

**JULY
2021**

VOL. IV ISSUE 2

Editor

Mr. Justice (Retd) Brojendra Prasad Katakey

Volume-Editor

Ms. Madhusmita Bora

Advisors

Mr. Justice (Retd) Dhiresch Narayan Chowdhury

Mr. Nilay Dutta

Mr. Apurba Kr. Sharma

NILIMA

A JOURNAL OF LAW AND POLICY

RECALLING OUR PAST

The Lived History of The Gauhati High Court

Editor

Mr. Justice Brojendra Prasad Katakey
Former Judge, Gauhati High Court

Volume-Editor

Ms. Madhusmita Bora

Advisors

Mr. Justice Dhiresch Narayan Chowdhury
Former Judge, Gauhati High Court

Mr. Nilay Dutta

Mr. Apurba Kumar Sharma

Board of Directors

Mr. Justice Dhiresch Narayan Chowdhury
Former Judge, Gauhati High Court

Mr. Justice Brojendra Prasad Katakey
Former Judge, Gauhati High Court

Mr. Nilay Dutta
Senior Advocate, Gauhati High Court

Ms. Millie Hazarika
Senior Advocate, Gauhati High Court

Ms. Sudha Shankar
Facilitator and Trainer
Non-Violent Communication

Dr. Mahfuza Rahman
Academic
Former Head of Department (Geography), Cotton College, Guwahati

Mr. Apurba Kumar Sharma
Senior Advocate, Gauhati High Court
Chairman, Executive Committee, Bar Council of India

Mr. Pradip Bhuyan
Industrialist

A Foreword from the Editor

Studio Nilima: Collaborative Network for Research and Capacity Building, as part of its efforts in building capacity amongst the lawyers, law students and others, is devoting this edition of *Nilima: A Journal of Law and Policy* to document the contribution of the Gauhati High Court in developing the law through its doyens.

Like each book has a story, each special edition of this journal has a purpose, without which the object of the edition may not be achieved. This edition of *Nilima* is to link our past to the future. It is said that people without knowledge of their history, origin and culture are like “a tree without its roots”. The study of contributions of the people and their experiences paves the path for the next generation to understand the changes that happened in the past to forge a better future. History also gives us the opportunity not to repeat the mistakes, if any, committed by the earlier generation.

Documenting the history of the development of law in Assam is especially important because of the unique legal architecture of the region apart from its socio-political complexities. Few North Eastern States, namely, the State of Assam, Meghalaya, Tripura and Mizoram, enjoyed a special status

(ii)

under the Constitution of India in the form of Sixth Schedule under Article 244(2) and 275(1). The provisions as to the administration of tribal areas of these States, enumerated in the Sixth Schedule of the Constitution are unique as they are not applicable to any area in the rest of the country. The development of law with special reference to the Sixth Schedule of the Constitution by the Gauhati High Court with the contribution of the stalwarts of the legal profession of this region, therefore, has special importance.

It is equally important to project the contribution of the Gauhati High Court through the lens of its stalwarts as their contribution in the development of law and justice have gone unnoticed by many outside the region.

Those of our generation in the legal profession have had the privilege of personally witnessing the arguments of the pioneers such as Dr. Jagadish Medhi, J.P. Bhattacharjee and others. We have also had the privilege of observing how the famous Judges of our High Court have contributed towards developing of law. It is therefore imperative that such rich history be documented so that the generation to come can learn how the law has evolved.

This edition is spread across seven sections. The journal opens with the section titled “*Without fear or favour*” which addresses the work of Justices Parbati Goswami, Justice B.L Hansaria and Justice N. Ibotombi Singh. All three judges displayed remarkable fortitude and courage in times of national crisis. The following section “*The Icons*”, celebrates the work of such great jurists such as Shri Joy Choudhury, Dr. Jagadish Chandra Medhi, Shri N.M. Lahiri, Justice Kiranmoy Lahiri and Shri J.P Bhattacharjee, who were truly icons of their era.

The section titled “*The Magnanimous*” is devoted to personalities including Justice S.N. Phukan, Shri Saroj Kumar Sen, Shri Suchendra Nath Bhuyan, Shri Jatindra Mohan Choudhury, and Shri Amrit Kumar Phookan, who apart from being doyens of the profession were equally well known for their charisma and endearing personalities. In “*Pioneering Trial Advocacy*”,

(iii)

we look at the contributions of some of the stalwarts of the practice in Assam who have made seminal contributions to the law. The caliber and expertise of the eminent counsel covered in this section include Shri Bishnu Kinkor Goswami, Shri Ramesh Chandra Chaudhury, Shri Bisheswar Sarma, Shri Shrish C. Choudhury, Shri Birendra Kumar Deka, Shri P.C. Katakai and Shri Pratap Chandra Deka who have become part of the lore in the profession.

The “*Pathfinders*” is devoted to jurists including Justice K.N Saikia, Justice Shafiqul Haque, Justice Meera Sharma and Justice D.N. Baruah who broke new ground and heralded a new jurisprudence during their journeys. The “*Statesmen*” is devoted to the work of three members of the fraternity; Justice Baharul Islam, Shri Dinesh Goswami and Shri Surendra Nath Medhi, who went on to make major contributions in public life. They distinguished themselves through the yeoman service they rendered during times of socio-political crisis.

The concluding segment, “*Pillars of Strength*” is devoted to reflections on some of the most enduring personalities who have played a major part in the institutional development of law in the region. Apart from providing several key learnings from their lives, the articles in this section also provide a close look at the strong bonds and the sense of responsibility which both the Bar and Bench maintained towards the society. The section includes reflections on some of the most well-known figures of Assam’s Judicial system such as Justice M.C Pathak and Surendra Mohan Deka.

In linking the past to the future, our sincere attempt has been to memorialize the contribution of all the stalwarts of Assam. However, we are aware that inspite of our best efforts few stalwarts could not be included owing to the various constraints including the pandemic. For all such omissions, we are deeply apologetic. Our efforts are ongoing in continuing to document the contributions of all the stalwarts of the Northeast region and we shall strive to bring those to you in our subsequent endeavors.

I extend my heartfelt gratitude to Madhusmita Bora for her extensive

(iv)

support to the project and key editorial inputs. I would also like to acknowledge Abantee Dutta's efforts in conceptualizing this edition and tenaciously following it through. I am deeply indebted to Abhilasha Alice Khongshei and Anubhab Atreya for their persistence and dedication in providing editorial support. I would like to acknowledge the continued partnership with Bhabani Offset & Imaging Systems Pvt. Ltd., specially to Bidhan Dev, Bibhash Dev, Prince Choudhury and Amal Das. As always, it has been a pleasure working with you in bringing out this volume.

I am confident that this edition of *Nilima: A Journal of Law and Policy* will inspire the present and future generations of lawyers and lawmakers of the region to conserve our collective heritage and imagine its future.

Mr. Justice Brojendra Prasad Katakey
Former Judge, Gauhati High Court
January 26, 2021

Contents

| | |
|--|----------|
| I: Introduction: <i>Justice in Northeast</i> | 1 |
| <i>By Justice Amitava Roy, Former Judge, Supreme Court of India</i> | |
| <hr/> | |
| II: Without fear or favour | |
| <hr/> | |
| a. “Without fear or favour” The Legacy of Justice Parbati Kumar Goswami | 25 |
| <i>Gayatri Goswami, Advocate</i> | |
| b. “Serving the Cause of Justice” Justice Banwari Lal Hansaria | 34 |
| <i>Vijay Hansaria, Senior Advocate</i> | |
| c. “Sentinel on the <i>Qui-Vive</i> of Individual Rights” The Legacy of Justice N. Ibotombi Singh | 46 |
| <i>Anubhab Atreya, Advocate</i> | |
| <hr/> | |
| III: The Icons | |
| <hr/> | |
| a. “The Gentle Patriarch”: Joychandra Choudhuri | 63 |
| <i>Prashanta K. Goswami, Senior Advocate</i> | |
| b. “One of the Brightest Legal Minds of his Generation” Dr. Jagdish Chandra Medhi | 67 |
| <i>Vikram Rajkhowa, Advocate</i> | |
| c. “Building Jurisprudence” Reflections on N.M Lahiri’s approach to Law and Life | 72 |
| <i>Justice H.S Thangkhiew Judge, Meghalaya High Court</i> | |
| d. “The Revered Guardian”: Justice Kiranmoy Lahiri | 82 |
| <i>Barnali Chowdhury, Advocate</i> | |
| e. “The Leading Light of Assam Bar”: Remembering Shri Jyoti Prakash Bhattacharjee | 86 |
| <i>Justice Hrishikesh Roy Judge, Supreme Court of India</i> | |
| <hr/> | |
| IV: The Magnanimous | |
| <hr/> | |
| a. “A Life of Kindness and Disarming Simplicity” Justice S N Phukan | 93 |
| <i>Pragyan Pradip Sharma, Advocate</i> | |

- b. **“The Common Man’s Lawyer”**
Remembering Saroj Kumar Sen 106
Bijan Chandra Das, Senior Advocate
- c. **“Revolutionary, Lawyer and a Philanthropist”**
Suchendra Nath Bhuyan 109
Justice Ujjal Bhuyan Judge, Bombay High Court
- d. **“Sophistication in Simplicity”**: Jatindra Mohan Choudhury 118
Pallab Katak, Advocate
- e. **“A Magnetic Field”**: Amrit Kumar Phookan 126
Justice Manojit Bhuyan Former Judge, Gauhati High Court

V: Pioneering Trial Advocacy

- a. **Initial Lawyering in Assam & The Three Renowned Civil Lawyers Whom I Knew Well** 133
Justice Dr. Mukundakam Sharma. Former Judge, Supreme Court of India
- b. **“Luminaries of the Gauhati Bar”**: Shrish C. Choudhury, Birendra Kumar Deka and P.C Katak 145
Hari Kanta Deka, Senior Advocate
- c. **“What not to ask”**: Musings on Pratap Chandra Deka 151
Neelanjana Deka, Advocate

VI: The Pathfinders

- a. **“An Academic and A Jurist”**: Justice Khagendra Nath Saikia 163
R.C Borpatrogohain, Senior Advocate
- b. **“Serving Humanity”**: Justice Shafiqul Haque 175
Dr. Taufiqur Rahman Borbarah, Former Principal, Assam Medical College
- c. **“A Force of Nature”**: My Mother Justice Meera Sharma 183
Krishna Sharma, Advocate
- d. **“Heralding a New Jurisprudence”**: Justice D.N Baruah 190
Devashis Baruah, Advocate

VII: The Statesmen

- a. **“Indian first and an Indian last”**
Remembering Justice Baharul Islam 197
Nazrul Islam, Advocate
- b. **“A Versatile Genius”**: Dinesh Goswami 205
Justice Biplab Kumar Sharma, Former Judge, Gauhati High Court
- c. **“Eminent Lawyer, Astute Statesman”**
Remembering Surendra Nath Medhi 211
Justice Sanjay Kumar Medhi, Judge, Gauhati High Court

VIII: Pillars of Strength

- a. **“Going down the Memory Lanes”**
Justice M.C. Pathak and his times 223
Kalyan P. Pathak, Senior Advocate
- b. **“Schooling Judges”**: Remembering Surendra Mohan Deka and his contributions to the Assam Judicial Academy 230
Justice I.A Ansari, Former Chief Justice, Patna High Court

Justice in North East: The Genesis

Amitava Roy¹

“How do I worship Thee O Revered Mother?

Thy lotus feet Divine

I breathed life in your loving arms

You reared me with your selfless charms

Indebted forever to Thee, I pledge

Beholden self of mine...”

(Ai Tuk Kihere Pujime

Ai Tur Charaney Dukhani

Ai O Kihere PujimeTuk

Ai O Jiban Di PujimeTuk

Ai Tur Moromi Kulatey

Ai Moi Jonomey Lobbilu

Ai Tur Kihere Shujimey Dhar

Ai O Jibon Di Shujimey Dhar...)

-Dr. Bhupen Hazarika

This soulful homage to motherhood by the universal bard rings with permeating vibes in the verdant valleys and hills of the entire North East striking the umbilical bond integrating the place and its populace with familial

camaraderie. This perhaps explains the lasting comradely existence of the inhabiting abounding communities with kaleidoscopic ethnicity.

The North East presents an exotic pageant of Nature's extravagant bounty, blessed with ethereal picturesque settings, rejuvenating rivers prancing in their courses, lively hills, breathtaking valleys, blooming meadows, brisk forests, quiet rivulets, flourishing biospheres, sprightly streams and gargling waterfalls. Bright azure sky with captivating clouds, enchanting rains, occasional fragrant zephyr under the canopy of sun and shade, complete the sublime spectacle. The Presiding Deities attest the divine ambience.

The denizens of the region, exude a homogeneous identity engendering a cohesive and harmonious coexistence, notwithstanding the diversity in geographical, ethnic and cultural attributes, irrespective of varied legal customs and traditions informed with customary laws. The inhabitants zealously sustain a unique assimilation thereof to present a kindred mosaic of human existence cemented with fraternal solidarity. As if in deference to the bounteous benefactions of Mother Nature, the dwellers of this territory value simplicity, frankness, humility in conduct and innocence of character, sans vain vanity and abrasive arrogance. Devotedly dedicated to truth and moral values, they are God fearing, their belief in divine dispensations being the creedal core of the customary systems of administration of justice prevalent even today. Pluralistic in vision, they believe in compassion and conviction with conscious commitment to honour the composite cultural heritage. The region indeed is a wiredrawn gossamer of diverse customs, traditions, practices and beliefs however integrated in unitive actuality. These extraordinary characteristics of the region and its inhabitants thus command a committed avowed account of their past glory for a worthy future.

The aphorism, "the best prophet of the future is the past", is a time tested veracity. Stephen Fry had thoughtfully remarked, "*How can we understand our present or glimpse our future if we cannot understand our past? How can we know who we are if we don't know who we were? History is not the story of strangers, alien from another realm; it is the story of us had we*

been born a little earlier"² (Fry, 2006). Rightly people constitute living history and that history is inescapable as it connects events through time. Dehors the past or such history neither the present nor the future is complete. To assess the present and fathom the future, indispensable it is, to hearken to the past.

The ethnic communities of the North East which are still wedded to a host of diverse customs, cultures, traditions and languages are religiously possessive of their customary laws and judicial institutions constituting the kernel of the justice dispensing mechanism, dominantly to maintain societal discipline and harmony. Such customary laws are not written parchments but have been orally handed down from generation to generation. These are founded on deep conviction for truth and moral values informed with the duty to foster community well being, the ultimate end being to mete substantive justice. Fairness in procedure is rigidly secured and principles of common sense and logic are applied to evaluate the evidence to arrive at any verdict. The customary laws are not rigid but malleable to cater to the exigencies of time, the end mission being to sustain a disciplined social order. The indigenous methods adopted to discern the truth are founded on the abiding belief in the divine entities worshipped or feared. The solemnity of the Oath administered to a witness to be truthful in his/her testimony is deeply entrenched in the credulous belief in and reverence for the supernatural powers which enjoy overall spontaneous acceptance of the communities. The analytical process is simple, rational, practical and intelligent, loyal to the deeper springs of higher consciousness. No wonder, such customary precepts and procedures applied by the native institutions are still in vogue, notwithstanding the advent of the contemporary dispute redressal mechanisms. Mentionably, the overwhelming objective of justice dispensation which initially used to be retributive in character and impact, gradually came to be replaced by the mission of restitution and compensation. Allegiance to truth and moral and ethical values non-negotiably inform the process. In all eventualities, however, the customary laws, traditions, practices and beliefs are scrupulously followed to secure the integrity and honour of the communities.

Metamorphosis

The evolution of the justice system in North East India is breath-taking in range; it ranges from some of the most nuanced customary law-based systems to the modern-day constitutional courts. What is most fascinating, however, is that these systems co-exist today and in harmony with each other. This is made possible by such pioneering innovations of the constitutional framework as the Sixth Schedule which Justice Hidayatullah revealingly termed as “*Constitution within a Constitution*”.³ (Hidayatullah, 1978)

But the story of the evolution of the justice delivery system in North East India, now an ensemble of seven sister states, Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh, is in many ways, coterminous with the story of the Gauhati High Court. Indispensable thus it is to reflect upon the numerous political, legislative and historical events which have brought us to the cusp of the modern-day justice delivery system in the region.

An institution is not necessarily defined by its power or its impact. It is, in many ways defined by its people. The Gauhati High Court has been fortunate to have amongst its earlier constituents, both at the Bar and on the Bench, such strong people of unflinching conviction, who had the courage to speak truth to power. To take the side of the last, lost and the lowliest. And it is these people, who have carved the institutional memory of this Court. It is they, who have built a jurisprudence which settled seminal points of law relating to the writ of habeas corpus, civil rights, fairness in state action etc. In tribute, this edition modestly seeks to celebrate these pioneers and their lives and times wholesomely embodying the cornerstones of the institutional growth and glory.

The expansive eventful canvas is traceable to the Ahom kingdom that ruled Assam from the 13th century to the 19th century and had evolved a judicial system of its own. Many commentators have referred to the salient facets of the justice system of the Ahom kingdom. In much the same way,

the various other units of the North East, such as the hill states had their own systems of justice dispensation.

Following the Treaty of Yandaboo in 1826 and with the arrival of David Scott, the first Commissioner and Agent to the Governor General for the eastern frontier, the process of judicial and administrative reforms in the region stood initiated. Three Civil Courts (Munsiff, Sadar Ameen and an Appellate Court) had already been established in Gauhati by 1826. However, most of these reforms were only in areas under direct British control, namely the districts of undivided Goalpara, Kamrup, Darrang and Nowgong.

With the enactment of Assam; Arracan; Tenasserim 1835 (Act II of 1835), a Sadar Court came to be established in all the districts of Lower Assam to try all civil and criminal cases, while the Bengal Board of Revenue was made the ultimate authority in matters of revenue. However, Scott also deemed it important to resurrect the traditional courts amongst the different tribes with the Commissioner being the final appellate authority. The Assistants to the Commissioner were also invested with powers of Judicial Magistrates who presided over courts. With the annexation of Cachar on August 14, 1832, the British formed a separate district under a Superintendent with its headquarters at Silchar. Soon after in 1836, the district of Cachar was transferred to the Dacca Division, due to which it came under the jurisdiction of the High Court of Calcutta.

The next pivotal development in the judicial history was the bringing into force of the Assam Code, 1837 which regulated the procedure in civil and criminal cases. Noting that these provisions had come more or less from the laws and regulations adopted in Bengal, Scott and his officers made an effort to simplify the regulations in Assam due to the large ethnographic diversity of the region. With the deposition of the Ahom king Purandar Singha in 1838, the judicial reforms imposed in the Lower Assam districts were also replicated in Upper Assam.

In 1860, the General Codes of Civil and Criminal Procedure superseded

the Assam Code of 1837 and in 1862, the British sought to foist the Indian Penal Code on the region. After realizing that the demography and cultural differences in the area made it difficult to implement the IPC, the British sought to remedy the issue by introducing the Scheduled Districts Act XIV of 1874 and the Laws Local Extent Act, XV of 1874. Both these Acts classified Assam as a Scheduled District and endowed the administration with the power to declare specific laws for the region.

However, Assam was separated from Bengal only on February 6, 1874 and was made a Chief Commissionership under R.H Keating. The legal basis for this change emanated from Acts VIII and XII of 1874 (The Assam Chief Commissionership Act, 1874 and The Sylhet Act, 1874 respectively) which designated the area, comprising of the two valleys (the Brahmaputra and the Surma) and the hill areas, as Assam. All legal powers from the Lieutenant Governor of Bengal, were transferred to the Chief Commissioner by the same Acts. However, through all this, the Calcutta High Court continued to wield jurisdiction over the State.

Assam's political system through the colonial years went through many mutations. The prime considerations for these changes were British administrative convenience and revenue collection. For example, between 1905 to 1911, parts of Bengal were merged with Assam to create a new province called Eastern Bengal and Assam at the instance of Lord Curzon. With the upheavals that followed the partition of Bengal, the areas of Eastern Bengal were re-united with West Bengal and Assam became a separate province in 1911. Following the enactment of the Government of India Act, 1919, Assam was upgraded to a Governor's Province in 1921 and came to be administered by a Governor and his Executive Council. While there also existed a Legislative Council, the provisions of the Government of India Act provided that the "reserved" subjects such as police, law and justice, land revenue etc. were to be administered by the Governor and his two-member Executive Council.

Significantly, in case of the hill areas, the British adopted a different disposition. Without attempting to impose western models of

administration, for instance, the Naga Hills was continued to be administered as a frontier district of Assam till Independence, ensuring that the autonomy of the tribes in such matters was not compromised. The legal basis of this mechanism stemmed from the Administration of Justice and Police in the Naga Hills, 1872 which vested the administration in the hands of the Chief Commissioner, the Political Agent and his Assistants, *gaonbura* (Village Chief) and the *dobashi* (Interpreter). Alike the Naga Hills, the British adopted a more or less similar approach for the Lushai Hills (present day Mizoram) and Arunachal Pradesh. The areas which comprise present day Meghalaya, i.e. the Garo, the Khasi and Jaintia Hills also had a chequered evolution with the Bengal Regulation X of 1822, which barred applicability of rules and regulations prevailing in the rest of India and instead allowed for special rules framed by the Executive to be applied in areas covered by it.

Emergence of the Assam High Court

Noticeably, after the formation of the Chief Commissionership in 1874, a substantial judicial system had been established in most parts of Assam. However, the High Court at Calcutta continued to wield its jurisdiction over the area. The situation continued throughout the last decades of the 19th century and a litigant then had to travel for months in country boats on the Brahmaputra to access the High Court. While steamers became available during the last years of the 19th century, the prices remained prohibitive much beyond the capacity of ordinary litigants.

After the setting up of the Governor's province in 1921, the power of the High Court of Judicature of Calcutta in the excluded and partially excluded areas of Assam came to be exercised by the Governor and the High Court remained the primary appellate authority in all other regions.

The Government of India Act, 1935, laid the bulwark for the Indian judicial system that came to be adopted in the Constitution of India. The 1935 Act, provided for the Federal Court in India which would consider appeals from the High Court. Apart from this, it also provided for the setting

up of a High Court in the provinces under Section 229. However, the procedure under Section 229 enjoined discussion in the Legislative Council and the Legislative Assembly and a formal resolution to that effect. While considerable deliberations ensued in 1936 in the Assam Council and the Assembly, nothing fruitful emanated from it. Finally, even though a resolution for establishment of a separate High Court in Assam was adopted by the Legislative Assembly, nothing progressed further for the next decade or so.

With the advent of Independence, the Assam Legislative Assembly reaffirmed its resolution for a separate High Court in Assam, on the September 9, 1947. This time, the Governor General of India, Lord Mountbatten, exercising the power under sub-section 1 of Section 229 of the Government of India Act, 1935, promulgated the Assam High Court Order on March 1, 1948. The Order was to come into effect from April 5, 1948. Thereby, not only the original, appellate and other jurisdictions hitherto exercised by Calcutta High Court in respect to the province of Assam, but also the powers of the Governor were conferred on the Assam High Court. This essentially brought the hill areas of Assam within the purview of the new High Court, thus vesting in it, jurisdiction over the entirety of Assam.

Under the first Chief Justice R.F Lodge, the one-member Assam High Court assembled in Shillong, before shifting to Guwahati from August 14, 1948. With the commencement of the Constitution of India on January 26, 1950, the jurisdiction of the Assam High Court was extended over the tribal areas through the Sixth Schedule and the Jurisdiction over District Councils Order, 1954. Justice Lodge, being a former member of the Indian Civil Service, had a major role to play in streamlining the administration of the High Court. His love for the region and commitment to the concept of inclusivity and precepts of judicial independence set the tone and tenor of the Court in its fledgling years.

The Hon'ble Judges who served in the early years of the Assam High Court such as Justice T.V. Thadani, Justice Sarjoo Prasad, Justice Ram Labhaya, Justice Holiram Deka amongst others, uncompromisingly ensured that the

Court remained second to none both in judicial fervour and efficiency. It was also during this phase, that most of the basic groundwork as regards infrastructure, such as laying of the foundation stone for the permanent building of the High Court and overseeing its constructions were completed.

Over the years, as independent states were carved out of Assam, concordant changes had to be made to the legal edifice of the High Court. With the passing of the State of Nagaland Act, 1962, the Naga Hills and Tuensang areas of erstwhile NEFA (North East Frontier Agency), were constituted into the State of Nagaland. Following this, under Section 13 of the Act, the High Court was re-designated as the “High Court of Assam and Nagaland” on December 1, 1963. As regards Nagaland, the customary laws and authorities were recognized by Article 371A of the Constitution and the Rules of Administration of Justice and Police in Nagaland, 1937 were amended to provide for a hierarchy of village courts that would administer customary laws. To ensure uniformity in both practice and procedure, a Circuit Bench of the High Court was established at Kohima on December 1, 1972 which was upgraded as a Permanent Bench on February 10, 1990.

By operation of the North-Eastern Areas (Reorganisation) Act, 1971 (Act 81 of 1971), the states of Manipur, Tripura and Meghalaya were chipped off from composite Assam and the High Court of Assam and Nagaland ceased to function and was abolished in terms of Section 28 thereof. Thereby, Union Territories of Mizoram and Arunachal Pradesh were also established identifying areas from the erstwhile State of Assam. A common High Court thus came to be established for the five states of Assam, Nagaland, Meghalaya, Manipur and Tripura and two Union Territories (Union Territory of Mizoram and the Union Territory of Arunachal Pradesh). With the enactment of the State of Mizoram Act, 1986 (Act 34 of 1986) and the State of Arunachal Pradesh Act, 1986 (Act 69 of 1986), both the States of Mizoram and Arunachal Pradesh attained statehood on the February 20, 1987. Special provisions with regard to these states were made by the Constitution (Fifty Third Amendment) Act, 1986 (for Mizoram) and Constitution (Fifty Fifth Amendment) Act, 1986 (for Arunachal Pradesh) also with effect from the

same date. The High Court of Assam and Nagaland was eventually renamed as the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh).

Sequentially thereafter, circuit benches of the common High Court were set up in the newly formed States followed by permanent benches thereat. Finally, by the North-Eastern Areas (Re-Organisation) and other Related Laws (Amendment) Act, 2012, separate High Courts for the States of Meghalaya, Manipur and Tripura were established with effect from the March 23, 2013 christened as the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura, respectively. In view of this institutional transfiguration, the parent High Court presently is designated as the Gauhati High Court (High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh).

In the pre-independence era, during the colonial rule, the British foresaw the expediency in continuance of the traditional systems of justice dispensation in particular and therefore, had classified areas in the region to effectuate such objective. After the independence, a sub-committee was formed to address the issue of conventional judicial interventions in these areas by the Constituent Assembly led by Late Gopinath Bordoloi. This sub-committee after an in depth study of all the attendant aspects recommended against supplantation of the customary laws and practices and instead underlined that the communities ought to be left with full powers to administer their own social laws and to codify or modify the same. The resultant “Draft Rules for Administration of the Tribal Areas of Assam” laid before the Constituent Assembly on July 28, 1947 was adopted with a few amendments and were eventually incorporated in the Sixth Schedule of the Constitution. In terms thereof, the tribal areas to be administered as per the Sixth Schedule, were termed as Autonomous Districts. Each Autonomous District could establish a District Council. If there were different Scheduled Tribes in an Autonomous District, it could be divided into areas inhabited by them into Autonomous Regions. In such an eventuality, every Autonomous Region could establish a Regional Council. The administration of an Autonomous

District, in so far as not vested in the Regional Council within such District, was vested in the District Council and the administration of an Autonomous Region was vested in the Regional Council. In the present context, further dilation on this scheme of the Sixth Schedule is inessential and suffice it to record that the same is a complete code for the administration of the tribal areas thereof and not only secures the integrity thereof and the laws, customs, traditions and practices in vogue thereat, but also vests the people of these areas, the autonomy in managing / administering their own affairs.

In such unique ethnic and cultural diversity, with different communities committed to their customary laws and age old fealty to their judicial institutions, the judges manning the conventional courts including the High Court have to be essentially conversant with the host of tribal laws and customs in addition to the legislations ordaining the laws applicable. In their quest for truth, to administer fair and even handed justice, the judicial forums have to negotiate the intricacies of perceptual incompatibilities between the customary/ tribal laws and the domestic laws applicable. To ensure justice in accordance with law, the life purpose of any judicial institution or forum entrusted with the role of dispensation of justice, the judges not only are indispensably required to be adequately acquainted with such customary/ tribal laws and the procedure, at times relatively primitive in form, but also have to be possessed of the learning and judicial techniques to apply the ordinary laws to achieve finality in the adjudgment binding on the parties. This is indeed a singular feature of the adjudication mechanism of this region pursued by the ordinary courts as well as the High Court exercising its power of superintendence on them under the Constitution of India.

The Gauhati High Court, has steadily with time, earned an admirable niche for itself by its distinguished and credible accomplishments and by its several landmark renditions, has reaffirmed the faith in the fundamental human rights and freedom, civil liberties, dignity and worth of human person, apart from making pioneering contributions to the growth of law in various spheres of national and transnational significance. Not only has it set and maintained high traditions, the constituents thereof have in the exigent

conditions displayed estimable integrity and character and with remarkable sensitivity, compassion and conviction conscientiously defended and upheld human rights. With time, this budding institution has not only reassured itself to be the bastion of justice and the guardian of peoples' rights and liberty, but also has been able to firmly claim a pride of place as an inseverable stakeholder in the process of judicial development both in this region and at the national stage.

As a forerunner in the challenging role of defending the fundamental right to life and liberty during the Emergency, this institution, even in the face of inexplicable vacillations of various Constitutional Courts of the land, did entertain writ petitions challenging preventive detentions. After the Emergency days as well, more particularly during the mass movement against foreign infiltration witnessed by the State of Assam in particular, the Gauhati High Court with its deserving interventions as warranted by facts, ensured that the life and liberty of the people were not encroached upon without any authority of law or following the procedure prescribed by law. Instances of such judicially sensitive interventions are galore and the consequential pronouncements did not only authenticate the admirable knowledge of law and the clarity of concept but also the commendable resolution of the judges and their commitment to the Constitutional faith and preambular promises enshrined in the National Charter. Such instances are legion, though an endeavour to mention a few thereof would be made hereafter.

Seminal Pronouncements in Retrospect

Soon after its establishment, it demonstrated its judicial acumen in upholding in *The King vs. Gananath Goswami and Anr* being Jury Reference No. 1 of 1949, the decision of the concerned Sessions Judge disagreeing with the unanimous verdict of guilty returned by the jury in a Sessions trial initiated before Independence. It indeed reinforced the promise held out by the institution for the time to come, by such commendable resolution, to ensure fair trial.

In another notable decision in *State of Assam vs. Ranga Mohammed* as reported in AIR 1967 SC 903, this Court on a dialectical interpretation of Article 233 and 235 of the Constitution of India, propounded that the transfer of a Judge of the Subordinate Judiciary can be ordered by the High Court under Article 225. This ruling, sustained by the Hon'ble Apex Court, in substance paved the way for incorporation of Article 233A by the Constitution (20th Amendment) Act, 1996. This rendering not only proclaimed the independence of the Judiciary but also ushered in a Constitutional amendment to secure the finality of judicial decisions thus upholding the rule of law.

While the pronouncement in *Hareswari Marak vs. Fredrice Marak* highlighted the indispensable requirement of the Judges of the High Court to be familiar with the customary laws of the different ethnic communities of the region, in *U Owing Singh vs. Ka Nosibon Jyrwa*, the autonomy of the Syiem of Myllem and his Durbar to entertain and decide civil litigation between the tribals living in a territory which forms part of the United Khasi & Jaintia Hills District but is an area constituted within the Municipality of Shillong, was acknowledged.⁴

In defining the ambit of the power of judicial review in administrative and quasi-judicial matters, the insightful perspectives of the High Court earned recognition of the Hon'ble Apex Court in *Nagendra Nath Bora vs. Commissioner of Hills Division* as reported in AIR 1958 SC 398.

In Re the Sixth Schedule to the Constitution of India, the Hon'ble Apex Court in *State of Nagaland vs. Ratan Singh* as reported in AIR 1967 SC 212, upheld the validity of the Rules for Administration of Justice and Police in the Naga Hills District framed under Sections 6 and 7 of the Scheduled Districts Act, 1874 and held as well that the Deputy Commissioners exercising jurisdiction over the area concerned would have the power vested in the District & Sessions Judge and would be guided by the spirit of the Civil and Criminal Procedure Codes as envisaged in the Rules. This decision did cast a leading light in comprehending the mechanism

for justice dispensation in the areas inhabited by the tribal communities otherwise committed to their customary laws, practices, traditions and usages in deciding their disputes.

In another landmark rendition having a formidable bearing *qua* the authority of a District Council under the Sixth Schedule, it was ruled in *T. Cajee vs. United Khasi and Jaintia Hills District* as reported in AIR 1961 SC 276, that after the conferment of power under the Sixth Schedule, the District Council was authorised to take executive actions with regard to matters where it had power to legislate, even in absence of any legislation in respect thereof.

These determinations find reference herein for having their moorings in the region and are founded on the research oriented ground work undertaken by the High Court at its level of adjudication and have indeed enriched the judicial chronicles worthy of timeless references for the future.

In an interpretation stimulating the humanising jurisprudence of death row prisoners, it was expounded in the process of analysing Section 30(2) of the Prisoner's Act, 1984 in *Khowaj Ali Barbhuyan vs. State of Assam*, that thereby the Jail Authorities are neither empowered nor left at liberty to effect solitary confinement of such prisoners.⁵

An eminent exposition of the law of divorce in Muslim Law in the context of the precepts of Holy Koran, was rendered by the High Court in *Jiauddin Ahmed vs. Anowara Begum* being Criminal Revision No. 199 of 1977, which found deferential reference in the later pronouncements pertaining amongst others, to the practice of triple talaq.

In a path breaking and singularly unique instance of judicial intervention, the High Court on a Writ Petition filed by an upright and enterprising member of the Gauhati Bar Association, did put on hold the appointment of Mr. K.N. Srivastava as a Judge of the Gauhati High Court. The case was eventually transmitted to the Hon'ble Apex Court and registered as Transferred Case (Civil) No. 101 of 1991, in which it was ruled that though

the issue of appointment of a High Court Judge was one within the purview of Article 217, the Courts can interfere where the challenge is on the ground of non-fulfilment of the criteria of eligibility enumerated in Article 217(2). The Hon'ble Apex Court in the attendant facts, directed the Union of India not to administer oath or affirmation to Mr. K.N. Srivastava, being satisfied that he was not qualified for such an appointment.⁶

Not only the High Court's timely and sentient intervention in such extraordinary circumstances did prevent possible incursion of judicial independence, but did laudably secure the institutional credibility to be inscribed in the annals of judicial history.

In its pioneering estimable role as the guardian of human rights and civil liberties, the High Court made commendable contributions since its establishment, the first in the line being in *Tarun Sen Deka vs. Government of Assam* as reported in 1949 Cr.L.J. 762, in which the order of detention of the petitioner under the Maintenance of Public Order Act, 1947 was set aside. Subsequent thereto, from time to time and in particular, during and after the Emergency in the country, the High Court in a plethora of cases, stood firmly as a vigilant and conscientious sentinel against executive excess and arbitrariness, to guard the constitutionally cherished right to life and liberty of a person. The High Court exhibited courageous adherence to the constitutional ethos and eidos with remarkable perceptual clarity, jurisprudential ideology and resolution of judicial purpose. In succession, this Court recorded lucid, erudite and dispassionate elucidation of several preventive detention laws invoked to suspend civil liberty on grounds determined to be constitutionally impermissible. Such renditions are numerous but to name a few of mentionable distinction are: (*Tikaram Chand Khatri vs. Kamleswar Bora*, Criminal Revision No. 17 of 1976); (*Nibaran Bora vs. Union of India*, 1980 Cr.L.J. 1201); (*Bipul Mahanta vs. State of Assam*, Civil Rule (HC) No. 25 of 1983); (*Brindaban Goswami vs. District Magistrate, Darrang*, 1981 Cr.L.J. 1269 and Civil Rule No. 306(HC) of 1981); (*Madhab Chandra Chakraborty vs. State of Assam*, Civil Rule 514(HC) of 1981). Though such bold and fearless interventions had followed even

thereafter, the instances cited have their significance being relatable to a period that witnessed a deluge of preventive detentions.

In its emphatic proclamation of right to equality before the law and equal protection of laws, the High Court struck down the summary procedure for ejection of a person from Government land as per Rule 18 of the Settlement Rules made under Section 12 of the Assam Land and Revenue Regulation on the ground of discrimination inter se the same class of persons and leaving the authority concerned at its unregulated discretion to pick and choose persons to be subjected to such summary procedure.

That the High Court being consciously mindful of the mandate contained in Article 50 of the Constitution of India for separation of the Judiciary from the Executive in the public services in the State had been taking committed initiative both in its administrative and judicial dispensations is evident inter alia from two pronouncements, *Subhasis Chakraborty vs. State of Meghalaya* as reported in 2002(1) GLT 227 and *Registrar General of Gauhati High Court vs. Union of India* in particular. Whereas in the first adjudication, the State of Meghalaya was directed to take steps for separating the subordinate judiciary of the State from the executive and for vesting control in the High Court of all subordinate courts, in the second determination, in essence the provisions of the Civil Procedure Code and the Criminal Procedure Code were extended to the tribal areas in the State of Assam as mentioned therein and also in the States of Mizoram and Arunachal Pradesh. Vis-à-vis the State of Nagaland, on a detailed scrutiny of various pronouncements of the Apex Court on statutory interpretation, it was held that the Bengal, Agra and Assam Civil Courts Act, 1887 would also be applicable therein without in any manner affecting the operation of Article 371A or the functioning of a village, customary or any other Court.⁷

In the sphere of judicial review in exercise of its jurisdiction under Article 226 of the Constitution of India as well, the High Court has made notable contributions to outline the limits of executive power and discretion in the

dealing with the State and its instrumentalities both in their administrative dispensations and also in commercial transactions including grant of Government largesse. The spectrum traversed encompassed issues stemming amongst others from settlement of commercial contracts; grant of State largesse; election under the Representation of the People Act, 1951; grant of recognition of village; allocation of public funds; evaluation of answer scripts by academic experts; awards for compensation under the Motor Vehicles Act, 1988; Court Martial proceedings under Army Act, 1950; eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971; service conditions of the members of High Court service; Schedule X of the Constitution of India, involving disqualification of a member of the State Legislative Assembly, et al.

In administering the adjudicative dispensations, the High Court being consciously mindful of the jurisdictional limits of the power of judicial review, while exercising admirable restraint, did intervene in deserving cases where the decisions impugned were discernibly illegal, irrational, unfair, unreasonable and in defiance of logic. Unfettered and unbridled executive discretion was strongly discountenanced and the notion of legitimate expectation as an index of fairness in action as well as the invocation of the Wednesbury Principle as a measure of adjudging reasonableness and non-arbitrariness of state action, received authoritative imprimatur.

Avant-Garde Bar

The importance of the Bar in the dispensation of justice cannot be overemphasized. Its role becomes all the more prominent in the case of a court which has been newly established, as was the case with the precursor of the present day Gauhati High Court, the Assam High Court. The expectant words of Justice R.F Lodge, the first Chief Justice of the Assam High Court, at its inauguration proved prophetic:

*..... There cannot be a "good" High Court without a "good" Bar.
I hope to see the growth here in Guwahati of such a strong independent*

Bar of fearless advocates who will not hesitate, if need be, to brave the displeasure of Judges in defence of the legitimate interests of their clients.

The impact and legacy of any Bar is often determined by the quality of its leaders and the level of organization it has. Even before the inception of the Assam High Court, Gauhati already had a robust Bar, with a Lawyer's Association which had been started as far back as 1850. It was further strengthened when on June 13, 1948, twenty nine advocates of the High Court met under the chairmanship of the then Advocate General of Assam, Shri Fakhruddin Ali Ahmed and resolved to form the Assam High Court Bar Association.

As the Assam High Court Order, 1948 had stipulated that lawyers practicing in the Calcutta High Court who had earlier dealt with cases from the Province, could practice in the newly established Assam High Court, a number of prominent lawyers from Calcutta, including M.N Roy, Paresh Lal Som, S.K Ghose, Gyanendra Bora, Purnendu Choudhury, GirinDeb, N.M Dam and Bhabesh Chandra Barua, shifted their practice to Gauhati. Further, since local lawyers who had ten years' experience were also allowed to join the High Court, it created another pool of talent.

As time passed, the High Court Bar Association was enriched by the enlightened presence of amongst others, Parbati Kumar Goswami (who went on to adorn the Supreme Court of India as a Judge), M.C Pathak, Dambarudhar Pathak, Kiranmay Lahiri, Dr. Jagadish Chandra Medhi, Joy Chandra Choudhury, Baharul Islam (who also went on to become a Judge of the Supreme Court) Abdul Muhib Mazumdar, Mohiuddin Bar-at-Law, Hareswar Goswami, Dina Nath Medhi, KP Bhattacharya, PK Guha, N.M. Lahiri, J.P. Bhattacharjee and many other eminent lawyers of this period, have ennobled the chronicles of the institutional history.

As is the case with the legal profession in India, this Bar as well, has contributed many personalities to other walks of public life. The Bar has produced such tall leaders namely, Sir Syed Muhammad Saadulla who was

the Premier of Assam under the Government of India Act, 1935; Deshbhakta Tarun Ram Phukan, who apart from being an accomplished lawyer was also a distinguished political personality; Fakhruddin Ali Ahmed, who went to hold the office of the President of India; Gopinath Bordoloi and Bishnuram Medhi (Chief Minister of Assam); Dinesh Goswami (Union Law Minister); Nabin Chandra Bordoloi, Rohini Kumar Choudhury, Muhammad Tayebullah etc.

With the formation of the High Court of Assam, Fakhruddin Ali Ahmed was appointed as the Advocate General (1948-1952), followed by such doyens as S.M Lahiri, Bhabesh Chandra Barua, Jagadish Chandra Medhi and so on. When Nagaland was declared a State in 1963, Dibyendu Mohan Sen became its Advocate General followed in 1969 by S.K Ghose. The next Advocate General of the State was the legend J.P Bhattacharjee. The first Advocate Generals for Meghalaya, Manipur and Tripura were N.M Lahiri, N. Ibotombi Singh and H.C Nath respectively.

With the progression of years, many advocates developed masterly specializations in various jurisprudential disciplines. Late Satyen Mohan Lahiri was regarded as one of the foremost authorities of civil law while Late Joy Chandra Choudhury and his son Late Jatin Chandra Choudhury, were the most illustrious and astute advocates of their generation, practicing criminal law.

Several members of the Association namely Justices Baharul Islam, Khagendra Nath Saikia, Kiranmoy Lahiri, Mahendra Pathak, Dambaru Dhar Pathak, S.K Hom Chaudhuri, Mukunda Kam Sharma, Meera Sharma, JN Sharma, DN Choudhury, Ranjan Gogoi, Amitava Roy, BK Sharma, HN Sharma, BP Katakey, Anima Hazarika, have also been elevated to the Bench of the Gauhati High Court and the Supreme Court.

Mentionably, the Lawyer's Association was proactively, at the forefront of the movement to set up a High Court in Assam, and the political leaders among the legal practitioners, carried this movement forward in the Legislatures for fruition.

Epilogue

In the words of Justice Benjamin Cardozo, a court must give to the words of a Constitution 'a continuity of life and expression' and therefore its role is not limited to conventional application of pre-existing legal rules to a given situation but desiderates liberal and dynamic interpretation of laws to accord with the changing times more particularly to preserve and sustain constitutional principles to secure, the life, liberty and dignity of the citizens. The judiciary thus as an amalgam of the Bar, Bench and the Laity is not merely an instrument of conflict resolution but a citadel of justice, where the values of the nation are preserved, protected and proclaimed.

Any social change or reform demands persuasive advocacy as a potent instrument therefor and for heralding such a change a specialized insight into the essence of human rights and values is an inalienable essentiality and axiomatically, the enlightened members of the Bar and the Bench are best suited to assume the role of a social engineer and reformer. The High Court with a symbiotic synthesis with the enlightened and enterprising members of its Bar have in the past decades emerged as a philanthropic institution to actualize the wholesome constitutional goals and guarantees. The stalwarts of the Bar and the Bench with their erudite statesmanship and human spirit have exemplarily discharged their significant role to sustain, consolidate and promote the rule of law and to motivate and style public opinion for midwifing policies of governance to serve as the foundation of a civilized society. Indeed, the High Court, in the onerous discharge of its solemn responsibilities, has vindicated its existence as the guardian of the guarantees enshrined in the Constitution to fulfil its functional trust.

The High Court as the custodian of high traditions and rich heritage of the Bench and the Bar has been an embodiment of cultural diversity with underlying unity. Apart from the abiding cordial comity between the Bar and the Bench, these august institutions have stood together to uphold the majesty, credibility and glory of the High Court. The alchemical harmony of these two entities has been unique and remarkable. The founding fathers

of the Bar with legendary intellect and integrity embraced the constitutional creed of equality, justice and fraternity as their living faith. Devoid of high hauteur, they personified humility, discipline, perseverance, morality, compassion, commitment, charity, fairness and resolve. Spiritually sensitive of their duties as learned members of the noble profession, they with collective collegiality used to be at the vanguard of any legal and social cause, worthy of the remedial intervention of the Bar. The fond association and instructive tutelage of these doyens of the yesteryears have enlightened and inspirited their protégé for the future. Many of their worthy disciples have commendably carried their mantles till this day and have belighted the way laid by them. Cornucopian expectations of the society render the task ahead vastly challenging. Reassuringly, “*Geetanjali*” holds the beacon:

*Where the mind is without fear and the head is held high;
Where knowledge is free;*

...

Where words come out from the depth of truth;

...

*Where the clear stream of reason has not lost its way into the dreary desert
sand of dead habit;*

*Where the mind is led forward by thee into ever-widening thought and
action*

Into that heaven of freedom...

Endnotes:

- ¹ Justice Amitava Roy is a former Judge of the Supreme Court of India. He has held the office of Judge, Gauhati High Court and thereafter Chief Justice of the Odisha High Court and Rajasthan High Court. This author would like to acknowledge the research assistance provided by Anubhab Atreya.
- ² The quoted lines are attributed to a speech delivered by Stephen Fry in 2006 as part of a campaign called History Matters to raise public awareness about the “huge contribution that history, heritage and the built environment make to our quality of life.” The said speech has been reproduced on July 9, 2006 in The Guardian.
- ³ The concept of “Constitution within the Constitution” is attributed to M. Hidayatullah, the 6th Vice President of India and the 11th Chief Justice of India, while delivering the 3rd Anundoram Barooah Law Lecture at Gauhati in 1978. However, this view was not accepted by the majority in the Constitution Bench decision of the Hon’ble Supreme Court of India in *Edwingson Boreh vs. State of Assam* as reported in AIR 1966 SC 1220.
- ⁴ The decision in *Hareswari Marak vs. Fredrice Marak* arose from Civil Revision No. 35(H) of 1954 (D/D 24-03-1954). On the other hand, the case of *U Owing Singh vs. Ka Nosibon Jyruva* dealt with Civil Revision No. 189(H)/1953 and Civil Rule No. 188/1954 and No. 17/1955 (Misc).
- ⁵ The decision in *Khowaj Ali Barbhuyanarose* from Criminal Misc. Case No. 47/86 in connection with Criminal Death Reference 2/85 and Criminal Death Reference No. 115 of 1985
- ⁶ The decision of the Hon’ble Supreme Court in this case was reported as *Kumar Padma Prasad vs. Union of India* as in AIR 1992 SC 1213.
- ⁷ The decision of the Hon’ble High Court in *Subhasis Chakraborty vs. State of Meghalaya* is numbered as Writ Petition, W.P.(PIL) No. 4592/2001 – 63/2002) while the petition titled *Registrar General of Gauhati High Court vs. Union of India* is numbered as WP(C) No. 5873/2006 (1609/ 2003) before the Hon’ble Gauhati High Court.

Reference List:

- Dutta, A. (2018). Gauhati High Court: History & Heritage. Publication Division, Ministry of Information and Broadcasting, Government of India.
- Fry, S. (2006, July 09). The future’s in the past. Retrieved from The Guardian, The Observer: Culture: <https://www.theguardian.com/theobserver/2006/jul/09/featuresreview.review>

WITHOUT FEAR OR FAVOUR

“Without fear or favour”

The Legacy of Justice Parbati Kumar Goswami

Gayatri Goswami¹

Early Life

Justice Parbati Kumar Goswami came from humble beginnings. He was born in 1913 in Assam and lost his father when he was three years old. His mother passed away at the tender age of eight. With the help of his very supportive youngest uncle, he completed his school education in Sivasagar. The adversities that he faced during his early life did not come in the way of his determination to pursue his aspirations. He graduated on the basis of a merit scholarship from Cotton College, Gauhati and completed B.L. (first class) from Earle Law College of Gauhati.

Legal Journey

He began his legal career in Dibrugarh in 1938. In 1958, he moved his practice to the Gauhati High Court. He was appointed as a Judge of the Gauhati High Court in May, 1967 (the first member of the High Court Bar to be appointed directly) and became its Chief Justice in 1970. He also became the acting Governor of Assam in January 1971 for a few months, when Governor Mr B.K. Nehru went on leave. In 1973, he became the first

Judge from the North-East to be elevated to the Supreme Court of India. He retired from that position on January 1, 1978.

While Justice Goswami's tenure as a Judge in the Gauhati High Court and the Supreme Court stretched for little over a decade, it was at a time when circumstances were testing. Three senior most Judges were superseded in appointment of the Chief Justice of India, followed soon thereafter, by the declaration of internal emergency. At the end of emergency came the Supreme Court's decision in *State of Rajasthan v. Union of India* as reported in 1978 (1) SCR 1. The scope of judicial review of the executive action of dissolution of state assemblies arose for decision and Justice Goswami was a member of the Bench. It became a controversial paragraph, prompting the Chief Justice of India to come out with a press release. It is a paragraph that makes me very proud every time I read it. It's a paragraph that brings out emphatically how sacrosanct it was to Justice Goswami the very fundamental, yet delicate, obligation to do justice "without fear or favour". During discussions among the Justices it was revealed that the then acting President visited the Chief Justice of India, sometime after the arguments in the case concluded, to invite the Chief Justice to the President's son's wedding. During this visit the acting President sought to discuss the timing of issuing the judgement with the Chief Justice.

Justice Goswami's reaction to this revelation was thus:

I part with the records with a cold shudder. The Chief Justice was good enough to tell us that the acting President saw him during the time we were considering judgment after having already announced the order that there was mention of this pending matter during the conversation. I have given this revelation the most anxious thought and even the strongest judicial restraint which a Judge would prefer to exercise, leaves me no option but to place this on record hoping that the majesty of the High Office of the President, who should be beyond the high watermark of any controversy, suffers not in future.

I was introduced to this judgement by a dear colleague, who was asked to read the concluding paragraph of Justice Goswami’s opinion by our Senior, saying, “Now we know where Gayatri gets it from”. This is also a judgement that the legendary Fali S. Nariman writes about in his book “Before Memory Fades” describing Justice Goswami as:

...invariably a predictable judge....he was a judge with a great, almost overpowering sense of integrity....it was beyond his comprehension and sense of values that the country’s highest constitutional functionary would attempt to influence the timing of a decision of the country’s highest Court.
(Nariman, 2012)

The Janata Government set up the Second Press Commission post the internal emergency. This commission, chaired by Justice Goswami, in its report in 1979 recommended repeal of the Official Secrets Act, 1923. Mrs Indira Gandhi, who came back to power in January 1980, disbanded the Justice Goswami Commission and replaced it by a different Second Press Commission, which did not recommend the repeal of the Official Secrets Act.

This controversial colonial-era law, with authorities relying on it for refusing to divulge information, has been particularly in focus recently courtesy the Rafale case before the Supreme Court. I discovered the Goswami Commission’s recommendation from an article by Mr Nariman, a member of the Goswami Commission (Nariman, 2019). His article reflected on court events relating to the Rafale judgement – where the petitioners relied on a story by The Hindu’s Mr. N Ram. The Attorney General opposed it saying that the article was based on classified and stolen documents therefore, violated the Official Secrets Act. Mr Nariman writes:

The Goswami Commission and all its deliberations had been obliterated by a stroke of the pen. If Mrs. Gandhi had returned to power a few months later and our report had been accepted by the previous government, concerns in the context of the Hindu expose ... would probably have not arisen...

Mr. Nariman says that the Official Secrets Act: “has no place in democracies as the Goswami Commission had suggested in the late 1970s”. Mr Nariman, by citing the Goswami Commission in his articles and his book, ensures that the disbanded Goswami Commission Report remains relevant and is not “confined to the dustbin of history”.

H.M. Seervai, in his book Constitutional Law of India, specifically mentions orders by Justice Goswami while discussing the habeas corpus case and the internal emergency. Mr Seervai minces no words and says that during this dark period, the High Court judges “...had a stronger hold on law and reality”. Compared to the Supreme Court, which accepted the contention that “if a detenu was threatened that he would be shot or starved to death, there was no remedy till the emergency was over”. To this unfortunate stand of the Supreme Court, he mentions orders passed by Justice Goswami as the fearless exception. In a case where a detenu was not allowed to attend his father’s funeral, a High Court came to his rescue permitting him to attend the 13th day ceremonies. Against this order, urgent appeals for stay were filed, not once but twice in the Supreme Court. To the government’s misfortune, the appeals on both occasions came before Justice Goswami who did not hesitate to refuse to stay the High Court order.

An interesting judgement I came across while researching this piece is the case of *All Party Hill Leaders’ vs. Captain M.A. Sangma* as reported in AIR 1977 SC 2155. Out of 121 members of the All Party Hill Leaders’ Conference (APHLC), 81 decided by majority to merge with the Indian National Congress Party and dissolve the party. Forty members opposed this resolution, but abstained from the meeting when the resolution was passed. The Election Commission held that APHLC had ceased to exist and the name and symbol “flower” reserved for it should be deleted from the list of recognised State parties.

The Supreme Court, in a judgement by Justice Goswami, rejected the preliminary objection that the Election Commission is not a Tribunal. It held that its primary function being judicial, the Commission fulfils the

essential and unfailing test of a tribunal and hence appeal against the Commission’s order is maintainable. On merits, the Court held that even after a major chunk of the party joined the Indian National Congress, “APHLC, as a recognised state political party in Meghalaya, stays and is entitled to continue with their reserved symbol “Flower”.”

What I found fascinating while reading this judgement is the earnest attempt to keep democracy alive by preserving a regional party, whose inception was tied to a peaceful constitutional movement for a separate hill state. This regional party, the Court held, could not be obliterated by a mainstream national party “for democracy cannot thrive as democracy by being an oligarchy masquerading for democracy”. Prophetic words indeed.

Justice Goswami’s concurring judgement in the *Mohinder Singh Gill*’s case as reported in 1978 (1) SCC 405 is also very instructive on the powers of the Election Commission. He held:

Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission, in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324...

The judgement in *Mohinder Singh Gill*, including the concurring judgement of Justice Goswami was relied on, among others, in the case of *Association of Democratic Reforms* as reported in (2002) 5 SCC 294. That case was first of its kind dealing with criminalization of politics. The court held that the Indian Constitution allowed electors the fundamental right to know candidates antecedent prior to contesting elections for public office. The Election Commission was directed to secure candidates affidavits, relating to all past or pending criminal charges or cases against them. Taking on from

Justice Goswami's judgement in *Mohinder Singh Gill* that:

every contingency could not be foreseen or anticipated with precision, therefore, the Commission can cope with situations where the field is unoccupied by issuing necessary orders.

The Court in *Association of Democratic Reform* (supra) rejected the contention that if there is no provision in the Act or the Rules, the High Court ought not to have issued such directions to the Election Commission.

Justice Goswami's pronouncement in *Gurcharan Singh vs. State* as reported in AIR 1978 SC 179, reiterating:

the two paramount considerations [for grant of bail], viz. the likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others.

is often relied upon.

Another judgement cited as precedent in criminal law is the case of *Khemraj vs. State of M.P* as reported in AIR 1976 SC 173, where it was held that the State Government is competent under the law to institute an appeal against the order of acquittal and the word 'also' in section 471(2) of the Criminal Procedure Code does not bar the State to direct the public prosecutor to present an appeal even in cases investigated by the Delhi Special Police Establishment.

In arbitration law, his judgement in *K. P. Poulose vs. State of Kerala & Anras* reported in AIR 1975 SC 1259, was another precedent of significant value. It was held that under the 1940 Arbitration Act, an award can be set aside when an arbitrator has misconducted himself or the proceedings. The misconduct can be legal misconduct, in that,

on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision.

In that case, the arbitrator failed to consider two documents, which were material documents to resolve the controversy.

Reflections

No piece on my grandfather can be complete without mentioning my grandmother, Mrs. Jyotirmoyee Goswami. They were made for each other. There was harmony in their thoughts and actions – the bedrock of their relationship being implicit trust, unfailing respect and love for each other. Their love for each other extended to looking out for each other’s families, particularly my grandfather’s family, which was very important to him. He was the *pater familias* of the Goswami clan, fair and just as much in his personal space as in the professional, and showering love on all equally. Until the end of his journey, he remained grateful and took the responsibility for the entire family.

He retired when I was in high school and had more time in his hands, of which I was perhaps the biggest beneficiary. He loved English and Sanskrit poetry. His command over the English language and its literature was enlightening. He introduced me to Shakespeare, Shelly, Milton, Longfellow, Mahatma Gandhi’s “My Experiments with Truth” and Nehru’s “Discovery of India”, to name a few. My success with the speeches and debates in school were all courtesy of him reviewing them. Equally impressive was his command over the Sanskrit language. When we shifted from Guwahati to Delhi, he taught me three years of Sanskrit in school (which I had missed) in six months. He had a quest for adventure and knowledge at a time when foreign exchange was restricted and the internet unheard of. He made Fodor’s Travel Book his guide for travels around the world.

His keen interest in sports, particularly tennis, led him to be the founder

of the All-Assam Lawn Tennis Association in 1957, when he was just a budding lawyer. At a time when the civil service, law, engineering and the like would be considered more sought after “viable” and “secure” professions, he encouraged his youngest son to pursue his interest in tennis. His openness to ideas ensured that he was a liberal judge and made him a good father. One of his sons went on to become a national champion in India and an iconic tennis coach in the U.S.A.

He is the example I always remind myself of when I hear about big cities being synonymous with good/better education and opportunities. Growing up in a small upper Assam town under difficult circumstances didn't inhibit my grandfather in any manner. And whether it was because of life's lessons or the institutions he was a part of or the books he read or the places he visited, he was a visionary. He always encouraged me to read, travel, participate in extracurriculars and most importantly to have opinions and to be unafraid to voice them.

From a small town in an extremely marginalized and disconnected North East, he rose to become a Judge of the highest court of the country. He did this on the basis of his hard work and conviction and without ever compromising on his values. His greatest gift to everyone dear to him, including me (which I remain in the process of unravelling), was the conviction that life is full of opportunities waiting to be pursued with humility and compassion.

On a very personal note, no one encouraged me more than he did and no one, unfortunately not even me, had more faith in my abilities than he did. And it is only appropriate that I end this piece with something that he and I read together:

*Lives of great men all remind us
We can make our lives sublime.
And, departing, leave behind us
Footsteps on the sands of time.
H. W. Longfellow*

Endnotes:

- ¹ Gayatri Goswami is the granddaughter of Late Justice Parbati Kumar Goswami. Immediately upon enrolment to the Bar in 2001, Gayatri Goswami joined the Chambers of Mr. Harish Salve, who was then the Solicitor General of India. She pursued a master’s degree in law at the University of Oxford, U.K. She presently practises in the Supreme Court of India and the Gauhati High Court and has appeared with Mr. Salve in several international arbitrations including the Vodafone BIT arbitration at the Peace Palace, The Hague.

Reference List:

Nariman, F.S (2012), *Before Memory Fades: An Autobiography*. Hay House.

Nariman, F. S. (2019, March 13). *To serve the governed: on Official Secrets Act*. Retrieved from The Hindu: <https://www.thehindu.com/opinion/op-ed/to-serve-the-governed/article26515102.ece>

“Serving the Cause of Justice” Justice Banwari Lal Hansaria

Vijay Hansaria¹

Early Life

Justice Banwari Lal Hansaria was born December 25, 1931 in Chaparmukh, a small village by river Kopili in the district of Nagaon, Assam. Tired of dealing with annual floods and erosion, the family shifted to Raha. He was home schooled until Class IV when he started formal education in Raha High School. He completed his schooling from Piani (Rajasthan), which was an educational hub. For his intermediate degree he joined Nagaon College.

Justice Hansaria graduated from Dibrugarh Kanoi College. The urge to acquire higher education led him to join Calcutta University from where he received a master's degree in economics and earned a gold medal in 'banking and currency'. Justice Hansaria joined law school at Calcutta, attending evening classes. He never thought that a law degree which he acquired as an ancillary would make him serve as a Judge of the Gauhati High Court, Chief Justice of Orissa High Court and finally the Judge of the Supreme Court.

Legal Journey

Justice Hansaria enrolled with the Bar Council of Assam in 1962 and joined legal practice in the Gauhati High Court. His first legal work was drafting an affidavit for a relative, who offered him Rs. 21. He accepted Rs. 1. His first case in Gauhati High Court was on January 2, 1963. The judgement went in his favor and so began his legal journey. Justice Hansaria did not remain content with practicing law. He joined as a founder teacher of J.B Law College, Guwahati, which was set up in 1969, earning Rs. 200 honorarium monthly. He prepared notes before teaching a class and became so popular among the students that recourse to “proxy attendance” was rarely taken and his class would always have nearly full attendance of 150 students. His students included retired government servants, who were much older than him.

Based on a brief oral interview with the then Chief Justice of Gauhati High Court, Justice Hansaria was appointed as a District and Session Judge of Dhubri in 1971. The Chief Justice asked him only two questions: Whether he was serious about the job, because of the low salary offered. The second question was about the number of children he had. Justice Hansaria had three children. The purpose of the second question, was to determine whether he would be able to maintain integrity and support his family despite the low salary. At that time, there was no written examination followed by formal interview for appointment in the subordinate judiciary. There was absolute faith and trust in the office of the Chief Justice to make the hires.

On reaching Dhubri, Justice Hansaria decided to stay in what was then known as the “*Bhoot Bangla*”. The official residence of the District Judge came to be known as *Bhoot Bangla* because the skeletons of the wife and three daughters of the previous resident, District Judge Upendra Nath Rajkhowa, were found buried in the compound. Justice Hansaria was the judge upon whom fell the duty of presiding over Rajkhowa’s trial for the murder of his wife and three daughters. After a trial, which is remembered to this day for its unprecedented scale and pioneering use of forensic

technology, Justice Hansaria found Rajkhowa guilty and sentenced him to death. The death sentence awarded by Justice Hansaria was eventually approved by the Gauhati High Court and Supreme Court. The starting para of the judgement of Justice Hansaria in the Rajkhowa murder case reads thus:

Very few cases in the annals of Indian criminology had raised so many brows- both high and low from far and near as this case. This is mainly due to very astounding facts of the case involving gruesome murder of four very near and dear ones in two parts; and partly because the main accused, Upendra Nath Rajkhowa, is none-else than a retired District & Sessions Judge of Assam having last presided over this Court itself. This case can safely be described as an Indian counterpart of the famous Raxton case which had rocked England in the mid-thirties- both the cases being based on circumstantial evidence and identification of deceased persons having played important part in both. Mystery too had its own part to play in the two cases, as much as unusual public interest. The charge against Rajkhowa and his servant, xx, in this case is that they had murdered in cold blood Smti. xx, wife of accused Rajkhowa; and Miss xx, eldest daughter of accused Rajkhowa on the night between 10-2-70 & 11-2-70 and thereafter buried their dead bodies in the compound of the official residence of the District & Sessions Judge of Goalpara at Dhubri where accused Rajkhowa was admittedly living even after his retirement as a Judge on 2-2-70. This is not all. The further charge is that Miss. xx and Miss. xx, the two younger daughters of accused Rajkhowa were also similarly done to death on 25-2-70 and their dead bodies were also similarly buried inside the compound of the residence of the District Judge.

At the end of the judgement, he recorded his appreciation for the able assistance of lawyers and prayed for the soul of the accused to rest in peace.

Justice Hansaria also served as the District Judge at Jorhat. He was always courteous with the members of the Bar and would always encourage young lawyers. He was particular about punctuality and hated delays. People used to set their watch by his time of leaving the official residence and sitting in the Court.

In 1976, Justice Hansaria was appointed as Legal Remembrancer to the Government of Assam, a post which had at one point been adorned by the Constitutional Adviser Sir B.N.Rau. During his tenure as the Legal Remembrancer of the State, Justice Hansaria gave advice even if it was against the proposed action of the Government. Justice Hansaria was very particular about the decorum of the office. While serving as Legal Remembrancer of Government of Assam, the Estimate Committee of the Assam Legislative Assembly wanted some advice and asked him to appear before the Committee. In the communication the Committee used the expression “call to appear”, which was found disrespectful for the office of Legal Remembrancer. When he raised the issue of inapt language, the Committee wanted to initiate breach of privilege proceedings. The matter was sorted out with the intervention of the Chief Secretary.

As a Judge of the Gauhati High Court

Justice Hansaria was elevated as Judge of Gauhati High Court in 1979 after serving as District Judge for six years and as Legal Remembrancer for the Government of Assam for three years. He later became the Chief Justice of the Orissa High Court (1989-1993) and retired as Judge of the Supreme Court (1993-1996).

On the date of swearing in (February 12, 1979) as Judge of Gauhati High Court, Justice Hansaria wrote in his personal diary,

Really without God's blessings, a shy boy who used to be hooted and chased when he was a school student, would not have risen high to become a Judge of a High Court of five states and two Union Territories. It has been rightly said that even a mother cannot know what her son would become one day...Let it be so regarded by all, forever, and when it is closed and when it so happens till it be said 'Here retires a man who served the cause of justice, the most'.

Thus, the journey of Justice Hansaria of dispensing justice without fear

or favour, affection or ill-will commenced in a Constitutional Court. Very soon, Justice Hansaria became a very popular judge in the High Court not because he would give relief out of the way, but because he would hear the members of the Bar with patience, especially the juniors. Justice Hansaria always served the cause of justice especially for the poor and the downtrodden and upheld the fundamental rights of the people.

Justice Hansaria made national headlines when he stayed the operation of the Assam Disturbed Areas Act 1955, which gave sweeping powers to the armed forces to shoot at citizens. Since the beginning of the year 1980, there had been wide-spread agitation in Assam over the issue of illegal entry of foreigners from Bangladesh. This was widely perceived to be jeopardizing the demography of the State. There were violent incidents of assault, arson, intimidation. The Governor of Assam on April 5, 1980, declared Assam as 'disturbed area' under the provisions of the Disturbed Areas Act, 1955. By virtue of the declaration police officers, even a *hawaldar*, had the power to fire and use force to the extent of causing death against any person violating law and order. A writ petition was filed by Indrajit Barua challenging the validity of the Assam Disturbed Areas Act and the Governor's notification declaring Assam as a disturbed area. Justice Hansaria by order dated April 7, 1980, stayed the operation of the Assam Disturbed Areas Act and remarked that a *hawaldar* cannot be authorized to shoot a person merely because there is an apprehension of breach of law and order. The stay order was widely published throughout the country and on April 8, 1980, the New Delhi edition of the Indian Express carried it as a cover story.

A. Protecting Press Freedoms

Freedom of expression, particularly a free press, is an important pillar of democracy. This was reflected in Justice Hansaria's judgement relating to pre-censorship of leading newspapers of Assam. On December 23, 1980, in the wake of Assam agitation, the Assam government imposed pre-censorship on three leading newspapers '*The Assam Tribune*', '*Dainik Asom*' and '*DainikJanambhumi*'. The order required these newspapers to obtain prior government approval on any matter relating to the foreigner's issue. A Division

Bench of the Gauhati High Court comprising Justice N.Ibotombi Singh and Justice Hansaria by judgment dated May 6, 1981 declared pre-censorship under the Assam Special Power (Press) Act, 1960 as unconstitutional and violative of freedom of speech guaranteed by Article 19 of the Constitution of India. Justice Hansaria held that though the Government has the right to restrict the freedom of speech because the duty to maintain public order rests with the executive; such restrictions have to be minimal and there must be procedural safeguards. Everything cannot be left at the Government's whim or any other authorized officer. Before imposition of pre-censorship can be constitutionally cleared, the order stated that the following tests must be satisfied:

1. There must be clear and present danger.
2. This danger must be such which is likely to produce great evil.
3. It is eminently necessary to take recourse to pre-censorship to check the evil.

B. On Personal Liberty and the Rule of Law

Chaoba Singh was arrested by armed forces in Manipur under the provisions of the Armed Forces Special Powers Act, 1958. Thereafter his whereabouts were unknown. His wife filed a habeas corpus petition in the High Court. The armed forces took a plea that Chaoba Singh had been released. Justice Hansaria by a detailed judgment came to the finding that it is a case of “counterfeit release” since the detenu was not handed over to the police authorities as required under the law; thus, came to the finding that he continues in custody.² He said:

Our armed forces have a bright image. They are disciplined, imbued, and imbued with the spirit of service and sacrifice. Let them undergo the discipline of fundamental rights also when operating against their own countrymen.

In another case of counterfeit release,³ Justice Hansaria examined the role which the district administration has to play after the armed forces have been

called to assist the civil power. It was held that the civil authorities and the armed forces have to work hand in glove. Any person arrested or held by the armed forces had to be taken over to the officer-in-charge of the nearest police station with the least possible delay. In our constitutional set up, there is no provision for a military rule in any part of India. The armed forces must act in co-operation with the district administration and not as an independent body. Of course, so far as the operational part of the activity of the armed forces is concerned, they must be given free hand. But in other matters they must take the civil authorities in confidence and work in harmony.

Another case which needs mentioning is regarding imposition of President's rule in Nagaland in 1988. The challenge was made by Vamuzo, who claimed that he had a majority in the House but was denied the opportunity to form a Government. Instead on the Governor's recommendation, President's Rule was imposed. Justice Hansaria held,⁴

Ours is basically a quasi-federal polity. The conferment of power on the Central Government, inter alia, by Articles 355 and 356 of the Constitution, undoubtedly constitutes 'invasion' by the Centre on the State field. The framers of the Constitution were conscious of this and their desire was to see that the invasion is not 'wanton, arbitrary and unauthorized by law.' The Court cannot adopt the attitude of 'Judicial hands off' merely because the question of imposing President's rule is a political question.

The views expressed by Justice Hansaria were approved by a 9 Judge bench of the Supreme Court in the case of *S.R. Bommai vs. Union of India* as reported in (1994) 3 SCC 1.

Justice Hansaria believed that Rule of Law must prevail, and the judicial orders passed by the Court must be obeyed by all. To him nobody was above law. A contempt petition was filed against Mrs. Jyoti Jafa, a senior IAS officer of Assam Government who in an article said, "Even some High Court decisions seem to be biased, while the Court made little effort to

control the lower judiciary’s misconduct.” Justice Hansaria said:⁵

the cornerstone of the contempt laws is in fact the accommodation of two constitutional values, the right of free speech and the right of independent justice.... Though, there is a need that the Courts be criticized when they go wrong, but there is a great need that they be allowed to do their due without fear or favor.

The Court found that her criticism was unfair because there was no reference about any High Court decision giving the impression of any bias. Mrs. Jafa was found guilty of contempt, but she was let off with a warning.

A few instances on the administrative side are also of interest. There was a Full Court meeting in 1981 to consider ways and means for speedy disposal of cases triggered by 79th report of the Law Commission of India on “Delay and Arrears in High Courts and other Appellate Courts”. Justice Hansaria desired to increase working hours to five from four and half hours and proposed to increase working days from 210 days, which other judges did not agree with. The minutes merely recorded “discussed”. He also took up the issue that the Court work should not be affected due to Full Court meetings, which also did not go well with the Chief Justices. Justice Hansaria always opposed fixing short and returnable dates for new cases which was at the cost of old ones. Such prayers were dealt with toughness, and he was reluctant to give preference to new cases over old ones. The Bar has found him strict about adjournment and always felt that Bar was yet to rise to the occasion in this regard. Far from feeling guilty in asking for time in old cases, this was being done without qualm.

C. The Sixth Schedule

Justice Hansaria utilized his spare time and vacations in writing books. He authored a book on the Sixth Schedule to the Constitution, which was a mini-Constitution for the administration of tribal areas of the North-Eastern States. District Councils constituted under the Schedule have all the powers of the State namely Legislative, Executive and the Judiciary. On many

subjects, even Parliamentary and State legislations did not apply to the tribal areas. It was difficult to get the historical materials for the enactment of the Sixth Schedule and the laws existing in the area prior to the framing of the Constitution. The book on the Sixth Schedule was published in 1983 and Justice Hansaria in the preface said:

it was found that materials necessary to understand the historical setting relating to the administration of these areas, which aspect has now been dealt with by the Sixth Schedule to the Constitution of India, were so varied and scattered, that I was seized with the idea that a work knitting them together may be an humble contribution to the study of this branch of the subject.

Under the scheme of the Sixth Schedule, the Governor occupies a pivotal and key position in the administration of tribal areas. Justice M Hidayatullah, former Chief Justice of India, in the Anundoram Borooh Law Lectures held in 1979 in Guwahati said that the Governor was to act in his personal discretion while administering the tribal areas. He also said that it is not compulsory for the Governor to consult the Council of Ministers, nor is he bound by their advice. Justice Hansaria in his book, however, differed with the views expressed by Justice Hidayatullah and argued that the Governor has to act on the aid and advice of the Council of Ministers because the Constitution is one organic document, and the Sixth Schedule provisions have to be interpreted in harmony with other Constitutional provisions. The Governor can act in personal discretion only in those matters which specifically empowers him to do so. Subsequently, a Constitution Bench of the Supreme Court in the case of *Pu Myllai Hlychho vs. State of Mizoram* as reported in (2005) 2 SCC 92 has affirmed the views expressed by Justice Hansaria and said that the constitutional model of parliamentary democracy requires that the Governor acts on the aid and advice of the Council of Ministers.

The book continues to be the primary authority on the subject and has been revised from time to time by the author; the fourth edition of which

was published in 2016.

Tenure as a Chief Justice and Judge, Supreme Court

Justice Hansaria was appointed as the Chief Justice of the Orissa High Court in 1989. His concern for the poor and downtrodden was reflected in his various judgements. As a Chief Justice, Hansaria directed award of compensation in cases of starvation deaths and custodial deaths in Orissa. Chilka Lake in Orissa, Asia’s largest brackish water lagoon, was polluted to earn “prawn-dollars”. Chief Justice Hansaria passed a series of directions to protect the lake’s ecology. As a mark of respect and gratitude, the Library of Orissa Judicial Academy was named after him as “Justice B.L.Hansaria Memorial Library”. The library also is home to a sculpture of Justice Hansaria.

In 1993, Justice Hansaria was appointed as a Supreme Court Judge. In that capacity, Justice Hansaria issued judgements on a variety of fields such as culture, environment, corruption and also enlightened the people of this country of their dharma.

In a Supreme Court judgement, Justice Hansaria recognised the importance of Sanskrit in Indian culture and quoted what Pandit Jawaharlal Nehru said about the language,

If I was asked what is the greatest treasure which India possesses and what is her finest heritage, I would answer unhesitatingly - it is the Sanskrit language and literature, and all that it contains. This is a magnificent inheritance, and so long as this endures and influences the life of our people, so long the basic genius of India will continue.

The Supreme Court rejected the objection of the CBSE that teaching Sanskrit will be against secularism and directed to make Sanskrit as an elective subject as the course of study.

Justice Hansaria was passionate about the environment when it was not

a part of mainstream consciousness. He was concerned about the pollution in Nainital and said that Nainital “a beautiful butterfly” is turning into an “ugly caterpillar”. As a Supreme Court judge, he gave a series of directions to prevent pollution in the city. He was equally religious and believed in Dharma. He explained that Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfilment of these objects is Dharma, that is definite. There is nothing higher than dharma, he would say. He believed even a very weak man hopes to prevail over a very strong man on the strength of dharma.

Justice Hansaria’s had immense love for children, particularly from the deprived section of society. He gave directions for creation of a Child Labour Rehabilitation and Welfare Fund for children engaged in the manufacturing of firecrackers in his decision *M. C Mehta vs. Union of India* (Sivakasi Fireworks Manufacturers case) as reported in (1996) 6 SCC 756. Justice Hansaria recalled the famous poem of Manie Gene Cole;

I am the child.

All the world waits for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance, For what I am, the world of tomorrow will be. I am the child.

You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail. Give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world.

Justice Hansaria retired as judge of the Supreme Court in December 1996. The destined journey of Mr. Hansaria came to an end on 3rd November 1997, when he left for the heavenly abode after performing his karma in this mortal world.

Endnotes:

- ¹ Vijay Hansaria is the son of Late Justice B.L Hansaria. He is a Senior Advocate in the Supreme Court of India. Enrolled as an Advocate in 1980, he became an Advocate on Record in 1985. He has served as the Vice President of the Supreme Court Bar Association (2004-05) and was also a member of the National Legal Services Authority (2013-2015). Because of his commitment to issues of social justice, he has been frequently called upon by the Supreme Court to serve as Amicus in matters of public interest and social equity.
- ² *Nungshitombi Deviv. Rishang Keishing*, (1982) 1 GLR 756
- ³ *Luithukla v. Rishang Keishing*, (1988) 2 Gau LR 159
- ⁴ *Vamuzo vs. Union of India*, 1988 (2) Gau LJ 468
- ⁵ *Registrar, Gauhati High Court vs. Jyoti Jafa*, 1984 (1) Gau LR 484

“Sentinel on the Qui-Vive of Individual Rights” The Legacy of Justice N. Ibotombi Singh

Anubhab Atreya¹

Introduction

Justice N. Ibotombi Singh’s term as Judge of the Gauhati High Court commenced on September 21, 1976. This was an inflexion point in history when various Northeastern states were grappling with insurgency often raising questions of personal liberty and the extent of state action. Additionally, many issues which were to become the mainstays of public policy debates over the next decades, including land reforms and citizenship, had just begun taking shape. Amidst these challenges, Justice Singh built a reputation as a civil rights defender and a judge with a fiercely independent mind.

Justice Singh commenced his career on the Bench when the Supreme Court was beginning to move away from what is referred to as “the positivistic era” of its early history. When Justice Singh assumed office during the Emergency, the liberal era of the Public Interest Litigation jurisprudence of the 1980s had not yet dawned. Justices such as V.R Krishna Iyer, P.N Bhagwati, Chinappa Reddy and D.A Desai had not yet embarked on their relentless interventions in issues of personal liberty and social justice, which became the hallmark of the post-Emergency Supreme Court. In many ways,

Justice Singh’s judicial philosophy of an equitable and purposive interpretation was visionary and a precursor of the times to come.

This article is an attempt to reflect upon Justice Singh’s jurisprudence, which in many ways is characteristic of the important role High Courts played whenever the nation faced institutional crises.

Legal Journey

Justice Singh obtained his law degree from Calcutta University. He entered practice as a Pleader on April 19, 1950 in the Judicial Commissioners’ Court, Manipur. With the separation of the executive from the judiciary, Justice Singh enrolled as an Advocate on September 14, 1950. As with most judges who are elevated directly from the Bar, Justice Singh had a distinguished career in the profession. Around this time, the Assam High Court had been inaugurated and with it dawned a new era in the legal history of the region. Eventually after 21 years of practice, Justice Singh was designated a Senior Advocate of the Gauhati High Court in March 1976.

Justice Singh was no stranger to the burdens of constitutional office. Much before his elevation to the Bar, on January 21, 1972, he assumed office as the first Advocate General of Manipur when the state was undergoing a tumultuous time with the insurgency question still unresolved. Soon his services were called upon to the Bench and in September 1976, he was elevated as a Permanent Judge of the Gauhati High Court.

The Gauhati High Court: As it was then

Justice Singh joined the Bench during “the golden phase” of the Gauhati High Court. (Dutta, 2018) The reorganisation of the North-Eastern states through the North Eastern Areas (Re-organisation) Act 1971 had just been completed. The Gauhati High Court, being at the apex of the regional judicial mechanism, now exercised jurisdiction over the states of Assam, Nagaland, Manipur, Meghalaya and Tripura as well as the Union Territories of Arunachal

and Mizoram. Among the prominent advocates at the Bar were legal luminaries including Dr. Jagadish Chandra Medhi and Mr. Nirendra Mohan Lahiri, who were the Advocates General of Assam and Meghalaya. Added to this was the legacy left by his illustrious predecessors beginning with Sir Ronald F. Lodge, the first Chief Justice, who laid down a strong foundation and set high standards for the institution amidst limited resources.

As is the fate of any member of the higher judiciary in our country, Justice Singh had the privilege of deciding on a variety of subjects, ranging from income tax appeals to criminal matters. However, it was in the cases which concerned questions of personal liberty and fundamental rights where he displayed a characteristic humanism and equitable approach. This is visible in the series of habeas corpus petitions which came before the Gauhati High Court in the early 1980s.² Most of them related to the detention of prominent leaders of the Assam Movement and attracted widespread public and press attention. By continuously stressing the high standards of procedural fairness that was demanded of the State before subjecting a person to preventive detention, Justice Singh also clarified several ambiguities in the various preventive detention statutes. It is with an objective to identify these ambiguities and what they meant for the larger constitutional framework of personal liberty that a few of the judgements he authored are discussed in the following section.

The Habeas Corpus Cases

The Assam High Court heard its first habeas corpus petition as early as 1948. In this decision, *Tarun Sen Deka vs. Government of Assam* as reported in 1949 Cri LJ 762, a Bench of Chief Justice R.F Lodge and Justice T.V Thadani differed over the validity of the detention of two detainees under the Maintenance of Public Order Act, 1947. Following this, the Gauhati High Court played a stellar role in the protection of the right of personal liberty during the Emergency and the Assam Agitation. Certain judges such as Justice K.M Lahiri had taken a pre-eminent role in several of these judgements and displayed great judicial fortitude. It was in this tradition

that Justice Singh developed the habeas corpus jurisprudence through several decisions, the majority of them delivered at the peak of the Assam Movement from 1980 to 1984.

With the rampant use of preventive detention powers by the State to deal with large-scale challenges posed by the Assam Movement, the High Court was inundated with habeas corpus petitions. This necessitated the constitution of several Single Benches to hear these petitions amongst whom were judges such as Justice N. Ibotombi Singh and Justice Thir Narayan Singh.

A. Nibarón Bora vs. State of Assam

In April 1980, several major leaders of the *Assam Gana Sangram Parishad* including Nibarón Bora, Prafulla Mahanta, BhriḡuPhukan were detained by an order issued under the Assam Preventive Detention Ordinance, 1980. Among the grounds of arrest were that they had orchestrated “*Assam Bandhs*” and caused an economic blockade at the Indian Oil station at Narengi, Guwahati. These detainees came before the Single Bench of Justice Singh through a batch of nine habeas corpus petitions in *Nibarón Bora vs. State of Assam* as reported in 1980 Cri LJ 1201 which was decided on June 9, 1980.

Representing the petitioners was Dr. Jagadish Chandra Medhi, one of the doyens of the Bar, who mounted a two-fold challenge on the orders of detention. He submitted that the grounds furnished were too vague for the detainees to make any effective representation against them. He argued that the grounds were themselves irrelevant or non-existent for making an order under Section 3(1) of the 1980 Ordinance.

Mr. P.A Francis, Senior Advocate, Supreme Court of India, who appeared for the State, submitted in response to the first argument that only the grounds based on which the order of detention was made needed to be provided to the detainee. This need not be a detailed recital of all the facts constituting

such grounds. In response to Dr. Medhi's second argument, he submitted that the grounds were not vague and the detainees could have very well asked for the particulars. Since they had not done so, there could be no violation of Article 22(5).

In his decision, Justice Singh held that it is settled law that all basic facts/materials which have been considered by the detaining authority to arrive at any conclusion must be furnished to the detainee. This was because these very facts and materials formed the basis of the orders of detention under which the leaders had been detained. Further, it was the clear mandate for complying with the safeguards laid down in Article 22(5) of the Constitution of India. This settled the first question in favour of the petitioners- the leaders of the Assam Movement.

In response to the second argument, Justice Singh held that the Supreme Court's decision in *Prabhu Dayal Deorah vs. District Magistrate, Kamrup* as reported in (1974) 1 SCC 103 had settled the law on this point and the authorities cited by the State did not counter the principle laid down in *Prabhu Dayal*. The Supreme Court held that when the grounds communicated to the detenu are vague, the fact that the detenu did not exercise the option of asking for particulars would not have an impact on deciding the question of whether the grounds were vague or not.

Another interesting question for adjudication arose in this case. In the pendency of the petition, the detention orders had been confirmed by the State Government based on the report of the Advisory Board under the Ordinance. The State raised the contention that no relief could be granted in any of the petitions as no prayers had been made for setting aside the orders of confirmation. Justice Singh in *Nibaron Bora* held that if the orders of detention themselves are held void for infringement of fundamental rights under Article 22 (5), the orders of confirmation issued by the State Government under the 1980 Ordinance would be devoid of any legal effect. This was because the subsequent orders of confirmation could not validate void orders of detention.

Justice Singh then considered the grounds of detention themselves. After a threadbare examination of both the grounds, he concluded that they were indeed vague and obscure. In view of this, the orders of detention of all the detainees were held to be bad in law and set aside. Consequently, all these leaders came to be released from custody.

B. Atul Bora vs. District Magistrate, Kamrup

Atul Bora and Biraj Sarma (then leaders of the *All Assam Gana Sangram Parishad*) were detained under the National Security Act, 1980 on the grounds *inter alia* that they had instigated the *Anchalik All Assam Gana Sangram Parishad* to resort to picketing at the houses of the government employees, preventing them from attending their lawful duties. This had purportedly adversely affected the maintenance of essential services and supplies and maintenance of public order.

The petition came before a Division of Justice Singh and Justice Thir Narayan Singh who by a short order dated February 22, 1983 directed the release of the detainees, Atul Bora and Biraj Sarma. In the subsequent detailed judgement titled *Atul Bora vs. District Magistrate, Kamrup* as reported in 1984 Cri LJ 1357, Justice Singh elaborated that the supplies and services of shops and business establishments, which was a ground in this particular case, did not come within the purview of supplies and services for the purpose of sub-section (2) of Section 3 of the National Security Act, 1980.³

C. Prafulla Mahanta vs. District Magistrate, Kamrup

On January 7, 1983, Prafulla Mahanta, president of the All-Assam Students Union, and his general secretary Bhriagu Phukan were returning from Delhi after tripartite discussions with the Central Government and the State Government when they were arrested at the airport. Mr. Mahanta and Mr. Phukan were taken to the District Jail at Guwahati before being transferred to various other jails. They were arrested on the basis of an order

of detention under the National Security Act, 1980 passed by the District Magistrate, Kamrup on January 6, 1983.

On January 12, 1983, grounds of detention were served on them. *Inter alia* the grounds stated they had orchestrated a two-hour blackout throughout the state on December 9, 1982 which seriously affected the maintenance of supplies and services essential to the community. The habeas corpus petitions filed by both Mr. Mahanta and Mr. Phukan came up before the Division Bench of Justice Singh and Justice Thir Narayan Singh. The Court held that the detention orders were bad in law and required to be set aside for several flaws in the detention order. In the judgement dated March 2, 1983 titled *Prafulla Mahanta vs. District Magistrate, Kamrup* as reported in (1983) 1 GLR 231, Justice Singh famously observed:

... Where the liberty of a subject is involved and he has been detained without trial, under a law made pursuant to Article 22, which provides certain safeguards, it is the duty of this Court as the custodian and sentinel on the ever vigilant guard of the freedom of an individual, to scrutinise with due care and anxiety that this precious right which he has under the Constitution is not in any way taken away capriciously, arbitrarily or without legal justification.

Reiterating the principle laid down in *Sarat Mudoj vs. District Magistrate, Nowgong* as reported in (1983) 1 GLR 225, Justice Singh examined a situation where the detaining authority does not specify the particular supplies and services which had been prejudicially affected by the detainees' activity. In such a case, the order of detention under sub-section (2) of Section 3 of the National Security Act, 1980 would be invalid. The Court also went on to hold that when the supplies and services were not mentioned, the order of detention was additionally hit by the vice of vagueness. Mr. Mahanta went on to become the youngest Chief Minister of Assam while Bhriugu Phukan served as the Home Minister in his cabinet.

D. Clarifying Procedure in Preventive Detention

In habeas corpus petitions which came up before the High Court during this period, important points of procedural law were clarified. One such important case that Justice Singh dealt with was that of *Bipul Mahanta vs. State of Assam* as reported in (1983) 1 GLR 332. The case was so peculiar that award-winning author Arup Kr. Dutta termed it as the “*theatre of the absurd*”. Bipul Mahanta, a B.A. student at B. Barooah College, Guwahati, was arrested on January 5, 1983 under Section 151 of the Code of Criminal Procedure, 1973. While he was in custody, an order of detention under the National Security Act, 1980 (NSA, 1980) was passed. The order, passed by M. Gopalakrishna, Commissioner and Secretary to the Government of Assam, Political Department, did not record that Mahanta was already in custody.

The order was held illegal because it did not record the subjective satisfaction of the detaining authority in detaining Mr. Mahanta, especially when he was already in custody. The subjective satisfaction of the detaining authority was held to be tainted with non-application of mind to the relevant and vital facts.

The facts in *Bipul Mahanta* prompted Justice Singh to reiterate the level of care and diligence expected from the State in such litigation. In para 9, Justice Singh makes the following observation:

It is hardly necessary to point out that when Rule Nisi is issued in a writ of Habeas Corpus, it is incumbent on the detaining authority to satisfy the court that the detention of the petitioner is legal and in conformity with the mandatory provisions of law authorising such detention. There should be precision and perspicuity in the affidavit filed by the detaining authority to the court. Care and clarity are particularly important in such matters, since court is concerned with the questions of personal liberty guaranteed under our Constitution. The court is sentinel qui-viva of the freedom of an individual guaranteed under our constitution. It is the area

where the Court has been most strict and scrupulous in ensuring observance with the requirements of the law and even where the requirement of law is breached in the slightest measure, the Court will not hesitate to strike down the order of detention as invalid.

From the perspective of the development of the jurisprudence of preventive detention, the Full Bench (5 Judge) decision in *Hitendra Nath Goswami vs. State of Assam* as reported in 1984 Cri LJ 1558 was especially important. The question which had been referred to the Bench was:

Whether on the report from the State Government under S. 3(5) of the NSA, 1980, the Central Government has the discretion coupled with the duty to consider the question of revocation of detention order expeditiously, irrespective of the fact that there is no representation/petition from the detenu to the Central Government for the purpose.

Justice Singh in his leading judgement in *Hitendra Nath Goswami* conducted an authoritative discussion of the law on preventive detention as laid down by the Supreme Court and the English law which clarified issues on statutory interpretation. In conclusion, it was held that the discretionary power of the Central Government under Section 14 (1) of the NSA, 1980 when seen in the context of Section 3 is:

coupled with duty to consider the report received from the State Government with reasonable expedition, notwithstanding that no representation/petition has been made by the detenu to the Central Government.

The case of *Thokchom Gosai Singh vs. State of Manipur* as reported in 1985 Cr.LJ 553, was decided by a Division Bench of Justice Singh and Justice Tarun Chandra Das. The controversy in this case was the detenu's claim that he was not provided with the seizure memo of the incriminating materials against him. Justice Singh held that the seizure of the incriminating materials from the detenu's possession was taken into consideration by the

detaining authority in achieving the subjective satisfaction. As such, the non-provision of the seizure memo to the detainee brought in a serious infirmity in the order of detention. The detention order was held to be void and the detainee was directed to be released.

Besides preventive detention, another issue presented by the Assam Movement was press censorship by the Government under the Assam Special Powers (Press) Act, 1980. That the freedom of press is a constituent of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India has been held time and again by the constitutional courts. Challenges posed to the freedom of press and attempts at censorship have been the subject matter of celebrated Supreme Court decisions such as *Romesh Thapar*⁴, *Sakal Papers*⁵ and the *Indian Express*⁶. The following section discusses how when presented with an issue of censorship by the State on some of the prominent news dailies, a Bench of Justices Singh and Justice B.L Hansaria unhesitatingly delivered a decision which went on to become a powerful statement in favour of the constitutional freedoms of speech and expression.

The Press Freedoms Case

During the Assam Movement, three important newspapers of the era, *The Assam Tribune*, *Dainik Asam* and *Dainik Janambhumi* had taken a clear stand in support of the Assam Movement and its objectives. To counter this narrative, the Government issued a notification on December 23, 1980, invoking the special powers of censorship conferred by Section 2 of the Assam Special Powers (Press) Act, 1960. This attempt at censorship resulted in a public outcry and several newspapers ran blank portions where content had been censored.

Finally, on January 2, 1981, the newspaper challenged the notification by way of a writ petition. The challenge was mounted on the claim that the Act was unconstitutional and the Government's action of issuing the

notification was arbitrary and illegal. The case initially came up before the Single Bench of Justice K.M Lahiri, who issued notice and gave interim relief by directing the State to give reasons in writing when censoring any news item. It also directed the State not to censor any news items of the Press Trust of India and United News of India.

The constitutional challenge was heard by a Division Bench of Justice Singh and Justice B.L Hansaria. The court heard comprehensive arguments from both sides until May 6, 1981. The decision noted that the clause (c) of Section 2 (2) of the Assam Special Powers (Press) Act, 1960 did not provide for any procedural safeguards including according a time limit or providing provisions for filing representation. As such, it clearly fell afoul of Article 19 (1) apart from being unreasonable.

The Bench of Justices Singh and Justice B.L Hansaria quashed the notification issued by the Government but granted the leave to appeal. This decision became a landmark and a permanent fixture in the limited number of cases where the higher judiciary of the country came to the aid of press freedom and civil liberties in the face of oppressive state actions. It was one of the defining moments in Justice Singh's legacy as a guardian of civil liberties at the Gauhati High Court.

It is important to note that the daily life of the common individual is not impacted by those cases which have constitutional significance. Very often, the only point of contact between the average working individual and the judicial system is through litigation arising out of incidences of service or labour. The following section discusses cases concerning labour and service law where Justice Singh displayed a sense of empathy and pragmatism in resolving such disputes.

Labour and Service jurisprudence

It is not surprising that the jurisprudence developed by Justice Singh through his trademark approach had major implications in the field of labour

and service law. Labour disputes in the state’s tea industry have been a major contributor to litigation at the Gauhati High Court. Of these, Justice Singh clarified important issues in the law relating to disciplinary proceedings in decisions such as *Workmen of Dewan Group of Tea Estates vs. Presiding Officer, Labour Court* as reported in 1981 Lab IC 713.

In *Dhirendra Kumar Barthakur vs. State of Assam* as reported in (1983) 2 GLR 459, the controversy before the Division Bench of Justice Singh and Justice T.N Singh arose from the suspension of an Executive Engineer of the PWD Department on the order of the Commissioner, Upper Assam Division. A report had been called from the delinquent officer who had not responded and as such was placed under suspension in contemplation of disciplinary proceedings under the Assam Civil Services (Discipline and Appeal) Rules, 1964.

Justice Singh in his leading judgement noted that the order did not record the connection and purpose for placing the officer under suspension. There was no indication of the satisfaction of the condition precedent under Rule 6 of the 1964 Rules, which was a contemplation of disciplinary proceeding.

In discussing the law holding the field, the decision observes:

No doubt suspension is not a punishment by itself, but it cannot be denied at the same time that in such cases the officers placed under suspension suffer a lot. Apart from this, suspension of a Government servant is liability on the part of the Government in the sense that not only the person concerned is required to be paid substantial allowance but also a substitute in his place is to be taken.

In reiterating the principle that the use of statutory power as in the case of the impugned suspension order, is based on trust and it is in no way an absolute power, Justice Singh relied on the landmark decision of the House of Lords in *Padfield vs. The Minister of Agriculture and Food* as reported in

(1968) A.C 997. Further, the affidavits which had been submitted by the respondent authorities did not reveal whether the officer had been suspended for not furnishing the report in question. Rather the averments referred to the petitioner's past conduct in service. As such, Justice Singh was of the opinion that the wrong legal test had been applied to the case by considering irrelevant considerations and failing to take relevant considerations. This was clearly an error apparent on the face of the record. In conclusion, the Court held the suspension order issued by the Commissioner, Upper Assam Division to be invalid and set it aside. Justice Singh was also part of many other famous cases such as the reaffirmation of the death sentence of Henry Westmuller Roberts (who remains the last person to have been executed after being sentenced to death in the State of Assam). However, it is not possible to cover each of these cases for constraints of space.

Conclusion

While Justice Singh delivered erudite judgements in many issues of the law, his judicial philosophy primarily came to the fore in cases which involved issues dealing with civil liberties and human rights. Justice Singh's judicial approach necessitated a deep understanding of equity and public trust. One cannot help but reflect on the impact of speaking truth to power through the judicial mechanism which many of his judgements display. Justice Singh's jurisprudence also has a key takeaway for understanding the role of the High Court as a sentinel on the *qui-vive* for the individual's rights. In many ways a keen understanding of the human condition and reliefs which does not remain restricted to the letter of the law continue to remain the need of the day.

Equally significant is his contribution to the Gauhati High Court. Justice Singh and many of his colleagues in the Bench firmly established the Gauhati High Court's reputation as a High Court that did not look the other way even in the most trying socio-political circumstances. The habeas corpus jurisprudence developed by Justice Singh continues to be cited in commentaries and research as examples of High Courts which stood strong

when important institutions were compromised. And it is through these decisions that Justice N. Ibotombi Singh’s legacy will continue to live on. While it is true that there has been a transformative change in the socio-political climate of the region, the core questions concerning liberty and the extent of state action continue to rear their head time and again. It is imperative that we continue to imbibe and apply these judgments to uphold the sacred ideals of democracy, liberty, and freedom of expression.

Endnotes:

- ¹ AnubhabAtreya is a practicing Advocate of the Gauhati High Court. Upon enrollment in 2020, he joined the chambers of Mr. Nilay Dutta, Senior Advocate and has been attached to the Office of the Advocate General, Arunachal Pradesh since then. He is also one of the founding members of Studio Nilima: Collaborative Network for Research and Capacity Building (2016) and leads the advocacy and research efforts of the initiative.
- ² In Indian law, a writ in the nature of habeas corpus is available under Article 226 of the Constitution of India. The objective underlying the writ is to secure the release of a person who is illegally deprived of his liberty. The origin of the writ of habeas corpus lies in English law where it is available in all cases of wrongful deprivation of personal liberty and is available against the Crown, its ministers and its servants. (Seervai, Constitutional Law of India, Vol. II, Fourth Ed., Silver Jubilee Edition, Universal, p. 1455.
- ³ Sub-Section (2) of Section 3 of the National Security Act, 1980 provides the Central Government and the State Government the power to make orders of detention on primarily two grounds, these being, *acting in any manner prejudicial to the maintenance of public order or acting in any manner prejudicial to the maintenance of essential supplies and services.*

The provision states as follows:

“(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained. Explanation.—For the purposes of this sub-section, “acting in any manner prejudicial to the maintenance of supplies and services essential to the community” does not include “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.”

- ⁴ See Romesh Thapar vs. Union of India as reported in AIR 1950 SC 124.
- ⁵ See Sakal Papers vs. Union of India as reported in AIR 1962 SC 305.
- ⁶ See Indian Express Newspaper vs. Union of India as reported in (1985) 1 SCC 641.

Reference List:

Dutta, A. (2018), *Gauhati High Court: History and Heritage*, Publications Division, Ministry of Information & Broadcasting, Government of India, p.185.

THE ICONS

“The Gentle Patriarch” Joychandra Choudhuri

Prashanta K. Goswami¹

Introduction

Several decades ago, in Court No. 1, I saw an elderly, gracious figure rising to move a petition. As he walked out, what struck me were his eyes. They were penetrating, but not aggressive. A few months later during a criminal appeal, the presiding Judge, impressed by the cross-examination asked, “Who cross-examined this witness?” Late Dr Jagadish Chandra Medhi, who represented the other side, immediately replied “Who else, but my friend” and pointed at Mr Joychandra Choudhuri. “Who can stand his eyes and cross?” Mr. Medhi said.

That was a tribute in open court from one great to another, and a display of the famous *jugalbandi* of “Joy – Jagadish”.

Joychandra Choudhuri was truly the doyen of the criminal bar. He was perhaps the first exponent of the difficult art of cross-examination. He was a remarkable investigator, brief and to the point. He was absolutely thorough in case preparation and could get to the focal point without bothering the Court to enter “the scholarly side-walks and the historic by-lanes”. I have

seen him arguing a criminal appeal and getting an acquittal without even opening his brief. Such was his mastery over facts and law.

Mr. Choudhuri lived by the highest standards of the profession and his detachment and intellectual integrity characterized his successful career. He left behind a legacy of inspiring professional standards. He was fearless but graceful in his advocacy. His contribution to the growth and maintenance of the high traditions of this bar is immense. The bar rightly honoured him on the completion of his 50 years of practice.

The Early Years

Great struggle preceded this success story. Mr. Choudhuri was a self-made man and his earlier years were filled with hardships. He explored different professions before finally pursuing law. Born on the April 12, 1898, at Kaithalkuchi village in erstwhile Kamrup District, Mr. Choudhuri came from a respectable family. His father was Radha Nath Choudhuri, a leading personality, and his mother was Aderipriyaz Choudhuri. Mr. Choudhuri passed his Matriculation Examination by securing First Division from the Guwahati's Cotton Collegiate School in 1918. He cleared the Intermediate Examination by securing First Division from Cotton College in 1920.

At the call of the Father of the Nation Mahatma Gandhi, Mr. Choudhuri joined the Non Cooperation Movement in 1921 and abandoned his studies. In 1922, he left for Dibrugarh in search of a job and worked as a Sub-Editor of "SadiniyaAsamiya". After some time, he left that job and joined as a clerk in the "Assam Valley Light House", which was an Army Unit.

Mr. Choudhuri left Dibrugarh in January 1923 and joined as the Head Master of Sualkuchi M.E. School for a monthly salary of Rs. 40. He appeared for his Bachelor of Arts Examination in 1926 as a teacher candidate and passed with distinctions in English, Assamese, History and Sanskrit. His quest for the legal profession was inherent and so he immediately joined the Earle Law College. But owing to financial hardships, he could not continue

his studies. Instead, he joined the Gordon High School, at Nalbari, and worked there as an Assistant Teacher for some time. He returned to finish what he started and rejoined the Earle Law College. In the Law Preliminary, Mr. Choudhuri stood first (1st Class). He passed Intermediate of Law in 1928 and LL.B. in April, 1929 and started his practice in Guwahati District Court. Since then, Mr. Choudhuri established himself as an unparalleled criminal lawyer in Assam, an image he continued to project until his retirement in 1974.

A. Tryst with politics and the Freedom Struggle

Mr. Choudhuri was an active member of the Congress party, which he joined as a student in 1921. He was elected as a member of the Gauhati Local Board in the year 1934 and was re-elected again in 1938. Mahatma Gandhi chose him for individual Satyagraha in 1940. Mr. Choudhuri also participated in the Quit India Movement and was detained in the third division cell as an under trial prisoner for 15 days. He was eventually convicted and sentenced to rigorous imprisonment for a year in the Nagaon Jail.

After his release, Mr. Choudhuri resumed his legal practice. Although he started his career as a civil attorney, he became a criminal lawyer after his jail experience and in a short span of time, built a name for himself. In 1951, Mr. Choudhuri resigned from the Congress Party and joined Acharya Kripalini's Kisan Mazdoor Praja Party. The party merged with the Praja Socialist Party in 1952. In the 1950s, Mr. Choudhuri said goodbye to politics and was wholly preoccupied with the legal profession.

Life in the Law

After the Assam High Court was established in 1948, Mr. Choudhuri enrolled as an Advocate. He had an extensive and roaring practice in the Judges' Courts as well as in the High Court. He was designated a Senior Advocate by the High Court in 1970.

He retired from active practice while at the top of his career. He did not look back and made it clear that he was not available even for consultations, although he retained his alertness and phenomenal memory almost till the end. I consider this to be rare. His post retirement contented life reveals yet another facet of his great personality. Mr. Choudhuri was more than a good lawyer. He was a great man, who spoke no ill of others and always wished everyone well. In spite of his great success, he remained very modest and is one of the finest examples of “simple living and high thinking”.

To quote William Saroyan:

But try to remember that a good man can never die.

You will see him many times...

In all the things here that make this a world for us to live in

The person of a man may leave or be taken away

But the best part of a good man stays, it stays forever.

As the Gentle Patriarch quietly passed, he continued to live on.

Endnotes:

- ¹ Prashanta K. Goswami is a Senior Advocate practicing in the Supreme Court of India and Gauhati High Court. He has formerly been the Advocate General of the State of Assam and Additional Solicitor General of India. He is the son of Late Justice Parbati Kumar Goswami.

“One of the Brightest Legal Minds of his Generation”

Dr. Jagdish Chandra Medhi

Vikram Rajkhowa¹

“I have come across very few people as knowledgeable in the law as Dr. J.C Medhi to have walked through the revered corridors of Gauhati High Court.”

-Shri P.K Goswami, Senior Advocate

Early Life

Dr. Jagdish Chandra Medhi was born in 1903 in the undivided district of Kamrup (Assam), now Barpeta. After high school, he moved to Guwahati where he graduated from Cotton College. A stellar student, Dr. Medhi completed his masters in economics from Calcutta University and moved to London to pursue law. He earned his PhD from Yale University. His journey from a small vernacular school in rural Assam to a prestigious Ivy League university is no mean feat. After Yale, Dr. Medhi returned to Assam, at a time when the country was preparing for the Civil Disobedience Movement under Mahatma Gandhi’s leadership. To discourage students from participating in the agitation, J.R Cunningham, the Director of Public Information of Assam, issued the Cunningham Circular imposing a ban on anti-British and pro-Swadeshi activities. The order forced parents, students

and guardians to furnish assurances of good behaviour. Students were also required to sign an undertaking that they would face expulsion if they participated in anti-government actions.

To counter this oppressive move by the colonizers, Barpeta residents established Barpeta Vidya Peeth, a private English high school that served the expelled students. Dr Medhi became the founding head-master of that school. Dr. Medhi actively participated in India's struggle for Independence and spent two years in prison. It is common lore that while in jail the British were wary of Dr Medhi as he knew the law, and therefore they made him shift from one jail to another.

Legal Journey

In the mid 1930s, Dr. Medhi came to Guwahati to start his legal practice. He worked with Joy Chandra Choudhary, senior advocate and father of Jatin Choudhary. Dr. Medhi went on to have an illustrious legal career himself, spanning over 50 years. He was the Advocate General of Assam from 1970 to 1978. He was part of many important cases that set legal precedents. I shall dwell on one such case due to paucity of space and shed light on his legal acumen and brilliance.

A. State of Assam vs. Upendra Nath Rajkhowa

Sessions Case No. 35(D) of 1972 pertains to a District and Sessions Judge of Dhubri Upendra Nath Rajkhowa, who was charged with the murder of his wife and three daughters and for burying their bodies in two pits at his official bungalow in Dhubri.

The Sessions Judge of Dhubri convicted Upendra Nath Rajkhowa under sections 302 and 201 of the Indian Penal Code and sentenced him to be hanged to death. Umesh Baishya, an orderly working for Rajkhowa, was also charged with murder. He was acquitted by the Sessions Judge who ruled that the prosecution failed to prove the charges. A Death Reference and Appeal

arose out of the judgment before the Gauhati High Court. Mr K.M Lahiri, Senior Advocate appeared on Rajkhowa’s behalf and Dr.Medhi, in his capacity as Advocate General of Assam, argued on behalf of the state.

Dr.Medhi submitted that the murders have been proved beyond reasonable doubt by providing compelling forensic evidence: photographs, negatives of skull, examination of skeletons, which helped identify the bodies as those of Mrs. Rajkhowa and the couple’s three daughters. During that time DNA evidence was not available and the examination of the skeletons was done for the first time in the Central Forensic Science Laboratory at Guwahati. The identification could be established by anthropometric measurement, by measuring selected distances between different facial anatomical landmarks and finding out ratios.

The Hon’ble Gauhati High Court after hearing both parties and considering the evidence and materials on record found accused Rajkhowa to be guilty under Sections 302 and 201 of the Indian Penal Code. The impugned order of Umesh Baishya passed by the Sessions Judge was set aside and Baishya was convicted under Sections 302 and 34 of the Indian Penal Code . He was sentenced to life imprisonment.

The above decision of Gauhati High Court was appealed before the Supreme Court by Rajkhowa but the Hon’ble Apex Court also upheld the decision of the Gauhati High Court and the Trial Court. On February 14, 1976, former judge Upendra Nath Rajkhowa was hanged in Jorhat Central Jail, for the murder of his wife and three daughters. This case was a testament to Dr.Medhi’s brilliant legal mind and court performance.

B. International representation

Dr. Medhi was part of the 1971 Indian delegation to Belgrade for the Fifth World Conference on World Peace through Law and World Assembly of Judges. At the conference, he passionately defended India’s position against arch rival Pakistan. Leading up to the conference, the question of ‘World

Peace' had been studied by a group of scholars for two years under the chairpersonship of Dr. Hubich of Switzerland. This group submitted its report to the United Nations Organisation Committee, following which a discussion was held. According to the committee, 'World Peace' was impossible unless there was an elimination of armed conflicts between states. The committee suggested various measures such as compulsory membership of all states, adjudication of interstate disputes, and the creation of a World Parliament. It is at this stage, Dr. Medhi intervened and posed a series of questions: "Need a war be always between two or more states? Can't the Government of a state wage war against its own people?" He complained that neither the committee nor the participants had taken any notice of the recent happenings in certain parts of the world which could compel them to revise their traditional opinion on 'War and Peace'.

He then referred to how a military dictator was waging a war against the people of East Pakistan. He spoke of the innocent and unarmed villagers who were bombed and machine gunned from the air; how artillery was opened on market goers; how an army of 70,000 personnel were let loose on unarmed people to shoot indiscriminately, to molest women and bayonet children to death. "No foreign invader," Dr, Medhi argued, "could have done worse to the people of East Pakistan. The number of refugees in the two Israel-UAR conflicts was 300,000 compared to 7 million in East Pakistan. "Now consider, Mr. Chairman and my fellow delegates, whether this means war?"

Dr. Medhi pointed out,

Domestic affairs has more often than not been used as a scope for avoiding responsibility. It is not domestic affairs when hundreds and thousands of unarmed people are killed by a warlord, simply because he happened to hold the reins of government, when millions of people are facing starvation and death. Will you say Sir, let them die like flies because they are domestic flies?

On the issue of human rights of the 7 million displaced from East

Pakistan, the former Attorney General of Pakistan said that “they were not refugees but fugitives from justice.” Retorting to the same, Dr. Medhi asked the conference to consider “What kind of justice could it be when 7 million people have to run away from it? I suppose you will not question that they are human beings? What is then the fate of their human rights? They were citizens of Pakistan and Pakistan had driven them out. They had no claim against India. That India had taken care of them was out of kindness. If it was no obligation of any other country, it was no obligation of India. Who will then take up their cause, take up their responsibility, if not the international body?”

Dr. Medhi observed, “Peace requires as much boldness as war. Peace, do we mean peace of dead men? We mean the peace of men who live and live nobly.”

4. Conclusion

A passionate citizen, a proud son of the soil and one of the brightest legal minds of his generations, Dr. Medhi’s extraordinary contribution to the field of law will forever be remembered by all, in particular by the legal fraternity of Assam.

Endnotes:

- ¹ Vikram Rajkhowa is an Advocate at the Gauhati High Court, practicing primarily in Writs, Criminal, Corporate and Environmental Law.

“Building Jurisprudence”

Reflections on N.M Lahiri’s approach to Law and Life

Justice H.S Thangkhiew¹

Introduction

I deem it an honour to have this opportunity to write about my senior N. M. Lahiri, his life and more importantly his contribution towards the institution which he loved and cherished, the Gauhati High Court.

I must confess that I feel inadequate for the task. I am not aware about his early life and engaged with him when he was in the evening of his career. Thus, I cannot even pretend that I have the authority or capability to write about such a towering personality in a manner that would do justice. It would take a whole book to write and recount Mr. Lahiri’s story, his ideology and life’s philosophy, Because of space constraints, I will focus on a few specific areas- his study and practice, his passion for the Sixth Schedule, the tribal areas, the customary practices and his contribution in the formulation of precedents and law in the areas mentioned.

The Early Years

Mr. Lahiri was born into a family of legendary lawyers. By his own

account, he never really aspired to be a lawyer. He was a member of the Revolutionary Communist Party of India and was detained in Jorhat Jail in 1948 as a Security Prisoner under the Assam Maintenance of Public Order Act, 1947. His first contact with the High Court was when a Habeas Corpus Petition was moved on his behalf by the renowned lawyer Shri Hemanta Kumar Lahiri. The case, ILR 1949 (1) Assam 281, was the first reported one of its kind. The matter travelled up to the Federal Court, which passed an order for his production. He was then released, taken to Shillong and interned within its municipal limits. He reluctantly joined the legal profession in 1949 after obtaining his pleaders licence and continued to practice until his death in August, 2006.

Mr. Lahiri’s father was S.M. Lahiri, the Legal Remembrancer of Assam and a Senior Advocate of Guwahati since 1950. Being his father’s son, Mr. Lahiri attended the High Court very often and became a lawyer born and bred by the institution. He grew alongside the institution from its nascent days, until the time he breathed his last.

Mr. Lahiri practised at a time along with stalwarts of the newly established Gauhati High Court including Fakhruddin Ali Ahmed, who went on to become the President of India; S.M. Lahiri, S.K. Ghose, Dr. J.C. Medhi, Purnendu Bhushan Choudhury, N.M. Dam. These luminaries were pioneers in the profession and had a profound influence on him. But that doesn’t mean he was intimidated by them. The case of *Sheikh Mahammad Alijan vs Rafique Ahmed* reported in 1957 ILR 68, reflects Mr. Lahiri’s indomitable spirit where he argued against a giant such as Fakhruddin Ali Ahmed.

But, Mr. Lahiri’s contribution to the legal landscape was not limited to the cases he appeared in, wherein judicial precedents were set. His influence expanded to the legislative and political realm, where he was consulted in formulating laws and advising the state in his capacity as the Advocate General of Meghalaya. He held this office from the state’s inception in 1972 until 2003, a period spanning 30 years, which gave him the rare distinction of being one of the longest serving Advocate Generals of India. Prior to his

assumption of office as Advocate General, he was the lawyer for the United Khasi Jaintia Hills District Council and later for the Khasi Hills Autonomous District Council. As an adviser and counsel, his contribution to the development of law concerning the Sixth Schedule and its application was tremendous.

Mr. Lahiri was well-read, well-versed and an authority on various other aspects of law, literature, history and politics. His personal library reflected these. I had the privilege to access this treasure trove and spend hours immersed in reading from his collection. He donated a portion of this library to the Gauhati High Court Bar Association and it exists today as the N.M. Lahiri Reference Library within the Bar Association Library.

Building Jurisprudence: N.M Lahiri and the Sixth Schedule of the Constitution of India

The Sixth Schedule was incorporated to provide a constitutional set up for the tribal areas of North East India. This was done to address the sense of isolation and separation and also to uphold and maintain certain institutions and processes, such as the system of village administration. The Sixth Schedule, as originally framed, was applicable only to the tribal areas of Assam, by virtue of Article 244(2) and 275(1) of the Constitution of India and the table appended to paragraph 20 of the Sixth Schedule which defined the areas in two parts (A and B). In 1950, the State of Assam included within its jurisdiction the current states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland. With the Constitution coming into force on January 26, 1950, and the formation of the various District Councils in the tribal areas of Assam under the Sixth Schedule, the stage was set for interpretation and implementation of the Sixth Schedule and the Constitution of India. It was in this scenario that Mr. Lahiri sharpened his skills and left an indelible mark in the development of law and the three District Councils, which are now within the State of Meghalaya.

The administration of the Sixth Schedule needed intense judicial scrutiny

and interpretation. The District Councils, whose functions and powers were forever a subject of great debate, gave rise to numerous cases. There was also much ambiguity around the exercise of the Councils’ executive functions in law implementation, especially in the regulation and control of the traditional institutions, trading, land, and the Council’s role in the field of customary law and practices. Another significant area, which required expertise was the cases involving the tribal areas of erstwhile and present day Assam, which fell under the Sixth Schedule. The complexity was especially pronounced in the context of the Rules for the Administration of Justice prevalent in these areas and their interplay with the normal laws, the conflict of jurisdiction and the dispensation of justice. Many vexed questions that were decided by the High Court those days find place in the journals and now serve as an invaluable guide and reference points.

Amid this backdrop of unsettled law and fluid legal situation, Mr. Lahiri by his depth of knowledge and sustained study, emerged as an authority and assisted the Courts in coming to definite conclusions. Apart from the cases concerning general law, his contribution particularly to the matters concerning the Sixth Schedule are considered invaluable till the present day. A few of these cases that illustrate the formulation and development of law by way of pronouncements by the Gauhati High Court wherein he appeared are: the cases in the area of Administration of Justice under the United Khasi and Jaintia Autonomous District (Administration of Justice Rules) 1953 by the District Councils, subjects under Paragraphs 1, 2, 3 and 4 of the Sixth Schedule, the Rules for the Administration of Justice prevalent in the Khasi, Jaintia and Garo Hills of Meghalaya and also matters under customary law.

Other notable cases include:

- *U Ram Lato vs. State* as reported in ILR (1955) 7 Assam 226, decided on December 11, 1955, wherein the applicability of Section 197 of the Code of Criminal Procedure, 1973 was discussed and it was held that the same could not be applied to areas where District Councils were functioning,

- *U Mania Stong vs. Chief CEM District Council, United Khasi and Jaintia Hills* as reported in 1955 (7) ILR 550 Assam, the competency of the Executive Committee to confirm a minor appointment of an official lowest in the hierarchy of the village court was upheld though no reference was available in the rules.
- *Ka Phiermai Lyngdoh vs. Ka Thermai Lyngdoh* as reported in 1960 ILR 477, with regard to Rule 6 of the Assam High Court (Jurisdiction of District Council Courts) Order 1954, it was held that the High Court was not to sit as a Court of Appeal and the only privilege of the Court was to interfere, if necessary, though this position has since been subject to further interpretation.
- *U Lokendra vs. U Driwell Myntri & Ors* reported in ALR 1970 Assam & Nagaland 242, the Court decided the issue regarding jurisdiction of Civil Courts/competency to decide a right to property based on the extent of the territorial boundary of the Syiemship.
- *U Join Manick Syiem vs. U. Rose Mohan Roy Myntri & Ors* reported in AIR 1963 Assam 3, was a matter wherein it was held that notwithstanding the framing of the Administration of Justice Rules, 1953 by the Khasi and Garo Hills Autonomous District Councils, the Assistant Deputy Commissioner and Magistrates had the power to take action as contemplated under Section 145 of the Code of Criminal Procedure, 1973.

There are many more cases wherein Mr. Lahiri appeared and the Gauhati High Court interpreted and laid down the law arising from Paragraphs 1, 2, 3, and 4 of the Sixth Schedule, which are reported in the various journals. Few cases mentioned below illustrate the development of law and concepts in this special area, ranging from the special powers of the Governor under the Sixth Schedule, the Constitution of the District Councils, and subjects under Paragraph 3 which included land, markets, forest, traditional institutions (Chief and Headmen), social customs, personal law and matters of village and town administration.

These cases are:

- *Mrs. C.N. Lloyd vs. District Council United Khasi and Jaintia Hills* as reported in 1959 ILR 213, with regard to jurisdiction and power of the District Council to issue prohibitory orders wherein it was held that in the absence of any statutory provisions to issue such orders, the petitioner could claim relief under Article 226 of the Constitution of India.
- *Sporsomanick Syiem vs. Rokendro EM I/C, Rural Administration UKJH* as reported in 1964 ILR 558, the legal right of a person deprived of the right to be nominated as Syiem was determined.
- *Franciswell Syiem vs. Judge District Council Court* as reported in ALR 1970 Assam & Nagaland 256, dealt with the formulation of a tribunal’s own procedure in the absence of any procedure laid down in the Act.
- *U C. Koring Singh Lyngdoh vs. Executive Committee, United Khasi and Jaintia Hills* as reported in ALR 1971 Assam & Nagaland 196, it was held that the Executive Committee had no jurisdiction to revoke, stay or suspend the appointment of a chief following his election pending approval of the District Council.
- *Dore Sangma vs. Chief Executive Member, Garo Hills District Council* as reported in 1988 (2) GLR 120, a matter concerning appointment or succession of a Nokma (Village Headman) of an Akhing land (Community Land in Garo Hills), and the legality of Section 11 of the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958 with regard to the bar to civil court jurisdiction, had come up for consideration wherein it was held that the bar was valid and that while hearing such matters, the concerned authority was to follow the fundamental principles of judicial procedure in deciding the case.
- *Bogaram Das vs. The Chief Executive Member, Khasi Hills District Council Court & Ors.* as reported in 1983 (1) GLR 491, the matter of the bar to the jurisdiction of the Civil Court under the United Khasi Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 was determined.

- *Miss Sitimon Sawain vs. District Council United K and J Hills, Shillong* as reported in AIR 1968 Assam & Nagaland 43, was a watershed case in the scope of legislation by the District Council wherein it was held that under Para 3 (1), the District Council had no competence to legislate on the transfer of land. This matter was carried before the Supreme Court, wherein it was affirmed that the District Council had no plenary power of legislation.
- *Edwingson Bareh & Anr. vs. State of Assam & Ors.* as reported in AIR 1966 Assam & Nagaland 1, a notification by the Governor for the creation of the Jowai District Council was held to be valid and legal and the same was also upheld by the Supreme Court.
- *Ka Sirian Marbaniang vs. V.H. Cotton* as reported in 1956 Assam 162, the competency of the District Council to pass the enactment namely the (Management and Control of Markets) Act (5 of 1953) was upheld, as the Court was of the view that the same would promote the interest of the inhabitants.
- *U Mesingh Syiem vs. Secretary Executive Committee of the District Council of the Autonomous District of Khasi and Jaintia Hills and Ors* as reported in AIR 1969 Assam & Nagaland 94, it was laid down that after election of the Syiem (Chief) the Executive Committee must publish the result and place the same for approval before District Council and that it had no jurisdiction to issue notice for fresh elections.
- *Prakanta Warisa & Ors vs. State of Assam & Ors.* as reported in 2001 (3) GLT 500, the power of the Governor to extend the term of District Council, was held to be discretionary and that there was no enforceable right to demand exercise of such power of extension and that, such discretionary power was to be exercised by the Governor when circumstances exist rendering the holding of election impracticable.

A case that needs special mention is the case of *T. Cajee vs. Jormanik Syiemas* reported in AIR 1961 SC 276, which was ultimately settled before the Hon'ble Supreme Court and dealt with the matter of removal of a Syiem

(Chief). It was a landmark decision by all standards, as the scheme of the Sixth Schedule showing how the District Councils, was both an administrative as well as legislative body was vividly elucidated in the judgment.

Mr. Lahiri, through his appearance in these matters related to the Sixth Schedule, became the resident expert. But there was one particular issue that always haunted him and I recollect how it was the subject of endless debates in the chamber with B.M. Mahanta, Senior Advocate and close friend and associate of Mr. Lahiri’s. Under the Rules for the Administration of Justice and Police, 1937, issues arose regarding the extent of jurisdiction of these Rules *vis-à-vis* the Administration of Justice Rules, 1953 of the District Council. The High Court in the case of *I.C. Chakravarty vs. Khasi Hills Dzistrict Council* as reported in AIR 1984 GAU 92, held that in view of the judgment of the Supreme Court in *Ka Drepsila Lyngdoh* as reported in 1975(4) SCC 809, it is only the District Council Courts which would have jurisdiction over a part of an administered area which had been ceded for municipal administration. In this case, it was the locality of Mawkhar in Shillong, which would in turn be the law in all the similarly situated administered areas of Shillong. There appeared to be valid reasons for revisiting this especially in the context of the other judgments such as the case of *Late U Owing Singh vs. Ka Nosibon Jyrwa* as reported in 1956 ILR 89 Assam, where it was held that the jurisdiction of Courts over the administrative area of Shillong included in the Khasi States but outside the judicial administration of the Syiem would be subject to the Administration of Justice under the Rules of 1937 by the Deputy Commissioner (which was overruled by the Drepsila case). The case of *Hardeodas Jaganath vs. State of Assam* as reported in AIR 1970 SC 724 also featured in these endless discussions.

Mr. Lahiri also appeared in matters related to appreciation and application of customary law, where the Court was also called upon to decide and define who is a member of the Khasi Tribe. The test to determine that was deliberated in the case of *Wilson Reade vs C.S. Booth* as reported in 1958 ILR 283. In the case of *Ka Bril Kharkongor & Ors. vs. Ka Jngiem Kharkongor* as reported in 1973 ALR 77, on the question as to whether a husband had

any right to his wife's property, it was held that Khasi custom does not provide any such right. Similarly, valuable assistance was rendered by Mr. Lahiri in deciding matters under section 10(26) of the Income Tax Act, 1961 which dealt with the exemption extended to tribal residents residing within the areas under the Sixth Schedule.

In this myriad of path breaking cases, a landmark case which needs special mention is the case of *The Nongkhlaw Clan & Ors. vs The Union of India* as reported in 1997 (2) GLT 652 (Full Bench), which dealt with the lands leased out by three Shillong clans to the British. In this case, a claim was made that since the British paramountcy lapsed, the lands should revert back to the three clans. This case was of immense importance, because the three clans were praying for re-repossession of land in the heart of Shillong; land that covered three wards of Shillong Municipality, where important Government establishments, schools and colleges were situated. During the hearings on this matter, the history of the areas leased to the British Crown, the nature and recitals of the lease documents, whether they were determinable or in perpetuity, were all discussed in great detail. The State was successful in resisting the claims of the clan petitioners mainly because of the efforts of Mr. Lahiri. I had the good fortune of assisting him in this important matter and though my name did not appear in the roll of Advocates, it was a great learning experience. I can confidently say that it was his expertise and vast knowledge that led to the successful outcome.

Though this article mainly centers on his professional life and his expertise in one branch of law, I feel that it would be an injustice to not briefly mention about the person that he was. Mr. Lahiri was known for his innate humanness and sensitivity to the oppressed and his practice of egalitarianism. I remember in the late 1990's, Guwahati Municipal Corporation launched an eviction drive in the Fancy Bazar area. Mr. Lahiri also had a property there. The hawkers, who were the victims of eviction, were deprived of their means of livelihood. They approached him and seeing their condition, he allowed them to occupy the entire stretch of his property facing the road. The hawkers set up shop there without paying any rent and

with the security that they would no longer have to worry about being displaced or evicted by the authorities.

Mr. Lahiri was a nature lover. He had intense love especially for the Khasi hills. He was familiar with the entire region and knew of places and pockets of scenic beauty, long before the advent of any type of tourism. The sacred groves, especially *Mawphlang Sacred Grove* near Shillong, were places that he cherished. He was the first person to introduce me to *Laitlum*, now referred to as the Grand Canyon of Khasi Hills. I was fortunate to be able to accompany him on many such sojourns and those adventures will forever be etched in my memory.

He also had a deep knowledge and passion for plants and flowers. He took great pains to obtain seeds and supervise his garden in Shillong. He was the happiest when he was with nature, his plants and his books.

Endnotes:

- ¹ Justice Hamarsan Singh Thangkhiew is a Judge of the Meghalaya High Court. He was a junior to Shri N.M Lahiri, formerly Advocate General of Meghalaya. He practiced in Gauhati High Court in both the Principal Bench and the Shillong Bench. On the establishment of the Meghalaya High Court, Justice Thangkhiew exclusively devoted himself to his practice in the Meghalaya High Court and was designated Senior Advocate in 2010 before his elevation to the Bench.

“The Revered Guardian”

Justice Kiranmoy Lahiri

Barnali Chowdhury¹

Justice Kiranmoy Lahiri- Habu Da for many and Habu Jetha to me and my siblings, was a man with myriad qualities. An outstanding lawyer, Jetha was a jurist par excellence. My father’s generation, who had the privilege of seeing the lawyer and judge in Jetha, fondly recall him as a superb trial lawyer. Although people generally associated him with criminal law, Jetha’s expertise extended from criminal trial to election petition or any other matter in the Original side or the Appellate side. Jetha was at ease with every case at hand.

An all-time great jurist, he dove to the root of the matter instantly. Jetha would get so preoccupied with a case that he would be thinking about it, even in the shower, much to the chagrin of my father. He never looked at the time when he was working on a case, and would keep his juniors engaged past midnight.

Early Life

Born on December 29, 1924 to Hemanta Lahiri and Renuka Lahiri, Jetha came from a lineage of lawyers. His grandfather was Lalit Mohan Lahiri

and his uncle was ProbodhLahiri, all eminent lawyers of their time. The Lahiris’ were known for their passion to dig deep in whatever field they entered. Jetha’s mother, Renuka Lahiri, (Mashima for my parents and Thamma for us), had completed her Intermediate from the famous Bethune College- the first Women’s College in India. She had a penchant for learning and picked up doll making in her 80s. Thamma taught her grandchildren- Kishore Dada and Kaveri Baideu to appreciate culture and the arts. That is the lineage Jetha inherited.

A brilliant student, Jetha completed his early education in Cotton Collegiate School and then joined Bengali High School. He obtained his law degree from Earle Law College, Guwahati. At school, his contemporaries included the Bard of Assam, Dr. Bhupen Hazarika, the famous artist Girish Choudhury and the cricketer Nalini (Pilik) Choudhury to name a few. After college, Jetha briefly explored teaching as a career. He worked at J.B. Law College without any honorarium during its nascent days. His dedication and commitment was such that he would cyclostyle notes for all his students.

Jetha was also a talented sportsman and he excelled in athletics, cricket, football, volleyball, lawn tennis, badminton and bridge. He was a very good cricketer, an all-rounder; who could bat, field and bowl with equal elan. What seemed like an impossible catch at short leg was made possible by Jetha. He was by all accounts a renowned sportsman and even represented the Maharana Athletics Club in both football and cricket. My father recounts the good old days, when the Sports Authority of India Stadium at New Field used to buzz with cricket and football matches almost twelve months a year. Jetha used to take part in most of the matches. He also used to represent the Lower Assam School Tournament.

Legal Journey

When he chose law as his calling, it was a big loss to the sporting world. The legal profession though was blessed with a lawyer who could think on

his feet while empathetically caring for a worried litigant. He embodied the same sensitivity while adjudicating as a Judge. His profession was his passion.

Jetha's chambers at Paltan Bazar and TulsiBala Road, Ulubari, used to be abuzz with activities even in the early hours of the morning. In fact, it wasn't uncommon for his juniors to work until the wee hours of the morning. My father recalls those beautiful days of his life as Jetha's junior. Often he and his chamber colleague Rantukhura (Amrit Kumar Phukan) would contemplate returning home, when Jetha would pose a query to Gayankhura (P.C. Gayan). They would then be stuck for hours. Jetha's chamber yielded some of the luminaries of our field in Assam. Members of the illustrious Lahiri chamber include Surendra Mohan Deka, Dhanajit Talukdar, Chandra Kanta Das of Barpeta, ManabendraSarma, Dinesh Goswami, Raj Narain Singh, Rajen Ghosh, Justice Hirendra Nath Sarma amongst others. Jetha used to love the assistance he got from Bijoy Saha, Purna Lal Senapati and Chanaram Das.

His first teaching to his juniors was to always work hard and persevere. He impressed upon them that there is no other shortcut to success and to achieve all that what is required is not just brilliance, but perseverance and dedication. My father, Dhiresch Narayan Chowdhury, recalls with gratitude that the first day he joined Jetha's chamber, Jetha said to him: he said, "*A lawyer has to take care of his health, as the luxury of rest when one is sick is not available to him*". Such was his commitment, that in every sphere of life, Jetha endeavoured to be a perfectionist and be second to none. Although, it has been quite some time since this great personality has left us all, yet it is the endearing stories and wisdom relevance of Jetha has kept him alive in people's hearts.

Jetha was an exemplary judge. Even today, I hear my father and my senior Prashanta Kumar Goswami, Senior Advocate, recount how much of a learning experience it was to simply sit in Court No.1, Gauhati High Court and watch Jetha in action. His judgements reflected his erudite scholarship and his unique ability to balance and deliver "*justice beyond justice*".

He never faltered from his path in discharging his duties without fear or favour. Jetha undoubtedly had a meteoric rise in the profession, but much of it was the result of his tremendous perseverance. As mentioned before, he was a workaholic. Immediately after returning from Court, he would sit in his Court attire in his chamber. During his free time, he would open the All India Law Report and type out the index sitting at his Remington machine. That was the tireless zeal in him. It was thus not alone brilliance or family lineage, but tremendous perseverance that resulted in Jetha’s meteoric rise as a lawyer and as a judge, leading him to adorn the Chair of the Chief Justice of the Gauhati High Court.

Acknowledgments

Ofcourse, to complete the symphony in his life, Jetha was ably assisted by our dearest Jethima (Elder Aunt), Krishna Lahiri, a mother figure for our parents. This narration of the life and work of Habu Jetha, will not be complete without acknowledging the support Jetha received from Hareshwar Dada, (Hareshwar Lahkar) and Niranjan Dada (Niranjan Kalita). I believe Hareshwar Dada is not the lone fan that Jetha cultivated in his lifetime. He has left a huge following of ardent admirers, who recount him as larger than life. But to us he was just Habu Jetha, our uncle, who used to be great fun to visit and who never missed an opportunity to shower us with lavish gifts.

This in brief the majesty of a man whose aura has still not disappeared for people who knew him and adored him. For us at home, the personal influence of our beloved Habu Jetha has still not fallen silent, despite years of his physical absence. Our elders believe that Jetha has been one of those inspiring figures who continue to inspire them to be benevolent. Our reverence to the great soul!

Endnotes:

- ¹ Barnali Chowdhury is a practicing Advocate of the Gauhati High Court. She has taken great initiative in pro bono matters throughout her career. The Gauhati High Court has recognised her services by including her in the panel of legal aid counsel.

“The Leading Light of Assam Bar”

Remembering Shri Jyoti Prakash Bhattacharjee

Justice Hrishikesh Roy¹

A dozen years have gone by since Shri Jyoti Prakash Bhattacharjee passed away. But his footprints and his legacy remain. If you visited his chamber, you may have noticed a plaque on his desk, which read “the buck stops here”. We gifted that wood and metal plaque to Sir on one of his birthdays. The words inscribed succinctly encapsulate his exceptional personality. He was one of the luminaries of the Gauhati High Court. Shri Bhattacharjee’s precision and devotion to his clients hold an underlying promise that any responsibility entrusted on him would be handled with competence. He would leave no stone unturned to achieve a resolution for his clients. Those who had the good fortune of apprenticing in his chamber would recollect the desperate litigants for whom most doors were shut. They finally would knock on Sir’s door with the earnest belief that he would resolve their problems. It wasn’t just potential clients who sought him out. His contemporaries, too, reached out to Sir when they needed rescuing from legal predicaments.

Early Life

This remarkable doyen of the Assam Bar was an exemplary student.

After securing his Bachelor of Science from Calcutta University, he was invited by his school teachers to teach at his alma mater - Bengali Boys High School, Tezpur. His calibre as a gifted student made him a natural choice for the position. The headmaster acknowledged in writing that Sir was the “best boy” of his batch. Later, Sir secured his LL.B. from Gauhati University. As per the prevalent practice in the Assam High Court, he was formally granted articles of clerkship with the Calcutta veteran, Shri S.K. Ghose. Sir turned out to be the most trustworthy and dependable junior in Shri Ghose’s office. He proved his mettle and when his senior retired, he inherited most of the chamber’s work. In 2005, on the 50th anniversary of Sir’s legal career, the Gauhati High Court Bar Association, conferred on him an honorary Bar membership during its foundation day celebration on April 5. This acknowledgement came as a token of love and respect for the rightfully celebrated lawyer.

A mentor par excellence

As a first-generation lawyer, Sir amalgamated his conspicuous intellect with intense industry and stood out as the first port of call for the informed litigant. He was a demanding boss and the high attrition rate in his chamber was a natural consequence of the relentless quest for perfection and the high benchmark he set. It is hard to overstate how confident we were in court the following day, post the evening grind and meticulous preparation in the chamber. I do not recollect a single occasion when we felt unprepared to answer probing questions from the Bench or counter high-quality arguments from the other side. Many times, the briefing lawyer would feel inadequate during the conferences with Sir. His advance planning, methodical preparation and thorough research on the latest precedent, ensured that the court presentation of a case brief bordered on perfection. It is a hallmark of his mentorship that many of his juniors picked up best practice skills and carved out enviable careers for themselves. It will be no exaggeration to state that the largest bunch of juniors from Sir’s chamber i.e. *J.P. Gharana*, have made a mark for themselves, both in the Bar and the Bench.

Modesty was one of Sir's chief mantras. He was always calm - a valuable lesson on Court demeanour. It's natural for a junior to be excited when they land an early opportunity to argue a case or when they receive a favourable verdict. They may flaunt victory smiles or may even brag about it among peers. Sir would chastise conceited juniors by quoting the wisdom of Rudyard Kipling's poetry. His advice was that both victory and loss in a case should be treated equally. "Just like you wouldn't cry if you lost a case, there should be no jubilation for winning". Sir explained the importance of not wearing one's emotions on the sleeve. Thus, an important lesson was passed on to the juniors, to treat both triumph and disaster akin to imposters that should be kept at arm's length. A captain of many juniors' legal journeys, he always led by example and we fondly remember him as the most cherished mentor one could have asked for.

Those who saw him in Court, remember Sir as the immaculately dressed lawyer. Even at home, he would be found working in his white *kurta-pyjama*. The routine in the early hours of the evenings would be marked by the usual procession of briefing counsels with a pre-fixed appointment. When the conference work for the next day's cases were over, his *man Friday* would place a cold glass of water on his side table. After a sip of water from the frosting glass, Sir would pour himself some quality scotch. His moderate habit would therefore, inevitably start in reverse order. Occasionally, his immediate neighbour, Shri N.M. Lahiri, (who would usually be one of his opponents in major litigations), would stroll across and share a drink, particularly, when the scotch was of the highest quality.

A gentle doyen

Sir was usually in complete control of his surroundings and always in command. He was a serious man, but there were a few times when we caught a glimpse of his soft, fun side. One of the most endearing memories of him was when his granddaughter, Tanya, all of five years old, managed to flummox the stern senior counsel. Tanya had travelled from England to visit her grandparents and asked for lollies. Sir thought she wanted a lollipop and

immediately had one arranged. But Tanya had no interest in the proffered candy and kept insisting for lollies. Sir was helpless, like everyone else in the chamber. He had no idea what it meant. His exasperated granddaughter eventually climbed on the office desk and kept banging on the table saying, “I want a lolly”. Finally, Sir called Chandana (Tanya’s mother), who informed him that what Tanya wanted was an orange ice bar. Tanya only climbed off the desk, when her demand was met. Sir loved being a grandfather and really indulged in his grandchild.

Another occasion when we experienced Sir’s less serious persona was after his mother’s passing. After the mourning rituals, a luncheon was arranged where a *rosogolla* eating competition ensued. Suren Sharma, the current President of the bar, boasted that he could eat the most and beat another young lawyer known for his insatiable appetite. Hearing of the gauntlets, Sir arranged for a large pot of *chbena* dumplings to be brought out to the dining area. He arranged to serve *rosogollas* to the challenger under his supervision. Following the impressive performance, he took distinct pleasure in congratulating Suren Sharma, who devoured 33 *rosogollas* and that, too, after a hearty meal.

End of his life

Sir used to frequent Delhi for important cases and when the work in Guwahati was not challenging, he decided to focus his attention on the Supreme Court. Sheer providence made the Delhi sojourn short-lived and eventually located here to Calcutta, making himself available only for selective cases. This disruption from his busy “life is work” schedule at Guwahati, aggravated medical issues which eventually hastened his demise in 2009. Those of us who had rushed to be with the family in their hour of grief could only feel the poignancy of his sombre last journey in Kolkata. We imagined what a crowded send-off he would have received had he passed away in Guwahati.

“An extraordinary mentor is innately a magnificent leader” – and Sir

was one. Effortlessly yet efficiently, he planted the seeds of excellent work ethic and calmness and modesty in all his juniors. Like a true leader, he led by example. He showed us the path, but also walked together with us. Those seeds of wisdom helped transform many of his chamber juniors into robust professionals ably shouldering the responsibility of continuing the legacy of a legal legend of India.

Endnotes:

- ¹ Justice Hrishikesh Roy, Judge of the Supreme Court of India has been a Judge of the Gauhati High Court as well as Chief Justice of the Kerala High Court. His legal practice has blossomed under the guidance and teaching of Late J.P Bhattacharjee. While in the chambers of Shri Bhattacharjee, Justice Roy was associated with Justice Ranjan Gogoi, former Chief Justice of India and Justice Amitava Roy, former Judge, Supreme Court of India.

THE MAGNANIMOUS

“A Life of Kindness and Disarming Simplicity”

Justice S. N. Phukan

Pragyan Pradip Sharma¹

“I am a God fearing person, fully satisfied with life and with absolutely no regrets”.

This quote of Justice Sailendu Nath Phukan, affectionately called Monida, sums up the person that he was.²

Early life

Justice Phukan’s life journey began on April 1, 1937, with his birth in the illustrious Phukan family of Jorhat. He was born to Mrs. Bokhurani Devi and Mr. Nalini Nath Phukan, a lawyer of repute at the Jorhat Bar and founder principal of the Jorhat Law College. His grandfather, Mr. Rai Bahadur Radha Nath Phukan, was a doyen of his time. He was a highly regarded scholar and the first District and Sessions Judge from the North Eastern region, as well as the first Sub Divisional Officer of Sunamganj and Habiganj Districts (now part of North-Eastern Bangladesh). Despite such an aristocratic ancestry and pedigree, Justice Phukan preferred a life of austerity, simplicity and unpretentiousness. He embodied these qualities – as a child and adult by choosing to go barefoot to Sankardev Seminary in Jorhat, like

his peers from humbler backgrounds, and refusing personal security as a Judge.

The foundation of Justice Phukan's education was built in Sankardev Seminary. He passed his I. Sc from J.B. College, Jorhat. After finishing his secondary education, he completed his B.Sc from St. Anthony's College in Shillong, Meghalaya. He followed the expected professional trajectory of his lineage and pursued law from Calcutta University. He completed his LL.B in the 1961. During that period, entry to the legal profession required a year of 'articleship' with an advocate and the trainees had to fill a diary that required approval by a committee of High Court Judges at the year's end. When he was in this process, the new Advocates Act of 1961 became enacted and did away with this practice. This made possible for law graduates to enrol as Advocates upon completion of formalities with the Bar Council.³ Justice Phukan was thus enrolled as an Advocate with the Bar Council in 1962. After a brief stint as a pleader at the Jorhat District Court, he moved his practice to the Gauhati High Court at Guwahati, the Principal Seat.

In February 1963, he tied the nuptial knot to Meera (Bhattacharjee) Phukan, a woman of great substance, who was an immense reservoir of strength and support to him throughout his life.

His contributions to the State of Meghalaya

It was probably providence and lady luck brought along by matrimony that he was chosen as Munsif to the Assam Judicial Service in 1963. The Assam Judicial Service provided him with an opportunity to serve in the Districts of Gauhati, Nagaon, Silchar and then Meghalaya, which would become his "*karmabhoomi*" for a substantial period of time. After the formation of Meghalaya under the Assam Reorganisation (Meghalaya) Act 1969, Justice Phukan joined the new Meghalaya State cadre on deputation as Under Secretary, Law and Parliamentary Affairs. He was eventually promoted to the rank of Law Secretary in 1975 with the additional responsibility of Legal Remembrancer. This would shape his judicial career.

His stint in the state law department brought him immense recognition and prominence. The development and enactment of the various state legislations of the new state had his distinct imprint and endowment. His contribution in the development of Meghalaya’s judicial system and enactment of the laws, rules and regulations brought him acclaim and eminence and endeared him to Captain Williamson A. Sangma, the first Chief Minister of Meghalaya. A notable contribution was his role as an inspiration and enabler for a collective compendium of the laws for the North Eastern Region. This book is a must read for anyone connected to the law in the North East of India. He joined the Shillong Law College as a part time faculty and fulfilled his passion for teaching.

Judicial Pronouncements

Justice Phukan was elevated as a Permanent Judge of the Gauhati High Court on October 11, 1985, a position in which he spent almost an entire decade.

His first judicial pronouncement, came merely a month after his elevation, in a case titled *Bhagabat Kundu v. Debidutta Agarwalla* reported in (1988) 64 CompCas 734 (Gauhati). As a member of a bench presided by Justice K. M. Lahiri (a stalwart and a legendary jurist), the Acting Chief Justice of the Court, it was held that apportionment of compensation under the Motor Vehicles Act ought to be made on proper scrutiny of and in accordance with terms and conditions of policy.

In the intervening period of his judgeship between 1985 and 1994, Justice Phukan presided over matters as wide ranging and diverse as arbitration, food safety, direct taxation, labour rights, criminal offences *et cetera*. Some his cited decisions include:

- *Sunanda Ram Deka v. Commissioner of Income Tax* as reported in (1994) 1 GLR 368: (in this case, under the Income Tax Act, it was held that the question whether a revised return was filed due to any mistake or omission was a question of fact. It was also held that

filing of the revised return after discovery of the omission or wrong statement is not by itself sufficient to bring the revised return within the ambit of Sub-Section (5) of Section 139 of the Income Tax Act 1961).

- *New India Assurance Co. Ltd. v. Satyanath Hazarika and Ors.* as reported in (1989) 2 GLR 63, (payment of fair compensation under Motor Vehicles Act).
- *Md. Jainulabdin and Ors. v. State of Manipur and Ors* as reported in(1991) CriLJ 696, (holding that the CrPc provisions are applicable to NDPS Act only to the extent they are not inconsistent with NDPS Act).
- *Subho Ram Kalita and Ors. v. Dharmeswar Das Koch and Ors.* as reported in(1987) 2 GLR 109, (whether recourse to Section 151 CPC is permissible for stay or injunction where requirements of Section 10 CPC are not satisfied), among many others.

Justice Phukan authored several crucial orders and judgements on varied issues like tenancy rights⁴ civil procedure⁵, motor vehicles insurance⁶ and arbitration law⁷. On the criminal side, he issued influential decisions on matters such as burden of proof in adducing criminal evidence⁸, food adulteration⁹, inherent powers of the court to quash proceedings under CrPC¹⁰, grounds for allowing probation of offenders¹¹, *et cetera*.

His pronouncement in the case of *Anurag Saxena v. S. Damodaran* as reported in 1986 2 Gau LR 380, was one of the most quoted cases. It laid down two vital propositions:- the adage, '*justice delayed is justice denied*' - is not true in all cases and free legal aid is a right guaranteed to every person under Article 21 when read along with Article 38A. Justice Phukan in his judgement stated that free legal aid is necessary to make a trial *reasonable, equitable and just*. He proceeded to declare a trial bad because the accused was not provided with access to free legal aid. Again in *J.C. Mondoloi v. Oil and Natural Gas Commission and Ors. Justice* as reported in (1986) 2 GLR 365. Justice Phukan helped develop and interpret the term "probation period". This was a case where the termination was challenged on the grounds that

the “probation period” was over. It was held that the probation period was over before termination letter was issued, and hence it was illegal.

Justice Phukan had a very good grasp on issues pertaining to Constitutional Law, particularly issues emanating out of the 6th Schedule and Criminal Law, because of his experience as Meghalaya’s law secretary .¹²

Justice Phukan had a knack of deciding complex issues – would offer practical solutions – which ensured both parties were back happy. In an interview for a local daily, he recalled a matrimonial dispute where the spouses had been separated for six years. Taking a conciliatory approach, he spoke to the husband and the wife separately and found that both were willing to reconcile. Despite the interference of the wife’s father, he was able to help the couple reunite. He felt suitably vindicated when fifteen months later, the wife wrote to thank him and informed him that they were having a baby. Another incident he liked to share was a long running boundary dispute involving a tree. Finding the tree to be valued at Rs. 100, he agreed to split the cost with law minister Mr. Suren Medhi and end the dispute.

A darling of the Bar

Justice Phukan was very amiable and approachable by all. In his decade of service as Gauhati High Court judge - he was probably a darling of the Bar. I am sure the Advocates would remember him as a large hearted judge, who would offer the most relief. The corridor gossip around that time was that if you cannot get a relief before Justice Phukan, you would better not expect it from anyone else. Justice Phukan, was a very good people’s person. Young advocates used to love appearing in his court as he was most indulgent and encouraging. If you placed the matter well as a young lawyer, you were almost sure at getting a relief. One such anecdote, narrated by Justice B P Katakey pertains to a matter when he appeared before Justice Phukan as a lawyer. After a detailed hearing, the only relief that he could get was a ‘notice’. Justice Phukan refused to grant a stay. When the matter came up for final hearing, it was dismissed (by another Hon’ble Judge) on the grounds that

the matter was devoid of any merit if no relief was granted by a Bench of Justice Phukan.

Justice Phukan took over as a judge of Himachal Pradesh High Court on September 30, 1994. The hills always fascinated him and he would say that Shimla reminded him of Shillong. The Bar as well as Justice Phukan embraced one another, and he was appointed as the Chief Justice on March 1, 1995. Among his significant rulings are *Roshan Lal and Ors. v. High Court of H.P* as reported in 1995 (2) ShimLC 157 and *Parvati v. Fate Ram and Ors* as reported in ILR 1995 4 HP 3020.¹³

On August 2 1996, he took over as the Chief Justice of Orissa High Court. Justice Phukan was a great believer in the power of prayer and interpreted his transfer as Lord Jagannath's calling to serve the people of Orissa.

As the Chief Justice at Orissa High Court, he passed several pronouncements including the case of *Nirakar Pradhan v. State of Orissa* as reported in 1997 (II) OLR 22. The case that got substantial national attention was *Anjana Mishra and Ors. v. Indrajit Ray and Ors.* as reported in AIR 1998 Ori 11. Indrajit Ray, was the serving Advocate General of the State of Orissa. Anjana Mishra, his wife, alleged marital rape and torture by him and their laws. The petition alleged infraction of statutory provisions relating to arrest, custody and improper and indecent behaviour of the DIG, Central Range. The Bench consisting of Justice Arijit Pasayat (as he was then) and presided by Justice Phukan transferred the case to the CBI for an impartial investigation. Justice Phukan, while giving the judgement for the Bench, also expounded on the word "investigation" and its importance.

Supreme Court Elevation

Justice Phukan was one of the rare few of the Judges that have made an arduous journey in life from a humble beginning as a Munsif to the Supreme Court of India. Infact, this was the first time ever in the history of the Gauhati

High Court that a Grade III Judicial Officer was elevated to the Supreme Court of India. His elevation to the country’s highest court on January 28, 1999 alleviated and attenuated a lot of disappointment resulting from judges junior to him being elevated to the Supreme Court of India.¹⁴

During his judicial career, he delivered and authored several judgments of far reaching consequences. He believed in complete justice. His personality and his approach is demonstrated in his decisions, which show his benignity and compassion for victimized and disadvantaged and his proclivity and propensity to rise above the letter of law

Justice Phukan was part of a Bench (with Justice M.B. Shah) that decided on environmental pollution caused by loudspeakers used by religious places for prayers.¹⁵ The pronouncement (authored by Shah J) kept the welfare of the environment over religion, and held that no religion prescribes that prayers should be performed by disturbing the peace or that they should be broadcasted through voice-amplifiers or beating of drums.

I had the good fortune of meeting him when he met me for tea at his house. He was then a Judge of the Hon’ble Supreme Court. Growing up, I had heard stories of his kindness and benevolence, but what I saw completely amazed me. How could a Judge of the Supreme Court be so “matter-of-fact” and “down-to-earth”? A great host, everyone was given attention and more than a fair share of helpings. That meeting created a connection that I will always cherish. The more I interacted with him, the more in awe I would be.

Justice Phukan, retired as a Judge of the Supreme Court of India on March 31, 2002, after a successful judicial career spanning almost 40 years.

Post retirement assignments

After his retirement from the Supreme Court of India, Justice Phukan wanted to lead a quiet life in Jorhat, a place dearest to his heart. He had to

change his mind when Assam Chief Minister Mr. Tarun Gogoi, a close friend, made a personal request and appointed him the Chairman of Assam Human Rights Commission (AHRC). Justice Phukan always stood up for upholding human rights and rights of the poor and the needy. As the Chairman of AHRC, he quietly went about providing justice to victims of abuse and human rights violations. In one such case, he ensured compensation to a poor woman whose husband was killed by a wild elephant while chopping wood in the forest for their home. (Smt. Padumi Devi, AHRC Case No. 4646/2003). In another case, he ensured justice for a 16 year old boy, who faced inhuman torture by the Lahowal Police.

A case was initiated on the basis ‘Operation West End,’ a sting operation conducted by news portal ‘*Tehelka.com*’ in 2001 to expose alleged corruption in defence deals. In March 2001, the NDA government set up a Commission for Inquiry, under Section 3 of the Commissions of Inquiry Act, 1952, headed by Justice K. Venkataswami, a former Judge of the Supreme Court of India. On November 23, 2002, Justice K. Venkataswami resigned from the Tehelka Inquiry Commission. Justice Phukan was then requested to head the Commission of Inquiry. The appointment meant Justice Phukan would have to temporarily relocate to New Delhi, which he was reluctant to do. He wanted to be closer to Jorhat. But, a call from Attorney General of India, Soli J Sorabjee (Late), made him change his mind. Justice Phukan’s appointment to head the Tehelka Commission was hailed by one and all. One report stated:

Justice S N Phukan, who was appointed by the central government on Saturday to head the commission of inquiry into the Tehelka scandal, has the reputation of being a fiercely independent man who is unafraid to speak his mind. (Ganapathy, 2003)

Justice Phukan took great pain and effort in preparing an interim report after detailed hearings and browsing through thousands of documents pertaining to defence purchases of various items. Unfortunately, with a change in the Government at the Centre, the case was handed over to CBI before a

final report could be submitted.

Working with him closely as a commissions counsel gave me insight into his razor sharp mind. The record we were handed over was voluminous, but he had a solution to all complexities and intricacies and dealt with them with amazing deftness. This made the process of going through a sea of these documents and evidence - unexacting and undemanding. He would demand the best notes and briefs, and require that we were duly and well taken care of and that we spent time with our families. Lessons that I will always carry with me.

The most memorable moments of those days - were the discussions at his Asiad Village home. Once we finished with work, there would invariably be a feast awaiting us. He loved his food but hated the control that his beloved and soul mate of years exercised over this passion of his. They were a great couple and complemented each other beautifully.

Family and friends meant the world to him, and around them he would be in a happy space. He would often regret how little he saw of both, especially his grandchildren. He would look forward to the family time and rituals during Durga Puja, an event which has been organised in his family over several generations. He would not miss the festivities for the world and would actively participate in all the rituals and fun. Mrs. Karobi Barooah, his younger daughter, recalls “Deta always encouraged us to be good human beings, first, before anything else. He would always lead by example and would treat us like his friends”. His elders, Mrs. Namita Chakravarty, fondly remembers how he would always get gifts for each of his children whenever he had to travel for work. Though Justice Phukan encouraged his children to pursue their own career interests, he regretted that none of them took up law. His heart swelled with pride when grandson Mr. Aweek Chakravarty, now a lecturer at Jindal Global Law School, cleared law from National Law Institute University, Bhopal. Another grandson, Mr. Ishaan Phukan, is also pursuing legal studies.

Justice Phukan was loved by all who met him. He had this uncanny ability to recall names of people and that of their families. He was the darling of his staff and went all out to support and stand by them in their need and also the needs of their families. The sheer number of people and their families who benefited from his benevolence speaks for itself.

Service in any form and social work was his passion. To him it was like a prayer, a source of confidence and inspiration. Throughout his life, he tried to maintain this, and ensured that he was approachable to any person, regardless of their background or circumstances. He particularly felt blessed to be associated with Sri Kanchi Sankara Health and Educational Foundation which runs the Sri Sankaradeva Nethralaya. He became its founder President, a position he served with utmost dedication and enthusiasm till the very last day of his life. Such was his wholeheartedness to the cause that he would travel (towards the end, by rail as due to his ill health he could not travel by car) at his own cost from Jorhat to Guwahati only to attend meetings. Justice Phukan abhorred “child labour” and associated himself with an NGO “Hopeline” as an advisor, and worked towards its eradication. He also closely associated himself with Vivekananda Kendra and took active interest in its educational activities, including a key role in organising the *Vedanta Vacaspati Radhanath Phukan Biennial Lecture* in memory of his grandfather. The lecture continues even today.

Legal education was another area that interested him. The long judicial career hardly gave him time to engage in that area. But immediately after his retirement, he resolutely worked on development of quality legal education in Jorhat. In 2006, he took charge as President of the Governing Body of the Jorhat Law College (of which his father was the founder principal). Under his active initiative, first the BA. LL.B (Hons.) course was introduced in the academic year 2008-09, and then the LLM course from the academic year 2014-15 with approval from Dibrugarh University. During his tenure as the President of the Governing Body, the College came to be formally recognized by the University Grants Commission. It was solely due to his endeavors that the institution received several funds from the Government which was

judiciously used for infrastructural development. Justice Phukan desired that legal education should not be a privilege for the rich, and shaped the college's financial architecture in a way to make it the most affordable program in Upper Assam. As an endeavor to inspire the budding legal talents, Justice Phukan introduced a scholarship program in his father's memory.

In Justice S.N. Phukan's passing on November 11, 2018, we lost a great soul, and a towering father figure. He left an indelible and enduring mark in the lives of many. His beneficence went far beyond his contributions in the judicial field. Justice Phukan experienced life from varied angles, some through his extraordinary and multifaceted career, but most through his quest to make his life meaningful to others. His journey on this earth always reminds me of “A Psalm of Life” - a poem we read in college by American poet Henry Wadsworth Longfellow (1807-1882). I could possibly have no better words to conclude but to quote the last few lines of the poem :

*Lives of great men all remind us
We can make our lives sublime,
And, departing, leave behind us
Footprints on the sands of time;*

*Footprints, that perhaps another,
Sailing o'er life's solemn main,
A forlorn and shipwrecked brother,
Seeing, shall take heart again.*

*Let us, then, be up and doing,
With a heart for any fate;
Still achieving, still pursuing,
Learn to labor and to wait.*

Endnotes:

- 1 Pragyant Pradip Sharma is an Advocate practicing primarily in the Supreme Court of India and Delhi High Court and assisted Justice S.N. Phukan as a Commission Counsel in the Tehelka Commission. The author appreciates and acknowledges discussions with Justice B.P. Katakey, Former Judge, Gauhati High Court, Mr. D.C. Mahanta, Senior Advocate, Gauhati High Court and inputs from Mr. Aweek Chakravarty, Lecturer, Jindal Global Law School (Grandson of Justice S. N. Phukan), Ms. Karobi Barooah (Daughter of Justice S.N. Phukan) and Ms. Gurnoor Kaur, Advocate.
- 2 Reported in an Article on Justice S.N. Phukan in Melange, The Sentinal, May 11, 2003 Edition.
- 3 Interestingly, this practice was again brought back in the year 1996, by an amendment to the Advocates Act, 1961, only to be struck down later by a judgment of the Supreme Court in the case of *V. Sudheer v. Bar Council of India*, (1999) 3 SCC 176.
- 4 *Kailash Singh v. Hiralal Dey*, AIR 1994 Gau 12
- 5 *Raju Das v. Sushil Kumar Das and Ors.*, AIR 1991 Gau 71, Appellate Authority has power to transfer claim Petition from one Tribunal to another if both Tribunals are located within local limits of jurisdiction of Court.
- 6 *Babban Tiwari and Ors. v. Usha Ranjan Chakraborty and Ors.*, (1987) 2 GLR 155.
- 7 *Union of India (UOI) v. D.S. Narula and Co.*, AIR 1992 Gau 13, while deciding the issue whether the power of revisional jurisdiction under Arbitration Act, 1940, was vested in the High Court or not, held that the Court shall not exercise revisional jurisdiction unless expressly empowered by provisions of relevant statute.
- 8 *Ashok Kumar Ghose v. Khetra Mohan Das*, 1991 CriLJ 1769, where it was held that in case of inconsistency contradiction between the ocular and medical evidence, the benefit of doubt has to be extended to the accused person.
- 9 *State of Assam v. Banwarilal Pipalwa*, 1992 CriLJ 3053.
- 10 *Chandra Nath Sarma and Ors. v. Mahesh Nath Sarma*, 1989 CriLJ 1330
- 11 *Dandi Nath v. The State of Assam*, (1988) 1 GLR 205.
- 12 Discussions with Mr. D.C. Mahanta, Senior Counsel and a childhood friend of Justice S.N. Phukan.
- 13 The *Roshan Lal* decision came in a petition filed claiming equal pay for equal work by clerks and assistants of the High Court with that of the junior translator. It was held that there is no violation of the principle of equal pay for equal work, as the work performed was different by both the categories was different. On the other hand, the main question in the Parvati case was whether the court could allow a party to change his defence from adverse possession to tenancy. It was held, that amendment to the written statement cannot be considered on the same principle as amendment to the plaint. Pleas in the written statement may be alternative or on additional ground or to substitute the original plea and amendment

to the pleas can be made at any stage, but it should not prejudice the right of the other side.

- ¹⁴ It was reported that Justice Phukan, as the Chief Justice of Orissa, brought it to the notice of President K R Narayanan that three judges nominated to the Supreme Court were junior to him.
- ¹⁵ Church of God (Full Gospel) in India vs. K.K.R. Majestic Colony Welfare Association and Ors. reported in (2000)7 SCC 282.

Reference List:

Ganapathy, V. (2003, January 5). *Phukan is fiercely independent, says legal fraternity*. Retrieved from Rediff.com: <https://www.rediff.com/news/2003/jan/05teh.htm>

“The Common Man’s Lawyer”

Remembering Saroj Kumar Sen

Bijan Chandra Das¹

When the High Court of Assam was established in 1948, advocates practicing in the Calcutta High Court such as M.N. Roy, Paresh Lal Som, S.K. Ghosh, Gyanendra Borah, Purnendu Choudhury, N.M. Dam, Bhabesh Chandra Baruah descended on Guwahati. They joined luminaries such as Fakhruddin Ahmed, Kamakhya Ram Baruah, Rohini Kumar Choudhury, Pabitra Kumar Gupta, Hemanta Lahiri, S.M. Lahiri, Dr. J.C. Medhi, Joy Chandra Choudhury and started practicing in the newly established court. This group became the first generation lawyers of the High Court and they laid a strong foundation. They mentored and passed the baton to the next generation of able lawyers such as Parbati Kumar Goswami, M.C. Pathak, Dambarudhar Pathak, Kironmoy Lahiri, K.N. Saikia, J.P. Bhattacharjee and Saroj Kumar Sen.

I joined the Bar in 1974 and was privileged to witness some of these towering figures in action. Of them, Shri Saroj Kumar Sen really inspired me. I saw Shri Sen arguing multiple cases on diverse issues in different stages of his journey in court. Shri Sen was also a member of the Revolutionary Communist Party of India (RCPI). He was involved in armed revolution in the prime of his life along with Khagen Borbora, Sailen Medhi, Hironmoy

Ganguly, Mohanlal Ganguly and others. Legend has it that he went underground for a while, hiding in the Bodoland area while the authorities were searching for him. I often marvelled how a tall and robust man like him could remain hidden from view.

Born in a middle class family in June 1921, Shri Sen attended school and college in Guwahati. After completing his law in 1958, he joined the chamber of Shri Purnendu Choudhury in 1959. Shri Choudhury, as indicated before, was one of the first generation lawyers who had moved from Calcutta. Shri Sen also worked at the chamber of Shri Pabitra Kumar Gupta. In a short span of time, Shri Sen became a lawyer to reckon with. When I saw him during the initial days of my practice, he was either arguing cases in the courts or was flanked by his juniors and clients in the corridors of the High Court heading to different courtrooms for deliberations. I worked with him in a few cases and also would also socialise with him at his chamber. Shri Sen was an early riser and would be at his chamber by 6 a.m. meeting with clients. He would intently listen to their complaints and hand write petitions. His drafting was concise and he would write it at the first attempt. He had deep knowledge of the law and its applications. and a sharp memory, which always was an asset during final hearings. He was so brilliant that he didn’t need to prepare in advance before an argument and yet could answer all queries posed by the bench. Whether it was a civil, criminal, constitutional, labour or tax matter, he was adept in all areas of the law.

Shri Sen was dynamic and formidable and yet had a dignified presence. He was unfazed during proceedings, but also had a sharp sense of humor, which served him well with the bench and his opponents. Shri Sen was designated as a senior advocate in 1974. Once he assumed that position, he delegated drafting assignments to his junior, keeping a watchful eye over the process. Shri Sen became a star in the galaxy of lawyers of that generation who built on the legacy of the founding predecessors. They maintained the standards and raised the bar higher for the future generations.

To Shri Sen, practicing law was akin to serving the community. His

legal practice was informed by his leftist ideology. The legal profession to him was not a money making venture, and so had a sliding scale for his clients. His long association with the RCPI made him sensitive to the problems of peasants and workers. I was witness to his philanthropic spirit and saw him offer financial support to those in need. That's probably the reason why clients would flock around his chamber and also surround him in the corridors of the High Court.

Shri Sen was deeply inspired by the philosophy and writings of Marx and Engels. He was one of the few who never wavered from the ideology until his last breath. He dreamed of an egalitarian society based on the ideals of equality and fraternity, a society free from exploitation and hunger. He engaged in civic debates and always offered his wisdom for the betterment of the community and society. Shri Sen had a multifaceted personality. In 1974-75, he contested the Guwahati Municipal Corporation elections and became a councillor. Later, he was elected as the Deputy Mayor of the corporation and served with Mayor Shri Lakhyadhar Choudhury.

Unfortunately a tragic motor accident snatched away this talented, compassionate man on June 2, 1991. Shri Sen's death marked the loss of a great lawyer and a kind human being. It was truly the end of an era.

Endnotes:

- ¹ Shri Bijan Chandra Das is a Senior Advocate practicing in the Gauhati High Court and has formerly been the Advocate General of the State of Tripura. He was a President of the Assam State Committee of the All India Lawyer's Union.

“Revolutionary, Lawyer and a Philanthropist”

Suchendra Nath Bhuyan

Justice Ujjal Bhuyan¹

To write about one’s father is difficult for the simple reason that one may lose focus and objectivity. I share a close relationship with Shri Nilay Dutta at the Bar, and our families share a bond tracing back to our parents’ generation. So, when Shri Dutta approached me to write about my father for Studio Nilima’s journal dedicated to the legal luminaries of the Gauhati High Court, I simply could not say no. Because of time and space constraints my essay can only provide a bird’s eye view of the vast canvas over which my father Suchendra Nath Bhuyan strode. However, to confine the narrative to Suchen Bhuyan, the lawyer, would be wholly inadequate; in fact it would be doing a great disservice to the vast and varied persona of this great man.

My father started his life’s journey with humble beginnings. Born at the remote Niznarikali village of Kampur area of Nagaon district on the banks of Kopili on July 29, 1924, Bhuyan endured great hardship and several hurdles on his way. He lost his mother when he was two and half years of age. But by sheer grit, determination and merit, he could overcome such hurdles and hardship. He got a merit scholarship when he was in class VII which helped him pursue his studies.

While a student at Nagaon, my father plunged into the freedom struggle and actively participated in the Quit India movement. The entire Nagaon district was then gripped by an unprecedented surge of patriotism. “Indians will decide India’s future; Britishers must go; they must quit India. That was the call.” His exploits brought him under the police glare and there are innumerable tales of his escapes from the police dragnet.

My father moved to Guwahati after independence. He joined the prestigious Cotton College and later Gauhati University, where he obtained his masters in History. During this period my father became attracted towards the communist ideology and became deeply involved in the leftist movement. In the conference held on the November 27, 1947 at Guwahati’s Church Field, presently Judges Field, he was elected as the General Secretary of *Assam Chatra Sanmilan*. However, the communist party came into conflict with the Central Government and was proscribed towards late 1948. My father went underground and remained in hiding until his arrest in Nagaon in 1951. His exploits as an underground activist became legendary. He was interned in jail as a political prisoner for about six months and was released in 1952 when the ban on the communist party was lifted.

During this turbulent period he met my mother, Smti. Subhadra Saikia, who was also a firebrand left wing student activist. My father married my mother on January 26, 1950. After his release, he did not renew his communist party membership and retired from active politics to resume his studies.

At Cotton College and in Gauhati University, my father was known for his oratory skills besides his academic brilliance. His fiery speeches became legendary. A gifted student leader, he became the first General Secretary of the Post Graduate Students Union of Gauhati University. Because of his organizational abilities, leadership qualities and wide acceptability, he could successfully organize the first inter-college youth festival of Gauhati University. The festival attracted participants from as far as Manipur, which was then under the jurisdiction of the Gauhati University.

Impressed by his hard work, dedication and oratorical skills, his teachers, particularly, Dr. Surya Kumar Bhuyan and Dr. Birinchi Kumar Baruah, advised him to study law. Following their advice he joined the Earle Law College which later on became the Government Law College and now the BRM Government Law College. He passed the LL.B examination in 1957. During 1957-58, he was Article Clerk of Fakhruddin Ali Ahmed, a leading lawyer of the times who went on to become the President of India.

Towards the later part of his Article Clerkship, Fakhruddin Ali Ahmed joined the Assam Ministry as the Finance and Law Minister. My father completed his Articleship under Mahendra Chandra Pathak, Fakhruddin Ali Ahmed's junior, who later on became the Chief Justice of the Gauhati High Court. He also served as a junior to Mahendra Chandra Pathak and years later that relationship blossomed and they became family friends. In August 1958, my father appeared for the chamber examination before the Full Court consisting of Chief Justice Sarju N. Prasad, Justice Mehrotra and Justice Holiram Deka. He cleared the chamber examination and was conferred the license to practise law on August 18, 1958.

One of the first Advocates with whom he came in contact in the Bar was Dambarudhar Pathak who was kind and generous to him. Dambarudhar Pathak gifted the lawyer's band to him and tied it around his neck. Shri Pathak, to encourage my father, handed him his first brief, i.e., a writ petition to be filed against the decision of the Assam Board of Revenue.

An inspiring mentor

In the course of his professional career, my father took under his wings many young lawyers as his juniors, who later on firmly established themselves as leading lawyers of the High Court. In the early 1960s, while studying in the Judges' Library, he came across a young lad, who introduced himself as Dilip Chaliha. When Bhuyan came to know that Chaliha had passed the LL.B examination, he gave him an offer to join his chamber as his junior. Chaliha readily accepted the offer and joined my father's chamber and thus

began a long relationship spanning over a decade. In due course, Sri Chaliha was conferred seniorship by the Gauhati High Court and he went on to become the Advocate General of Mizoram.

Another prominent junior of my father was Sri Basudeo Agarwal whom my father described as hardworking and sharp. Sri Agarwal was selected and entered grade I of Assam Judicial Service. He retired as a judge of the Gauhati High Court. Though there were numerous juniors in the chamber, Sri Atul Chandra Buragohain and Sri Liakat Ali were the regulars. While Sri Liakat Ali joined the Assam Judicial Service, Sri Buragohain went on to become the Advocate General of Assam and a Senior Advocate of the Gauhati High Court.

Among the other lawyers who frequented the chamber in the course of his long professional career, were Nagendra Nath Saikia, who later on became a leading lawyer of the State and a designated Senior Advocate; he was also the Advocate General of Nagaland and Arunachal Pradesh; Sri Dilip Choudhury; Sri Dulan Chandra Nath and Sri Prafulla Chandra Gayan. Moreover, Senior Advocates Achyut Shankar Bhattacharjee, D.C. Mahanta, Dr. B.P. Todi, Meera Sharma (who went on to become the first woman judge of the Gauhati High Court), Dr. Yamini Phukan, Dr. Satya Nath Chetia and Ram Saikia were professionally associated with my father at different stages of his career.

As a young student, I could see my father's chamber agog with plenty of activities with frequent visits from lawyers and litigants. After his return from the court, my father would narrate to my mother about the happenings in court, and I would attentively listen in. Names of Birendra Mohan Goswami, Bishnu Kingkor Goswami, Prasanta Kumar Baruah, Kanakeswar Sarma, Bhabesh Barua, Anil Ratan Borthakur, Abdul Muhib Mazumdar, Pachu Gopal Barua, Anil Sarma, Sailen Medhi, Beni Madhab Mahanta frequently cropped up in the household.

A legal luminary

As a lawyer, my father rose to great heights and became an eminent

counsel. By dint of his hard work and dedication, he built up an extensive practice practically covering all branches of law. A bold and courageous lawyer, he was at the same time extremely courteous and respectful towards the Bench. A strict but an affectionate senior, he was also instrumental in guiding many young lawyers to establish themselves. He was a legal luminary in the true sense of the term.

In recognition of his standing at the Bar, my father was designated as Senior Advocate by the Gauhati High Court on September 8 1978. He was appointed as Advocate General of the State of Assam on two occasions, first during 1983-1986 and then again during 1993-1996.

He was associated with the State Bar Council as an elected member since 1969. On April 28, 1984, he was elected as Chairman of the Bar Council. My father's contribution to the growth of the legal profession and the development of law in this part of the country is immense. The numerous law reports are a testimony to that.

Though my father had an extensive practice covering all branches of law, the initial phase of his professional journey saw him emerging as a leading lawyer in matters relating to fisheries, excise and transport. As the Advocate General of the State, he defended the State in numerous cases of seminal importance, including the case where the election to the Assam Legislative Assembly in 1983 was put to challenge by Indrajit Baruah and a large number of petitioners.

Following the 1978 Assembly Elections, the Janata Party came to power in Assam. The Government was led by Chief Minister Shri GolapBorbora. Once Sri Borbora called my father and shared that the Government decided to break the stranglehold of one particular family, who had a monopoly over the country liquor trade, a lucrative business during those days. It was decided that settlements of country liquor shops would be given to local youths. Sri Borbora impressed upon my father that he should ensure that such settlements were sustained when put to challenge before the Assam

Board of Revenue or before the High Court, which my father successfully did.

There were allegations of police excesses during the emergency when Sri Hiteswar Saikia was the Home Minister of Assam. My father was a vocal and staunch critic of the emergency. In the 1978 Assembly Elections, which followed the emergency, Sri Hiteswar Saikia contested as a Congress candidate from the Nazira constituency. He was opposed by the combined opposition candidate Sri Khagendra Nath Saikia. Sri Hiteswar Saikia won the contest. An election petition was filed in the Gauhati High Court against Sri Hiteswar Saikia's election by Sri Duleswar Bezbarua, a voter of the Nazira constituency. The election petition was heard by Justice Dambarudhar Pathak in what was then Court No. 3. Sri Hiteswar Saikia was represented by eminent counsel Ramesh Chandra Choudhury, who was a Senior Counsel and Advocate General of Nagaland. He was ably assisted by Bhargav Choudhury, a soft spoken but a very popular lawyer. The election petitioner was represented by my father and Bijoy Das, another eminent Senior Counsel. It was an epic no holds barred legal battle that went on for nearly 7 (seven) months. During the course of the proceedings Shri Saikia was subjected to intense cross-examination by my father. When the judgement was pronounced by Justice Pathak, the election of Sri Hiteswar Saikia was upheld.

It is quite interesting that eventually when Sri Hiteswar Saikia became the Chief Minister of Assam he turned to my father and offered him the post of the Advocate General of the State, not once but twice. Though my father was never a Congressman and had criticised Sri Saikia on a couple of occasions, Sri Saikia chose one of his main legal detractors to be his chief legal advisor. This reflected the competence and standing of my father as a lawyer and as a person.

On achieving the rare distinction of completing 50 years of practice as a lawyer, my father was felicitated by both the Gauhati High Court Bar Association and by the Lawyers Association, Guwahati with which he was associated until his death.

A humanist

Committed to national unity and integrity, my father was an embodiment of peace and communal harmony. During those turbulent days, be it the language movement or the anti-foreigners movement, he stood up fearlessly for the victims of senseless violence. My father was a humanist to the core. He relentlessly worked for the welfare of the downtrodden and the underprivileged people. A philanthropist, he emerged as a generous donor in his later years and helped in building several institutions, in his native Kampur and in Guwahati.

The life story of my father can be broadly categorized into three phases: the tumultuous period when he was a firebrand student leader and a revolutionary; the time when he was a leading lawyer, and the final phase of his life, which was marked by selfless social service, which also saw him emerge as a large-hearted philanthropist. The vast and varied life of my father has been poignantly captured in a biographical documentary *“A Son of Kopili Returns”*. The film has received critical acclaim.

Through-out his life’s journey, my father was accompanied by my mother, who stood by him like a rock through thick and thin. When they started their conjugal life, they faced tremendous odds. They lost their first child when he was hardly one year old as they could not afford better treatment. However, such personal tragedies could not hold them back. Together they crossed one milestone after another. Indeed, theirs is a success story worth emulating.

Tributes

A revolutionary in his younger days, my father became an epitome of affable nature, innate goodness and compassionate warmth as he matured in the legal profession. On his 81st birthday, a book published by his friends and admirers was aptly titled *“ByetikromiByekti- Suchendra Nath Bhuyan”*. In English it would mean “An Exceptional Person-Suchendra Nath Bhuyan”.

Wishing him well on that occasion, eminent jurist and former judge of the Supreme Court of India, Justice K.N. Saikia, described my father as one of the distinguished luminaries of the celebrated and esteemed Gauhati High Court Bar. He said:

The Law (Dharmashastra) is long and the life for learning it is proverbially short; hence, one has to be quick to acquire only its essentials. Shri Bhuyan did it reasonably well; and with his decent manners and eloquence he attained status and dignity in the profession.

Former judge of the Supreme Court of India, Justice S.N. Phukan, described my father as a person with a very simple and amiable disposition, who never raised his voice in the Court. He always maintained the prestige and decorum of the Court while at the same time ably assisting the Court by his arguments laced with decisions of the High Courts and the Supreme Court. He never misled the Court and was therefore respected by all the judges. His behaviour towards his colleagues was worthy of emulation.

In his essay, Justice Dambarudhar Pathak, Chief Justice of the Orissa High Court, reminisced about his first encounter with my father. My father had just joined the Bar of the Gauhati High Court in August, 1958 and Late Pathak had also started around the same time as a junior barrister. He had declared that it was his privilege to tie the band around my father's neck on his first appearance before the Gauhati High Court. He also proudly acknowledged the fact that it was he who had given the first brief to him. Dambarudhar Pathak was elevated to the Bench in 1973. Justice Pathak recollected that my father had appeared before his Court on a number of occasions. Though his submissions were forceful, they were to the point and conformed to the decorum of the Court, which was appreciated by the Bench.

Shaikh Chand Mohammad, a popular lawyer who became Speaker of the Assam Legislative Assembly acknowledged in *Byetikromi Byekti* that he consulted my father whenever there were any legal and constitutional issues. He acknowledged that he always benefited from the sound legal advice my

father offered him. One of the closest friends of my father was Shri J.K. Barua, Bar-at-Law. Barua has referred to him in *ByetikromiByekti* as his walking companion, with whom he would discuss anything and everything under the sun. They used to accompany one another on evening walks for more than four decades. They didn't necessarily agree on many issues, yet like true gentlemen they agreed to disagree and continued with their walks and discussions.

My father died on February 13, 2014. He was 89. Justice A.K. Patnaik, former Judge of the Supreme Court of India, in his condolence said that my father's contribution to the legal profession is immense. Justice Patnaik remembered my father from his 8-year stint as a Gauhati High Court Judge where my father argued cases in his courtroom as the Advocate General of Assam. Though my father is no more, he has left behind an indelible imprint. His life story would remain an inspiration for generations, particularly young friends, who come to Guwahati from the districts with dreams of a successful stint at the Bar.

Endnotes:

- ¹ Justice Ujjal Bhuyan is the son of Late Suchen Bhuyan who was the Advocate General of the State of Assam on two occasions. Beginning his career as an advocate at the Gauhati Bar, Justice Bhuyan was conferred seniorship by the Gauhati High Court in 2010. Having been elevated as Judge, Gauhati High Court, he is presently serving as Judge of Bombay High Court.

“Sophistication in Simplicity”

Jatindra Mohan Choudhury

Pallab Katak¹

Introduction

Eight years have passed since the death of my senior and mentor, Jatindra Mohan Choudhury, who was endearingly known as Jatin Da. A person with a big heart, Jatin Da, was generous with his wisdom and knowledge. He was always ready to mentor any junior or help out a colleague. His passing has left a huge void in our legal fraternity. As someone who worked under his shadows, I feel Jatin Da lingers on through stories, and his memory continues to guide us in our work.

JatinDa’s contribution to the field of law is remarkable. I would like to highlight some of the memorable events during his illustrious career. While I knew Jatin da personally as a member of my extended family, I encountered him in a professional capacity once I joined his chamber. He was intelligent, sensitive, and had a great presence of mind.

A friend to his clients and juniors

Jatin Da knew how to put clients at ease. He would calmly listen to

their problems with empathy and kindness. The clients also felt comfortable and would open their hearts to him. He always treated his clients as his guests. He did not distinguish between rich and poor and always insisted on offering tea and snacks to anyone who visited the chamber. The clients hailing from rural areas used to flock to his chamber in huge groups. On many occasions there would be no place to sit in the chamber and the people crowded the veranda. But Jatin Da never disappointed them, rather he always found a way to listen to their grievances and offered the best possible advice.

Jatin Da would often sit in his chamber after 9 pm for an evening session. He was an amazing teacher. According to him, to be a good lawyer, one needed to be a master of facts. He always emphasized honesty in dealing with the client's brief. He used to have discussions regarding cases with his juniors and encouraged them to share their views. He did not appreciate juniors misleading him. He would often remark in his characteristic manner, “*Mukbhulile garbha sini pao*” (I can see your heart/womb when you speak).

Exploring the law: Jatin Da as a lawyer

A. The trial of Upendra Nath Rajkhowa

Jatin Da often enthralled us with stories about significant and inspiring proceedings. One of his favorites was the landmark case of the former District Judge of Dhubri, Upendra Nath Rajkhowa. Rajkhowa was found guilty of killing his entire family and burying their bodies within the boundary of his official residence. Jatin Da would share with us the evidence that helped win the case - the photographs of the bodies of Rajkhowa's wife and the couple's three daughters, Rina, Runa and Bhanti.

He would recount how the Forensic Science Laboratory had identified the bodies through the novel method of superimposition—a first in Assam. According to Jatin Da, the forensic expert compared the skull with the photos of the victim by superimposition, where two photographs were combined in one. They were brought to the same plane and enlarged to the same size.

The scientific officer took the measurement of the anatomical landmarks. In the Rajkhowa trial, Jatin Da assisted my father Shri P.C. Kataki as an assistant public prosecutor. Jatin Da was entrusted to look into the superimposition process. He was extremely thorough in his presentation and could convince the Trial Court about the superimposition technique. The arguments were also accepted by the High Court and confirmed by the Supreme Court. The aforesaid case was reported in 1975 Cr.LJ 354 and continues to be celebrated as a landmark decision.

B. The Tata Tea Case

In the late 1990s, Jatin Da successfully represented Tata Tea officials in a case brought against them by the government. The Managing Director of Tata Tea, Sri R.K. Krishna Kumar and other directors were charged under the dreaded Unlawful Activities Prevention Act, 1967, for providing medical assistance to Pranati Deka, a member of the United Liberation Front of Assam (ULFA). The defence filed for anticipatory bail before the Gauhati High Court, where Sri Ram Jethmalani appeared as senior counsel. Jatin Da argued that at best his clients should be charged under Section 10 of the Unlawful Activities Act, a bailable offence. The Apex Court agreed in its judgment *R.K Krishna Kumar vs. State of Assam* as reported in (1998)1 SCC 474.

C. The Sockalatinga Tea Estate Case

Another famous case was the one involving Sockalatinga Tea Estate, where three people were sentenced to death on the charge of abetment and 27 out of 79 accused were sentenced to life imprisonment. It was heard by Hon'ble Justice B. D. Gyani and J. Sangma. The hearing took place daily for over a week. In his judgement, Hon'ble Justice Gyani discussed the provisions of Section 109 of the Indian Penal Code as well as the procedure of conducting a test identification parade and accepted the arguments offered by Jatin Da. However, Hon'ble Justice Sangma gave a contrary opinion by holding the abettors guilty and sentenced them to life. When the matter was referred to another Judge, Justice N.J. Das, he delivered an elaborate judgment

endorsing the view pronounced by Justice Gyani and acquitted the accused from the charges.

Of Professionalism and Punctuality

Jatin Da was known for his professionalism, punctuality and brevity. He would start his day at 10:30 a.m. at the Trial Court and then go over to the High Court, where he would appear in the cases listed for motions. Every day he would attend the Chief Judicial Magistrate’s Court, the Sessions Court and Special Judge’s Court either for argument or for cross examination of witnesses. At 2 pm, Jatin Da would come back to the High Court and appear in the hearing matters listed in Part II of the causelist. All the courts were accommodative; Jatin Da disliked adjournment of the cases listed for hearing. His arguments were very short, but specific, precise and to the point. The Courts were always eager to hear him as he placed the facts very lucidly and this enabled the Court to easily understand the case.

The Trial Courts always looked forward to JatinDa’s appearances. At that time, there were many Food Adulteration cases and Essential Commodities cases and the cross examinations in these cases were very brief and the supply or food inspectors had a tough time. The Brook Bond Company had several cases in Tezpur and Sibsagar relating to the Food Adulteration Act. Jatin Da used to conduct the trials on a regular basis. The members of the local Bar Association would throng the court room to see JatinDa’s performance. He conducted and argued several sessions’ cases in Nalbari, Silchar, Karimganj and Bongaigaon. He appeared for some surrendered ULFA militants in a sensational murder and rape case of a young girl whose body was found on the railway track. The members of the Bongaigaon Court refused to take up the case and finally Jatin Da appeared on behalf of the client. Despite being threatened by ULFA, he went ahead and cross examined important witnesses personally. Though there was an incident of firing between members of ULFA and the security persons on the final day of argument, Jatin Da refused to take adjournment and completed his argument.

His love for Shillong and Pinewood

Jatin Da always liked to attend the court at Shillong and his favourite place to stay in the city was Hotel Pinewood, more specifically Room No. 67 or 59. Those two rooms were always reserved for him. He was such a regular that the management gave him a 10% discount on each visit. Jatin Da used to stay at Pinewood continuously for two to three years when Shillong was the capital of undivided Assam. The visits were so frequent that the management of the hotel were like the extended members of the Choudhury family.

When Jatin Da was a junior counsel, he assisted some barristers from Kolkata, during the murder trial of Susodia, a Darjeeling tea estate owner. Jatin Da was given the responsibility to brief his seniors for cross examination. For days and months, he was confined at Pinewood and he became accustomed to all the rooms and their staff. Jatin Da used to share his memorable experiences with various barristers of yesteryears at the Pinewood. The hotel became a second home for him during this time. He would look forward to staying there and was grateful when the case related to the death of Parthasarthy, Commissioner of Upper Assam, was tried at Shillong. The trial continued for more than two years. Two former ministers of the AGP Government were among the accused. Jatin Da conducted the whole trial and got them acquitted.

Why he never became a judge

Jatin Da was offered judgeship on many occasions, but he refused. Hon'ble Justice U.L. Bhatt, requested the Bar members to persuade Jatin Da to accept judgeship, but Jatin Da couldn't be bothered. He disliked fame and according to him, judges had a secluded life. Jatin Da was social and he did not like restrictions. He was a regular at the local markets and enjoyed shopping for vegetables, fish and groceries.

The Art of Cross-Examination: Jatin Da as a trial lawyer

Jatin Da was a master in the art of cross-examination. He always prepared

and studied his cases thoroughly and only if necessary would he cross examine the witness on a few relevant points. But anytime he did that, it would prove to be fatal to the prosecution's case. According to Jatin Da, to cross examine any expert, the lawyer also has to be an expert. He must study the intricacies and finer points of the subjects where he wants to cross examine.

In the anti-corruption cases as well as NDPS cases, Jatin Da was a pioneer as a defence counsel and was much sought after for cross examination. Before the appellate court also Jatin Da was always brief in his submissions and never misled the courts or suppressed any facts. Even the Hon'ble Judges of the High Court used to seek his advice over phone in legal matters as they were confident that Jatin Da would enrich their legal acumen. But Jatin Da was very firm and straight forward in the Court. Once when the Single Bench of Justice Ranjan Gogoi was taking bail matters at the Hon'ble High Court, a case relating to kidnapping came up before the Court. Justice Gogoi ridiculed Jatin Da for appearing in such a petty offence. Jatin Da immediately replied that his father used to say, *“Jeneke xapar soru dangar nai, teneke caser soru dangar nai”*. Justice Gogoi got agitated but soon calmed down and passed order in his favour.

A sportsman and social worker

Since his childhood, Jatin Da was involved in various sports. He was actively associated with the India Club. During 1972-73, when the Government of India took possession of the land belonging to the State Government for construction of the Reserve Bank of India, it submitted a proposal to cancel the lease for India Club in order to extend the bank's boundary to the club premises. At that time, Mahendra Mohan Choudhury was the Chief Minister of Assam and Jatin Da was the Secretary of the India Club. Dada along with other office bearers and under the able guidance of R.G. Baruah, architect of Nehru Stadium, was able to stall the process. In 1968, at R.G. Baruah's request, Jatin Da supervised the construction of two tennis courts near Nehru Stadium, which was named Nurul Amin Tennis Stadium for the juniors.

Jatin Da was an avid tennis player. In 1968, he was runners up in the doubles final of All Assam Tennis Championship. He was the office bearer of All Assam Lawn Tennis Association holding various positions along with his childhood friend Bireswari Goswami, the former Professor of Pragjyotish College. Jatin Da organized the All Assam Tennis Championship 1968-72 under the guidance of Justice Parbati Goswami, who was the President of the Association. In 1993, under his supervision and his own financial assistance, the India Club was renovated and he introduced lights for playing tennis in the evening.

Jatin Da was actively associated with various social activities. He was an active member of the *Barwari Puja Committee*, *Nabagraha Kali Mandir* & *Shiva Mandir* as well as the *Ugratara Mandir*. On festive occasions, he generously supported the *Samitee* for organizing the *bhog* ceremonies and other activities. He was also actively involved in the *Giyandeep Natya Samaj*, Dharmapur in Nalbari. He constructed an auditorium hall with a stage in the memory of his father Joy Chandra Choudhury, who was also a renowned criminal lawyer.

Conclusion

Jatin Da gave almost half a century of his life to Assam's judicial system. Besides being a legal luminary, he was also a renowned spokesman and exemplary social worker. But through it all, he never neglected his obligation towards his family. Being the oldest amongst seven siblings, he always assumed responsibility for his immediate and extended family. His family members loved him dearly and respected him. Jatin Da was a true fighter and continued to regularly appear before the courts even when he was diagnosed with cancer. He loved the courtroom and the courts loved him. The quote:

The adventure of life is to learn, the purpose of life is to grow, the nature of life is to change, the challenge of life is to overcome, essence of life is to care and opportunity of life is to serve

aptly describes JatinDa's life.

Endnotes:

- ¹ Pallab Katakı began his career as an Advocate in the chambers of Jatindra Mohan Choudhury, a legend of the Gauhati Bar. Shri Katakı himself is an esteemed lawyer practicing on the criminal side. He is the son of late P.C Katakı, Senior Advocate.

“A Magnetic Field”

Amrit Kumar Phookan

Justice Manojit Bhuyan¹

“People who shine from within, don’t need the spotlight”

On this Earth walked a man who touched lives wherever he went. Unlike flowers that spread fragrances only in the direction of the wind, the goodness of this man spread in all directions. An optimist to the core – this saintly soul preached and practised goodness all around, inspiring people to live life to the brim, to have fun, and fulfill all societal and familial responsibilities. Who could have imagined that he would be plucked out from our midst before his prime? This saint was my guru Amrit Kumar Phookan, Senior Advocate, fondly called Rontu/Rontu Da by kith and kin, irrespective of age.

That fortunate day in 1988, when I joined Rontu Da’s chamber, my life took on a new dimension, a new chapter. Thus began my career in law and journey with its ups and downs, but mostly amidst rainbows because I was under Rontu Da’s wings. I began to understand the greatness of his noble soul of which I make a humble endeavour to portray in this piece. I confine myself only to touch upon a very few qualities that define the man that he was.

Cultured, suave and handsome Rontu Da created a magnetic field wherever he travelled attracting all who came in touch with him. What he valued most was family and friends. More than anything, he loved being a father, a devoted husband, a doting grandfather, and a family man. Woven seamlessly into his life were the many friendships he treasured and the interactions he so enjoyed. His friends came from all ranks, trade and calling- be it someone employed in the ministerial level or someone figuring in the who’s who pages. He mentored and inspired junior colleagues in the legal fraternity, including his own chamber juniors and helped them reach the pinnacles of name and fame. I, for one, am forever indebted to him. He also shaped the lives of many senior ranking protagonists who today are at the helm of Assam’s political affairs. So, it was only fitting that he received great respect and admiration, honour that will remain steadfast and unshaken whenever his name shall ring.

What placed Rontu Da a league apart was his unmatched kindness, his innate care towards human beings and his truly loving spirit. He reached out to everyone with unparalleled compassion, touching their hearts in extremely valuable ways. Over the years, I witnessed people from different walks of life visiting Rontu Da unannounced at home and in the court, paying *pranaam* and wishing him well. More often than not, he wouldn’t recognize them immediately, but this much was certain that Rontu Da must have touched their hearts with a good deed at some point. Rontu Da believed strongly that extending a helping hand to those in need was actually an act of serving God, as who could tell, if the person seeking alms was not God himself in human avatar. Truly, he epitomized the richness of humanity and enveloped every situation with class, charm, finesse and empathy.

In the legal world- his much appreciated qualities include his abject fairness in handling a case, his high sense of morality and ethical standards to sustain and promote the perfect balance and harmony between the Bar and the Bench and the bonhomie he exuded amongst the fellow lawyers irrespective of age and seniority. Academic excellence may not have been Rontu Da’s forte, but his memory in recalling a particular case-law suited to the facts of

a case, was exceptionally phenomenal.

Rontu Da vastly contributed to the needs of children, focusing particularly on orphans and children with special needs. An early riser he would take off in his car on one of his benevolent activities most mornings before court hours. I have had the privilege to accompany him on such pilgrimages. He responded to those in need with empathy and created strong reciprocal relationships. His passion for social work was unbounded – be it in his neighbourhood or beyond.

It is said that humour softens life's edges. There was humour galore in Rontuda's company. Given his love to indulge in long conversations, it was mostly a spontaneous overflow of musings touching upon current affairs and events in his life peppered with humorous anecdotes, so much so that the room would be reverberating with guffaws. It is difficult to single out any one of the witty conversations; each being a classic piece in its own merit. He instantly developed a rapport with strangers and that made him a star in all social gatherings. He was hands down the life of any party. Generally private get-togethers thronged by seniors are mostly stiff. There would be civil interactions amongst the guests and some nice music in the background. But there would be none to jump on to the dance arena to move to the beats. Everyone pushes the other to break the ice. With Rontu Da around, it was a different ball-game altogether. No prodding was required. He would be the first to occupy the dance floor and sway with the music with his trademark dance style: each leg pushed back, in alternative mode, with knees bent, orchestrated with his arms flailing up and down like a seesaw, sometimes in circular motion, and the signature rhythmic clicking of fingers. All this while the torso desperately trying to keep the body balanced. So infectious were his dance movements that floodgates would immediately open and the dance floor flooded with young and old alike. On small musical gatherings, Rontu Da would take over from the percussionist effortlessly tapping beats in sync with the music like a musician adept in the classical style. He was passionate about learning new musical instruments. He religiously took lessons on the keyboard and made great progress by

engaging a private tutor.

As a sportsman, he represented the Gauhati University in Cricket Eleven but had to give up on his passion because of a right shoulder handicap, often resulting in a painful arm dislocation. He was the pioneer of the Gauhati High Court Mountaineering Association, consisting of lawyers enthusiastic about annual adventurous retreats during the Durga Puja Court vacations. Rontu Da successfully led trekking expeditions from Shillong downhill in East Khasi Hills, from Itanagar to Banderdewa in Arunachal Pradesh and from Manebhanjan to Sandakphu, one of the highest trekking points located at the Singalila Ridge of the Darjeeling Hills.

Seldom do we come across a man of such a colossal stature. Although he is gone, he continues to live in our hearts. Remembering him every passing day is a rich and contented feeling. Indeed, we were lucky to have him in our lives. And as time flows by, his greatness only magnifies.

From family, friends and the lives you touched:

Your life was a blessing

Your memory a treasure

You are loved beyond words

And missed beyond measure

Endnotes:

- ¹ Justice Manojit Bhuyan has been formerly a Judge of the Gauhati High Court and is presently Chairperson, Real Estate Appellate Tribunal. In his career as an advocate, he was attached with the chambers of the great Amrit K. Phookan, who was Advocate General of Assam for a continuous period of 13 years.

PIONEERING TRIAL ADVOCACY

Initial Lawyering in Assam and The Three Renowned Civil Lawyers Whom I Knew Well

Justice Dr.Mukundakam Sharma¹

Introduction

After the British annexation of Assam in 1826, focus and importance was given to establish an effective and planned administrative machinery in the state, as it was done in the rest of the country. Toward that purpose the British also established an effective machinery for the dispensation of a justice delivery system. With the establishment and growth of a system of Administration of Justice in Assam, there grew a necessity for lawyers. The different grades of legal practitioners in India are;

- a) Advocates
- b) Attorneys (Solicitors)
- c) Vakils
- d) Pleaders
- e) Mukhtars
- f) Revenue Agents

As far as Assam is concerned, the system of litigants' representation by Vakils can be traced back to the Ahoms Gunabhiram Baruah and in Assam, *Bandhu* refers to a practice of "Ukils' ' during Gaurinath Sinha's reign. During

the British rule, these legal practitioners earned a position and status in the society and became almost equal stakeholders like the judges and the Magistrates in the process of dispensation of justice. Their statutory existence can be traced back to the Assam Code that was enforced in 1837. This particular Code contained a series of rules of practice, consisting mainly of judicial procedure. The Code contained provisions for the appointment of Vakils in Assam, apart from establishing a procedure for the appointment and remuneration of the subordinate staff to support and assist the Judges, who were managing the justice delivery system in the state.

History of Legal Practice In Assam and the birth of member associations

Despite the aforesaid position, there were no regular trained legal practitioners in Assam. Anandaram Phukan shared his observation cited below, with Mr J.M. Mills:

The want of a constituted and respectable Bar in the court of the Province has been likewise productive of no small injury to the administration of justice. There are no regularly appointed vakils attached to the courts of Assam. Every person is allowed to plead and conduct a case without any reference to his character and qualification and this privilege has infested the Courts with the most unprincipled and ignorant men; and parties often actually lose their just claim owing to the incapacity and ignorance of their pleaders..... We have therefore to suggest that instead of permitting an ignorant and degraded class of men to act as pleaders, a respectable, intelligent and better qualified body be organized to fill the responsible duties of advocates and vakils, after duly testing their qualifications and legal fitness, as far as the general circumstances of the province would admit..¹

This is in fact the first opinion in writing of the initial quality of lawyering in Assam. When the numbers of lawyers increased with the passage of time, they desired to have and constitute a group for themselves and

decided to form an association of legal practitioners. Thus was born the Lawyers' Association in 1850 in Guwahati, with a handful of lawyers as its members. It probably could claim itself to be one of the oldest Lawyers' Associations of India and definitely, the oldest in Assam.

After its establishment, it became necessary for the Association to have a permanent home. With this end in view, members acquired a plot of land at a prime place at Pan Bazaar and constructed its own building in 1881. Records available reveal that somewhere around the year 1889 the association changed its name to the "Bar Association of Guwahati". In 1918 it was named "Guwahati Pleaders' Association", for a brief period. In 1926, members decided to rename it "Lawyers' Association, Guwahati". It continues to be known by the same name today. Records also indicate that the first set of Rules of the Association was framed in 1941.

Lawyers Association of Guwahati

The Association has a glorious past and included members, who were leading citizens of Guwahati. Many of the members also took an active part in the struggle for Independence and served time in Jail. The entire Association took a leading role in starting a movement to establish a High Court at Guwahati, which finally materialized in 1948. Prior to that, the Calcutta High Court was exercising jurisdiction in the entire undivided State of Assam. I am informed that written history of this glorious period documenting the journey from the association's inception to its advocacy for the establishment of the Guwahati High Court are not available. This makes it challenging for office bearers to compile and write a complete history of the Lawyers' Association, Guwahati. The records that we do have, indicate that a number of initiatives were taken by the office bearers and members of the Lawyers' Association.

A provident fund scheme was introduced in 1987, wherein an association member could contribute up to Rs. 50 per month and the Association was contributing 10% of the amount contributed by the member. According to

my information, this scheme is still continuing. There was yet another scheme for creating a “Provident Fund Scheme,” to support members at the time of their need. This proposal was mooted in the year 1941, but unfortunately it appears that there was no follow up action. It is pertinent to have some sort of scheme to aid members, who face financial hardships. This is relevant today as we are living through a historic pandemic and there is hardly any work in the Court. To tide over this loss of income, there should be some welfare scheme for the lawyers, where the Government also becomes a stakeholder and contributes to the schemes. The Delhi Government is currently participating by contributing a substantial amount in a provident fund organized for the Delhi lawyers. I am confident that such a scheme could be undertaken by the Lawyers’ Association, Guwahati as well Delhi Bar Council would definitely lend its support, and guidance to the Lawyers’ Association, Guwahati, to launch some welfare measures for the members, particularly, the young members of the Bar.

Over the century of its existence, the association has been very active in the political space. Some of the actions and achievements are mentioned in an article by Shri BishnuKinkor Goswami, Senior Advocate, and association member. “Century plus old Lawyers’ Association, Guwahati” was published in the souvenir of the Association’s centenary celebration in 2000. The activities highlighted in the piece are part of the glorious innings played by the members and should always be remembered by the upcoming and future generation of Assamese lawyers. Here are some of the welfare and other activities undertaken by the Association, which was summarised by Shri BishnuKinkor Goswami in his article:

1. *When there was a countrywide resentment against the Simon Commission, the Lawyers’ Association observed and recorded its protest against the commission on 03.02.1928.*
2. *In a meeting held on 17.04.1930, a decision was taken for boycotting of foreign clothes and cigarettes and the members decided to put on and wear only Khaddar apparels as far as possible.*

3. *By a resolution dated 25.09.1930, the Association protested against the decision of the Government for the enlistment of Special Constables 17 of the Police Act.*
4. *The Association, in token of its moral support to Japan during the 1904 war between Russia and Japan in which Admiral Togo destroyed the Russian fleet, sent an Rs. 10/- in aid of the sick and wounded Japanese.*
5. *On 23.08.1935 a demand for a separate High Court was made.*
6. *The Government of Assam in 1941 prepared a Bill for the establishment of a University in Assam. The Association appointed a Committee to examine the provisions of the Bill and sent its comments.*
7. *In 1942, there was a move to hand over a part of Cotton College where the Physics and Chemistry departments were located. The Association, by a resolution dated 04.07.1942, protested against the move of the Government.*
8. *On 23.05.1946 the Association, by a resolution, opposed the proposal of Grouping as given by the Cabinet Mission.*
9. *During World War-II, the soldiers behaved in an unruly manner, therefore, the Association adopted a resolution on 25.02.1944 drawing the attention of the Provincial Government to an instance of unbecoming and unruly conduct of soldiers. The instance cited was of Maheswar Kaibarta of North Guwahati, who was moving in a boat in the river Brahmaputra with his wife. Some soldiers rushed to the boat and Kaibarta managed to row the boat to midstream. The soldiers opened fire on them and Maheswar Kaibarta was injured. Protest was raised against this incident.*
10. *In 1955, the Association submitted a memorandum before the States Reorganization Commission and gave evidence.*

11. *In a meeting dated 27.06.1957, a demand was made for a second Oil Refinery in Assam.*
12. *In 1960, after the police firing resulting in the death of Ranjit Barpujari, a delegation of West Bengal Congress Committee Consisting of Sailo Kumar Mukherjee, Sankardas Banerjee and Bijoy Singh Nahar came to Assam and made an unwarranted allegation of lawlessness in Assam. The Association, by a Resolution on 13.07.1960, recorded its protest. The meeting also condemned the murder of Surrya Bora and the murderous attack on Hareswar Goswami at the Siliguri Railway Station.*
13. *During the language disturbance in Assam, the Prime Minister Jawaharlal Nehru came to Guwahati and a delegation of the Association met the Prime Minister.*
14. *On 20.04.1961 a demand was made for the construction of a broad gauge railway line in Assam.*
15. *By a resolution dated 04.01.1962, the Association demanded the shifting of the Assam Board of Revenue, from Shillong to Guwahati.*
16. *During the Chinese aggression, the Association pledged its help and co-operation to the Government. The members donated blood and contributed money to the Prime Minister's Fund.*
17. *In 1963, the Association took up the issue of infiltration of Pakistani nationals into Assam. It appears from the resolution dated 23.11.1963 that the Government admitted that there were 3 lakhs infiltrators. The Association demanded immediate steps to stop the infiltration, guard the borders and to deport infiltrators*
18. *During the Indo-Pakistan war of 1965, the Association contributed Rs. 2,500/- to the National Defence Fund.*

19. During the Assam agitation the Association extended active support and participated in various phases of the movement.

Besides the above mentioned activities, the Association has also been carrying out several other actions, including welfare efforts and its engagement in the recent protest against the amendment being brought into the Citizenship Act.

Assam High Court Bar Association

With the establishment of the Assam High Court, “Assam High Court Bar Association” was formed, but many members belonged to both organizations with the exception of a few who had exclusive membership to only one. Although the Assam High Court Bar Association has a separate entity and separate existence, it was carved out of its parent body the Lawyers’ Association, Guwahati. The new association included members from all the District Bar Associations of Assam. On June 30, 1948, 29 advocates of the Guwahati High Court, under the Chairmanship of Late Fakhruddin Ali Ahmed, who was the Advocate General of Assam resolved to form the High Court Bar Association. Fakhruddin Ali Ahmed, (who went on to become the President of India), was the association’s first President.

The Assam High Court Bar Association boasted members from all four corners of undivided Assam, Tripura and Manipur, (former Union Territories) and the North-east states. All these areas were within the jurisdiction of the Assam High Court. “Assam High Court Bar Association” was later rechristened to “Guwahati High Court Bar Association,” when the name of the High Court changed after the reconstitution and reorganization of the States under the Assam Reorganization Act, 1971.

All Assam Lawyers Association

Once the Districts of Assam had their own courts, it became necessary to have District Court Bar Associations. Members of these district bar

associations decided to join together to have an all Assam body of lawyers to represent its causes at the state level. This necessity became more pressing with the Assam Agitation, where Lawyers Association, Guwahati and Assam High Court Bar Associations joined in the demand for detection and deportation of foreign nationals.

Thus was birthed the “All Assam Lawyers’ Association” which represented all the lawyers residing and practising in the State of Assam. The Association started a number of welfare activities, such as free legal aid in the face of violence which ravaged the state at one time. This Association initiated peace missions, which travelled widely in the 1990s to the disturbed areas such as Kokrajhar, Udalguri, Nalbari, Dibrugarh and Tinsukia. The Association also raised a large protest against the imposition of the “Armed Forces Special Powers Act” in Assam. It also participated in the recent agitation against the imposition of an amendment to the Citizenship Act.

The many legal associations within the state have always served the interest and welfare of the lawyers, so that they can carry out their professional obligations and benefit from a congenial relationship between the Bar and the Bench. The legal profession in Assam has a glorious past because of the contribution of many stalwarts, who established high standards of professionalism, ethics and honesty. The present generation, who’ve had the good fortune of training with such legends are conscious of the path they walk on. So, they have been able to carve out a niche for themselves, not just within the State but also beyond its borders.

The Doyens in The Profession

The foundation of the state’s legal system was laid by the untiring efforts of a few stalwarts, who gave it their all to grow deep roots. These luminaries were also known for their contributions to growing the Bar Associations and were experts in all areas of legal practice; constitution law, civil law, criminal law, labour law, taxation and revenue law. These doyens laid down a strong foundation which allowed for a very strong and solid Bar of Civil

Lawyers in the State. It is impossible to list the names of them all, but I will take the liberty to mention Shri Ramesh Chandra Chaudhary, Shri BishnuKinkor Goswami and Shri BisheswarSarma, all of whom were close to me.

A. Ramesh Chandra Chaudhary

Shri Ramesh Chandra Chaudhary, belonged to an illustrious family from Uzan Bazar in Guwahati. “Ramesh Da”, as many of us called him, took full advantage of his lineage and privileged upbringing and grabbed every opportunity that came his way. He started his legal practice in Guwahati after his Postgraduate studies in Comparative Philology from Calcutta University where he secured a first class first position. He also obtained a first class degree in Law. Soon, thereafter, he joined the Bar and made a distinctive mark as a lawyer. He was tall and handsome with an equally forceful voice and a towering personality. He was always well-dressed. Due to his command over the language, he could proficiently and persuasively put forth his views and submissions before the Court. Recognising his ability and competence, the Government of Assam offered him the important position of the Secretary, Assam Legislative Assembly, which he accepted. He left an indelible mark. After completing the entire tenure very successfully, he came back to the profession and restarted his career as a professional lawyer. He accepted the coveted post of the Advocate General of the State of Nagaland and provided his service to the State.

Shri Chaudhary was not only a famous civil lawyer but also proficient in Constitutional matters. He was very accomplished and recognized as one of the leading election lawyers in the state. He was a very good orator and could speak skilfully and adeptly in both the Assamese and English and it was a pleasure listening to him. His outstanding communication skills were highly appreciated by the Judges and colleagues. He was designated as a Senior Advocate by the Guwahati High Court. He was also elected as the President of the Gauhati High Court Bar Association. There was no commotion, shouting or any unpleasantness when he presided over meetings. He was forthright in his views and honest and dignified to the core, which made

him very popular among contemporaries, juniors, and litigants.

Shri Chaudhary made a mark in theatre. He was involved in acting in his younger days and I am told that he became famous for his portrayal of Lord Rama. He was involved with the Kumar Bhaskar Natya Mandir stage for many years. He was also a social activist and was connected with the Rotary Club. Later on, he had the honour to be the first District Governor of Rotary District No. 325 (covering Nepal, Bhutan, Bangladesh, West Bengal and North East).

Politics attracted him for some time, but he soon realized that it was not his cup of tea. The litigants who engaged him as their counsel always found him to be very hardworking. He was also the President of the All Assam Lawyers' Association and in that capacity, travelled throughout Assam. Shri Chaudhary passed away at an early age of 69. With his passing, Assam lost one of its most brilliant citizens and a great lawyer.

B. Bishnu Kinkor Goswami

Shri Bishnu Kinkor Goswami established himself as a formidable civil lawyer of Assam, practising both in the District Courts of Guwahati and the Guwahati High Court. The Judges and the lawyers respected him because of his knowledge and scholarship of civil laws, particularly the Land Laws of Assam. His book on the "Land Laws of Assam", is considered a legal Bible, for the law students as well as lawyers and the general public. Many of Shri Goswami's juniors have become Senior Advocates and Advocates of repute in Guwahati. His reputation as a civil lawyer is reflected in the various case laws on Land Revenue Laws, reported in the Law Reports published in Assam.

Shri Goswami was also a social activist and took an active part in all activities of all the Bar Associations.. He never minced words and always spoke freely. He had a socialist frame of mind and always spoke and believed that it was the best ideology for a country like India.

Shri Goswami taught at the J.B. Law College, Guwahati, where he was respected as an able communicator and teacher. The students liked his style of teaching. He was elected as the President of the governing bodies of various institutions in Guwahati, where he very ably and meaningfully contributed to the growth and development of those institutions. He was also a very good orator and was proficient in Assamese and English. He thought and believed that the land laws of Assam required a review and overhauling because of changing times and the loss of land area due to erosion and flood. The present Government may consider this view with all seriousness. On his death, all the three Associations with which he was intimately connected, lost a very dependable and active member. Shri Goswami's death created a tremendous void in the legal profession, especially among practitioners of civil law.

C. Bisheswar Sarma

Bisheswar Sarma was academically brilliant. After his bachelor's degree, Shri Sarma joined Handique Girls' College's, administrative office. But, once he acquired his law degree, became a member of the Guwahati Bar. Shri Sarma was a very sound civil lawyer and excelled in drafting pleadings. He emphasised that while drafting a complaint, one has to be very concise and precise. Apart from being a talented civil lawyer, Shri Sarma had a heart filled with sympathy and kindness. He excelled as a District and Sessions Judge and was recognized as a very erudite and competent Trial Judge. In fact, to be a good civil Judge, one has to have patience, steadfastness and an analytical mind and Shri Sarma, possessed all these qualities in abundance.

Subsequently, Shri Sarma was appointed as a Judicial Secretary and Legal Remembrancer of the State of Assam. He was very intelligent and quickly grasped the arguments by the opposing counsel and was always quick with his rebuttal. Apart from his acumen as a lawyer, he possessed a very good personality and never lost his cool in Court. He had a subtle sense of humor and was known for his one-liners. As a competent and able Counsel, Shri Sarma earned the confidence and trust from his clients, the Court, and his adversaries.

He was a famous man, but humble enough to mingle and be friendly with his juniors. He would support and help any colleague or junior who approached him with a legal query. I fondly remember an incident that happened when I was a young lawyer. The Court used to be in session from 10.30 AM to 04.00 PM, with a 45-minute lunch break. I was a novice then and since I did not have much work, I started leaving the court around 3 PM. One day Shri Sarma saw me in the corridor and asked why I was leaving Court early. When discovered that I did not have any other engagement he asked me to leave my bag in the Bar Library and join him in Court No.1. He sat with me until 4 PM, explaining to me the ongoing proceedings. That left an indelible mark in my mind. I understood that he wanted to set an example and teach me that even if one does not have work in Court, he or she can always listen in on other proceedings and learn.

Shri Chaudhary, Shri Goswami and Shri Sarma were all articulate, forthright speakers and lawyers and leaders. They left their footprints for the next generation to follow, march forward and keep the flag flying.²

Endnotes:

- ¹ Justice Dr. Mukundakam Sharma is a former Judge of the Supreme Court of India. He has held the offices of Chief Justice, Delhi High Court and Judge, Patna High Court and Gauhati High Court. Prior to his elevation as a Judge, Justice Dr. Sharma also served as Advocate General of the State of Nagaland. He is presently the Chancellor of the Shri Lal Bahadur Shastri National Sanskrit University.
- ² While preparing this article, help is taken from the article of Bishnu Kinkor Goswami published in the Souvenir of the Centenary Celebration, 2000 and also from the book "History of Judiciary in Assam" – A Study initiated by All Assam Lawyers' Association.

“Luminaries of the Gauhati Bar”
Shrish C. Choudhury, Birendra Kumar
Deka and P.C Katak

Hari Kanta Deka¹

There is always a few who leave their footprints in a way that inspires generations to follow. I shall highlight three such stalwarts whose expertise in the legal system is reminisced by members at the Bar even today. They were adept at advocacy. and were giants who mastered the art of trial.

Shrish Chandra Choudhury (1903-1979)

Shrish Chandra Choudhury was one of the most proficient lawyers of his time and a popular member at the Gauhati Bar. Born on the October 7, 1903, Mr. Choudhury spent his early childhood at Guwahati. His father Shraddha Charan Choudhury hailed from the temple town of Hajo and was a teacher at Cotton Collegiate High School from where Mr. Choudhury finished his matriculation He attended Cotton College, and followed in his father's footsteps and became a teacher at the Cotton Collegiate High School. Mr. Choudhury later pursued his legal education at Earle Law College (later rechristened as the B R Medhi Law College) at Guwahati.

After joining the bar, he excelled in civil litigation and soon emerged as one of busiest civil lawyers. He was unparalleled in his command at legal

drafting, dexterity at cross-examination and his skill at interpreting the laws. The courts had often appreciated the valuable assistance rendered by him during arguments where he seamlessly articulated the most complex legal concepts in a simplified manner. His narration of facts, evaluation of evidence and legal submissions during arguments made drafting of judgments a breeze for the judges. A gentleman par excellence, he was fondly known as 'Shrish Babu'. Mr. Choudhury was very amiable and popular not only at that bar but also in his native Hajo. He rendered his services in the Managing Committee of Shri Hayagreeva Madhav Mandir at Hajo and presided over the Managing Committee of Hajo High School. Mr. Choudhury was also the President of *Guwahati Ukil Santha* (Lawyers Association of Guwahati). He died on January 19, 1979 but his legacy continues to live on.

Birendra Kumar Deka (1928-1995)

Birendra Kumar Deka was born on July 27, 1928, in Salmara, a village in Kamrup, Assam. He was the son of Shri Chandra Mohan Deka. Despite his humble beginnings, Mr. Deka excelled in his academic career. He secured distinction in his matriculation exam from Karara High School and went on to graduate from Cotton College, Guwahati, with a degree in science.

He then joined Kamrup Academy School as a math teacher and simultaneously pursued his legal education at Earle Law College. He secured a Gold Medal in his LL.B examination and ventured into legal practice under the guidance of renowned civil lawyer Dharma Kanta Sarma. Mr. Deka later started his independent practice in both civil and criminal divisions. His physical appearance complimented his towering personality. He was blessed with a stout body and a complexion akin to that of an Englishman. A fellow advocate is once rumoured to have charged a hefty fee from his client by undertaking to engage a 'Barrister Saheb' from England. Mr. Deka played the part well and his appearance and personality had apparently led the clients to believe that he was an Englishman. Mr. Deka did not possess the title of a 'Barrister' (as was understood then) but what he did have was the innate ability to manoeuvre the course of a trial. He was known to be very meticulous

in case studies and never missed a factual detail. He became arguably one of the most successful cross-examiners of his time.

His depth of knowledge and mastery over the art helped him prevail over shaky witnesses and he won half his cases during cross-examination. Mr. Deka was designated as a Senior Advocate by the Gauhati High Court in the 1980s. Despite having tasted success early in his career, he led a simple life and was indifferent towards outward appearances. Once he forgot his gown and borrowed one from a fellow advocate Mr. Nirmalendu Chakraborty, who was way shorter than him. The District Judge spotted Mr. Deka donning a gown that hardly reached his hips and mistook it for a coat. He interrupted Mr. Deka in the midst of his argument and snapped: “Not the case, Mr. Deka... First tell me-Is it a gown or a coat that you’re wearing?” Mr. Deka had trouble explaining to the Judge his situation amidst peals of laughter inside the courtroom.

Mr. Deka was witty and he enjoyed socialising with friends. He had a special fondness for a good game of Bridge. He frequently visited his ancestral home and mingled with old friends. Whenever he visited his village, he invariably made it a point to visit the *Namghar* and participate in *Nagara Naams* with an enthusiasm and spirit that matched that of his fellow villagers. He could proficiently play *Nagara* and *Taal* (Bhartaal). This legendary lawyer breathed his last on January 5, 1995 leaving behind his wife, a daughter and three sons, one of whom was later elevated as a Judge of the Hon’ble Gauhati High Court.

Pabitra Chandra Kataki (1930-1996)

Shri Pabitra Chandra Kataki (Shri Kataki) was born on November 3, 1930 in Dibrugarh. His father Keshab Chandra Kataki served as a daroga during the British rule and because it was a transferable job, he and his family moved around quite frequently. Shri Kataki grew up attending schools in different towns. He passed his HSLC examination from Goalpara, his pre-university examination from Banaras University, his Bachelor in Arts from Cotton College Guwahati, Masters from Calcutta University and LL.B from Harding’s Law College, Calcutta.

Shri Katakai started his career under Joy Chandra Choudhury, who was one of the best criminal lawyers of Gauhati in the 20th Century. After a few years of dedicated service as junior counsel and having been enriched with invaluable knowledge and skill of advocacy, Shri Katakai started his independent practice. When his senior, Joy Chandra Choudhury, retired from active practice, his son Jatindra Mohan Choudhury joined the profession as Shri Katakai's junior. Shri Katakai, endearingly called 'Rana Da,' by the junior members of the Bar, devoted a substantial amount of time exploring criminal laws. At the same time, Shri. Katakai had the opportunity to dive into constitutional law and service laws under the mentorship of Dr. Jagadish Chandra Medhi, another legal luminary of the time.

Shri Katakai as a criminal lawyer did not confine his practice merely to trials concerning offences under the Indian Penal Code. He expanded his practice to other criminal statutes such as Essential Commodities Act 1955, The Prevention of Food Adulteration Act 1954, Gold (Control) Act 1968, The Prevention of Corruption Act 1988. His sharp intellect, his sincerity, thorough study of cases, and analytical research of laws made him one of the most successful lawyers of his time. He was designated a senior advocate by the Hon'ble Gauhati High Court. Juniors loved and respected their 'Rana Da' and placed him in high regard. His colleagues were often shaky and extra cautious while appearing against him.

Shri Katakai was a jolly person and was fond of good food. He was immensely helpful to his juniors and was concerned about their welfare. He supported them financially at the cost of reducing his own fee. His fame and reputation transcended beyond Assam's boundaries into other North-eastern states. He made his mark both at the trial courts and the High Court. He was considered an expert particularly in the Law of Evidence and it was largely acknowledged that no other contemporary had such an intricate understanding of the Indian Evidence Act.

Shri Katakai was always keen on helping people in distress. During the Assam Movement against undocumented migrants, answering the call of

the All Assam Students Union and the *All Assam Gana Sangram Parishad* for satyagraha, a group of lawyers came forward to participate in the strike. Mr. S.K. Agnihotri, Deputy Commissioner of Kamrup, instructed authorities to arrest the participating advocates. The lawyers were detained and escorted to the jail. It was on a cold winter night when the lawyers found themselves behind bars. The group included seniors such as Ramesh Chandra Choudhury. As chances of a release seemed remote, the advocates started spreading their bed rolls to pass the night under custody. Fortunately for them, Shri Katakai could not participate in the satyagraha because he had taken ill that day. As the news of the jailed advocates broke out and reached Shri Katakai, he urgently drafted a petition, filed the same in the wee hours and got a bench constituted for moving the petition and release of the advocates. He emerged successful and the advocates were spared jail time. Though not in the government panel, Shri Katakai was frequently appointed as Special Public Prosecutor by the State Government in corruption cases because of his brilliance.

When District and Session Judge of Dhubri Upendra Nath Rajkhowa was arrested for the murder of his wife and three daughters and for burying their bodies inside the compound of the Judge’s Bungalow, the State Government appointed Shri Katakai as the Special Public Prosecutor. A unique technique called the method of craniofacial superimposition was adopted by the prosecution to identify the skulls recovered from the burial sites. Shri Katakai carefully and successfully placed the forensic report and other circumstantial evidence and despite the absence of an eyewitness, he and the prosecution team secured a conviction and a death sentence for the convict.

Shri Katakai was one of the most accomplished lawyers of his time. But unfortunately, the relentless momentum of his career was impeded by his ill health. During his lifetime, he underwent a critical brain surgery and although he survived the surgery, his health deteriorated after a few years and on February 19, 1996 he left for his heavenly abode leaving behind his wife and two sons. His sons are now practicing advocates. His death was premature and is considered a big loss to the Bar and to the society.

Endnotes:

- ¹ Shri Hari Kanta Deka is a Senior Advocate practicing in the Gauhati High Court and is considered to be an authority on both the civil and criminal sides in the trial courts as well as the revisionsal and appellate jurisdictions.

“What not to ask”

Musings on Pratap Chandra Deka

Neelanjan Deka¹

Introduction

Late Pratap Chandra Deka was my role model. From a very young age I wanted to become a lawyer like him. He was a doting father to me and my sister but, to me, he was also my inspiration. When I enrolled in the LLB course, he started to play a dual role in my life, that of a teacher and a father. He was adept at both. My dilemma as to whom to join after obtaining my lawyer’s license was resolved when I chose him. Being the youngest junior in the chamber, I was fortunate to have the guidance of his juniors who were older than me. For that, I am ever grateful.

My father never gave me any special treatment and always wanted me to learn the craft of advocacy the hard way. He was a strict disciplinarian in the chamber and followed a strict routine. He used to dress himself in a white kurta and pyjama and would invariably be in the chamber by 6 p.m. everyday, without any break. No exception was made for the weekends.

Early life

My father was born on January 5, 1931. He was the oldest child of Uday Chandra Deka and Aitaru Deka. His birthplace was the Teghariatari village in Mukalmua, which is in the present Nalbari District of Assam. He studied in Narayanpur L.P. School and completed his middle school at Jagara High School. At a very tender age, his parents recognised his academic brilliance and sent him to Guwahati for further studies. His father, a farmer, did not have the means to pay for him to stay at a hostel, so my father stayed with his relatives and pursued his studies.

He did his matriculation from the Cotton Collegiate School, Guwahati. After his graduation in 1954 from Cotton College, Guwahati, he enrolled in the LLB course offered by Gauhati University. He completed his LLB in 1958 and started his practice in Guwahati from September 25, 1962.

My father married our mother, Kunja Deka, on May 12, 1967 and together they raised two children, Dr. Neelakshi Deka, my older sibling, who is a doctor and me, a practising Advocate.

Legal Practice

My father was always actively associated with the various Bar Associations, including the Gauhati High Court Bar Association, the Lawyers' Association, Guwahati and later on the All Assam Lawyers' Association. He was a member of the Gauhati High Court Bar Association from June, 1970 and was its executive member from 1998 to 2000. Later on he became a life member of both the organizations. He joined the Executive Committee of the Bar Council of the North Eastern States on January 12, 1993 and became its Chairman from March 27, 1999 to October 8, 2004. He was also an active member of the Lawyers' Benevolent Fund Committee under the Gauhati High Court Bar Association. The fund, maintained from contributions from members of the Gauhati High Court Bar Association, provided financial relief to lawyers in times of medical and other emergencies.

From the initial days of his professional career, my father practised extensively in labour matters, civil matters, writ petitions pertaining to service law, contractual matters, consumer cases and arbitration matters. He practised in the High Court but also regularly attended the Civil Courts, Labour Court/ Tribunals of Kamrup [now Kamrup (Metro)] as well as of other districts including the Assam Board of Revenue, Consumer Forums, the Debts Recovery Tribunal. He was a frequent visitor to the Bar of the Chief Judicial Magistrate’s Court and was known to be a champion Bridge player.

He was regularly engaged by several Public Sector Undertakings like Indian Oil Corporation Ltd., M/s. Numaligarh Refinery Ltd., ONGC Ltd., Oil India Ltd., and Assam State Transport Corporation etc. He was designated as a Senior Advocate by the Hon’ble Gauhati High Court on December 18, 1986. He had many juniors, who later on became independent and successful lawyers. Among them include Justice Biplab Kumar Sarma, retired Judge of the Gauhati High Court and Justice Sanjay Kumar Medhi. When my father started his practice, the law in almost all fields was still developing. He had argued in many matters before the Hon’ble Gauhati High Court wherein he had developed the law. He was also adept in cross examination. He carried a calm demeanour, which allowed him to disarm witnesses and extract information from them. He also had a subtle sense of humour, which he often used to his advantage during cross-examination or while arguing a case.

Academic and Social Activities

My father was actively involved in the academic field and played a pivotal role in the establishment of the S. B. Deorah College in Guwahati. The college is a provincialized / deficit grant in aid College of the State of Assam. He was the President of the college’s governing body. He also took a keen interest in various social activities in the neighbourhood and worked for development infrastructures in the community.

Landmark Cases

Few of the important cases argued by my father and which have been reported in various Law Journals are referred to below. These cases demonstrate how he argued in different fields of law, before the Hon'ble Gauhati High Court and how his lucid arguments won these cases for his clients.

A. Paban Kumar Bordoloi vs. State of Assam as reported in 1996(2) GLT 161

A Government of Assam employee had been sent on deputation to the Assam State Housing Board (Board for short), where he was retained. A Voluntary Retirement Scheme (VRS) was introduced in the Board and the employee exercised his option under the Scheme, which was accepted by the employer. Later, the employee sought to withdraw from the same, but the employer did not permit it. Challenging that decision, the employee filed a writ petition before the Hon'ble Gauhati High Court.

My father appeared on behalf of the Board and the question which arose for consideration was whether after the acceptance of the offer of voluntary retirement by the employer, the same could be withdrawn by the employee. By placing reliance on various judgments of the Hon'ble Supreme Court he argued that once the prayer for going on voluntary retirement is accepted by the employer, the same cannot be revoked or withdrawn. The Hon'ble Court accepted his arguments and the writ petition was accordingly dismissed. The judgement titled as *Paban Kumar Bordoloi vs State of Assam* is reported in 1996 (2) GLT 161.

B. Assam Industrial Development Corporation Ltd (AIDC) &Anr vs. Rabindra Kumar Sarma (2004 (1) GLT 248)

In this case, an employee resigned from the services of the Assam Industrial Development Corporation (AIDC) and the resignation was accepted and the employee released from service, a Voluntary Retirement Scheme (VRS) was introduced in the AIDC. The employee then filed a representation before the AIDC requesting that his resignation should be

considered to be a voluntary retirement under the VRS. The AIDC refused, and a writ petition was filed before the Hon'ble Gauhati High Court. A Single Bench of the Hon'ble Court held that the AIDC had a duty to inform the employee that the VRS was in the pipeline and on that ground the writ petition was allowed.

Against the judgement of the Single Bench, a Writ Appeal was preferred where my father argued that once an employee's resignation was accepted and he or she was released from the services, the employer-employee relationship is severed. The benefits under the VRS would be available only to an existing employee, working when the scheme was brought into force. It wouldn't be offered not to an employee who has retired / resigned from service earlier. The aforesaid contention was accepted by the Hon'ble Division Bench and accordingly the writ appeal was allowed. The case titled as *Assam Industrial Development Corporation Ltd (AIDC) & Anr vs. Rabindra Kumar Sarma* is reported in 2004 (1) GLT 248.

C. Jitendra Nath vs. the Chairman of Assam Co-operative Jute Mills Ltd as reported in 1995(2) GLT 291

The law regarding whether a body is a “State” within the scope of Article 12 of the Constitution of India and whether it is amenable to the writ jurisdiction of a High Court under Article 226 of the Constitution of India has undergone a sea change over the years. The latest position in that regard is laid down by the Hon'ble Supreme Court in the case of *Board of Control for Cricket in India v. Cricket Association of Bihar*, reported in (2015) 3 SCC 251. The position of law in the 1990s in this regard was at a nascent stage. An issue arose before the Hon'ble Gauhati High Court whether the Assam Co-operative Jute Mills Ltd. was a “State” within the meaning of Article 12 and amenable to the Writ jurisdiction of the High Court under Article 226 of the Constitution of India. Another question posed was whether a writ petition was bad for non-joinder of parties and maintainable if the body corporate against which relief is claimed is not arrayed as a party and only its Chairman is made a party.

My father argued the matter on behalf of the Assam Co-operative Jute Mills Ltd. and in the judgement titled *Jitendra Nath vs. the Chairman, Assam Co-operative Jute Mills Ltd* is reported in 1995 (2) GLT 291. It was held the Assam Co-operative Jute Mills Ltd, is not a “State” as defined by Article 12. It was also laid down by the Hon’ble Gauhati High Court that in the absence of the main body corporate as a party in a case, a writ petition is not maintainable against the officers of the said body.

D. Deltech India Pvt Ltd vs. ONGC as reported in 2002(2) GLT 422

In another matter, an NIT was floated by the ONGC. But prior to receipt of bids, certain clauses in the NIT were amended, which was challenged by one of the bidders. My father argued on behalf of ONGC and drove home the point that as the owner the ONGC based on reasons and necessity, had the absolute right to amend the clauses prior to receiving bids. He further argued that an NIT is an invitation to offer and the bid was the offer. It becomes a contract only after the said bid is accepted by the owner of the work. The contentions urged by my father were accepted by the Hon’ble Gauhati High Court and the writ petition was dismissed. The case titled *Deltech India Pvt Ltd vs. ONGC* is reported in 2002 (2) GLT 422.

E. Dynasty Walford Ltd. vs. State of Assam as reported in 1999(3) GLT 115

An issue arose for adjudication before the Hon’ble Gauhati High Court on the definition of a “sales representative”. The court heard arguments on whether a person engaged by the employer to procure orders from customers for products sold by the employer, and whose job is limited to promotion of sales only falls within the purview of the definition of “workman” as given in section 2(s) of the Industrial Disputes Act, 1947. The court also heard arguments on whether the Labour Court has jurisdiction to decide any dispute raised by such a “sales representative”. In the present case, the sales representative had been dismissed from service.

The Labour Court decided the issue in favour of the sales representative and accordingly the employer approached the High Court by filing a writ petition. My father, appearing for the employer, relied upon several judgements of the Hon'ble Supreme Court, and argued the point that the services of a “sales representative” are covered by the Sales Promotion Employees Service Act, 1966 and hence is not a “workman” within the meaning of section 2(s) of the Industrial Disputes Act. He argued that the Labour Court has no jurisdiction to decide the question of his dismissal from service. The High Court accepted my father's contention and answered the issue in favour of the employer. The judgement titled *Dynasty Walford Ltd. vs. State of Assam* is reported in 1999 (3) GLT 115.

F. ONGC vs. Flotech Consultants & Services Pvt. Ltd. as reported in 2003(1) GLT 403

The ONGC Ltd. declined to extend the work of a particular contractor, who filed a suit before the Court of the Munsiff and the said Learned Court passed an order of status quo against ONGC Ltd. The court also directed the police to enforce the order, which stated that ONGC would have to continue the work with the contractor.

Against the order of status quo, my father, on behalf of the ONGC, filed a petition at the Gauhati High Court, under Article 227 of the Constitution of India. He argued that even though against an order of injunction, ordinarily an appeal ought to have been filed, but an application under Article 227 would still be maintainable if the facts and circumstances of the case so warrant. He urged that there was a gross violation of the law and total non-compliance thereof. Accepting my father's arguments, the Hon'ble Gauhati High Court in the case of *ONGC vs. Flotech Consultants & Services Pvt. Ltd.* reported in 2003(1) GLT 403, held that the power under Article 227 of the Constitution of India is plenary in nature and should be used sparingly to see that the Courts and Tribunals abide by the law and do not contravene the same.

Though there was an alternative remedy, the High Court interfered with the order passed by the Trial Court thereby laying down the law that in cases where the courts and Tribunals do not abide by the law and contravene the same, the High Court has the power to interfere under Article 227 of the Constitution of India.

G. K. Suresh &Ors. vs. M/s. Arihant Hire Purchase Co. Ltd. as reported in 2006(3) GLT 74

Although my father did not have extensive practice on the criminal side, when the opportunity presented itself, he did not shy away. The Madhya Pradesh State Road Transportation Corporation (MPSRTC) had taken a loan from a party in Guwahati and had issued certain cheques towards repayment of the loan amount. The checks were signed by the Directors and senior officers of the MPSRTC, who were IAS officers. The cheques were dishonoured. Complaints under section (u/s) 138 of the Negotiable Instruments Act, i.e. for dishonour of cheques were filed at Guwahati and the Learned Judicial Magistrate, Kamrup took cognizance and issued summons. However, prior sanctions u/s 197 of the Code of Criminal Procedure 1973, for prosecution of public servants acting in discharge of their official duties when the alleged offence was committed, were not obtained. Accordingly, petition u/s 482 of the Cr.P.C. were filed in the Gauhati High Court for quashing the complaints.

A Single Bench of the Gauhati High Court, in another matter filed u/s 482 of Cr.P.C. had held that in case of an offence u/s 138 of the NI Act, sanction u/s 197 of the Cr.P.C. is not required to be taken if the persons issuing the cheque is a public servant acting in discharge of his official duties.

Despite the judgment and the fact that no appeal lies in the High Court before a Division Bench against an order passed by the Single Judge in an application u/s 482 of the Cr.P.C., my father argued the matter before another Single Judge to drive home the point that sanction u/s 197 was mandatory even in case of an offence u/s 138 of the NI Act. The co-ordinate bench of

the High Court agreed with him and referred the matter to a larger Bench.

The Division Bench in the judgment of *K. Suresh & Ors. vs. M/s. Arihant Hire Purchase Co. Ltd.* reported in 2006 (3) GLT 74 accepted the aforesaid arguments advanced by my father and held that sanction u/s 197 of Cr.P.C. is required to be taken prior to taking cognizance against any public servant, in respect of any offence alleged to have been committed while discharging the official duties of the said public servant including an offence u/s 138 of the NI Act.

Conclusion

In addition to examples highlighted above, there are many cases which my father argued before the subordinate Courts and many cross examinations which he had skillfully and successfully conducted, of which there are no records available.

I, as his son and his junior for 12 years, had the privilege of watching and learning from him the art of cross examination of witnesses. I still remember the wisdom he offered me once while cross examining a witness. I was pestering him to ask a particular question. My father said that it is important for one to know “*what not to ask, rather than to know what to ask*”. I have tried to follow him in whatever manner possible and I remember and try to emulate what he has taught me as his junior.

Acknowledgment

I am deeply grateful to Shri Nilay Dutta, Senior Advocate, whom we fondly address as “Nilay Da”, for this opportunity to pen these words so that the future generations can know of the contributions of various legal luminaries towards our esteemed profession.

Endnotes:

- ¹ Neelanjan Deka is an Advocate practicing in the Gauhati High Court as well as in the civil courts of Assam. He is the son of Late Pratap Chandra Deka.

THE PATHFINDERS

“An Academic and A Jurist”

Justice Khagendra Nath Saikia

Dr. R. C. Borpatragohain¹

Introduction

Justice Khagendra Nath Saikia was born March 1, 1926, into an illustrious Ahom family in Bhorolua village, Simaluguri, Sivasagar, Assam. From a young age, he showed intellectual acumen and brilliance. He passed the Matriculation Examination from Calcutta University in 1943 and graduated LL.B with a first class. He obtained his LLM degree with a second class.

Throughout his career, Justice Saikia cultivated innovative ideas inspired by his study of interdisciplinary literature. We have benefited from his deep exploration and understanding of diverse subjects, which spurred his academic writing, judicial observations and excellent classroom performances as an academic and jurist.

Justice K.N Saikia as a Judge

Justice Saikia passed the LL.B and the Chamber examinations in 1955, while he was a Lecturer in Commerce (Evening classes) of Gauhati University.

He was enrolled as an Advocate on April 18, 1955. He started his practice while continuing his teaching assignment. The Government of Assam appointed him as the Chairman of the Assam Land Reforms Commission on May 27 1978. While working as the Chairman, he was appointed as a Gauhati High Court Judge and was sworn into office on February 12, 1979. Justice Saikia retired as Chief Justice of the Gauhati High Court on March 1, 1988. During the Assam Agitation, he was appointed the Chairman of the Gauhati High Court Advisory Board under the National Security Act. Justice Saikia was eventually elevated as Judge of the Supreme Court of India on October 14, 1988 and retired on February 28, 1991.

As a High Court and Supreme Court Judge, Justice Saikia adhered to a dynamic but jurisprudential approach to social justice. He addressed the needs, hopes and aspirations of the justice seeking masses with a view to alchemizing the needed judicial idealism from the moorings of a naturo-positive mandate of socio-political human conduct.

Below are some of the important judgements, through which Justice Saikia's brilliance is reflected.

A. The Secretary, Assam Chah Mazdoor Sangha, Sonari Bendi vs. The Presiding Officer, Labour Court, Dibrugarh as reported in 1980 SCC On Line Gau 56

This was a writ application filed by the applicant assailing the award of the Presiding Officer, Labour Court, Dibrugarh in the Ref. No. 53 of 1975. The enquiry was conducted on identical charge-sheet, inter-alia against twenty four workmen and each workmen was found guilty of riotous conduct and wilful absenteeism without leave. The Management agreeing with the findings dismissed them all. The Government of Assam was pleased to refer the dispute conciliation having failed to the Labour Court, Dibrugarh.

The High Court per Justice Saikia observed that while the process of industrial adjudication made by the Tribunal has to interpret the beneficial

labour laws in consonance with the persuasion method of International Labour Organization requiring the Management to prove the alleged misconduct and the workmen to disprove the allegation. Here the workmen failed to disprove the allegations of misconduct and the award as such was upheld. The Management was fair and the domestic enquiry was valid and the punishment inflicted was justified.

B. New India Assurance Co. Ltd vs. Purabi Saikia as reported in 1980 SCC On Line Gau 10

In this case, the petition arose from a battle between the New India Assurance Company (The Petitioner) a public institution and the children of the injured (now deceased) young girls and a minor boy. The claim was for an award of expenditure incurred for the treatment of the injured. The petition was filed under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution. By that time, the case of compensation proceeding had crossed its tenth year. The injured and his wife died in the course of the proceeding, leaving the children pitted against the might of the insurer (The Petitioner) to recover none too high a compensation. The Tribunal therefore allowed the heir to be substituted and prosecute the case.

The Court looking up the matter from different dimensions and adhering to a number of leading cases concluded with reasons that the High Court had no hesitation in coming to this conclusion that the cause of action did not extinguish the death of the injured. As such the Tribunal was justified in allowing the heir to be substituted and prosecute the case.

C. Sri Abhimanya Kalita vs. The Deputy Commissioner as reported in (1983) 2 Gauhati Law Reports 101

The Division Bench comprising Justice K.N Saikia and Justice Dr. T.N Singh heard the matter to ascertain as to whether the Chin Hill Regulation, 1896, Clause 1 was ultra vires Article 19(5) of the Constitution. The provision of the Regulation authorized the Deputy Commissioner by

passing an order under that Clause of the Regulation to extern the Petitioner, a resident of Bomdilla from West Kamrup district, Arunachal Pradesh as according to him the stay of the Petitioner in the district was not at all desirable in the interest of peace and tranquility of the locality of Bomdilla. On the date of passing the externment order, the Petitioner was already in custody.

The Hon'ble Court, inter-alia held that the impugned order affected the Civil Rights of the Petitioner. More so, the order was passed without giving any opportunity of hearing (in flagrant violation of the principle of natural justice) to the Petitioner. As such the order was set aside. However, the challenge to the vines of the Clause of the Regulation on the ground of infringement of fundamental right under Article 19(5) was not decided; the impugned order had been set aside.

D. The Workmen Represented by the Secretary, Law Assam P.W.D Labour Union, Dhubri Goalpara vs. The Labour Court, Gauhati as reported in (1986) 1 GLR 351 (Full Bench)

This was a case before the Full Bench of the Hon'ble Gauhati High Court. The matter relates to interpretation of the object of Industrial Disputes Acts, 1947, more particularly section 2(8) and the scope and meaning of the expression 'Industry' as defined therein.

The Hon'ble Court observed inter-alia that the object of the Act is to be derived from the long title 'to make provision for the investigation and settlement of industrial disputes, and for certain other purpose' connected therewith. It was observed that the object of the Act is to achieve industrial peace and harmony. It is of equal and vital importance to the employer, the employees of the industrial concerns and the nation as a whole for lasting peace and harmony in the industrial sector (para 5).

The Court further observed that from the discussion of the relevant provisions of the Act and precedents there emerges inescapable conclusion

that an establishment can be taken out of the pale of ‘industry’, only if it can be said to be discharging sovereign or regal function strictly understood and not welfare activities or economic adventures undertaken by Government or Statutory bodies (para 9).

E. Sri Ahmed Ali vs. The Superintendent, District Jail, Tezpur as reported in (1988) 1 GLR 352

In this case Justice Saikia was presiding as Chief Justice (Acting) along with Justice T.C Das. This case was relating to violation of the provisions of the Contempt of Court Act, 1971. Upon hearing the matter in detail the Court observed inter-alia that besides the two types of contempt viz. Civil and Criminal as defined in the Act, there had been inherent powers of the Court that existed prior to the Constitution and are recognized by Articles 129 and 215.

The Court observed inter-alia that the discretion of the Court cannot be confined within the four walls of a definition; the categories of contempt may not also be closed by the definitions (para 12).

The next section discusses some of the important judgments pronounced by Justice Saikia as a Judge of the Supreme Court.

F. Mithilesh Kumari vs. Prem Behari Khare as reported in (1989) 2 SCC 95

In this matter, the point for interpretation of Section 4 of the Benami Transaction (Prohibition) Act, 1988 and its retroactive operation was interpreted. Justice Saikia sitting with Justice G.L Oza observed inter-alia that a declaratory law may relate to a time antecedent to its enactment, will apply to all such suits, claim or actions pending on the date of commencement of the enactment irrespective of the date of their origin. Any such Statute taking away vested rights is generally presumed to be unjust and oppressive unless retrospective effect is provided expressly or impliedly in the Statute (paras 19, 21 and 22).

G. Charan Lal Sahu vs. Union of India as reported in (1990) 1 SCC 613

These issues of the case which was heard by the Bench of the Hon'ble Supreme Court presided over by Hon'ble Justice Sabyasachi Mukherji C.J. This case arose out of sections 3 and 4 of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 which conferred on the Central Government to represent the victim claimant in suits instituted in India against multinational companies. The Court held that the State in capacity analogous to that of 'parens patriae' is competent to represent the victim.

The Court observed inter-alia, that normally in measuring civil liability, the law has attached more importance to the principle of compensation than that of punishment. Penal redress, however, involves both compensation to the person injured and punishment as deterrent (para 92).

Further, per Mukherji C.J and Saikia J. observed that the constitutional validity of the Statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. When upon being so judged it passes the taste of reasonableness, then the possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid (paras 63 and 103).

H. British India Steam Navigation Co. Ltd. vs. Shonmughavilas Cashew Industries as reported in (1990) 3 SCC 481

In this case, Justice Saikia sitting with Justice P.B Sawant made a judicious scrutiny on the applicability of Principles of Private International law in a contract under international trade and commerce and the binding nature of choice- action in personam.

The Court held that an action in personam in Private International law, for the purpose of jurisdiction, is an action brought against a person to compel him to do a particular thing (para 11). It further held that it is a settled

Principle of Private International Law governing the bills of lading that the consignee or an endorsee thereof derives the same right and till in respect of the goods covered by the bill of lading as the shipper thereof had. For the purpose of jurisdiction, the action of Respondent 1 (of the instant case) is an action in personam in Private International Law.

I. Punjab Land Development and Reclamation Corporation Ltd. Chandigarh vs. Presiding Officer, Labour Court, Chandigarh as reported in (1990) 3 SCC 682

This case consisted of analogous matters and was heard by the five Judges Bench headed by Justice Sabyasachi Mukherji C.J and other four Judges including Justice K.N Saikia. The main issue before the Court was to interpret the definition of “Retrenchment” under section 2 (oo) of Industrial Dispute Act, 1947. The Court observed that the wider literal meaning of the word Retrenchment was termination of service of a workman by employer for any reason whatsoever except those expressly excluded in the section is preferable to the natural, contextual and narrow meaning viz. discharge of surplus labour.

The Court herein adopted the principles propounded by Hans Kelson in his Pure Theory of Law (page 355) that makes a distinction between interpretation by the science of law or jurisprudence on the one hand and interpretation by a law interpreting system (especially the court) on the other. The purely cognitive interpretation by jurisprudence is unable to fill alleged gaps in law. Kelsen propounded a philosophy that characterizes law as a “pure” theory and aims at cognition focused on law. The law creating functions can only be performed by a law applying entity. The Court has to interpret a statute as such and apply it to the facts (para 79).

J. Krishna Kumar vs. Union of India as reported in (1990) 4 SCC 207

This case consisted of five analogues writ petitions and one Special writ

petition involving a common question of law as to whether the P.F retirees, who failed to exercise the option within time, are not entitled to the pension scheme on ground of parity. The court held that P.F retirees and pension retirees constitute different classes in terms of Articles 14 and 16 of the Constitution of India. The Court also examined the issue from jurisprudential point of view and held that moral obligation is not binding while legal obligation is binding.

The Court further held that though morally the State's obligation towards pension retirees is same as that of PF retirees but that was not the ratio decidendi of the Nikara's case (D.S. Nikara –vs- Union of India, 1983 1 SCC 305). The legislation has not said so, otherwise it would amount to legislation by enlarging the circumference of the obligation and converting a moral obligation into a legal obligation (paras 7, 14 and 31).

K. S.N. Mukherjee vs. Union of India as reported in (1990) 4 SSC 594

This was a matter heard by a five Judges Bench led by Justice Sabyasachi Mukherjee C.J.. The main issue before the Hon'ble Bench was to judicially analyse the objects and basic principles of natural justice and their applicability

The court held that it entirely depends on the governing statutory framework, which may include it explicitly. The court further held that an administrative authority (as is the instant case) exercising judicial or quasi-judicial function must record the reasons for its decisions. The other considerations are the requirement of recording reasons that would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimize chances of arbitrariness in decision making (paras 35, 36 and 40). Accordingly, based on the above the Hon'ble court arrived at a decision (in the instant case) that the finding recorded by the Court Martial on the third charge is based on no evidence and is perverse.

L. Anil Vats vs. Union of India and others as reported in 1991 Supp (2) SCC 661

In this case Justice K.N. Saikia presided the bench along with Justice M.M. Punchhi of the Hon'ble Court has taken up the matter concerning refusal of taking assistance of a friend by the detainee in the preventive detention procedure before the Advisory Board.

The court held, on the basis of the above facts, that such an act has caused prejudice to the detainee. It rendered the continuation of preventive detention illegal as there was no valid reason for the refusal when his friend was ready and available to extend assistance to the detainee. That the detainee was a graduate is no justification for refusal. Such an act of refusal amounts to violation of Article 22(5) of the constitution of India and sections 11 and 3 of the National security Act, 1980 (para 9).

M. Board of Technical Education, U.P. vs. Dhanwantri Kumar as reported in AIR 1991 SC 271

In this case the three Judges Bench led by Justice Dr. T.K. Thomen along with Justice K.N. Saikia and Justice N.M. Kasliwal took up the appeal and Special Leave petitions in connection with the – Audi Alteram Partem, a cardinal principle of natural justice. The matter arose out of an order dated 30-9-1988 made by the Board of Technical Education, (the appellant in the instant case), cancelling the result of the examination taken by certain students who are the respondents.

The court after perusal of the record, hearing the counsel of both sides and on the peculiar facts and in the special circumstances of the cases (through a brief judgment) was of the view that the High court was justified in coming to the conclusion that notice is served on the students were so vague and imprecise that they could not effectively defend themselves in the enquiry. As such the court observed that as the party (students) could not defend themselves, it did not satisfy the requirements of Natural Justice.

Justice Saikia in Academia

Justice Saikia taught Commerce and Law in Gauhati and Dibrugarh Universities. He started his career as a Lecturer for Commerce (evening classes) from July 21, 1950. In 1957, he was appointed a Reader. He became a professor of commerce (evening classes) at Gauhati University on August 1, 1964. He would hold that job until December 13, 1966. In December 1966, he started teaching law at Dibrugarh University. During his tenure as a professor, he was permitted by the university to practice law. His legal practice flourished and he didn't have the capacity to teach anymore. He resigned in February 1970. In May 1976, he was appointed as a part time teacher in the LL.M Classes (evening) of Gauhati University.

Justice Saikia was a sincere and dedicated teacher in Commerce and Law. He had deep knowledge on all the subjects he taught and was a gifted and innovative educator.

Justice Saikia as a Jurist

The juristic approach to law and justice, combined with lateral thinking, reflected in the various books and articles that Justice Saikia authored. Some of them are listed below.

A. Books:

1. The Assam Land and Revenue Regulation, 1886 (A commentary on the Regulation).
2. The Assam (Temporarily Settled Areas) Tenancy Act, 1935 (A commentary on the Act)
3. The Assam Adhiars Protection and Regulation Act (A commentary on the Act).
4. Studies on the Banker Customer Relationship (A study of the case laws on the subject).
5. Foreign Banking Systems (Containing the banking systems of foreign countries).

B. Articles:

1. Cicero's Treaties on Laws - Gauhati University Journal, 1958
2. Morals and Manners in Ancient India- Gauhati University Journal
3. Certain Instances of Paying Banker's Negligence - Gauhati University Journal, 1961
4. Nationality Domiciles and Residence of Corporations- Gauhati University Journal, 1962
5. Capital Punishment- Gauhati University Journal
6. Rajadharma of Manu- Assam Review
7. Changing Pattern of Legal Education- Gauhati University Law College, Golden Jubilee
8. Basis of Labour Legislation- Gauhati University Journal 1963
9. The Gauhati High Court Law Research Institute (A working paper outlining the program of research)
10. Customary Modes of Trial and Punishment among Tribes and Races of North East India (A paper prepared at the Gauhati High Court Law Research Institute, Eastern region).

C. Papers

1. Jurisprudence of Interests- Souvenir of India Association of Lawyers, Assam Branch in 1982.
2. Sociological trend in Indian Jurisprudence- Souvenir of All Assam Lawyers Association 1986.
3. Equal justice and free Legal Aid- Souvenir of All Assam Lawyers Association 1986.

Justice Saikia conducted various enquiries including the important Commission on Secret Killings in Assam, which was constituted in August 2005. The commission stemmed from the nearly 400 deaths in Assam between 1988 and 2000, where authorities were accused of shooting people and killing them without due process. The Commission submitted its reports in four parts to the Government of Assam and the reports were presented before the Assam Assembly on November 15, 2007.

From 1967 to 1977, Justice Saikia was active in Assam politics and was involved with Assam Tai Parishad. In 1967, the group floated a political party called *Ujani Axom Rajya Parishad* and Justice Saikia became the President. In 1977, he contested the General Parliamentary election as a *Ujani Axom Rajya Parishad* candidate for the Lakhimpur Lok Sabha Constituency and lost against Congress Candidate Shri Biswa Narayan Shastri.

Justice Saikia was a true son of the soil. His academic brilliance and his deep study of law and its ancillary subjects, coupled with his deep regard for his regional and ethnic identity made him a formidable force. Succeeding generations ought to analyze his multi-talented and versatile personality spread across his varied roles as a Judge; as an inspiring teacher of commerce and Law in the Gauhati and Dibrugarh University; and a jurist. With his persistent perseverance and perfect probity, he is undoubtedly an ideal role model.

Endnotes:

- ¹ Dr. R.C Borpatragohain is a Senior Advocate practicing before the Gauhati High Court and has formerly been Advocate General of the State of Assam. He is a jurist par excellence with innumerable publications. He has been former Dean, Faculty of Law of the Gauhati University.

“Serving Humanity” Justice Shafiqul Haque

Dr Taufiqur Rahman Borborah¹

“We make a living by what we get but we make a life by what we give.”

-Winston Churchill

Born in 1930, Justice Shafiqul Haque created a niche for himself as a jurist and philanthropist serving society. He firmly believed in the saying, “Service to humanity is the best service.” Those who knew him well vouch for his selfless life.

A Philanthropist

Justice Haque inherited his philanthropic spirit from his father, Dr. Nabiullah of Tinsukia, who among other efforts, donated land for a masjid at Bhaju near Sonari. Justice Haque silently carried on various giving projects from providing financial support to those in need to donating land for places of worship. As a former student of Aligarh Muslim University (AMU), he was active in the AMU Old Boys Association, Assam Chapter and actively engaged in the many social service projects. He was empathetic toward students with financial hardships and supported them unconditionally. Many of the beneficiaries are now engineers, doctors and lawyers. The success of

those students gave him immense pleasure and satisfaction.

Health care is often inaccessible and daunting for the poor. During his lifetime, Justice Haque provided financial assistance to innumerable people, who couldn't afford medical care. A cry for help from any acquaintance was enough for him to provide the required assistance. When the ancestral Tinsukia property was sold off, he donated the income to charity. Justice Haque and his siblings donated land for a 150 metres stretch of road named Dr. Nabiullah Road. The road today connects College Road to Devipukhuri Panch Ali in Tinsukia. In 1985, the family funded the construction of Nai Masjid. He also donated a portion of his land to the Tinsukia Puja Mandir (estd. 1968) at College Road.

Justice Haque nurtured a number of charitable institutions associated with health, vocational training, and science. He was closely associated with the Haji Musafir Khana Trust in Guwahati. He also served as the Chairman of the Imdadia Trust at Hijubari, Guwahati from 2004. He provided financial assistance to the ANM Nurses of the Imdadia Trust. Justice Haque strongly believed in the social upliftment of the oppressed. It was his sincere wish to build quality institutions to train young professionals and leaders from oppressed communities. In 2005, he along with some senior retired doctors launched the Child Healthcare Society at Hatigaon, Guwahati. The organization's objective was to provide free healthcare to children in need. His service to the community was acknowledged by many. In 1998, during the 98th birth anniversary celebration of Radha Gobinda Baruah, the *R. G. Baruah Smriti Rakhya Committee* felicitated him for his social justice efforts. On December 4, 2000, Aditya Hospitals, Dibrugarh, honored him for his philanthropic activities during the hospital's Foundation Day festivities.

As a lawyer in Dibrugarh, Justice Haque served as secretary of the Flood Relief Committee. The committee served the victims of erosion, which was triggered by the devastating 1950 earthquake. He struggled to rehabilitate the affected people of Jorhat Patti (Panch Ali) of Dibrugarh and sought the help of Deputy Commissioner, Mr Sultan, in their resettlement at

Molokubasa (now Convey Road). Justice Haque also acted as Secretary of the Jamiat-e-Ulum Madrasa (estd.1903). Justice Haque often motivated the young generation of lawyers to engage in social service and create public awareness on constitutional and legal rights. He emphasised the importance of building the public’s trust in judiciary and administrative systems. He also provided guidance to different families on matters related to institution of marriage, faith, career as well as legal issues. Those who have benefitted from his support speak highly of his humble and selfless personality.

After his retirement from the Gauhati High Court, he served as the Vice Chairman of the Central Administrative Tribunal, and later as the Chairperson of the Assam Backward Classes Commission. He also served on the Minority Commission, Assam. He was still serving on the two commissions when he died in January 2009.

Reflecting on Justice Haque’s jurisprudence

Justice Haque was a fearless man. In 1972, as a subordinate Judge, he joined the District and Sessions Judge, Nagaon, and issued a death sentence on dangerous and veteran criminal Haso Sheikh, who threatened him during the trial. Justice Haque fearlessly pronounced his decision and became the talk of the town. People who feared Sheikh and his accomplices waited outside the court to catch a glimpse of the courageous judge.

As a Judge of the Gauhati High Court, Justice Haque continued his fearless legacy and his Bench delivered several important decisions on civil, criminal and administrative law. His judgments emphasized the importance of civil liberties in political life. Some case examples:

- *Seikholand vs. State of Nagaland* as reported in (1986) 2 GLR 73, the customary rights of tribal communities in the State of Nagaland was upheld.
- *Ms Kahdem Ongbi Punimashi Devi v. State of Manipur* as reported

in (1985) 1 GLR 22, the rights of a detenu under Preventive Detention law was upheld.

- The judgement of *Kulabidhu Singh vs. Speaker Manipur Legislative Assembly* as reported in (1986) 2 GLR 91, relates to the disqualification of Members of Legislative Assembly under the (then) newly introduced anti-defection laws in the Constitution.
- In *Nazanthong vs. the State of Nagaland*, he was critical of the legal procedures adopted by the Deputy Commissioner cum the District Magistrate and observed that the Commissioner had crossed the limit of exercising the spirit of “discretion”. Justice S. Haque expressed concerns regarding the miscarriage of justice and said:

Who knows how much of such illegalities committed in the name of application of the Code in spirit had been swallowed by many illiterate tribal litigants in the Hill tracts of Nagaland.

The Hon’ble High Court especially directed the Government of Nagaland to consider for the full application of the Code of Criminal Procedure in letter and spirit for the welfare of the inhabitants of the state.

- *Akanman Bora vs. State of Assam* as reported in 1988 Cri LJ 573 was an appeal from the jail against conviction of an accused for murder under section 302 of Indian Penal Code, which was decided by the divisional bench of Hon’ble Guahati High Court comprising Hon’ble Judges S. Haque and Justice. Sangma. In this instant appeal it was held that accused shall not be convicted on the basis of ignorance and negligence of law and facts on part of decision giver.” In his judgement, Justice Haque held that:

the Judicial Magistrate should be conversant with the law, procedure

and manner of recording a confession. Ignorance on the subject may lead to illegality and gross irregularity causing failure of justice. In the instant case, it appears that Judicial Magistrate was not conversant with the law and procedure of recording confession. Act of recording confession is frequently done by Judicial Magistrate, they should observe with the law cautiousness in this duty, according to the law on the subject, to make it legal and admissible and that it is not rejected merely for the fault of the recording Magistrate.

- In another criminal appeal, *Arjun Karmakar vs. State of Assam* as reported in (1986)2 GLR 287 decided by divisional bench comprising of Justices K. Lahiri and Justice Haque, it was held that failure to provide free legal aid to an indigent is violative of the basic and fundamental norms of justice.
- In *Smt. Tilka Das vs. Smt. Rina Das* as reported in (1986) 2 GLR 315, an important view relating to *stridhan* property was given by Justice Haque where it was held that

it will be an error to entertain a quashing proceeding under section 482, Cr. PC, when once prima facie being satisfied the magistrate has taken cognizance of the alleged offences”

- In the judgment of *Amir Ali vs. State of Assam* as reported in 1988 Cri LJ 1512 the ratio decidendi of the case was that the accused shall be convicted on the basis of evidence corroborated by testimony of witnesses. In several important judgments, Justice Haque reversed the finding of the subordinate judiciary considering the welfare of society and efficient implementation of the criminal justice system
- On the point of dying declaration, there is a landmark in the *Masaddar Ali vs. State of Assam* as reported in 1990 Cri LJ 1333 pronounced by Justice Haque and Justice W.A. Shishak.
- In the judgement of *Badhna Kharia vs. State of Assam* as reported

in 1988 Cri LJ 1412 which was decided by Justice Haque and Justice J.M. Srivastava, it was held that in a criminal trial, the evidence-in-chief and cross-examination is to be read together to find out the truth.

- While an acting Chief Justice of Hon'ble Gauhati High Court, Justice Haque with Justice W.A. Shishak gave a significant judgement in *Prem Singh vs. Union of India* as reported in (1990) 2 GLR 297 in which it was held in para 10 that

No adhoc appointment/promotion can be made against substantive, after recommendation by the D.P.C. unless service rules specifically provide such provision; and in the absence of such provision all appointments/promotions on the recommendation of the D.P.C. must be treated as a regular appointment against substantive vacancy, if available.

- Justice Haque's role in deciding writ petitions during his tenure as a Judge of Gauhati High Court is also worth mentioning. In the *K.S. Vohra vs. Director General, Border Security Force* as reported in (1992) Gau 705 it was held that delay in enquiry and proceeding because of inaction by disciplinary authority can prove fatal for proceedings.

The contribution of Justice S. Haque in service jurisprudence during his tenure as the Vice Chairman of Central Administrative Tribunal, (CAT) Guwahati Bench is remarkable. He effortlessly dealt in the matters of All India Services, resolving seniority disputes, fixing cadre strength among others. One of the significant judgements is the transfer of IAS officers from Assam/Meghalaya Cadre to Uttar Pradesh and Punjab. The Hon'ble Tribunal observed that preferential treatment to a lady officer resulted in injustice to applicants. Another important decision relating to correction of date of birth in the service book was delivered in *Naren Chandra Chakravarty vs. Union of India*, where the Tribunal allowed the Central Government to accept Chakravarty's date of

birth, as December 31, 1938 and accord approval to the actions of the Government of Assam to correct the same in the service book.

In 1997, Justice Haque joined as an associate member of the International Chamber of Commerce-India chapter (ICC-India). In 1998, the International Court of Arbitration through ICC-India, appointed him a Chairman of the Arbitral Tribunal for arbitration of a case between the Korean Company M/s Daelim Engineering Co. Ltd and Numaligarh Refinery Ltd. He was probably the first Assamese to head such a tribunal. In 2007, he also chaired the expert committee to examine the suitability of the draft Model Police Act prepared by Soli Sorabjee Committee. The result was the enactment of the Assam Police Act, 2007. Justice Haque also chaired a number of independent commissions such as Commission of inquiry into the death of student leader Subhas Sharma in 1984, Baihata Chariali incident of torture and humiliation of teachers in 1995, death of Ripunjay Acharjya and Hemchandra Sarma in Sipajhar in 1995 and Kokrajahr and Bongaigaon district ethnic violence in 1996. His contributions as legal custodian (as District Judge, Kamrup) of Hajo Pua Mecca Dargah and Kamakhya Temple is still being remembered by many.

On personal liberty

During his tenure as a Judge of the Gauhati High Court, Justice Haque was known as someone who tremendously valued individual liberty. People who were wrongly arrested and taken into custody by the Police/Authorities were always granted adequate relief by him.

He used to step beyond the call of duty to protect the peoples' rights. In the matter of Sankarmal Bagri vs. The State of Assam, C. R. No. 4 of 1987, where an urgent writ of habeas corpus was moved before Hon'ble Justice Haque in the late evening hours, he was kind enough to entertain the petition at home allowing the interim prayer and providing adequate relief to the petitioner based on the circumstances and the prima facie merits of the case.

Hon'ble Justice Haque set an example of how a Judge should protect individual liberty. He never entertained the State covering up their mistakes and had little tolerance for the lack of procedural compliances at the cost of individual liberty. Former colleagues from the Bench and Advocates who had the opportunity to appear before him and attend his Court remember him for his championship of the common man.

A God fearing and secular individual, Justice Haque lent a helping hand to everyone who sought him. A striking tradition that he followed enthusiastically, even after his retirement from the Gauhati High Court, was to send nearly 500 New Year cards to his acquaintances. He maintained a close relationship with people from the judicial service. He was a loyal friend and devoted family man. After his demise, many of his acquaintances miss receiving his New Year cards. He was a humanist who led a simple, honest and fulfilling life with a passion to serve society. The saying, "Men live in deeds not in years", truly applies to his life.

Endnotes:

- ¹ Dr. Borborah is former Principal, Assam Medical College and Hospital and an eminent scholar and litterateur. The article has been written with inputs from Hasibur Rahman, Senior Advocate, Hafiz Rashid Ahmed Choudhury, Senior Advocate and Zafreena Begum, Assam Judicial Service.

“A Force of Nature”

My Mother Justice Meera Sharma

Krishna Sharma¹

Meera Sharma née Borpujari, is a pioneering Assamese lawyer and jurist. She is the first woman lawyer and the first lady Judge from Northeast India and was elevated to the Bench in May 1989. As a Judge, she delivered many crucial decisions involving Indian constitutional law and human rights. She is also my mother.

Ma is one of the most accomplished, determined, and resilient women. Her life has not been smooth but at every hurdle, she rose like a phoenix – wiser, stronger, and more determined. She is accomplished in every aspect – a talented lawyer, a wise jurist, a devoted daughter, wife, mother, and homemaker. While doing all that, she somehow found time to weave her Mekhela *Sadors*, stitch our clothes when we were children. She continued doing all that even when she was a Judge. She maintained order in the family and kept our home beautiful. It is difficult for a daughter to try and emulate even a fraction of what she achieved and with such elan. In all my growing up years, I have seen her successfully don many hats/roles at the same time. At work, she broke the proverbial glass ceiling without compromising her responsibilities as a nurturer for her family. My Ma overcame all the challenges and hurdles that woman of that era faced. She did this with fewer

opportunities and resources than we have now. She was often the only woman in a room full of men, but she stood strong and created space for others like her. A trail blazer, my Ma is a source of inspiration to an entire succeeding generation of women from Assam, Northeast India and elsewhere.

Early Life

Ma was born on November 4, 1937, in the scenic Nazira town of Assam into a prominent family. Her father was Shri Bholanath and her mother, Smt. Jayada Borpuzari. She was the youngest of eight siblings. – Ma did her schooling from Nazira Girls High School. From the stories I've heard my older cousins share, Ma had an idyllic childhood. She grew up in a large extended family, against the backdrop of India's Freedom Movement and was a witness to how that played out in a small Upper Assam town. From an early age she displayed spunk, grit, and determination. In school she was good in studies and sports. She didn't believe in assigned gender roles and was an advocate for equal rights for women from a very early age. Her demands to play male roles in the local theatre and be included in boys' sports teams are legendary. Her neighbours called upon her to pluck areca nuts (*tamul*), coconuts and betel leaves (*pan*). Ma was a revolutionary and in her dignified way paved the way for others to question gender stereotypes. She was also fortunate to grow up among relatives and contemporaries from her town, who were equally progressive and went on to occupy prominent positions in their fields. Shri Hiteswar Saikia, former Chief Minister of Assam was one of them. These were abiding friendships and relationships over time.

Attending College: Determination

Ma was the youngest and her parents and brother indulged in her. When she was growing up the accepted social norm for girls was to be married off after puberty. All of Ma's sisters were married off into prominent Upper Assam families when they were quite young. But, Ma and her niece Funka Baideo, were sent for their I.A. in the renowned Handique Girls College in

Guwahati in 1952. There, Ma got the Narayani Handique Scholarship for scoring the highest marks in English. In 1955, she graduated with a B.A. degree in Political Science. After her B.A, Ma taught English in Dergaon Girls High School for a year and stayed with her niece Uma Baideo. Baideo encouraged her to save her earnings to pay for higher studies. Ma was dreaming to study law at the prestigious Banaras Hindu University (BHU) and was determined to get there.

BHU: Defining University Years

In 1956, Ma enrolled in the BHU. She worked hard and made optimal use of time and resources. An enterprising woman, she pursued dual degrees from BHU, despite the scarcity of funds. She graduated from BHU with a Master of Arts (Political Science), as well as a Bachelor of Laws degree in 1959.

While excelling in studies, she also found time to seriously pursue the *Esraj* – a stringed instrument. One of her greatest regrets in life is that family and career did not allow her to continue her musical interests. She was deeply influenced by the vocal music of Pt. Omkarnath Thakur. She preserved the *esraj* all throughout our growing up years.

The BHU years were the most important and defining years for my mother at a personal level as well. Ma was always beautiful, albeit serious, and had many suitors. But it was my father who won her heart. He was her fellow student in the law department, brilliant and dashing but with an easy, almost cavalier attitude to life. My father was from Nalbari. The two of them could not have been more different. But I guess Ma’s practical and serious nature was offset by the fun and levity that my father brought to their marriage, family and wider social interactions. My four siblings and I took after our dad, much to Ma’s chagrin. She would often justify her choice by saying that she saw in my dad, a person who would support her independent spirit and be an equal partner at home and in her professional life. My dad apparently had a bet with his peers that he would successfully

woo my mother. Whatever be the back story, the truth is that it was a legendary romance worthy of envy.

Early Career and Marriage

In 1959, after graduating, Ma returned to Nazira. She joined the Sivasagar Bar, where her elder brother, Late Baidyanath Borpujari was already a prominent lawyer.

Ma's family was keen to have her marry a suitable boy from a similar background, but Ma was steadfast that she would only marry my dad. The wedding took place on December 14, 1960 in Nazira. Ma moved to Nalbari, to a very different environment. Ma threw herself into her new role, though it must have been a challenge to adjust. Like any able daughter in law, she cooked and looked after an entire extended family. Legends are shared even today about how a '*bilayti api*' adapted into a boisterous joint family. With great admiration, my aunt Radhika Pehi, recounted how Ma could also weave.

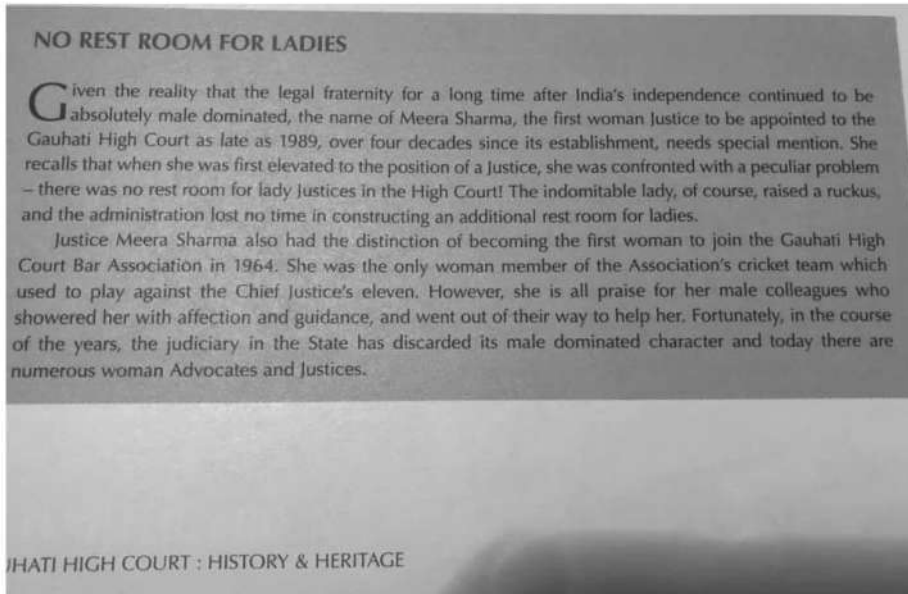
My parents started their law practices in the Nalbari Courts and would frequently travel the 70 odd kilometers to the Gauhati High Court. Four years of travelling back and forth from Guwahati indicated that some changes were required, especially after my sister Rajashree (Riku) was born. In 1965, the young family moved to Guwahati. My younger brothers, the twins Nandan and Randeep, and I were born after my parents bought their Guwahati home.

Gauhati High Court: Practice 1964 - 1989

As mentioned before, there were many '*firsts*' in Ma's life. She was the first woman lawyer of Assam and of the Northeastern states, and when she joined the Assam High Court Bar Association in 1964, a photograph from 1969 showed that Ma was the only woman among her male peers.

The Gauhati High Court - History & Heritage curated by Arup Kumar

Dutta has an interesting mention about Ma.



Ma was hard-working and meticulous as a lawyer. She was always ready to go to any Court to mention a matter or draft/file an application. She joined the chambers of Suresh Bordoloi, Senior Advocate, who saw in her great potential. She practiced company and labour laws and boasted clients such as India Carbon, Grindlays Bank, and a host of tea companies. It is worth mentioning that both the lady lawyers from this chamber became judges – Ma and years later, Anima Hazarika. Ma edited the Gauhati High Court Law Report from the 1960s till 1983.

A sport enthusiast, Ma played cricket for the Gauhati High Court Bar team with her male colleagues against the Judges XI.

Upheaval and Challenges

In January 1983, our lives upended when my father suddenly passed away at 50. We were still in school. It is remarkable how Ma, despite this

unprecedented personal loss, went on to rebuild our lives and her career. It was her resilience, tenacity and hard work that made us all into the confident individuals that we are today. She gave all four of us the best education possible.

The challenges of being a single mother while doubling up as a lawyer was a humongous task. In the years from 1983-1989, Ma took up numerous cases and clients and earning a living became top priority for her. She would often take the bus or rickshaw to the Court and the chambers. When I think about her struggles now, my heart goes out to her. It must have been a lonely and uphill task given the circumstances, available opportunities and resources.

She was a Government Advocate for the State of Assam in Gauhati High Court and sat on the panel for the State of Arunachal Pradesh. She was also a Standing Counsel for the Karbi Anglong District Council. She would travel frequently to Diphu and Karbi Anglong, some 250 kms away, often taking the night bus, working during the day and taking the bus back the following night. This was also the time when she had appeared before the Supreme Court along with Advocate General of Assam, Suchen Bhuyan.

Elevation to High Court Judgeship

After a long and distinguished career as an advocate – specialising in labour, company law, service, Civil, Criminal, and constitutional matters – Ma was elevated as a Judge of the Gauhati High Court.

Post Retirement Career

After her retirement on November 3, 1999, Ma became busy with several assignments. She headed the Meera Sharma Commission to probe a series of secret killings between 1998 and 2001. She also had a rather busy schedule as an arbitrator through 2014. In 2016, we incorporated – the Meera Women Weavers' Association as a not-for-profit public company under Section 8 of the Companies Act, 2013. This was done to encourage and support the talent, determination, hard work, and resilience of the

Assamese women weavers. In 2019, a Coffee Table Book called ‘Assam- a Journey Through its Textiles’ was released on her birthday.

To Ma’s credit, three of her children became lawyers and one joined the police force. She spends her time between Guwahati and Delhi and is a doting grandmother to her three grandsons and a granddaughter. She continues to be a force of nature.

Endnotes:

- ¹ Ms. Krishna Sharma is the daughter of Justice Meera Sharma. Ms. Sharma is a leading lawyer practicing in the Supreme Court of India and the Delhi High Court. She is the Founder and Managing Partner of Corporate Law Group (CLG), a law firm based in Delhi and has served as the Additional Advocate General of the State of Assam in the Supreme Court from 2011 to 2016.

“Heralding a New Jurisprudence”

Justice D.N. Baruah

Devashis Baruah¹

Introduction

The judgement in *Uma Prasad Gogoi vs. State of Assam & Ors.* case as reported in (1997) 1 LLJ 1088 (Gau) states :

Natural Justice is said to demand not only that whose interest may be directly affected by an act or decision should be given prior notice and an adequate opportunity to be heard, but also that the authority should be disinterested and impartial.

The above decision was the hallmark in all of the judgments delivered by Hon'ble Justice D.N. Baruah.

Justice Baruah was born on March 1, 1935, in Machkhowa, a tiny village in North Lakhimpur sub-division of Lakhimpur District, Assam. He finished his schooling from Dibrugarh Government High School and pursued a masters in economics after college. He then enrolled in the law program at Gauhati University in 1962. Justice Baruah started his practice in the Mofussil Courts in Dibrugarh, predominantly in the fields of civil, criminal and labour

laws. Within a quick span of time, his practice developed and he was appointed as an Additional Public Prosecutor. Along with practicing law, Justice Baruah, taught at the newly established D.H.S.K. Law College. The college now is one of the premier law colleges of Assam imparting quality legal education.

Justice Baruah continued his flourishing practice in the Courts under the Dibrugarh District Judiciary, which had jurisdiction over the present districts of Dibrugarh, Tinsukia, Dhemaji and North Lakhimpur. He simultaneously started his practice before the Hon’ble Gauhati High Court in 1977. Soon after, he permanently moved to Guwahati and predominantly started practicing in the Gauhati High Court. Justice Baruah’s practice thrived in the areas of central excise, electricity laws, criminal, civil, labour, revenue, state excise and taxation. On November 14, 1991, he was appointed as a Judge of the Hon’ble Gauhati High Court.

Justice Baruah’s tenure at the High Court

Justice Baruah established his footprints in the dispensation of justice in various branches of law. One of his significant contributions was the evolution of law and judicial review of the State’s action in the distribution of its largesse. The case of *Subhash Projects and Marketing Ltd. & Ors. vs. State of Mizoram & Ors.* as reported in (1994) 2 GLR 183, wherein the Wednesbury principle of unreasonableness was held to be a touchstone in deciding the reasonableness of the actions of the State in distributing its largesse was an important decision. Subsequently, the Hon’ble Supreme Court, for the first time in the case of *Tata Cellular vs. Union of India* as reported in (1994) 6 SCC 651 on 26th July, 1994, adopted the Wednesbury principle of unreasonableness as a ground upon which an administrative action is subject to control by judicial review. The doctrine of freedom of “*play in the joints*” to the Executive, was interpreted in his Judgment rendered in the case of *G.L. Agarwalla Eastern Enterprises & Ors. vs. The State of Assam & Ors.* as reported in (1995) 2 GLR 83. In that case, Justice Baruah held that within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. He said the Court must always resist

the temptation to draw the bounds too tightly, merely according to its own opinion.

The relevance of Freedom of Speech and Expression in a working democracy and not granting/allotment of advertisements by the Government at par with other similar newspapers amounts to unreasonable restrictions in the exercise of the Freedom of Speech and Expression enshrined in Article 19(1) (a) of the Constitution of India. This was the concept propounded by him in his judgment rendered in the case of *Omega Printers and Publishers Private Limited & Ors. vs. The State of Assam & Ors* as reported in (1994) 2 GLR 15.

The evolution in the concept of “sustainable development” could be seen from his judgment in the case of *Mahabir Coke Industry & Ors. vs. Pollution Control Board & Ors* as reported in AIR 1998 Gau 10. Rendered on August 29, 1996, Justice Baruah in *Mahabir Coke* emphasised the requirement of checks and balances for industries to grow. He stated that industries are subject to causing no pollution or health hazard and any industry not conforming to the standards would be liable for appropriate action in accordance with law. The concept, contemporarily, received approval from the Hon’ble Supreme Court in the case of *Vellore Citizens’ Welfare Forum vs. Union of India & Ors* as reported in (1996) 5 SCC 647, wherein, it was held that the traditional concept that development and ecology are opposed to each other was no longer acceptable and sustainable development is the answer.

The judgment delivered by Justice Baruah, sitting with the then Chief Justice Hon’ble Mr. U.L. Bhat in the case of *Khudiram Chakma vs. Union Territory of Arunachal Pradesh & Ors* in AIR 1992 Gau 105, is of great importance. In that judgement, after holding that the petitioners are not Indian citizens and that they were foreigners, the Court took a humanitarian approach to decide the rights of the Chakma people, who came as refugees. It directed the state to give shelter to the Chakmas by compensating them for the money and labour invested by them in the land before they are moved to alternate sites. The order also required the state to make all arrangements

for settling the Chakma people in an alternative area by constructing houses and other necessary structures and arranging for drinking water before they were moved.

Late in his stint as a Judge of the Gauhati High Court, Justice Baruah was entrusted to a Special Bench to decide all the Income Tax Reference cases. These cases were pending for a long time. Within a very short period, he disposed of almost all the Income Tax References.

During his tenure as a Judge, Justice Baruah delivered several important judgments in various branches of law. The numerous law reports are a testament to that.

Post Retirement

He retired on March 1, 1997, and was appointed as the Vice Chairman of the Guwahati Bench of the Central Administrative Tribunal. Subsequent to his retirement from the Tribunal, he assumed office as the Upa-Lokayukta of Assam. After he retired from that position, he kept himself busy in various arbitration proceedings until his passing on January 18, 2012.

Endnotes:

- ¹ Devashis Baruah is the son of Late Justice D.N Baruah. He is an Advocate practicing before the Gauhati High Court and presently serves as the Additional Advocate General, Assam. He is also the Standing Counsel, Election Commission of India in the Gauhati High Court.

THE STATESMEN

“Indian first and an Indian last”

Remembering Justice Baharul Islam

Nazrul Islam¹

Childhood & Early Life

Justice Baharul Islam’s interesting and inspiring life story began with his birth in Udiana near Rangja, about 52 Kms from Guwahati. After his elementary education, he joined the reputed Gurdon High School in Nalbari. He excelled in studies and won a competitive scholarship with a gold medal. Before his Matriculation, he changed his name from ‘Gamiruddin Ahmed’ to ‘Baharul Islam’ on the advice of the Director of Public instruction for Muslim Education, who visited the school for inspection and spotted the bright student. He felt that he deserved a better name. With the name change, his official birth date was recorded as March 1, 1918.

He secured ‘letters’ in Persian and Mathematics and joined Cotton College in Guwahati for his Intermediate degree. At Cotton, he studied Physics, Chemistry, Botany Mathematics, English and Assamese. For his bachelors, he switched to Arts and graduated with Honours in Economics and Mathematics

In 1937, State Legislature elections were conducted under the Government of India Act of 1935. Fakhruddin Ali Ahmed, later President

of India, ran as a candidate and Justice Islam signed his nomination papers as a proposer. Mr. Ahmed won and became the Finance Minister in Gopinath Bordoloi's cabinet

As a School Teacher

Justice Islam was the oldest of five brothers and two sisters and belonged to an agricultural family. He accepted a graduate teacher's job at his alma mater the Gurdon High School. He was later appointed as a permanent graduate teacher in the Dhubri Government High School. Two of his students from his teaching days would later become senior advocates Bishnu Kinkon Goswami, who was his student at the Gurdon High School at Nalbari and Bijoy Kumar Das. who was his student at the Dhubri Government High School. Justice Islam worked as a teacher for six years. He sincerely loved to teach, but dreamt of pursuing higher studies.

While a teacher at Dhubri, he met an old school friend, a military contractor, who invited him to join as a business partner. The friend offered him a salary of Rs. 1,000 per month or a share in the net profit. Young Justice Islam at that time was earning a salary of Rs. 85 as a government school teacher. Despite that, he rejected the offer because he wanted a job that would allow him time to pursue higher studies. In school, the English poem, "Scholar" by Robert Southey inspired him and he wanted to be a scholar surrounded by a library.

In April, 1944, after his father's death, he joined a Bachelor of Teaching (B.T.) course at St. Edmund's College, Shillong, That was the only B.T. College in Assam then. Prior to St. Edmund's, teachers from Assam had to go to Dacca in East Bengal for the B.T. Course.

Higher Education

Although, Justice Islam enjoyed teaching, he was unhappy and restless and felt that he was stagnating. His father wanted him to be a lawyer and he, too, wished the same.

On October 1944, while on holiday, he sent three express telegrams to Calcutta, Dacca and Aligarh Universities, enquiring about vacancy in the postgraduate programs in English and Law. All three institutions wrote back stating they had none. He was disheartened and returned to Shillong. A friend told him that Sir Syed Saadullah, the Premier of Assam was a good friend of Dr. Sir Ziauddin, the Vice Chancellor of Aligarh University. The friend encouraged Justice Islam to seek support from Mr. Saadullah. But there was another hurdle. Since, he was in Government service and on a Government deputation to the B.T. College, he had to resign or take leave. That was a time consuming process. Justice Islam met the Director of Public Instruction, Abu Lais, and expressed his desire to go for higher studies. After his leave was granted, he persuaded Mr. Saadullah to write a letter addressed to Mr. Ziauddin. With the two letters in hand, he rushed to Aligarh by train from Guwahati, traveling by general class on the train. It was war time and he had a horrible experience with blackouts in the compartment all throughout the journey. It took three nights, three days and train changes at Katihar and Lucknow. His shoes got stolen before reaching Lucknow and he had to buy a new pair of shoes. When he arrived at the Aligarh Railway Station, to his relief he found AMU students in their black *sherwanis*, white trousers, caps and uniforms. One of the students arranged a *tanga* for him and asked him to go to the room of a Sylhet student. Sylhet was then part of Assam. When Justice Islam got to the University campus, he learnt that the Vice Chancellor (VC) was out of town for a week. As he waited for the VC's return, he slept on his bed roll on the floor in the hostel and had to eat his food outside the University Campus because the hostel food was exclusively for boarders..

When he finally met the VC, he was told that he was too late. But somehow Justice Islam was accommodated in the M.A. and Law courses, but boarding was still not available. He was subsequently accommodated in a former post mortem room. It was a one room brick house without any water or electricity. His roommate was from Sind. The room was white washed for the new occupants and two big hurricane lamps were provided. Food and water was also supplied in the room, which was an Annexe to V.M. Hall, one of the hostels. In the subsequent year, he was accommodated

in the Osmania Hostel. After all the adventure, Justice Islam received his M.A. and Law degrees from AMU in 1946. He graduated first class in LLB.

At the Bar

JusticeBaharul Islam enrolled himself as a probationer for pleader ship in the District Court at Guwahati on November 18, 1946. The court then was under the Calcutta High Court. After his probationary one year period, he was enrolled as a pleader on December 3, 1947. He applied for a part time law teacher position in the Gauhati University, the monthly salary for which was Rs. 100.He didn't get the job. The University in its wisdom appointed a law graduate with a second class.

UPSC in 1948 recruited the first batch of Indian Foreign Service officers based solely on interviews. Only candidates, with a first class in any degree examination could apply. Although, Justice Islam intended to be a lawyer, but because of pecuniary compulsions, he applied and received an interview call. UPSC asked him to submit a character certificate from a distinguished Assamese person. Justice Islam went to Shillong, the then capital of Assam, and got the document from the Chief Minister Gopinath Bordoloi. But, Mr. Holiram Deka, the then Chairman of the Assam Revenue Tribunal (later Chief Justice of the Assam High Court), advised him to stick to law. He said:

With this career you are going for foreign service? What will you do after retirement? Lawyers have no limit. Sky is the limit. Stick to the Bar. Come to me after five years and tell me if my advice is wrong.”

Holiram Deka's words inspired Justice Islam and he decided to return to Guwahati and continue at the Bar. In a few years, he picked up a fairly good practice.

The Assam High Court was established in 1948. On completion of his three years practice as a pleader, he enrolled as an Advocate of the Assam High Court in 1951. After the requisite minimum period of seven years practice, he became an Advocate of the Supreme Court of India in 1958.

Personal Life

Justice Islam married Saleha on March 6, 1949. Saleha was the daughter of Chand Mohammad Choudhury, a *Sheristadar* at the Guwahati Court. The bridegroom's party was joined by Fakhruddin Ali Ahmed (later President of India) and other distinguished guests..

Politics and Public Life

In 1948, under the leadership of Jai Prakash Narain, the Socialists left the Indian National Congress and launched the Socialist Party of India. Justice Islam joined the Socialist Party in Assam and became its executive member. In January 1953, he was part of a delegation to the Asian Social Conference in Rangoon. In 1955, Congress accepted the Socialist ideals. A year later, Justice Islam resigned from the Socialist Party and joined the Congress Party.

In 1962, Justice Islam was elected to the Rajya Sabha. In 1968, he was re-elected for a second term. During this period he was appointed as the Member of the Executive Council of the Gauhati University and the Academic Council of the Dibrugarh University. Apart from the two Universities, he was also connected with several other colleges and schools. He was the President of the Governing Bodies of the Gauhati Commerce College and the Rangia College, and a member of the governing bodies of the Cotton College, Gauhati Medical College, B. Barooah College, Arya Vidyapeeth College and the Gauhati College.

The Supreme Court and the Gauhati High Court: Years in the Judiciary

Justice Islam was sworn in as a Judge of Assam and Nagaland High Court on January 20, 1972. On January 21, 1972, he was sworn in as a Judge of the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura) because the north eastern states were reorganised that day. In his autobiography, *“The Story of my Struggle”*, he mentions:

I liked judicial work; it was easy, enjoyable and peaceful. But you had to do a lot of homework. Some judges did not peruse the days brief at home lest, as they used to say, their minds were made up. In my case, perusal of the briefs at home meant knowing the facts of the case and the points involved in advance. After hearing the counsels of both parties and putting them question for necessary clarifications, I made up my mind towards the end of the hearing. It was my habit to dictate judgments immediately in court, in easier cases and next morning, at my residence in complicated cases, in which judgement were reserved. I never allowed judgments to accumulate on my table.

I always tried to give justice to the party that needed it. It was substantial justice. I was not baffled or deterred by any law or decision of the Supreme Court. I interpreted the law or a decision of the Supreme Court cited in Court in such a way as to meet justice in a particular case. I tried to be precise and concise. It was not my habit to write lengthy judgements.

The most sensational criminal matter heard by Justice Islam (along with Chief Justice M.C Pathak), was the Upendra Nath Rajkhowa case. Mr. Rajkhowa, a retired District and Session Judge, was sentenced to death by the Session Judge on charges of murdering his wife and three daughters. Among the prominent civil matters, Justice Islam heard the election case that Indreswar Goswami filed against the election of Deva KantaBarooah, the then President of the Indian National Congress. The judgment was not appealed against. Justice Islam's most important and revolutionary decision was the judgment on 'Talaq,' delivered sitting in a Single Bench.

When Justice Islam assumed the office of the Chief Justice of Gauhati High Court, he granted paid holidays to all fourth grade employees. Prior to that, these employees had no holidays. They worked even on Sundays. He also discontinued the Reception given to a Chief Justice on working days. He wrote in his autobiography thus:

On taking over as Chief Justice, when I visited Nagaon and Silchar, I found that judicial officers of the station led by the District and Session Judge stood in

a row in Court uniforms, saluted the Chief Justice and received him. This was even on working days, at the cost of public time and convenience. I asked the officers why they did so, causing inconvenience to litigants. The reply was that this was in pursuance to a circular issued by a former Chief Justice. On return to Guwahati, I scrapped that circular. I had a circular issued to the contrary. The judicial officers must not come to receive the Chief Justice or any High Court Judge during working hours. I learnt later that after my retirement my circular was scrapped and the earlier one revived by another Chief Justice.”

Justice Baharul Islam was sworn in as a Supreme Court of India Judge on December 4, 1980. One of the first cases he heard in a Bench headed by the then Chief Justice of India, was the sensational rape and murder by the notorious duo, Ranga and Billa. Some of his important judgments include: the *National Textile Workers Case*,² *Raghubir vs. State of Haryana*,³ *SheonandanPaswan vs. State of Bihar*,⁴ the *West Bengal Electoral Rolls*⁵ case and several others.

C. Return to the Council of State: Justice Islam’s second term in the Rajya Sabha

After his innings in the Supreme Court, Justice Islam was elected to the Rajya Sabha on June 1, 1983, during the peak of the Assam agitation. He had earlier served as a Rajya Sabha member from 1962 to 1972. After his election, he visited the Bar Associations all over the State and met with other acquaintances to explain to them the foreigner’s issue. He wrote in his autobiography:

The situation in Assam had taken such a turn due to misunderstanding of the problem, and distrust and mistrust between different communities that there was communal tension everywhere. I analysed the foreigner’s issue, and its implications in the background of the Constitution, domestic and international laws and human rights. I felt that after my tour, tension was reduced to a large extent although the problem had yet to be solved.

On his retirement from the Rajya Sabha on June 14 1989, he returned home to Guwahati. He spent his time working for Gauhati University and writing for newspapers and periodicals..

Justice E.S. Venkataramiah, former Judge of the Supreme Court of India had, at a meeting on January 12, 1987 in New Delhi, described Justice Islam in the following words:

*I have watched the thinking, speeches and actions of Justice Baharul Islam from a distance as well as from close quarters for a number of years. I found him to be an Indian first and an Indian last. Region and religion have had no effect on the liberal views he possesses. I wish we had more persons like Justice Baharul Islam around us in these days when the country is passing through a difficult period on account of events taking place both inside and around it. A few saner voices like that of Justice Baharul Islam would have had a sobering effect on the national and International issues which we are facing today.*⁶

Endnotes:

- ¹ Nazrul Islam is the son of Justice Baharul Islam and is a practicing Advocate of the Gauhati High Court. He is a lawyer of eminence and is well known for his immense contribution in the social field. He has been a former Senior Vice President of the Gauhati High Court Bar Association as well as the President of the Rotary Club of Guwahati.
- ² (1983) 1 SCC 228
- ³ AIR 1981 SC 2037
- ⁴ (1987) 1 SCC 288
- ⁵ (1985) 4 SCC 689
- ⁶ Condensed from the “Selected works of Jurist-Statesman Justice Baharul Islam”.

“A Versatile Genius”

Dinesh Goswami

Justice Biplab Kumar Sharma¹

I met Dinesh Goswami as a child back in the 1960s. He was a referee and I was a sports competitor. I participated in different sporting events organized by the *West Guwahati Bihu Sanmilian*. These free events were held on *Rongali Bihu* at the Sonaram High School Field in Bharalumukh. I was highly impressed by Mr. Goswami’s personality and role as a referee. Later he married my eldest sister, Bibha Goswami and became my brother-in-law.

Mr. Goswami’s father Rajanikanta Goswami, an Advocate, was a freedom fighter. The father son duo were lawyers of repute practicing in the Gauhati High Court and its Subordinate Courts. I never knew then that I would become a member of the legal fraternity, more particularly, that my stepping stone as an advocate would begin with my brother-in-law.

An exemplary mentor

My experiences with Mr. Goswami were manifold and difficult to express in words. I particularly remember one such incident that happened at the threshold of my legal career. A client came to the Gauhati High

Court from Hojai looking for him. After meeting with him, Mr. Goswami entrusted me with drafting a Revenue Appeal to be moved before the Assam Board of Revenue on the very same day. Being a novice, I was hesitant to take on the task. But, he told me not to be afraid and to dive into it. He said,

Do not think much and go ahead with the drafting, whatever way you feel like. That will do and work. If you go on thinking for perfection, that will be time-consuming and never-ending. Your decision in an urgent matter will have to be instantaneous.

That advice paid dividends. I joined the Gauhati High Court Bar in 1978, under the guidance of Mr. Goswami. Soon after, Mr. Goswami was elected to the Rajya Sabha. Prior to that he was a member of the Lok Sabha from the Guwahati Constituency. My relationship with him was beyond our personal connection. He was an inspiring, charismatic man.

A versatile man

Besides being a lawyer, Mr. Goswami was a great orator, sportsman, dramatist, writer, and, a person deeply involved in social issues.

As a student he won the All India, All Bengal and All Assam Debating Championships. As a lawyer, he was the General Secretary of the National Forum of Lawyers and Legal Aid and occupied the position of the Assistant Secretary, All India Democratic Lawyers' Association.

Mr. Goswami was the Treasurer of the Sports Council of Assam. He was particularly fond of cricket and football. He used to organize cricket and football matches amongst the lawyers and judges. He is hailed as a great sports commentator in English and Assamese. I remember him as the goalkeeper of the West Guwahati Club and later as a commentator on All India Radio in Eastern India's famous Bordoloi Trophy Competition at the Nehru Stadium, Guwahati. As a Member of the Parliament, he organized a

cricket match annually between Lok Sabha and the Rajya Sabha members and between the Members of the Parliament and journalists and other groups Mr. Goswami was active in Assam's theater world. He was also associated with the Indo-Soviet and Indo-GDR Friendship Society.

An able politician

Mr. Goswami won the Lok Sabha election with a thumping majority as a Congress Party candidate. He lost the polls in 1977, but he was immediately nominated to the Rajya Sabha in 1978. During the Assam Agitation, he joined the *Asom Gana Parishad* and won the 1985 Lok Sabha elections from Guwahati Constituency as an AGP candidate. He was again elected to Rajya Sabha in 1990 and became the Union Minister of Law and Justice and Steel and Mining in the National Front Government.

As a politician, Mr. Goswami was outspoken and forthright in his criticisms. He took keen interest in the Parliamentary proceedings and was a vocal advocate for the North-Eastern region, particularly Assam. He participated in all parliamentary proceedings with ability, vision and great oratory skills and commanded respect from all the sections of the House. As a leader of the Indo-Arab Friendship Association, Mr. Goswami attended the Non-Governmental Organizations Conference of the United Nations Organisation on Palestine in Geneva and was the main speaker from India. The Late Yasser Arafat in his speech hailed Mr. Goswami as “the Crusader of Peace” from India.

A crusader for election reform

What Mr. Goswami will be remembered for most is his invaluable work as leader of the Dinesh Goswami Committee on Electoral Reforms, launched to cleanse our democratic system of its various ills. The National Front accepted most of the committee's recommendations in principle and certain major Amendments were proposed to the Representation of People's Act 1950 and 1951. The committee submitted its reports within a two-

month time frame and among its major recommendations was the state Funding of Elections. It also recommended the delimitation of parliament and legislative assembly constituencies. Mr. Goswami was keen on Multi-Purpose Identity Cards. He believed Identity Cards for Elections purposes only will be unsuccessful because they would be required every 5 years and voters may not have the incentive to maintain or preserve them. He firmly believed that the identity cards should have multipurpose use to be relevant.

The delimitation and the Multi-Purpose Identity Cards, are applicable for the State of Assam today given the demographic changes discussed in the *Sarbananda Sonowal versus Union of India* judgment as reported in (2005) 5 SCC 665.

A crusader for Assam

One of Mr. Goswami's major contributions to Assam was to ensure Assam's place on the Planning Commission's "Special Category States" list. That allowed the State to receive planned financing in the ratio of 90 percent Central Grant and 10 percent State resources. This accelerated the State's economic development and helped allocate resources towards infrastructure development.

Mr. Goswami's strong plea in Parliament for Liberal Central Financial Help for flood victims resulted in much needed flow of funds to the state. Because of his advocacy, the Government of India, appointed Brahmaputra Board and their network of Monsoon Warning Systems in the upper reaches of the Brahmaputra extending up to Bhutan and Arunachal Pradesh.

Mr. Goswami was very concerned about the development of communication and infrastructures for Assam's economic progress. His speeches in Parliament during the period of Assam Agitation were masterstrokes. He forcefully argued for the expulsion of illegal Bangladeshis from Assam. He wrote an article in "*Parliamentary Chronicle*" published on December 15 1980, captioned "*Assam is not for Burning*". In the article, he

forcefully and convincingly argued the wilful neglect and planned injustice to Assam and its people by the Central Government since independence.

A day after his first stint in the Rajya Sabha, an article published in the Statesman said:

Many would be missed for many reasons. So long as the Assam tangle was in the news, Mr. Dinesh Goswami (Ind.) was one member who tried to reason with the Government with passion. There was no rancour in his voice, only sadness. But he was highly persuasive. He argued the case of his people ably and more than made up for some other members.

It is difficult to describe Mr. Goswami's many talents.. Great writer Khushwant Singh, once said:

I cannot think of another person who I liked so much on my first meeting with him, learnt to respect and admire in the few meetings we had and felt as great a void in my life, when I heard of his tragic death and realized that I would see him no more as I did with Dinesh Goswami.

Mr. Goswami was a prolific writer and his published works include *Chinaki Prithibi (a poem), Anchalik Baishyama aru Khudra Jatisatta, Kuhelika, Rashtra Sangha, I have kept my word, Pal and Degeneration of Poll Proces*. His numerous speeches in the Parliament have been compiled by Kumar Deepak Das, former Member of Parliament in his book: “*Dinesh Goswami- An Ardent Patriot*”. Mr. Goswami's untimely death, at age 56 was a huge loss for Assam and India. On his death, Sri Birinchi Bhattacharyya rightly said- “*Akao Ebar Hari Gol Swadesh.*”

We understand death for the first time when it snatches the ones we love. I was in my chamber the morning of June 2, 1991 when I received the terrible news of Mr. Goswami's passing in a tragic road accident. Though traumatized and unable to reconcile, I somehow managed to console myself, meditating on the words of these great philosophers:

Milton - "Death is the golden key that opens the palace of eternity."

Richter - "The darkness of death is like the evening twilight; it makes all objects appear lovelier to the dying."

H. Hubbard - "Whom the Gods love die young no matter how long they live."

John Ruskin - "The highest reward for man's toil is not what he gets for it, but what he becomes by it."

Endnotes:

- ¹ Justice Biplab Kumar Sharma has been a former Judge of the Gauhati High Court. In his practice, he was the Standing Counsel of the N.F Railway both in the High Court as well as in the Central Administrative Tribunal, Guwahati Bench. Presently practicing in the Supreme Court of India, the services of Justice Sharma have been utilised by the Government of India as a Chairman of the Committee for Implementation of the Clause 6 of the Assam Accord.

“Eminent Lawyer, Astute Statesman” Remembering Surendra Nath Medhi

Justice Sanjay Kumar Medhi¹

Introduction

A self-made disciplinarian, a Senior Counsel of immense repute, a devout follower of *Sankardev*, a writer, a Statesman, a perfectionist, and a politician by chance, that was my father – Surendra Nath Medhi. To attempt to write about this multifaceted personality is akin to the Assamese idiom ‘*Hati Mari Bhurukat Bhoruwa*’ i.e., to put an elephant in a miniscule container. He loved society more than self. As a successful Counsel, his mission was to make the courts accessible to all and educate the masses that the court of law was their merciful guardian before whom all were equal. This piece is an endeavour to project the impressions of some of Mr. Medhi’s seniors in the profession, contemporaries and few other eminent lawyers. Their views were expressed in a commemoration volume brought out in 2001.

The Early Years

Born in 1932 to Bharat Chandra Medhi and Sarojini Medhi in Bhawanipur village, of Barpeta, Assam, Mr. Medhi finished his schooling in the village. He then migrated to Guwahati and enrolled in the prestigious

Cotton College, where he acquired a B.Sc. degree. Thereafter he joined the University Law College at Guwahati and obtained his LLB degree. All along, he excelled in his studies and had great respect for his teachers. His teachers respected him back. Mr. Medhi lost his father in his childhood and faced many economic hardships. He supported his family by working as an Assistant in the Gauhati High Court. After completing LLB, he started practicing sometime in 1961 and joined J.P Bhattacharjee's chamber. Shri Bhattacharjee, a doyen of the profession, described Mr. Medhi in the following words:

I was enrolled as an advocate of the High Court in March, 1954 and only after five or six years of my profession, Suren joined me as my Junior in the Chamber attending every morning and evening taking responsibility of our legal works then.

...

During the span of not less than twenty years when he was a part and parcel of my professional life, he drafted innumerable petitions to be filed in the High Court with great care, pain and devotion and one has to admit without any hesitation that such petitions were eventually of good standard and attracting everybody connected with the profession.

The system that we used to follow in those days that Medhi had to go through all connected papers of the case then thoroughly applying his independent mind and I had to glance such papers independently in order to appreciate the point involved in the case. After joint discussion, we prima facie formed an opinion regarding the points involved in a particular case and ultimately the petitions used to be drafted by Medhi applying his independent mind in the light of the discussions held by us jointly. Even now I feel that the course followed by us was of great help and for the best interest of the case concerned and eventually helped the cause of justice. Such faithful discharge of duties with devotion and sincerity are rarely found and there was no grudging at all as regards the hours spent for such work with very little consideration for the ultimate financial gain in the process.

The number of petitions drafted by him dealing with case of varied subject and the note left by him in each case, was always the basis of the arguments and submission made in the court. The copies of such petitions are preserved in the chamber even now. He had a great love for the High Court Bar and the tiny library of the High Court Bar. He managed the High Court Bar for many years as the Secretary of the Bar Association with sincerity. Eventually considering his standing in the Bar and ability as a lawyer, the High Court designated him as a Senior Advocate recognizing his merit.

The law journals from 1970 to 1986 bear testimony to the large number of cases Mr. Medhi was involved in and his gift in crafting arguments. He initially assisted his senior and subsequently argued these cases as Counsel.

In Law and Public Life

I would like to narrate a personal experience when my Jetha (elder brother of my father) took me to visit one of my father's school teachers in Barpeta. It was a wintry evening and there was no electricity and the only source of light was a lantern. I found a sufficiently frail, aged person on the bed, who was excited to see us. After blessing me, he shared what he had very tenderly preserved, a few notebooks with my father's handwriting. In this connection, it would be apt to quote Late Justice D. Pathak, retired Chief Justice of the Hon'ble Orissa High Court from his article in the Commemoration Volume:

It was warm and bright summer afternoon toward the fag end of nineteen fifties. After taking my class in the Gauhati University Law College as I was proceeding towards our teachers' Common room, I could sense that somebody was following on my heels. No sooner than I took my seat in the Common room, a good-looking young man with amiable demeanour stood before me and introduced himself as Surendra Nath Medhi hailing from Bhawanipur, a village near Barpeta town. I asked him to take a seat. As he was feeling shy of sitting in front of me, I insisted that he should take his seat which he ultimately did. That was my first

encounter with Late Medhi.

After the first introduction, I noticed that Medhi was attending the classes regularly with rapt attention. Whenever any topic on a subject was discussed in the class Medhi used to raise several valid and seminal questions arising out of the topics under discussion for clarification which I liked very much. At that time, I could visualize that the young man was very discerning having absorbing interest in diverse matters taught in the class. I became optimistic that Medhi would do well in life.

By the time I was elevated to the Bench of the Gauhati High Court as a permanent Judge. Medhi had his firm foothold in the legal profession. On many occasions he appeared before me either in Single Bench or in Division Bench. In some matters he appeared before me alone and in others with his Senior. While going through the briefs at the time of hearing, I found that the briefs prepared by Medhi were very well drafted with short narrative highlighting the salient and fundamental issues for discussion of the case in hand. Medhi appeared in a large number of cases challenging the orders of preventive detention, mostly arising out of All Assam Students Movement during 1978-83 on illegal foreigners issue. In many of these cases he appeared on behalf of the student activists as well as the Karmachari Parishad free of charge. I found to my satisfaction that Medhi was well groomed as a dependable Advocate of repute.

Even while he was busy in the legal profession, he found time to write many articles on legal problems as well as on burning issues concerning the people and the society. These articles were published in different newspapers.

Late Medhi was a multidimensional person. He was an able and competent Advocate, a good administrator and devoted to many welfare activities and programmes for the society, educational institution and religious association. He was the President of All Assam Lawyers Association, President of the Governing Body of S.B. Deorah College, Ulubari,

Guwahati, President of Srimanta Sankar Kristi Bikash Samity, Guwahati, President of Madhupur Satra Committee and Working President of Sankardev Sanskriti Samaj, Puri Project. In all the above institutions, his significant contributions for the growth and development have the stamp of sincerity and unstinted devotion.

Late Anil Ratan Borthakur, Senior Advocate and another doyen in the profession had expressed a similar view in the following words :

It is a pleasure to be close to some persons who are endowed with special qualities of head and heart and who are interested in doing something good not only for him but also for the community as a whole. Late Medhi is one of those persons who, as a man, had an aura around him and left an ever-lasting impression amongst those who know him closely during his life time.

His activities in the Gauhati High Court Bar earned for him a lot of respect, love and affection not only from the members of the Bar but also the members of the Bench as well. Because of his unique contribution to the Bar, he was entrusted with the job of Joint Secretary of the Gauhati High Court Association, a position which he held for long seven years from 1971-72 to 1977-78 and, thereafter, he was elected Secretary of the said Bar for Six year from 1980-81 to 1985-86. He was the pioneer of creating awareness among the people about their basic civil rights and became the General Secretary of the Citizen Civil Liberty Association.

Late Pabindra Nath Sharma, a very respected and reputed counsel of Guwahati expressed some views in his article written on Late Medhi and a part thereof is extracted below:

He was a man of versatile genius. He absolutely devoted his time in through study of Law and legal profession with a firm determination and he was loved and respected by one and all. He had a hold in Law. He had a hold in politics and in literature also.

He was greatly inspired in his legal profession from no less than a person like Mahatma Gandhi.

Medhi emulated Babu Rajendra Prasad who happened to be the President of the Constituent Assembly. Previous to becoming the President, Dr. Rajendra Prasad practiced in Calcutta High Court when he had a roaring practice, but leaving his lucrative profession, he jumped into the freedom struggle led by Mahatma Gandhi and courted arrest in the freedom movement and was imprisoned in jail. He was then the prominent member of the Indian National Congress.

Medhi also found men like Jawaharlal Nehru, Pandit Motilal Nehru and Barrister Fakaruddin Ahmed of Assam, Dr. Jagadish Chandra Medhi, Desh Bhakta Tarun Ram Phookan and Karmabir Nabin Chandra Bardoloi leaving their practice and joining the Freedom Movement.

Ultimately, Young lawyer Medhi also followed their path and gave up his roaring practice in the interest of service to the people and he joined politics and was elected as a member of the Assam Assembly and got a berth in the Cabinet as an Education Minister.

During his short life time Medhi performed a commendable job to the Assamese Literature when he transformed Mahapurasha Sankardev, the Vaishnavit poet and writer of 'Kirtan-ghosha' into simple Assamese version so that even a common villager could follow the tenets of Kirtan-ghosha.

He also contributed many articles in English and Assamese. He was greatly involved in many social and religious organisations in various ways."

Eminent Senior Advocate Shri Vijay Hansaria of the Hon'ble Supreme Court had the following words to say:

At the time when I joined the legal profession I went to pay regards of Medhida. He led me affectionately into his in-chamber canceling temporarily

all his appointments. I was given both love and regards as a “learned friend”. His approach towards me had echoed the words of Sharswood declaring that let it be remembered and treasured in the hearts of every student of law that no man can truly be a great Lawyer who is not in very sense of word a “good man”. I could observe and perceive that “good man” of Sharswood in Medhida at that point of initial proximity. He blessed me with numerous sagacious advice as to how to address the court, what to say and when to say in course of a hearing and allied matters as to intricacies of advocacy.

I had the occasion to appear against this doyen in one or two cases. During the course of hearing, he was highly conscious about the decency and decorum of the court; and for that he would never interrupt and used to wait for his turn as a “polished” counsel. I remember, that when the case was over, he patted me on my back and said I have “done good”. He had a great sense of applaud and appreciation which not only enthused me but all the upcoming lawyers who were devoted to their profession. This encouragement enhances the morale and motivation of the juniors especially when it emanates from a lawyer of Medhida’s stature.

He was one of the few advocates who was instrumental in steering and guiding the Foreigner’s Movement of Assam in the 80’s lead by All Assam Students Union. He motivated the leadership by being the Charles Hutton’s concept of a “bold lawyer”. He motivated the leadership in a gainful manner which lead to formation of the Assam Gana Parishad. Not only that he remained constantly with these motivated group of students to his last breath living up to his sense of responsibility.

Medhida was not only an eminent lawyer but he also proved himself to be an astute statesman and a politician. A politician with principles. He as a Law Minister was highly cautious about the case having significant bearing on the State. He would personally ring me up and make enquiries regarding progress of the cases as if the matters had personal bearing. It was made available quickly. He was not a person who would tolerate losing a

case due to lapse of legal or bureaucratic process:

Medhi da remained the same humble, amiable and courteous person throughout his life. Even after he became the Law Minister he remained the same person devoid of any sense of ego. He rather became more humble and submissive.

My father personified the saying “Cleanliness is next to Godliness”. Be it 6 a.m. or 11 pm he would always be neat and tidy, properly attired with his hair back brushed. There was hardly a day when he didn’t shave. In fact, even while travelling by train, he used to have a bath and shave before his morning *proxongo*. Mr. Medhi was a teetotaler. Whenever he visited a *Naamghar* or attended any religious function, he would adorn the traditional Assamese *Suria* with Kurta and the *Cheleng/Gamusa*. He would start the day with a *proxongo* in our *Naamghar* and recite the *Kirtan/Naam Ghokha* for at least half an hour despite his busy schedule as a lawyer and later as Minister.

As a stalwart of the Citizens’ Civil Liberties Association, he was involved in numerous litigations as a Counsel and moved innumerable habeas corpus petitions in Gauhati High Court as well as the Supreme Court. He did this all-pro bono. He was closely associated with legal doyens such as Tarkunde, Soli Sorabjee, F. S. Nariman and K. K. Venugopal, to name a few. He was featured as the “Man of the Week” in the national news magazine “The Week” in the year 1998.

Mr. Medhi was instrumental in publishing “Know Your Rights”, a booklet on the fundamental rights of the citizens. He did this at the peak of the Assam Movement when citizens suffered through sleepless nights because of the horrific treatment of youths by an adverse administration. The booklet was distributed for Rs 2/-only with the objective of getting the buyers more involved in the movement.

Even as a Minister, Mr. Medhi’s first love was law. In the words of Late Y K Phukan, another Senior Advocate:

Mr. Medhi's dedication to the profession is worth mentioning and emulating. Even after becoming a Minister, he regularly read the law journals and kept himself abreast of the latest development of law. As a Law Minister, he made it a point that necessary facilities be provided to the Judicial Officers.....

Politics was not Mr. Medhi's forte. But the vortex of events dragged him to that arena. He was in the mud of politics but that mud did not stain his mind and he was without meanness which is the hallmark of today's politician...

Mr. Medhi simply loved his constituency Bhawanipur and its people. He single handedly established a college in Bhawanipur in early 1980s to cater to the needs of the local people. Today, Bhawanipur Anchalik College is a highly respected College in the district. He initiated an effort to permanently solve the perennial flood problem of Bhawanipur by changing the course of the river *Pohumara* ever so slightly. He was responsible for dismantling the existing structure of the *Bhawanipur Xotro* and giving it a new look.

On September 3, 1998 when Assam was preparing to celebrate the day with Sports activities on *Abhiruchi Dibokh*, Mr. Medhi left for his eternal journey. His death was untimely and premature. At that time, he was the Minister of Law and Veterinary. His passing left a void in the legal and political fields, which can perhaps never be replaced.

Endnotes:

- ¹ Justice Sanjay Kumar Medhi is presently Judge, Gauhati High Court. Before being elevated, he was a Senior Advocate and served as Additional Advocate General, Assam. He is the son of Late Suren Medhi, Senior Advocate of the Gauhati High Court and formerly Law Minister of the Government of Assam.

Reference List:

Deka, K.C, ed. (2001). *S.N Medhi: Commemoration Volume*.

PILLARS OF STRENGTH

“Going down the Memory Lanes”

Justice M.C. Pathak and his times

Kalyan P. Pathak¹

Recently during a phone conversation with Nilay Da, an esteemed Senior colleague whom I adore as an elder brother, I was asked to pen down my childhood memories of the doyens of our profession who were associated with my late father, Justice M.C. Pathak. Frankly speaking, as a child busy playing hide and seek and catching butterflies, I never had any idea about the standing of these lawyers, until I joined the Bar.

Looking back at my childhood days, the first person that comes to my mind is Fakhruddin Ali Ahmed. He was a regular visitor to our home and my father’s small single-room chamber. Fakhruddin uncle was a tall man, very often wearing *churidar-pajama* and he would visit us in a black car. Because of the way he dressed and his broken Assamese as a child, I thought him to be a rich *Kabuli walla*. In those days, *Kabuli wallas* moving in cycles was a very common sight in the streets of Guwahati. Fakhruddin uncle was a soft spoken man and sometimes we would request him for a ride in his car to which he always readily agreed. He stayed in the Lakhtokia area of Guwahati and later on, as I grew up, I came to know that he was my father’s senior in the profession. Now when I look back, I realise how informal the relationship was between a senior and a junior at the Bar those days. Since

my father did not have a car, his senior, Fakhruddin uncle took the trouble of coming to the chamber to take the briefings from my father.

I vividly remember Fakhruddin uncle visiting us for dinner after submitting his nomination papers for the Presidential Elections. While having dinner with us, he told us that it would be his last dinner with us in our house and none of us understood the implications of his statement. Soon, he got elected as the President of India and I along with my brothers and sisters visited him. But truly, he could never visit us for dinner again as he died while in office. Once, when he visited Assam as the President of India, we were taken on a formal visit with him to the Circuit House by Mr Baruah, his private secretary. We could hardly meet with him for half an hour.

Fakhruddin Uncle was very involved in our lives. As a child, I was full of ailments and I remember him taking me in his car to be seen by his relative Dr.Hamiduddin Ahmed. After his demise, we almost lost contact with my uncle's family but when I moved to Delhi in 2004 as the Additional Solicitor General of India, his son, Badar (Justice Badar Durrez Ahmed), who was a Judge in the Delhi High Court, reconnected and re-established the relationship between the two families.

I still remember the other regular visitors to my father's single room chamber; A.M. Mazumdar, Sri N.N. Saikia (father of Justice Soumitra Saikia), Late Gunajit Talukdar (father of Advocate Biswajit J. Talukdar), Tarun Ch. Das (Akon Mama) - (father of Senior Advocate Diganta Das) and on Sundays, they were joined by K.M. Lahiri (Habu Uncle). If for some reason, my father's chamber was crowded, all of them would convene in our *pakghor* (kitchen), where they would either be eating fried fish or sipping tea prepared by my mother until they were called one by one by my father. Each one of them was so loving that I am short of words. Nagen Saikia Uncle and A.M. Mazumdar Sir, would save me from my mother's beatings. Whenever I was not inclined to go to school, I would hide behind Mazumdar Sir. Nagen Saikia Sir was also really attached to my father and used to offer me toffees as a reward for going to school. Mazumdar Sir was always full of

jokes and very often I found my unusually strict father scolding him for being casual with the briefs. One night, I even overheard my father telling my mother, “This Muhib, only God knows how far he will carry on in the Court with his jokes, it gives me a lot of mental pressure.” Next morning, when I disclosed this to Mazumdar Sir, he immediately rushed into our kitchen, where my mother was, to enquire about the exchange. Although, out of context, there are two incidents that happened later with Mazumdar Sir that I will never forget. By that time, I had become the Advocate General of Mizoram and Mazumdar Sir had a tough case, appearing on behalf of a petitioner. As he entered the Courtroom of Justice J.N. Sarma, he asked me if I am appearing against him and would be opposing the interim prayer. Justice J.N. Sarma had a habit of opening every case with a question, “What is this?” I told Mazumdar Sir that I won’t oppose him if he can audibly say, “This is a case” and stop thereafter. He agreed and as the matter was called out and Justice Sarma said, “What is this?” Mazumdar Sir replied, “This is a case.” Justice Sarma looked at him and Mazumdar Sir replied, “My Lord, I understand now that the Advocate General will not oppose my Interim Prayer, so let it be passed for the time being”. He got a favourable order. The second time was when we appeared before Justice Chelameshwar in a Division Bench and I as the Advocate General opposed Mazumdar Sir in an interim prayer. Mazumdar Sir’s reply was, “I know the Advocate General from the time he started wearing clothes and he should not oppose me today.” That submission became the basis for the Court to insist on me to be reasonable with a senior person. Now that I think of it, no one can beat Sir’s presence of mind inside the Courtroom.

The other person that I remember from my father’s chamber is Gunajit Talukdar, Advocate Biswajit Talukdar’s father. He was a very soft spoken person and wore a constant smile on his face. On Sunday mornings, whenever Mr. K.M. Lahiri (Habu Uncle) and Mr. Talukdar uncle visited, I used to notice that both of them would go out of my father’s chamber to our *pakghar*. They would catch a bite and then go out to the street for a smoke. My brother and I followed them to their smoking joint for another reason. Habu uncle would invariably buy two whistles for us from the pan shop and ask us

to whistle them. He would compete with us by drawing long puffs on his cigarette, as long as the sound of the whistle. Both Lahiri uncle and Talukdar uncle were very close to my maternal uncle, who also lived with us. In fact, Habu uncle's father, Advocate Hemanta Lahiri, was the best of friends with my maternal grandfather.

Another person who impressed us as little children was Late Hareswar Goswami who was extremely fond of good food. He had a habit of taking the advocate's children for picnics in his Bolero. I remember that he stayed in Shillong for some time and used to take us to the hill station during our summer break. We would be hosted at the MLA Hostel with all the luxuries of that time.

Sometimes, my father used to take us to the homes of Late Rajani Goswami, Late Dharma Sarma (father of Justice Jiten Sarma) and Late Joy Choudhury. During these social visits, I used to notice from my father's body language that he held them in the highest regard. Same was the case when my father visited the residence of Dr. Jagadish Chandra Medhi. Much later, as an advocate, I came to know that these people were the distinguished founding pillars of our Bar. After I started practicing as an advocate, when I mentioned these visits to my father, he only said, "these advocates not only had the legal knowledge, but were endowed with big hearts, honesty and integrity, which are essential factors for an advocate to shine in life."

The most fascinating personality in my life, the one who influenced me to choose the legal profession was Dr. Jagadish Chandra Medhi (Jetha). He was a hefty and tall man and us children were friendlier with him because my father respected him a lot and more importantly, he always spoke with us in the *Barpetia* accent. Whenever he visited our home, I noticed that my father would immediately stop attending to his clients out of respect for him. As I grew up, I understood the reason for this special courtesy extended to Jetha. When my father was in the Gauhati Jail for his participation in the Quit India Movement, he was expelled from the Government High School in Barpetta. Jetha had by then returned from USA after completing his Ph.D.

in Law. He along with Late Prasenna Lal Choudhury established a private high school, “Barpeta Vidyapeeth” (now Government School), for my father and other boys, who were expelled from regular schools for their involvement in the freedom movement. Jetha became the headmaster of the school. Later on, when my father became the Chief Justice, he was the Advocate General of Assam.

When my father was a Judge and later a Chief Justice, I often noticed that after his return from the courts in the evenings, there would be an *adda* in our drawing room. This would be over by 6 PM, after which my father would go straight to his office to review cases for the following day. These *addas* were presided over by Jetha, who would occupy the easy chair meant for my father. He would be surrounded by my father, sitting in a *murab* (stool), Pulakananda Das, Kanak Sarma, Biren Goswami, Ramesh Choudhury, B.M. Goswami, Kalipada Sen and many other advocate colleagues of theirs, whose names I fail to recall now. Occasionally, Justice D.M. Sen also came wearing a hat. The most troublesome issue for me and my brother was that during these sessions, Jetha would call either one of us to massage his great big legs, while he remained busy in conversations. It was quite the punishment for a child. If after some time, one of us asked for his leave, he would suddenly get hold of our small hands and make us touch his chest, which was permanently swollen because of a pace-maker. We were mortally scared of that encounter.

In one such *adda*, I overheard them speaking about a young adult whose father was close to my father. The young man was in jail for being a member of a revolutionary organisation. My father and his friends discussed how to bring the young man back into the mainstream and change his ways. My father was very annoyed and I heard him telling everyone that the “boy belongs to such a talented family, I am going to give him stringent conditions.” Jetha, interrupted and said that stringent conditions may be counterproductive for such an intelligent young man. But, my father was adamant with his stand. Later on, when I grew up, I came to know that the boy was Nilay Dutta, our most revered Senior Advocate of the Bar. The reason I am penning this

down is to reflect on how the Bar and Bench in those days came together in their collective social responsibility. Another person for whom my father had heaps of love and respect was Late S.K. Ghose, who also occasionally joined the *adda*. One day, my father took me to his residence and at the end of their discussion, Mr. Ghose asked me what I would like to become when I grew up. I told him that I wanted to become an Advocate, thinking that he would appreciate that. His reaction was not what I expected. “Why do you want to spoil your life like your father?”, he asked: “*In a lawyer’s life when you need money, you don’t have money and when you have it, you cannot spend it.*” When we left for home, I asked my father what he thought about what Mr. Ghose said. My father only smiled and did not reply.

Until the time my father became the Chief Justice, Judges and the Chief Justice were not provided with any Government or High Court vehicles. Very often, I saw Justice D.M. Sen drive on his own to take my father to the High Court and drop him back after work. Colleagues were more like family then.

My father had a few close friends, among whom was Late Salil Dutta (retired Judge of the Calcutta High Court). My father and Justice Dutta studied together in school and college and used to address each other as *toi* (third person singular). Incidentally, both of them became Judges in the same year, although, in two different High Courts. Justice Dutta had one son, Dipankar, who is at present, the Chief Justice of the Bombay High Court. He also had a daughter, Satarupa, who married Justice Amitava Roy, who has now retired as a Judge of the Hon’ble Supreme Court. I still remember how before his daughter’s marriage, Dutta Uncle came to Guwahati for a day to discuss with my father about his prospective son-in-law, who hailed from Dibrugarh. Two other close associates of my father were Late Dharma Deka, father of Late Advocate Abhijit Deka, and Late Biseswar Sarma, father of Senior Advocate Atul Sarma. They came to our house often and since they had a very serious disposition. I did not dare go near them.

My father also shared a very close camaraderie with Late Advocate Sarat

Das, father of Senior Advocate, A.K. Das. After his untimely death, I saw my father playing a guardian’s role to his four children. Late Purnandu Choudhury was also a very good friend of my father’s and since he had a very loving personality, my brothers, sisters and I took full advantage. When I joined the Bar, he specifically brought the lawyer’s band and collars for me from London.

Among the other stalwarts of the profession who used to respect my father and frequent our home were J.P. Bhattacharjee, N.M. Lahiri, Dr. B.P. Saraf (Dr. A.K. Saraf’s father). Dr. B.P. Saraf was also my father’s student. After I completed my LL.B, father took me to Late J.P. Bhattacharjee’s residence to join his chamber. I was not a very serious student. There I met a very disciplined, meticulous and workaholic senior P.K. Goswami (Rubul Da). Rubul Da was a very loving person, especially towards me, maybe because his youngest sister, Mamu (Advocate Lira Goswami), who was of a similar age as me, literally grew up in our house.

Many names, many thoughts, many stories come to my mind when I look back on my childhood. More so when I see the present justice delivery mechanism. But, since Nilay Da asked me to be brief, I am going to honor his wishes and close here. I look forward to interacting one day with the members of Studio Nilima and sharing more anecdotes.

Endnotes:

- ¹ Kalyan P. Pathak is a Senior Advocate practicing in the Supreme Court of India and various High Courts including the Gauhati High Court. He is a former Additional Solicitor General of India and has also served as Advocate General of Mizoram.

“Schooling Judges”

Remembering Surendra Mohan Deka and his contributions to the Assam Judicial Academy

Justice I.A Ansari¹

Born on March 1, 1933, at Chenga in Barpeta, Assam, Surendra Mohan Deka, popularly known as S.M Deka began his early education at Government Barpeta High School. Following his school education, he embarked on a journey to Gauhati where he studied at Cotton College. After completing his graduation in science, Mr. Deka moved to Calcutta and obtained a masters in science from Calcutta University. He returned to Assam and studied law at Earle Law College. Mr Deka joined the chamber of the legendary Kiranmoy Lahiri, an eminent lawyer in Gauhati, who went on to become a Judge of the Gauhati High Court and then demitted office as the Chief Justice. While practicing law, Mr. Deka also worked as a part time lecturer at University Law College.

Having cleared the Assam Judicial Service exams, Mr. Deka joined as an Assistant District and Session Judge at Dhubri in 1973 and rose to the rank of District & Sessions Judge. He served in many districts across Assam. He was appointed to the post of Legal Remembrancer-cum-Law Secretary, Government of Assam and retired on superannuation in 1992.

After his retirement, he was appointed a lecturer in North Eastern Judicial

Officers Training Institute known as NEJOTI. NEJOTI was an institution for training Judicial Officers of the North Eastern States which fell within the jurisdiction of Gauhati High Court. At that time, there were altogether seven states within the jurisdiction of Gauhati High Court; Assam, Nagaland, Manipur, Meghalaya, Tripura, Mizoram and Arunachal Pradesh.

Acknowledging his quest for knowledge and his ability to train judicial officers, Mr Deka was appointed as Director of NEJOTI. Recognising his legal expertise, the Government of Assam appointed him as a member of the 6th Pay Revision Commission of Assam. Apart from being a legal expert, Mr. Deka was a prolific writer, who contributed many articles/ write-ups on various social and legal issues.

I came to know Mr. Deka around 1985-86, when he came to my hometown Tezpur as an Assistant District and Sessions Judge. Very soon, people in Tezpur recognized him as a good human being and a knowledgeable man in law. He became very fond of me; but it did not affect his functioning as a judge. I distinctly recollect that I had argued a civil appeal before him. My case rested on a judicial precedent, which could not be effectively met by the learned counsel for the respondent in the appeal. Surprisingly enough, Mr. Deka dismissed my appeal referring to some judicial decisions. I felt highly annoyed and thought that he ought to have given me an opportunity to offer my views and arguments on the same judicial decisions, which were not referred to by either parties or by the court. Had I been given a chance, I believe, the outcome would have been different.

Though everyone was happy with Mr. Deka as an Assistant District and Session Judge, he was transferred and posted as the Chief Judicial Magistrate. Mr. Deka became extremely popular at the Bar as a kind hearted, strict and knowledgeable man of the law. I distinctly recall that even the prisoners were very fond of him because of his caring and attentive nature. He left such a mark on Tezpur that when he was finally transferred, several members of the Bar wept at his farewell. I came to know later that even the inmates of Central Jail shed tears when Mr. Deka visited the jail to say goodbye.

It's very rare for a judge to be this popular among lawyers and inmates alike. But this sums up the personality of Mr Deka.

Justice J. Chelameshwar, Chief Justice of the Gauhati High Court, told me during a Management Committee of NEJOTI meeting that it was sad that a person as knowledgeable and straightforward as Mr. Deka did not reach the Bench. Mr. Deka's interest and his quest for knowledge of law remained alive till his last breath. When he was unwell, I visited him and found him still preoccupied with current affairs of the law. Many times, Mr. Deka had differences with the judgments pronounced by High Courts or Supreme Court. He was critical of two of my judgments and he expressed his disagreement by writing articles in the law journal.

There were few judges who felt that Mr. Deka was being impertinent by critically examining their judicial pronouncements. One of the Chief Justices of India once issued a judgment in a case relating to the Prevention of Food Adulteration Act. Mr. Deka wrote a critical analysis of this decision. This annoyed the judge and he told me that Mr. Deka was trying to teach the Judges of the High Court. I am firmly of the view that law is a subject which nobody can claim to have mastered and Mr. Deka was within his right and proprietary when he criticised the judgment academically. Such a scholar is not only very difficult but impossible to find. I always considered him my guru. I learnt a lot from him and never felt hesitant to call him on the phone or visit his residence to discuss doubts on positions of law. Mr. Deka always amazed me with his analytical capabilities and his current knowledge of law and capacity to analyse the law.

His death left a huge, irreparable void in the legal field. I doubt another man of his personality and calibre will ever be in the Assam Judicial Academy. Of course, there have been many luminaries in the academy, but none has been able to reach Mr. Deka's stature. I envy all who got to work with him closely and learn from him. My heart bleeds for him and I pray, very sincerely and honestly to the Almighty for his soul to rest in eternal peace.

Endnotes:

- ¹ Justice I.A Ansari is a former Judge of the Gauhati High Court and has also been the Chief Justice of the Patna High Court. At present, he is the Chairperson, Punjab State Human Rights Commission.

NILIMA : A Journal of Law and Policy

Published by

Studio Nilima: Collaborative Network for Research and Capacity Building

Printed at

Bhabani Offset and Imaging Systems Pvt. Ltd.
7 Lachit Lane, Rajgarh Road, Guwahati 781007, Assam
Ph: 0361-2524056, 2528155

Editor

Mr. Justice Brojendra Prasad Katakey
Former Judge, Gauhati High Court

Copy-editor

Mr. Anubhab Atreya

Disclaimer

The views and opinions expressed in the articles
are those of the authors and do not necessarily reflect the official policy
or position of Studio Nilima.

Terms of Copyright

The copyright of these works rests with Studio Nilima.
Reproduction in any other publication or any other form is encouraged only
after prior written approval from Studio Nilima.

© Studio Nilima, 2021

ISBN: 978-81-936514-0-7

Address for Communication:

Editor

Nilima: A Journal of Law and Policy
Studio Nilima
C1, Damayanti Mansion, Satya Bora Lane
Dighalipukhuri East, Guwahati-781001
Ph: 0361-2970487
e-mail: info@studionilima.com



STUDIO
নীলিমা

COLLABORATIVE NETWORK FOR
RESEARCH AND CAPACITY BUILDING



ABOUT STUDIO NILIMA

Studio Nilima is a not for profit research collective based in Guwahati. It seeks to be at the forefront of engaging and initiating dialogues on the contemporary public policy concerns of the northeast of India. It brings together lawmakers, thinkers, learners, policy makers, academicians and practitioners from across the arts to unfold new ways of learning, thinking, research and practice.

