A JUDICIAL REVIEW

The bonds of loyalty in my father's chelas were so great that they were transmitted with equal intensity to the next generation of grand chelas. Justice Sethuraman imbibed his admiration and veneration for my father from Subbaroya Iyer his 'Prathama Sishya'. He had the privilege of watching my father play the role of one of the principal architects of the Indian Constitution. He paid his tribute through an article in the Madras Law Journal, a judicial review enriched by warm human sentiment and emotion.

I wish to thank my friend Ravi Narayanaswamy for his kind permission to reprint this article for private circulation by the Alladi Centenary Foundation.

ALLADI RAMAKRISHNAN
5th October 1989

Editor's Note

Justice V. Sethuraman was a junior of M. Subbaroya Iyer, who although not a junior of Sir Alladi, considered himself to be his disciple in law. Subbaroya Iyer had been a student of Sir Alladi in the history classes at the Madras Christian College. The term 'chela' that Ramakrishnan uses above, is a Sanskrit word in Hinduism which means a student, but it emphasises a special bond between the teacher and pupil akin to that of a father and son.

In his article, Justice Sethuram emphasises Sir Alladi's lectures on "The Constitution and Fundamental Rights" delivered in 1953, and quotes profusely from those lectures.

Krishnaswami Alladi

ALLADI KRISHNASWAMI IYER - AN ARCHITECT OF OUR CONSTITUTION*

by *Justice V. Sethuraman*

This is the centenary year of the birth of Dr. Sir Alladi Krishnaswami Iyer, a great legal luminary who brightened the legal firmament for nearly four decades. Sir C. P. Ramaswami Iyer, a senior contemporary of his and himself a great lawyer and statesman described him as "one of the most successful lawyers of his generation, who possessed an unrivalled knowledge of Case Law - Indian and foreign - as well as a firm grasp of juristic principles. His reputation was not confined to the State of Madras (then the Madras Presidency) and his professional services were in requisition all over India."

In recognition of his legal eminence, he was nominated a member of the Constituent Assembly. Rare indeed is the opportunity available to any jurist to draft the Constitution of any country and it was given to Sir Alladi to be blessed with such an opportunity. He was one of the architects of our Constitution. If one goes through the eleven volumes of the Constituent Assembly Debates, one would find evidence of the awe and respect he commanded from all sections of the House. The main and important feature of this Assembly was that the discussion and voting did not proceed on party lines. Most of the available talent was drafted into the House. The Constitution is thus a document representing the consensus of the finest brains employed in the process.

Speaking of his own role in the framing of the Constitution, Dr. Alladi observed:

"As a member of the Drafting Committee, in spite of my indifferent healih, I took a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestions for the consideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft, for reasons of health, I could not take part in any of its deliberations and I can claim no credit for the suggestion as to the modification of the draft" (see Vol. 7, Constituent Assembly Debates, p. 334 to 337).

He took a leading part in the general discussions and deliberations especially regarding Fundamental Rights and Directive Principles. It would be useful indeed if our Universities prescribe a study of the Constituent Assembly Debates as part of the curriculum dealing with the Constitutional Law. The students would then have the necessary background of the deliberations which shaped the fina1 form that the Constitution took. The study would also have an educative value to bring out the objective outlook of most members and the high level of debate.

To illustrate the thinking of the Drafting Committee on a few problems, it would be useful if some excerpts from the speeches of Dr. Alladi both in the Constituent Assembly and outside are extracted. He had planned to deliver a series of six lectures under the auspices of the Institute of Politics founded in memory of Rt. Hon'ble V. S. Srinivasa Sastri. He could deliver only two and they have come out in the form of a book entitled "The Constitution and Fundamental Rights" published posthumously in 1955 with some notes and appendices provided by (his eldest son) Mr. Alladi Kuppuswami who has recently retired as the Chief Justice of the Andhra Pradesh High Court.

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We may first take up Article 136 which invests the Supreme Court with a general power to grant speeial leave to appeal from any judgement, decree, determination, sentence or order passed or made by any Court or Tribunal in the territory of India. There is an exclusion of jurisdiction over the decisions by any Court or Tribunal constituted by or under any law relating to the Armed Forces. There was a demand that the High Court should be invested with a power to grant a certificate of fitness for appeal to the Supreme Court in all cases involving questions of law.

In dealing with the relevant Articles, Dr. Alladi spoke as follows:

"This (Article 136) gives a very wide power to the Supreme Court. There again it will to some extent depend upon the discretion that is exercised by the Supreme Court. There is absolutely no reason why the Supreme Court should not grant special leave if the case is of sufficient importance." (See C.A.D., Vol. 8, pp. 59S596.)

Objecting to the demand for a general right of appeal on any question of law, Dr. Alladi observed: "You have a right of appeal, a right to seek the intervention of the Supreme Court when fundamental rights are involved. You have the right to seek intervention by way of special leave". He pointed out that the Supreme Court was being invested with criminal jurisdiction also and that "unless Courts were to be the sporting field of litigants, there is absolutely no point in multiplying the right of appeal." He contrasted the powers of the Supreme Court with those in other democratic countries and stated: "The Supreme Court of India has wider powers than the highest court in any other known federation including that of the U.S.A., where the Supreme Court is not a general Court of Appeal." He did not approve of any further enlargement of its jurisdiction as a regular Court of Appeal on all questions of law. The way Article 136 is being invoked nowadays is not dealt with here as it is not relevant to this discussion. Suffice it to say that the Article is by and large responsible for the arrears in the Supreme Court and the Court's jurisdictian is invoked more often successfully as if it is a Court of Appeal in Rent Control, Labour and other matters.

He envisaged however a future when in the provinces of India, 'Collegiate Courts' would be established and "the intervention of the High Court diminished and the Supreme Court made merely a Court of ultimate appeal in these matters to see that errors are set right".

He explained the content of the provisions relating to the Supreme Court in the Sastri Memorial Lectures, and added:

"Whether these articles providing speedy and effective remedies would prove of lasting good to the State or to the individual citizen aggrieved would to a large extent depend upon whether they will be utilised for the redress of genuine grievances or whether these remedies will be abused by the profession and the citizens affected, and whether the Courts will encourage citizens in invoking the jurisdiction of Courts in all sundry and frivolous matters. It is hoped that after certain main principles are settled in regard to the enforcement of these rights by the decisions of Courts, there will be less tendency to abuse the procedure and the remedies provided for in the chapter." (See pp. 11 and 12.)

It is indeed a sorry state of affairs that the High Courts and the Supreme Court carry a large backlog of matters mainly because of the writ jurisdiction being invoked and that the burden is such that most other matters have to wait a decade and more before they

could be taken up and decided.

It would be a monumental task to examine how he approached the several other articles in so far as they are discernible from his speeches and lectures. It would be possible here to touch on only one or two matters of importance or interest. There has been a pronounced conflict in the interpretation of the provisions in Part III relating to the Right to Property particulary in the matter of compensation. In explaining Article 3 as it originally stood, Dr. Alladi said:

"On the one side it has been urged that the expression 'compensation' by itself carries with it the significance that it must be equivalent in money value of the property on the date of the acquisition, i.e., its market value. On the other side, it has been urged that taking the clause as it is, it refers to the law specifying the principles on which and the manner in which the compensation is to be determined. The expression 'just' which finds a place in the American and in the Australian Constitutions is omitted in section 299 (of the Government of India Act 1935) and in Article 24 (= 31 in the Constitution as adopted in November, 1949). There is also no reference to any principles and the manner in which the compensation is to be determined at all in the Australian or in the American Constitutions. The principles of compensation by their very nature cannot be the same in every species of acquisition. In formulating the principles, the legislature must necessarily have regard to the nature of the property, the history and course of enjoyment, the large class of people affected by the legislation and so on. The legislature is clothed with plenary power to formulate the principles and the manner of compensation.

It is an accepted principle of Constitutional law that when a legislature, be it the Parliament at the Centre or a Provincial legislature, is invested with the power to pass a law in regard to a particular subject matter under the provisions of the Constitution, it is not for the Court to sit in judgement over the act of the legislature. The Court is not to regard itself as a super-legislature and sit in judgement over the act of the legislature as a Court of Appeal or review. The Legislature may act wisely or unwisely. The principles formulated by the Legislature may commend themselves to a Court or they may not. The province of the Court is normally to administer the law as enacted by the Legisla1ture within the limits of its power. Of course if the legislation is a colourable device, a contrivance to outstep the limits of the legislative power, or to use the language of private law, is a fraudulent exercise of the power, the Court may pronounce the legislation to be invalid or *ultra vires*. The Court will have to proceed on the footing that the legislation is *intra vires*. A constitutional statute cannot be considered as if it were a municipal enactment and the legislature is entitled to enact any legislatlon in the plenitude of the power confided to it."

The interpretation placed on Article 31 read with Article 19(1)(f) and the consequences thereof culminating in the right to property losing its position as a fundamental right and its transposition to Article 300-A is a matter of recent history and needs no recapitulation here. The sequel is an eloquent testimony to the imperfections in human expression and to the fact that the unexpected happens even in the application of well established principles.

The makers of the Constitution had to effect a reconciliation between the individual's right or liberty and social obligation or the society's right over the individuals. It is this attempt at reconciliation that was responsible for formulation of rights in Article 19

followed by a power to the legislature to impose reasonable restrictions over the exercise of those rights. Dr. Alladi has referred in his Sastri Memorial Lecture to the American Supreme Court reading a number of restrictions into the right expressed in wide and general terms and thought that the restrictions on the right set out in the Constitution expresses in a compendious form what is recognised in any well ordered State and added that there was danger in leaving the Courts to read the restrictions "according to idiosyncracies and prejudices of individual judges".

In the context of Article 19, Dr. Alladi observed: "Normally speaking the Courts would lean in favour of the legislation and proceed on the footing that the restrictions imposed by a popularly elected legislature are reasonable though if *ex facie* restrictions are arbitrary or alien and repugnant to the subject matter of the legislation, the Court would not hesitate to pronounce the restrictions unreasonable. That would be a step which the Court would not lightheartedly undertake." By and large the Courts have been keeping these concepts in view. If in applying these principles, Courts find the need for interference in particular matters, the reaction of the Executive as seen in several countries including the U.S.A. is one of annoyance or irritation.

With regard to preventive detention, there are persons who feel that it is an anachronism in a chapter on Fundamental Rights as there can be no fundamental right to be detained. The view expressed in this connection by Dr. Alladi was:

"It is agreed on all hands that the security of the State is as important as the liberty of the individual. Having guaranteed personal liberty, having guaranteed that a person should not be detained for more than 24 hours, the problem necessarily had to be faced as detention has become a necessary evil under the existing conditions of India. Even the most enthusiastic advocate of liberty says there are people in this land at the present day who are determined to undermine the Constitution and the State and if we are to flourish and if liberty of any person or property is to be secured unless that particular evil is removed or the State is invested with sufficient power to guard against that evil, there will be no guarantee even for that individual liberty of which we are all desirrous. That is the object of the provision."

Quite a number of the members of the Constituent Assembly had been the victims of the law relating to preventive detention. It is they who felt the need for writing such a provision into the Constitution. Its place in the chapter on Fundamental Rights has been justified on the ground that certain essential safeguards have been built into the Articles so that the detenu's rights are to the extent possible and necessarily safe-guarded. It the same provision is to be formed in an ordinary statute, then it would be easy to amend the provision and do away with the safeguards, it is this aspect which has been emphasised by Dr. Alladi.

In regard to the flexibility of the Constitution he remarked : "An easy and flexible method of amendment has been provided for. But this does not mean that amendment must be undertaken lightheartedly. The people will then have no work to do but mending and amending the Constitution."

On this aspect there is an observation of Sir C. P. Ramaswami Iyer in his Foreword to the lectures of Dr. Alladi, which is worth quoting and which testifies to his characteristic farsightedness:

"Although Dr. Krlshnaswami Aiyer comforts himself with the thought that the procedure for amendment of this Constitution is satisfactory, there will be quite a few who believe that there is a danger of this power being exercised too often with a view to get rid of the effect of inconvenient judicial decisions."

One less known aspect personal to Dr. Alladi may be referred to here. He was himself the proprietor of an estate. He was of the firm view that the Madras legislation passed for abolishing the estate was in some respects incomplete and inequitable. He however suggested to the Drafting Committee a way out of the threat of invalidating, which the legislation was facing. The suggestion which was accepted was to provide that all preconstitution bills reserved for the assent of the President could not be called in questlon in any Court of law. Though attempts were yet made to challenge its validity, he did not join the opposition to the Abolition Act and rested content with receiving the small amount paid as compensation (Cf. his speech in the Assembly on 12th September, 1949).

This attitude is in marked contrast to what one hears of persons who before they translate their socialistic outlook, arrange their affairs in such a way that the future legislation does not touch them. We may end this note with reference to what he said about the Constitution as a whole:

"A brief survey of the Draft Constitution must convince the members that it is based upon sound principles of democratic government and combines within itself elements necessary for growth and expansion and is in line with the most advanced democratic constitutions of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world."

The Madras bar can take legitimate pride in its having sent one of its brightest jewels to adorn this country with a Constitution which deserves to be handled with care and caution by all concerned. It is up to all of us to work it propeply and not to allow it to be tinkered with too often.