

JUSTICE AT HEART

LIFE JOURNEY OF
JUSTICE
V.R. KRISHNA IYER

SALMAN KHURSHID
LOKENDRA MALIK



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Foreword

 I am glad to contribute this Foreword to the book, *Justice at Heart: Life Journey of Justice V.R. Krishna Iyer*, authored by Mr Salman Khurshid and Dr Lokendra Malik. This book is a welcome contribution in memory of a great judge who served the country his best till his last days.

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

Justice Krishna Iyer's elevation to the Supreme Court took place within a few months of Justice A.N. Ray's appointment as Chief Justice of India, superseding three seniormost judges. The entire Bar of India was up in arms against the supersession of judges following the momentous decision in the *Kesavananda Bharati case*¹, curtailing the power of Parliament to amend the basic structure of the Constitution. After Justice Krishna Iyer had moved to Delhi as a member of the Union Law Commission, his friends and admirers started pressing for his elevation to the Supreme Court. Chief Justice S.M. Sikri did not recommend his name. A section of the Bombay Bar was against the move due to his political antecedents, including his ministership in the Communist government² in Kerala. Amidst vehement protests, he was

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

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

elevated as a Supreme Court Judge on 17 July 1973.³ Very soon his bitter critics became his ardent admirers appreciating his equipment, ability, qualities and sense of justice.

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

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

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

High Court by a reasoned judgment dismissed the writ petition. A Letters Patent Appeal to a Division Bench of the High Court also failed. Notwithstanding the concurrent findings of fact against him, he filed a Special Leave Petition and also filed a stay petition. In the conference I had with Mr Setalvad, I mentioned to him towards the end, about the stay petition and requested him to strongly oppose the stay. Mr Setalvad smiled and said, “will things go that far?” Pleased with his reaction, I left. The petitions were posted for hearing before the court of Mr Justice Krishna Iyer. Contrary to our expectations, Mr Justice Krishna Iyer was impressed with the fact that the enquiry was conducted *ex parte* and all that the petitioner was praying for was only an opportunity to present his case and nothing more. In his turn, Mr Setalvad emphasised that both the courts below had given a concurrent finding of fact to the effect that the petitioner was given a reasonable opportunity but he had not availed it. Therefore, it was not a fit case under Article 136 for the Supreme Court to interfere. After hearing both sides, Mr Justice Krishna Iyer dictated an unusual order to the effect that the order of removal that had been already passed by the government against the petitioner would be regarded as provisional and the government would give the petitioner one more opportunity to appear and present his case. Thereafter, it would be open to the government either to confirm the provisional order or to rescind or modify it. Both sides were reconciled to the order and went away with the feeling that each side had substantially won the case.

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

When I think of his unusual orders I cannot help but refer to the momentous stay order⁴ in Mrs Indira Gandhi’s election appeal. The Supreme Court was in vacation when Justice Jagmohan Lal Sinha of the Allahabad High Court had pronounced the historic judgment allowing the election petition filed by Mr Raj Narain and unseating Smt Gandhi, the then Prime Minister of India. I was keenly watching that case because during the pendency of the election petition before the High Court, the Central Government had issued an

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

ordinance amending the Representation of the People Act, 1951 with retrospective effect so as to cover all pending cases in order to get over the judgment of the Supreme Court in the *Amar Nath Chawla case*⁵ regarding election expenses. The Supreme Court had held that expenditure incurred by a political party sponsoring a candidate in connection with his election had to be treated as expenditure authorised by the candidate for the purpose of Section 123(6) of the Act. Mr Raj Narain assailed the validity of the ordinance in a separate writ petition impleading the Union of India as the first respondent and Smt Indira Gandhi as a co-respondent. The Union of India engaged the late Mr Niren De, Attorney General to defend the amendment before the Allahabad High Court and I was engaged to instruct Mr De. The arguments went on for a few days before Mr Justice Sinha. Mr Shanti Bhushan appeared for the petitioner. Mr Raj Narain himself used to attend the court every day with quite a few of his followers. Justice Sinha, while allowing the election petition of Raj Narain and unseating Smt Gandhi, dismissed the writ petition and upheld the impugned amendments to the Representation of the People Act, 1951. However, he granted unconditional stay on the operation of his judgment in the election petition for a limited period to enable Smt Indira Gandhi to approach the Supreme Court.

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

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

Although the outcome of a case or the terms of the final order/judgment was by and large unpredictable, Justice Krishna Iyer's possible attitude towards a variety of issues was broadly predictable. If it was a labour matter, his sympathies would always be with the workmen. His judgment in the *Bangalore Water Supply and Sewerage case*⁶ giving the widest possible meaning to the expression "industry" will remain a landmark judgment in labour law, notwithstanding its far-reaching effect on several small scale industries and charitable organisations. It was a common judgment covering a large number of cases. I appeared for the workmen in one of these cases and even then I had not expected that the judgment would go to the extent of including almost every conceivable organised activity within the definition of "Industry". Shortly thereafter, I was to appear for a Gandhi Ashram against its workmen. The question involved was whether piece-raters were entitled to paid holidays like regular workmen. The Industrial Tribunal found that the Gandhi Ashram was not in a position to bear any additional burden. In fact, the Ashram was surviving mainly on the contributions made by the Central Government from time to time. Even so the tribunal ordered payment of wages to piece-rates even for holidays observed by the Ashram. The matter came up before a Bench presided over by Mr Justice Krishna Iyer. To add to my difficulties, Mr Justice D.A. Desai was also on the Bench. His attitude towards workmen was just the same—in fact he was more vocal about it. I was fully conscious of the uphill task before me. Being aware of the acute financial position of the Ashram, I also felt that the recent judgment of the Supreme Court on "Industry" might eventually lead to the closure of all such establishments which are basically meant to serve the people in the rural areas with a missionary spirit. Within minutes the appeal was disposed of. The only indulgence I could get from the Bench was the facility of payment of arrears which had accrued over the years in convenient instalments. The representatives of the Ashram who were present at the hearing saw the writing on the wall. They left with the consolation that at least this much of consideration was shown to the Ashram.

I was once engaged to appear in a service matter for a retired audit officer. The order of his compulsory retirement was under challenge. My client after losing the case in two rounds before the High Court, confidently remarked, "It is the last key of the bunch that is sure to open the lock." The Supreme Court granted the special leave. My client

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

was fairly well known for his knowledge of astrology. On the day when his appeal was to be heard finally, he came to me in the morning and predicted his success in the appeal. He was jubilant that the appeal was posted before Justices V.R. Krishna Iyer and R.S. Pathak. He said that according to his stars the arguments would be brief, the judgment would be pronounced on the same day and it would be in his favour. I thought his predictions were inspired by wishful thinking, but I was wrong. When the case reached, within a few minutes of my arguments, the judges felt that the impugned order of retirement was not passed by the competent authority and immediately called upon the other side to reply. The government counsel could not satisfy the court. The stenographer was called and the judgment was dictated on the spot. My client beamed with joy because not only he succeeded in the appeal but also his prediction had come true. I had the satisfaction that at least an astrologer could predict Mr Justice Krishna Iyer's verdict correctly.

In a case pertaining to land ceiling, he would not only lean in favour of the legislation, but also find fault with the government for not implementing the law quickly. I remember once when a stay petition filed by a landowner came up before Justice Krishna Iyer in a land ceiling matter, he passed an order directing my client, the respondent government, to distribute the land already surrendered by the landowner to the weaker sections in terms of the legislation and report compliance to the court within three months or so.

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

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

Justice Krishna Iyer's concern for the "small man" in land acquisition cases was voiced in the *Gurdial Singh case*⁸ when he observed, "It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter."

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

If it was a case of reservation of posts or seats in favour of Scheduled Castes, Scheduled Tribes or Backward Classes, he was clear in his mind that as far as possible the reservation should be upheld. In the celebrated case, *State of Kerala v. N.M. Thomas*⁹, I assisted the Solicitor-General of India. The question was whether Article 16(1) itself permitted classification of Backward Classes so as to enable the State to confer certain benefits and grant some concessions in favour of persons belonging to Scheduled Castes and Scheduled Tribes, etc. Throughout the hearing, one could see how passionately he was committed to the cause of the weaker sections and how keen he was to uphold the rule in question. His judgment is a classic exposition of the constitutional commitment to weaker sections. At the same time, it exposes how all reservations made under Articles 15(4) and 16(4) are being absorbed by the uppermost layers of these classes. Thus, the concept of exclusion of creamy layer was born.

In fatal accident cases, Justice Krishna Iyer was in favour of strict liability. As a member of the Law Commission he was a signatory to the 51st Report wherein several recommendations have been made for law

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

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

9. (1976) 2 SCC 310.

reform. However, Parliament is not accustomed to move in such matters quickly. In the *Darshana Devi case*¹⁰, he observed:

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

Dismissing the Special Leave Petition filed by the State of Haryana, he said:

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

Justice Krishna Iyer's deep and abiding respect for life and liberty is reflected in many of his judgments. His concern for prisoners was indeed great. As a Minister in Kerala, he had personal knowledge of prison conditions. In several judgments he made constructive and useful suggestions for prison reforms and issued directions for providing more humane treatment to the prisoners within the framework of the existing law. In the *Sunil Batra case*¹², he observed, "Karuna is a component of jail justice. Basic prison decency is an aspect of criminal justice." In this judgment he formulated extensive guidelines for the exercise of the power under Section 56, Prisons Act in the matter of imposition of bar fetters on convicts. A little later, in the *Prem Shankar Shukla case*¹³, he ruled that handcuffing of undertrial prisoners is permissible only in very exceptional situations. His passionate plea for amelioration of prison conditions and for early prison reforms will be remembered for a long time to come.

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

11. *Ibid*, 238.

12. *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494, 509.

13. *Prem Shankar Shukla v. Delhi Admn.*, (1980) 3 SCC 526.

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

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

While reducing the sentence to 18 months and imposing a fine of Rs 1200 with a direction to pay it over to the victim of cheating, he suggested transcendental meditation propagated by Maharishi Mahesh Yogi as a corrective to the convict.

In an abduction case from Bihar, a girl of 17 years was pushed into a cab and carried away by the abductor for trading in flesh. She was enslaved in a village and later offered for marital sale. She somehow escaped and reported the matter to the police. The accused was convicted and sentenced to three years' rigorous imprisonment by the courts below. The convict approached the Supreme Court for special leave to appeal. Dismissing the petition, Justice Krishna Iyer observed:¹⁵

All that we can do is to reject the pleas with indignation and follow it up with an appeal to the State Governments of Bihar and of Haryana to put a special squad on the trail and hound out every such offender so that the streets of our towns and cities may be sensitized and safe after sunset for Indian womanhood.

In the *Kunjukunju case*¹⁶, the appellant developed sexual relations with a girl and as an offshoot thereof, killed his innocent wife and two

14. *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC 287, 289.

15. *Devki v. State of Haryana*, (1979) 3 SCC 760.

16. *Kunjukunju Janardhanan v. State of Kerala sub nom Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646.

children brutally at the dead of night when they were asleep. Justice Krishna Iyer found there was no material to hold that the accused was a social security risk altogether beyond salvage by therapeutic life sentence. According to him, “a course of anti-aphrodisiac treatment or willing castration is a better recipe for this hyper-sexed human than outright death sentence.” In the *Rajendra Prasad case*¹⁷, he reiterated his belief in yoga:

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

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

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

Modern neurology has unravelled through research the traumatic truth that aggressive behaviour, even brutal murder, may in all but not negligible cases be traced to brain tumour. In such cases cerebral surgery, not hanging until he is dead, is the rational recipe. This factor is relevant to conviction for crime, but more relevant to the irrevocable sentence of death.

17. *Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646, 687.

18. *Ediga Anamma v. State of A.P.*, (1974) 4 SCC 443.

19. *Dalbir Singh v. State of Punjab*, (1979) 3 SCC 745, 754.

Justice Krishna Iyer's approach to appreciation of evidence in rape cases is realistic. In the *Krishan Lal case*²⁰, he observed:

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

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

In the *Moti Ram case*²², speaking for the court, he endorsed the view that the Magistrate should always bear in mind that monetary bail is not a necessary element of the criminal process and remarked, "if a Magistrate is satisfied after making the enquiry into the condition and background of the accused that the accused has his roots in the community and is not likely to abscond he can safely release the accused on order to appear or on his own recognizance."

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

Justice Krishna Iyer's judgment in the *M.S. Gill case*²³ is a landmark concerning the principles of natural justice. M.S. Gill was the

20. *Krishan Lal v. State of Haryana*, (1980) 3 SCC 159, 161.

21. *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240.

22. *Moti Ram v. State of M.P.*, (1978) 4 SCC 47, 54.

23. *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405.

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

Fair hearing is thus a postulate of decision-making cancelling a poll, although fair abridgement of the process is permissible. It can be fair without the rules of evidence or form of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law.

It is one of the rare cases where the Supreme Court was persuaded to declare the law in general public interest while holding that the

24. *N.P. Ponnuswami v. Returning Office*, AIR 1952 SC 64.

writ petition filed under Article 226 was not maintainable. In view of the law declared by the court, the appellant could get relief from the High Court in the election petition. The election held pursuant to the impugned order was set aside by the High Court.

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

Justice Krishna Iyer's style of writing judgments was inimitable but natural. At times, it may appear that he was influenced by the American way of writing judgments. The text of his judgments was an impressive blend of law and literature. Often the point at issue is picturesquely presented in the very first paragraph itself. In this respect, as in some others, he was a trend-setter. His vast learning is reflected in his writings. His judgments abound with quotations from Mahatma Gandhi, Jawaharlal Nehru, Jayaprakash Narayan, Anatole France, Winston Churchill, President Carter and a host of others. For example, in *Commr. of Expenditure Tax v. P.V.G. Raju*²⁸, one of the questions to be considered was whether politics is a profession or an occupation. He observed:

25. *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405.

26. *Ediga Anamma v. State of A.P.*, (1974) 4 SCC 443.

27. *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471, 474.

28. (1976) 1 SCC 241, 244.

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

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

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

As a judge, Justice Krishna Iyer tried to provide the healing touch in his own way. In his judgments and speeches he sometimes referred

29. *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104, 107.

to the immortal words of Jawaharlal Nehru about Mahatma Gandhi's mission of wiping every tear from every eye. He observed in the *Eswara Iyer case*³⁰:

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

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

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

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

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

Justice Krishna Iyer appeared to be a terribly lonely man after the tragedy of his wife's death. He was visibly affected by the loss of her

30. *P.N. Eswara Iyer v. Supreme Court of India*, (1980) 4 SCC 680, 694.

31. *Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646, 689.

32. *Ibid.*

33. *Bachan Singh v. State of Punjab*, (1979) 3 SCC 727, 736.

34. *Jagmohan Singh v. State of U.P.*, (1973) 1 SCC 20.

35. (1979) 4 SCC 93.

36. H.M. Seervai, *Constitutional Law of India*, vol. III (2nd Edn.) vii.

companionship. In his Gandhi Peace Foundation Lecture, 1976, he observed in passing, "And I, if anything, am a flimsy faggot once feebly afire but now mostly extinguished by tragic personal circumstances."³⁷

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

Justice Krishna Iyer was basically a hardcore rationalist. He initially shared the platform with Abraham Kovoor to challenge the spiritual powers of Sri Sathya Sai Baba. But after he came in contact with Sai Baba, he became his admirer. He participated in public functions without any reservations. Whenever he was invited by the United Lawyers Association of which I was the founder president, he readily accepted the invitation, participated in our functions and made them a success. The inaugural address delivered by him at the symposium on conditions of judiciary with special reference to the subordinate judiciary impressed one and all.

A term of over seven years on the Bench of the Supreme Court must be a strenuous engagement considering the amount of reading and writing involved. Justice Krishna Iyer left the Supreme Court having made a great impact. His values, his approach, his methods, his remedies and recipes, his language and style of judgment-writing have no doubt raised some controversies. However, the fact remains that during his tenure numerous litigants who may be collectively described as the "weaker sections" who might as well have lost their cases on one technical ground or the other before other Benches, got relief from him in the name of social justice. Several lives condemned to death have been saved by him. He sowed some seeds of thought which took root even before his retirement and became a source of inspiration to some of his successors.

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

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

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

I congratulate the authors for writing a nice book on Justice Krishna Iyer, which I am sure, would be warmly welcomed by all—judges, lawyers, professors, students and even by laymen.

New Delhi
14 April 2016

— P.P. RAO
Senior Advocate
Supreme Court of India

38. In his autobiography, Nariman writes, “Whilst Subba Rao had an obsessive concern with Fundamental Rights, Krishna Iyer’s concern was broader—for the poor and down-trodden.” Fali Nariman, *Before Memory Fades: An Autobiography* (2010) 325.

Preface

Justice Krishna Iyer, in whose demise the Indian Bar lost a towering and somewhat mythical figure in the legal profession, was a remarkable multifaceted personality having experienced life from varied angles—as a lawyer practicing for a number of years in a subordinate court at Tellicherry, thereafter, at the High Court of Kerala as a judge, then as a Minister of the famous first Communist government of Kerala headed by Chief Minister E.M.S. Namboodiripad, as member of the Law Commission of India under the worthy supervision of Justice P.B. Gajendragadkar, and finally as a judge of the Supreme Court of India for more than seven years. Just short of a century he departed for his heavenly abode on 5 December 2014, without a moment of rest from the overpowering concern about humanity. His death is a big loss to the legal fraternity but his erudite judgments have made him immortal. The present volume is a tribute to Justice Krishna Iyer by two of his followers and admirers.

Justice Krishna Iyer was an internationally known public figure. The first encounter of Salman Khurshid, one of the authors of this book, with him was as a young lecturer at Oxford University in the late 1970s. Salman says that it was a gloomy and wet autumn morning when his lawyer friend Javed Gaya from Worcester College knocked on his study door and asked whether he would like to meet two eminent judges of the Supreme Court of India. They went down to the garden of Magdalen College and soon forgot the gloomy weather on meeting Justices V.R. Krishna Iyer and P.N. Bhagwati. Salman says that just then Professor H.L.A. Hart came strolling by and he was able to introduce them in what might be described as a fleeting handshake of jurisprudential

history! All three have made contribution to our understanding of law and judicial decision-making that cuts across time and space.

At the time of that first meeting Salman Khurshid had some idea of the remarkable mind Justice Krishna Iyer possessed not only from his unique judgments but also from Dr Rajeev Dhavan, who was also at that time teaching in England and with whom Salman had fascinating discussions on different issues pertaining to Indian law and politics. The Oxford chance meeting of Salman Khurshid led to further contact with the two eminent judges. He was able to persuade them to visit the university again for a Seminar on the Judicial Mind at which Professor Hart's inimitable successor to the Chair of Jurisprudence, Professor Ronald Dworkin, had the most enchanting exchanges with them. Professor Dworkin's work at that time concentrated on the "Rights Thesis" and the two judges had in their judgments articulated a web of rights for the disadvantaged and vulnerable sections of society in the form of public interest litigation. But whilst Dworkin's work was analytical, the approach of Justice Krishna Iyer and Justice Bhagwati was intuitive, emphasising perhaps the socio-cultural difference between the two common-law systems as indeed the stage of institutional development of Indian polity and democracy in the aftermath of the Emergency era *Habeas Corpus judgment*¹ of the Supreme Court, to which Justice Bhagwati was a party.

Justice Krishna Iyer was no ordinary soul, both in terms of his vast experience as an activist for the rights of all human beings as indeed his spirituality. Salman Khurshid had a rare insight into his soul searching reflections in his private conversations over the years as indeed through a visit on his company to Mentmore Towers, the seat of the World Government of the Age of Enlightenment presided by Maharishi Mahesh Yogi. Salman says that it was an interesting experience to see how easily someone who was naturally inclined to a scientific view of the world and was clearly influenced by scientific materialism took to people whose pursuit of a fulfilling life was "spiritual". Meditation, levitation and cogitation were being conducted in different parts of the sprawling estate as they sat down to a splendid banquet. The Minister for Natural Justice on Salman's right and the Minister for All Possibilities on the other, Justice Krishna Iyer, at the head of the table, no less in command than when he sat on the Bench of the Supreme Court of India.

1. *ADM, Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521.

The Mentmore visit was just one curious dimension of the remarkably varied and rich intellectual pursuits of the extraordinary judge: truly one to walk with aplomb amongst giants and greats but equally comfortable and comforting amongst the helpless and meek. If asked to sum up in one sentence the incredible personality of Justice Krishna Iyer one would simply say that he too wrote the Constitution through his judicial pronouncements enriching it immensely and indeed explicating the intent and aspiration of the noble framers, making it truly a living document of our nationhood. To borrow the words of great judge, in the land of the Daridra Narayana it cannot be a crime to be poor. It took a rich mind and even a richer heart to hear the cry of the poor. Justice Krishna Iyer was truly a messiah of the masses.

As might touch upon a brief life history of Justice Krishna Iyer, to be found at greater length takes in the book. Mr Krishna Iyer was born on 15 November 1915 in Palakkad, in Malabar region of the then Madras State, presently located in Kerala in southern part of India. His father Mr V.V. Rama Iyer was a leading criminal lawyer practicing at Thalassery district courts in Kerala. He had his education at the Basel Mission School, Thalassery, Victoria College, Palakkad, Annamalai University and Madras Law College. Upon starting legal practice in 1937 under the guidance of his father in the Thalassery courts, he used to appear for workers and peasants in several agrarian struggle-related cases became a well-known legal practitioner that attracted him ultimately towards politics. For protecting the interests of workers, he was also arrested by the police in 1948² but was released just after spending a month when the police failed to establish its case against him in the court. Professor George H. Gadbois Jr. states that Justice Krishna Iyer is the only judge of the Supreme Court who can claim to have been arrested by the police in Independent India and spent some time in prison.

Justice Krishna Iyer's political journey began in 1952 when he became a member of the Madras Legislative Assembly from Thalassery constituency as an independent candidate with the support of left parties and Muslim League. He participated in the proceedings of the Madras Legislative Assembly as an active member of the opposition party. It is said that the Assembly was then dominated by the Congress party having its government under the towering leadership of C. Rajagopalachari, popularly known as Rajaji, who had been the Governor-General of

2. V.R. Krishna Iyer, *Wandering in Many Worlds* (2009).

free India for a brief period soon before the commencement of the Constitution.

Krishna Iyer became the member of the first Legislative Assembly of Kerala in 1957 and became the Minister in the E.M.S. Namboodiripad government holding a number of portfolios such as Law, Justice, Home, Irrigation, Power, Prisons, Social Welfare and Inland Navigation. The Namboodiripad government was the first democratically elected Communist government not only in India but in the entire world.³ He was instrumental in passing several pieces of people-oriented legislations during his tenure as Minister in the Kerala government. As a Minister of Prisons, he made landmark reforms in that State that were widely appreciated. He had an experience of prison life which he utilised for the prison reforms.

The Namboodiripad government was dismissed by the Central Government under Article 356 of the Constitution just after two years of its formation in 1959, and thereafter, Krishna Iyer resumed his practice in the High Court of Kerala. He lost the 1965 Assembly election. On the initiative of Mr Menon, the then Chief Justice of the Kerala High Court, he was appointed a judge of the Kerala High Court on 2 July 1968. He graced the Bench of the High Court for three years and thereafter he was appointed as a member of the Law Commission from 1971 to 1973. He served the Law Commission under the supervision of Justice P. B. Gajendragadkar and was elevated as a judge of the Supreme Court on 17 July 1973, and retired on 14 November 1980 after an eventful career by delivering hundreds of erudite judgments.

Justice Krishna Iyer's elevation to the Supreme Court raised eyebrows and scepticism in many legal circles as he had a rich political background and was a friend of Mr Mohan Kumaramangalam, who was a powerful left-oriented politician and Minister in the then Central Government. Besides this the time during which he came to the Supreme Court was also difficult from many angles. The then Central Government had superseded three senior judges of the Supreme Court, namely, Justices Shelat, Grover and Hegde after the *Kesavananda Bharati judgment* and had appointed their junior Justice A.N. Ray as Chief Justice of India who had decided in favour of the government in *Kesavananda Bharati v. State of Kerala*⁴, while the three superseded judges had decided against the government. In such a polarised atmosphere, the government felt the

3. *Ibid.*

4. (1973) 4 SCC 225.

need to pack the court with judges who were sympathetic to its philosophy and who could endorse its pro-poor social justice and land reforms schemes. Justice Krishna Iyer was conspicuous for his social philosophy and of political background that made conventional people wary. Some Supreme Court judges and eminent lawyers such as Soli Sorabjee opposed his appointment saying that he was a leftist and would not be able to detach from politics. But soon all these doubts proved wrong and Justice Krishna Iyer was widely accepted as an extraordinary judge who followed law and the Constitution truly.

Mr Fali Nariman says that Justice Krishna Iyer wielded considerable influence on the thought processes of his colleagues also such as Justices P.N. Bhagwati and Chinnappa Reddy who shared his social justice mission with him. Along with such judges he interpreted Part III and IV of the Constitution liberally in favour of social justice schemes. They were articulate, sensitive and had a strong desire to translate the vision of the Constitution makers into reality. By 1980, Justice Bhagwati and Justice Krishna Iyer became senior justices and took the Supreme Court in a new direction while evolving radical principles. He carved out a special entrance for the destitute in the somewhat formidable portals of the Supreme Court argues Mr Nariman.⁵ Justice Krishna Iyer made the Supreme Court, the peoples' court, a court dedicated to the human welfare and growth.

It is pertinent to mention that Justice Krishna Iyer propounded the well-known public interest jurisprudence in the country as a silent revolution under which the old "locus standi" rules were jettisoned, epistolary litigation was encouraged and a strategy was evolved for giving relief to the disadvantaged and underprivileged who were not able to have access to justice. Procedural "due process" was given centre stage, overruling earlier decisions. Consequently this radical transformation gave high international stature and visibility to the Supreme Court of India. It was an explosive enlargement of the court's jurisdiction. Carving out a niche in the common citizens' heart whose respect and adoration for the higher judiciary knew no bounds, he became a voice of the poor and downtrodden in the Supreme Court and his judgments came as boon for millions of people who were not able to approach the courts due to their poverty, illiteracy and other reasons. He propounded what is described as the new poverty jurisprudence in the country in the form of Public Interest Litigation popularly known as PIL.

5. Fali S. Nariman, *Before Memory Fades: An Autobiography* (2010) 325.

It is equally pertinent to mention that over a period of seven years in the Supreme Court, Justice Krishna Iyer delivered about 700 judgments on a range of issues. Professor Gadbois says that he never delivered a dissenting judgment as he believed that such opinions did not serve any purpose. In this, he was in the company of Justice P.B. Gajendragadkar in his consent and approach. He did not strike down any law as unconstitutional. Once he struck down a subordinate legislation in *C.B. Muthamma v. Union of India*⁶ (*C.B. Muthamma*). But in most of the other cases, he interpreted laws and subordinate legislations so as to make them consistent with the Fundamental Rights scheme and other welfare provisions. Mr Anil Divan says that Justice Krishna Iyer's prolific judgments, his gentle and disarming demeanor as a judge, his unrivalled grasp of facts and law, his empathy for the disadvantaged, and his courtesy and consideration for the young lawyer appearing before him was a unique blend of judicial virtues.⁷ Mr Fali Nariman states that Justice Krishna Iyer's judgments are strewn with "purple-patches". He further says that Krishna Iyer loaded into his judgments a rich mixture of law, politics and common sense and also compassion. Krishna Iyer's judgments are well-known for their language and writing-style for which sometimes he also became the victim of criticism by some eminent jurists and even some of his brother judges in the court.

Justice Krishna Iyer was a fearless judge. Just after two years of his elevation to the Supreme Court, he delivered a bold and historical judgment in 1975 in *Indira Nehru Gandhi v. Raj Narain*⁸. His interim order of 24 June 1975—a day before the proclamation of Emergency on the night of 25 June 1975—is noteworthy. Some background to the case would be useful to narrate the episode. Mrs Indira Gandhi had won her Lok Sabha election in 1971 from Rae Bareilly constituency in Uttar Pradesh by defeating her rival Raj Narain. Mr Raj Narain challenged the validity of her election in the High Court of Allahabad alleging that she had used corrupt practices in her parliamentary election. Justice Jagmohan Lal Sinha of the Allahabad High Court tried the case and decided the matter against her for using corrupt electoral practices in her election and disqualified her to contest the election of the Lok Sabha for six years. This judgment understandably shook the nation and set the foundation of a difficult time.

6. (1979) 4 SCC 260.

7. Anil Divan, "A Unique Blend of Judicial Virtues", *The Hindu*, New Delhi, 15-11-2014.

8. 1975 Supp SCC 1.

Against the order of the Allahabad High Court, the then Prime Minister Mrs Indira Gandhi filed an appeal in the Supreme Court and engaged senior lawyer Nani A. Palkhivala. Mr Palkhivala was well known for his legal acumen and court arguments. The appeal particularly the stay application matter came up before Justice Krishna Iyer for adjudication when he was sitting as a vacation judge during the summer recess of the Supreme Court. It is said that before filing of the appeal the then Law Minister H.R. Gokhale, a good friend of Krishna Iyer, went to meet him at his residence but he politely refused to see him and indicated that the correct way was to file the appeal in the Registry which would be taken up promptly.⁹ Mr Nani Palkhivala requested to the court to grant unconditional stay against the order of the Allahabad High Court while Shanti Bhushan who was representing Raj Narain, strongly opposed the unconditional stay application. Justice Krishna Iyer did not grant an unconditional stay and only granted conditional stay by allowing Mrs Indira Gandhi to function as Prime Minister, attend the House, but without a right to vote following well-settled precedents.¹⁰ Indeed a wise decision as per the well-settled juristic principles.

But despite the conditional stay granted by the Supreme Court, the opposition continued its protests against Prime Minister Mrs Gandhi and prominent leaders such as Morarji Desai and Jai Prakash Narain demanded her resignation from the office of Prime Minister of India. To overcome all these difficulties created by the opposition Mrs Gandhi decided to impose National Emergency in 1975 and accordingly made a recommendation to the then President Mr Fakhruddin Ali Ahmed who signed on the proclamation. Along with the proclamation of Emergency came the suspension of the Fundamental Rights of the people under Article 359 of the Constitution. Thousands of people were detained by the police including leading opposition leaders such as Jaiprakash Narayan, Atal Bihari Vajpayee, L.K. Advani, Charan Singh and Morarji Desai under the Maintenance of Internal Security Act.

The 1975 internal Emergency brought huge political challenges for the people of the country. Some political scientists and legal scholars criticised the Emergency strongly. Unfortunately even the Supreme Court of India failed to protect the human rights of the people during this period and gave a green signal to the government to detain people

9. V.R. Krishna Iyer, *Wandering in Many Worlds* (2009).
10. *Indira Nehru Gandhi v. Raj Narain*, (1975) 2 SCC 159.

under the MISA.¹¹ It was only Justice H.R. Khanna who delivered a celebrated dissenting bold judgment which was widely appreciated by the people of the country but it cost him the chief justiceship of the country as he was superseded in 1977.

As a judge of the Supreme Court, Justice Krishna Iyer delivered hundreds of judgments on different issues pertaining to law and governance. Some of his landmark judgments include *Samsher Singh v. State of Punjab*¹², which interpreted the powers of the Cabinet vis-à-vis the President; *Maneka Gandhi v. Union of India*¹³, which gave a new dimension to Article 21; *Municipal Council, Ratlam v. Vardhichand*¹⁴ (*Ratlam Municipal Council case*); *C.B. Muthamma case*¹⁵; *Sunil Batra v. Delhi Administration*¹⁶ (*Sunil Batra*); *Prem Shankar Shukla v. Delhi Administration*¹⁷ (*Prem Shankar*); *Maru Ram v. Union of India*¹⁸; etc. Soli Sorabjee says that Justice Krishna Iyer pushed for reformatory theory, in contrast to deterrence theory in the criminal justice system. Thanks to his judgments, “jail birds” will no longer have to rot under degrading and inhuman conditions. The horrors of solitary confinement have been banished. No more will the jailer and his minions be the monarchs of all they survey, because prisoners now have rights and remedies to combat prison arbitrariness and assert their human dignity. Mr Sorabjee further states that Justice Krishna Iyer’s portrait should find a prominent place in every penal institution as the benefactor of numerous prison inmates. His opposition to capital punishment, which he regards as official murder, springs essentially from his deep reverence for the dignity and worth of every individual, however, downtrodden and despised. He has not minced words to express his abhorrence of society snuffing out the life of one of its members on the ground of retributive justice.¹⁹ He was a great messenger of human rights and dignity in the highest judicial tribunal.

After retirement, Justice Krishna Iyer took up people’s issues and championed causes of human rights and civil liberties across the nation fearlessly speaking out against the powers that be, whether on repression in Nandigram or on the privation of Taslima Nasrin. In retirement

11. *ADM, Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521.

12. (1974) 2 SCC 831.

13. (1978) 1 SCC 248.

14. (1980) 4 SCC 162.

15. (1979) 4 SCC 260.

16. (1980) 3 SCC 488.

17. (1980) 3 SCC 526.

18. (1981) 1 SCC 107.

19. Soli Sorabjee, “A Man for all Seasons”, *The Hindu*, New Delhi, 16-11-2004.

Justice Krishna Iyer sought to be the conscience-keeper of the Indian higher judiciary.²⁰ His post-retirement life was very busy and creative. He was associated with a number of academic and social organisations and became the part of various commissions and committees of the government. In 2002, he was part of the citizen's panel that inquired into the Gujarat riots along with retired Justice P.B. Sawant and others. He was conferred with Padma Vibhushan in the 1999. He had unsuccessfully contested to the election of the office of President of India against Congress nominee late R. Venkataraman in 1987. He also headed the Kerala Law Reform Commission in 2009. He had to his credit around 100 books, mostly on law, and several articles in leading newspapers and magazines in the country as well as overseas. After completing almost a century, he left for his heavenly abode on 4 December 2014.

Soli Sorabjee, a great jurist and a great admirer of Justice Krishna Iyer captures some of his multiple achievements in these words:

For a true assessment of Justice Krishna Iyer do not turn to learned authors on constitutional law and carping critics nor to bumptious bureaucrats and insolent administrators who are understandably annoyed by his insistence on the observance of the principles of fairplay in all areas of decision-making. Seek the answer from Jolly George and the tribe of debtors who have been spared the degradation of imprisonment for their genuine inability to satisfy money decrees passed against them because, according to Justice Krishna Iyer's judgment, 'to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling, because to be poor in this land of poverty is no crime.'

There are judges who are more erudite than Justice Krishna Iyer, judges who have an excellent memory for Supreme Court and House of Lord citations, judges who can master the record of a case in a few minutes. But the one essential quality that distinguishes him from his judicial brethren and puts him in a class of his own is compassion. He took human suffering seriously and dispensed justice with compassion, which he possessed in abundance.²¹

In the *Ratlam Municipal Council case*²², Justice Krishna Iyer conceived a larger role for the court as an ombudsman of the behaviour of a municipal body and admonished it for not performing its duties as laid down in the Act. Judicial activism to him did not mean being trigger happy

20. Fali S. Nariman, *The State of the Nation* (2013).

21. Soli Sorabjee, "A Man for all Seasons", *The Hindu*, New Delhi, 16-11-2004.

22. *Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162.

against legislation. Maximum deference to the will of the legislature which represents the people seems to have been the mainstay of his judicial policy. Most of his admonitions were addressed to the Executive asking them to do what the laws and the Constitution enjoined it to do. He wrote in a style that has been the envy of not just other jurists but also students of English literature. There was a flow—a natural ease—even if he used words like jejune that needed a dictionary to decode. He coined words too—and powerful ones at that. But that was all natural. His judgments have made him immortal.

Justice Krishna Iyer was an outstanding judge, and a legal philosopher of international repute who was a true connoisseur of ideas of and about justice. As mentioned earlier, almost singlehandedly, he rewrote the theory of crime and punishment in India by delivering historical judgments in *Sunil Batra*²³, *Charles Sobraj*²⁴ and *Prem Shankar Shukla*²⁵ cases that brought out a visible transformation in prison system of the country. As mentioned earlier along with Justice P.N. Bhagwati (as he then was), he devised the public interest litigation jurisprudence in the country that benefited millions of people. Professor Upendra Baxi, himself a doyen of jurisprudence, has suggested that Justice Krishna Iyer pioneered, with some other gifted brethren such as Justices Bhagwati, Chinnappa Reddy and Desai, the conversion of the Supreme Court of India into a Supreme Court for the people of India. He measured the distance between colonial and postcolonial law by laying down standards to civilise the administration of justice. He detested the barbarity of total institutions such as the police, prisons and custodial institutions. Even when sparingly administering capital punishment, he inveighed against it and believed in making it very rare as an alternative to its total abolition; he outlawed solitary confinement and putting undertrials or prisoners in manacles.

The present volume deals with the life-journey of Justice V.R. Krishna Iyer in the light of different politico-constitutional remarkable developments in the country and many of his landmark judgments. We have critically analysed different phases of his life particularly his judicial contribution and extrajudicial works. The book thus presents a unique assessment of his juristic profile and philosophical outlook. The book is presented in 12 chapters. Chapter 1 deals with the early

23. *Sunil Batra (2) v. Delhi Admn.*, (1980) 3 SCC 488.

24. *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104.

25. *Prem Shankar Shukla v. Delhi Admn.*, (1980) 3 SCC 526.

years of Justice Krishna Iyer while Chapter 2 focuses on his legal career. Matrimonial bliss of Krishna Iyer and Sarada is narrated in Chapter 3. Chapter 4 deals with the political life of Krishna Iyer as a legislator and Minister in the State of Kerala. Chapter 5 describes the times of Krishna Iyer as judge of the High Court of Kerala. Chapter 6 reflects Krishna Iyer's tenure as a member of the Law Commission of India. Chapter 7 looks Justice Krishna Iyer as a judge of the Supreme Court of India. Chapter 8 presents selected judicial reflections of Justice Krishna Iyer. Chapter 9 is focused on post-retirement life of Justice Krishna Iyer. Chapter 10 presents selected extra-judicial reflections of Justice Krishna Iyer. Chapter 11 highlights Krishna Iyer's association with professional and academic bodies, awards and publications. In the last chapter, the concluding remarks are presented by the editors.

This work has seen the light of the day because of cooperation of a number of friends and well-wishers. A word of thanks is must for all of them. First of all, we are highly thankful to renowned jurist Mr P.P. Rao for writing an erudite Foreword to the book that has enhanced its value as well as academic beauty. We express our heartfelt thanks to him. Besides this, many friends and well-wishers deserve our sincere thanks and appreciation. Our colleague Ms Daksha Sharma deserves our special thanks.

We place on record our sincere thanks to the publishers M/s Eastern Book Company, Lucknow for publishing this book within a short period with high quality. Mr Sumeet Malik, Mr Abhinandan Malik, Mr Vivek Verma, Mr Rajan Sharma, Mr Rajiv Agnihotri, Ms A R Lakshmithaa, Ms Chaitali Bose and, all from the Eastern Book Company deserve our thanks and appreciation for their excellent editorial work.

Last but not the least, we pay our sincere tribute to Justice V.R. Krishna Iyer, about whom this volume is published. Publishing a book in honour of such a great judge and a great human being is really a privilege and pleasure for ordinary souls like the editors.

We hope that the readers would find this book useful and interesting.

New Delhi
April 2, 2016

—SALMAN KHURSHID AND
DR LOKENDRA MALIK

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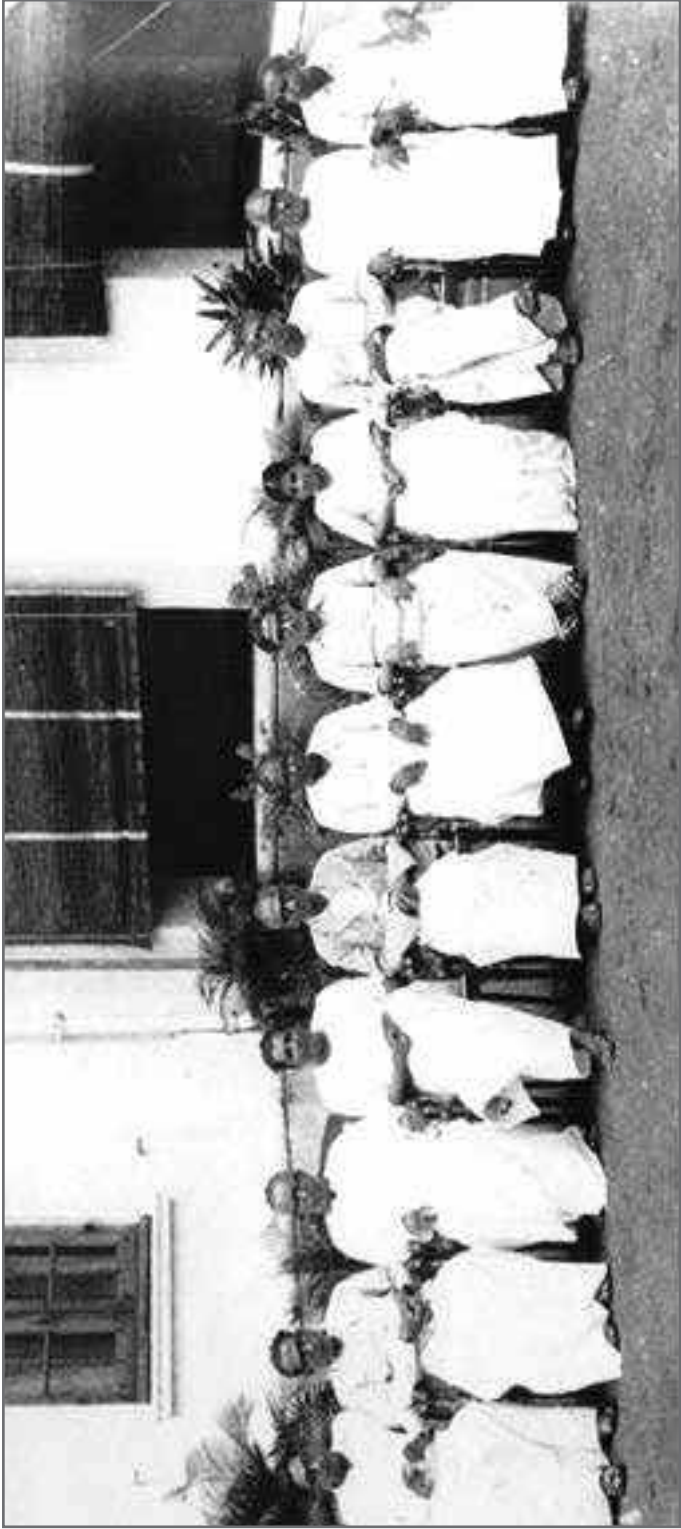
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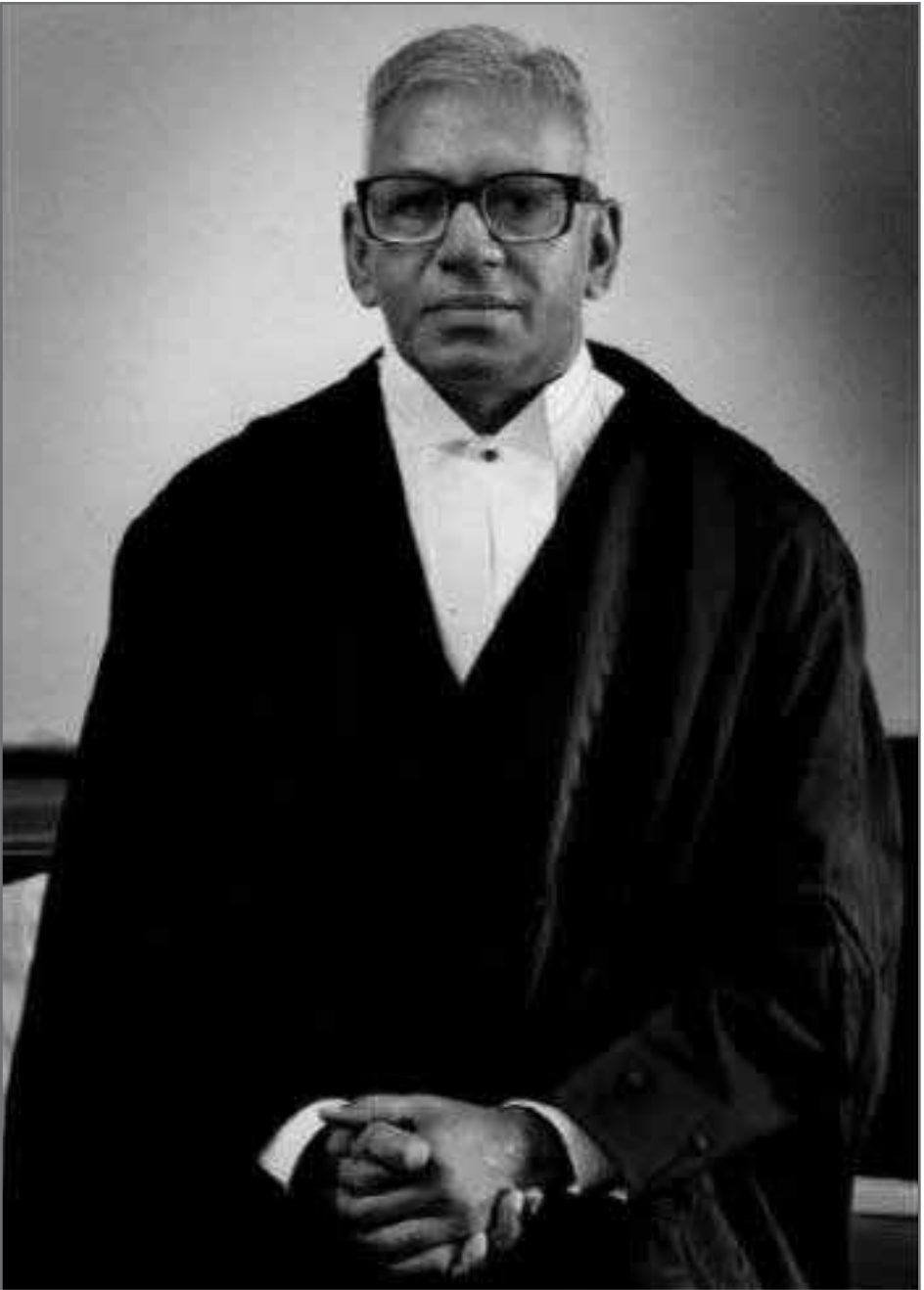
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KERALA MINISTERS FROM 1957 E.M.S. NAMBOODIRIPAD MINISTRY.
JUSTICE V.R. KRISHNA IYER (THIRD FROM RIGHT) HELD SEVERAL PORTFOLIOS IN IT

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JUSTICE V.R. KRISHNA IYER
AS JUDGE OF SUPREME COURT OF INDIA

JUSTICE AT HEART

LIFE JOURNEY OF
JUSTICE
V.R. KRISHNA IYER

The work dwells on the story of a crusader against injustice, a legendary judge who lived and worked for social justice for the people of India. Justice Krishna Iyer was a towering and a multifaceted personality having a varied experience of life.

He has inspired many persons by his philosophy of life, and his insatiable hunger for socio-economic justice. An ardent advocate of change for better, a person with simple habits, he was a friend of all.

If one has to sum up in one sentence this incredible personality one would simply say that he too wrote the Constitution through his judicial pronouncements, enriching it immensely and indeed explicating the intent and aspiration of the noble framers, making it truly a living document of our nationhood. The work will be a welcome addition to any library.

EXTRACT FROM THE FOREWORD

“This book is a welcome contribution in memory of a great judge who served the country his best till his last days. ... I congratulate the authors for writing a nice book on Justice Krishna Iyer...”

— P.P. Rao

Senior Advocate, Supreme Court of India

