

On the release of:
***'Judicial Reflections of Justice Bhagwati'*, compiled by**
Ram Kishore Choudhury & Tapash Gan Choudhury
(Kolkata: Academic Foundation & Publication Pvt. Ltd., 2008)
at Vigyan Bhavan, New Delhi (September 11, 2008)

(Comments by Justice K.G. Balakrishnan, Chief Justice of India)

Ladies and Gentlemen -

It is indeed my privilege to be present here on the occasion of the release of a work that details the judicial contributions of Justice P.N. Bhagwati. I would like to congratulate the authors who have invested their time and effort in bringing out this digest. They have meticulously organized extracts from Justice Bhagwati's leading decisions and writings. The book itself forms a coherent narrative of Justice Bhagwati's ideas and his unique contributions to the Indian legal system as well as to the fields of constitutional law, jurisprudence and the protection of human rights at an international level.

Justice Bhagwati's name is now synonymous with several momentous developments in the evolution of our judiciary. His tenure at the Supreme Court of India contributed to a substantial change in the way the higher judiciary was perceived by the general public. From an institution that was seen as elitist in its composition and functioning, his tenure witnessed a sea-change wherein the Supreme Court actively engaged with the problems of the poor and

marginalized sections of our society. Justice Bhagwati himself played a pivotal role in the expansion of the 'right to life' under Article 21 of the Constitution and the introduction of 'Public Interest Litigation' (PIL). His ruling in the *Maneka Gandhi case*¹ marked a departure from the prior position and introduced the 'substantive due process' guarantee as the threshold for evaluating governmental action. The theory of 'inter-relationship of rights' not only widened the scope of Article 21 but also opened the doors for several subsequent decisions which involved harmonization between the fundamental rights and directive principles enumerated in our constitution.

In order to serve the interests of justice, Justice Bhagwati did not hesitate to depart from the doctrinaire limits of the law. He showed tremendous courage in consistently prioritizing the concerns of justice over those of precedents and procedural considerations. His creative approach to the understanding of statutory laws, existing doctrines as well as remedies, marked the 'activist' turn of our higher judiciary. Alongwith Justice Krishna Iyer and Justice Chinnapa Reddy, he took the lead in responding to letters and news items and proceeded to address the problems of the under-privileged and voiceless sections of our society. Through the device of 'Public Interest Litigation' the traditional rules of 'locus standi' took a backseat and matters were heard on behalf of disadvantaged groups. The Court also improvised with methods such as the appointment of 'Fact-finding Commissions' and granting discretionary remedies such as a 'continuous mandamus' under Article 32. In expanding the wider

¹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

social engagement of the Supreme Court, Justice Bhagwati not only gave rulings to protect the rights of citizens against governmental action, but also those that were being violated by other citizens. Any keen student of Indian Constitutional law will readily refer to his decisions pertaining to the rights of bonded labourers,² child labourers,³ trafficking, treatment of children in observation homes,⁴ working conditions in stone quarries and environmental pollution.⁵

Justice Bhagwati has demonstrated a life-long commitment to causes such as the improvement of access to justice as well as the protection of human rights. Since the 1970's, he has been at the forefront of several Legal Aid Initiatives and his efforts were instrumental to the establishment of Lok Adalats and Environmental Courts. His unwavering commitment to human rights has also led him to value the role of dissent. Besides writing several opinions in defence of the 'freedom of speech' he himself famously dissented in the *Bachan Singh case*,⁶ where he made a compelling case for the abolition of the death penalty. That opinion stands out as a work of immense scholarly and moral worth.

Even after retiring from the bench, Justice Bhagwati has made tremendous contributions on the international stage. He was the pioneer behind the judicial colloquia which evolved the 'Bangalore

² *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161

³ *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473

⁴ *Sheela Barse v. The Secretary, Children's Aid Society*, (1987) 3 SCC 50

⁵ *M.C. Mehta v. Union of India*, (1986) 2 SCC 176

⁶ *Bachan Singh v. State of Punjab*, (1982) 3 SCC 24

Principles for the domestic application of International Human rights norms' in 1988.⁷ He has been an advisor for the framing of the constitutions of several countries such as South Africa, Mongolia, Nepal, Ethiopia and Cambodia. He has been associated with numerous international institutions and has been a long-serving member of the United Nations Human Rights Committee. I could of course go on enumerating his achievements. However, we have gathered here today to celebrate the release of a book devoted to his life and works. This book captures the substance of his judicial contributions and will no doubt be a valuable resource for anyone interested in the fields of Indian constitutional law, jurisprudence and human rights. It will also serve the purpose of transmitting Justice Bhagwati's ideals and legacy to future generations.

Thank You!

⁷ *The Bangalore Principles on the Domestic Application of International Human Rights Norms*, (1988) 14 Commonwealth Law Bulletin 1196