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**Front cover:**
Portrait of justice Vaidyanathapuram Rama Aiyar Krishna Iyer, former judge of India’s Supreme Court, by Indika Dissanayake, a Sri Lankan artist.

**Back cover:**
Portrait from the piece in context on Essex St, Chinatown, Boston, photograph by Chris Devers.
(courtesy via www.flickr.com)

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REMEMBERING V.R. KRISHNA AYER
A SYMBOL OF HUMANITY
by V. VENKATESAN  
page 2

A LARGER THAN LIFE & TRULY ICONIC FIGURE
by GEORGE H. GADBOIS, Jr  
page 9

LOVER OF LIBERTY
by JUSTICE G.S. SINGHVI  
page 13

ground report
INABILITY TO MOURN
THE SRI LANKAN EXPERIENCE  
page 28

essay
POLICY AND POLICING IN ASIA  
page 34

voice from the grassroots
HEALING THE WOUNDS
The vital role played by the Gwangju Trauma Centre in healing victims of state oppression  
page 54

interview
NO RECONCILIATION WITHOUT TRUTH
1965 Mass Killings in Indonesia  
page 59
by V. VENKATESAN

KRISHNA IYER
A SYMBOL OF HUMANITY
JUSTICE VAIDYANATHAPURAM RAMA
Aiyar Krishna Iyer, former Judge of India’s Supreme Court was, by all accounts, an unconventional Judge and a habitual deviant from orthodox norms. According to George H. Gadbois Jr.’s seminal book, Judges of the Supreme Court of India: 1950-1989, as a Judge, Justice Krishna Iyer, was a leading workhorse, having participated in 510 reported decisions, of which he authored 291, during his tenure of seven and a half years between 1973 and 1980. A search at India’s legal website, Manupatra’s Judge Analytics reveals that Justice Krishna Iyer authored 493 decisions, (which includes both reported as well as non-reported decisions. Judges have discretion to decide which of their decisions are to be reported) of which he wrote 407 as the Supreme Court Judge, and the remaining 86 as the Judge of the Kerala High Court, from 1968 to 1971. Justice Krishna Iyer joined the Law Commission as a member in September 1971, and served it for nearly two years, before his appointment to the Supreme Court in on 17 July, 1973. Although he retired from the Supreme Court on 14 November, 1980 at the age of 65, as stipulated by the Constitution, many wonder whether this early retirement age deprived the people of India of his enormous energy and enthusiasm which he displayed as a public intellectual, till he breathed his last at the age of 100.

Justice Krishna Iyer had an explanation for everything, including aspects of his personality. Senior advocate of the Supreme Court, T.R. Andhyarujina observes in an article that Justice Krishna Iyer’s method of writing judgments with deep passion and flowery language irritated many persons, including Judges of the Supreme Court like Justice V.D. Tulzapurkar, who criticised his language as being “prefaces, perorations, sermons and philosophies which have no proper place in judicial pronouncements”. Justice Krishna Iyer, however, had a different explanation for his ornate language in his judgments. According to him, dry facts and statements rob law of energy and enthusiasm which are necessary ingredients for its development. If one looks for factors which animated and moved Justice Krishna Iyer, they could well be located in philosophies and doctrines. It is not without reason that his term at the Supreme Court has been described as the “Age of Enlightenment” by some observers.

He was a polymath, who found an Aladdin lamp in Article 21 of the Constitution, guaranteeing protection of right to life and personal liberty to every person. Successive Judges after him found in the same article, a reservoir of rights. He gifted the doctrine of karuna (to be translated as empathy, if one has to be exact) to the Indian Constitution, making today’s Judges to wonder whether anyone else in his place could have written pro-prisoner judgments with such sensitivity which he had displayed in cases like Charles Sobhraj vs The Superintendent, Central Jail, Tihar (1978), and Sunil Batra vs Delhi Administration (1978). It was possible because Justice Iyer himself was incarcerated in the Kannur jail for a few days in 1948. As he recollects this phase: “A brief spell in distressing, preventive detention, lonely behind bars, steel my soul and broadened my bosom”. As Justice Jasti
Chelameswar of the Supreme Court put it during a memorial lecture, in honour of Justice Krishna Iyer: “He had seen the turmoil of life; that made him what he was”.

Through his expansive definition to rights, Justice Krishna Iyer blurred the distinction between declaration and making of law. As a Judge, he could balance his personal attribute of compassion with his understanding of right and wrong. The result was his control over his emotions, as his judgments on capital punishment, like Rajendra Prasad vs State of Uttar Pradesh (1979), show. How often today’s Judges miss Justice Krishna Iyer’s erudite observation in that judgment, which is binding on subsequent benches, as it was delivered on behalf of the majority in the five-Judge Constitution Bench. “Special reasons”, necessary for imposing death penalty, he held, must relate, not to the crime as such but to the criminal. Later, after retirement, he wrote: “Death sentence on death sentence is my living faith, but a lost cause because my colleagues’ conscience struck a ferocious note, true to their faith.”

He further held in the same judgment: “The crime may be shocking, and yet the criminal may not deserve death penalty. The crime may be less shocking than other murders, and yet the callous criminal, e.g., a lethal economic offender, may be jeopardising societal existence by his act of murder....Society survives by security for ordinary life. If officers enjoined to defend the peace are treacherously killed to facilitate perpetuation of murderous and often plunderous crimes, social justice steps in to demand death penalty dependent on the totality of circumstances....The patience of society must be tempered by the prudence of social security and that is the limited justification for deprivation of fundamental rights by extinguishment of the whole human being. The extreme penalty can be invoked only in extreme situations.”

Justice Krishna Iyer, despite displaying compassion to fellow human beings, was realistic and pragmatic. He wrote in the very first judgment, which he wrote as the Supreme Court Judge, as follows: (Shivaji Sahabrao Bobade and Anr. Vs State of Maharashtra, decided on 27.8.1973): “Two men in their twenties thus stand convicted of murder and have to suffer imprisonment for life because the punitive strategy of our penal code does not sufficiently reflect the modern trends in correctional treatment and personalised sentencing. We do not wish to consider these facts as they fall outside our scope here.” The three-Judge bench, of which, he was a part, confirmed the conviction and life sentence imposed on the convicts, and dismissed their appeals.

He was 104th in all-India ranking of Judges according to their seniority, when he was a Judge of the High Court – a factor which would have been considered as a disqualification in terms of today’s informal criteria which the Collegium adopts to select Judges to the Supreme Court. He was initially rejected by the then Chief Justice, S.M. Sikri, for elevation to the Supreme Court for “unknown reasons”, (in the words of Justice Krishna Iyer himself) but was regarded as good by Chief Justice A.N. Ray, who made the selection.

In an autobiographical account written in 2001, Justice Krishna Iyer reflected on the memorable events of his life as a Judge. ‘What were my guiding goals I tried to practise on and off the Bench?’ he asked himself. The first lesson, fundamental to life and law, that he learnt on the Bench, was humility without hubris and humanist hearing without “high bench” hauteur. The second value, which touched his judicial heart, was the compassionate treasury of the Preamble to the Constitution, particularly its five opening words – We, the People of India – as the democratic imperative which bound him. The third imperative was to hear either side fairly, since courage and independence obligated him “to give (even) the devil his due, whether he be in the right or in the wrong”. Among the last things he learnt was that “perfect justice is a mirage.” “In the pursuit of the illusion of perfect justice, we jeopardise the justice that is within our grasp”, he wrote. What he was taught at college as Cromwell’s message holds good for a Judge, he wrote: “Think it possible in the bowels of Christ that you might be mistaken”.

As Justice Krishna Iyer breathed his last on 4 December, 2014, after celebrating his 100th birthday on 15 November, a grateful nation looked back at some of the milestones in his long and distinguished life, which were indistinguishable with some of the
milestones in India’s own political and judicial history. Called to the bar way back in 1938, Krishna Iyer sprang to lawyerly life with great elan and lucrative practice as a junior in the chambers of his father, V.V. Rama Aiyar, a leading member of the Tellicherry bar. As he put it, young in age, but with propitious opportunities to cross swords with vintage wonders of the Malabar bar and beyond, it fell to him to spend his vernal years in versatile professional life.

Busy from the beginning, both at the bar and in public life, Krishna Iyer had a head start. Driven by his idealism and socialist sympathies, he soon engaged himself with peasants’ struggle and litigation gravitated towards him. Recalling those years, he wrote: “Gently, I became a public figure of sorts without party affiliation.” Yet, as a lawyer, he often represented the Communists, arrested in violent incidents, and this landed him in controversies. As George H.Gadbois Jr. observes in his book, Judges of the Supreme Court of India, 1950-1989 “although he was opposed to violence, because he represented many of the arrested leaders, he acquired the label of being a dangerous leftist.”

In May 1948, Krishna Iyer was accused of actively helping Communists in their violent activities and providing hideouts for them and was arrested. The then Madras Government, however, could not justify his arrest in the Court and consequently he was released, but only after he spent a month in jail. He was the only Judge of the Supreme Court who was jailed by the Indian Government after Independence. In 1952, he was first elected to the then Madras Legislative Assembly as an Independent with Leftist leanings from Malabar (Tellicherry). In 1957, after the reorganisation of states, he was elected to the Kerala legislative assembly, as an independent with strong support from the Left. The assembly elections in Kerala that year led to the first communist-led government in an Indian State and he was sworn in as a Minister under the Chief Minister, E.M.S. Namboodiripad. The Jawaharlal Nehru Government at the Centre dismissed the Communist Government within two years. During this period, as a Minister, Krishna Iyer looked after portfolios as varied as home, law, justice, irrigation, inland navigation, power, prisons, social welfare, agriculture and cooperatives.

Krishna Iyer wrote about this phase as follows: “A little over a couple of years as minister in Kerala, with several challenging and creative portfolios and exciting political battles, made my administrative career a hectaric chapter of colourful work and innovative excellence in several dimensions, with the public and the Opposition cooperating in giving shape to novel constructive projects with which I experimented. My intrepid mind and spotless conscience were a humane asset and education in experiential compassion. I humanised prisons and prisoners and used habitative strategies. The common people loomed large in my vision of minister’s obligations.”

Between 1959 and 1968, Krishna Iyer flirted with electoral politics, even while practicing at the bar. However, that did not disqualify him from being considered for appointment as a Judge of the Kerala High Court on 12 July, 1968. Krishna Iyer recalled those early years as a Judge as follows: “When defeated (in electoral politics), I parted company with politics. Back at the bar, the art of ‘submissions’ and diction of courteous assertions before opinionated and erudite justices were fruitful gains. Later, when elevated to the Bench in 1968, (Kerala High Court), I sat with the same ‘robed brethren’, but a sharply different social philosophy marked me out as an unorthodox socialist, people-oriented jurisprudent, unbound by obsolete precedents and fossil forensic praxis, innovating pragmatic processes and sensitising legal justice with substantive values. The Constitution, to me, ceased to be an idle Preamble and printed prolixity, but became a lodestar imparting living light to litigative law. I tried out odd experiments, which solaced my spirit and gave relief to victims… This was my approach while I was minister for Law, Justice, Prisons and Social Welfare, and my social philosophy illumined my judicial tenure.”

Thanks to his friendship with the then Union Minister for Steel and Mines, Mohan Kumaramangalam, Krishna Iyer’s progressive capabilities were recognised by the Centre. As he put it: “A short term in the Gajendragadkar Law Commission was a good preparation before my ascent to the Supreme Court in July 1973” (Justice Gajendragadkar, the former Chief Justice of India was then the Chairman of the Law Commission).
As a Judge, Krishna Iyer was known for his non-conformity with conventions, as he readily agreed to give lectures in support of people’s causes and professional enlightenment. But he was always careful not to prejudice the finer freedom and sacred neutrality of his high office as Judge. On the contrary, as he was to claim later, he gained a larger constituency to serve. He was criticised by great jurists and advocates for his “unconventional views” and “unjudicial unenglish” (the love of the long word or odd mintage, which he confessed as his guilt). But he was incorrigible. “The style is the man and I survive”, he said about himself later.

Krishna Iyer was greeted, when appointed, by a large number of ‘hostile’ lawyers writing a letter to the Times of India, accusing him of being a dangerous man on the Bench. He kept his cool and his conscience. Eventually, suspicion died down. He had no enemies at the Bar, as far as he knew, and his friends generally appreciated his stance, so he assumed. Eminent advocate, Soli Sorabjee, was one such convert, who admitted his transformation from being his adversary to admirer.

He imparted a literary touch and adopted a new mode of writing judgments ignoring the traditional pattern. He tried to democratise judicial remedies and brought into vogue Public Interest Litigation and ‘epistolary’ jurisdiction – a letter complaining of injury being received as a lis. He fervently believed that procedural lissomness and informality in a poor country is an aspect of access to justice. He paid his humble tribute to human rights by introducing the values of International Covenants into Indian law by hermeneutic humanism. He tried, with some measure of success, to liberalise the prisons, to sensitise sentencing correctionally, to enliven liberties and to pragmatise gender justice and dalit equity.

In Ediga Anamma, Justice Krishna Iyer laid down the principles which ought to govern commutation of death sentence to life imprisonment: “Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socioeconomic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being .under s. 302 read with s. 149, or again the accused has acted suddenly under another’s instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime.” In this case, the appellant, a rural woman was convicted and sentenced to death for killing another woman and her child. The deceased happened to be the paramour of appellant’s lover. In his judgment, Justice Iyer commuted the death sentence to life imprisonment, citing the above grounds.

In Rajendra Prasad too, Justice Iyer reasoned that if the murderous operation of a die-hard criminal jeopardises social security in a persistent, planned and perilous fashion then his enjoyment of fundamental rights may be rightly annihilated. One test for imposition of death sentence is to find out whether the murderer offers such a traumatic threat to the survival of social order. Some of the principles are – never hang unless society or its members may lose more lives by keeping alive an irredeemable convict. Therefore, social justice projected by Article 38 colours the concept of reasonableness in Article 19 and non-arbritrariness in Article 14.”

Justice Krishna Iyer was to acknowledge later that these two decisions – setting aside death sentences – solaced his soul the most. Criminal jurisprudence, he said, fulfils its functional trust when life and liberty are saved for even the least of humanity.
At a time when Judges tended to view Public Interest Litigation with suspicion and distrust, Justice Krishna Iyer was proud of being its progenitor. He wrote: “I strove to humanise conceptually the narrow locus standi notion, whereby the people had a larger chance of access to justice. This open sesame has come to stay.”

Despite his unique judicial philosophy, Justice Krishna Iyer hardly dissented from his brother Judges while on the Bench. Even in the split judgments of the Court, he was always on the side of the majority, trying to harmonise his decision with the majority and express his dissent in a nuanced manner, so as to contribute to the evolution of the law, through concurring judgments. This unique quality perhaps stemmed from his belief that law develops by diverse views, and in flashes of collision, unfolds truth and justice. Dissent, he thought, was speech to the future and duty to the present, since “judicial responsibility includes the task of exposing bad precedents. Judges are, or should be, their brother’s keepers”, he wrote. His judicial vocabulary was, to borrow his own words, more vivid, than hackneyed, less voguish than dull, drab verbalism. But his unique style of judgment writing was in no way an impediment to his urge for consensus among brother Judges. As he explained, a single judge’s singular opinion may be opinionated verdict prone to be erroneous. So he realised that “the joint judgment of three is worth much more than three times the judgment of one, unless he is a genius” (attributed by Justice Krishna Iyer to Justice Learned Hand, an American judicial philosopher who served on the U.S. Court of Appeals for the Second Circuit. Like Justice Iyer, Hand possessed a gift for the English language, but unlike Iyer, he missed a promotion to the U.S. Supreme Court, although his judicial opinions were relied upon by the U.S. Supreme Court in several cases.)

Krishna Iyer regarded his ruling delivered as the single Vacation Judge in June 1975 in the Indira Gandhi v. Raj Narain as the most sensational case in his career. While refusing Prime Minister Indira Gandhi’s plea for an absolute stay on the Allahabad High Court’s order, setting aside her election on the grounds that she had violated the election law, he ruled that she had lost her status and privileges as a Member of Parliament, but could retain her position as Prime Minister. His ruling in the case was hailed by legal scholar, H.M. Seervai as the finest hour of the Supreme Court.

Eminent legal academic, Upendra Baxi wrote on the occasion of his centenary: “Krishna, along with some other gifted legal brethren, pioneered the conversion of the Supreme Court of (of in ital.) India into a Supreme Court for (for in ital.) the people of India”.

Justice Krishna Iyer’s perception of his post-retirement life was instructive. Unlike his colleagues in the Court who saw post-retirement phase as the beginning of another long career in arbitration, to make money, he treated his life as a functional public trust to be executed by social service and espousal of common causes, including giving legal aid and getting justice to those who needed his assistance. His days post-office were busier than ever before and his embrace of public issues spread over the whole spectrum of his life, notwithstanding age. He said of himself: “I am a human being and nothing that affects or afflicts anyone’s life is alien to me. That is my humble creed and testament of Truth – a tryst with Destiny and Universal Divinity I seek to redeem.”

Strange as it may seem, Justice Iyer believed in occult experiences of people claiming to have communicated with deceased persons. He wrote that no longer is death a wall; it is now a door to a different dimension, and that a vast research is necessary to unfold more information about this invisible side of our universe. One assumes that for the past one year, Justice Iyer must be apparently in pursuit of this information, which he could not secure whilst living on the planet earth.

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V.R. KRISHNA IYER (1915-2014)
A LARGER THAN LIFE & TRULY ICONIC FIGURE
SHALL INDIA EVER SEE HIS LIKES AGAIN?

by GEORGE H. GADBOIS, Jr
THE MOST CELEBRATED of the more than 200 judges who have served on the Supreme Court of India since 1950 is V.R. Krishna Iyer. He was 99 when he died in 2014. Despite failing eyesight and other infirmities of old age, his passion for human rights and social and economic justice for the disadvantaged was as strong in 2014 as it was 50 years earlier.

On the bench he was a crusading maverick. In his words, “…a sharply different social philosophy marked me out as an unorthodox socialistic, people-oriented jurisprudent, unbound by obsolete precedents and fossil forensic praxis, innovating pragmatic processes and sensitizing legal justice with substantive values.” [Legally Speaking (New Delhi: Universal Law Publishing Company Pvt. Ltd., 2003), p. 317]. A brilliant intellectual, he was intimidating to many of his brethren and cast a large shadow over the Supreme Court. The language he used, variously described as strange, poetic, quaint, bewildering, and incomprehensible, resulted in opinions such as the readers of the law reports had never before seen, and compelled them to expand their own vocabularies. He wrote that he was criticized for his ‘unjudicial unenglish (the love of the long word or odd mintage – I confess my guilt)’. [ibid., p. 318-19]. But his main message was clear to all - the mistreatment of any human being was unacceptable to him, and that the Supreme Court must strive to provide justice to all, particularly the disadvantaged. His creed was “I am a human being and nothing that affects or afflicts anyone’s life is alien to me.” Although he often shocked his colleagues and the bar, he pricked their consciences and none could openly disagree with has assessment of the ills of Indian society. And none questioned his compassionate humanism and honesty of conviction.

During his years at the Bar in Madras Presidency and then Kerala, he represented prominent political figures, particularly from the left of the political spectrum, including communists. He acquired a reputation as an outspoken if not dangerous leftist and was soon surrounded by controversy. In the late 1940s the communists in Madras engaged in violence. He often represented them in preventive detention cases. Accused of actively helping communists in their violent activities and providing hideouts for them, he was arrested in 1948. The grounds for his arrest could not be supported by the Madras government and he was released, but only after spending a month in jail. He was the only Supreme Court judge to have been jailed by his own countrymen. This first-hand experience with jail conditions and the inhuman treatment of prisoners began a lifetime passion for prison reform and the treatment of prisoners as human beings. Particularly in the field of criminal jurisprudence and jail reforms, he left a mark that will unlikely ever be erased.

In 1952, with his strongest support coming from the Communist Party of India - Kisan Mazdoor Praja Party alliance and the Muslim League, he was elected to the Madras Legislative Assembly as a left-leaning independent, defeating other socialist rivals and the
Congress party candidate. As a legislator he gained recognition as a leading member of the opposition and as a committed socialist. After the state of Kerala was carved out of the Madras presidency, he was elected in 1957 to the Kerala legislative assembly, again as an independent with strong support from the left, particularly the Communist Party. This election resulted in the first communist-led government to gain power in an Indian state. During its two-year existence, he served as Chief Minister E.M.S. Namboodiripad’s home minister, minister for law, justice, irrigation, inland navigation, power, prisons, social welfare, agriculture, and cooperatives.

After that government was dismissed in 1959 he returned to the bar. In 1960, he again stood for election, and again as an independent. He was defeated by the CPI (Marxist) candidate by seven votes, but filed an election appeal challenging the outcome, and “I was elected by the Court.” He contested the 1965 assembly election as ‘a radical in the cause of social justice’ and at first was backed by the CPI(M). But he refused to use that party’s election symbol, stood as an independent, and lost to the CPI(M) candidate. Again he returned to the Kerala High Court bar.

In 1968, at age 52, when another CPI(M)-dominated government was in power, he was appointed a judge of the Kerala High Court. At the swearing in ceremony, he made clear what he planned to do on the bench: “The forensic institutions and the legal system itself need a new orientation, a modern grammar and vocabulary and simpler techniques of social engineering, if they are not to be accused of exotic, expensive, obsolescent and tardy features. I shall endeavor, in a humble measure, to be a judicial activist and treat my career ahead as a fresh call to service in the cause of the Rule of Law, which not merely keeps the executive in leash but insists upon the basic and equal right of every individual to a really free and good life.”

When he arrived on the Supreme Court at age 57 in 1973 none of the 50 judges who had preceded him had as politically active a background, and none were known to be proponents of a leftist agenda. Mainstream lawyers objected to his appointment mainly because of his reputation as a Marxist. Many believed that he was, or at least earlier had been, a communist. In his words, “I was never [his emphasis] a member of the Communist Party – I am too individualistic, but I had many communist friends.” He came to the Court with an agenda which seemed to violate the norms of judicial detachment. He was unabashedly pro-poor, pro-downtrodden, and pro-weaker sections. He was the Court’s first judge to depart emphatically from the hoary inherited common law and seek to adapt it to Indian conditions. He pushed the boundaries of legitimate debate to the left and moved the center in the process. He was also the Court’s first openly socialist judge and he sought to employ the Constitution and the law as tools to achieve social and economic justice for all Indians. He also departed from the tradition of the aloof judge who cloistered himself, and often ventured outside the Court to express his views on public platforms. His often flame-throwing rhetoric in speeches notwithstanding, his unpretentiousness and charm and his inability to hold grudges disarmed his critics, most of whom came to realize that he was a valuable colleague in the human experience.

As the single vacation judge inn June 1975, it fell to Krishna Iyer to rule on Prime Minister Indira Gandhi’s request for an absolute stay order after the Allahabad High Court had set aside her election on the grounds that she had violated the election law. He gave her less than she wanted, ruling that she had lost her status and privileges as a member of Parliament but could retain her position as prime minister. The infamous Emergency was declared a few days later.

Upon his retirement in 1980, he was feted by the bar in an unprecedented show of respect and affection. The then president of the Supreme Court bar association, Dr. L. M. Singhvi, whom no one ever accused of being a leftist, presided over a well-attended retirement dinner in his honor. Singhvi’s farewell speech lamented his departure and recalled that it was “in stormy weather that you first took your seat on the Supreme Court Bench. Some members of the bar were apprehensive that your appointment may not contribute to the traditions of judicial detachment. But those who came to scoff stayed on to respect and to admire.” He went on to praise Krishna Iyer as a “great intellectual and as great gentleman,” a man who opened the Court’s doors wider to the poor, the needy and the indigent, and helped “humanize our legal system.” His early critics had come to believe that his missionary zeal for human rights was genuine.
An intense, driven man of great restless energy, he did not go quietly into the night after leaving the Court. His tenure on the Court was only 7 ½ years, a small portion of his long life, and those few years were sandwiched between many decades of activism in the cause of human rights. But those years made him a national figure and provided him a larger constituency to spread his human rights and social justice exhortations throughout India and abroad. Few denials of justice escaped his attention and he was always ready to take action against the next violation of human rights. In the best sense of this term, he was an agitator, repeatedly reminding all that there is a large downtrodden population – his definition included women – that needed help. He was critical, but nearly always constructively so, of the behavior and policies of all branches of the government, including the courts.

His most high-profile activity after retirement occurred in 1987 when he stood for the presidency of India as the combined opposition’s candidate. He accepted the nomination reluctantly, agreeing to do so because “there were principles to be fought for.” The opposition’s agreement on his candidacy was not as complete as in most other presidential elections. The Bharatiya Janata Party was less than enthusiastic about him, both because of his left orientations and because his nomination was spearheaded by the Communist Party of India (Marxist) and the CPI. L.K. Advani, a BJP leader, in a letter to him, wrote that “you are a handmaiden of the Soviet Union and, therefore, we are not in a position to support you.” [Krishna Iyer, _Wandering in many Worlds: An Autobiography_ (Noida: Uttar Pradesh: Dorling Kindersley (India) Pvt. Ltd., 2009)]. Given the way the president is elected – by an electoral college comprised of members of Parliament and the state legislatures, with voting reflecting party strength, the outcome was a foregone conclusion. He polled just 27.5 per cent of the votes, losing to his friend Ramaswamy Venkataraman, the Congress (I) Party’s candidate.

When he left the Court he retired only in the sense that the Constitution compelled his departure on his 65th birthday. His post-court years were filled with a wide variety of activities, many relating to the cause of human rights. Writing and incessant lecturing, sometimes two in one day, engaged much of his time. His interests were wide-ranging. He was president of many organizations. These included the Kerala Fine Arts Academy, the Institute of Socialist Legal Studies, the Indian Society of Criminology, the World Council of Deontology, and the International Association of Democratic Lawyers. He served as chairman of the Indian People’s Human Rights Tribunal, the National Expert Committee on Woman Prisoners, and the Forum for Democracy and Communal Amity, among many others. He received dozens of awards and honors. These included the Padma Vibhushan – the nation’s second highest civilian award, honorary degrees, medals, and titles. Words came easy to Krishna Iyer. He wrote more than 100 books, an incredible number, and even more articles in _The Hindu_ and other newspapers and magazines, some written in his 99th year.

In his last years he tackled new issues, including changes resulting from the post-1991 economic liberalization. He believed strongly that there had been too many departures from constitutionally mandated socialism, that the already well-off had benefitted most, that the level of honesty in public life had plummeted, and that the lot of the poor remained unimproved. The Supreme Court has not been spared from his biting criticism. He was very critical of the behavior of some of the judges and of the process of selecting the “robed brethren.” A larger than life and truly iconic figure, shall India ever see his like again?

The author of _Judges of the Supreme Court of India: 1950-1989_ (New Delhi: Oxford University Press, 2011), _George H. Gadbois, Jr._ is Professor Emeritus of Political Science, University of Kentucky, USA. This piece draws substantially from the Krishna Iyer biographical essay in this book. He can be reached at gadboisgh@aol.com.
V.R. KRISHNA IYER
LOVER OF LIBERTY

by JUSTICE G.S. SINGHVI

by JUSTICE G.S. SINGHVI

ONE OF THE MANY UNIVERSAL TRUTHS is that “one who is born is bound to die some day or other” but most of the humans think that they are immortal and behave and conduct themselves as if death will spare them. Of course, many become immortal by their acts and deeds. Even after merging in Panchatatva, they continue to live in the minds and hearts of people for centuries together.

Rama and Krishna, Jesus Christ, Prophet Muhammad, to whom different segments of human society worship as Gods; Swami Vivekanand, Ram Krishn Param Hans, Gautam Buddha, Mahaveer and Mahatma Gandhi, whom most of us never saw in their bodily forms continue to live in our hearts and inspire us in making our lives more meaningful. In our age also, some mortals have become immortals. Lata Mangeshkar is one of the living legends, whose melodious voice has enthralled millions and will continue to do so for many centuries. Sachin Tendulkar’s contribution in the game of cricket will be talked about for many decades. In the field of law and justice, one such legend, who died this year but will continue to live in the minds and hearts of the legal fraternity and common man of the world is Vaidyanathapuram Rama Ayyar Krishna Iyer, to whom many of his generation affectionately called ‘VK’ and we know him as V.R. Krishna Iyer, a great humanist, social reformer and an extraordinary judge, who perhaps will have no parallel for many decades to come.

In 1950, India adopted the Constitution, preamble of which contains a declaration and resolve which reads:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a ‘SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC’ and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

Many eminent judges/jurists like Patanjali Shastri, Vivian Bose, M.H. Kania, P. Gajendragadhkar, K.K. Subba Rao, K.K. Mathew, P.N. Bhagwati and O. Chinappa Reddy have made great contributions in translating the words of preamble and particularly, social justice, liberty and equality into reality. But one man, who infused life into the ideas of justice, social and economic, liberty of thought, expression, belief, faith, worship, equality of status and opportunity and above all the dignity of the individual is none other than Vaidyanathapuram Rama Ayyar Krishna Iyer.
He will be remembered not only by the bench and bar, but also by the people. He can rightly be hailed as the Pole Star of the Indian judicial galaxy for his extraordinary judicial contribution. If asked to sum up in one sentence the incredible personality of Justice Krishna Iyer one would simply say that he had rewritten 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 takes a rich mind and even a richer heart to hear the cry of the poor. He was an outstanding example who influenced judicial minds and set the finest precedents in humanising the judicial process. He delivered hundreds of erudite judgments which gave a new direction to the judicial system of the country in making it justice-oriented. He treated the courts of justice as temples of justice. He extended the frontiers of the accountability of the Government and its instrumentalities in their ever expanding operations. He often stayed away from the beaten path of the law spinning his own “cocoon of jurisprudence”, inspired obviously by the fact that in dispensing justice the answer to the question “what result is best for the country?” is not always consistent with the response obtained by asking : “What is the decision according to law?” He thus treated and so inspired other judges to treat the binding decisions as no more than decisions applicable to the facts of that particular case (wrote eminent jurist Shri Fali S. Nariman in his article ‘The Judiciary and the Role of the Pathfinders’ (1987) 3 SCC (Journal) 1, 11). Justice Krishna Iyer was a multi-faceted personality, a judge having compassion and commitment to the cause of social justice and human welfare, who influenced others to think positively for the cause of justice.

Early Years

Justice V. R. Krishna Iyer, was born on 15 November, 1915 at Palghat in Palakkad District, located in the then Madras Presidency, which is presently part of the State of Kerala. His father, Mr. V. V. Rama Ayyar, was a prominent lawyer practicing at Tallicherry and Malabar District Courts in Kerala. Krishna Iyer was brought up in a fairly comfortable environment. His mother Mrs. Narayani Ammal and father Mr. Rama Ayyar intangibly shaped him well. Krishna Iyer got a good parental care in his early childhood which consequently developed his personality positively and helped him in becoming a bright intellectual and a responsible citizen who set fine precedents in his further course of assignments throughout different areas pertaining to law and governance.

Krishna Iyer’s formal schooling began in an old-fashioned, precarious village school with teachers earning forty rupees a month and rickety benches to stand upon as a common punishment and physical risk that was not administered to him due to his affluent family background. He was a fairly bright student in his young days but his grandfather, who was in his eighties, was his home teacher for English and Mathematics. In both subjects, he ranked highly. English grammar and idiom were his forte and Krishnan (as he was usually called), was a rich beneficiary. His father was too busy a lawyer and public figure to bestow time on his children’s education save to engage a private teacher for tuition and a Sanskrit teacher for a brief period. In initial days, a sound schooling helped him to make landmark achievements in his college life which consequently benefited him in judicial career.

After completing his schooling, Krishna Iyer earned his B.A. degree in English and Economics from Annamalai University, Annamalainagar in Tamil Nadu in 1935. A decade later, the same University conferred the honoris causa degree of Doctor of Laws upon him. He was elected editor of the English section of Annamalai Miscellany and was awarded the Srinivasa Sastry prize for proficiency in English language. It is said that Krishna Iyer’s father encouraged him to become a lawyer and he was admitted in Madras Law College from where he earned the B. L. degree in 1937.

Entry into Legal Profession

Having earned the B.L. degree Krishna Iyer enrolled as an Advocate of the Madras High Court on 19 September 1938. He practiced with his father in the Malabar District Courts for a number of years. Krishna Iyer’s clientele was varied and included both rich industrialists and landlords as well as poor peasants.
and labourers. The large fees he received from the rich enabled him to represent the poor at little or no cost. In those early years, he protested against police torture, harassment of workers and the exploitation of the peasantry by feudal landlords. He also represented some prominent political figures, particularly from the left parties, including Congressmen. He quickly acquired a reputation as an outspoken leftist and became a prominent public figure in southern part of the country. This is how Justice Krishna Iyer recalls those days:

“As a young lawyer with idealism and socialist sympathies, peasants’ struggle and working litigation gravitated towards me. Needy elements approached me, engaged me, encouraged me and popularised me. Before long I gathered appellate work civil and criminal work were also familiar. Gently I became a public figure of sorts without party affiliation. Communists like P. Krishna Pillai were often visiting me. Gandhians and bitter type of Congressmen who were not for power or office used to visit me frequently.”

As a lawyer Krishna Iyer used to represent the Communists and the oppressed classes in various litigations, and he soon came under clouds to be surrounded by different kinds of controversies. During the 1946 violence in which the Communists participated, he often represented them in preventive detention cases and continued to do so after the Communists’ 1948 Calcutta Thesis’ which advocated an increased use of violence. Although he was opposed to any kind of violence, he acquired the label of being a dangerous leftist for representing many of the arrested leaders and paid a price for it. In May 1948, he was arrested under accusations of actively helping Communists in their violent activities and providing hideouts for them. Yet his arrest could not be justified by the police in Court and consequently he was released after spending about a month in jail.

It is noteworthy that Justice Krishna Iyer was the only Judge of the Supreme Court of India who was jailed by the Indian Government after Independence. His first-hand experience with jail conditions and the inhuman treatment of prisoners began a lifetime passion for him for prison reform and the treatment of prisoners as human beings. He applied this first-hand experience in improving the quality of administrative system and governance for the benefit of the masses. The founding fathers established a welfare-state based government in the constitutional document and Justice Iyer truly implemented the vision of the constitution-makers in his creations.

**As Legislator and Minister in Kerala State**

Besides being an erudite lawyer, Krishna Iyer was also interested in politics and was elected to the Madras Legislative Assembly in 1952, with the support of the Communist Party of India- Kisan Mazdoor Praja Party alliance and the Muslim League, from Malabar as an independent candidate by defeating other social rivals and the Congress party’s candidate. During these years, he was recognised as a prominent legislator of the opposition party and a committed social reformer. In 1957, he was elected to the first newly established Kerala Legislative Assembly again as an independent candidate with strong support from the left parties, particularly the Communist Party of India. This election resulted in the first Communist-led Government to gain power in any Indian state and Krishna Iyer became the part of that system on the invitation of Mr. E. M. S. Namboodiripad. Justice Krishna Iyer recalls these moments in his own words:

“There is a tide in the affairs of men which change the course of life and a reincarnation occurs. This is my case. Success at the polls made EMS the Chief of the CPI, put pressure on me to abandon my abundant practice at the bar and accept the ministership on a petty salary of Rs. 500. My career as a legislator and a minister was a wonder as I look back upon the new chapter especially because politics was not my cup of tea still there was so much scope for creative contribution given imagination, innovation, vision and commitment to the people’s welfare.”

During the two-year existence of Namboodiripad Government in Kerala State, Krishna Iyer served in more than half a dozen ministries including Home, Law, Irrigation, Inland Navigation, Power, Prisons, Social Welfare, Agriculture and Cooperatives as well as made landmark reforms such as with prisons, innovative and hydroelectric projects and conceived
of the nation’s first master plan for water resources in Kerala. Krishna Iyer turned out to be a great legislator and administrator.

Krishna Iyer was very particular about his views and stands, differing with his Communist colleagues as and when he thought it fit to do so. He was a great defender of freedom of speech and expression. It is said that when Chief Minister Nambodiripad had rejected his recommendation for an inquiry into a police firing and Krishna Iyer refused to use the preventive detention law, he was relieved of the charge of home department. He has been labeled as a Communist although he was never a member of the Communist Party but had many Communist friends as he mentioned in his autobiography. He was a committed legislator, wedded to the causes of social justice and human welfare. After the dismissal of Nambodiripad Government, Krishna Iyer resumed his practice in Kerala High Court. In 1960, he again contested election to the Kerala Legislative Assembly as an independent candidate but was defeated by the CPI (M) candidate by seven votes. He challenged that election in the Court of Law and was declared elected by the Court. Krishna Iyer contested the 1965 Assembly election as a radical in the cause of social justice. Although he was offered support by CPI (M), Krishna Iyer contested the election as an independent candidate and lost. He again returned to the bar with a new determination not to return to politics and instead to focus on advocacy.

As Judge of the Kerala High Court

Mr. V. R. Krishna Iyer was appointed as a permanent Judge of the Kerala High Court at the age of 52 on 2 July, 1968. At the swearing-in ceremony, he made clear what had he planned to do on the Bench:

“The forensic institutions and the legal system itself need a new orientation, a modern grammar and vocabulary and simpler techniques of social engineering, if they are not to be accused of exotic, expensive, obsolescent and tardy features. I shall endeavour, in a humble measure, to be a judicial activist and treat my career ahead as a fresh call to service in the cause of the Rule of Law, which not merely keeps the Executive in leash but insists upon the basic and equal right of every individual to a really free and good life.”

As a Judge of the High Court of Kerala, Justice Krishna Iyer became the champion of human rights and social justice in the country by delivering various judgments on different issues pertaining to the law and governance. In his own words:

“A sharply different social philosophy marked me out as an unorthodox socialist, people-oriented jurisprudent, unbound by obsolete precedents and fossil forensic praxis, innovating pragmatic processes and sensitising legal justice with substantive values.”


As Member of the Law Commission of India

Justice V.R. Krishna Iyer graced the Bench of the Kerala High Court for only three years. In September 1971, he was prompted by his close friend Mohan Kumaramangala, who was then a Minister in Indira Gandhi Government, to accept appointment as a Member of the Law Commission. Justice Krishna Iyer described his appointment to the Law Commission in the following words:

“One fine morning when I was a Judge in the High Court, I had a call from Mohan (then Union Minister for Steel and Mines, earlier a prominent member of the Communist Party) who surprised me saying “VRK” you come to Delhi and become a member of the Law Commission. I thought poorly of that Commission whose report lay idle in the law ministry. So I told Mohan that I was unhappy for thinking so poor of me fit only for a sultriest post. Then he revealed a secret. “VRK”, as he used to call me, “you know I am close to Indira Gandhi and her leftist leaning; so I want you to be in the Supreme Court but you are very junior as a Judge although I esteem you high. The only way I thought was to put you in the Law Commission and select Judges to the Supreme Court from the Law Commission.” Then I agreed especially because one of our great Judges Dr. P. B. Gajendragadkar was to be the new Chairman of the Law Commission.” (V.R. Krishna Iyer, Up Till Now - An Autobiography, New Delhi: Universal Law Publishing Company, 32)
Justice Krishna Iyer himself admits that he was helped by a powerful politician in getting a berth at the Law Commission where he served for two years, and during this short period, his most noteworthy contribution concerned legal aid for the poor. This was not a new interest for him, for during his tenure as Law Minister in Kerala, he had initiated the nation’s first comprehensive legal aid programme. His Law Commission Report, ‘Processual Justice to the People: Report of the Expert Committee on Legal Aid, 1973’, laid the foundation for poverty jurisprudence in the country and is regarded as a classic on the topic. His association with the Law Commission, a Commission which he underestimated initially, proved lucky for him and facilitated him getting elevated to the country’s apex court where he set fine precedents for the future generations of lawyers and judges.

As Judge of the Supreme Court of India

Justice V.R. Krishna Iyer was appointed as a Judge of the Supreme Court of India at the age of 57 on 17 July, 1973. Although his name was recommended by the then Chief Justice S.M. Sikri, he was opposed by some senior Judges on the grounds that he had rich political background. However, in the aftermath of the resignations of three senior most judges of the Supreme Court, Justices Shelat, Grover and Hegde, who were superseded by Justice A.N. Ray, Justice Krishna Iyer was appointed as a judge. His appointment was an extraordinary event in the history of the Supreme Court because of his political engagement and outspoken attitude which invited huge opposition from the Bench as well as the Bar. A section of Bar opposed his appointment on account of his Communist connections. Led by prominent lawyer Soli J. Sorabjee, about 150 lawyers opposed the appointment on the ground that he was a Marxist. But despite all protestations, Justice V.R. Krishna Iyer was sworn in as a Judge of the Supreme Court and proved to be one of the finest judges in the country, a judge whom people can never forget, with his critics becoming his fans and admiring his judicial contributions (Soli J. Sorabjee, A Man for All Seasons, The Hindu, November 16, 2004). This is what Soli Sorabjee said:

“Fallible human beings do at times make errors of judgment. But none can surpass the monumental error I made in opposing Krishna Iyer’s appointment as a judge of the Supreme Court in a letter jointly signed by eight other leading lawyers of the Bombay High Court and published in the Indian Express on July 2, 1973. The occasion for this impetuous action was the apprehension that in the wake of the doctrine of a committed judiciary propagated at that time the appointment to the Supreme Court of a self-confessed political animal who had exhibited feathers of deep crimson would be a disaster.

Soon after the publication of the letter I had occasion to appear before Justice Krishna Iyer in the Supreme Court. I was a bit anxious about his reaction to my appearance before him. The worries were unfounded. There were no stern looks, no sarcastic remarks. Like the True Gentleman portrayed by Cardinal Newman “he had too much good sense to be affronted by insults and was too well employed to remember injuries.” I publicly acknowledged my mistake at the time of his retirement by an article in the Statesman published in January 1981.”

Justice Krishna Iyer’s appointment as a judge of the Supreme Court was a unique experience India’s judiciary as he had a strong political background as well as a different kind of ideology and judicial philosophy which he followed throughout his life. Justice Krishna Iyer himself admits that he got the benefit of his political background in his appointment as a judge of the Supreme Court. He states:

“Mohan Kumaramangalam could have made me a judge earlier, he was conservative and wanted that I should complete five years as a judge and so had asked me to wait. But the calamity of his casualty upset everything. However, Indiraji, notwithstanding our earlier political differences did put forward my name before the Chief Justice of India, who consulted Gajendragadkar and Vaidlingam. Both of them warmly appreciated my selection. Nevertheless, Justice Hegde told Chief that I was a Communist and would not be safe on the Bench. My name was rejected by the Chief. Then came a series of strange happenings. Three senior most judges resigned and Justice Ray junior to them was appointed as Chief Justice. He called me and told
me that he proposed to send my name for judgeship. Please be a distinguished judge in the Supreme Court, he asked me.”

Initially people assumed that Krishna Iyer had come to the Supreme Court with a specific political agenda, a Communist agenda, which seemed to violate the norms of judicial detachment. They all proved wrong and he emerged as a great judge who set fine precedents through his erudite judgments. It is well-known that, as a judge, Justice Krishna Iyer was pro-poor, pro-downtrodden, and pro-weaker sections as per the demands of the constitutional democracy and welfare-state. He was the first Supreme Court Judge to depart emphatically from the hoary inherited common law and sought to adapt it to local conditions. He pushed the boundaries of legitimate debate to the left and moved the centre in the process. Later on he wrote that. “If you ask me which trend of jurisprudence I inaugurated happily I would say it was Public Interest Litigation and Epistolary Process and the Ratlam Municipality case.” He developed the human rights jurisprudence and gave a unique direction to the judicial process in the country. His judgments in the Samsher Singh case, Sunil Batra case, Maru Ram case, C. B. Muthamma case and others are highly admired by the legal fraternity.

Commitment to Social Justice

Although the outcome of a case or the terms of the final order/Judgment was by and large unpredictable, Justice Iyer’s possible attitude towards a variety of issues was broadly predictable. If it was a labour matter, his sympathies would always be with the workmen. His judgment in the Bangalore Water Supply and Sewerage case, giving the widest possible meaning to the expression “industry” will remain a landmark Judgment in labour law, notwithstanding its far reaching effects on several small scale industries and charitable organisations.

Ms. Indra Jaising shared her encounter with Justice Krishna Iyer in an article on rediff.com, noting how being a lawyer for social justice was like being an oxymoron, a struggle and a losing game. While she struggled to establish some rights based labour jurisprudence, she encountered the bench of Justice Iyer and Justice P N Bhagwati, before whom she was arguing a case of a dismissed worker waiting in line for justice over the years.

Her opponent wanted an adjournment, the judges were willing as was routine and she was furious, making her discontent clear. Sensing her anger, Justice Bhagwati leaned over and told her, “If you cannot get justice for a worker from this bench, you will not get it at all.” It was then that she realised that she was appearing before a ‘social justice bench’.

Later, Justice Iyer told her that what he liked about her presentation was the absence of sycophancy towards judges. He made it possible for everyone to think of judges as approachable humans to be dealt with by equality.

Mr. P.P. Rao in his article published in Journal of Indian Law and Society shares one of his encounters with Justice Krishna Iyer as follows:

“I was once engaged to appear in a service matter for a retired Audit Officer. The order of his compulsory retirement was under challenge. My client after losing the case in two rounds before the High Court, confidently remarked: “It is the last key of the bunch that is sure to open the lock”. The Supreme Court granted the special leave. My client was fairly well known for his knowledge of astrology. On the day when his appeal was to be heard finally, he came to me in the morning and predicted his success in the appeal. He was jubilant that the appeal was posted before V.R. Krishna Iyer and R.S. Pathak, JJ. He said that according to his stars the arguments would be brief, the judgment would be pronounced on the same day and it would be in his favour. I thought his predictions were inspired by self-interest, but I was wrong. When the case reached within a few minutes of my arguments the Judges felt that the impugned order of retirement was not passed by the competent authority and immediately called upon the other side to reply. The Government Counsel could not satisfy the Court. The stenographer was called and the judgment was dictated on the spot. My client beamed with joy because both his success in the appeal as well as his prediction proved true. I had the satisfaction that at least an astrologer could predict Mr. Justice Iyer’s verdict correctly.”
Justice Krishna Iyer was the Supreme Court of India’s first openly recognised socialist judge and he sought to employ the Constitution and the law as tools to achieve social and economic justice for all people. He also departed from the tradition of an aloof judge who cloistered himself, and often ventured outside the Supreme Court to express his views on public platforms, which tended to be the left of the political spectrum. He was a great advocate of freedom of speech and expression and whenever he got opportunity he did not hesitate to express himself frankly on different socio-legal issues even at the cost of contempt of court. He was truly a fearless judge, a man deeply committed to human welfare.

It is significant to mention that during his entire judicial career, Justice Krishna Iyer decided a number of landmark cases. In June 1975, while a junior puisne judge, he decided the fate of the then Prime Minister Mrs. Indira Gandhi in her election appeal case. As a single vacation judge, it fell to him to rule on the Prime Minister Indira Gandhi’s request for an absolute stay order after the Allahabad High Court had set aside her election. He gave her less than she wanted, ruling that she had lost her status and privileges as a Member of Parliament but could retain her position as Prime Minister. His order was highly acclaimed not only by the members of the bar, but by the people in general within and outside the country.

Justice V. R. Krishna Iyer was a brilliant intellectual. His judgments are highly creative, erudite and value-loaded. He was intimidating to many of his brethren and cast a large shadow over the Supreme Court. The language he used in his judgments, variously described as strange, poetic, florid, colourful quaint, funny, bewildering and incomprehensible, resulted in opinions such as the readers of the law reports had never seen before, and compelled them to expand their own vocabularies. He later wrote that he was criticised for his “unjudicial unenglish (the love of the long word or odd mintage- I confess my guilt).” Indeed, Justice Krishna Iyer had his own style of judgments which influenced people deeply. His judgment-writing style was unique and he did not pay heed to criticism.

Justice Krishna Iyer’s main message was very clear — that the mistreatment of any human being was unacceptable and that the Supreme Court of India must strive to provide justice to all, particularly the disadvantaged. Although he often shocked his colleagues and the Bar, he pricked their consciences and none could openly disagree with his assessment of the ills of Indian Society, nor question his compassionate humanism and honesty of conviction. On his judgments Justice Krishna Iyer says: “My judgments are my message. Every judge, whether he is conscious of it or not, has a social philosophy of his own which is reflected in his work and life.”

Eminent constitutional historian George H. Gadbois Jr. who has deeply studied the working of the Supreme Court of India, states that Justice Krishna Iyer’s record on the Supreme Court ranks him among its leading workhorses, participating in 724 decisions during his seven and a half years tenure in the Supreme Court and writing opinions in 291 of these. No earlier judge wrote as high a percentage of opinions. Subjects covered every facet of law and public life; political, cultural and social. Some will not be surprised to learn, given the popular perception of him as having vehemently expressed points of view, that he never wrote a dissenting opinion nor was he ever in the minority in a non-unanimous decision. It was his view that divided decisions were not as good as unanimous ones and that writing dissenting opinions served little purpose. He tried to draw his colleagues towards his views, sometimes successfully, but often had to make concessions to achieve unanimity. He wrote twenty-four separate concurring opinions and many of these, he acknowledged, were thinly disguised dissents.

Justice Krishna Iyer’s judgments are well-written and deeply researched. In his judgments he does not only focus on legal principles but also takes into consideration various sociological aspects of the different cases by citing renowned scholars and philosophers. In his last judgment, in Akhil Bhartiya Soshit Karamchari Sangh(Railway) v. Union of India & Others, Justice Krishna Iyer quoted Swami Vivekananda as:

“The same power is in every man, to the one manifesting more, the other less. Where is the claim to privilege? All knowledge is in every soul, even in the most ignorant, he has not manifested it, but, perhaps
he has not had the opportunity, the environments were not, perhaps suitable to him. When he gets the opportunity he will manifest it. The idea that one man is born superior to another has no meaning in Vedanta; that between two nations one is superior and the other inferior has no meaning whatsoever."

By using this quotation of Swami Vivekananda, Justice Krishna Iyer attacked the evil of casteism and other social prejudices prevailing in the Indian society and gave a message of equality and humanity to the people of the country. His judgments leave a deep impression on people’s minds and truly reflect his multi-faceted personality.

**Lover of Liberty**

His deep and abiding respect for life and liberty is reflected in many of his judgments. His concern for prisoners was indeed great. As a Minister in Kerala he had personal knowledge of prison conditions. In several judgments he made constructive and useful suggestions for prison reforms and issued directions for providing more humane treatment to the prisoners within the framework of the existing law. In Sunil Batra’s case he observed: “Karuna is a component of Jail Justice. Basic prison decency is an aspect of Criminal justice.” A little later, in Prem Shankar Shukla’s case he ruled that handcuffing of undertrial prisoners is permissible only in very exceptional situations. His passionate pleas for amelioration of prison conditions and for early prison reforms will be remembered for a long time to come.

**Reformative Justice**

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

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

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

In Rajendra Prasad’s case 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.”

**A Vehement Abolitionist of Capital Punishment**

His crusade against capital punishment deserves a special mention. He made no attempt to conceal his firm conviction that this extreme punishment is inhuman and should be abolished. In Ediga Anamma’s case he outlined the positive indicators against death sentence under Indian law and commuted the death sentence to life imprisonment. This decision was mimicked in several other cases. In Rajendra Prasad’s case he restricted the scope of death sentence under S. 302 IPC. Even outside the Court he advocated for the abolition of the death sentence.

In Ediga Anamma, Justice Krishna Iyer laid down the principles that ought to govern commutation of the death sentence to life imprisonment:

“Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socioeconomic, psychic or penal compulsions insufficient to attract a legal
exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being, under Section 302 read with Section 149, or again the accused has acted suddenly under another’s instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wilful infidelity pushed the criminal into the crime.”

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

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

Justice Krishna Iyer was to acknowledge later that these two decisions, setting aside the death sentences, gave much solace to his soul. Criminal jurisprudence, he said, would fulfil its functional trust when life and liberty were saved for even the least of humanity.

Refreshing Approach to Bail

Mr. Justice Iyer is to some extent responsible for the liberal attitude of the Supreme Court on bail matters in the seventies and eighties. The practice previously was generally to refuse bail in cases involving a sentence of about three years or more. In life sentence cases, bail was unthinkable. Now, the long delay in disposing of the appeal is considered a relevant factor for granting bail. In Gudikanti Narasimhu’s case Iyer J. opened his order with the poser: “Bail or Jail?”

He outlined the relevant factors, which included the period in prison already spent and the prospect of the appeal being delayed for hearing.

In his view, bail is the rule and jail is an exception. He was in favour of granting bail stipulating protective and curative conditions. He was definitely against imposing onerous conditions relating to security and sureties. He ruled:

“Heavy bail from poor man is obviously wrong. Poverty is society’s malady and sympathy, not sternness, is the judicial response.”

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

“If a Magistrate is satisfied after making the enquiry into the condition and background of the accused that the accused has his roots in the community and is not likely to abscond he can safely release the accused on order to appear or on his own recognisance”.

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

He Stood for Natural Justice

His judgment in M.S. Gill’s case is a landmark concerning the principles of natural justice. The majority judgment of the constitution bench was delivered by Mr. Justice Krishna Iyer. It is significant inter-alia for the propositions of law laid down regarding observance of the principles of natural justice. The Court held that before passing such orders an opportunity, however brief and abbreviated it may be, ought to be given to the persons likely to be affected. He neatly summed up the law:

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

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

Inimitable Style of Writing Judgments

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

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

His language is as unconventional as his approach to
the issues. The following passage from his judgment
in Charles Sobraj’s case 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 he tried to provide the healing touch in his
own way. In his judgments and speeches he sometimes
referred to the immortal words of Jawaharlal Nehru
about Mahatma Gandhi’s mission of wiping every tear
from every eye. He observed in Eswara Iyer’s case:

“Litigants are legal patients suffering from injustices
seeking healing for their wounds. Would you tell a
sufferer in hospital that because he disclosed a certain
symptom very late therefore he would be discharged
without treatment for the sin of delayed disclosure?
Humanism, which, at bottom sustains justice, cannot
refuse relief unless, by entertaining the plea, another
may sustain injury.”
An unconventional judge is bound to provoke reaction from at least some of his brother judges. In Rajendra Prasad’s case A.P. Sen, J. wrote a strong dissenting judgment. According to him:

“The humanistic approach should not obscure our sense of realities. When a man commits a crime against society by committing a diabolical, cold-blooded, pre-planned murder of one innocent person the brutality of which shocks the conscience of the court, he must face the consequence of his act. Such a person forfeits his right to life.”

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

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

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

Landmark Judgements

Out of more than 700 judgements that he passed during his tenure as a Supreme Court Judge, here are some of the landmark judgements made by Justice V.R. Krishna that have contributed to making India what it is today:

In 1974, the judgement in the Shamser Singh vs State of Punjab case interpreted the powers of the Cabinet vis-à-vis the President. Justice Iyer later wrote about this in The Hindu and said, “The court, in Shamsher Singh (1974), laid down that the Indian administrative system is substantially based on the Westminster system where the Queen is bound to follow the Cabinet’s advice except in rare exceptions in which the Cabinet decision is irrational or arbitrary or perverse or plainly and blatantly biased or mala fide. In such an instance, the Governor may have the discretion.”

His judgement in the Indira Gandhi case in 1975 was controversial, and earned him both accolades and criticism. Krishna Iyer’s judgement snowballed the political crisis leading to the imposition of the emergency. On 12 July, 1975, the Allahabad High Court held Prime Minister Indira Gandhi guilty of corrupt practice in the Lok Sabha election of 1971. The judge held her election to parliament as void and barred her from contesting elections for six years. It is reported that before the filing of the appeal the then Law Minister H.R. Gokhale, a good friend of Krishna Iyer, went to meet him at his residence. 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. In an appeal filed in the Supreme Court, Justice V.R. Krishna Iyer, granted a “conditional stay” on 24 June, and barred Indira Gandhi from participating in debates or voting in Parliament and referred the matter to a larger Bench of the Court. By then the opposition was demanding that Indira Gandhi should quit office. The Emergency was declared the very next day.

In Sunil Batra vs Delhi Administration case 1979, the practice of keeping undertrials with convicts in jail was regarded to be inhumane. This case questioned solitary confinement to be in violation of Article 21 which states that no person should be deprived of his life and personal liberty. The judgement laid the foundation for the implication of Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations. It was this judgement passed by Justice V.R. Krishna that gave him the title of ‘Father of Prisoner Jurisprudence’.

In both Sunil Batra and M.H. Hoskot’s Case, Krishna Iyer’s fundamental concern for the rights of the prisoner spoke to his larger commitment to a constitutional morality. “I hold that bar fetters are a barbarity generally and, like whipping, must vanish,” wrote Krishna Iyer, in Sunil Batra v. Delhi Administration. “Civilised consciousness is hostile to torture within
the walled campus. We hold that solitary confinement, cellular segregation and marginally modified editions of the same process are inhuman and irrational.” In appealing to similar values, Krishna Iyer ruled in M.H. Hoskot v. State of Maharashtra that if a prisoner sentenced to imprisonment was unable to exercise his right of appeal, for want of legal assistance, “there is implicit in the Court under Article 142, read with Articles 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice.”

Another significant judgement passed by Justice V.R. Krishna Iyer was for Ratlam Municipal Council vs Shri Vardhichand 1980. The judgement passed for this case laid the foundations of the responsibilities to be observed by a local municipal body, giving people the access to enforce public duties and held that municipalities and corporations are responsible for sanitation facilities. In July, 1980, Justice Iyer wrote: “The budgetary constraints did not absolve the municipality from performing its statutory obligation to provide sanitation facilities.”

Justice VR Krishna Iyer is also known for laying the foundation of Public Interest Litigations in India. In the 1981, he emphasised the need for relaxing the rules relating to locus standi to include those whose legal rights have not been directly violated.

It was this fundamental ethos that allowed him to imbue in the court’s philosophy a proclivity for loosening the standards of locus standi. In fact, it was Krishna Iyer’s judgment in The Mumbai Kamgar Sabha v. Abdulbhai Faizullahbhai which served to forge the movement towards public interest litigation, that has today achieved a hallowed status. Where public interest demanded, “Even Article 226, viewed in wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights,” he wrote. “Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher Courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law.” Fertiliser Corporation Kamgar v. Union of India.

It was one of Justice Krishna Iyer’s judgements that redefined Article 21 to include liberties of travel. In the 1978 Maneka Gandhi vs. Union of India case, where Mrs Gandhi approached the court as her passport was impounded by the Government of India, Iyer noted, “Personal liberty makes for the worth of the human person. Travel makes liberty worthwhile.”

Retirement from the Supreme Court of India

After serving for more than seven years, Justice V. R. Krishna Iyer retired from the Supreme Court on 15 November, 1980. By this point, he had become a towering judicial figure not only in India but also internationally. His people-oriented jurisprudence, particularly in the fields of criminal jurisprudence and jail reforms, has left an indelible mark on the country’s judicial mind. His early critics came to believe that his missionary zeal for human rights was genuine and creative. Upon his retirement, he was feted by the Bar in an unprecedented show of respect and affection. Dr. L.M. Singhvi, the then President of the Supreme Court Bar Association, presided over a well-attended retirement dinner in his honour. Dr. Singhvi’s affectionate farewell speech lamented Justice Krishna Iyer’s departure and recalled that it was, “In stormy weather that you first took your seat on the Supreme Court bench on 17 July, 1973. Some members of the bar were apprehensive that your appointment may not contribute to the traditions of judicial detachment. But those who came to scoff stayed on to respect and to admire.” He went on to praise Justice Krishna Iyer as a “great intellectual and a great gentleman”, a man who opened the court’s doors wider to the poor, the needy and the indigent, and “helped humanise our legal system.”

Justice Krishna Iyer’s tenure as a Judge of the Supreme Court was superbly evaluated by the Bar and the people, with his judgments giving a new direction to the judicial system of the country. Justice Krishna Iyer states: “A judge never dies as his work performed with robes on one public property and survives as long as law and life interact mutually.” (V. R. Krishna Iyer, Up Till Now- An Autobiography, 2011, New Delhi:
Universal Law Publishing Company Pvt. Ltd., 93.) As a judge, he was remarkable. His juristic contribution and scholarship is unmatchable.

Post-retirement Life

Though Justice V. R. Krishna Iyer was retired from the judiciary in 1980s, he was not retired physically or mentally. He remained full of energy, enthusiasm, commitment and dedication. He did not go quietly into the night after leaving the Supreme Court. He always did something creative. Justice Krishna Iyer served as a Supreme Court Judge for only seven-plus years, a small portion of his long life, and those few years were sandwiched between many decades of activism for the causes of human rights and social justice. But, those years made him a national public figure and provided him a larger constituency to spread his human rights and social justice exhortations throughout India and abroad. During his first thirty years after leaving the Bench, few denials of justice escaped his attention and he was always ready to take action against the next violation of human rights. In the best sense of this term, he was an agitator, repeatedly reminding all that there is a large downtrodden population, with his definition including women. He was critical, but nearly always constructively so, of the behaviour and policies of all branches of the Government, including the Judiciary. His often flame-throwing rhetoric notwithstanding, his unpretentiousness, charm and his inability to hold grudges disarmed his critics, most of who came to realise that he was a valuable colleague in the human experience. Justice Iyer had been highly active in different socio-political activities which were widely appreciated by the people not only in India but internationally too.

Until his last day he continued to be a frequent contributor to *The Hindu* and *Frontline*. When Krishna Iyer spoke, people listened. He was a great orator and a prolific author. He wrote hundreds of books and articles on different subjects pertaining to law and governance. He was also honoured with many awards by different institutions. His philosophy and basic values are best expressed in his own words:

“I hold deep in my soul that I am a human and so anything that distresses any living creature deeply disturbs me and commands me into curative action, even if in vain. I am aware of my weaknesses and I feel painfully ineffectual when injustice is inflicted on fellow creatures.”

On his overall judicial career, Justice Krishna Iyer stated:

“On the whole, my career as a judge was soul satisfying and Marxist, without its extreme dialectical materialism. A confluence of the materialist approach and spiritual values is what I attempted to do. I thought it was my duty to make our jurisprudents loyal to the ancient precious culture; we have inherited and incorporated into the Constitution. In this view I was just an odd judge, with a celestial vision, mission and passion which accounts for my extreme diction. The reader as he goes through my judgments will agree with what I have stated above.”

Justice Krishna Iyer was always appreciated for his unique judicial contribution not only in our country but globally. He was an exceptional judge. His judicial career signifies that a matured and scholastic mind can innovate laws and procedures, invigorate the system with dynamism and dedication, enthuse the functionaries with new thinking and accelerate the pace of progress through the instrumentality of law. He never opted for any position or work after retirement. This was unusual when most people of his tribe opted for arbitration or commissions. He once accepted Kerala Law Commission but only because of his love for law reforms. Mr. M. N. Venkatachaliah, former Chief Justice of India, praised Justice V. R. Krishna Iyer with these erudite words:

“Lord Denning identified two kinds amongst judges: The timorous souls and the bold spirits. Justice Krishna Iyer is boldest in spirit in making the values of the Constitution of India approximate to something of an instrument and an agency for social change and to realise the dream of a peaceful social revolution that the Constitution promised. He has been a ferocious critic of the inequities of the International economic order. It is a Posnerian hypothesis that law is a minor branch of economics. Law is politics by other means. To Justice Krishna Iyer, the spirit of the law is the means to disarm the unrighteous strong against the
righteous weak. However, high you are, the law is above you. The remarkable feature of Justice Krishna Iyer’s judicial culture is that, whatever the range of his human sympathies, his propositions were always grounded in sound, pristine principles of accepted jurisprudential credibility, innovative in the true traditions of the Common Law, to the needs of justice in the case. It is this secret of the genius of the Common Law that the great judge has mastered. Law, it is said, is a notorious laggard. It does not reach out as a science does. It follows social consensus which is it behind the needs of times. The genius of the Common Law was its amenability to innovation, by extension and adaptation at the hands of great judges. That is why law making in the common law is not anonymous. If the judge in the common law tradition is not wise he tends to erect his own prejudices into principles.”

In his article titled ‘A Judge’s Judge’, published in the *Indian Express*, Prashant Bhushan paid tribute to Justice Krishna Iyer in the following words:

“His judgments have helped millions of people who were not able to have access to justice to getting justice from the courts of law. He devised the sociological jurisprudence which focused on human welfare. He took the courts as institutions of human welfare. He adorned everything he touched. He will be remembered as a constructive legislator, prolific speaker, forceful crusader, copious writer, and an excellent human being. Such a man is rarely born. We need such judges in the country. He was spiritually highly evolved. He believed in the immortality of the soul. He gave a purposive interpretation to the Constitution, law and rights. He gave an expansive interpretation to the right to life and liberty guaranteed by Article 21, and held it to include the right to life with dignity. He forbade the handcuffing and mistreatment of prisoners. It was his judgments that laid down the principle that, for undertrials, bail must be the rule and jail the exception. He further laid down that individuals could not be deprived of their liberty by just any procedure, and that such a procedure must be fair and reasonable. He also enunciated the principle that many judges often forget — that judicial procedure cannot and must not be allowed to come in the way of justice. In another example of purposive interpretation of the law to protect labour rights, he laid down that the word “industry” in the Industrial Disputes Act would include all undertakings, including schools, hospitals, shops etc.”

In the words of Professor Upendra Baxi:

“Krishna was a connoisseur of ideas of and about justice. Almost singlehandedly, he rewrote the theory of crime and punishment in 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. In many ways, he was India’s Jeremy Bentham. Krishna believed that legisprudence (the wisdom of legislatures or the theory of legislation) should always be reinforced by constitutional jurisprudence (the principles of justice and fairness that judges develop), and jurisprudence in turn should animate demusprudence (the prudence that accentuates the constitutionally worst-off). He pioneered, with some other gifted brethren, the conversion of the Supreme Court of India into a Supreme Court for the people, for India.”

The most important task of the modern day judiciary is to translate the concept of social and economic justice, equality of opportunity and of status and above all the dignity of every living creature. I am sure that the judges in whom the people reposes trust in years to come will not fail them.”
Troops are on patrol during the 1972 insurgency, Sri Lanka
(Photo: Special arrangement)
Collective guilt is a hard thing to swallow. That is the problem involved in the inability to mourn. However, as long as this is faced collectively, the imaginary grievances, imaginary heroisms and imaginary villainy of others are necessarily reflected on by society and the process of mourning can finally commence.
IN A FAMOUS BOOK entitled “Inability to Mourn”, husband and wife team, Alexander Mitscherlich and Margarete Mitscherlich, wrote about the experience of post-war Germany. Their patients complained of all kinds of illnesses, which the two authors traced to a common phenomenon of the inability of the Germans to mourn for their past, particularly as the atrocities committed by the German soldiers across various warfronts were being revealed.

A somewhat similar experience can be seen in Sri Lanka after the extraordinary measures taken by the Sri Lankan security agencies in 1971 in order to crush what was in fact a relatively minor rebellion led by Janatha Vimukthi Peramuna (JVP). According to the statistics revealed by the Criminal Justice Commission, which was created to hear the case against the JVP, the number of deaths resulting from the JVP atrocities was 63 persons, with several hundred wounded. On the other hand, many sources have given the figure of over 10,000 deaths being caused by the security forces in retaliation. This 63:10000 ratio demonstrates the extent of the disproportionality of the violence used.

It was this intensity of violence used in crushing the 1971 JVP rebellion that changed the contours of criminal justice in Sri Lanka. Ever since, all counter-insurgency operations, in the south as well as in the north and east, demonstrated a similar pattern of enormous disproportionality in terms of the violence that was permitted to be used.

One of the strategies that was employed in crushing the JVP rebellion of 1971 was the largescale practice of killing people after arresting them. The security forces were permitted to arrest any person suspected of having any kind of connection with the JVP and, irrespective of the nature of the connection, the suspect could be interrogated and killed, and their body disposed of.

A question that has not been the subject of any study so far is why the Sri Lankan security forces were allowed to kill suspects after securing their arrest. The procedure required by law when making arrests, as well as in dealing with those who had been arrested, was quite well-observed at the time. The criminal procedure code that prevailed in 1971 Sri Lanka was based on the same principles that were adopted by the British colonial power in India, as well as in other South Asian nations. This criminal procedure law prescribed the rules relating to arrest, as well as investigations leading up to the filing of indictments, and the conduct of trials, as well as the manner in which the punishments could be meted out in courts. Yet all such laws, rules and procedures were ignored when dealing with the alleged insurgents arrested in 1971.

The question that needs to be asked is why the government of the time and the security authorities decided to ignore the law, which was well laid down, regarding the matters of arrest and dealing with those who had been arrested, and instead allowed the security forces themselves to be the investigators, prosecutors, judges, executioners and also disposers of the bodies of such persons? Why didn’t the government and the security forces follow the normal law of the land regarding those who were arrested and comply with the procedures that were laid down in the conduct of investigations, prosecutions, trials and sentencing of prisoners?

In the absence of any explanation by the government at the time of these changes, the only possibility is to speculate on what may have been the reasonings of the government in allowing the security forces to act in the manner described above. The simplest explanation seems to be that the government did not think that merely securing of the arrest of insurgents was an adequate counter-insurgency measure. The government appears to have acted on the basis that highly visible and immediate actions that communicated their decision to kill anyone connected with the insurgency was a necessary measure for crushing the insurgency.

We may speculate as to what might have happened if the government had kept arrested persons in detention and let the law take its own course about what punishment should be meted out against them. This would have put the security forces in a situation where they could only arrest those against whom there was adequate evidence to demonstrate connection with
the insurgency. It may have been the government’s view that doing that would have retarded the ability of the security forces to quickly retaliate in an effective manner to crush the insurgency. It may have been argued that such a process of arresting persons only where there were reasonable grounds would have required considerable resources on the part of the government when dealing with a situation of mass arrests, as it was assumed that a very large group of insurgents were involved in an attempt to overthrow the government.

When comparing this situation with the attempted coup of 1962, when some leading members of the security forces, such as the army, navy and police, planned a coup to overthrow the government of Sirimao Bandaranayake, we see that all the suspected leaders of the coup were arrested and thereafter detained in special premises, where there were better facilities than in the normal prisons, and then brought before the courts. The courts dealt with them within the normal process of law. A trial was conducted and they were found guilty, with the opportunity to appeal to the Privy Council in the United Kingdom, which acquitted them on the technical grounds that they were tried under retrospective law.

If the arrestees in the 1971 insurgency were given the same chance to utilise the law of the land and have the recourse to court for their defence, would it have made a difference to the counter-insurgency measures necessary to crush a rebellion? Safeguarding the rights of the arrested persons did not deprive the government of the right to kill persons in combat, as for example the instances where attacks on some police stations were dealt with by direct confrontation by the security forces. What then were the disadvantages that could have been thought of as insurmountable difficulties in crushing an insurgency while dealing with the arrested under the normal process of law?

Perhaps a strategic reason may have been that if a large number of persons were being arrested throughout the country, and they were being kept alive, there may have been interventions by their relatives and others, who may have sought the arbitration of courts to safeguard their loved ones, which may have been thought of as a complication that the security forces would have found difficult to cope with. It may also be that that strategists for the government thought that, had such large numbers of persons been kept in prisons, this could have generated support from the public for the insurgency. One measure for crushing such public support would be to dispose of the arrested suspects as quickly as possible by way of expeditious killings.

Perhaps, if we are to speculate further, it may also have been that the government felt that adequate prison facilities did not exist for keeping large numbers of persons within the prison premises in Sri Lanka. The potential explosion in the number of prisoners could have disrupted the maintenance of the rest of the prison population. Sri Lankan prisons have always been overcrowded, with no space for more prisoners, rendering it possibly more convenient to dispose of all alleged insurgents rather than maintain a large prison population.

It also appears that the strategists who were working on the government counter-insurgency plan did not have adequate information about the actual capacities of the JVP and the extent of the actual threat it posed. While attending a meeting after his retirement, quite a long time after the 1971 events, one of the senior police officers involved in the counter-insurgency remarked on the panic they felt at hearing of some of the incidents caused by the insurgents. The lack of adequate information may be attributed to the poor state of the intelligence services at the time. This was the first insurgency faced by post-independence Sri Lanka and the actual strength of all security forces at the time, including the intelligence services, was rather weak.

The JVP menace was portrayed as an imminent threat of a communist takeover. Taking place during the Cold War, this inevitably attracted the foreign powers which also played a role in determining the manner in which the government organised its counter-insurgency. It is well known that assistance was requested from India, Pakistan and other neighbouring countries, as well as the United States. In places like Bandaranayake airport, some foreign forces were even deployed.
In Sri Lanka, followers of all the major religions, particularly Buddhists and Christians, treated the issue of a possible communist takeover as a threat to their religions. This was partly a reaction to “Marxist” parties, including the Lanka Samasamaja Party and the Communist Party, which had for several decades played a major political role in the country. The threat of these parties becoming more powerful, even establishing a government through elections, had been the subject of serious propaganda attacks. Thus, in the popular imagination, the idea of a communist takeover of power had been nurtured for some years. It may well have been that the JVP threat was taken as the fulfilment of this expectation, and therefore a massive effort deemed necessary to crush the imagined revolution.

Insurgencies and counter-insurgencies give rise to massive propaganda campaigns. This is perhaps psychological warfare within a civil war context. The government’s immediate reaction to the JVP threat was to unleash a massive propaganda attack against what the government termed terrorism. In fact, this was the first time that propaganda against terrorism was brought with such force in the country. This propaganda itself would have played a role in determining the nature of retaliation against those suspected of being participants, or even sympathisers, of terrorism. In turn, this could have excused treating the arrested not as ordinary criminals, to be dealt with within the overall framework of criminal justice in Sri Lanka. As the threat was one of terrorism, such suspects were seen as belonging to a special class, and this may have also led to their special treatment outside the framework of the criminal law.

A further factor could have been the influences of various international schools of thought about counter-insurgencies, and these would naturally have influenced the officers of the higher ranks of the establishment in particular, being trained in such ideas themselves. All these anti-terrorism schools advocated that harsh measures should be adopted when faced with such situations, the idea of meeting terror with terror being quite a popular slogan, even repeated at the time by some prominent politicians.

In counter-insurgencies, the target is often not merely the insurgents, but also the general population of a country. The aim of the counter-insurgency is to prevent any kind of popular support for the insurgents. The way this is achieved is often by terrorising the population into submission. There is no better method of terror than to exhibit dead bodies on the roads, canals and other public places. Thus the persons who have been arrested on suspicion of connections to the JVP would have been regarded as useful fodder for such exhibitions. In fact, after certain JVP attacks on security personnel, there were immediate counter-attacks with many alleged JVP members killed and their bodies exhibited on the roads. Besides the bodies, charred remains were left on display, the remnants of those burned to death with flaming tyres around their necks and other such methods.

Thus, dealing with the arrested persons at the time was a more complicated matter than dealing with criminals under the law of the land. In a sense, insurgencies and counter-insurgencies generate a kind of public theatre, where dead bodies become dramatised objects for achieving the ends of such insurgencies and counter-insurgencies.

Therefore, when we look into the 63:10000 ratio and see the disproportionate response of the government
against the JVP, we see something which is far bigger than the issue of dealing with a crime. The whole episode of arrests, interrogations, killings and the disposal of bodies becomes the language of the politics of a counter-insurgency. In the heat created by the imaginary battle, reason plays a very small role. A new kind of logic emerges in which one-time neighbours, friends, fellow citizens, begin to think of each other — or are made to think of each other — as enemies. People become imaginary warriors of a war that is in fact created by clever strategists.

This short reflection on the 1971 counter-insurgency shows the difficulties involved in mourning about the tragedies that took place within a community. It becomes painful to probe into what actually happened. Long years of discourse on the subject have been conducted on imaginary terms. For example, if one were to probe into the 63:10000 ratio of killings by the JVP and the counter-insurgency against the JVP, which exposes the myths about the “insurgency” and the extent of the actual capacities of the parties involved, one would necessarily have to contradict popular imagination and long-entrenched discourse.

Deconstructing the romanticised versions of “the insurgency” and looking into actual facts exposes the folly that the Sri Lankan people have been caught up in. It is difficult for people who have been made to think of themselves as warriors to realise that they have instead all been fooled. To come to terms with the fact that those who were arrested should have been treated as any other suspects of crime, and dealt with within the normal framework of law, goes against the way Sri Lankan individuals and society have been thinking about these things for a long time. To come to an understanding that the killing of a person whose arrest has been secured is a horrendous crime, and that this horrendous crime has been committed within one’s own society many times over, will naturally be a struggle.

Truth in this kind of situation becomes a disturbing experience. The unwillingness to go through such disturbing experiences, and the desire to hold onto views that one has been encouraged to think of as the correct version of things, is at the root of the inability to mourn.

Mourning, even in normal circumstances, like in the case of the death of a loved one, is distressing. The disturbance consists of having to come to terms with a loss. The processes of grieving are the means by which people, individually and collectively, come to terms with such losses.

But in a political experience, such as the cruelties that people commit against each other under the pretext of various conflicts, this sense of loss comes also with a sense of guilt. One is somehow involved in the very process by which one lost something precious from his or her society.

In conflicts, people who become partisan to one view or another begin to think of themselves as pure. They begin to perceive themselves as a selfless warrior fighting against those who would bring their society to ruin. It is this sense of being pure that becomes challenged when one begins to examine what has really happened and to recognise the collective responsibility for the damage wrought against one’s own society.

Collective guilt is a hard thing to swallow. That is the problem involved in the inability to mourn. However, as long as this is faced collectively, the imaginary grievances, imaginary heroisms and imaginary villainy of others are necessarily reflected on by society and the process of mourning can finally commence.

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Every step in the realm of crime, criminals and justice should be undertaken from a “rights perspective”. The training of police, investment in police, their rewarding and respect, public questioning of leaders and public officials — these are all part of the rights framework. The mission of rights must be expanded throughout society, including within the home. A top down message, whereby the home should be free of child abuse, violence against women, free of every exploitation.
Policy changes required to guarantee fair trial through modern policing in Asia

by DR. P M NAIR

It is irrefutable that torture exists across the globe, among all law enforcement agencies. Yet in Asia specifically, there is no denying it is the affliction of not only the police but also other law enforcement agencies, like customs, drug enforcement, income tax, intelligence agencies and many more. While symptoms are known — highlighted in the media or through human rights agencies and activists’ interventions — causes remain latent and mostly unknown. Hardly any meaningful effort has been expended to understand the causes, the root causes, with the concern tending to be addressing or readdressing the symptoms.

To put things in perspective, we can understand torture better if we try to understand who the tortured are. In the Asian context, the powerful, the moneyed, those in authority, the person in the chair, the person who can command and control are never subjects of torture. It is always the powerless, the weaker sections of society, the downtrodden who are tortured. Therefore torture is a class phenomenon. Torture is a manifestation of the undue exercise of misplaced authority and power of those in authority over those who are not. It is therefore borne out of a culture deprived of human rights.

A professional investigative police officer will never venture into torture of any kind. S/he would befriend even the suspect and accused so that s/he gets the best out of them. Confessions before police being not admissible as evidence, the professional police officer would utilise the golden opportunity of interrogating the accused to gain leads and evidence. For such a police officer, irrespective of the rank, torture is not a weapon of the strong, but a weapon of the weak, the incompetent. And indeed this is so. Torture embodies the weakness and lack of professionalism of the law enforcer.

Torture, in any form, is a threat to democracy. It will espouse, stimulate, enhance, exacerbate and institutionalise non-democratic measures. The fear psychosis among the public, manifested in many different ways, such as the fear of women to walk on roads, the fear of people make a complaint in a police station, demolish the spirit of democracy, even if an elected government holds power. Therefore, if not addressed and nipped in the bud, undemocratic activities will take over the democracy. Therefore, for the survival of real democracy and rule of law, we must work together to stop and prevent torture in all its forms and manifestations.

Root Causes of Torture and Potential for their Address

Lack of technology integration in law enforcement. Criminals and law breakers know well how to use technology to their advantage. Rather they (mis)utilise technology not only in committing crimes but also in concealing illegal activities as well as illicit money and
services. For example, across Asia, the internet is being effectively abused by human traffickers for violating, exploiting, selling and buying children, especially girls. It is high time we stemmed the trend of law enforcement agencies growing weaker than criminals. Law enforcement and justice delivery processes must be made technology-driven, technology-oriented and technology-sufficient. The change in policy will entail financial burdens, the association of technocrats in law enforcement as well as many other steps, and above all a mindset change in the policy makers.

**Monetary investment in police and related fields.** Available data indicates that the world over investment in internal security and policing is a tiny percentage of GDP, whereas a substantial amount is inevitably spent on defence expenditure. No doubt territorial integrity and national security should take priority and therefore reasonable expenditure on defence is inevitable. Yet true national security comprises of not only defence, but is a combination of internal security, public safety and much more. The Broken Windows theory is well known. Issues have to be nipped in the bud. A small time criminal, if not brought to law, grows into an organised criminal with a vast network, which could even assume a form such as terrorist groups. We wake up at the last phase, when it is already too late. Best to fix the broken window early. Effective policing at the beginning could have curtailed, contained and prevented serious crimes and many a threat to national security. Across Asia there needs to be a paradigm shift in the allocation of funds to the matters pertaining to internal security vis-à-vis defence and other portfolios.

**Harnessing human potential and human resource management.** If one compares the life of a common police man with that of a common corporate employee or an academic or anybody with similar qualification and experience, one can see a distinct difference. For example, let us take the case of two youngsters who were classmates in a college and have recently taken two distinct jobs, one as a sub inspector of police in a police station in Mumbai and the other in a private corporation. The job predictability, certainty and security are important features where we can see a clear distinction. Further, the risk factors that are high with the police official, and almost non existent with the corporate official are ever so many including the physical threat to life, lack of recognition, lack of relaxation time, unforeseen work pressures, unpredictable work hours, lack of sleep, high level of expectancy by public, media and others, lack of time with family and friends, lack of accessibility health/hygiene habits, unpredictable food habits, chances of succumbing to addiction, negative mindsets and so many more. Moreover, there is another interesting dimension. In many corporations the management hires more than sufficient employees to keep on the ‘bench’, only utilising them as and when required. Yet in a police station there is a severe lack of personnel, meaning that the average officer is required to do much more work than should be reasonably expected. Exact statistics are difficult to come by, as this area has not received sufficient interest from policymakers, which means nobody is aware of the realities affecting the lives of the average police offer. There is an urgent need for policy shift in providing adequate human resources and a decent standard of work and life to police personnel.

**The police to public ratio** is an important and related aspect that requires immediate attention. A recent report by established that “For every VIP in India there are 3 cops on duty, on an average. But only 1 for every 761 commoners”. The people to police ratio is abysmally low in almost all Asian countries. The ratio of police per 10000 people in US is 23, and in India it is 13.6, china 12, Philippines 15. Whereas, according to UN recommendations, the minimum standard should be 20 officers per 10000 public. Policy makers in Asia must recognise this discrepancy and take necessary steps to augment the police strength to at least the UN bare minimum.

Another dimension is the uneven level and even lack of skills in the police systems across Asia. This does not mean that the entire police system is unskilled. There are outstanding examples of individuals in the police in Asia, who have tremendous skills and profound experience. However, these remain as islands of excellence and such qualified skilled personnel are
in minority. There is acute shortage of skills across the board and at all levels of hierarchy in the police systems in Asia. This renders the police forces unprofessional and an object of public criticism yet is easily rectified through training. The skilling up of police and prosecutors, when not addressed by policy makers should be taken as a mission of organisations such as the AHRC and Dignity.

There is one final dimension to reengineering. When we have experts, professionals, technicians, technocrats and scientists putting their heads together and working in synergy to improve the economy of a country or to send a spacecraft to moon, we appreciate, laud and reward this convergence. Why is this not copied for policing? Many crimes have their geneses away from the scene of the crime in this globalised world. Tracing, trailing and tracking these nuanced crimes require vast expertise from various fields of knowledge and skills. The Multi Disciplinary Monitoring Agency (MDMA), created by the Government of India, in the Rajiv Gandhi assassination case is a model here. The team brought together police officers, intelligence experts, Bank officials, Customs officials, legal experts and many others.

Despite the states in Asia possessing a vast resource of such skills, policy makers have not yet made efforts to ensure their convergence with the policing systems and therefore the policing world is deprived of such expertise. This is indeed a loss to the police and, at the same time, a great loss to the individual nation. It is time such convergence was brought in.

Take the case of a train accident that recently occurred in Mumbai. The departmental inquiry is being undertaken to identify human error, if any. Police investigation is in progress to look into issues of sabotage and criminal intent, if any. The usual result of both enquiries is finger-pointing at the engine driver/mechanic/signal handler/track maintenance team etc. yet, as put forward by a rail expert, there was a policy change a few years ago to double or triple the freight services, resulting in higher loads and consequent wear and tear on the tracks. Unless professionals are engaged in the fields of metallurgy and material sciences, track engineering, stress and load engineering, such facts will never surface. Experts should be hired as needed.

**On Corruption**

Corruption is the bane of policing in the Asia region: why is that the police is perceived to be so corrupt? Let us go to the root. There is no denying that corruption must be weeded out mercilessly, ruthlessly, aggressively and without any loss of time.

The nexus between the corrupt bureaucracy and the corrupt political system is a cause of major worry, being the perpetuating factor of police corruption. Corruption has become not only organised but institutionalised across Asia, in all levels of society. Those who are mandated to address the issue have become part of the problem. Corruption is a monster eating at our insides. Everything is for sale. Even the few incorruptible are not allowed to act, as a result of the political corruption which starts in the electioneering process. Money is pumped into the election process by parties as well as “unknown sources” which generates and perpetuates institutional corruption. All rules and laws are violated with impunity. There is no let up in this dismal scenario. We need sweeping steps from the very top. Effective ombudsmen, working under strict transparency must be brought in. All details of income, expenditure, savings, assets etc. of all public personalities, elected and non-elected must be displayed in public domain. All decisions in the public interest, irrespective of the agency and authority, should be made public. We must have public scrutiny! It should be the right of citizens to question the decisions and actions. Checks and balances are necessary to contain malicious interference and intrusion.

Such a transparent process in public dealings and government functioning is the first effective step to root out corruption. Jailing one police officer and one public servant here and there is providing only cosmetic service. It has nil impact on the state of affairs. Grounds of national security and such other gloriously ambiguous terms often used to camouflage
concealment of decisions and decision making processes must be the exception and not the rule. This calls for a policy shift.

On Prosecution and the Judiciary

Though there are several outstanding professionals and committed persons across India, doing commendable work, getting excellent convictions and punishments and taking rightful promotions, they are few and far between. The general state is one of incompetence, callousness, lack of skills and professionalism and above all, lack of care of the victim and witnesses. This is a major reason why witnesses do not wish to appear before the courts. There is no orientation or refreshing the memory of the witnesses. Yet, one cannot truly blame the prosecutors who even lack the space to sit themselves. There is no academy for training prosecutors, not institution for refresher trainings or capacity building. Despite being the eyes and ears of the Court, prosecutors can barely function let alone deliver justice. Calls for police modernisation abound, sadly there is no prosecution modernisation drive.

Another serious flaw is that prosecutors at the Lower Courts are government employees with accountability, whereas prosecutors at the District Courts are private lawyers appointed by the Government in power. When the government changes, as is the practice, they are made to resign lock and stock. Why this politicisation? Why not have a cadre of prosecutors from lower courts to higher courts, so that they get their promotions and due respect? A paradigm shift in the prosecution systems is essential.

With regards to the judiciary, as a single institution they ensure the rule of law as we see and perceive it. But this is not uniform across Asia, or even across India. Often the situation is both distressing and depressing. There is a huge backlog of crimes in the courts. A focus on targets produces a tendency to go for simple cases, which can be quickly decided. Serious crimes languish, or complex cases are split into smaller issues. Under the court trial system the best debater wins, notwithstanding the truth. Victims are, at best, heard. They are not listened to. Social stigma and intimidation tactics often induce witnesses to dither, keep quiet or even withdraw. Private lawyers are rarely allowed to present the case and the entire process is far from victim-friendly. There is a real need for a victim-centric, victim supportive and victim facilitative system.

On a Resigned Mindset

Mindset is a major impediment to any positive change. Across Asia, except in certain situations, the police are directly under the control of their political masters who exercise their power and authority with impunity. Political domination and interference has gone so deep that many police managers and leaders have become stunted and servile, mostly for their own survival. Police need space and freedom to function, within checks and balances that ensure conformity with the constitution and law. Subordination to the rule of law should be the only form of subservience.

Steps to Ensure Accordance with the Rule of Law

A mandate of non-interference. Bring in legislation to make police independent of political interference and be accountable only to the Constitution and laws of the country. This would be a good start, a welcome start and will instigate a paradigm shift towards Rule of Law.

Root out corruption in polity and administration. This is non-negotiable. Start with addressing the corruption in public elections, followed by the actions of public leaders, masters and public servants. Nobody should be above the law. There shall be no exception and no discretion. The corrupt shall be excluded and punished. The “culture of silence” in matters of corruption must be broken with the generation of public questioning and debate over all matters of corruption. It is the right of the citizens to have a corruption-free society, polity and administration. The public must be encouraged to assert, exercise and ensure that their rights are protected, that public funds are not stolen and squandered.
Transparency in the functioning of all public leaders and public servants. This must be across the board and within all agencies, including the police; put all decisions and decision-making processes in public domain, save and except a very few limited aspects wherein national security issues can be compromised.

Increase the strength of police to the minimum number of police to public ratio suggested by the UN. Harness the human potential in the best manner and only from the perspective of public interest. Linked to this, the convergence of experts and professionals should be allowed and provided in an institutionalised manner to assist police investigations.

Allot adequate funds. To know what is adequate, there must first be an impartial assessment. Police work should not be diminished or constricted for want of funds. If required, corporate funding should be funnelled into areas where there can be no dispute such as the provision of housing and educational facilities to the children of police personnel.

Invest in the police force. Make the police technology-savvy and let them be confident in handling crimes. Strengthen their hand with the best available technology and skills in the world. Soft and hard skills are currently in acute shortage, such as observation skills, listening skills, interviewing skills, interrogation skills, presentation skills, documentation skills, technology integration skills, and many more. A Skilling Police Mission, in a concerted manner, must be initiated across Asia if torture is to be contained and the rule of law established.

Police modernisation. Police modernisation is not limited to vehicles, wireless systems and computers. It means so much more. The police are people. Give them trust. Give them the respect. Give them the space. And task them; make them accountable, but only to the Constitution and the law. Remove the fetters placed around them and see how we can usher in a new era of Rights-based Investigation, Rights-based policing and Rights-based delivery of justice. Move beyond the arena of infrastructure and invest in human potential. This will generate the best police.

Wars are won, not with weapons, but with minds. The India Prime Minister, Mr Narendra Modi, recently said that Indian Police should be SMART. I think it holds the same for all police agencies, as S means Sensitive and Strict, M means Modern and Mobile, A means Alert and Accountable, R means Reliable and Responsive, T means Tech-savvy and Trained. Let the Asian Policy makers make this SMART call.

Distinguish the police from the army. Police officials can no longer remain objects of ridicule and criticism. They hail from the same society which ridicules them. Trust them and give them the due. Help police to restore their dignity. Utilise their services in serving public interest and not personal interest. The police are not a substitute to the army, nor visa versa. Role reversals have created serious damage. The army is trained to kill, “no bullet to be spared”, and “one eye for another”. But the police are a service. One eye for another, as Mahatma Gandhi said, will make the whole world blind. Hence in the police systems, the philosophy of working is “serve” and “reach out to the last”. We need to make this a mission.

Improve the Prosecution systems. On par with the importance of police modernisation is a process of prosecution modernisation. This should involve improving infrastructure as well as developing the human potential of prosecutors, coupled with ensuring better facilities for victims and witnesses. Counsellors and child minders should be installed in the office of the prosecutor. A cadre management system for prosecutors, with a clear roadmap for their appointment, promotion and welfare must be put in place.

Provide Judiciary support. A proactive judiciary is an essential for the speedy delivery of justice. Yet with the current backlog there needs to be a paradigm shift of the judiciary from “hearing mode” to “listening mode”. A time frame should be set for judicial disposal, at all levels. As Indian law states that police shall file a charge report (after completing all aspects of investigation) within 90 days of registering crime (FIR), why not specify time frame for prosecution and judicial disposals too? This must be brought
in by amending the procedural laws. Furthermore, we need to evolve and bring about clear policy on three most important aspects of criminal justice delivery: a sentencing policy, a policy for fining the convicted person and a compensation policy for victim compensation. As of today all these three fields are run on the discretion of the presiding officer of the court. This has led to unbelievable variations. For example, in a case of child labour, the court fined the offender with INR 200, whereas another court fined INR 200,000. There is an urgent need to address this issue. Law makers and judiciary should get together fast and act on these issues. This could be facilitated by international agencies.

A legal mandate to rehabilitate the victim. In relation to the anti-human trafficking laws in the region there is a clear directive to the police to rescue trafficked victims. However, there is no legal mandate for rehabilitative agencies to take over the post-rescue care of these victims. Instead, this is left to the discretion of the concerned officials with the result that innumerable rescued persons languish in so-called “homes” where even basic amenities do not exist. Any rehabilitative act is seen as one of welfare, when really it is the right of those rescued. There needs to be legislative change across countries to ensure rehabilitation a mandatory act after crimes such as human-trafficking. The “welfare perspective” should be replaced by a “rights perspective”.

The Convergence of Research and Action

The discussions above bring home certain undeniable conclusions. Existing systems are replete with innumerable violations and deprivation of rights and therefore are not conducive to the rule of law. These fault lines are inherent and embedded. They cannot be said as negative qualities of a good system, but instead are manifestations of a bad system, bad in law and bad in practice. We are in crisis management mode. Therefore, we need not cosmetic changes, nor an overhaul of the system but instead a complete change. Rule by law must step aside to allow for rule of law. The authority-centric and power-based system has to give way to a rights-centric system. What we need is not a transformation, but a revolution.

Gone are the days when we debated and the majority view and voice votes decided the laws and rules. It is time law is made based on expertise and evidence emerging from research. Unfortunately, research in the criminal justice system is an area where there is a vacuum. Seldom is there a linkage between crime, policing and justice delivery with research.

Response systems can and will be refined and improved only if properly researched with appropriate suggestions acted upon. Scholars should be linked with the police, prosecutors and judiciary, with think tanks viewed as an integral component in making and implementing such laws and policies.

Making a Mission of Rights

Every step in the realm of crime, criminals and justice should be undertaken from a “rights perspective”. The training of police, investment in police, their rewarding and respect, public questioning of leaders and public officials — these are all part of the rights framework. The mission of rights must be expanded throughout society, including within the home. A top down message, whereby the home should be free of child abuse, violence against women, free of every exploitation.

The mission of rights should be all pervading. Once this is ensured, the principle of duty-holdership will naturally follow. Assertion of rights by the public will entail compliance of duty by the state. The rights approach will become engrained and embedded in every step and every activity of all duty-bearers and across every institution. Some of the accompanying requirements will be to set and minimum standards ensured. Let us push this process now. I suggest that AHRC and ALRC take initiative in bringing about the following:

A protocol on minimum standards for the care and response to a complainant/victim at a police station;

A protocol on minimum standards of response to the victims of crime by prosecutors;

cont’d to page 49
All we knew about her was that she was a mother of three, a migrant worker labouring as a domestic aid in Saudi Arabia. But she was one of our own and the news that she was sentenced to be stoned to death touched a raw nerve. It is not uncommon for women (and men) to be stoned to death for transgressing archaic moral codes in places where religious obscurantism reigns, such as Saudi Arabia, Iran and Afghanistan. News of such happenings always generates incredulity, horror and anger. But this time it was far more personal. We didn’t even know her name, but she was a Sri Lankan and that was all that mattered.

Fortunately the sentence was commuted to imprisonment thanks to some excellent behind the Sri Lankan government.

The woman had consensual sex with a man who was not her husband. For that ‘crime’ she was to be subjected to a slow and tortuous death.

The word ‘Torture’ conjures images of secret police, clandestine facilities, prison cells, water boarding, electric shocks, Gestapo, Pinochet, Guantanamo.... We think of torture as something states, governments or political organisations do to people deemed inimical or undesirable, something done in secret and rarely acknowledged. This secrecy implies illegality and even shame; it indicates that the perpetrators sense they are committing acts which fall outside the law and societal norms.

But this is only a part of the picture, probably the smaller part. In all too many places of our world torture happens in public and is sanctioned by law or societal norms.
In a number of countries such as Saudi Arabia or Iran, torture, such as stoning someone to death, is written into the legal system. Consequently, torture is seen not as a crime or an act of injustice but as a just punishment, a right and proper way to correct a wrong. It is implemented in the open, in the full view of other humans, who either cheer or look away. Or participate.

Had her sentence not being commuted, Sri Lankan Muslim woman would have been stoned to death not in some secret location but in a public square in Riyadh. She would have been killed not by a professional executioner but by ordinary men, who would have lobbed stones at her until she died. They would have heard her cries, watched her die and gone back to their ordinary lives, probably feeling virtuous about what they just did.

Zbigniew Herbert was right; “The torturers sleep soundly, their dreams are rosy.”1 Why shouldn’t they, especially when their acts of torture are sanctioned by law, belief or tradition, and they do not have to worry about societal opprobrium?

Gang Rape, Witch Hunting and FGM: Torture by Family and Friends

In West Bengal, India, a 20 year old woman was gang raped by 13 men. In the eyes of the rapists, they were not committing a crime but meting out justice. The woman had a love affair deemed unacceptable by the community. Gang rape was the punishment decreed by a village tribunal known as Salishi Sabha2. And this happened in 2014.

Archaic ideas, often justified by some religious superstition, continue to be alive and well in the 21st Century, giving rise to horrendous acts of torture. Minimising such practices and combating their ideological justifications should form an essential component of any regional or global campaign to end torture.

In January 2015, Faidha Bakari a 58 year old Tanzanian woman was hacked with sharp knives and burnt alive. That horrific crime was committed by a group of fellow villagers who accused her of being a witch3. This was hardly an isolated incident. According to the Centre for Advocacy in Rural Development, more than 1000 women were hacked or stoned to death for being witches in 2014. The horror European and American women experienced centuries ago is now being visited on African women.

Even children are not spared and often their torturers are their own parents. According to a Nigerian evangelist Helen Ukpabio “If a child under the age of two screams in the night, cries and is always feverish with deteriorating health, he or she is a servant of Satan.”4 Treatment for such ‘Satanic possession’ is likely to include being splashed with acid, buried alive or immersed in fire5.

In 2009 in Nigeria, a father tried to force acid down the throat of his nine year old son, after the family pastor accused the boy of being a witch.

Sri Lanka with its high rate of literacy should do infinitely better, but does not. In 2012, a little girl was killed when an exorcist forced her to swallow a sharp knife as a ‘cure’ for a malady; two other ‘sick’ girls suffered severe burn-injuries when the same exorcist and his wife pushed them into the ritual fire. This bizarre triple-crime took place amidst a large gathering. In June 2015 in Sri Lanka, a young man was starved to death by his own parents, acting on

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1 An Unwritten Theory of Dreams.
4 (Unveiling the Mysteries of Witchcraft)
5 http://www.huffingtonpost.com/michael-mungai/americans-should-protest-_b_1191387.html
the advice of an exorcist. The two deaths by exorcism indicate the potency of divine/paranormal phobia and its capacity to make ordinary people commit/tolerate brutal acts of torture, even against their loves ones.

Another method of torture which continues to be visited on babies and young girls by their own families is female genital mutilation (FGM). One of its many horrendous after-effects is an increase in child mortality. According to the World Health Organisation, this practice has caused a 20% increase in still births in the African continent.

Europe and even the United States experienced many of these horrors in the past, especially witch hunting and burning at the stake for heresy. It was a combination of Enlightenment, secularisation, modernity, democracy and even capitalism which put an end to such habits. But in all too many parts of the world, torturing people for transgressing some tribal moral code (or to prevent such transgressions in the future) continues to thrive.

Ending such practices would require breaking the mould which gives rise to them and justifies them. It would be far harder to achieve because this torture is sanctioned by beliefs and customs. But it needs to be done, because this second type of torture claims many more victims, including children.

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6 http://www.gossiplankanews.com/2015/06/unfortunate-death-of-youth-at-mawanella.html#more
7 http://www.independent.co.uk/news/world/africa/witch-hunt-africas-hidden-war-on-women-1642907.html
The Lingering Problem

GUANTANAMO BAY AND THE TORTURE COMPLEX

The greatest problems dogging the US and Israeli legal establishments lie in the vast areas of exception that have been created to combat what are ostensibly deemed “threats to the state”. The towering reminder of this problem within the US context remains Guantanamo Bay, that great sore of exceptionality. The camp provided a site of normalising the regime of torture and detention.

The system saw the creation of juridical absurdities – in so far as you consider military commissions, and their accompanying problems absurd. Many legal commentators believed so, concurring that this was overegging the pudding. Why go this extra step if there is already a pre-existing and adequate legal system to try such suspects? Various convictions of terrorist suspects between 2001 and 2011 should have been proof enough.

However the Bush administration wanted to set an example, a dangerous one as it would turn out, for such detainees. Their counsel teams were to be harried; the defence team conversations were to be monitored; and illegally obtained evidence – including some supposedly adduced by torture – used.

The greatest harm has been directed at the detainees themselves. Earlier this year, aspects of what is euphemistically termed “enhanced interrogation” once again made their nasty appearance in the news stream.

According to Majid Khan, a legal US resident detained in Guantanamo Bay, interrogators poured ice water on his genitals, videotaped him naked and repeatedly groped him. At times he was also hung from a metal pole and suspended for several days. Lights were kept on his cell and various types of music blasted around the clock. All this was in addition to incidents of rectal feeding or rehydration, as deemed necessary by Guantanamo officials after Khan had gone on hunger strike. Of course, there was that pièce de resistance: water boarding.
These specific allegations did not even make it to the official Senate report which was released last December. (The CIA has been making an effort to ensure that the memory of a detainee, traumatised as it might be, remains classified.) It says much about the atmosphere in US politics that a report which combed through 6.3 million internal CIA documents, revealing instances of systematic detainee abuse, could be dismissed by members of the Republican Party as a record of embellishment.

This was not to say that Khan was pure as driven snow. He did confess to delivering $50,000 to al-Qaeda affiliates in Indonesia, money that was used to fund the 2003 truck bombing of a Marriott hotel in Jakarta. He also confessed to associating with the notorious Khalid Sheikh Mohammed on the matter of poisoning water supplies, attacking gas stations and acting a “sleeper agent” on US soil (Reuters, Jun 2).

Despite all that, nothing can get away from the fact that Khan has been a victim of CIA “black site” interrogations, along with the promise that he would be sent “to a place you cannot imagine”.

As a presidential candidate, Barack Obama promised to make the closure of Guantanamo a key policy priority. On 22 January, 2009, the President signed an order requiring the closure of the detention facility, claiming that the US would no longer be faced with “a false choice between its security and its ideals.” This has yet to eventuate.

Congress baulked at the suggestion, and limited avenues for relocating terrorist suspects into the federal civilian system through the usual means: cutting off the purse strings. Obama subsequently opened negotiations with other countries to ship off as many detainees as he could, though releases have dried up under the current Secretary for Defence. In 2003, there were 684 detainees. By July this year, the number had fallen to 116, with 99 of those held after some ten years still waiting for specific charges to be brought. This is affirmed legal purgatory.

The Obama administration sporadically puts the issue of closure on the cards, assuming that anyone, at this point in time, will genuinely believe that the complex could vanish. It did so again this year. But these are withdrawal systems, patterns repeated that confirm the general sense that this Kafkaesque incarceration complex is here to stay.

This attitude is best reflected by Republican Senator Tom Cotton from Arkansas. “In my opinion, the only problem with Guantanamo Bay is there are too many empty beds and cells there right now. As far as I’m concerned every last one of them can rot in Hell, but as long as they don’t do that, they can rot in Guantanamo Bay” (The Independent, Jul 23).

The implications for closing down such a camp system, with its unjustified extra-legal padding (review tribunals, administrative review tribunals and periodic review tribunals), will certainly make countries similarly engaged in the business of fighting terrorism in various ways take notice.

There are concerns, for instance, that closing Guantanamo will affect the Israeli system of detention system in the West Bank (Jerusalem Post, Dec 27). Civil rights lawyers will certainly be hoping that this is the case, though their wait will be a long one. Such realms of exception tend to eventually eviscerate the entire legal system even as they mocks the mission of messianic states.

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NOTES FROM PAKISTAN

Half Fry / Full Fry
NEW TORTURE TERMS DEvised BY THE PAKISTANI POLICE

Man has no right to kill his brother. It is no excuse that he does so in uniform: he only adds the infamy of servitude to the crime of murder.

In case you are wondering what the culinary term connotes, it is a new colloquialism used by law enforcement agencies in Pakistan, particularly the police in the Sindh province, to indicate the state of a suspect. The term “half fry” is colloquial for maiming a person for life. For example, if the police officers are convinced that the arrested suspect is involved in crimes the suspect will be shot in the leg to render them disabled before being sent to jail. This practice of maiming suspects gained notoriety during the tenure of former SSP Farid Jan Sarhandi of Hyderabad. The term “full-fry” on the other hand is used when the person is extra judicially murdered.

The use of the term “full-fry” to indicate extrajudicial killings showcases how common and open this outrageous practice by law enforcement officials has become. The formation of the Apex Committee in Sindh Province, ushering increased presence of the military and the Pakistan Rangers, has made the terms “half-fry” and “full-fry” common in the ranks of the police and other law enforcement agencies. The Apex Committee was formed to control serious crimes like terrorism, abduction, extortion, and target killings. Yet, the result has been a tremendous upsurge in extrajudicial killings.

This rising trend in the Sindh province sees innocent people abducted by the police and killed in fake encounters. As per Chairperson Pakistan People’s Party Shaheed Bhutto (PPP-SB), more than 700 innocent people have been killed by the police in fake encounters since the promulgation of Pakistan Protection Ordinance (PPO).

The Deputy Inspector General (DIG) Sindh, Sanaullah Abbasi, upon being asked about the legality of the “half-fry full-fry” formula in a press briefing last year, said he was confident that society had come to accept the “formula”. In a press briefing on 7 March, 2015 he claimed that extrajudicial killings are the best modus operandi to curb crime. The official was quoted by print media saying that “Extrajudicial killings and other actions cannot be justified officially but society has come to accept this ‘modus operandi’ of police to eradicate crimes and make streets safer. It is not
necessary for an encounter to be seen as genuine only if a policeman loses his life in it. You can see police have restored peace and order in the city through this modus operandi.”

He also claimed that Districts of Sindh Province such as Hyderabad and Khairpur had become model districts — thanks to this ‘modus operandi’. “If this [formula] continues then I can assure you that we will be able to create ideal conditions in crime control,” said the officer.

During the briefing the Senior Superintendent Police (SSP) Irfan Baloch referred to his brave actions of “half-fry” and claimed that during the first quarter of 2015, 73 suspects were “arrested” after they fell “injured” in encounters. He warned, “Remember, none of them [suspects] can obtain bail. We have made a strong case to ensure they were denied any chance of getting bail”. The Inspector General of Police Ghulam Haider Jamali, told a meeting at the Central Police Office that the police had killed around 998 criminals since July 2014.

Under Article 9 of the Constitution of Pakistan it is incumbent upon the state to ensure the safety and security of the people. The right to life as enumerated by the Supreme Court in Shezla Zia vs WAPDA case expanded this meaning to signify a dignified life free from fear of being killed. Karachi, the capital of Sindh Province, the country’s largest metropolis, is a hub of extrajudicial killings. It has been listed as the 10th most violent city of the world, according to Al Jazeera, with a murder rate of 12.3 per 100,000 residents. Yet, the Sindh Cabinet, on 11 February 2015, was briefed by the IGP Ghulam Hyder Jamali, who assured members that the crime rate had declined significantly in the Province.

The Jacobabad police officers are notorious for extortion and bribery, targeting innocent citizens and implicating them in frivolous cases. A victim of “half fry”, Naved Ahmed Dangar, was shot and maimed for life by the Head Constable of City Police Station Jacobabad. Naved has accused the police officer of torture and extortion in a video that went viral on social media.

The rampant corruption in Sindh Police is an open secret. While hearing an application on 1 August, 2015 regarding the withholding of funds meant for the police’s investigation wing, the Supreme Court (SC) observed that the level of corruption in the Sindh police had increased threefold. An internal inquiry conducted by the Sindh police department has identified more than 50 SHOs involved in cases of crime. Nearly a dozen of them have links with political parties and members of the Lyari (a no go area in the metropolis of Karachi)-based gangs as well as been accused of sheltering criminals affiliated with political parties and being involved in crimes such as targeted killing, extortion, robbery and land grabbing.

Pakistan ratified the United Nations Convention Against Torture in 2010, but no concrete steps have been taken to enact a law. A draft Anti-Torture Bill that purports to curb torture is eyewash, existing only to dodge pressure from the international community. In Pakistan the justice system is riddled with gaping problems related to fair trial — with conviction after conviction based on statements extracted through torture or other forms of ill-treatment. A staggering proportion of the accused have reported facing custodial torture, which is a serious indictment of due process of law in Pakistan and the fairness of its criminal justice system.

Custodial torture in Pakistan is treated as an inevitable part of crime investigation. Investigators adhere to the notion that if enough pressure is applied, the accused will confess. Nepotism, corruption, torture, misuse of power and illegal detention form the crux of what is the criminal justice system in Pakistan. Torture is often used to extract self-implicating confessional statements from suspects who are innocent. In the absence of modern forensic tools, the judiciary and prosecution rely upon confessional statements. These statements are never crosschecked against available circumstantial evidence, with the result that torture is the only tool available to police. The criminal justice system in the country is therefore no more an aid nor a means to seek justice; for many it is a labyrinth from which there is no escape.

According to figures compiled by several human rights organisations, over 30 people have lost their lives and
around 150 have been injured in fake encounters. Such extrajudicial killings and torture are undermining the credibility of police action and creating mistrust amongst the local populace of Sindh, particularly residents of Hyderabad. Media reports quote forensic doctors saying that police on occasion bring in bullet-riddled bodies, shot at close range. Many times, the doctors have removed handcuffs of the victims of police encounter.

On 3 July, 2015 a final year University student, Toqier Mashori, was tortured to death in the Central Prison of Hyderabad, Sindh, within three days of his arrest. His family was asked by the police and prison authorities to pay large bribes for Mashori’s relief, or else he would be “full fried”. Two of his fellow students were released after they paid the bribes. The victims were taken into custody on charges of preventing the police from performing their duty. However, when the family could not comply with the bribe demand, Mashori was booked in a case involving drug peddling. The victim was continuously tortured for three days, up to 18 hours a day. The torturers put him in conditions of scorching heat and beat him mercilessly. His corpse bears the marks of torture. Senior police officials pressured the family to bury the corpse, without a post mortem.

According to the yearly report of Human Rights Commission of Pakistan (HRCP) around 60 people who were wounded in separate encounters with the Rangers and police have been lying without any proper medical assistance at the Karachi central prison. If the suspect survives, conditions in the central jail make it difficult for them to survive for long, as there is no proper medical assistance. Suspects who had been held during the joint operations led by the Rangers and police were subsequently killed.

The police and other law enforcement agencies in Pakistan are given unbridled power under the guise of maintaining law and order. When a country has police officers who abuse citizens, it erodes public confidence in law enforcement resulting in further chaos and ultimately anarchy. Judges and murderers all rolled into one, these extrajudicial killers in uniform need to be held accountable for their actions.

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Dr PM Nair, LLB, PhD, Chair Professor, Tata Institute of Social Sciences, Deonar, Mumbai-88. Former Director General of NDRF (National Disaster Response Force) and Director General of Civil Defence, Home Guards and Fire services of Government of India. Dr. PM Nair was a member of the Indian Police Team, and has investigated international crimes including terrorist and fundamentalist organised criminals. In neither the investigation nor prosecution of any of these cases was torture involved. These crimes include the assassination of ex-Prime Minister Mr. Rajiv Gandhi (with LTTE involvement); the abduction of NGO activist Mr. Sanjoy Ghosh in Assam (ULFA involvement); the abduction of NGO activist Mr. Sanjoy Ghosh in Assam (ULFA involvement); the killing of 11 men in an RDX explosion in Madras in 1994 in the serial Blasts and explosions in Mumbai (international religious fundamentalists) in the international Arms Dropping by Aircraft in India in 1995 (multinational arms smugglers).

A protocol on minimum standards of response to the victims of crime by the judiciary;

A protocol on minimum standards of care of the victim by medical attendants/other care givers;

A protocol on minimum standards of functional independence/autonomy to police by the governments;

A protocol on minimum standards of proactive policing and fair public expectations;

A protocol on minimum standards of infrastructure and facilities required at the police station.

We must develop these Protocols, publish and disseminate them. Some will be accepted and adopted, with eventual development into international standards.
BEFORE I began writing this review I put Dmitri Shostakovich’s Seventh Symphony on my CD player. This symphony, known as the Leningrad Symphony, is the inspiration for a new and wonderful history by M. T. Anderson. As I write these words, the First Movement is approaching its end. The Nazi armies are beginning their ferocious attack on Leningrad and other parts of the Soviet Union under Hitler’s Operation Barbarossa. The symphony’s previous sounds of beauty are replaced by sounds of fear and threat; air raids and bombardments. The fear of Stalin’s police is superseded by the Nazi assault and the fear and death it brings.

Dmitri Shostakovich is one of the greatest composers to have ever lived. His works are musical documents of the times he lived in and timeless works of beauty. From the bloodshed of two world wars, a revolution and counterrevolution, to the fear and brutality of Stalin’s repressive rule, his symphonies, suites and chamber compositions reflect and inform the events which make up that history. The twentieth century will be remembered for a multitude of things; among them are the scientific advances we take for granted and the great progress humanity made in improving our species’ health and prolonging our lives. Despite these positives, however, there exists another much darker set of memories. Foremost among the latter are the two world wars. Both wars were ultimately fought for
reasons of power and wealth, and both caused the death of tens of millions. There is nothing else in history that compares to these bloody exercises in death. Virtually every nation bears some responsibility for the carrion that rotted into the ground as a result of these wars and their aftermath. Naturally, there are two or three nations who bear the bulk of that responsibility, just as there are others who bore the bulk of the casualties.

The Soviet Union is perhaps foremost among the latter. Millions died in its fight against the Nazi armies. More than a million of those died during the Nazi siege of the city of Leningrad — a siege that lasted 872 days. People ate paper and sawdust to survive. Some ate the dead, while a few even killed living humans and ate them. Corpses lay in the frozen streets after they fell dead from starvation and the unbearable cold of the Soviet winter. Thousands of residents were smuggled across a frozen lake out of the city during the winter, yet even then thousands died during their transport. But, when spring came, the citizens gathered their minimal strength and buried their dead. Some even planted flowers while many ate grass because it was the only thing to eat. The story of this siege and the humans who survived it is one of humanity’s greatest and most heroic tales ever.

The siege is the setting of M. T. Anderson’s newest book, *Symphony for the City of the Dead: Dmitri Shostakovich and the Siege of Leningrad*. Anderson, who writes for the Young Adult market, is perhaps best known for his dystopian novel *Feed* and *The Astonishing Life of Octavio Nothing*, a pair of novels about an African slave in the period of the American colonists’ war for independence with a contrary take on that war and its myths. *Symphony for the City of the Dead* is a non-fiction work. Part biography and part history, it is a sweeping look at the life of Dmitri Shostakovich, the rule of Stalin and the fate of Leningrad under the Nazi siege.

Before one begins reading this book, it is essential to dismiss the classification of it as a book for young adults. Like Anderson’s other works, this book transcends marketing classifications. It is a work that, in its majesty, defies expectations and creates new definitions. The composer is the centre of the tale, but, like all of us, he is also a plaything (perhaps even a victim) of forces and circumstances much greater than him. Born into pre-revolutionary times and a witness/participant in subsequent revolutions, the Shostakovich presented here is first and foremost a musician. Yet, he is also a patriot and a believer in the Soviet revolution. Many of his compositions are an attempt to reconcile these aspects of his intellectual being.

Anderson reflects these facets of Shostakovich’s being in this biography. The reader can feel the triumph of the composer when his first symphony is performed in public the first time. They can also anticipate the fear that comes from living under the iron hand of a ruler whose actions are inconsistent and often brutal. The joy his children bring him and the hopes they represent are felt as clearly as the death present every day of the bloody war.

*Symphony for the City of the Dead* is also the biography of Leningrad. Always Russia’s city of arts and music, it is also a city of revolution. Naturally, it buckles under the rule of a man like Stalin, but keeps its figurative head high. It is this pride that helps its people survives the siege. Daunted and desperate, the spirit of Leningrad’s residents is really the ultimate determinant of its survival. This is why the story of the siege is such a heroic tale. Anderson understands this and makes it the foundation of his history.

The final piece of this biographical triad is the story of the symphony itself. Titled the “Leningrad Symphony,” it is Shostakovich’s Seventh. Shostakovich attacked the composition with vigour until he and his family were moved out of Leningrad with dozens of other artists. After leaving his city, he sunk into a depression and stopped composing. Anderson writes that Shostakovich told friends he could not write knowing how many people were dying in his city. Of course,
SOLITARY CONFINEMENT is exactly what it sounds like.

A prisoner is kept in a small cell — usually 6 feet by 10 — alone, for 23 hours a day.

For one hour a day, he or she may be taken into a small cage outside, with the opportunity to walk in circles before being taken back in. Even the outdoor cage can usually be opened and closed remotely. The idea is to keep the prisoner from having any human interaction. Those who’ve been through it call it a “living death.” The United Nations calls it torture.

The practice is widespread in the United States. And until recently, it was applied even to juveniles in the federal prison. In January, President Barack Obama banned solitary confinement for federal inmates under the age of 18. He also ordered new limits on the amount of time prisoners of any age can be caged up alone. These are great steps forward for human rights in the federal prison system. But they won’t help most of the prisoners currently in solitary, who languish in lower jurisdictions.

State prison systems across the country use solitary confinement as a way to destroy people. These prisoners routinely experience “intense anxiety, paranoia, depression, memory loss, hallucinations, and other perceptual distortions,” philosophy professor Lisa Guenther noted in The New York Times.

Many Americans think that solitary is reserved for the worst and most dangerous criminals. In most cases, that’s simply not true. Solitary is used not for the safety of inmates or prison guards, but as a punishment and as an expression of power by guards.

For example, a prisoner can be sent to solitary for “insolence” or for “investigation.” What does that mean? Anything the guard wants it to. Talk back to an officer? Solitary! Take more than 15 minutes to eat your meal? Solitary! An anonymous source accuses you of gambling? Straight to solitary.
When an inmate is sent to solitary, the prison’s internal investigators are supposed to begin an inquiry into his or her behaviour. They’re given 90 days to do it, after which the prisoner should be released back to the prison’s general population.

But in fact, the investigators can renew the 90-day solitary period for a full year. That’s an entire year living in a small grey room the size of a walk-in closet with no human contact. It would make just about anybody crazy.

Even when prisoners are fortunate enough to have an attorney or family members who can press prison authorities on their behalf, the prison can simply transfer them to another facility — where the whole solitary count starts over again.

That really is torture.

Obama’s policy change is a great start. But most prisoners will get no benefit from it unless state prison systems follow suit.

John Kiriakou is a former CIA analyst and whistleblower and now an associate fellow for the Institute for Policy Studies in Washington, DC. He worked for the CIA from 1990 to 2004, including as chief of counter-terrorist operations in Pakistan. In an interview in 2009, he became the first former government official to confirm the use of waterboarding against al-Qaida suspects. From 2009 to 2011, John was a senior investigator for the US Senate foreign relations committee. In 2012, he was charged with leaking classified information to journalists and served two years in prison.

he did eventually complete the work and performed it. Its first performance was broadcast over the radio. The reception was instantaneous and thunderous. Shostakovich’s symphony rallied his fellow citizens. Next was a performance in the city of Leningrad itself. It was a city slowly rising from the coma of the siege; musicians were hard to find and, when found, often too weak to play their instruments. Yet, the performance took place, after weeks of rehearsal. Meanwhile, the symphony’s score had been put on microfilm and was being smuggled to the United States, where it would be transcribed onto staff sheets and sent to Arturo Toscanini, who ultimately performed it with the NBC Radio Orchestra to a national radio audience on July 19, 1942. This performance is legendary. Indeed, it is one of the most legendary radio broadcasts of the twentieth century. It would help turn the US Congress in favour of joining the Soviet government’s armies to defeat the Nazis.

M. T. Anderson has written a marvel. *Symphony for the City of the Dead* is a singular and spectacular book. Although the politics is occasionally simplistic, this isn’t really a book about politics. It is much more. It is a powerful and wonderfully told narrative about the sheer majesty of the human will and the power of music to not only transcend the depths of human suffering, but to go deep into that pit, struggle there, and deny the victory of those demons who would rule us with hatred, fear and brutality.
LIKE MANY COUNTRIES IN ASIA, South Korea suffered during a military dictatorship which dismantled the fundamental principles of civil liberty for a prolonged period. In particular, quite a number of political prisoners were suppressed and imprisoned during the Korean Peninsula conflict between Communist North and non-Communist South. The truth that most of the cases were fabricated under torture, coercion and forced confession has recently been discovered by a fact-finding committee and competent court for a retrial. In 2012, Gwangju Trauma Centre (GTC) was built for the purpose of healing wounds caused by government abuse including the May 18 Democratisation Movement.

Dr. Kang Yong-ju, was elected as the first director of GTC. He himself a victim of state violence, he works as a physician to heal the wounds of other victims as well as to protect human dignity and civil liberties as a human rights activist. He was a citizen participant of the May 18 Uprising, a torture survivor of the “foreign student spy ring” case and the youngest unconverted long-term prisoner against “ideological conversion system” and “law-abiding oath”. He is currently moving forward into the future through GTC and the Truth Foundation — taking the initiative in healing people hurt by state oppression.

The vital role played by the Gwangju Trauma Centre in healing victims of state oppression

Dr. Kang Yong-ju was interviewed recently by Jiwon Shin.

Jiwon Shin (JS): In 2012, the first healing trauma rehabilitation centre of South Korea was established in Gwangju. What does this mean to South Korea?

Kang Yong-ju (KY): In the cases of the Republic of South Africa, Chile and Argentina where they passed through a transitional period of democratisation like South Korea, there were trauma centres built for victims and their families who suffered from government abuse under authoritarian regimes. In Korea, sadly, there has been no healing centre until now, despite 10 years of democratic government. This lacks victim perspective. We took the first step towards confronting the past and reconciliation focused on victims by establishing the GTC, which was built under the collaboration of the Ministry of Health and Welfare and Gwangju. It signifies that the duty of the state to rehabilitate victims and their families damaged by government abuses is being practiced.

JS: How did you feel in the first place when you were offered the position as director? It must have another meaning for you to be involved in the May 18 Uprising again, despite your work with The Truth Foundation, supporting victims of torture in fabricated spying cases and their families.

KY: “I cannot hide from it any longer,” I thought.

In May 1980, I participated in the Gwangju Uprising by chance when I was in high school. After surviving from the May 18 Uprising, I was beset with survivor guilt. This didn’t change as the years passed. I wanted to stay as far away as possible from Gwangju and avoid facing the May Uprising.

But when the position was offered, I felt that this is where I am supposed to be. I even think that Korea’s first meeting for torture survivors by the Truth Foundation was a sort of preparation for the GTC. If I cannot avoid it, then I want to make a go of it. I wish to make this first trauma centre of South Korea an exemplary healing centre.
With the Uprising, it was part of the struggle for Korean democracy by the collective community. It was something accomplished by ordinary people, not just one or two heroic individuals. One by one they may be imperfect, but at the time of the Uprising, they came together as a group.

The May 18 uprising sent an inspiring message about democracy, not just to me but to everyone of the same age. Countless people have since walked the path of determination, devotion and sacrifice. Many Asian countries also seem to find the hope for future and inspiration in how the Koreans achieved democracy.

JS: 5 years later, you were arrested on a trumped-up charge which as a part of a ‘Foreign students spy ring’ case and suffered torture for 35 days in custody. May I ask you about your memory of those days?

KY: When martial law forces occupied the provincial government building, I threw my gun to the ground and ran away. That guilt led me to the student movement as soon as I entered University. At that moment, the president was Chun Doo-hwan, slaughterer of the May 18 Uprising. Then, in late June 1985, the Agency for National Security Planning arrested and tortured me for more than a month. It was a time beyond of any possible expression in words. My physical and psychological strength deteriorated constantly. My soul was miles away, writhing in agony in the pits of hell. The sense of shame and frustration by that I bow down to Chun Doo-hwan which was, for me, to strike against the ideological conversion system, was the only way to cope with survivor guilt after running away from Gwangju uprising and succumbing to torture by Agency for National Security Planning. It was not easy. I just moved forward step by step, hesitatingly, and was finally was able to be released without signing for conversion.

JS: You were released after 14 years as a youngest unconverted long-term prisoner. How did you feel at that time?

KY: I was so afraid. I cried with fear for several days once I found that I could only be released after death if I didn’t sign for conversion. I was so scared. But to fight at Chun Doo-hwan which was, for me, to strike against the ideological conversion system, was the only way to cope with survivor guilt after running away from Gwangju uprising and succumbing to torture by Agency for National Security Planning. It was not easy. I just moved forward step by step, hesitatingly, and was finally was able to be released without signing for conversion.

JS: The May 18 Uprising, a fabricated spy ring case, confession resulting from torture, sham trials and life imprisonment. You experienced so many different types of state violence yet in prison you still strove against state power, refusing the “ideological conversion system” and “law-abiding oath”. Weren’t you afraid? You are someone who knew exactly how the government treated people who raised their voice against them.
JS: I heard she is a source of strength in your life. What does your mother mean to you?

KY: My mother gave birth nine siblings. My father passed away when I was 15 years old. My mother alone raised nine brothers and sisters and out of them, I was the only child who entered university. Can you imagine how she felt when her son was sentenced to life in prison on charges of spying? Desperate. But she was strong enough to look after me all throughout my time in prison. She cried in front of me only once. It was at the time that the government announced they were repealing the ideological conversion system and would release prisoners who took a law-abiding oath. Mother expected that I would be released but instead I said, “Please stay healthy and live longer, mother”. Because I decided to reject the law-abiding oath, which I perceived as another type of ideological conversion. She nodded while shedding silent tears. People can endure if they have even one person who understands and supports them. For me, she was that person at the time and she still is today.

JS: After you left prison, you went back to medical school and became a specialist. Then you established “The Truth Foundation”. How did this come about and what type of place is it?

KY: When I got out of prison, in those days, my wife was working for a human rights organisation called Minkahyup, which supports family members of those who have been politically imprisoned under the National Security Act. We were concerned about the issue of healing for torture victims during the retrial of spy cases with fabrication by torture in the 1970s and 80s. To recall everything in order to reveal the truth is re-traumatisation. So we organised a meeting with psychiatrists, clinical psychologists and lawyers in charge. We dealt with the retrials and ran a group counselling at the same time, which continued for five years. That was the beginning of The Truth Foundation. Torture victims became torture survivors by facing their pain and became wounded healers by helping people who are still in pain. I guess that is ‘The Truth Foundation” is for torture victims to find a new meaning of their life within the community of suffering and growth.

JS: Could you tell us the basics of the GTC healing programme and its goal?

KY: Our centre is working largely on two projects, one is the Healing and Rehabilitation programme, the other is a state violence prevention programme through civil liberty activities. Under the Healing and Rehabilitation programme, we have been providing psychological consultation such as individual, group or family counselling, and psychotherapy for physical sequela. In terms of social rehabilitation, we provide a testimonial programme called “My Day” as well as photo therapy.

Our goal is, on the third anniversary of GTC, first and foremost to be an effective healing centre. Secondly, we aim to establish an independent permanent organisation and lastly, to develop trauma healing hub in Asia through international solidarity and exchange. I wish for the GTC to take on a role of inspiring and encouraging Asian people in the same way that the May 18 Uprising did. I want to see more interest in and support for the GTC.

JS: As you know, the May 18 Uprising was not the only instance of the fight for democracy against
dictatorship in Asia. Yet it continues to inspire. What are the differences between the May Uprising and uprisings which occurred in other Asian countries?

KY: I think that we democratised our government and overcame massacre in a very short time. This was achieved the the nameless fallen. During the whole period of uprising Gwangju City formed a collective community. This dealt with the critical situation through cooperation and maintained peace and order. Following the Uprising, the struggle for democracy continued and resulted in regime change in 1987. Internal factors were an important role, such as the need of a democratic system as a superstructure for a rapidly growing economy. Yet external factors were also important, like the post-Cold War context and the necessity for the West to lead symbols of democratisation. Democracy planted its roots in Korea along very objective external and internal factors.

JS: The May Uprising citizen militant, unconverted long-term prisoner, the world’s youngest prisoner serving a life sentence, Executive Director of The Truth Foundation, Doctor, Director of Gwangju Trauma Centre. There are so many words to describe you. And through those words, we can see the Korean history of democracy and human rights. So, what is the next step for Dr. Kang Yong-ju?

KY: The principle of human rights which states that “all human beings are born free and equal in dignity and rights” is our hope. But this is so easily denied and damaged in reality. I think that never giving up on this principle is the most powerful means for protecting of our community from war and violence. My dream of the world without torture is part of that. It will come true when we all long for it together. Human rights are the most beautiful promise of humanity, and I wish to see that fulfilled.

I wish I will be that companion all the way to Human Rights, the most beautiful promise of human being.

Jiwon SHIN is an intern at the Asian Human Rights Commission, Hong Kong SAR.
NO RECONCILIATION

WITHOUT TRUTH

1965 MASS KILLINGS IN INDONESIA

Senesce from The Act of Killing - a film by Joshua Oppenheimer
An Interview with Tan Swie Ling on the 1965 Mass Killings in Indonesia

by INTAN SUWANDI

[The following interview extract originally appeared in the Monthly Review September 2015 edition. We re-printed with the permission of the Editor of the Monthly Review, Martin Paddio. Read the full interview at monthlyreview.org]

The September 30th Movement, 1965

In the early morning of 1 October, 1965, self-proclaimed left-wing troops raided the houses of seven top army generals in Jakarta. In the process, six of the generals were killed — three were shot during the kidnapping attempt, while the others were taken to Lubang Buaya, an air force base located in the south of Jakarta, and then killed. The seventh general, Nasution, managed to escape. The perpetrators announced on national radio that they were troops loyal to President Sukarno, and they aimed to protect the president from the danger posed by the right-wing “Council of Generals” — who, they said, were planning to launch a military coup d’état. These troops called themselves the September 30th Movement (abbreviated in Indonesian as the G30S) and named Lieutenant Colonel Untung, a commander of the presidential guard, as their leader.

This movement was very short-lived. Within one day, it collapsed. Major General Suharto, then the commander of the army’s strategic reserve (KOSTRAD) — who “surprisingly was not captured,” although he was “logically” one of the “prime targets for the strike” — took control of the army during the morning of 1 October and quickly crushed the movement. Details of what happened behind the scenes with this movement remain murky, although some interpretations have suggested that the G30S was an internal struggle within the army. Nevertheless, one thing is clear: what happened on 1 October, 1965 marked the fall of Sukarno and the rise of Suharto, who was soon to rule Indonesia under his military dictatorship for more than three decades. The brutality of Suharto’s New Order is probably not news for people familiar with Indonesia. But there is “an episode the West would prefer to forget,” as journalist John Pilger put it, that accompanied Suharto’s rise to power: the destruction of Communism and the mass killings that followed — a phenomenon claimed by Time magazine in 1966 as “The West’s best news for years in Asia” or, as presented in the title of James Reston’s 1966 column in the New York Times, “A Gleam of Light in Asia.”

Having taken control of the situation, Suharto declared the Communist Party of Indonesia (PKI) as the dalang, or “puppet master” behind the G30S — an accusation that was never supported by evidence. The following years saw not only the destruction of the PKI — then the “largest nonruling Communist Party in the world” — but also the slaughter of hundreds of thousands of Indonesian Communists and those perceived as such. From 1965 to 1966, a series of mass killings occurred across the archipelago, especially in Central and East Java, Bali and North Sumatra. In Central and East Java, where some of the worst massacres happened, most of the killings were done by army units, in particular the para-commando unit RPKAD, along with civilian vigilantes associated with anti-Communist groups. One of them was Ansor, the youth movement of the Muslim political organisation Nahdlatul Ulama (NU). In general, the military had a significant role in providing weapons, training and encouragement...
to the vigilantes in various regions in the country. The killings themselves often took place “when anti-Communist army units arrived in a region.”

No less important is the role played by the United States, along with Britain, which aimed to destroy Indonesian Communism in this period of carnage. U.K. Ambassador Andrew Gilchrist called for “propaganda” and “psywar activity” to ensure the “destruction and putting to flight of the PKI by the Indonesian Army.” The United States aided Suharto’s forces through the “direct involvement of the CIA, the close cooperation of the U.S. Embassy and State Department, and the guidance of the Johnson administration’s National Security Council.” In a November 1965 memo, the CIA suggested that the United States should not be “too hesitant” about “extending assistance provided we can do so covertly.” Thus, when the Indonesian generals asked the United States for weapons needed “to arm Muslim and nationalist youths in Central Java for use against the PKI,” the United States quickly agreed to give covert aid, “dubbed ‘medicines’ to prevent embarrassing revelations.” Perhaps Bradley Simpson summarised it best: “The U.S. response to mass murder in Indonesia was enthusiastic”—and we are talking about the very same event that the CIA itself referred to as “one of the worst mass murders of the twentieth century.”

Fifty years after 1965, I met with Tan in Jakarta. He shared with me his personal experience as a political prisoner, as well as his political-economic analysis of the G30S and its aftermath, especially in the context of imperialism. These are his thoughts, his story as a survivor.

**On Being a Political Prisoner: One-Eighth of an Egg and a Three-Headed Monster**

IS: In one of your books, you wrote about some gruesome experiences, your own and your fellow prisoners’, having to deal with torture, uncertainties in the length of imprisonment and being held in an isolation cell. What made you survive and kept you from losing hope?

TSL: The number one factor is, of course, what we choose in life: Do we want to play around or be seriously determined in living our lives? I don’t know why, but then, I chose the latter. Second, as soon as I was sure that I was going to be in prison for a long time, I had to determine what I should do next. When we speak of long-term imprisonments, the main problem is the problem of the stomach, correct? It’s about food. Now the issue is, how do you deal with this problem?

There was a period when people were so afraid of hunger. When some prisoners were sent food [by their families or friends], other prisoners would stare at them, with eyes wide open. If these people were eating a yam, they would peel the yam and make tiny balls out of the skin. Then they would throw them at...
the others, and these other prisoners would quickly grab and eat them. That’s how bad it was. Why did they do that? Because they were afraid — afraid to die. So how we deal with this type of situation, that’s important. But I also had several friends who never abandoned me. They cared for me. Because of them, I could manage to have clothes that didn’t even have holes in them.

But you see, people can change. When people were first put in prisons, they were so afraid of being hungry. When they’re afraid like that, they became individualistic. If they had food, they ate their food in the middle of the night, hugging the food box tightly to their chest. Eating all of it just by themselves. But as time went by, they changed. They could think, “I’m not hungry. I can share my food.” Up to the point that when someone was sent a boiled egg, he would share that one egg with seven other prisoners. He broke the egg into eight small pieces, and he sincerely accepted that one-eighth share of his. This is why many people who weren’t sent food could survive — including me. So this fear of death could be overcome if our lives were led by good spirits — that is, solidarity, the sincere act of sharing your boiled egg with seven other people — and many lives could be saved. The ones in power wanted us to die slowly through starving us. But when the prisoners understood that food could be shared, nobody died. That was, for me, a very unforgettable experience.

IS: You also mentioned that the prisoners were not allowed to think. The authorities didn’t want political prisoners to have access to materials for intellectual activity. You were only allowed to read the Qur'an, the Bible, or other holy books, while other readings were forbidden. It was even difficult to play chess, since they thought of chess as a game that requires thinking. What did you do to keep your mind occupied and not to “surrender” to what they wanted?

TSL: Well, if you weren’t allowed to obtain the stuff you needed to play chess, you made them. We had a lot of materials then. Old, rotten chairs were plenty. Then I looked for a long nail, and tempered with it until it could serve as a sharp tool to shave the old wood. That’s how I made the chess pieces. The prison guards could take them away from us anytime in a surprise inspection. But no worries, the new ones would be available in no time!

IS: What about the times when you were put in an isolation cell? You wrote about how you would pace back and forth and keep your mind busy.

TSL: That was actually unintentional at first. The goal was to exercise my legs. During one of my early interrogations, an officer knocked me down by hitting the back of my knees with a one-meter-long thick ruler, just like a lumberjack cutting down a big tree. Anybody would fall as a result of that, and I had a problem walking because of it. So when I was put in the isolation cell, I tried my best to heal my legs. The only way was to keep on moving, going back and forth, back and forth. With a room that tiny, I felt like a monkey with his waist tied to a pole, pacing left and right. But after a while, my mind started to wander. The first thing that came to mind was, “What should I do to escape from prison?” But after that, I started to be able to think clearly. I didn’t really have many choices — I tried to remember what I had learned in the past, what was taught to me, the things I learned from the books I had read. When I began to recall all these, my mind worked. I tried to recall [sociopolitical and historical] questions and put effort to answer them. It kept going and going. That saved my mind.

IS: What about your experience after you were released from prison? What were some of the things that an ex-G30S political prisoner had to face after imprisonment and how did you deal with the hardships?

TSL: One of the hardships is of course regarding life, how to live. Coming back to the “stomach problem.” Many of these ex-political prisoners had difficulties in fulfilling their basic needs, including the need to eat. Many of them tried but most of them failed. There weren’t many who succeeded. I also experienced these difficulties, but I was very lucky because my wife worked extremely hard. She did anything she could, making and selling baked goods, everything.

Another hardship was that, after I came out of prison, many people were afraid of me. For example, before I was imprisoned, when I still lived in Pekalongan, I held an important role in Baperki, which dealt a lot with Chinese Indonesians’ issues. People there respected and accepted what I did for the organisation, even though I was still very young. But after I came out of prison, people sneered at me. And they showed no sympathy whatsoever.
I was trying to come back to activism after I was released. For Chinese Indonesian (Tionghoa) minorities, the citizenship issue was a central problem then, and I wanted to be a part of the effort in seeking solutions to it. But it was very difficult. One important step, I thought, was to amend the 6th clause in the Indonesian constitution (UUD 1945) and later to abolish the SBKRI [legal proof of citizenship, imposed mostly on Chinese Indonesians]. That was my goal.

That clause was the root of racism against the Tionghoa. This had been proposed previously by several Chinese Indonesian figures, but we had the right momentum when Megawati [Sukarnoputri] became president. It had to be done. I could not do it by myself, of course. Political work can't be done merely by individuals, so I asked others to work with me, especially on the SBKRI issue. I went to various Chinese Indonesian organisations, but almost all of them avoided me because of who I was. They refused by saying that this was a “small matter.” I told them, “Yes, it’s a small matter. As a matter of fact, let me correct you, it’s smaller than a small matter. It’s like a mole on your body. But if that mole exists in a certain place on your feet and because of it you’re not able to walk, what would you do?” In the end, only one organisation agreed to work with me, and it was the Indonesian Badminton community (KBI). I approached its leader, Tan Yoe Hok, and several badminton champions, and they welcomed my proposal. When we finally succeeded, suddenly there were so many parties that claimed this victory as a result of their own hard work! But I learned from the old Chinese martial arts stories: no need to boast, it is the work that’s important. And how your achievements can actually benefit others. But that was what happened, the obstacles I had to face. And people were afraid of me. Someone like me...I don’t know, maybe in their eyes, I appeared to be a three-headed monster.

**On Imperialist Powers and the Destruction of Communism**

**IS:** Now perhaps we can talk about your analysis of the G30S, which you also wrote extensively about in your book. I’m hoping that you can explain them briefly here — your own accounts of the event, and what you think really happened.

As we know, Suharto’s New Order used the G30S as an excuse to wage their decades-long “war” against Communism. In their version, the PKI was blamed as the mastermind behind the movement. And this led to its destruction and the mass killings that followed, as well as subsequent anti-Communist sentiment. You said that this New Order propaganda was so successful that even some of the captured PKI officials themselves believed that the PKI was to blame (“Because of the PKI, I’m suffering like this” was commonly heard in the prison). But you maintained that — despite their weaknesses and mistakes — the Party, along with its main leaders, was not responsible for the G30S. At its root, the real players behind the scenes were the imperialist powers or nekolim (especially the United States through the CIA), who wanted to destroy Communism in Indonesia and the world. Can you talk about this a little?

**TSL:** To make a long story short, the U.S. involvement was central due to several reasons. One of them is the extraction of Indonesia’s natural resources — think about the mines that still operate today. If there was no “gold” coming out of all this, the United States wouldn’t even do the things they did. Obviously the main reason was economic, with human beings sacrificed on the altar.

The issue of the United States is not by any means simple, but we can see it this way. The United States can be considered as a “modern” nation. They were established after the American continent was “discovered”, as they call it, by Columbus. A “discovery” followed by genocides against the natives. This “discovery” could not be separated from the whole development of capitalism itself, particularly the need for capital to expand out of Europe. Expansion — “globalisation” — since the very beginning has always served as a means for capital to control, oppress and exploit “backward” societies.

The United States, then, has a “historical mission” (tugas sejarah). What is this mission? It’s none other than protecting and advancing the development of capitalism. In any circumstances, with or without violence, it will do anything, whatever the costs, to defend the interests of capital. That’s how I see it. It can, for example, destroy countries. Look at what happened to the countries in the Middle East, to Iraq. If these countries were not seen as an obstacle to this “mission,” I don’t think they would meet such a
horrible fate. But the United States had determined that these countries hindered its goals and therefore had to be destroyed. That’s the character of an imperialist.

IS: So Indonesia was seen as an obstacle and therefore had to meet the “fate” of the G30S and its devastating aftermath?

TSL: For sure. If we look at the U.S. targets... just see how the United States treated Saddam Hussein. He was stubborn as a mule, therefore he had to die. But how did they treat Ferdinand Marcos? He was certainly not Saddam Hussein, so they let him die happily while enjoying a vacation. Now, what about Suharto? Suharto was no Saddam Hussein either, so the United States let him die in a noble way, à la Javanese aristocrat. He was buried with all the aristocratic glory and the law could not touch him until the end of his life! Could all that happen without the decisions made by the United States, as one of the imperialist powers? I don’t think so. A person’s life, a nation’s fate, many of them depend on these decisions. This is the role of imperialism in the world.

IS: Still in relation to this idea that Indonesia was an obstacle to the interests and goals of imperialism — you wrote a bit about how the destruction of the PKI was a means to bring down Sukarno. Can you elaborate on that? What was the “sin” of Sukarno and the PKI from the perspective of the imperialist powers?

TSL: Sukarno was, what do you call it, a loudspeaker. He gave fiery speeches everywhere — speeches despised by the United States. People like him “understandably” had to be “taken care of.” The United States initially just wanted to get rid of Sukarno because of his “propaganda,” but ended up doing more than that. It was because they realised later that they wouldn’t be able to get rid of Sukarno without getting rid of his protector — that is none other than the PKI. They had to attack the PKI first and the rest followed.

IS: But were there other reasons why Sukarno was seen as “dangerous” by the imperialist powers, besides the fact that he was vocal? What about his important role in the Non-Aligned Movement?

TSL: Obviously. The United States and the West could not live without sucking the life out of others. And Sukarno always emphasised this point. He was a hardliner when it came to his anti-colonial and anti-imperialist stance, so he was a main target. If Indonesia at that time considered imperialism as the enemy of revolution, then Sukarno was the enemy of imperialism.

The imperialist powers heavily objected to the effort of the oppressed nations in gaining sovereignty. They had to prevent this from happening. Take the Vietnam War for example — something that became the centre of attention at that time. What was the point of this war? From the perspective of Vietnam, this was about how they could break free from imperialism. But what was the goal of the United States? It was an effort to keep the anti-imperialist movements from spreading among the oppressed nations. That was the reason they “took care” of Indonesia: we behaved dangerously back then. We hurt the United States with our loud voice. We had the role of striking the anti-imperialist bell, “Toeng, toeng, toeng...Amerika is evil, Amerika is bad!” So, on the one hand, the United States was strongly against the sovereignty of the oppressed nations. On the other hand, Sukarno emphasised the need and the means for these ex-colonies to together free themselves from the imperialist powers. The two don’t really mix, do they? And then why the PKI as a target? PKI was the fence for Sukarno and they also borrowed his voice as their loudspeaker to spread their propaganda. So pretty much it was like that.

IS: And how does all this relate to the imperialists’ war against Communism?

TSL: In these ex-colonies, who was really behind their struggles to gain sovereignty? Communist movements. So the United States concluded that the “ungrateful little pricks” were the Communists. And hence they thought that Communism had to be beaten to a pulp. Exterminated from the world.

But speaking of U.S. involvement, it all started a while back [in 1947], when the United States was parading in the name of the Good Offices Committee (Komisi Tiga Negara) to interfere with the negotiation between Indonesia and the Netherlands. Why all of a sudden did the United States want to be involved in a “domestic business” between the two countries? I don’t think there was ever a clear answer to that —
and you know what that means: it was for their own interests. And what was one of their main interests? To stop Indonesia from spreading Communism.

**IS:** Maybe we can talk about the continuation of such interference in the subsequent years of Indonesian politics. In their effort to exterminate Communism, how exactly did the imperialist powers infiltrate local politics and use their local channels to destroy the PKI? And who were these compradors (kakitangan) — the military, the local bourgeoisie, the religious political parties?

**TSL:** Well, the cooperation between the imperialist powers and the Indonesian military is clear. No question about it. They needed each other. No matter how strong and able a foreign military is in destroying their enemies, they would need the role of “treason” from within the local politics of their targeted countries. Sure thing, the treacherous parties wouldn’t admit what they did was treason. They would even claim that they performed a heroic act to their nation. And the United States wouldn’t say blatantly that they were using the local military to advance their own goals. But if that was really the case, we wouldn’t have any problems, would we?

And yes, the political parties — they had their share. When Republik Indonesia was born and we could have political parties, they of course had their own figures. And for sure these figures, these people, would advance the interests of their own parties. If you were a party like the PKI, you would understandably not want to cooperate with the imperialist powers, including the United States. You would be against it. But for most of the other parties, it was indeed in their interests to be close to these powers. During that period, funding was a big issue. And how did you get funding? By living a life of servitude to imperialism.

**IS:** I want to talk more about the PKI, since you also wrote about it in your book. But before we come to that — how close were Sukarno and the PKI?

**TSL:** They were indeed close. Evidence of their close relationship was that Sukarno entrusted the writing of his speeches to Njoto, one of the main leaders of the PKI. Every time Sukarno was going to give a speech, including the Independence Day speech, he asked Njoto to write it for him. That was no small matter, especially with the Independence Day speech, since the speech would serve as some kind of a guideline for the following years — a resource for the Indonesian peoples that could inspire their thoughts and their work. Moreover, this trust was well received by the PKI, to the point that they never doubted Sukarno’s sincerity and friendship. As Sukarno said, “the PKI is my sibling as well as my friend.” Unfortunately, this made some PKI officials bigheaded. But from what I myself observed, Sukarno was not all talk. He proved his words. No matter how big the pressure was, Sukarno was never willing to disband the PKI. Until the last moment, he always defended the Party. So yes, the relationship between Sukarno and the PKI was quite close. But we also have to remember that in both parties — within the PKI and especially within Sukarno’s circle — there were “insincere” individuals. We don’t need to look too far; just look at his own daughter, Megawati. Has she ever been loyal to her father’s ideals? But I guess that’s how politics works.

**IS:** Do you think Sukarno and the PKI were “on the right track,” so to speak, in their struggles against imperialism? And would any of the G30S carnage have happened without Washington’s involvement?

**TSL:** Well now, if there was no such U.S. involvement, I think we would have seen peace [laughs]. As to whether Sukarno and the PKI were on the right track, I would say, probably not. The PKI themselves were not free from bourgeois characteristics. Take this small example. One of the main working guidelines (Tripanji) upheld by the Party was concerning the Indonesian revolution. D. N. Aidit wrote it. But later he said that it was really Mao Zedong’s work. Why would he do something like this? This is certainly a concrete example of the petty bourgeois characteristics that were still attached to our leaders. Aidit felt the need to use Mao’s big name because he thought, that way, people would be more likely to believe in his words — “Wong this came from Mao, kok, so how could you refute it?”

So no, I wouldn’t say that they were on the right track. In reality, what existed within the PKI… I doubt that we can see them as the “ideal” Communist thoughts. And with Sukarno, we can’t deny that, in some ways, he did use the PKI as a tool to boost his own fame on the international stage, “Since you don’t mind my using you, why not?” So they “took advantage” of each other.
IS: Since we’re talking about some of the problems within the PKI, what do you think was the PKI’s biggest weakness that made them vulnerable?

TSL: As I said, the Party’s bigwigs were still swimming in the ocean of the bourgeoisie. We couldn’t expect them to recover from this bourgeois disease. And what were the symptoms of this disease? One of them was great “subjectivism.” What I mean is… let’s take Aidit for example. When Fidel Castro succeeded to be the number-one person in Cuba, he was envious! He thought, “How come Fidel could do it, but I couldn’t?” This is purely a bourgeois thought. And it brought Aidit to the land of doom.

IS: If we consider all these weaknesses, can we say that the PKI was really a considerable threat to imperialism? Were they really militant then, or was their focus geared towards securing their power in the parliament, following their perceived success in the 1955 election?

TSL: Now that’s another symptom of the bourgeois disease that the Party carried. They believed that revolution could be won through electoral victories. Unlike, say, China, which was committed to the real struggle — “let’s fight even if we bleed!” — the PKI had the illusion the electoral system could lead them to a revolutionary success. So, I’m not sure what it was about them that was particularly threatening.

IS: But as you said, they were still seen as an important target by the imperialist powers.

TSL: Yes, they were. I think one possible reason why the PKI was seen as a threat is because the imperialist powers only compared Indonesia with countries like Laos, Cambodia and so on. But they mistakenly didn’t compare us [Indonesian Communism] with Vietnam. Now that would have been embarrassing!

IS: What else do you think Indonesians and the rest of the world should know about the G30S — things that are not told by “official accounts” that you know and want to share?

TSL: I just want to say that everything that the New Order told you was a lie. Among the most atrocious was the lie they perpetuated about the Gerwani women — that they were dancing naked and torturing the army generals. With all these lies, the New Order bragged about the “sanctity” of Pancasila. Little do people know that it was all a trick. A magic trick.

IS: Where do you think we are today in terms of dealing with the consequences of such a sinister magic trick? Is Indonesia ready to admit what really happened, or are we still lulled by the trick?

TSL: Especially recently, there have been lively discussions about human rights and the atrocities that happened after the G30S. There are debates about how to approach this issue. Some people argue that we have to approach it through the legal route, the justice system. This means that we will bring the perpetrators to the court. To what extent we can achieve this, I don’t think anyone has provided a good answer. Others argue that to deal with what is inherited from all these atrocities, we have to “reconcile.” But I think we can’t reconcile without bringing out the real truth — the real account of history.

In my view, we have to take the political route. The violation of human rights that happened amidst the G30S was born out of the political realm and therefore we have to bring it back to that realm. We can’t ignore the political history that underlies such brutal violations. Don’t forget the seizing of parliamentary (MPRS, or People’s Consultative Assembly) power by the army generals led by General Nasution. This is the origin of the banning of certain “isms” in Indonesia, including Communism. This gave justification to the slaughtering of human beings just because they are seen as followers of these “isms.” So before we can do anything meaningful, we must first and foremost lift the ban on those “isms.” Then we can talk about further steps — bringing the perpetrators to trial, wanting to reconcile, or whatever.

I mean, the current government seemed, at first, to start sliding their butts to move towards the better part of the sofa. But up until now, we haven’t seen any progress. People have demanded that our current president, representing the government, apologises for the atrocities that happened. I think that would be a notable gesture. But we don’t think an apology alone will be sufficient. What we need is an admission — that all this time we are not told the real account of the event. Admit what really happened. There is no way we can do a real reconciliation without first admitting the truth. So the political move should be prioritised.
IS: It appears that this is also related to the problem of Communist-phobia (komunisto-fobi) that you mentioned in your work. This somehow reminds me, it is not uncommon for commentators or observers — including those from the West — to repeatedly claim that they condemn the post-G30S mass killings and mass imprisonment of those who were accused or alleged Communists. The assumption, it seems, is that it’s okay, or at least less problematic, if the victims really were Communists, because somehow “they deserved it.” What do you think of this?

TSL: That’s why we need to rethink this issue a little — when our friends out there talk about “human rights,” they need to explain where they’re heading. If the intention is to make unclear matters even more blurry, or create further problems, that’s what could happen. But if the intention is to solve problems, then such assumptions should not exist.

So what if we are Communists? What’s wrong with being a Communist? If we recall the process of how the PKI was formed, the process of the development of Communism in Indonesia, we should remember that — for a very, very long time — Communists had always been hunted. But because the one that was hunted never stopped walking forward, it grew. If they had given up, it would have been over. If we only talk about “the law,” or the legal system, just like those people I mentioned previously, we should ask this question: When, legally speaking, have we ever said, “dear Communism, we welcome you with open arms”? Never! Since the beginning — take the peasant rebellions [against the Dutch] in 1926 for example — Communism had been banned. Not only banned, but people who were involved in these rebellions were captured, then exiled to Boven Digul. These were people who had understood the cost of their political choice. But it gave birth to the wrong conception, that these people were horrible criminals. They weren’t criminals! They were people who did so much for this country. They defended the rights of our nation to be sovereign. I think our young comrades have to apprehend this — in this country, Communism has never been granted life by the law. It has been surviving and growing through its own struggles.

On the Question of Sovereignty and the Future of the Left

IS: You emphasised several times in your book that Indonesia, like many other nations in the “third world,” was caught in the middle of foreign politics. We were being sucked into the Cold War current. Indonesians were pitted against each other by the hands of the imperialist superpowers in their efforts to destroy Communism. You argued that this is the reason why sovereignty is extremely important, so that we won’t be forever played like puppets (wayang). Can you talk a little bit more about sovereignty, and in what ways a nation like Indonesia can stand on its own feet and determine its own fate?

TSL: OK, I have to say one thing. Now we hear a lot about Trisakti [economic independence, political sovereignty, and cultural autonomy] — you know, the slogan that the current [Jokowi] regime keeps on boasting. Trisakti actually came out of Communism. When did we have this? When the majority of our people had the pride and courage to make a stance: to accept what we should accept, and to reject what must be rejected. For example, about being sovereign (berdikari). What is the key to sovereignty? Our own production. If we can’t produce our own goods for our needs, all the talk about sovereignty is nothing but empty words. And where did we get this wisdom? From the Soviet Union. Sukarno learned how the Soviet Union could win against Germany in the Second World War and then came to the realisation that sovereignty was the key. Only when you’re sovereign you can achieve great things. Soberdikari is not merely jargon [as it seems to be used by the current regime].

IS: This talk about sovereignty also reminds me of what you said regarding capital. Quoting Sukarno, you explained that human beings are determined by their material conditions — an idea that, to my knowledge, is held by Marxists. And you argued that human societies would lose their humanity if they keep following the ways of capital. The question is — how can oppressed nations struggle against the forces of capital?

TSL: A nation can have control over its own production if they are free and independent. So to achieve this, what should be done? We need to refer to the principles of the “Revolution Development” (Pembangunan Revolusi). If we can’t achieve that, or worse, can’t understand that, don’t expect to gain sovereignty. And
to understand these principles, we need to go back to what I said about a nation’s “historical mission.” What is Indonesia’s mission? To free ourselves from oppression by the imperialist powers. And we need to build strong political organisations that can help us achieve this.

**IS:** Speaking of the struggle to free ourselves from imperialist powers, we just commemorated the sixtieth anniversary of the Asia-Africa (Bandung) Conference. So after sixty years, what do you think — can we, the “third world,” the oppressed nations, continue our struggle against imperialism and form a solid movement based on solidarity?

**TSL:** Ideally, we can. And we should. But it’s difficult in practice. As long as we haven’t been able to unite the oppressed nations, we can’t achieve that. And that’s the biggest problem — we’re still not united.

**IS:** In the end, maybe we can talk a little bit about the future, about the next direction based on what we have learned from the past. It’s been fifty years since the G30S happened, and it’s been seventy years since Indonesia declared its independence. As a nation, what are the lessons that we need to learn from all the painful experiences we’ve had? And what messages would you like to convey to the Indonesian left today?

**TSL:** One of the direst consequences of the G30S and the rise of the New Order was the decapitation of the Indonesian left. We were knocked down, and for fifty years we could do nothing. Imagine — we could not get back up! Even a boxer in the ring can usually get up before the count of ten. But it’s been half a century for us.

When the G30S happened, the defeated Indonesian left could only point their finger at D. N. Aidit. He was blamed for everything. In some ways, yes, it’s understandable that he had to bear the responsibility for what happened as the number-one person in the PKI. We could say it was a failure. But it’s not right if we only hold on to this way of thinking. What came out of it was nothing but blame and arrogance. They all said back then, “If only you people had listened to me, or followed me, this disaster wouldn’t have happened!” This shows arrogance — they basically appointed themselves as the smartest ones, the most righteous of all. So this was what happened after the G30S, this kind of development. And perhaps this can help explain why we could not get back up after being knocked down. I haven’t seen signs of the rise of the left. Maybe it’s caused by a disappointment that was too big. I wonder if this can be healed. If we can go past this, then it will be good. If not, we’ll be carried away by this tsunami forever. It’s not really a cheerful answer, is it?

So yes, the left has been destroyed. But — OK, this may sound like a message from someone who’s waiting for death — don’t give up! Keep on going. Where? Well, to your destination. What is the destination? To build strong political organisations. One thing, though — all this totally depends on the young generation. What about the old one? Don’t count on them. They have plenty of problems, complicated ones.

**IS:** But there is hope.

**TSL:** Of course there is! If we don’t even have that belief, let’s just go back to our slumber [laughs].

**IS:** Last but not least, what lessons might be drawn from the world socialist movement that is now reemerging, sometimes referred to as the Movement Toward Socialism?

**TSL:** We should not collide against each other. In the 1960s, many times, when the Soviet Union did something, China would disagree and vice versa. Whenever Yugoslavia did something, the Soviet Union objected. But if we see the reality of what happens in Latin America, I think we need to learn from the concrete things that our comrades there have done. We don’t need to envy them, we must learn from them instead. From this, we’ll gain experience and knowledge from a diversity of nations — we’ll learn from each other and appreciate each other’s achievements. It’s about solidarity among socialists.

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