

“If you would not be forgotten,  
As soon as you are dead and rotten,  
Either write things worth reading,  
Or do things worth writing.”

- *Benjamin Franklin*

Introduction

Khushwant Singh, the well-known journalist, quoting Benjamin Franklin’s prescription wrote that Justice M. Hidayatullah has done both, and his memoirs ‘**My Own Boswell**’ come close to that prescription. Khushwant Singh also described Hidayatullah as ‘a many splendoured personality’. Coming as it does from Khushwant Singh, not given to undeserving and liberal praise of anyone, it is a high tribute. Indeed, it is very well deserved praise and sums up the personality of Justice Hidayatullah.

I deem it a privilege to be invited to deliver the Justice M. Hidayatullah Memorial Lecture organised by the Bharatiya Vidya Bhavan. Belonging to the legal fraternity and having occupied, in later years, each of the high judicial office held by Justice Hidayatullah in the state and at the national level, it is my obligation and privilege to pay homage to one of my most distinguished predecessor.

I also owe a personal debt to him. When I joined the Bar in Madhya Pradesh, Justice Hidayatullah was the Chief Justice of the state, and according to the then existing requirement, I took oath on enrolment as an Advocate before a Division Bench of the Madhya Pradesh High Court presided in by Chief Justice Hidayatullah. I also was privileged to interact with him at his residence, as a new entrant at the Bar, at the behest of my senior, Shri G.P. Singh who later became a judge and Chief Justice of Madhya Pradesh. Justice Hidayatullah had at once noticed the brilliance of G.P.Singh at the Bar and was particularly fond of him. The purpose of that meeting is of no consequence in the present context, but its significance lies in the fact that I had then a first hand experience of the great courtesy and humility of Chief Justice Hidayatullah, even to a beginner at the Bar. He had some words of praise for my perceived legal acumen, which, I have no doubt, were a great encouragement to me, and must have contributed to my later success in the profession.

I met him on a few occasions later, when I was on the Bench of the Madhya Pradesh High Court and then of the Supreme Court, and Chief Justice Hidayatullah had retired. His unflinching courtesy on each occasion, and the prompt recognition he gave me recalling the earlier meetings, depict his great human qualities. Each of the meeting with him was, for me, an education, the memory of which I will always cherish. In recent years, I came to know closely one of his several admirers, Shri Sudarshan Agrawal, who, after retirement as Secretary-General of the Rajya Sabha became my colleague in the National Human Rights Commission. He always recalls his association with Justice Hidayatullah and his

gracious wife with great reverence, and feels honoured to have worked for him, when he was the Vice-President of India.

I had, therefore, no hesitation in accepting the invitation to deliver this memorial lecture, and I perform this pleasant task treating it a unique privilege.

The choice of Raipur as the locale of this memorial lecture is also appropriate. It is here that Chief Justice Hidayatullah spent his early years, and received the early education. The impressions formed during those years would undoubtedly have left an imprint on his mind to influence later performance. His father was a revenue officer in C.P.& Berar, and spent some years as the Dewan in the princely state of Bastar. Madhya Pradesh, of which Chattishgarh was till recently a part, has, therefore, a claim to affinity and association with, both Chief Justice Hidayatullah and I.

The choice of the topic of this lecture relates to the long association of Chief Justice Hidayatullah, as well as I, with the judicial process in the country. Between us, the period covered is from 1946 to 1998, beginning with his elevation and ending with my retirement from the Bench. This was the period during which protection of human rights through the judicial process was an important role of the judiciary. Hence, this topic.

Human Rights
-----------------

Human Rights are those rights which are inherent in human existence and belong to all human persons irrespective of gender, race, caste, ethnicity, religion etc. The Oxford Companion to Philosophy says that in their strongest sense, rights are justified claims to the protection of persons' important interests. Human rights are not the gift or bounty of any political superior. The laws are meant to reaffirm and recognize human rights and to provide the mechanism for their enforcement. The upholding of rights is essential for maintaining human dignity.

Louis Henkin regarded rights as 'claims' rather than appeals to charity. Ronald Dworkin regards them as 'trumps' that set limits on state action whenever it encroached upon individual liberty. Jack Donnely pointed out that human rights are the new standard of civilization. 'All human rights for all' is the goal of the century and the aim is to ensure that human rights are universally accepted and respected. The seven freedoms essential are:

- Freedom from discrimination – by gender, race, ethnicity, national origin or religion.
- Freedom from want – to enjoy a decent standard of living.
- Freedom to develop and realize one's human potential.

- Freedom from fear – of threats to personal security, from torture, arbitrary arrest and other violent acts.
- Freedom from injustice and violations of the rule of law.
- Freedom of thought and speech and to participate in decision-making and form associations.
- Freedom for decent work – without exploitation.

Human rights are indivisible, inter-dependent and inter-related having a clear linkage with human development; and both share a common vision with a common purpose. The emphasis on human dignity is laid in the UN Charter, Universal Declaration of Human Rights and several international Covenants. Same is the emphasis in the Constitution of India which assures dignity of the individual as a core value in its Preamble. The Constitution of India was drafted nearly at the same time as the UDHR and contains similar provisions. Part-III of the Constitution containing the fundamental rights correspond to articles 2-21 of the UDHR and the directive principles of State Policy in Part-IV of the Constitution correspond to articles 22-28 of the UDHR. The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), both of 1966 are a further elaboration of these rights.

<p>Judicial Process in India</p>
--------------------------------------

The constitutional remedy of enforcement of fundamental rights is provided in article 32. It is a fundamental right in the Constitution, which is the original jurisdiction of the Supreme Court of India. A similar power is given to the High Courts in article 226 of the Constitution. Article 32 was described by Dr. B.R. Ambedkar as the *soul* of the Constitution; and Patanjali Sastri C.J. called the Supreme Court of India the *sentinel on the qui vive*<sup>1</sup>. This is the significance of the fundamental rights of the individuals guaranteed in Part-III of the Constitution, which are the basic human rights. To ensure that the provisions guaranteeing the fundamental rights are not mere rhetoric, article 32 is also contained in the same chapter emphasizing the significant role of the judiciary for the protection of human rights. Judicial review is also a basic feature of the Constitution and therefore, a part of the basic structure which cannot be taken away by amendment<sup>2</sup>.

The directive principles of state policy contained in Part-IV of the Constitution are principles fundamental in governance as mentioned in article 37, which also says that they are not justiciable. However, the Supreme Court in its decisions has relied on the directive principles to enlarge the scope and content

<sup>1</sup> **V.G. Row Vs. State of Madhya Pradesh, AIR 1952 SC 196**

<sup>2</sup> **Kesavananda Bharti & Ors. Vs. State of Kerala & Ors., AIR 1973 SC 1461**

of the fundamental rights, thereby bringing them within the ambit of justiciable rights.

The concept of equality in article 14 and the meaning of the words 'life', 'liberty' and 'law' in article 21 have been considerably enlarged by judicial decisions. Anything which is not 'reasonable, just and fair' is not treated to be equal and is, therefore, violative of article 14. Rule of non-arbitrariness is a facet of equality in article 14. Thus, any arbitrary state action is struck-down as violative of article 14. The word 'life' in article 21 has been construed to mean life with dignity and not mere physical existence; 'liberty' has been construed in the manner envisaged in the Preamble, that is, liberty consistent with social norms; and the word 'law' means a law which is fair in content and in procedure. It has been held that the validity of a law contemplated by article 21 must satisfy the test of articles 14 and 19 as well. The requirement that every state action must satisfy the test of fairness<sup>3</sup>; consideration of every legitimate expectation<sup>4</sup> in decision making is necessary to satisfy the rule of non-arbitrariness; and absolute power in any individual is antidemocratic<sup>5</sup>, are judicially evolved principles which form part of the constitutional law.

It is significant that even though, to begin with, in *A.K. Gopalan*<sup>6</sup>, the Supreme Court construed the meaning of word 'law' in article 21 narrowly, in later decisions the requirement of substantive and procedural fairness was held essential for the validity of a law contemplated by article 21. The requirement of fairness for constitutional validity entrenched by decisions in *Royappa*<sup>7</sup> and *Maneka Gandhi*<sup>8</sup> has its foundation in the opinion of Vivian Bose J. in *Anwar Ali's*<sup>9</sup> case.

Right to speedy trial has been held to fall within the guarantee of article 21<sup>10</sup>. Right to privacy in telephonic conversation, so that unauthorized telephone tapping is illegal, has been accepted<sup>11</sup>. Domiciliary visit by the police without authority of law was held to be violative of article 21, assuming right to privacy as a fundamental right derived from the freedom of movement under article 19 (1) (d) as well as personal liberty under article 21<sup>12</sup>.

---

<sup>3</sup> *Kumari Shrilekha Vidyarthi etc. Vs. State of UP & Ors.*, AIR 1991 SC 537

<sup>4</sup> *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, AIR 1993 SC 1407

<sup>5</sup> *SCAOR Vs. Union of India*, AIR 1994 SC 268 (Second Judges case)

<sup>6</sup> AIR 1950 SC 57

<sup>7</sup> AIR 1974 SC 555

<sup>8</sup> *Maneka Gandhi Vs. Union of India*, AIR 1978 SC 597

<sup>9</sup> *State of West Bengal Vs. Anwar Ali Sarkar & Anr.*, AIR 1952 SC 75

<sup>10</sup> *Common Cause v. Union of India & Ors.* (1996) 4 SCC 33; AIR 1996 SC 1619; *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360: 1992(5) SCC 326. *Saraswati Seshgiri v. State of Kerala*, AIR 1982 SC 1165: 1982(2) SCC 310

<sup>11</sup> *People's Union for Civil Liberties v. Union of India & Anr.* (1997) 1 SCC 301 : AIR 1997 SC 568

<sup>12</sup> *Kharak Singh v. State of Uttar Pradesh & Ors.* AIR 1963 SC 1295 : 1964(1) SCR 332; *Govind v. State of Madhya Pradesh & Anr.* AIR 1875 SC 1378 : 1975 (3) SCR 946 : 1975(2)

'Right to know' is read in article 19(1) (a) which guarantees freedom of speech and expression<sup>13</sup>.

Freedom of Press/ Media including electronic media is derived from article 19(1)(a) subject only to the reasonable restrictions provided in article 19 (2)<sup>14</sup>.

It has been held that the fundamental rights guaranteed under articles 14 and 21 of the Constitution are available even to non-citizens and not merely to citizens<sup>15</sup>. To this extent, the right even of the refugees before recognition of their status has been upheld by the Court. Abolition of child labour has been held to be the obligation of the State and the practice of child labour has been held to be a violation of the basic human rights<sup>16</sup>. Right against exploitation as a 'bonded labour' and to rehabilitation after release have been recognized under article 24<sup>17</sup>. The State has the obligation to preserve the life of every person, including an offender by providing adequate medical aid<sup>18</sup>. A prisoner is entitled to the bare necessities of life such as adequate nutrition, clothing, shelter, facilities for reading, writing etc. and – meeting his family and friends, subject to the prison regulations<sup>19</sup>.

The doctrine of public trust has been introduced by judicial decisions in the enforcement of fundamental rights to give protection from arbitrariness and misfeasance of public authorities in exercise of public power. Distribution of state largesse by Ministers inconsistent with this principle has been held to be violative of article 14 of the Constitution; and the Minister responsible for the violation has been held personally liable for payment of compensation to be credited to the public exchequer<sup>20</sup>. Preservation of ecology and environment based on the principle of sustainable development to reconcile the conflicting interest of development with the preservation of healthy environment has been recognized

---

**SCC 148; State of Maharashtra & Anr. V. Madukar Narayan Mandikar, AIR 1991 SC 207: 1991(1) SCC 57.**

<sup>13</sup> **Miss Lily Thomas v. President of India and others, AIR 1982 SC 149.**

<sup>14</sup> **Express Newspaper (P) Ltd & Anr. V. Union of India & Ors., AIR 1958 SC 578: 1959 SCR 12; Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India and Ors., AIR 1986 SC 515: 1985(1) SCC 641: 1985(2) SCR 287; Sakal Papers (P) Ltd. & Ors. v. Union of India & Ors., AIR 1962 SC 305: 1962(3) SCR 842; and Express Newspapers Pvt. Ltd. & Ors. v. Union of India & Ors., AIR 1986 SC 872: 1986(1) SCC 133" 1985 Supp (3) SCR 382.**

<sup>15</sup> **National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742: AIR 1996 SC 1234.**

<sup>16</sup> **M.C. Mehta(Child Labour Matter) v. State of Tamil Nadu, (1996) 6 SCC 756: AIR 1997 SC 699.**

<sup>17</sup> **Bandhua Mukti Morcha v. Union of India & Ors., AIR 1984 SC 802: 1984(3) SCC 161: 1984(2) SCR 67; Neeraja Chaudhary v. State of Madhya Pradesh, AIR 1984 SC 1099: 1984(3) SCC 243.**

<sup>18</sup> **Paramanand Katara v. Union of India & Ors., AIR 1989 SC 2039.**

<sup>19</sup> **Francis Coralie Mullin v. Union Territory of Delhi & Ors., AIR 1981 SC 746: 1981(1) SCC 608: 1981(2) SCR 516; and A.K. Roy v. Union of India & Anr., AIR 1982 SC 710: 1982(1) SCC 271: 1982 (2) SCR 272.**

<sup>20</sup> **Common Cause, a Registered Society (Petrol Pumps Matter) v. Union of India & Ors., AIR 1996 SC 3538.**

as a facet of right to life. The principle adopted is that ecology and environment are not objects of ownership but are nature's gift intended to be preserved in trust for the future generation<sup>21</sup>. In a large number of cases covering different facets of ecology and environment, the Court has intervened to arrest further degradation and pollution. Air pollution, water pollution, deforestation and degradation of biodiversity are being checked by Court's intervention<sup>22</sup>. The ban on import of hazardous wastes based on Basel Convention is also under consideration of the Court<sup>23</sup>. The polluter pays principle and that of strict liability have been applied<sup>24</sup>. Similarly ban on manufacture and sale of drugs which have proved to be injurious to human life and health has also been imposed<sup>25</sup>.

Right to corruption free governance is also a human right. Non-discrimination or the right to equality is undoubtedly an essential human right. Corruption in the institutions of governance derogates the human dignity of the people and also adversely affects them in many ways violating their human rights. The effect is greater in developing countries where the development programmes and the right to development of every individual get impaired by prevalent corruption resulting in denial to the people of their legitimate rights. It is on this basis that the Supreme Court of India took up this issue for enforcing probity in public life and accountability of public men in the Hawala<sup>26</sup> case because the Central Bureau of Investigation was discriminating by not investigating the allegations of corruption made against highly placed public functionaries. The Supreme Court treated it as a violation, 'inter alia' of the people's right to equality (article 14) which right can be enforced in the Supreme Court under article 32 of the Constitution, and orders necessary for doing complete justice can be made with the aid of article 142. The quality of governance determines the realization of the human rights of the people. Good governance transcending to the level of humane governance is the people's right. Corruption negates good governance. Right to corruption-free governance, particularly in developing nations, must be a basic human right upon which the other rights depend.

International conventions and norms, in case of void in the domestic law, when there is no inconsistency between them have been used to fill the void or enlarge the meaning and content of the fundamental rights, as a canon of construction. The award of compensation as a public law remedy, distinct from, and in addition to the private law remedy in tort for damages, has been held to be a mode of enforcement of a fundamental right. The doctrine of sovereign

---

<sup>21</sup> **Buffalo Traders' Welfare Association v. Smt. Maneka Gandhi & Ors., (1996) 11 SCC 35.**

<sup>22</sup> **Writ Petition (Crl.) No. 202 of 1995 & etc. etc. (Forest Matters), T.N. Godavarman Thirumulkpad v. Union of India 1997(2) SCC 267.**

<sup>23</sup> **Research Foundation for Science v. Union of India (Hazardous Waste Matter) Writ Petition (Civil) No. 657 of 1995.**

<sup>24</sup> **M.C Mehta & Anr. v. Union of India & Ors., (1987) 1 SCC 395.**

<sup>25</sup> **Drug Action Forum & Ors. v. Union of India (Drugs Ban Matter) Writ Petition (Civil) No. 698.**

<sup>26</sup> **Vineet Narain & Ors. v. Union of India & Anr. (1996) 2 SCC 199: AIR 1996 SC 3386; (1998) 1 SCC 226**

immunity has been held to be inapplicable in the public law remedy against violation of a fundamental right. In this manner, award of compensation as a remedy in public law for custodial death has been recognized<sup>27</sup>. This is also the principle underlying section 18(3) of the Protection of Human Rights Act, 1993 empowering the Human Rights Commission to award 'immediate interim relief' for the violation of a human right.

Recently, in view of the wide prevalence of sexual harassment, the Court in exercise of its power under article 32 of the Constitution has formulated guidelines and norms to curb this social evil which is an acknowledged global phenomenon<sup>28</sup>. It has been held that the guidelines and norms are law declared and enforceable under article 141 of the Constitution, and would avail till the enactment of suitable legislation to occupy the field. This is how the void in existing legislation has been filled. The international conventions and norms in CEDAW have been relied on and incorporated substantially in these guidelines. The Beijing Principles of Independence of Judiciary have also been referred to impress the role of judiciary in this sphere.

The Supreme Court has relied on article 32 read with article 142 to make such orders as may be necessary for doing complete justice in any cause or matter before it. Resort to article 142 has enabled expansion of the jurisdiction under article 32.

In some cases, the High Courts also resorted to similar progressive interpretation in exercise of its power under article 226. The practice of purification of members of the Scheduled Castes before permitting them entry in the Nathdwara Temple was held to be discriminatory and the Government was held bound to ensure that no untouchability is practiced for entry into a public temple<sup>29</sup>. A provision giving benefit only to a son was held applicable also to a daughter relying on the General Clauses Act wherein reference to a 'male' includes a 'female'. The view was supported on the ground that the object of the enactment did not permit any distinction between a son and a daughter and a different construction is violative of the equality guaranteed under the Constitution.

It is not necessary to multiply the reference to High Court decisions which follow the same pattern.

### **Public Interest Litigation**

The judicial process of PIL has been very useful for protection of human rights of the people, particularly the disadvantaged. The Supreme Court relaxed

---

<sup>27</sup> **Smt. Nilabati Behera v. State of Orissa & Ors., (1993) 2 SCC 746: AIR 1993 SC 1960.**

<sup>28</sup> **Vishaka & Ors. v. State of Rajasthan, Writ Petition (Crl.) Nos. 666-70/92 decided on 13.08.1997.**

<sup>29</sup> **Surya Narayan Chaudhary & etc. v. State of Rajasthan, Air 1989 Raj. 99**

the rule of *locus standii* to enable issues of public interest being brought to the court by any public spirited individual, social activist or organization, provided it is bonafide and not by a busybody. In due course, the principle underlying Order 1 Rule 8, CPC has been applied to treat the PIL as a representative action along with its safeguards to prevent misuse. The practice of appointing a distinguished lawyer as the *amicus curiae*, is to further ensure credibility of the process. This has been done so far, by judicial orders made by the Supreme Court from time to time. However, there is need to institutionalize the process by suitable amendments in the Rules of the Supreme Court and the High Courts. That will ensure uniformity and prevent misuse of the process. The stage is now reached, when steps are necessary to prevent misuse of PIL and ensure uniformity, to retain its credibility.

Contribution of  
the early period

Justice Hidayatullah belonged to an age when resort to judicial process was seldom needed for the protection of human rights. The recent trend of judicial activism developed because of the seeming failure of other organs of the state to duly perform their function, requiring the judicial process to activate them for public good. The occasion for judicial creativity in that era was, therefore, minimal. For a fair comparison, similarity in the circumstances in different times is essential.

Justice Hidayatullah was involved in the interpretation of the Constitution in the first two decades of its enforcement, when the aid of precedent was not available, and the need was to develop the human rights law. Justice Hidayatullah has to be credited with the performance of that task along with his peers, in a manner which gave to his successors the benefit of their wisdom in the interpretation of Constitution in more difficult times. Belonging to the later generation of Judges, I speak from personal experience of the great benefit our generation derived from the contribution made by Judges like Justice Hidayatullah.

Justice Hidayatullah was very close to Justice Vivian Bose and a great admirer of Justice Syed Mahmood, both of whom are known for their judicial creativity. Justice Hidayatullah believed in judicial creativity in a manner conforming to the established juristic norms, rightly shunning ad-hocism. This is evident from the manner in which he would persuade the court, as a lawyer, to leave it to the concerned authority to do justice in a cause by making the necessary order as suggested by the court, instead of the court itself making the order encroaching upon the jurisdiction of another authority. Several such instances are mentioned in his memoirs – *My Own Boswell*. Thus, adherence to the legitimate bounds of the judicial process, seeking to do justice on the basis of settled juristic principles was the creed practiced by Justice Hidayatullah.

An indication of his judicial philosophy can be found in *Justice B.D. Bal Memorial Lecture* delivered by him titled “*Highways and Bye-lanes of Justice*” on

October 24, 1983 at Pune. It is clear that Justice Hidayatullah was concerned at a certain ad-hocism which he perceived in some judicial orders of that time. He, therefore, suggested preference for the highways to justice along established routes instead of straying into bye-lanes for that purpose. It is unfortunate that the lecture which was meant to strike a note of caution for judicial restraint, evoked some harsh response from those who should have taken it as the sane advice of a distinguished predecessor. To emphasise that Justice Hidayatullah was not averse to judicial creativity, but was particular to remain within the bounds of judicial discipline, it is sufficient to quote from the above lecture, wherein, he said:

“It is not that there was no remedy before this trend came to vogue. The Rule in Dyson’s case enable the Attorney-General to be sued. I used it in the wellknown *K.A. Abbas case* dealing with his film “A Tale of Four Cities”. But this was done on the highway and not in a bye-lane.....”

Writing about Justice Syed Mahmood, Hidayatullah said, that it was difficult to omit his name from amongst the six greatest Indian Judges of all times but the real difficulty lay in proceeding with the list without naming Justice Mahmood. That was his assessment of Justice Mahmood’s contribution as a Judge, even though his tenure on the Bench was unduly short. Of Vivian Bose, he said, that it is rare to find a man who has done so much to achieve so many things. Justice Hidayatullah himself a person of great humility, was highly appreciative of Vivian Bose for his unassuming nature. Both Syed Mahmood and Vivian Bose, in my view were activists on the Bench and some of their judgments are landmarks in judicial activism. Being a great admirer of both of them, Hidayatullah could not be critical of judicial activism, provided it had a juristic base and precedent value, leading to development of the law.

It was Syed Mahmood who first enunciated the principles of natural justice<sup>30</sup> and held that a criminal appeal could not be disposed of in the absence of the accused and the appellant must be heard in person. Hidayatullah refers to this decision in particular, and many others by Mahmood in speaking of his greatness as a Judge. Sir T. Muthusami Ayyar, the first Indian Judge traveled to Allahabad to meet Mahmood, in recognition of his greatness.

Similarly, Vivian Bose is known for breaking new ground in law, the significance of which came to be realized in later years. As a Judge of the High Court, Vivian Bose held prior to the Constitution, that a forest officer was engaged in a commercial activity of the State and, therefore, the defence of sovereign immunity was not available in a case of tort committed by him<sup>31</sup>; that uninterrupted settled possession of even less than 12 years was a defence to

---

<sup>30</sup> **Queen Empress Vs. Pohpi, ILR 13 All 171**

<sup>31</sup> **Secretary of State Vs. Sheoramjee, AIR 1952 Nag. 213**

protect possession, except against a true owner<sup>32</sup>; and the signature on a document being admitted or proved, the burden shifts to the signatory to avoid the consequence of the document, because no one is known to append his signature to a document without agreeing to be bound by it<sup>33</sup>. As a Judge of the Supreme Court, Vivian Bose was the first to hold that any action which is not 'reasonable, just and fair' is violative of article 14<sup>34</sup>, much before *Maneka Gandhi*<sup>35</sup>. He also held that the plea of 'act of state' is not available, after the Constitution, against a former employee of a princely state since there can be no act of state against its own citizens<sup>36</sup>. These are all instances of judicial activism based on juristic principles, either established or created, having precedent value.

It was Justice Hidayatullah who took the view that right to property as a fundamental right in the Constitution was an anachronism which had the effect of diluting the basic human rights guaranteed in Part-III of the Constitution. This was, because of the attack to fundamental rights through the route of property right. This view paved the way for the omission of the right to property from Part-III of the Constitution, reducing the vulnerability of attack on fundamental rights.

It is such innovations of the judicial process which Justice Hidayatullah apparently had in mind when he advocated preference for the highways to justice instead of straying into the maze of the bye-lanes. To my mind, the foundation for the later judicial activism for the protection of human rights was laid initially by Mahmood and Vivian Bose, continued during the interregnum by Hidayatullah and his peers.

Impact of the early period

Believing in judicial creativity myself, and being actively involved in that process, I took advantage of that well-meaning advice to bear in mind always, and also to emphasize that the judicial activism should be tempered with the requisite self-restraint to avoid its degeneration into judicial adhocism or judicial tyranny. My own view, which I brought to bear in functioning as a Judge, may be summarized<sup>37</sup>:

“Judicial Activism is a delicate exercise involving creativity. Great skill and dexterity is required for innovation. Judicial creativity is needed to fill the void occasioned by any gap in the law or inaction of any other functionary, and, thereby, to implement the Rule of Law. Diversion from the traditional course must be

<sup>32</sup> **Pannalal Bhagirath Marwadi Vs. Bhaiyalal Bindraban Pardes Teli, AIR 1937 Nagpur 281**

<sup>33</sup> **Dalchand Mulchand Vs. Hasanbi, AIR 1938 Nagpur 152**

<sup>34</sup> **State of West Bengal Vs. Anwar Ali Sarkar & Anr., AIR 1952 SC 75**

<sup>35</sup> **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597**

<sup>36</sup> **Virendra Singh Vs. State of Uttar Pradesh, AIR 1954 SC 447**

<sup>37</sup> **Judicial Activism In An Asian Democracy, speech delivered at the 15<sup>th</sup> Law Asia Conference at Manila, Philippines on 27 August, 1997**

made only to the extent necessary to activate the concerned public authorities to discharge their duties under the law and to catalyse the process, but not to usurp their role. The credibility of the judicial process must not get eroded.....”

.....

“The need is to practise self-restraint and to innovate or forge new tools only when that is the requirement of public good and no other method is available under the legal framework.....The difference between ‘Judicial Activism’ and ‘ad hocism’ must be remembered. The former is a new dimension of law while the latter is a ‘rail road ticket good for only one journey’. Judicial Activism in its true form alone must be promoted and practiced. ‘Judicial Activism’ is legitimate and welcome but not ‘Judicial ad hocism’ which may tend to degenerate to ‘Judicial tyranny’. This is the legitimate province of the Judiciary in the Constitutional Scheme in a democracy.....”

The utility of the judicial process in protection of human rights in India has been significant. The earlier judges, of whom Hidayatullah was one in the forefront, paved the way for the smooth stride of the later judicial activism. I take this opportunity to pay homage to Justice Hidayatullah, one of my illustrious predecessors, whom I had the honour to know personally.

“As with flowers, so with men  
they blossom, bloom and wither away ....  
But there are some who always  
leave a fragrance behind ....”

Justice Hidayatullah’s fragrance will always remain.

\*\*\*\*\*

**SECOND JUSTICE M. HIDAYATULLAH MEMORIAL LECTURE**

**“PROTECTING HUMAN RIGHTS THROUGH THE JUDICIAL PROCESS”**

ORGANISED BY

**BHARTIYA VIDYA BHAVAN, RAIPUR KENDRA**

*BY*

**JUSTICE J.S. VERMA  
CHAIRPERSON  
NATIONAL HUMAN RIGHTS COMMISSION  
(FORMER CHIEF JUSTICE OF INDIA)**

*ON*

**21 DECEMBER 2002**

*AT*

**RAIPUR**