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MY FIRST INNINGS AT PATNA : PART-I

England expects that every man will do his duty.

—Lord Nelson's call to the fleet at the battle of Trafalgar.

(i) Ascended the Chariot in 1965 to get down in 1998

I had two stints at the Central Revenue Building at Patna; from 1965-74, then again from 1996-97. It was here that I learnt my work, and gave a good account of myself. After completing my initial training at the Indian Revenue Service (Staff) College at Nagpur (now called the National Academy of Direct Taxes), I went to Laheriasarai to be with my parents for a few days before I took over, at the end of 1965, my assignment as the Income-tax Officer Class I at Patna. In one of the delightful evenings, my father told me in simple language about the *Bhagavad-Gita* which contains Lord Krishna's teachings to Arjuna in the battle-field of the Mahabharata; and also about the *Ashtavakra Gita* which contains the dialogue between the *greatrishi* Ashtavakra and the great king of Mithila, Janaka. Summing-up the effect of his short exposition, my father told me that Lord Krishna's *Gita* is an invitation to embark on action, to ascend the chariot; and the *Ashtavakra Gita* is an instruction to descend from the chariot bidding farewell to actions. I wondered why he made such a fleeting exposition of these well-known philosophical texts. But the mystery stood unravelled soon when he said: "A government servant should keep these two *Gitas* in mind. His joining the public service is ascending the chariot of action; his retirement marks the point when he gets down from that chariot." After 45 years of his instruction, I feel he was wholly right.

(ii) My First day in the office

It was the 1965 December. Cold waves carried me and my batch-friend D.K. Roy to the majestic Central Revenue Building at Bailey Road (now called Birchand Patel Road) at Patna. My office room at the Central Revenue Building was good and had rich ambience. Its long and wide glass-pane windows provided occasional respite from the yellow-coloured anaemic files pyramiding on my table. Those files were there to suck my blood for more than 3 decades. There was in my chamber an ornate wooden cupboard with its top overloaded with bundles of old papers and bound registers with torn corners. Some of these had fallen on the floor on all sides. Over the first few days in my office, I felt miserable. My clerks would put up for my approval intricate arithmetical

calculations pertaining to tax-determination, and would frighten me by placing before me fat registers bidding me write figures at times in red, and at times in black. I was never good at calculations, but somehow I could mangle with my commonsense and logic. I made good my deficiency in arithmetical knowledge with what I considered my 'mathematical logic'. The multicoloured pages of the Demand and Collection Register seemed to me a set of disjointed fragments from Van Gogh's paintings. I was often at my wit's end. When I sat inert in despondency with my oars down, and head lost in fog, I felt I heard a voice I did not know from where: '*Aa No Bhadrah Kratavo yantu Viswataha*' ('Let noble thoughts come to us from every side'). I decided to learn all that I needed to know from my clerks, inspectors and other experienced subordinate officials. I learnt a lot from them which equipped me to function without ever being taken to task by my superiors for any fault. I handled greatly complicated cases in which almost all the provisions of the Income-tax Law got involved.

When we joined my post at Patna in 1965, Voluntary Disclosure Scheme was under operation. It was designed to grant an opportunity to disclose untaxed income, or black money. My first official duty was to submit my report on someone's petition for the disclosure of his concealed income to be taxed at the concessional rate. I drew up adverse notes suggesting the rejection of the petition as in my view it did not meet all the conditions of the Disclosure Scheme. But I must admit that I nursed a measure of moral wrath at tax-evasion. I was not happy with the grant of an unfair advantage to turn black money white. In the evening that day, I went to the Commissioner's residence to pay my respect. After making me wait for a little more than an hour on the outer veranda, exposed to bitter winter blast, I was asked to enter his living room. The Commissioner had an imposing personality and was meticulously dressed adhering to the Victorian dress code. Even before I could greet him, he fired at me a strong broadside which made me non-plus. I was amazed at his volcanic eruption. He jetted out: "Do not begin your career on a bad note". I left his residence highly distraught, with tears trickling down. I felt that at the threshold of my career I was so severely judged, and so ruthlessly condemned. A creeping feeling of being sucked into Slough of Despond overtook me. The next day one of my senior colleagues, whom I had told my distress, counselled me to be of sterner stuff to survive in the rough world. On coming to know that I had given an adverse note in a case of someone who mattered, the sagacious officer said, "The VDIS is the flowing Ganges in which all the evaders of taxes are invited to have a dip so that their sin against the society is washed out. It is a lucid period between one phase of greed and the other knocking at the door".

Once, when I entered my chamber on the third floor of the Central Revenue Building, I felt I reached there through a house of mourning. Just by the side of my chamber was the office of the Assistant Collector of Estate Duties. Many widows had come, in the company of their relations, and touts, in order to obtain, the Certificates of Exemption from that officer. Without such Certificates they could not get rights to the estates their husbands had left for them. They were mostly from villages, and were generally guided by touts. The sight of the luckless women, sobbing for hours, was shocking. I prayed to God to put an end to the law of Estate Duty. God heard my prayer. The Estate Duty was abolished in 1985. I thanked V. P. Singh, the Finance Minister, for this good work.

(iii) The Problem of Black-money: the Art of pretending to solve the problem without ever solving it

The dragon of 'black money' had noxious fumes. Its characteristic features were best captured by the former Chief Justice of India, Mr. Wanchoo, in these words:

"It (black money) is, as its name suggests, tainted money—money which is not clean or which has a stigma attached to it Black is colour which is generally associated with evil. While it symbolizes something which violates moral, social or legal norms, it also suggests a veil of secrecy shrouding it. The term 'black money' consequently has both these implications. It not only stands for money earned by violating legal provisions—even social conscience—but also suggests that such money is kept secret and not accounted for. Today the term 'black money' is generally used to denote unaccounted money or concealed income and/or undisclosed wealth, as well as money involved in transactions wholly or partly suppressed."¹

Euphoria that the 1965 Voluntary Disclosure Scheme generated was misplaced. The Scheme of 1951 (the Tyagi Scheme) could unearth only Rs. 70.20 crores of concealed income. The Scheme, conceived under section 24 of the Finance Act (No.2) 1965, could unearth Rs. 145 crores.² My considered view, on the basis of what I had witnessed over three decades and odd years, was that no voluntary disclosure could ever be a purgatorial process. The VDIS 1975 and the VDIS of 1997 unearthed substantially more amount of concealed income³ yet the general attitude towards tax evasion remained the same. It had only some melodramatic effect. Justice Gupta in *R.K Garg v. Union of India* (AIR 1981 SC 2138) pointed out very suggestively:

"I asked the Attorney-General if it was his case that all attempts to unearth black money had failed, and the present scheme was the only course open. His answer was that that was not his case. The affidavits filed on behalf of the Union of India also does not make such a case. Clearly, the impugned Act puts a premium on dishonesty without even a justification of necessity – that the situation in the county left no option."⁴

It is said, the proof of the pudding is in the eating, *orphalenaparichayetey*. When I commenced my service in the Income-tax Department, in 1964, I heard that dealing with the menace of 'black money' was the most pressing of all the challenges. Despite efforts, the magnitude of the problem, posed by the black economy, has grown in later years. If you are interested in knowing reasons for the continuance of this sinister phenomenon, you should better study Chap. 5 of Prof. Arun Kumar's *The Black Money Economy of India*. Reflecting over the extent of the prevailing illegality, manifested in the massive increase in black-money, this distinguished expert aptly states:

"Illegality in society relates to the growth of the black economy. It has grown from about 4% of GDP in 1955-56 to 40% in 1995-96 and possibly 50% by now. In other words, a substantial part of our activity (economic) involves some form of illegality. It has brought into its grip

vast sections of society. This scale of illegality would not have been possible without the ruling classes who are supposed to govern society being a party to it.”

Not surprising that Scott Adams said: “The only way I can go to sleep at night is by imagining a secret cabal of highly competent puppet masters who are handling the important decisions while our elected politicians debate flag burning and the definition of marriage.” And David Rothkopf felt it appropriate to quote it as an epigraph in his *Superclass: The Global Power Elite and the World they are Making*.

(iv) I regret I prosecuted a good man

While at Patna, I had to wade through a truckload of seized papers pertaining to the “Search and Seizure Cases”. I worked hard to make a good criminal case against a deviant company, and its director. Decades after the decision of the Rangoon High Court (reported in the First Volume of the Income-tax Report) convicting an advocate for concealment of income, the Patna District court held the company guilty of criminal breach, and sentenced its Director to a term in jail for concealment of income. But I felt very much distressed as the Director had concealed income for a good cause: to set up an academic institution in a backward area. The end was good, the means was bad. While conducting that criminal case, I came in contact with a great lawyer who was also a great man. He was the great Shri Nageshwar Prasad, a criminal lawyer of all India fame.

Nageshwar Babu had been a Judge of Patna High Court during the pre-Constitution days. He had become fabulously rich but had never forgotten how he made his ascent from rags to riches. We had a chance meeting. He took interest in me on knowing that I was doing my LL. M. from Patna University. He too had thought of doing his LL. M. but he could spare no time from his busy profession. Most evenings I spent in his chamber learning the art of criminal prosecution. I had the privilege of sitting on his sofa: between us invariably lay the Indian Penal Code bound in old shining leather. He felt that in specific contexts a re-look on the legal provisions was highly profitable as that helped one understand the new shades of meaning. He was a very patient listener. Once finding tedium manifest on my face, he told me softly that a lawyer’s art was to pick up what was relevant in a given case. He advised that a client should not be discouraged from coming out with facts he considers relevant. The lawyer’s work is to pick up facts necessary to build up his case. He was extremely thorough in his preparation, and he took copious notes. Once he told me that the lawyer’s creative process resembled the poet’s, as both see in ‘their vision which later on finds expression through words and acts’. With a vision in his mind a lawyer goes ahead building up his case step by step, brick by brick.

I requested Nageshwar Babu to be the counsel for the Income tax Department to conduct the said prosecution case going on in the Magistrate’s court. First he hesitated in responding to my request. But after a long pause, he accepted my request out of sheer love and affection for me, but on the condition of ‘no fee’ for his work. For two years the trial went on. If my memory is right, this matter was heard over twenty-four dates. Shri Prasad was a hard task master. He made me go through all the Indian and British cases relevant to the issues in that case.

I studied Glanville Williams' *Criminal Law* and some other standard books on the art of cross-examination. I found the volumes of the *State Trials* greatly illuminating and profoundly interesting. I briefed Shri Prasad every evening that preceded the dates for hearing of the case. His presentation of case before the court was masterly. I worked as his *de facto* junior, and visited district criminal court to assist him on all the days the matter came up on the board for hearing.

Then one fine morning (if I remember right, March 31, 1968), he rang me up to tell me that the judgment had been delivered in favour of the Revenue by sentencing the managing director of the accused company to two years rigorous imprisonment. But the accused in that case was not a commercial crook. The man was in his seventies. I agreed with Mr. Prasad that his petition for bail deserved no opposition. I worked for the success of this case with complete dedication without guidance from my bosses. But my decision not to oppose the bail petition was questioned to the point of doubting my integrity. When I told Shri Nageshwar Prasad the wage that I got for my dedicated work, he said in his subdued tone: 'virtue is its own reward'. I was surprised when on the next day I was called by Shri V.S. Narayanan, the Commissioner, in his chamber. After some ominous silence, he asked me to read the letter he had received from Shri Prasad. He had written about certain qualities he noticed in me, which I myself did not know that I ever possessed. He had written in the letter that my instruction to him was most appropriate. I felt relieved.

I found Shri Prasad's art of cross-examination so effective and so nicely structured that I requested him to speak about the art amidst the gathering of the officers. On June 6, 1969 he delivered a short talk in the Central Revenue Building, Patna. I have put its transcript on my website.⁵ It is short but enlightening and thought-provoking.

(v) Assessing the Maharaja and the Raja to income-tax

I held jurisdiction over the tax cases of the Maharajadhiraja Dr. Sir Kameshwar Singh of Darbhanga, Raja Bahadur Kamakhya Naryan Singh of Ramgarh, Maharaja Kamal Singh of Dumraon and the Maharani of the Raj Hathua. The Maharajadhiraja was a person of extra-ordinary composure and poise, and exuded warmth. The Maharaja was a greatly decorated person with K.C.I.E., LL.D., D.LITT, and had been a member of Constituent Assembly (1947-1950) and also a member of the Provisional Parliament (1950 -1951). I had the opportunity to meet him in 1960 when he had congratulated and blessed me for my performance at the M.A. examination.

But I enjoyed most working as the Maharaja's Assessing Officer. I found in his records the whole cavalcade of the law and administration of the income-tax from the day their history began in our country. I found that the case records had become richly strewn with legal opinions of some most important Indian and British jurists. But when I became the Raj Darbhanga's Assessing Officer, the Maharaja was no more. He died a few years before. He was found dead in his bath-tub. The reasons of his death were open to speculations of all sorts: divine decree, human machinations or mere death-wish. When I got access to his files, his Will was being probated under the jurisdiction of Calcutta High Court under high pressure claims and counter-claim. Such destiny awaits the Wills of most of the great persons. Two-thirds of the Maharaja's estate went for public charity,

and the remaining one-third was to be used for discharging other legal obligations charged on his estate. As a member of our Constituent Assembly, he contributed to the framing of our Constitution. He had celebrated the work of our Constituent Assembly even in England by hosting a party in London which was noticed and chronicled in the *Romance of Savoy*. He believed that the Rule of Law must be upheld. He got the Zamindari Abolition Act declared *ultra vires* paving the way for the First Constitutional Amendment in 1951. He fought for his legal right to own property, but parted with his property for a good cause with great delight. He was a capitalist *sui generis*.

I recall an event when I was of 8. I went to see the Raj Campus. After loitering for some time, I roamed from temple to temple enjoying *prasada* that I got in the temples I visited. I gazed vacantly on the full-size statue of Maharaja Rameshwar Singh standing under a marble canopy on the pyramidal platform. The statute was an exquisite piece of art with impeccable but highly suggestive waves in the marble. It illustrated what could have been considered the best in the Renaissance art. After much roaming in my vacant mood, I strayed into the adjoining complex of the residential palaces and the Secretariat. I felt that some octopus caught me from behind. When I turned to see what it was, I found a tall terrifying person with rich moustache. He dragged me back shouting: "Not permitted to enter that campus". I returned home morose to tell my mother what had happened. She told me: "Bother not. Time would come when they would invite you into the palaces." My mother's words came true. Time came in 1968 when I inspected the inner campus of the Raj in order to decide its claim for exempting the income of the 'palace complex' from the incidence of income-tax. Under the law, the property used for agricultural operations could not be charged to tax under the Wealth-tax Act. I went inside the palaces, libraries, gardens, and temples. My mother's words kept on floating in my consciousness.

(vi) The Aiyar Commission

The Congress Party, which ruled Bihar over decades, was defeated in the elections held in February, 1967. The rival parties formed a Coalition ministry on March 5, 1967 with Shri Mahamaya Prasad Sinha as the Chief Minister. On March 17, 1967, the Governor, in his address to the Legislature, announced that an inquiry would be made against the conduct of certain ex-ministers of Bihar. Shri Khaleel Ahmad, who was formerly a puisne Judge of Patna High Court and later the Chief Justice of the Orissa High Court, was made a minister in the Coalition Ministry, and was put in the charge of the affairs dealing with the inquiry against the former Congress Ministers. The Patna High Court observed:⁶

"..... he (Shri Khaleel Ahmad) travelled extensively all over India with a view to find out a suitable gentleman who would agree to preside over the Commission of Inquiry. Ultimately Mr. Venkatarama Iyer was persuaded to agree."

Shri Aiyar, a retired Judge of the Supreme Court of India had an established reputation for excellence and integrity. Even those, who faced the Commission of Inquiry, held him in the highest esteem. Shri A.K Sen stated before the Patna High Court, at the commencement of his argument in *K.B. Sahay v. Commission*, that the petitioners had the highest regard for his ability and integrity.

That Commission was constituted by the Governor of Bihar under the Commission of Inquiry Act, 1952. The Commission was appointed⁷ to look into the conduct of the following former Ministers:

1. Shri Krishna Ballabh Sahay, who held the office of Minister, during the periods from 16 April 1946 to 5 May, 1957 and 29 June 1962 to 2 October 1963 and the office of Chief Minister during the Period from 2 October 1963 to 5 March, 1967;
2. Shri Mahesh Prasad Sinha, who held the office of Minister during the periods from 29 April 1952 to 5 May 1957 and 15 March 1962 to 5 March 1967;
3. Shri Satyendra Narayan Sinha, who held the office of Minister during the period from 18 February 1961 to 5 March 1967;
4. Shri Ram Lakhan Yadav, who held the office of Minister during the period from 2 October 1963 to 5 March 1967;
5. Shri Raghavendra Narain Singh, who held the office of Minister of State during the period from 2 October 1963 to 5 March 1967; and
6. Shri Ambika Sharan Singh, who held the office of Deputy Minister during the period from 2 October 1963 and also the Minister of State during the period from 2 October, 1963 to 5 March 1967.

The Notification mentioned that allegations had been made that they “by abusing and exploiting the official position or positions held.... obtained pecuniary and other benefits for [themselves], either in [their] own name *or benami*, and for [their] family, relatives and other persons in whom [they were] interested, and allowed them to obtain, or connived at their obtaining, pecuniary and other benefits and thereby [they], [their] family, relatives and other persons in whom [they were] interested acquired vast properties made illegal gains....” (Singular pronouns made plural by me). It was further alleged that they, during the tenures of their offices, “indulged in corruption, favouritism, abuse of power and other malpractices.

The Commission of Inquiry, headed by Justice Venkatarama Aiyar, was essentially a fact finding body. An inquiry under the Commission of Inquiry Act was not a judicial inquiry. The Commission's orders could not be judicially enforced. The scope of the trial by the Courts of Law and that of the Commission of Inquiry are quite different. It is meant to ascertain facts for which it wielded powers of the Civil Court under the Civil Procedure Code. The Commission's prime mission is to find out facts for the information of the mind of the Government so that appropriate legal action can be set afoot against the persons found guilty of dereliction. It does not function as a court in an adversary proceeding. Its role demands it to adopt an inquisitorial technique. That role required a specific perspective and conscious activism. The Aiyar Commission, in my considered view, did not reach the high water-mark of excellence in adopting the inquisitorial method. The Chagla Commission⁸, which had been appointed on January 17, 1958 for inquiry into certain alleged scams pertaining to the six Mundhra concerns (popularly known as “Life Insurance Corporation Inquiry”), and the Shah Commission⁹, which was appointed on May 28, 1977 to look into the excesses of the infamous Emergency, had used the inquisitorial method with commendable skill and effectiveness. The Aiyar Commission adopted the usual method of admitting affidavit evidences from all those

involved in the matters under inquiry. But in evaluating such materials, the Commission often went wrong for reasons beyond my comprehension.

When the Aiyar Commission was constituted, I was the Income-tax Officer heading Ward A of the Special Circle, Patna. I had a heavy load of the 'search and seizure' cases from different places of Bihar. When the Aiyar Commission was set up, the cases of the six ex-ministers, and some senior I.A.S officers, undergoing inquiry, were centralized under my jurisdiction for proper conduct of investigation by coordinating and interacting with the Commission of Inquiry, and the special unit of the Central Bureau of Investigation under the specific assignment to conduct investigation into the affairs of those ex-ministers and others involved.

The Aiyar Commission had been constituted to derive political mileage, but the choice of the presiding officer indicated that it had not been constituted with any tainted motive, or evil design, to embarrass powerful political rivals. But the politicians involved, did not take the Commission seriously. Their hostility towards the Commission affected the quality of its work. It was surprising to see that on a mere affidavit by one Ramaya, the Commission held that Shri M.P Sinha received bribe of about fifty thousand rupees. The Commission held that one ex-minister had constructed a house, making un-explained investment, when, in fact, what had been constructed by him had not gone even above the foundation level. The Commission could have determined the nature of the deposits aggregating to more than twenty lakhs in a particular Bank account in the name of Shri Krishna Ballabh Sahay if it could have examined the destination of the disbursements from the bank account made just before 1967 General Election. I investigated in the light of all the emerging materials to come to a fair decision. My administrative superiors never interfered with my decisions even where I chose to depart on some points from the views of Justice Aiyar and the Special Unit of the C.B.I. The working conditions provided me joy to work hard.

I found Krishna Ballabh Sahay, who had been the Chief Minister of Bihar from 2.10.1963 to 5.03.1967, a most impressive person and extremely courteous. Whilst a Minister, he had endeared himself to common people by his incessant strivings to bring about the legislation abolishing the Zamindari system. When this law was held *ultra vires*, Pandit Nehru saw to it that the First Constitutional Amendment was brought about. Shri Sahay established his eminence by making Bihar lead in the national task of land reforms. He chose his words with meticulous care, and he could cut short anybody who indulged in beating about the bush. For the first time when he appeared before me he was gasping for breath as he had a severe onset of asthma. As lift was not working in my office, he climbed the three floors in order to be on time. I provided him a cup of coffee and requested him not to run the risk of climbing up when he was not in good health. The small thing I did for him made him happy. Shri Sahay was evidently happy with me despite the inconvenience that I caused to him in exercise of my duties. He never discouraged me, never misguided me, never pressurized me. Shri Radha Mohan Sahaya, his close friend from his childhood days, used to appear with him. Once Radha Mohanji told me, with hesitation of course, that in some context Krishna Ballabh Babu said, "I would like an officer who is a fool; but not one who is a

knave". When Radha Mohan left my room I spent some time in measuring myself whether I was a fool or a knave.

Shri Sahay was a distinguished fund-raiser for the Congress. He was himself a man of simple habits, and was trusted by the high leadership of the party. The Aiyar Commission found that there was a Bank account in which sums more than Rupees Twenty Lakhs had been deposited shortly before 1967 General Election. The deposits were in cash. The Bank account was in Shri Sahay's name. The Commission applied mechanically the principle that apparent was real till the contrary could be proved. And Shri Sahaya had his reasons for not co-operating with the Commission. Shri Sahay told me that in the Congress organisation there was a prevailing practice to deposit party funds in the personal name of some very trusted functionary as it was felt that the deposits in the name of political parties ran the risk of being confiscated by the British Government. The practice which prevailed before the Independence continued in some cases even after that. But the Commission did not accept his plea; and certain criminal cases were filed against him. He never took them seriously. He was sure that he would never be put on trial. He was so sure not because he was free from all blemishes but because the politicians in power would find such trials troublesome for themselves too. What Shri Sahay said came true. Complaint against him hibernated for some time before they became pathetic lost causes. During my second term at Patna, I had investigated into what was known as the JMM Scandal wrought on account of bribe that the then four Members of Parliament of the Jharkhand Mukti Morcha were alleged to have received before the 'No Confidence Motion' against the Government of Shri Narsimha Rao on July 28, 1993. The JMM pleaded that the deposits in the bank accounts were of the party. Ultimately, their story was believed without any credible inquiry. *Quis custodiet ipsos custodes?* ("Who will watch the watchers?").

Shri Mahesh Prasad Sinha was a soft spoken person with genial temper. All sorts of allegations had been made against him. It was said that he feathered his nest with ill-gotten gains. On the basis of an affidavit alone the Commission went to the extent of holding him guilty of taking bribe. In my assessment, most of the allegations were wild. But all these made him suffer inside. Then a morbid day came: I saw from the window of the Central Revenue Building a procession taking someone's dead body for cremation. It was Mahesh Prasad Sinha's. For quite some time I stood, like a statue, with tears in my eyes.

Shri Satyendra Narayan Sinha had not acquired the political stature which his father Shri Anugraha Narayan Sinha had earned for himself. He was soft and suave. Shri Raghavendra Narain Singh and Shri Ambika Sharan Singh were men of common run who came under cloud for no gross faults. Shri Ramlakhan Singh Yadav was terribly aggressive, and was at times feared by many. Allegations of various types were hurled against him. But nothing came out grave enough for which he could have been embarrassed. I cannot forget that one winter evening he had come to my residence unannounced for a social call. As per his version, my illustrious maternal uncle late Kaleshwar Mishra was his friend. He told me how during our country's Freedom Movement he became appreciative of my maternal uncle who had saved Dr. Rajendra Prasad from getting trapped by the British government whilst crossing the Ganges near Parbatta. Yadav was dressed in long robe, and was wearing an imposing improvised pagri. I invited him into the

living room of my one-room apartment. We sat on an old creaking cane chair, beside the firewood burning bright in a big earthen pot. I found him courteous to the core. He neither tempted me nor frightened me. It was a real gentlemanly visit: he maintained the highest standards in his behaviour. The next day I told Shri V.S.Narayanan, the Commissioner of Income-tax, about Shri Yadav's visit at my residence. He asked me whether I was right in welcoming him at my residence when he had official dealings with me. I told him that any other behaviour on my part would have been an act of discourtesy towards a citizen of great public eminence. He heard me, and just smiled.

Most of my time was consumed in conducting investigations into these cases of the VIPs. I was closely associated with the Commission of Inquiry. I was in close touch with the unit of the Central Bureau of Investigation headed by Shri Hingorani, the Deputy Inspector General of Police, ably assisted by Shri Ratan Singh, the Superintendent of Police. The unit of this premier investigation agency worked well under the able guidance of these outstanding officers. We never heard anything adverse against the unit's solidarity, or its commitment to the cause. The unit of the CBI was never a house divided. The officers of the unit co-operated with the Income-tax Department realizing full well that we had a common pursuit.

I dealt with sensitive cases. I played my statutory role to my full satisfaction. I went to various remote places to conduct my investigation. I invoked all my legal powers to ascertain facts. But I must record that in course of all that I did, I never had a sense of fear. My departmental superiors never interfered in the exercise of my duties. I was happy with the administrative culture of the Income-tax Department. It is saddening that things have deteriorated over years. I would write more about it in Chapter 11 entitled 'Patna; my second innings'. But what amazed me all along was the level of decency that the persons indicted by Aiyar Commission had maintained. I moved on my bicycle in different parts of the town even quite late at night without any apprehension. However in my second stint, during 1996-97, when I was the Chief Commissioner of Income-tax for Bihar, I found things had changed for worse. The officers investigating the Fodder Scam cases worked with harrowing sense of fear.

The Aiyar Commission submitted a voluminous report. It indicted the ex-ministers, and also a number of important officers, many of them were the members of the Indian Administrative Service. The officers came in for criticism as they tilted rules to bask in political patronage. The evil alliance between the politicians and the bureaucrats had emerged. They betrayed public trust and damaged public interest. In my view the most important point that the Aiyar Commission had made is to draw our attention to the unhealthy relationship between the political executive and the civil servants. The scams of the recent years are the illustrations of worsening pathology in our democratic polity. The findings of Commissions of Inquiry, held before or after¹⁰ the Aiyar Commission, brought out this point again and again but with no impact on our governance. The refrain in all the reports by the Commissions insofar as this concerns the relationship of the Ministers with the Civil Servants, is the same. As Justice Shah expressed his feelings with deep felt emotions and great insight, I would quote him *in extenso* later in Chapter 12 ('Patna : My Second Innings').

The Aiyar Commission was presided over by a great Judge, but it could not work well. To hold someone a bribe-taker on the ground of someone else's untested affidavit, or to hold someone possessing unexplained wealth in his bank accounts without considering the time of the deposits and the destination of their disbursement, were contrary to the principles of natural justice. Such issues are generally decided on the broad principle of probability. The deposits in the bank account of Shri Sahay were all made just prior to the General Election. Shri Sahay had filed a detailed list of persons to whom payments were made out of the bank account. Those recipients were all VIPs and political heavyweights. The Commission should have summoned those persons to explain how and for what purpose the payments had been received by them. Nobody would have spent his own money that way for a political party. Neither CBI unit thought of exploring facts to ascertain truth, nor did the State of Bihar help the Commission to ascertain facts. Shri Sahay too did not press his point with full seriousness as he considered the Commission just a melodramatic performance in the public domain destined to have no long-term effect. The factors which led the Commission to come to this pass were many: but two of these are thus summarized:

- (i) It was surprising that the Commission missed its prime task: it was to gather primary and secondary facts after monitoring proper investigation (got conducted by investigative agencies, or by its own officers). It adopted rather an adversarial approach typical of the civil court, rather than an inquisitorial approach of a 'fact-finding' tribunal. The outcome was most unfortunate. Neither the operative facts were ascertained for the people to know, and for the Government to take action, nor justice was done to the people undergoing inquiry. It is distressing to note that such an outcome characterized the endeavours of almost all the commissions of inquiry appointed in our country.
- (ii) The persons, whose matters were being examined by the Commission, had serious misgivings about the role of the Commission. The Commission functioned in the climate of hostility. Besides, they felt that the Commission served only the political purpose of the adversary political party. Besides, there were obvious reasons to believe that the politically important persons in Delhi and elsewhere would ensure that no serious prejudice was caused to any of them.

The Commission worked in an environment of political hostility. Even the Press did not conduct investigation to gather facts. All sorts of theories and rumours were spread, and logic ran wild for this or that view. Such situations do not help the proper ascertainment of facts. When such things happen, sound judgment becomes impossible. People are accustomed to think the way Baron Alderson portrays in his instruction to the jury in *Reg. v. Hodge* (1838) 2 Lewin 227 where he said :

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and misled itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”¹¹

In my considered view, the best model for the working of a commission of inquiry is the Profumo Inquiry Report submitted in England by Lord Denning in 1963 in which facts were investigated to see whether immorality and security-risk marked the affairs of some government functionaries. He completed his inquiry in 49 days. It made an intensive inquiry which included examination of 160 persons. The Report commanded great respect because of its worth. Lord Denning perceived his role with utmost clarity and precision. He says in his *Landmarks in the Law* (Part 13)

“I have often been asked: Which of your cases was the most important? Beyond doubt, the Profumo Inquiry. It was a landmark. It was not a law case. But it had a great deal in common with it. For it was an inquiry to find out the truth.”

(vii) The Moot Court & the Law of the Sea

In 1972, the Patna University sponsored to conduct a Moot Court for selecting two persons for participating in the 1973 Philip International Law Moot Court to be held in America. It was the most prestigious and well known moot court competition in the world. Jessop Philip was a great name in the field of international law. The participants had to draw up memorials to be submitted for the petitioners and the defendants in a hypothetical case bringing to mind the conflicts which the littoral States in the North Sea had faced. The Moot Court simulated the case, which the Government of Neptunius brought before the International Court of Justice in pursuance of Article 40(1) of the Statute of the International Court of Justice, against the Government of Atlantica for adjudication and judicial determination in accordance with international law under Article 38 of the Statute. It involved some intricate questions of international law requiring a measure of judicial creativity and statesmanship on the part of the Court. Under the rules framed by the University, a participant could submit memorials for the petitioner and the respondents both. I submitted my memorials which were adjudged the best by a panel of distinguished examiners.¹² This Moot Court consisted of three Judges. The Judges were Justice A.N Grover,¹³ Chief Justice N. L Untwalia,¹⁴ and Shri G Parthasarthy¹⁵. Participants, mostly members of the Bar, had come from different parts of the country. But none could be sent abroad because our Central Government did not appreciate the University undertaking that project, funded by the US State Department, without seeking government's approval. My participation in the moot court helped me develop my interest in the Law of the Seas. I wrote, in 1973, the dissertation for my LL. M on the Developing Law of Fisheries. I did that under the guidance of Dr. R. C. Hingorani who had made a mark by writing a book on the Law of Extradition. I had strongly pleaded for the constitution of the International Seabed Authority. Summarizing my position, I wrote:

“The International Sea Authority would be in overall control and management of the resources of the seas. The common property of mankind well deserves to be managed by an organization representing mankind. This would have an approval of *ius aequum rule*”

I suggested a multilateral treaty under the U.N. supervision to set up this organization with organs as (i) the Sea Assembly, (ii) the Sea Council, (iii) the

Director General of the Sea Authority, and (iv) the International Sea Court. I was happy that almost two decades after, the International Seabed Authority was set up in 1994, to regulate all mineral related activities in the international seabed region. India is one of its members. In this context, I may mention that I have, felt that now time has come to set up the International Tax Authority to manage equitably the problems of international taxation. I would come to this point in Chapter 16, where I would plead for the establishment of an International Tax Authority (ITA) with global jurisdiction, modelled on the International Seabed Authority (ISA).¹⁶

(viii) India's acme of glory: the emergence of Bangladesh

The great Tulsidas had said; '*Prabhutapai kah mad nahian*' (whose head does not turn after acquiring powers without restraints?). This came true in the ways the Government of Pakistan dealt with the affairs of the East Pakistan, so called after the partition of India. The Government of Pakistan turned tyrannical against its own people living in the East Pakistan. Morbid attempts were hysterically made to destroy the cultural identity of the people of that aggrieved region, often through stealth but quite often with aggressive starkness which no self-respecting people could tolerate. The people there revolted against the tyranny. Hoards of refugees swamped the eastern region of India. As India's stakes were heavy, and as our country had good reasons to empathize with the struggling people of Bangladesh, India took recourse to humanitarian intervention, a ground for valid intervention recognised by Public International Law. The Pakistani armed forces surrendered before Lt. General Jagjit Singh Arora, who held the joint military command of military operations. It was the proudest moment for us to see how at 4.21 p.m. on 16th December 1971, Lt. General Niazi, Commander of the Pakistani forces in Bangladesh, surrendered unconditionally to General Arora at the Decca Race Course ground.¹⁷ When I read a graphic account of this historic event, I felt ecstatic delight. The credit for this glorious event went to Mrs. Indira Gandhi. Our people had good reasons to consider her Goddess Durga. Indira was jubilant. We felt the morbid era of Wajid Ali Shah, about which I would tell you through the story of the *Satranj ka Khiladi* in Chapter 25, had gone.

(ix) The Flood

On my transfer, I went to Bhagalpur to function as the Appellate Assistant Commissioner. The Members of my family remained at Boring Canal Road in Patna. In the evening of August 24, 1975, I heard, on radio, my friend Dr. Jagganath Mishra, who was at that time the Chief Minister of Bihar, saying that a terrible flood had submerged Patna. The government did not know how to respond to the challenge. The city-dwellers found themselves left only at the mercy of God. His words were enough to make people panicky. I left Bhagalpur by road for Patna. I was not sure of reaching my destination as on the way several bridges had been washed away, and roads and tracks at various places had been breached. I could reach the Chirayatad Bridge near Patna railway station. Beyond that, it was impossible to go. But I could engage a brave rickshaw-puller who could reach me somehow on the crossing near the Central Revenue Building at the heart of the town. I reached there, wading through neck-deep water under the continuous shock on seeing many dead bodies and animal carcasses floating in

the swelling water. Water from the Sone, and the Ganges, was furiously swirling and whirling on the main streets of Patna flooding the legislature complex, the High Court, and other institutional areas. Two boats had been provided by the district administration to ferry stranded people, but I found none of these available. I could gather that some VIPs had gone on errands, and had chosen not to return. I had lost all hope to reach my residence to know how my wife and children had fared. I could somehow enter the Central Revenue Building, and I saw it overcrowded with the persons whose shelters had been destroyed. The government found itself helpless. I was told that it could be possible for me to wade through the water from the side of the Rajapur Bridge. Almost in delirium, I reached that place on the bank of the furious Ganges. I was told that I could walk down to my place as the water-depth on the road might not go above my nose. I treaded a few steps when I heard: 'What, if the water goes above your nose?' God knows, who whispered that in my ears. I returned, and sat underneath a tree on the roadside racking my brain for some light.

At the dusk, I saw a tiny boat which had returned after distributing germinated grams to the residents of the marooned areas. The good boatman agreed for Rs. 5 to reach me to my place. I was so hungry that I begged for some grams which I munched while the boat negotiated through the maze of the narrow lanes. I reached my house which was on the first floor. The ground floor had gone all under water. I could land on the first floor from the brim of the boat. I found that everyone was well. My old father had collected good stock of food and drinking water before it could become impossible to do so. Spending a night seemed more gruesome than spending a century of horror. The next day I could somehow arrange a boat to reach the railway station on way to Baidyanath-Deoghar to hold my official camp. I held my appellate jurisdiction over that area.

NOTES AND REFERENCES

- 1 The Taxation Enquiry Committee presided over by the former Chief Justice of India, Mr. Justice Wanchoo.
- 2 H.M. Seervai, *Constitutional Law of India Vol. I* pp 488-489 (4th ed.)
- 3 The Economic Survey 1975-76 said "Under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, total amount disclosed has been provisionally placed at Rs. 1578 crores of which incomes disclosed have amounted to Rs. 744 crores and wealth Rs. 834 crores. Incom-tax and wealth-tax payable respectively on these disclosed amounts are estimated to be Rs. 241 crores and Rs. 7.7 crores respectively, of which Rs. 159 crores of income tax and Rs. 4.2 crores of wealth-tax have been already paid. Beside Rs. 4.9 crores have been invested in specified securities." H. M Seervai, *Constitutional Law of India* by H. M Seervai, 4th ed. p. 489
- 4 AIR SC 2162.
- 5 http://shivakantjha.org/openfile.php?filename=articles/cross_examination.htm
- 6 *K.B Sahay v. Commission of Inquiry* 1968 B.L.J.R 207 at 213
- 7 The Notification S O 255 October 1, 1967.
- 8 Shri M C Chagla, the Chief Justice of the Bombay High Court.
- 9 Shri J. C. Shah, Retired Chief Justice of the Supreme Court of India.
- 10 Shri S.R Das Commission which inquired into the conduct of late Shri Pratap Singh Kairon, Chief Minister of Punjab (1963-64), Shri Rajgopal Iyengar Commission which inquired into the conduct of late Shri Bakshi Ghulam Mohammed, ex-Chief Minister of Jammu & Kashmir (1965-67), Shri Venkatarama Aiyar Commission which inquired into the conduct of certain Minister of Bihar (1967-70), Shri Madholkar Commission which looked into the affairs of Shri Mahamaya Prasad Sinha, Chief Minister of Bihar and other Minister (1968-69), Shri A.N Mulla Commission which looked into the affairs of the Ministers of Kerala-Govindan Nair and T.V Thomas (1969-71), and Shri G.K Mitter Commission who looked into the Kendu leaves purchases in Orissa (1973-74).
- 11 Quoted in *Hanumant v. State of M.P.* AIR 1952 SC 343.
- 12 Dr. R.C. Hingorani, Professor & Dean of the Faculty of Law mentioned in his certificate dated November 25, 1974 : "This is to certify that Shri S.K Jha passed LL.M in 1972 Examination and received first Position in both the parts. His brief for all Indian Moot Court Competition was adjudged to be the best in 1972."
- 13 A Judge of the Supreme Court of India.
- 14 Chief Justice of Patna High Court.
- 15 The Vice Chancellor of the Jawahar Lal Nehru University.
- 16 <http://shivakantjha.org/openfile.php?filename=triplets/triplet-013.htm>
- 17 <http://www.bharat-rakshak.com/1971/Dec16/Art01.htm>