

VOICE OF THE POPULIST JURISPRUDENT



JUSTICE V.R. KRISHNA IYER
AND HIS PRO-ACTIVE PRONOUNCEMENTS

L S SATHIYAMURTHY

JUSTICE V R KRISHNA IYER

The greatest judge of our times had served as a minister in Kerala. After renouncing the passion in politics, resumed the legal profession and elevated to the judge of the High Court, Kerala.

He delivered more than 700 trendsetting judgments in his tenure of fewer than eight years as judge of the Supreme Court.

This book is an account of fascinating insights into the erudite judgments and extra-judicial writings of Justice V R Krishna Iyer.

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‘An erudite judge illumines the pages of law reports. He earns the respect and admiration of the members of the Bar and the Bench. The legal fraternity may remember him as his reputation survives to posterity. But rarely is such a judge widely known outside the world of law.

Erudition coupled with an honest missionary zeal in the cause of social uplift gives a different image to a judge and makes him live not only in the books of law but also in the hearts of men.

Sri.V.R.Krishna Iyer is known and respected by the public of this country. His tenure of office as a judge of this court, later as a member of the Law Commission and finally as a judge of the Supreme Court has been marked by a distinction that singles him out from the rest of his colleagues. His decisions evince a new approach to law and new role for the Judge.”

Extract of the Tribute paid to Justice V.R.Krishna Iyer by the High Court, Kerala in a contempt proceedings initiated against him.

- (Vincent Panikulangara Vs V.R. Krishna Iyer
(1983 KLT 829; 1983 2 ILR (Kerala) 626)

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JUSTICE V.R.KRISHNA IYER - A COLOSSAL



India as a country is prouder its locus as the largest democracy as well as the largest judiciary around the world. The Constitution of India has made its judiciary as an independent, A multi-tier body of adjudication. The hierarchy is best discerned right from the Munsif or the Magistrate Courts as the substratum to the High Court as the '*State's highest forum for justice*' and the Supreme Court as the '*Supreme and Apex constitutional the institution*' of justice in the country. Ever since our independence, the Supreme Court has been the conscience of the people and the savior of India's democracy, a salient feature of our Constitution itself. Apart from being our nation's patron, it has also been the seconder in the prevention of maladministration and mismanagement. Thus, bolstering our faith by functioning as a watchdog to protect our rights and liberties guaranteed to the citizenry. Judicial activism and the existence of *bonafide* public interest litigations (PIL) have brought to light the decisive capacity in the minds of people in shaping the destiny of the nation.

Precedents vouch for profuse icons adorning the noble bench of the Supreme Court and leaving indelible imprints in the annals of judicial history and earning global reputation and reverence. Undoubtedly, one amongst such laureate is Justice V.R. Krishna Iyer; a rare concoction of unique multi-faceted personality with humane qualities and leadership skills. Throughout his life, he bore within himself two diametrically opposite qualities. As a popular political activist and an elected representative with a conviction to political ideology, he was seen to share moments with mammoth crowds. However, people were privy to his other side in the Bench, where he convincingly secluded himself from the people and penned down the disputes uninfluenced by any of the party statecrafts. He has won the hearts of lawyers, litigants, common public and leaders of all sects of politics and society by the bulk and sheer brilliance in his benchmark pronouncements.

Justice V R Krishna Iyer has played many prominent roles in his life. Being a dynamic lawyer, he has defended many leaders including A.K.Gopalan and other

politicians in courtroom battles and has saved their life and political career. The litigating and legally defending experience while standing in the Bar enriched his legal acumen to greater extents. He had fought in the public election thrice and was elected as a representative of (MLA) from *Tellicherry*, apart from being a member of Madras Presidency Legislature and Kerala Legislative Assembly. The versatile experience of legislating he gained in the Assembly is one of the rarest experiences. Worthy it is to note that in India, there is no other Judge of the High Court and the Supreme Court who had such an opportunity to serve in the Legislature before their elevation. In his public life, his services rewarded him a politically glorified post in the ministry.

Thus, he served as a Minister of Law and Prison Reforms in the State of Kerala, which bestowed upon him powers of financial independency to introduce and implement welfare schemes and projects.

A sojourn in the Law Commission of India, having gotten him to Delhi, introduced him to the pre-legislating experience of drafting Law Reports and Bills. His impeccable hold on the language, coupled with his drafting experience, augmented his skills to fine-tune comprehensive exercises from drafts to bills and ordinances to laws. His tenures as Judge of the Kerala High Court and the Supreme Court, respectively, made him privy to other essential experiences including that of acid-test and determination of the law being vires or otherwise.

Post-retirement, Justice Iyer has dedicated himself to being an activist and has subsequently participated in numerous historical events. The Electoral politics had once again indulged him in the fray and he was a contestant for the President of India in the '*fateful hour of history*' in 1987, however, was defeated by the Electoral College. Establishing himself as an avid learner, he took the post-election exercise as a tide to travel from *Kashmir to Kanyakumari* and infuse within himself the pulse of the people, politicians and their parties. The defeat did the least bit to demobilize him. He traveled around the world to preside over seminars, present papers and deliver prestigious endowment lectures. In due course, his prolific writings produced more than one hundred books. The campaigns and crusades against violation of human rights and supporting the cause of public welfare, promoting communal harmony, eradicating corruption from public life and public offices and other numerous noble causes have become the breath of his life.

Interestingly, in an endeavor to disseminate rights and fight against the torture & death penalty, Justice V.R. Krishna Iyer played a promising role by appearing

in a Tamil movie of *Kamal Hassan*, *Virumandi*, and made a clarion call against the capital punishment on screen. His life, career, and services can be reflected through the illuminating lines from Hamlet.

A Soul - Satisfying Experience

‘When on the Bench, unmet apostrophe he shared arresting semblance with Lord Denning’s picturesque smile of a judge as to the rider. When counsel urged the master of the rolls (Lord Denning) not to invent a new head of public policy, he retorted, ‘I know that public policy is an unruly horse but it is for an able and competent judge to ride that unruly horse and to bring him down on the side of justice insert. It is indeed notable that in due course of his judicial career, Justice Krishna Iyer gladly rode such unruly horses; and even more laudable were his constant endeavors in conjuring them from amongst the herd. He showed considerable prowess (and ingenuity) in bringing them down on the side of the justice’¹

Justice V R Krishna Iyer, a ‘living legend of law’ was elevated to the Bench of Kerala High Court on 2nd July 1968. After the conventional swearing-in ceremony, he delivered his maiden speech as a judge of the High Court, with a robust reflection of his judicial vision and mission. The bulk of his words were coated with sheer candour and docility. After gesturing his thankfulness for everyone around, with immense humility, he began,

‘My Lord, the Chief Justice, Brother Judges, brothers and sisters at the Bar. In a country like India, judges are not only trusted with the adjudication of rights and wrongs but also betoken as sentinels on the qui vive. They face newer challenges and shoulder myriad responsibilities in upholding the Constitution and the laws of the land.

For as we know, where justice is a copious and a true concept, the ‘Rule of Law is a more positive and dynamic idea, with socio-economic content and political overtone not implied in them by orthodox jurists. The social goals enshrined in the preamble to our Constitution, the fundamental rights chapter and the directive principles of state policy, broadly and vaguely project our current legal philosophy. The judicial organ, being part of the state, shares the national objective and perspective of political and economic democracy. It spells itself from the articles of the Constitution and the corpus juris of India, starring the

legal framework of a secular society with egalitarian urges, thus, departing from the old order and sensing them on trial.

It is my humble prayer that I am given the courage and vision to live up to the sacred trust of the high office, for, I am keenly sensitive to the demanding nature of the judicial process, which strikes at social evils, legislative transgressions, and quasi-judicial injustices².

These reviving words of credence from Justice Krishna Iyer, on the first day of his assuming high office, had touched the hearts of common men and enhanced the confidence of lawyers and litigants over the juridical arena. On his elevation to the Judicature, it appeared as if God's own State was favoured another diamond on its crown. Mr.V.V.Giri, the then Vice-President of India, in his letter of felicitation³ dated 2nd of July, 1968, described the acceptance of judgeship by Krishna Iyer as a '*financial sacrifice and abdication of leadership at the Bar*'. He drew a balance sheet of Bar and Bench as '*what for the Bar is a loss, is a distinct gain to the Bench*'. It was a short span of four years that Justice Iyer served as a puisne judge of the Kerala High Court. Even though he was not elevated to the pedestal of a Chief Justice, his presence in the Bench was felt in depth by the learned counsels and common folk.

Justice Krishna Iyer has not only decided cases pertaining to the constitutional validity of Acts of legislators and exceeds of executives, but has also distinguished himself on definitions of small accords in the courts, with his distinguished and venerable legal acumen. He has rightly earned his deference by adjudicating disputes and resolving them with perpetual solutions. It is pertinent to take note that each of his judgments has laid down its own legal principle and remained a legal philosophy in the adjudicatory domain. The decision in *Kuruvilla Chandy vs Hassan Bava Rawthar*⁴ is a classic instance to describe Krishna Iyer as a legal philosopher. The term '*appearance*' often used in courts, legal domains and documents has several connotations and lacks a codified definition in the Code. However, in an endeavor to draw its definition and fine-tune its meaning and application in the legal parlance, he made a journey of precedents and searched volumes of textbooks and at last, interpreted the term to suit the party who rightfully deserves the cause.

For a better appreciation of his wit and reasoned accord, it is appropriate to throw some light on the facts of this case. It was a suit of a *pauper*, dismissed at the trial stage, following the non-execution of the warrant by the advocate commissioner, who was appointed to record the evidence of a witness. But, on

the subsequent motion under Order 9 Rule 9 CPC, the suit was restored. The aggrieved defendant preferred a revision for the same and put forth the following questions:

a. What is understood by the expression ‘non- appearance’?

b. Considering a situation where an advocate appears on behalf of the party, moves an adjournment and on refusal thereof, does nothing more for the benefit of his client in the case, can such an event be construed as limited participation of the party so as to deprive him of the benefit of Order 9 rule 9 CPC?

c. A pleader appears at the hearing on behalf of a plaintiff and applies for an adjournment either on the ground that he had no time to prepare himself with the case, or on the ground that the papers were departed with his senior, and thus, he could not proceed with the case. In furtherance of this, the application stands refused, and the pleader, unable to go on with the case, faces dismissal of the suit. Under these circumstances, is it acceptable to hold the plaintiff appearing through a pleader?

It is an established principle in law, that a party is not said to ‘appear’ by a pleader if the pleader appears at the hearing and acknowledges the filing of his ‘vakkalatnama’ and states the lack of instructions from his client and his denial to move further with the suit as a consequence thereof. Similarly, a party is not said to ‘appear’ through a pleader if the pleader bears no instructions other than to apply for an adjournment, and, upon the contingency of refusal, withdraws himself from the suit with the defense of no direction.

‘Learned counsel for the petitioner has cited certain other rulings before me, which, to some extent, concurs this viewpoint. However, I am inclined to take the view that a beneficial provision calculated to help a party in default should be so construed so as to give the benefit of reasonable doubt, if doubt exists, in favour of the party in default. Even otherwise, appearance through a pleader in court has a purpose to serve, and if the presence of the advocate does not serve that purpose, it is as good as non-appearance from the party’s point of view. The learned subordinate judge has, therefore, taken the correct view of the law and proceeded to dispose of the application under Order 9 Rule 9, read with Order 17 Rule 2 CPC. Ergo, let me conclude my point with the learned

thought that in law, as in philosophy, appearance is not always reality.'

His tenure on the Kerala High Court Bench was brief but bright. The versatile experience of Justice Krishna Iyer as an advocate from taluk level *Tellessery* Courts to High Court Bench is seldom a unique phenomenon. He has vividly recalled his days at the High Court Bench and to quote⁵, *'I decided several cases with imaginative novelty, social justice, and remedial creativity. My jurisprudence had a literary flavor reflected in my judgments and justice was my goal, the law is but a tool. Humanity, not legality, was the object of the judicial process and even sentencing of convicts had a positive transformative objective. My experience as a Minister of Law, Justice, Home, and Prison stood in good stead while on the Bench. Justice Raman Nair, ICS, with whom I sat in the early days, was a strong man with a firm grasp of British jurisprudence. I came from the people, knew their sorrows, and had socialist, secular convictions. I respected him for his integrity but disagreed with him in his hard and harsh perspectives and allergy to socialist ideology. However, we agreed on our conclusions and I enjoyed hearing cases along with him.'*⁶

After a short tenure as the Chairman of the Central Law Commission, he was elevated to the Supreme Court on July 17th, 1973, amidst protest from a section of the Bar. He served as Judge of the Apex Court of India for seven years (1973-1980), and in his sprint as the Judge, penned down seven hundred and twenty-four judgments and short prompt orders. An American researcher opined that *'No judge in India has, during a comparable seven-year period, written so many judgments on a serious front and almost majority of them being shelved as classics in postremo.'*⁷

In the court, Justice Krishna Iyer was a prolific writer and an indefatigable worker. His record of judgments, in sheer number, surpasses the statistics of *Subba Rao*. His pre-occupation for quick justice is apparent in his judgments.⁸

Justice Brain J., Preston, Chief Justice of the Land and Environment, Court of New South Wales, in an article, has felicitated Justice V R Krishna Iyer as *'one of the most pro-active judges to have ever served on the Supreme Court and made valuable contributions to varied areas of law, human rights and social justice, constitutional and public law and has widened the access to environmental justice.'*⁹

¹ Fali S Nariman, *'Before memory fades An Autobiography'* Hay House India (2010) page 327.

² See, The full text of the speech is available in the book '*Wandering in many worlds*'-An Autobiography

³ The letter dated 2nd July 1968 by the vice president of India, reproduced in the book '*Wandering in many worlds -An Autobiography*'

⁴ Kuruvilla Chandy vs Hassan Bava Rawthar (1969 KLT 402; 1969 KLR 177).

⁵ The full text of the speech is available in the book *Wandering in many Worlds-An Autobiography*, page 161

⁶ *Wandering in many worlds- An Autobiography*, page 158

⁷ *Justice VR Krishna Iyer, 98 Not Out*, Universal Law publishing Law Co Ltd New Delhi, 2013

⁸ *Fall S Nariman, Before Memory fades – An Autobiography*, Hay House India (2010) page 329

⁹ Justice V. R. Krishna Iyer' 80th Birthday souvenir, SOCO Trust, Madurai, 1995

Judgement Debtor's Judgement

Justice Krishna Iyer, while assuming the judgeship of Supreme Court, was at the receiving end of warmth and welcome and to a certain extent, strings of brickbats as well; evident from the bulk of protests by a group of senior lawyers against his elevation, who channeled their retorts through a series of revolting articles in print media. However, the collective opinion of the loathsome transposed on Justice Iyer's effulgent jurisprudential articulation, conviction on social justice, pronouncements causing a profound impact on society and legal system on the large, his contribution to the legal aid and development of public interest litigation. And thereby, the old order yielded place to the new. On the day of his retirement, the Supreme Court Bar Association sent a letter which ran thus:

'Permit us to remind you that the Bar is the judge and no judge can avoid or escape the verdict of the Bar. We have summoned you this evening to hear our unanimous declaratory verdict. Our verdict is a decree of affection and admiration. Let us also declare, in these proceedings, which are sui generis, that we are not only your judges but also your judgment-debtors.

*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. Last Thursday the weather was crisp and bright. But in the court where you sat, there was a humid air. Eyes were moist. We felt that a great intellectual and a great gentleman was sitting in the Court for the last time.'*¹⁰

Such words reflect nothing short of profound homage to one such luminary, who is recognized as one of our country's radical legal reformers. It is Justice Krishna Iyer's exemplary performance in the Bench, conviction on social justice, landmark pronouncements, and veneration of constitutional values that won the hearts of both friends as well as foes-turned-into-friends in pursuance of their fond admiration for him.

Compromising on the pecuniary perks he gained at the Bar and sacrificing the public life that had him on a higher pedestal as Minister of State, Justice Iyer took up the seat of a judge with philanthropist impulses. He directed himself to render justice to the deserving and depressed and to raise voice from the Bench for the helpless victims. In his words, during the maiden speech as Judge of the High Court, *Ernakulam*, his commitment to society was, above all,— ‘to gain a soul-satisfying experience in his judgeship career, thus, stating that,

‘The Advocate pleads for rights and fights against injustice. The judge fulfills himself in the quest for truth and justice. Together, the divine duet of ‘doing justice is played. To me, it is perhaps, a soul-satisfying experience’.^{[11](#)}

To this day, embarking upon a series of acclamations and conspicuous distinctions, he is regarded as a noble soul- a living legend, who has won the hearts of people from all walks of life. Even as a centenarian, his second childhood, he has been tirelessly serving humanity.

Through this introduction, reflecting upon known facts and events of his yesteryears, a better understanding of some of the landmark decisions penned by Justice V.R.Krishna Iyer shall be attempted. Through these decisions, he raised his voice for the concerned and the destitute. His discernments have often been quoted, followed and admired by the legal fraternity in India, as well as abroad.

^{[10](#)} The full text of the speech is available in the book *Wandering in many Worlds-An Autobiography*, page 161

^{[11](#)} The full text of the speech is available in the book *Wandering in many Worlds-An Autobiography*, page 161

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