

All India Federation of Tax Practitioners Journal

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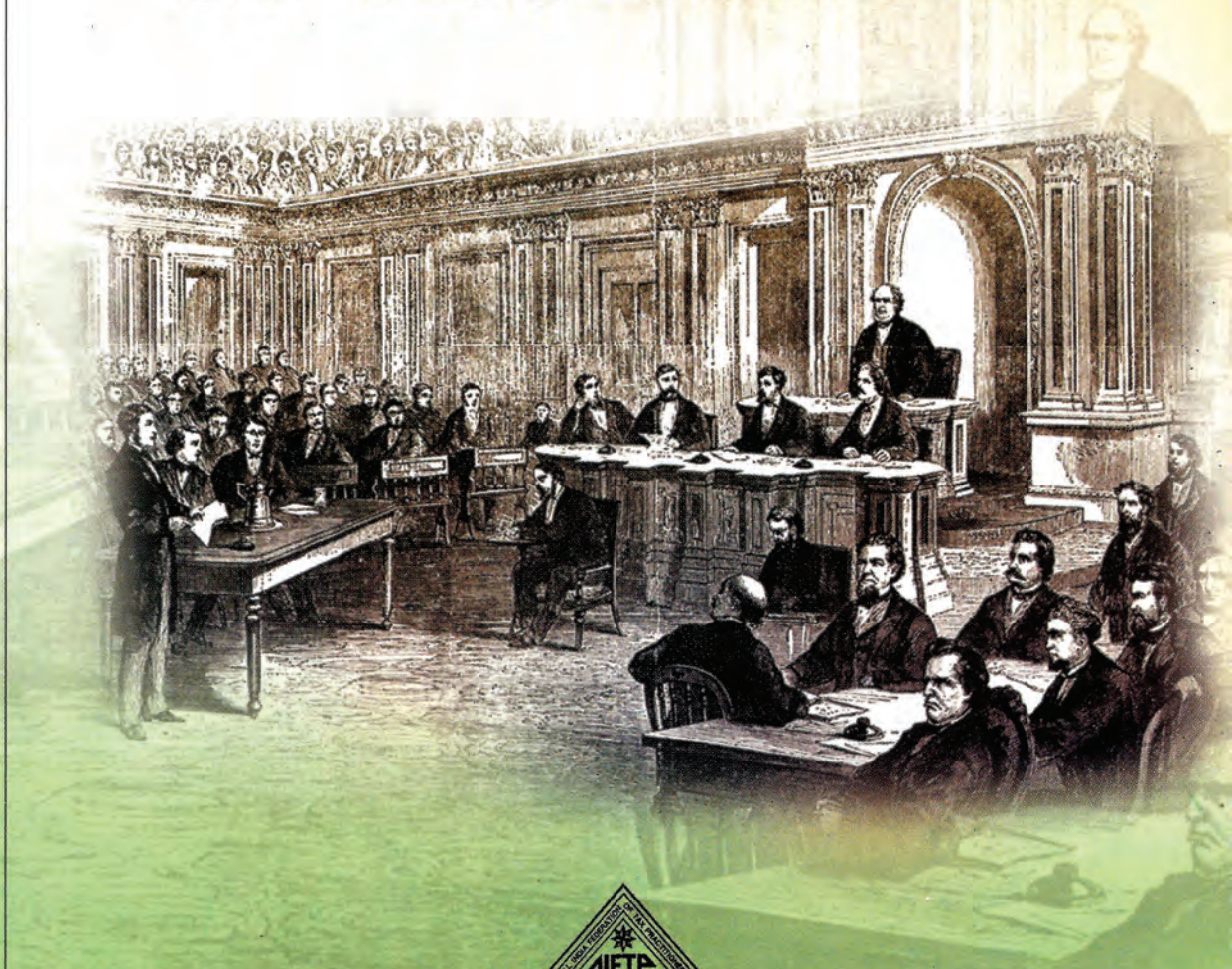
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A Tribute to The Stalwarts of The Tax Bar

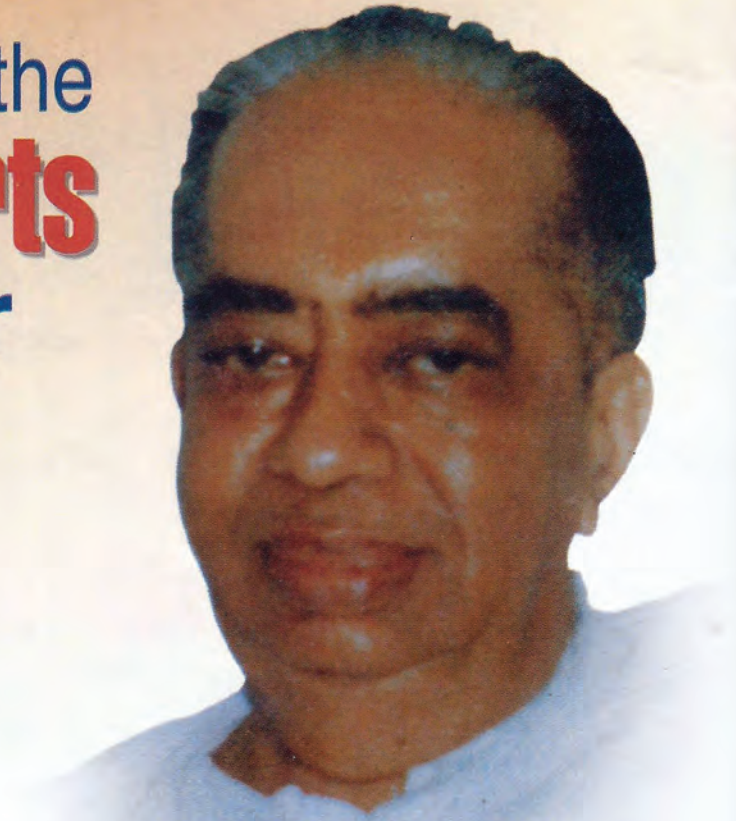


All India Federation of Tax Practitioners

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Federation Salutes the
Three Stalwarts
of the **Tax Bar**



SHRI. S. P. MEHTA



SHRI. R. J. KOLAH



SHRI. N. A. PALKHIVALA

CONTENTS

The Federation wishes all its members and readers a
HAPPY INDEPENDENCE DAY

1. Messages		
a. Hon'ble Justice Shri B. N. Srikrishna, Supreme Court of India		2
b. Hon'ble Chief Justice Shri C. K. Thakker, Bombay High Court		3
c. Hon'ble Chief Justice Shri S. H. Kapadia, Uttaranchal High Court		4
d. Hon'ble Shri Soli J. Sorabjee, Attorney General for India		5
e. Hon'ble Shri V. Dongzathang, President, Income Tax Appellate Tribunal		6
f. Hon'ble Shri A. Kalyanasundharam, Sr. Vice President, Income Tax Appellate Tribunal		7
2. Editorial	<i>M. H. Gami</i>	12
3. President Writes	<i>K. Shivaram</i>	14
4. In memory of Shri Shailesh Kapadia		16
5. A Reminiscence	<i>S. E. Dastur</i>	17
6. Nani Palkhivala	<i>Dinesh Vyas</i>	21
7. Sanatbhai a Saint Among Professionals	<i>V. H. Patil</i>	25
8. Leaders in Taxation Law		
– A Tribute to Nani Palkhivala, R. J. Kolah and S. P. Mehta	<i>Sujata Manohar</i>	32
9. Palkhivala and the Constitution of India	<i>Soli J. Sorabjee</i>	33
10. S. P. Mehta – My Senior	<i>U. T. Shah</i>	41
11. Tribute to Shri N. A. Palkhivala	<i>M. K. Chaturvedi</i>	43
12. A Tribute	<i>Iqbal M. Chagla</i>	45
13. Three Stalwarts Who Outshone on Tax Horizon	<i>Y. P. Trivedi</i>	46
14. Shri R. J. Kolah and Shri N. A. Palkhivala	<i>M. L. Bhakta</i>	48
15. A “Threebute” to Stalwarts	<i>Jal Dastur</i>	52
16. The Legacy of a Legend	<i>H. P. Ranina</i>	57
17. Nani Palkhivala – A Legendary Lawyer and a True Humanist	<i>Bansi S. Mehta</i>	59
18. Shri Palkhivala and Mehta		
– Unique Combination of True Professionals	<i>P. N. Shah</i>	61
19. A Tribute to Stalwarts of Tax Bar Shri N. A. Palkhivala and Shri S. P. Mehta	<i>Arvind H. Dalal</i>	64
20. Shri Nani Palkhivala – A True Democrat	<i>Arun Sathe</i>	66
21. Shri Sanat Mehta – A Pragmatist	<i>Arun Sathe</i>	68
22. Shri N. A. Palkhivala, Shri S. P. Mehta & Shri R. J. Kolah		
– A Tribute	<i>R. V. Patel</i>	69
23. Memories of Mr. S. P. Mehta	<i>Ajay thakkar</i>	72
24. Shri N. A. Palkhivala & Shri S. P. Mehta	<i>N. C. Mehta</i>	74
25. Before My Memories Dry Up	<i>B. C. Joshi</i>	75
26. The Inimitable Palkhivala	<i>Sukumar Bhattacharya</i>	77
27. My Tribute to the Two Stalwarts of Tax Bar	<i>N. M. Ranka</i>	78
28. Federation News		80
a. TAXCON – 2003		81

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The opinions and views expressed in this journal are those of the contributors.
The Federation does not necessarily concur with the opinions/views expressed in this journal.

MESSAGES



Justice B. N. Srikrishna
Judge
Supreme Court of India



4, Jantar Mantar
New Delhi - 110001
Ph. : 23715439
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July 23, 2003

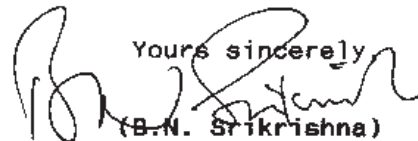
Dear Mr Shivaram,

I was happy to note from your letter that your federation has decided to bring out a publication titled "A Tribute to Stalwarts of Tax Bar" as a tribute to Late M/s. R.J.Kolah, S.P.Mehta and Nani Palkhivala.

The triumvirate of late M/s. R.J.Kolah, S.P.Mehta and Nani Palkhivala strode the field of Tax Laws like colossuses. I had the privilege of personally knowing late Shri Kolah and appearing with him in some matters, though not arising under tax laws. I also had the privilege of late Shri Mehta arguing before me when I was a Judge of the Bombay High Court in tax matters. I also had the pleasure of hearing Shri Palkhivala in the Bombay High Court, though not in a tax matter, and of course knowing him personally.

These three legendary gentlemen not only contributed to widening the horizon of tax laws but also became paradigms for emulation for young professionals because of their erudition, intellectual prowess and strength of character.

My best wishes to you on your endeavour to bring out the special issue "A Tribute to Stalwarts of Tax Bar". I earnestly hope that your efforts to establish the "Palkhivala Research Academy on Direct Taxes" will soon fructify.

Yours sincerely

(B.N. Srikrishna)

Shri K.Shivaram,
National President,
All India Federation of Tax Practitioners,
215, Rewa Chambers,
31, New Marine Lines,
Mumbai -400 020.



CHIEF JUSTICE C. K. THAKKER



Chief Justice House
J. Mehta Road, Malbar Hill
MUMBAI 400 006.
TEL.: 2262 3665

MESSAGE

I congratulate All India Federation of Tax Practitioners for bringing out a special issue on "A Tribute to Stalwarts of Tax Bar" containing articles from former Judges of the Apex Court, High Court, members of the Tribunal as also members of the legal fraternity.

I had an opportunity to pay my tributes to the memory of late Shri Nani Palkhivala in the Full Court Reference on 19th December, 2002.

Words will fall short to pay tribute to legends like Nani Palkhivala, R.H. Kolah and Sanatbhai Mehta. This special issue, I am sure, will help Judges, professionals and students in the field of tax laws, emulate the percepts, principles and high standards of stalwarts of Tax Bar.

I wish the publication success.

25th June, 2003.


(C.K. Thakker)
Chief Justice

4



**JUSTICE
S.H.KAPADIA**



**Chamber No.41
High Court, Main
Building, 2nd Floor,
Mumbai.**

June 9, 2003

MESSAGE

My Tribute to Stalwarts of Tax Bar

In the field of Income Tax Law, out of the few luminaries, there were three legends; i.e., late Shri R. J. Kolah, late Shri S. P. Mehta and late Shri Nani Palkhivala, who devoted their professional practice to the field of Direct Tax Laws. I deem it a great privilege to have been requested by All India Federation of Tax Practitioners to forward to them my tribute to the above stalwarts in the form of a message for their publication.

All the three stalwarts led the Tax Bar in intellect, clarity and integrity. They have provided a valuable legacy in the form of their Juniors who, today, have emulated these three stalwarts in the above virtues and who, in turn, today, are the leaders of the Tax Bar.

I was lucky to have seen the three stalwarts in action when they were not so young and yet, after hearing them for a few moments, I came out of the Court with the following words which flashed across my mind.

“The spirit knows no youth or age, no fatigue or death”

These are the qualities and virtues which should inspire our young professional lawyers and I am happy to state that, even today, in the Tax Bar practising in the High Court, there are young professional lawyers who are following in the footsteps of these three legends.

On the 70th birth day of Sir Jamshedji Kanga, late Shri Nanai Palkhivala stated as follows.

“If a man were to go by chance in to the Court and hear Sir Jamshedji Kanga argue for a few moments he would say, — “this is an extraordinary legal mind”.

When I heard in my junior days these three legends, the above words of Shri Nani Palkhivala came to my mind.

This is my tribute to the three legends.

(S. H. Kapadia)

Justice S. H. Kapadia is presently Chief Justice of Uttaranchal. — Editor.



भारत के महान्यायवादी
ATTORNEY GENERAL
INDIA

23rd July 2003

MESSAGE

The law of taxation in India is complex and complicated. Many eminent lawyers have tried to unravel its mysteries.

Your special publication "*A Tribute to the Stalwarts of the Tax Bar*" is a step in the right direction and deserves full congratulations for this initiative on your part.

May I wish the publication every success.

A handwritten signature in cursive script that reads 'Soli J. Sorabjee'.

[Soli J Sorabjee]
Attorney General for India



V. DONGZATHANG
President

D.O. No.
Tel. No. : 4694246
आय-कर अपीलीय अधिकरण
INCOME TAX APPELLATE TRIBUNAL
MINISTRY OF LAW, JUSTICE & CO. AFFAIRS
GOVT. OF INDIA
LOK NAYAK BHAWAN,
NEW DELHI - 110 003

Dated the

MESSAGE

I am very happy that the All India Federation of Tax Practitioners is bringing out a Special Issue titled "A Tribute to Stalwarts of Tax Bar".

It is indeed befitting that such outstanding luminaries should be recognized and remembered. The process of law is an ongoing process and one has to learn from the past to bring out the best in the present. The Advocates are recognized as officers of the Court. They are instrumental in the proper administration of justice in the field of civil, criminal and taxation. The prestige and dignity of the Court and the Bar is evolved and developed through customs, usages and conventions practised through generations. The sterling contribution of the luminaries like late Shri R.J.Kolah, late Shri S.P.Mehta and late Shri Nani Palkhivala in the field of development of taxation laws and also to the cause of the prestige and dignity of the Courts in particular the Income-tax Appellate Tribunal, is to be cherished and remembered always.

I congratulate you on your noble endeavour and hope that it will contribute substantially in enshrining their legacy which will remain a guiding Star for us.


(V Dongzathang)



अ. कल्याणसुन्धरम
A. KALYANASUNDHARAM
वरिष्ठ उपाध्यक्ष
SENIOR VICE PRESIDENT

अर्थ शासकीय न०

D.O. No. _____

भारत सरकार

GOVT. OF INDIA

विधि एवं न्याय मंत्रालय

MINISTRY OF LAW AND JUSTICE

आय-कर अपीलीय अधिकरण.

INCOME-TAX APPELLATE TRIBUNAL

ए-3, राजाजी भवन, बसंत नगर,

A-3, RAJAJI BHAWAN, BESANT NAGAR,

चेन्नै: CHENNAI - 600 090.

dated the June 19, 2003

MESSAGE

Dear Mr, Shivaram,

I thank you for your letter of 3rd June, 2003 and for giving this opportunity to remember Shri S. P. Mehta who is not in our midst. I was overawed by your letter making me to say what I had known of him. It took me sometime to build up my courage and on that basis from my sweet memory I am mentioning the following:

Mr. S. P. Mehta, as I knew him, had a magnetic face which was all the time smiling and almost any one and every one would have felt he being pulled towards him. He knew about his charm and he also knew that the Members of the Tribunal, Judges of the High Court had lot of regard and respects for him as a person first. His rendering of argument before the Tribunal and High Court with his natural voice was always a pleasure to hear. He had something special in him especially when he placed the facts of the various cases of his clients and he would carry the members with him in the appreciation of those facts. This he could do because he was sure about the facts and he was convinced that on those facts the conclusion had to be in favour of the assessee. As a Member, when I had chances of sitting in Bombay as well as in Jaipur and on occasions when I had the benefit of receiving the arguments from Mr. S. P. Mehta, I have to admit that it was quite a revelation in almost every case. He had perhaps the intuition or the psychology of each and every Member and at least I accept it is true of me that I had noticed him place the facts and related case law in a manner that I had not even imagined or known at any point of time. I would admit that every time he placed his clients' matters by means of an argument I had learnt something new from him. I always expected to hear more from him because it was something like he carrying me to new areas which I had never visited. His rendering of the arguments was in a way that the voice was completely in his control with total modulation and the tone remaining constant throughout which make the hearing a pleasant one and as I have stated above, something from which you can learn and you do learn.

He was known for his reputation and integrity and some of my seniors like former President Mr. T. D. Sugla, the former Vice President Dr. V. Balasubramanian, Mr. D. S. Meenakshi Sundaram, Mr. George Cheriyan, Mr. T. N. C. Rangarajan and not to omit our former President Ch. G. Krishnamurthy were all fond of him because hearing him argue a matter would relax them and make them comfortable during the hearing. They had also told me on several occasions about Mr. S. P. Mehta being placed very high in the pedestal of Advocates who leads rendering assistance to the court in coming to a reasonable conclusion. I had known that he would not stake his

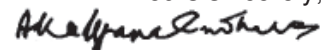
reputation for the sake of winning a case. I also heard that on occasions when he would have advised his client that the court may not be in his favour, the clients insisted his appearance and considered that more important than the outcome of the hearing. The clients had so much of confidence in him that they would accept his advice as something coming down from the Creator himself. His placing disposition in the courts and outside requires to be emulated by many for the sustained maintenance of reputation of the profession and the Bench. He is an institution in himself and I feel the tributes received from all over India remembering Mr. S. P. Mehta would not be able to describe his greatness in full.

I had the benefit of hearing Mr. Nani Palkhivala on a few occasions when he had come down to Delhi and on a few occasions when I was on tour to Bombay. As a student and in my initial years of practice as Chartered Accountant on insistence of my father I used to read the book published by Kanga and Palkhivala on Income-tax. I used to wonder the enormous capacity of Mr. Palkhivala to bring out the gist of a particular case law in just one sentence or at the most two sentences. It only showed the extent of grasp of knowledge not only of income-tax but also on the expression of the requirements and the Act itself. In 1990 at Delhi, the Tribunal had organised a Workshop and we had the pleasure of hearing Mr. Palkhivala in the inauguration of the Workshop. I remember his words : "The Department thinks that professionals are responsible for tax planning that leads to tax evasion and avoidance. What they do not realise or know is that the tax-payers are well ahead of them in their thinking and we are called upon only to place those tax planning schemes before the authorities in support of the commercial trade." He also stated something about an amendment which he asked for over three decades back. He said : "I suggested for an amendment and it took over 30 years for the law makers to bring it in. Had I only kept my mouth shut, perhaps the amendment would have come sooner". I used to hear his budget speech as a professional and even as member whenever I happen to be at Delhi or at Bombay. His facts and figures were very clear about the numerous amendments both retrospective, prospective, repeated amendments, repeated deletions and so on. Though the law makers would be critical about his criticism, what he expected of them was to show that the law makers are also human and were considerate in regard to tax paying community keeping their welfare also in their minds. He was not against levy of taxation but he wanted human considerations to prevail upon everything. He was fearless in criticising not only the law makers but also the Judges. As members I had known some of my seniors paying all the attention to his arguments and refraining from raising any question for fear of being snubbed immediately. His argument before the Bench was almost like a teacher teaching a class. He was always logical in his approach and he could make even dumbest of the persons to understand what Mr. Palkhivala states. This is all because his address always was in simple English that was easy to understand and when it was spoken by the booming voice that echoed from all over the court room was a music to the ear of the members as well as persons present in the court room. He always believed that benefit should be conferred on the subject because they were tax-payers and they were not as powerful as the State itself. It was for this reason many of my seniors used to tell me what he used to repeat often that the Income-tax Appellate Tribunal being the last fact finding authority should not be afraid of granting relief to the tax-payer. The ever-smiling face was something of envy to many and this was possible because the man within Mr. Palkhivala was a very simple person who thought every other person as a human being only and loved them for whatever they were. This was the strongest point and he maintained it till his last. I wish if someone has the recording of speeches of Mr. Palkhivala during budget or on other occasions to publish it so that we could hear him speak.

These are some of the things that came to my mind and I know that I am almost short of the expectations because remembering such great personalities makes it difficult to bring out words that describe them. This is why I stated earlier that all the tributes put together received from all over India and world would be only an incomplete description of such a great personality.

With kind regards,

Yours sincerely,


(A. Kalyanasundharam)

Mr. K. Sivaram,
National President,
All India Federation of Tax Practitioners,
Mumbai.



28-1-1904 to 2-2-1992

SHRI R. J. KOLAH

Shri R. J. Kolah was born on January 28, 1904. He did his schooling in the Master Tutorial High School. Thereafter, he joined the St. Xavier's College and, subsequently, the Government Law College. He was called to the Bar in 1926 and passed his Advocate (O.S.) Examination in 1928. He passed away on Sunday, February 2, 1992. He appeared in number of leading cases before Tribunal, High Courts and Supreme Court.



16-1-1920 to 11-12-2002

SHRI N. A. PALKHIVALA

Shri N. A. Palkhivala was born on January 16, 1920 in Bombay. He took his M. A. Degree with Honours in English from the Bombay University in 1942. He stood First Class First in the 1st LLB (1943), as well as in the 2nd LLB (1944) and again First in the Advocate (Original Side) Examination of the Bombay High Court in 1948.

He was a Professor of Law at the Government Law College Bombay, for many years, and was appointed as the Tagore Professor of Law at the Calcutta University.

He was a Member of the First Law Commission of India (1955) and also of the Second Law Commission (1958).

In 1975 he was elected an Honorary Member of The Academy of Political Science, New York, in recognition of his "outstanding public service and distinguished contributions to the advancement of political science".

In September 1977, Mr. Palkhivala was appointed Ambassador of India to the United States of America.

In June 1978 the Princeton University, New Jersey (USA), conferred on Mr. Palkhivala, the Honorary Degree of Doctor of Laws, describing him as "defender of constitutional liberties, champion of human rights, teacher, author and economic developer."

In April 1978 the Lawrence University, Wisconsin (USA), conferred on Mr. Palkhivala, the Honorary Degree of Law with the following citation :—

"....

As India's leading author, scholar, teacher and practitioner of constitutional law you have defended the individual, be he prince or pauper, against the state; you have championed free speech and an unfettered press; you have protected the autonomy of the religious and educational institutions of the minorities; you have fought for the preservation of independent social organisations and multiple centres of civic power Never more did you live your principles than during the recent 18 month ordeal which India went through in what was called "The Emergency,"... Under the shadow of near tyranny, at great risk and some cost, you raised the torch of freedom..."

Mr. Palkhivala was the author of **The Law and Practice of Income-tax**, which is the standard reference book on the subject. He is co-author of **Taxation in India**, published by the Harvard University in the World Tax Series. He has written a book on India's tax structure — **The Highest Taxed Nation**; on the Constitution of India — **Our Constitution Defaced and Defiled** in which he has discussed the basic features of the Constitution and the amendments made to it; and on the cultural heritage of India — **India's Priceless Heritage**. In 1984, he published **We, the People**, which contains extracts from his speeches and writings of over three decades. This volume also includes extracts from his speeches on the Union Budget, and an incisive analysis of the public policies of India.

He has argued a number of historical cases in the Courts of India and abroad.

Mr. Palkhivala successfully argued before the Supreme Court the cases which affirmed the Fundamental Rights of minorities to establish and administer educational and religious institutions of their choice, and to choose the language in which education should be imparted.

Barring some exceptions, the above cases were all fought by him without charging any fees and as a matter of service to the nation.

Mr. Palkhivala was the Chairman of The Associated Cement Companies Ltd., Tata Exports Ltd., Tata Consultancy Services, and of several overseas companies. He was the Vice Chairman of Tata Engineering and Locomotive Company Ltd. and Associated Bearing Company Ltd., and a Director of Tata Sons Ltd., The Tata Iron and Steel Company Ltd., Tata Energy Research Institute, National Organic Chemical Industries Ltd., and of several overseas companies.

Mr. Palkhivala had many activities outside the immediate sphere of his work. He was the President of the Forum of Free Enterprise, he was the Chairman of The Leslie Sawhny Programme of Training for Democracy, The A. D. Shroff Memorial Trust, The Lotus Trust, and the Income-tax Appellate Tribunal Bar Association, Bombay, and a Trustee of other charitable trusts.

Felicitated with the Life time achievement award by Maharashtra Governor, Hon'ble Shri P. C. Alexander at a function organized by the All India Association of Industries (AIAI) on 15th April, 1999.

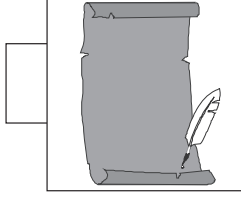
Government of India awarded Padma Vibhushan on 26th January, 1998.



16-3-1923 to 2-3-1990

SHRI SANAT P. MEHTA

- 16-3-1923 : Born at Rajkot, Saurashtra, State of Gujarat.
- 1930-1937 : Schooling at Bombay and Jamnagar
- 1937-1941 : Studied at Wilson College and passed his B.A. (Economics)
- 1941-1945 : Studied Law and Passed O.S. Examination and also M.A. Examination.
- 1945 : Registered as Advocate on Original Side. Started practice as Junior of Purshottamdas Trikamdass in Bombay.
- 1952 : Started his own independent practice
He started appearing in Sales-tax and Direct-taxes.
He wrote a small book on Sales Tax Act. He wrote several Articles in various Magazines and Papers.
He was member of Tax Advisory Committee of Govt. of India.
He was also appointed as a Member of Govt. of India's Committee on simplification of Tax Laws popularly known as Choksi Committee.
When he passed LL.B. (O.S.) his relatives thought that he was not cut out for practice as Lawyer and was advised to take up employment.
His college colleague and hostel room mate who had appeared for I.A.S. Examination brought form for I.A.S. Examination but at last moment decided against filling the Form.
He was approached to join the High Court at Ahmedabad.
Part time Professor of Govt. Law College during 1954 to 1961.
He taught Constitution of India.
He was the director in many leading companies.
He appeared in number of leading cases before Tribunals, High Courts and Supreme Court.



EDITORIAL



A TRIBUTE TO 3 STALWARTS OF TAX BAR

This issue is dedicated to the memory of three stalwarts of the tax bar namely Shri N. A. Palkhivalla, Shri R. J. Kolah and Shri S. P. Mehta.

The authors of these articles have given their experience through their close association with all or any of the three stalwarts, where they had in one capacity or the other as the junior or as a colleague in the same chamber or by way of an interaction at the bar, have highlighted their good qualities or attributes, as a professional and their character, nature, acumen, simplicity, integrity, humility, intelligence, outlook of life and many others and last but not the least their human approach thru their generosity in helping each and everyone, be it in the profession or even in the daily life and all these are required to be fully understood and rigidly to be followed in the day to day life. In fact they were the “Karma Yogies” in its true sense following the dictum ...

विद्याविवादाय धनंमदाय
इवित्त पेरषां परिपीडनाय !
खलस्य साधो विपरितमेतत्
ज्ञानाय दानाय च रक्षणाय !!

“VIDYA IS NOT FOR DIALOGUE BUT FOR DISCOURSE AND FOR ACQUISITION AND DISSEMINATION OF KNOWLEDGE. WEALTH IS NOT MEANT FOR PRIDE OR EGO BUT FOR CHARITY FOR THE BETTERMENT OF THE PEOPLE AT LARGE. ENERGY OR POWER IS NOT MEANT FOR SUBJUGATING OR EXPLOITATION OF OTHERS BUT FOR PROTECTION OF THE WEAK. WISE PEOPLE FOLLOW THE ABOVE DICTUM FOR HAPPINESS OF EVERYONE WHEREAS THE UNWISE OR IGNORANT FOLLOW THE CONTRARY”.

In the present times of strifes and turbulations in the society, where maladministration and corruption is rampant, fall or decay in public life, debasement of our national character, and the outlook of the people at large being more towards materialism specially the youths of this country who are hankering more after material happiness rather than the real spiritual one, it is all the more necessary that they should be guided by understanding the life of the great luminaries who have in fact become the legends in their life time, and lived their life as a True gentlemen, and as our friends, philosopher and guides as they had reached the pinnacle of profession.

With the above avowed objects in mind, the President of AIFTP Mr. K. Shivaram took a bold initiative to publish a special issue on the memoirs of these three stalwarts or the legends and took enough pains by writing to the various learned authors who had in one way or the other known them personally and thoroughly thru a close corner and who have also in fact emulated them in their personal life by practising in practical life for all the ideals that they stood for or wedded to like Satya, Dharma, Shanti, Prem and Ahimsha and this gigantic task would not have been possible but for active help and co-operation from all the authors who have sent their articles well in time to enable us to publish the special issue in time.

I shall be failing in my duty in not conveying my hearty thanks to all of them and also the President and the other members on the editorial board without whose help and guidance this issue would not have seen the light of the day well in time.

If a thorough glance is made thru all the articles, a common tune that is found, is that no words are sufficient to describe perfectly the life of all the three stalwarts and the best tribute that one can offer is that one should take a vow while going through all these pages that he or she shall hereafter follow the path that is so laid down by all the three legend at any cost so that truth shall ever prevail and the cause of justice that has been so dearly espoused by all the three of them, shall be duly carried out with all the honesty, integrity and sincerity to the goal so to be achieved. It is therefore necessary for a movement to be launched for regeneration of values and to maintain and revive idealism in the youth of our country.

It is also my bounden duty to place on record honest appreciation for all the pains that have been taken by my Associate Editor Shri Sanjaybhai Parikh but for whose help and masterly guidance, this special issue would never have been possible. He is an example to be emulated by our youngsters.

I am also thankful to Mrs. Arati Vissanji and Mr. Chetan Karia for their active help for editing this publication.

I also thank my seniors in the profession for their guidance and comments without which this issue would have been incomplete. It is more in tradition between the teacher and the taught that the same is continued and maintained and I offer my all the best regards and respect to my seniors.

It is a matter of great privilege to find ourselves fortunate to have the guidance and blessings from Honourable the Justice Shri B. N. Srikrishna, the Judge of the Supreme Court, Honourable Justice Ms. Sujata Manohar, the Judge of the Supreme Court, Honourable the Chief Justice Shri C. K. Thakker of the Bombay High Court, Honourable the Chief Justice Shri S. H. Kapadia of the Uttaranchal High Court and also Honourable the President of Income Tax Appellate Tribunal, Mr. V. Dongzathang and also the Vice President of Income Tax Appellate Tribunal Shri A. Kalyansundharam and Shri Soli J. Sorabjee, the learned Attorney General for India who have been kind enough to bless us by their kind and inspiring messages that are so published in this issue and I respectfully thank all their Lordships and the Attorney General for the same.

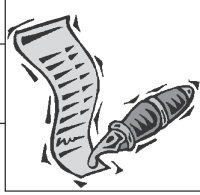
I also take this opportunity to thank Shri Rajesh Kapadia, the Trustee of Shailesh Kapadia Memorial Trust who was kind and benevolent to make handsome contribution to the publication of this issue in loving memory of this brother late Shri Sailesh Kapadia who in the short span of his professional career had made a great dent and contribution to the professional fellow brothers in his own humble way by taking an active part in all the professional activities for spreading knowledge by holding various posts in various capacities as a President of the B.C.A. and also with Indian Merchants Chambers and other bodies.

Our printer M/s. Finesse Graphics & Prints Pvt. Ltd. deserve a special thanks for printing this issue so flawlessly in too short a time.

Lastly, we shall feel amply rewarded if this special issue leads the life of each and every one of us keeping all these legends as our role model or an idol or an icon in all the walks of our life. As puja Mahatma Gandhi said that his life was itself a message and so also is the case of these three legends.



M. H. GAMI



PRESIDENT WRITES



FEDERATION SALUTES THE STALWARTS OF THE TAX BAR FOR THEIR ETHICS, EDUCATION AND EXCELLENCY

1. The Tax Bar is acknowledged as one of the Best Bars of our country by the Judiciary. We have been able to achieve this honour only because of the highest standards of ethics and integrity set by the stalwarts of the Tax Bar. The Income-tax Appellate Tribunal is one of the finest institutions of our country. The Income Tax Appellate Tribunal has attained this glory and honour, mainly because of the legendary personalities of the Tax Bar who practised there and because of the traditions of the High Court followed by the members of the Income-tax Appellate Tribunal.
2. One of the former Presidents of the ITAT, who was later elevated, narrated an incident which occurred soon after he joined as member of the Tribunal at Mumbai. One day after hearing a matter, when he started dictation, he desired certain clarification. When he called the counsel to see him in his chamber, the counsel said if it related to the matter, please fix the matter before the Bench, let the Departmental representative be present, he should also be heard. This was the tradition of the tax bar, which he admired and followed thereafter.
3. In another instance, one counsel had argued a matter before a bench in a Miscellaneous Application, the counsel argued that the facts put forward by him, were not considered by the bench. The members asked the counsel to file an affidavit. Shri S. P. Mehta, who was in the Court came forward and told the bench, that when a member of a legal profession makes statement at the bar, that statement carried more value than an affidavit and the same has to be honoured. This is the tradition of the Tax Bar.
4. When there was a threat to the independence of the Income-tax Appellate Tribunal, the Tax Bar collectively challenged the matter before the Bombay High Court. On this occasion I had the privilege of appearing before the Bombay High Court along with Shri N. A. Palkhivala. To the best of my knowledge, this was possibly one of the last appearances of Shri N. A. Palkhivala in the High Court. I must acknowledge that almost all senior members of the Tax Bar wholeheartedly supported and spared their valuable time for representing before the High Court and Supreme Court, on honorary basis, without even charging for the travelling and other incidental expenses. The Income-tax Appellate Tribunal is able to function today as an independent Judicial Body, only because of the contribution of the stalwarts of the Tax Bar. This tradition of Tax Bar deserves to be appreciated and preserved. We must also acknowledge that the contribution of then President of the Income-tax Appellate Tribunal, Shri T. V. Rajagopala Rao towards protecting the independence of the institution deserves to be written in golden words in the history of Income-tax Appellate Tribunal.
5. When five additional Benches were sanctioned for Mumbai, there was a move to start the five additional Benches at Navi Mumbai. It is only because of the PIL filed by the Income-tax Appellate Tribunal Bar Association along with Federation and other associations, that the five additional Benches were allowed to function at the present premises. This achievement was possible due to the active support given by the then President Shri T. V. Rajagopala Rao and thereafter, Shri V. Dongzathang, President of ITAT. The Contribution of Shri Ram Jethmalani, Minister of Urban Development and the selfless contribution of the members of the Managing Committee also deserves to be acknowledged. The five new additional Benches were inaugurated by the Hon'ble Law Minister Shri Arun Jaitley on 16-2-2003. This is the contribution made by the Tax Bar to the tax-payers of Mumbai.
6. When there was difficulty in allotment of residential accommodation to the members of Income-tax Appellate Tribunal, it was the Federation which filed a PIL before the Bombay High Court. Similar Petitions were filed at Rajasthan and Gujarat. Because of the active representation by the Tax Bar, members of the ITAT are allotted residential accommodation immediately on their appointment.

7. When Hon'ble Shri P. V. Narasimha Rao was Prime Minister and Hon'ble A. B. Vajpayee was opposition leader, there was a move by some bureaucrats to shift the headquarters of the Income Tax Appellate Tribunal from Mumbai to Delhi. The Tax Bar made a strong representation stating that the headquarters should not be shifted from Mumbai to Delhi. Hon'ble Shri Vajpayee as the leader of the Opposition took up the matter with the Hon'ble Prime Minister and this move was stalled. We must acknowledge that head quarters of the Income-tax Appellate Tribunal has been retained at Mumbai only because of strong representation of the Tax Bar.
8. I was fortunate to witness the arguments of Shri R. J. Kolah, Shri N. A. Palkhivala and Shri S. P. Mehta before the Bombay High Court and the Tribunal. It was a great experience and a learning process, I had the privilege of being associated with Shri N. A. Palkhivala, when he was President of ITAT Bar Association for more than a decade, as the Secretary of the ITAT Bar Association. I must say that Shri N. A. Palkhivala was very punctual at meetings. I must admit that in the 10 years of my association, I cannot recollect a single instance when Shri Palkhivala was late for a meeting. This tradition deserves to be preserved by professionals, who assume responsibility as office bearers of any professional organization. Shri S. P. Mehta was very helpful to the junior members of the Tax Bar. Once we were discussing the difficulties of getting admission to a particular school. Shri S. P. Mehta, overheard our conversation. When we went back to our office in the afternoon, we found a letter from Shri S. P. Mehta addressed to the trustee of the school, requesting for his help in getting admission. This great quality of Shri S. P. Mehta shows how humble and helpful he was to junior members of the Tax Bar. When Shri S. P. Mehta expired, as a mark of respect to him, the Income Tax Appellate Tribunal, Mumbai was closed for one day. This proves how Shri S. P. Mehta was respected by the Bar, the Bench and Departmental Representatives.
9. We must acknowledge that the three great stalwarts of the Tax Bar, Shri R. J. Kolah, Shri N. A. Palkhivala and Shri S. P. Mehta have laid down a strong foundation for the Institution of the Income-tax Appellate Tribunal. The common characteristics amongst all the three were Ethics, Integrity, Excellence and Values. As a mark of respect to them and with the hope that the younger professionals should follow the footsteps of these stalwarts of the Tax Bar, we are bringing out this unique special issue and also adopting the theme of the Federation for the next three years will be "Ethics, Education and Excellence". We are indeed grateful to all the authors who have shared their experiences for the benefit of the Tax profession.
10. The Federation is making an sincere and honest attempt to preserve the values, ethics and integrity demonstrated by the stalwarts of the Tax Bar and striving to maintain the status and glory of the Income-tax Appellate Tribunal as one of the finest institutions of our country. We hope this publication will help professionals to follow the principles adopted by the stalwarts of the Tax Bar.
11. The Federation has made an appeal to the Government, as a national tribute to Shri N. A. Palkhivala to release a stamp in memory of Shri N. A. Palkhivala and to constitute a "Direct Taxes Research Academy". We are pleased to state that, the Government has in principle agreed to publish the stamp and is considering the proposal of "Palkhivala Research Academy on Direct Taxes".

Jai Hind.



K. SHIVARAM
National President.

Acknowledgement

This Independence Day special issue is dedicated to the memory of Late Shri Shailesh Kapadia. Federation is grateful to Shri Rajesh Kapadia, the trustee of Shailesh Kapadia Memorial Trust for co-sponsoring this publication

– Editor



24-12-1949 to 19-10-1988

SHAILESH KAPADIA

Late Mr. Shailesh Kapadia, FCA, was a Chartered Accountant by profession and was a partner of M/s. G. M. Kapadia & Co. and M/s. Kapadia Associates, Chartered Accountants, Mumbai.

Shailesh qualified as a Chartered Accountant in 1974 after completing his articles with M/s. Dalal & Shah and M/s. G. M. Kapadia & Co., Chartered Accountants, Mumbai. Shailesh had done his schooling at Scindia School, Gwalior and he graduated in Commerce from the Sydenham College of Commerce and Economics, Mumbai in 1970.

Shailesh enjoyed the confidence of clients, colleagues and friends. He had a charming personality and was able to achieve almost every task allotted to him. In his short but dynamic professional career, spanning over fourteen years, Shailesh held important positions in various professional and public institutions. His leadership qualities came to the fore when he was the President of the Bombay Chartered Accountants' Society in the year 1982-83. During his tenure as the President of the Bombay Chartered Accountants' Society, he successfully organized the Third Regional Conference at Mumbai. He was the Chairman of the Seminar Committee and a member of the Law Committee of the Bombay Chartered Accountants' Society and a member of the Institute of Fiscal Studies, U. K. He was a member of the Direct Taxation Committee and the Law Committee of the Indian Merchants' Chamber and served as the Vice Chairman of the Direct Taxation Committee of the Indian Merchants' Chamber. He was also a Director of several public companies in India and a Trustee in various public Charitable Trusts.

Shailesh had been a regular contributory at various seminars and conferences and had presented papers on diverse subjects of professional interest at refresher courses organized by professional bodies.

R. J. Kolah - A Reminiscence



S. E. Dastur

Sr. Advocate, Mumbai

To write about a personality like Mr. R. J. Kolah in whose chamber I cut my teeth at the bar is difficult because so many memories and thoughts come flashing back. I first saw Mr. Kolah in 1957. On a visit to Delhi for an all-India debating competition, we decided to visit the Supreme Court which was then in Parliament Building. The Court was hearing a challenge to the constitutional vires of the Bombay Labour Welfare Fund Act. We heard a most persuasive argument from a man of medium height and spare build who was later identified as Mr. Kolah. The judges heard him with rapt attention, a phenomenon I witnessed repeatedly thereafter.

After I passed the examination for “the office of an Advocate of the High Court at Bombay”, as the qualifying examination was then known, I had to decide on the “line” to pursue and the chambers to join. Having been (now, as it happens, very fortunately) turned down by one chamber, my father and I approached Mr. Manek (Botty) Mistry of Messrs. Kalyaniwalla & Mistry who was a great friend of Mr. Kolah. He immediately rang up “Rustom” and I could hear the voice at the other end say that he should ask the “boy” to see him the next day at 9.45. Kolah (at Bar, the juniormost advocate is supposed to refer to the seniormost by his surname) had a place in the chambers of Sir Jamshedji Kanga, which chambers were then located on the ground floor of the High Court on the left hand side as one entered the High Court from the gate near the University. The interview was brief. He accepted me saying how could he turn down a request from “Botty”. He later confided to me that I could have come through my father because he remembered him from his days with Payne and Co. in the late 1920s, when he used to visit the liquidators’ office and my father was there as an auditor. When I recounted this to my father he was surprised that Mr. Kolah still recalled those few meetings. He told me that Kolah used to come from Payne & Co. always wearing a “Parsi cap.” This was but one illustration of Kolah’s phenomenal memory - for cases, facts and faces. Whatever be the size of the brief and howsoever complicated the facts, he never made detailed notes and sometimes just jotted down a few dates. He said that one should not become “notes bound” because one then tends to get tied down to the “plan” and one does not “go” with the judge as one always must. This was in marked contrast to a neighbour, when we were in chamber No. 2 in the High Court, who used to mark his briefs at the first reading in pencil, then in blue, black and red ink. There was a problem when the matter was adjourned for the fourth time!

Kolah was a man of principle and believed that the law and rules must be obeyed in letter and spirit. He did not apply to be enrolled as a Senior Advocate because under the Bar Association rules a Senior Advocate cannot draft pleadings or appear before a Court or an Authority without a junior advocate. He felt (much to the chagrin of juniors in his chamber!) that the latter condition would impose an unnecessary financial burden on the client.

In so far as juniors were concerned, his principle was that he should not “recommend” those in his chamber because this may deprive another advocate in another chamber of a brief as it was possible that the instructing solicitor/chartered accountant may have wanted to brief someone else. Nevertheless, when occasion demanded he would praise the junior in conference for the work he had done in the matter and leave it at that.

There were several companies who wanted him to become a director. He generally turned down these requests as he felt that the same may compromise his independence as a professional. This is a view which is now fully supported by the rules of conduct framed by the Bar Council of India according to which an advocate should not appear in Court or before an Authority for a company client if he is a director of the company as that would create a conflict between his duty to his client and to the Court. This salutary principle is not always observed by professionals. He was very meticulous in his interaction with judges. Though he looked upon them with great respect, he did not believe in socialising with them or hosting personal parties or dinners in their honour. He was averse to advocates identifying themselves with business houses as he felt that this impaired their sense of judgment if legal issues cropped up which also affected that industrial house.

Being personally so principled he always had the interest and welfare of the client uppermost in his mind. It is this which gave the impression that he was brusque in conference. If he felt that the instructing person had done a shoddy job, he would not hesitate to express his displeasure in the conference. Predictably this made him “unpopular” with certain persons who would rather brief somebody who did not express his views so forthrightly. Not only in conferences but even in Court, Kolah never hesitated to purforth the client’s point of view forcefully and without mincing words. He once recounted to me how when he as a junior, an English judge was rather rude with him. Sir Jamshedji Kanga who was in the Court, waiting for his matter to be called out, stood up and put the matter in proper perspective. It was to the credit of the judge that he realised he was wrong in the view he took and perceptibly changed his manner. This is an example which seniors should today follow and judges should also take such a submission in their stride and not get unduly touchy. Those who judge must realise that they can also be judged and that none is so foolish or arrogant as the one who believes himself to be above committing an error.

Some advocates give preference to appearing in the Tribunal over the High Court as the possibility of a disposal of the case on the listed day is more likely and he can perhaps dispose of more than one case in a day. Kolah however, felt that one should always give priority to the High Court as there, one is a part of the formation or making of the law.

Kolah was a stickler for attending the Court punctually. Even if his matter was “low down” he believed in being at the Court well in advance. He felt this to be important particularly in a “new Court” as it gave him the feel of how the judge reacted to different situations. He believed that if he accepted a brief it was his duty to see it through from start to finish. He did not subscribe to the view that it was sufficient if he was present when his turn came as the appellatant or the respondent, as was the practice with certain seniors. To a junior this was most comforting. Often a senior in his opening can sway the court to his way of thinking. Thereafter the other side’s Counsel may perform the same trick. If the senior is not there to rejoin and the case is lost, the client is likely to attribute it to the junior’s inability to perform, overlooking that in an opening address, before the other side has had an opportunity to put forward its case, it is comparatively easy to make the judge “swim with you.”

A remarkable aspect of his life was that whilst he was fully conscious of his own dignity and had respect for himself, he was a great believer in propriety and etiquette. If he had a personal matter to be attended to by a brother in the profession, he would go to his office/chamber, even to a comparative junior in the profession, because he felt that he was then in the position of client.

At heart Kolah was “soft.” It was unbelievable that a man of such legal acumen and experience of the world could get fooled or conned so easily. Several people came to him with schemes which he “fell for” but he never complained and took the experience as a learning process. Many people managed to take loans from him which were never returned.

Kolah was a man of wide and varied interests. He tried his hand at alchemy. At one stage he with his caring and charming wife, Lorna, embarked on a venture of perfume making. He was a keen photographer and was an avid photo-painter. He was fond of music — Indian and Western — and in his later days used to spend time in the afternoon listening to music on his walkman. He was passionate about horses and horse racing. His knowledge of the sport was unmatched. He was unsparing in finding time to discharge his duties as a Steward of the Royal Western India Turf Club for over 25 years, for 7 of which he was the Chairman. The institution of the R. J. Kolah cup was a small tribute by a grateful club.

Countless were the number of times he would fly back from a part-heard matter in a High Court or the Supreme Court on a Friday night, attend the races on Sunday and then take back the early morning flight on Monday. In those days it seemed to us in the chamber, to be fantastic for a person just to fly down and back for a race meeting! This, of course, entailed considerable inconvenience because apart from the fact that he had to leave early on Monday morning the departure time from his house would be even earlier because he believed that one should go to the airport in the Indian Airlines bus which then used to leave from the Army and Navy Building. He felt that if he went to the airport by taxi there was the possibility of a breakdown and he may not be able to be there on time. This belief originated from the fact that a friend of his did have such an experience. This also meant that on the few occasions I went out of Bombay with him, I too had to sacrifice an hour’s sleep!

At that time Kolah had a great deal of work out of Bombay and used to travel much. He enjoyed such visits. He was a regular at the Hotel Imperial (in Delhi) which was then managed by the Oberois. His idea of relaxation when he was out of Bombay was to take a walk in the town centre. He enjoyed seeing and meeting people. For him to be with people was more relaxing than being in the hills or sitting by the riverside. Till his marriage (on 5th January,

1959, if I remember correctly) he was not a great “holiday goer” unlike his senior, Sir Jamshedji Kanga who used to go religiously to London during the court’s summer vacation and often beyond. After marriage Kolah also used to take a holiday for 4 weeks primarily to London where he got interested in dog racing apart from his abiding interest in horse racing. Indeed for some time he worked on a project to introduce dog racing at the Brabourne Stadium. One of his prized possessions from his English sojourns was his photograph at Ascot (top hat et al) with Mrs. Kolah in equal finery. It commanded a special place in Chamber No. 2 at the High Court.

It was a wrench for all of us when we had to leave those chambers in May 1987 because the High Court wanted the premises. Kolah was visibly upset when the then Chief Justice communicated his decision in this behalf. But an old warrior always returns home and Kolah spent the last 5 years of his professional life at a room in the office of M/s. Payne & Co., the place from where he began his illustrious law career.

In the 1960s, the Board used to publish in the newspapers a list of the highest tax payers — an item which set many a junior dreaming! Kolah’s name invariably found a place. Yet he did not amass a fortune compared to some of the present day lawyers because despite his high earnings, the tax had taken a considerable portion thereof. Those who cavil at today’s tax rates should remember that during Kolah’s earning days, the income-tax rate touched 92.5% and for a few years it was 97.5%. In addition, there was the wealth tax and for some years the available liquidity was further reduced by having to make first a compulsory deposit and then the annuity deposit.

He had rubbed shoulders professionally with several leading businessmen and industrialists. He nevertheless was fully conscious that those who look up to you professionally are not necessarily personal friends who will abide with you through thick and thin. This fact came home to him brutally when he was defeated in the RWITC elections when the club started getting dominated by businessmen and industrialists. The promised help was not forthcoming and Kolah did not believe in canvassing support by entertainment and other means.

He took success and failure in his stride. Only once did I see him tremendously upset at a decision rendered in a matter he had argued. This was the decision of the *Supreme Court in Homi Jehangir Gheesta vs. CIT 41 ITR 135*. He was convinced that the assessee’s version of events was true and he was upset that the Supreme Court did not accept the same. He was otherwise not very concerned about the result of the litigation he had participated in. He looked upon success and failure with the same sense of equanimity.

It would be trite to say that Kolah had an extremely busy schedule. After his marriage he relaxed a little and would normally leave the chamber by 6.46 p.m. and arrive at 10.00 a.m. — 45 minutes later than the previous regimen. In the morning his faithful part-time steno (Mr. Gulwadi from Payne & Co.) would be waiting for him. Despite his ‘tight’ schedule if a person who was not to be a paying client wanted an appointment Kolah would go out of his way to accommodate him. As is not unusual with busy Counsel, his own personal affairs often got neglected. We juniors used to joke that it would be interesting to see what would happen if he were to auction the right hand top drawer of his desk. The successful bidder was likely to find several undeposited dividend/interest warrants and cheques!

Today people tend to brand lawyers as “a tax advocate” or “a labour man” or “a trademark specialist” etc. When I joined Kolah’s chambers, Kolah’s practice was mainly in the tax, labour and constitutional fields. However, the first half of Kolah’s sixty years period of practice tax litigation was not so rampant as today, a fact which would be visibly established by a glance at the size of the one-volume-a-year Income-tax Reports till 1952 and thereafter of two volumes a year till 1959. During this period Kolah had a very wide civil practice and was an expert in railway rate matters when the Indian Railways scene was dominated by the Great Indian Peninsular Railway (GIP) and the Bombay Baroda and Central India Railway (BB and CI). When Sir Jamshedji Kanga was the Advocate-General, Kolah had taken part in several criminal trials which, at that time were conducted in the Central Court (or the 2nd floor of the High Court).

At a personal level, Kolah had some strange characteristics. He had several friends and visitors to his chamber who were quite unlike him in character and integrity. He still maintained relations with them at a very friendly level without in any way compromising his own integrity. It only goes to show that though you can judge a word by the company it keeps (ejusdem generis) one cannot always judge a human being by those who keep him company. He had his own principles and rules for the chamber. He did not relish juniors holding conferences in the chamber but this was not a great problem as one had the facility of the bar library and the bar room for holding conferences. He was a little hyper about the security of the chamber and, therefore, did not share the chamber keys with others (except with Shantaram, the peon) and often switched off the airconditioning as he left the chamber but this in no way lessened the respect and affection the juniors had for him because they realised here was a man with really a heart of gold and like all human beings had, what the juniors felt were, minor foibles.

It is to the credit of Kolah that he inculcated a spirit of co-operation amongst all the juniors in his chamber. The rivalry which disturbs the peace in some chamber was totally absent. I recall several occasions on which Dilip Dwarkadas, who most unfortunately passed away in 1995 when away in Patna on professional work, very often guided me in my early days on how work should be done to meet Kolah's requirements.

The Labour Law Journals, the Bombay Law Reporter, the Income-tax Reports and the several Supreme Court reports etc. bear adequate testimony to the large number of important cases he appeared in and how he participated in the shaping of the tax and labour laws of the country. He was the principal advocate in the case of The Associated Cement Companies concerning the payment of bonus before the advent of the Payment of Bonus Act.

One could justifiably claim that Kolah was a pioneer in the field of direct tax laws in India. Pursuant to section 5A of the Indian Income-tax Act, 1922, which section was inserted by the 1939 Amendment Act, the Income-tax Appellate Tribunal was constituted on 25th January, 1941. Prior to that references to the High Court were made by the Commissioner of Income-tax.

Kolah appeared in several of such references by the Commissioner as would be evident from a perusal of the cases reported from Volume XI of the Income-tax Reports (going back to 1942). The diligent researcher will find that Income-tax Reports from Volume XIII onwards are replete with cases where references were made by the Tribunal in which Kolah had appeared. Kolah was perhaps the only advocate in practice till the late 1980s who has appeared both in the Federal Court (*A. H. Wadia vs. CIT 17 ITR 63*) and in the Supreme Court of India starting with Executives of the *Estate of J. K. Dubash vs. CIT 19 ITR 182* (a judgement pronounced in the very year in which the Supreme Court was established). Two of the several path breaking decisions in which Kolah appeared were *E. D. Sasoon & Company Ltd. vs. CIT 26 ITR 27* and *Dhun Kapadia vs. CIT 63 ITR 651*.

The Government of India Act, 1935 (the predecessor to our constitution) was a monumental piece of legislation and Kolah appeared in leading cases concerning the interpretation of its provisions. He appeared in several litigations under the Abkari Act as also when the constitutional validity of the Bombay Prohibition Act, 1949 was tested in the celebrated case of the State of Bombay vs. F. N. Balsara AIR 1957 SC 316. He himself was a confirmed feetotaller and non-smoker !

Rome was full of monuments to its illustrious sons. There was, however, none for Cicero. It is said that when a friend of his was asked why this was so, he replied, if you desire to see a monument for Cicero just look around you. If one wants to know why Kolah is indeed called a stalwart of the bar — and not only the tax bar — one could say “just look into the tax reports.” According to the dictionary, “stalwart” means, steady, robust, resolute, unbending, determined, a strong and valiant man. Indeed all these do describe the man Rustom Jehangirji Kolah.

Apart from his professional life, Kolah had a most rewarding personal family relationship. He looked after and guided a large number of relatives, nieces and nephews and was a devoted son. He lived in a joint family in which his wife blended splendidly.

On a personal note, I would like to refer to two incidents which stand out. When I was about 3 years at the Bar and barely earning about Rs. 350 per month (which was of course a great improvement from the Rs. 30 I had notched up in the first year of practice) I was offered a job in a leading industrial house at Rs. 2,000 per month. I thought it was a fantastic offer. When I mentioned it to Kolah his reaction was “gadhero chhe ke?” He followed it up by saying that as a professional person I should not sacrifice my independence for what I thought was monetary gain. Also the most delicious Chinese dinner I ever had was thanks to him when we were invited to the Chinese New Year at the Nanking which was then, fortunately, in full bloom. Mr. Ling was Kolah's personal friend and somehow my name also got smuggled into the list of invitees.

So much for Kolah the person, now to the mundane. He was born on January 28, 1904. He did his schooling in the Master Tutorial High School. Thereafter, he joined the St. Xavier's College and, subsequently, the Government Law College. He was called to the Bar in 1926 and passed his Advocate (O.S.) Examination in 1928. He passed away on Sunday, February 2, 1992. If he had been alive and well on that day he would certainly have been at Mahalaxmi to watch the 50th Indian Derby. It was perhaps in the fitness of things that a thoroughbred like him departed this earthly scheme and went to the far beyond as a new winner was being crowned at Mahalaxmi!





Dinesh Vyas
Sr. Advocate

I had a great fortune and a proud privilege of being associated with Mr. Nani Palkhivala and his younger brother Mr. Behram Palkhivala as a Junior in the legal profession for a long period exceeding over three decades. This gave me an opportunity to watch Mr. Nani Palkhivala very closely from vintage positions. I have no doubt in my mind that more than a practitioner of man-made laws, Mr. Palkhivala was a greater practitioner of god-made laws. If his life is to be summed up in one sentence, the most appropriate statement is that **“his life was a journey for spiritual quest.”**

The ultimate realisation of the Supreme Divine requires as a condition precedent, an experimentation in the material and mundane life, a churning process, from which alone the nectar can come out. The material and mundane world is the reception area passing through which alone can one enter the spiritual world – the sanctum sanctorum. Mr. Palkhivala’s life was broadly divided in two phases the mundane phase and the spiritual phase.

In the mundane phase, Mr. Palkhivala went through the experiences of an ordinary mortal which leads one to be a spiritual leader. He worked hard to make a good living, to educate himself and to raise himself to better living standards. He worshipped work and engaged himself in various worldly gainful activities. As a young boy, he sold race tickets at the Turf Club and played for a professional Music Band. He taught as a tutor to carry on his own education further and thereafter, became a Professor himself to teach several generations of students at the Government Law College, many of whom are country’s eminent lawyers today. He practised law to earn his living but more importantly he knew that he had to do many more things to accomplish his ultimate mission. In the process, he came in contact with businessmen and industrialists of all sorts, principled and honest as also unscrupulous and dishonest. He knew too well that a pure and beautiful lotus can come out only from muddy waters of a lake. To carry on his ongoing march, he also came in contact with political leaders of the country. At important times he remained in centre of political developments, but never joined a political party. In the field of international diplomacy, he rubbed shoulders with the best of the ambassadors and diplomats while he was an Indian Ambassador to the U.S. This phase gave him the material to reach the higher planes of human existence and find out the Ultimate Truth; the Ultimate Force which could push him to the spiritual phase of the life.

His foray in the spiritual world was multi-dimensional. Early on in his life, he was most fascinated by the philosophy and writings of Sri Aurobindo. The Holy Mother of Pondicherry Ashram was forever ready and willing to give him an audience as per his wish. He visited Pondicherry frequently and after an address in the Ashram, the unanimous opinion of the Ashramites was that here is a man who has read, understood and implemented Sri Aurobindo’s philosophy much more than each one of them. Kanchi Paramacharya noted Mr. Palkhivala’s deep study of Hindu scriptures and hailed him as a “Brahman”, the truly learned wise noble man. Mr. Palkhivala closely associated himself with Sri Sathya Sai Baba and participated in various activities launched by the revered Baba. Mr. Palkhivala also closely interacted with Swami Ranganathanada of Sri Ramakrishna Math. In the pursuit of his spiritual goals, Mr. Palkhivala involved himself in the spiritual activities of Bharatiya Vidya Bhavan and ended up as being its Vice President. He used the Bhavan as a launching pad for achieving spiritual heights and under its banner wrote “India’s Priceless Heritage” and “Essential Unity of all Religions.” This to Mr. Palkhivala was an experimentation and exposure and the churning process in the spiritual phase.

Mr. Nani Palkhivala had within himself in his life time an element of divinity which now has merged totally into the divine. There was in Mr. Palkhivala something unfathomable, something unexplainable,

something extraordinarily radiant and that was an element of divinity. All the three Goddesses had showered their choicest of blessings on him. Deep knowledge, not just of law but of many more subjects under the sun was the bounty received by him from Saraswati, the Goddess of Knowledge. He could earn any amount of wealth at his will and his command over the wealthiest of wealthy businessman and industrialists was an ability that he received from Laxmi, the Goddess of Wealth. That in any confrontation he could vanquish any foe is the energy he received from Kali, the Goddess of Energy. A personality endowed with such spiritual qualities is rare indeed.

The divine elements in him made him a magnetic personality. Anyone who came in contact with him was instantaneously deeply drawn to him. Those who worked for him virtually surrendered themselves before him and exhausted their capabilities to present a perfect work before him. For a common man to go to his annual budgets speeches, year after year, was like making an annual pilgrimage to a holy shrine. This divine quality was matched with an outstanding brilliant mind giving him a complete control of the situation in which he found himself. The unending stream of energy, both physical and mental, coupled with the above attributes enabled him to achieve magical wonders.

After a deep and intensive study, analysis, experience and exposures of both the material and the spiritual world, Mr. Palkhivala culled out five immortal ideals which could easily be regarded as his religion. These are Satya, Dharma, Shanti, Prem and Ahimsa. If a book is to be published with a title "Thus Spake Nani Palkhivala" it would just contain these five ideals.

"Satya" means truth but to Mr. Palkhivala more importantly it meant intellectual integrity.

"Dharma" connotes nobility and righteousness. But Mr. Palkhivala desired to flow his Dharma and equally respect Dharma of others.

"Shanti" connotes peace. But to Mr. Palkhivala the deeper meaning of this term is calmness of mind. In a hall with pin-drop silence, there can be a man with a most turbulent mind and at the busiest noisy airport you could find Mr. Palkhivala reading a book or a brief with total calm of his mind.

"Prem" is not just the love you see in the Indian movies, the pyar, ishq and mohabbat. To Mr. Palkhivala, love encompasses compassion and understanding of others.

"Ahimsa" is non-violence. To Mr. Palkhivala it also involved a feeling of oneness with all life, the fellowmen, animals, birds and nature.

These realizations can be had only if one travels on a spiritual road and this is exactly what Mr. Palkhivala did. He was fortunate to have been born in a pious and noble Parsi community. The nobility and goodness of an average Parsi is much higher than any other individual from the rest of the communities. For a gifted man such as Mr. Palkhivala who was ordained by destiny to rise spiritually higher and higher, **Parsi birth was a divine design and not an accident.** The noble soul flourished more in a noble body in a noble family in a noble community. He was proud to be a Parsi. At a function held by the Bombay Parsi Panchayet to honour him upon his appointment as an Indian Ambassador to the U.S. in 1978, he completed his speech by observing that in his next birth too he would wish and desire to be born a Parsi.

Law was the life line of this multifaceted man, Mr. Palkhivala; with his in-born brilliance, razor-sharp intellect and sheer hard work, he rose to become one of the most distinguished lawyers of all times; he sat in boardrooms with the wealthiest of industrialists and businessmen to advise them; he dabbled in hardcore politics barring joining a political party or standing in an election; he had a short but effective stint in international diplomacy; he himself taught in colleges and supported educational endeavours; though he ran several charities founded by others, he was himself a great philanthropist in his own life-time; he was a champion of fundamental freedoms and a leading social activist; his prolific writings and speeches have moulded public opinion amongst intelligent and educated Indians to an extent that very few can emulate and for all this he remained the most quoted and referred to non-political Indian in the last quarter of the last century.

But all this said and done, tax law was the main turf and the pitch where he played the game of his life. It was not only his passion but also his bread and butter. It was tax law with which he made his beginning

and his big name; it is his magnum opus “Kanga and Palkhivala’s The Law and Practice of Income Tax” that has taught and guided a long line of generations of tax professionals. Next to his home and office the maximum time of his life was spent in the courtrooms and corridors of the I.T.A.T. in Mumbai. It is for his contribution to the growth and development of tax laws that he will be remembered the most in India; in short, tax laws was his Karma Bhoomi.

I had the great fortune and the proud privilege of being associated as a junior to Mr. Palkhivala for a long period extending over three decades. However, the relations dated back to the early nineteen forties when he and my father studied law in the same college at the same time. Interestingly, Mr. Palkhivala and my father-in-law as his instructing Attorney were together booked on a Delhi-Bombay flight on 8th May, 1953 and since Mr. Palkhivala decided not to go to Delhi for the case, my father-in-law changed his flight to the next day and this saved him from the air crash of the 8th May flight in which there were no survivors.

My long association with Mr. Palkhivala and also his younger brother Mr. Behram Palkhivala gave me an opportunity to watch him from very close quarters. This was a great learning and an education in itself. For the benefit of the young professionals, let me recall some of his extraordinary qualities which made him one of the most successful lawyers of our times.

The foundation of Mr. Palkhivala’s personality was his single-pointed determination to succeed in life in achieving noble objectives. He knew early on in his life that he was not ordinary mortal and that he had to achieve great heights to leave behind the fruits of success for the future generations. He had his own set of ideals and objectives. To preserve a good society for Indians to live in, he was determined to protest a sound and solid legal framework. He defended human freedoms in all their facets. To meet these objectives he fought several legal battles including the Fundamental Rights case, the bank Nationalisation case, the Privy Purses case, the Minorities case and several others. Most of the tax cases he fought were driven by the desire to oppose unauthorized deprivation of property.

Extensive reading and ever-expanding knowledge are the prerequisites of a successful lawyer and Mr. Palkhivala implemented this principle in its totality. He extensively read not only tax law and constitutional law, but also several other laws on a regular basis. He mastered the fundamental laws such as jurisprudence and interpretation of statutes. He once advised me that tax cases are better won with non-tax legal material and not just with tax material and I have followed this advice with significant benefit in my practice. Mr. Palkhivala never studied a statutory enactment in isolation on a stand alone basis but as a part of a broad legal network and this brought out much wider and deeper meaning and understanding of that particular enactment. A substantial part of his library and books which he gifted me over the past few years included law books from virtually every branch of law. The wide range of his law books display the width of his mental horizon and the depth of his brilliant mind.

Hard work is the hallmark of a successful lawyer and continuous hard work was Mr. Palkhivala’s second nature. The man had struggled and toiled all through his life constantly trying to achieve precious worthwhile. He had enormous inner energy to keep his crusade on all the time. Reading books and watching some finer elements of nature and its beauty rejuvenated his vigour and further motivated him to carry on his hard work. I have never seen in my life any other man who valued the importance of time as much as Mr. Palkhivala did. To him waste of time was a big crime. For frequent fliers on Mumbai-Delhi-Mumbai flights, Mr. Palkhivala glued to a chair at the airport or to his seat on the plane reading books or briefs was a frequent sight. Some clients will vouch for holding conferences with him in the car during the drive to or from the airport. During the busiest days of his legal practice, his conferences with his clients were absolutely to the point and very brief and still the client went back with the right advice and satisfaction.

Mr. Palkhivala had an amazing photographic memory and made continuous effort to sharpen and preserve it. A brief read by him virtually got printed in his mind. I realized this in the very early days of my association with him. The case of Indian Oil Corporation vs. Rajagopalan (92 ITR 241) before the Bombay High Court is an ideal illustration on the point. Since I.O.C. was being denied the claim of development rebate, it proposed to file a Writ Petition on the Bombay High Court. The conference to discuss the matter was held and he advised the filing of a Writ Petition in the Bombay High Court. The Petition was drafted and filed, the brief was sent to Mr. Palkhivala, the Petition was soon moved and the admission and stay

were obtained from the Court. Then, Mr. Palkhivala returned the brief which he had read with clear instructions that I should give back to him that very brief at the time of the final hearing before the High Court. The matter came up for final hearing some months thereafter on a day which he was to return from Delhi on the morning flight by about 9 a.m. I checked up with him whether I should send the brief so that he can carry it with him to Delhi for reading but he declined. He told me that I should send the brief to his home only on the day prior to the hearing day and that he will be in the court by 10.55 a.m. sharp, five minutes before the court hour on the day of the hearing. We all were a worried lot. When will he read the brief and how will he argue the matter after so many months? On the D-Day, the matter was called out for hearing at 11.00 a.m. in the court of Hon'ble Justices Nain and Kania. Mr. Palkhivala took off in the fourth gear, presented briefly the issue before the Court, set out all the facts in great details, argued the law extensively with the support of case laws kept ready in the Court and wound up the whole case just before the Court rose for the day in the evening. It was a stunning and amazing performance. For me, it was just the beginning of witnessing such outstanding displays of brilliance; many more followed later on during our association.

In all his legal battles, Mr. Palkhivala had a clear and consistent strategy. He would deeply analyse the facts, compartmentalize the legal issues and on that basis would formulate the proposition that he wanted the Court to accept. This intellectual ability with gifted and persuasive advocacy worked as magic and did wonders year after year; whether it be the Supreme Court or the High Courts or Tribunals all over India. His advocacy was extremely convincing, based on respect for the Court and devoid of any arrogance and more importantly, administered firmly but with humility. Many times during the replies of the other side, he would give me precious hints on Court craft, chief among them being never to offend the Judges and lose temper in the Courts. To hear him in Court was an intellectual treat in itself. Juniors flocked the Courts whenever he argued and on occasions, Judges took pride in the fact that none other than Mr. Palkhivala was appearing before them.

In the all-powerful legal armoury of Mr. Palkhivala, full presence of mind coupled with fastest reflexes resulting in complete control over the on goings in Court constituted the main weapons. In the Courts, he was 'full concentration' in the ultimate and detested any intervention unless he himself asked a question. He never forgot to mention any point or argument that needed to be made. He always remembered to ornament his legal propositions with fine literary gems and illustrative examples which easily made obvious what he said.

Kanga and Palkhivala's *The Law and Practice of Income Tax* is a masterpiece, a monumental work, and an extraordinary performance and ranks as a classic in the entire English-speaking legal world. That the actual writing was done by Mr. Palkhivala is not at all a secret, as acknowledged by the legal doyen Sir J. B. Kanga himself. That after a long pause "the book" is being revised is a matter of delight. That I have been assigned the task of writing the ninth edition of the book is to me the rarest of rare opportunities. That in spite of his keen desire, I could not show the ninth edition to Mr. Palkhivala in his lifetime will be one of my greatest regrets. The new edition to come out in the near future, however, will be the Junior's real tribute.

Bliss was it always to have lived and learnt in the shadow of this towering personality.



Sanatbhai a Saint among Professionals



V. H. Patil
Advocate

If today, in the tax professional field in Mumbai if there is more professional efficiency, integrity, more fair play, more professional co-operation and professional brotherhood, as against other professional fields, the entire credit must go to the three great stalwarts of our tax profession, Shri R. J. Kolah, Shri N. A. Palkhivala and Shri S. P. Mehta. Any one of these outstanding and ideal professional leaders was sufficient to put the tax profession on the right track. However, we were very fortunate to have amongst us all these three at one and the same time. They laid down a sound professional tradition to the future generation. During their illustrious career they lived as per the fine traditions set by them. They were so great and outstanding professionals that during their life time they became ideals for us to follow.

It is normally believed that to be a real successful man in the temporal world, one has to compromise on certain basic principles, but these three great professionals showed us that one need not compromise on principles to become a successful professional. Their success in the tax field was undoubtedly great. However, this success was achieved by them by following ideal professional path without compromising on any of the basic ethics and principles that govern ideal professional's life. Professional idealism was ingrained in them.

Though there were certain common features in these three great professional leaders because of their temperament and the nature of their contribution these three great leaders, the "Trimurthis" of our profession, can be called:

Mr. Palkhivala as Lord Brahma. Mr. S. P. Mehta as Lord Vishnu and Mr. R. J. Kolah as Lord Mahesh.

Mr. Palkhivala had great originality and creative spirit in abundance and because of these qualities he made great contribution to the making and development of tax laws and tax administration of this country. One can certainly call him — the Brahma of the tax laws. Shri R. J. Kolah's intolerance towards anything which was wrong is well known and considering his fighting spirit against any injustice noticed, one could compare him to Lord Shiva. Considering Shri Mehta's fatherly outlook towards his professional colleagues and his pleasant and peaceful nature, one can certainly call him Lord Vishnu of our profession. We know that "Shantkara" is one of the attributes of Lord Vishnu. While sleeping on the serpent he is still very calm and collective. That was the nature of Shri S. P. Mehta. Therefore he deserves the title of Lord Vishnu of our profession.

Shri S. P. Mehta popularly known as "Sanatbhai" was such a charming personality that any person coming in contact with him would always remember him. The meeting which one had with him would always leave a pleasant experience on that person. He had a charming face which was a real abode of peace and that tinge of smile on his serene face that would always leave a deep impression on the person who came in contact with him.

Sanatbhai was gentleness personified. He was gentle to the core. He was gentle in his action, in his speech, in his behaviour and in his arguments. The dominating feature of his arguments as a counsel was a gentle persuasion. He was not dramatic in his arguments — still less there was any showmanship in it. His arguments might not have attracted a common crowd, but as far as the judges were concerned his persuasive reasonings had a great impact on them. He had the skill of a surgeon as he did not believe in the knife of the butcher. I remember him always telling us that persuasiveness is the best form of advocacy and

he used to tell us that while arguing we must concentrate on the judges and not on the public who came to listen.

Gentleman to the core in the professional field his life was dominated by a gentleman's spirit. His advice was that one has to be fair as a counsel, fair to the court, fair to the opponent and fair to the client. He never believed in encashing on the shortcomings and ignorance of his opponent or the court. I have so many times witnessed Sanatbhai pointing out the cases against him when the same were not known either to the other side or to the judges. He always used to say that one has to win on merits and not on the weakness of the other side. This attitude is quite significant because in the tax field it is quite often that the other side is not up to the mark either in case laws or in recent development in the laws, particularly when some non tax legal issues crop in a tax appeal.

As stated above during his life time, Sanatbhai was a fatherly figure to the most of his professional colleagues, particularly to one who was junior to him. He showered his affection on one and all as a senior professional and that shower of love made no distinction on the basis of age, language, caste, creed etc. He was always very helpful in guiding his professional juniors. I have seen many times, while the juniors were arguing, though he was not concerned with a particular case he would give them useful tips and instructions which were required when he just happened to be present in that court. His guiding hand was available to everybody who sought his guidance. Due to his affectionate nature and the love he showered on his professional colleagues he has made a place for himself in the hearts of most of the professional colleagues who came in contact with him. It is a fact that unfortunately we have not made any monument in his memory — possibly that was not needed because he continued to dwell in the hearts of most for the colleagues who were fortunate enough to come in contact with him.

The humility which Shri Sanatbhai possessed was something amazing. He was not at all conscious of his learning or knowledge - still less of his goodness. It is said "*Vidya Vinayene Shobhate.*" Shri Sanatbhai was a shining example of it. While in conference or while discussing with anybody, particularly with his juniors he was always discussing on equal terms. We, juniors were always free to discuss with him. Without keeping in mind his knowledge or seniority, he would always appreciate the point made by the other person with whom he had a discussion, irrespective of who that person was. I personally had experiences of making Shri Sanatbhai change his views. He always appreciated the logic in other's arguments and was ready to change his own views. Sanatbhai was always open for learning. He was always a student. He was ready to learn new things and ever ready to reconsider his own views. Because of this attitude it was a great pleasure to discuss any issue with him. I personally had a great pleasure of discussing so many legal and other issues on one to one basis. I have seen that even though the point put forward by the other person in the course of discussion was stupid or unarguable, still he bore him with patience and understanding and would point out so gently and politely the shortcomings of other's arguments that the other side would have to accept it without any sense of reluctance.

Shri Sanatbhai in his arguments was very precise, concise, brief and to the point and at the same time very effective. He never believed in going round and round in lengthy arguments. He was always to the point on the issue and would hit the nail on the head. In fact, sometimes Shri Sanatbhai was so brief and so direct to the point that sometimes members would find it difficult to follow him. I have taken this point from him in a bad way, particularly no doubt like him I am very brief in my arguments, but not precise and concise as Shri Sanatbhai was. In fact, one of the members had commented that Mr. Patil is sometimes so brief that he finishes the arguments before one could follow the points made by him. That was not the case with Shri Sanatbhai. He was no doubt brief and concise but he was also very effective. He would straightaway come to the point and deal with it so effectively and briefly that within no time the issue would become very clear. Normally, a case which would take a couple of hours and if Mr. Sanatbhai was to argue it would be over within half an hour. But this briefness and conciseness in his arguments, not only did not diminish the effectiveness of his arguments but it enhanced the same. I had hardly seen a counsel who was so brief and yet so effective like Shri Sanatbhai.

A special note has to be made as regards his attitude to other person in his chamber, whether a junior or the staff working with him. There was absolutely a homely atmosphere in his Chamber, I have never seen

Shri Sanatbhai firing any of the juniors or his staff. In fact, as a junior I never got any scolding or firing from him, not that I did not commit any mistakes or did not deserve any firing or scolding, but Shri Sanatbhai never believed in it. In fact, he would always point out the mistake which one had committed in such a cordial and effective way that the other person would realise his mistake and correct it, which possibly he would not have done if there was scolding or firing. Here also, his nature of persuading others was his key word. Therefore, he always gently pointed out a mistake and corrected it. He was so good, so kind and so affectionate to those who were working with him to the point of that being his weakness. I remember one specific instance to illustrate his very affectionate outlook towards his staff and juniors. One of the staff members — rather his chauffeur was very rude to everybody and used to create a lot of problems. Once I was so fed up with that person that I requested Sanatbhai to call him and give him a thorough firing so that he may learn a lesson. I narrated all the misdeeds that he was committing. Shri Sanatbhai quietly listened to me and told me that he would call him and fire him. I was glad that the chauffeur would get a nice firing. I immediately called him and then Shri Sanatbhai told him not to do such things again and that too, gently and that man was allowed to go. I told Shri Sanatbhai “What is this?” Shri Sanatbhai said “You wanted me to fire him, I fired him.” Then I remarked “If this is the firing, he will not improve at all.” Shri Sanatbhai just smiled and put an end to that episode. This attitude for Sanatbhai to deal affectionately and gently with all the problems of the Chamber had a very sobering effect on me as a senior in my Chamber. Many times I have restrained myself from firing my juniors when they committed a mistake only because in the nick of time I would remember Sanatbhai and I always told myself that if Sanatbhai never fired anybody, I have no right to fire my own juniors. Particularly in the later part of my career, I always remembered this quality of Shri Sanatbhai and I always tried to follow it, of course sometimes without success. As such, if today I am considered as a good boss or a good senior in my chamber the whole credit goes to my noble senior Shri Sanatbhai, not only in my role as a senior or as a head of the Chamber but in all the walks of my professional life, Shri Sanatbhai has been a guiding star. Whenever there is any problem facing me, whether small or big I always put Shri Sanatbhai in my position and always do as Shri Sanatbhai would have done in my position. With that I would get the correct solution to the problem. Without any iota of exaggeration, I can straightaway state that if any professional goodness and gentleness is in me, it is because of my worthy senior Shri Sanatbhai who always stood as a real model for me. Of course, if I have not succeeded fully in this regard, the fault is not of my senior Shri Sanatbhai but of mine. Sanatbhai’s affection for his juniors was so great that he would defend his junior against anybody, even when we juniors were at fault. Of course, afterwards he would make us realise that we were at fault but as far as the outside world was concerned, he would always defend his juniors.

Shri Sanatbhai would give credit to anybody whenever it was due. I remember many times when he used to argue, I would suggest a particular point. After arguing that point he would straightaway say that this point was suggested by his junior. I remember once when we appeared before the Commissioner, the arguments were on two points. The Commissioner told Shri Sanatbhai that he would not accept the first argument, but he would readily accept the second argument. At that time, Shri Sanatbhai smilingly told the Commissioner that he must give the credit to his junior who had brought out this point and in fact persuaded me to put forward this point, though I was not happy with the argument put forward by him, however if it has appealed to you then I think he must be right.

Another outstanding feature in Shri Sanatbhai was his simplicity. His simplicity was without any limit. He had a simple living, simple habits and was simple in his dress. In fact, one could straightaway say “Simplicity thy name is Sanatbhai.” I remember one incident. There was an All India Conference where almost one thousand delegates had come from all over India. Shri Sanatbhai was to chair that session. I was one of the paper writers. There were about 10/12 persons on the stage including Shri Sanatbhai and myself. All of us, with the exception of Shri Sanatbhai were in suits and when Shri Sanatbhai walked in he came in a simple white bush shirt and sat in the middle of us as a Chairman. It was a real contrast with the main person in a simple bush shirt and all the others in suits. I do not recollect any occasion where he used to wear a coat even as a chairman. Except in the court he always gave a goodbye to his coat. He always wore Khadi. However, his clothes were always spotless white. I have also heard about an incidence at the first RRC meeting of the Bombay Chartered Accountants Society way back in 1950’s. The RRC was at Matheran. Shri Sanatbhai was to inaugurate it. All the persons who were on the stage were in full suits. Then, I was

told, Shri Sanatbhai came in kurta and pajamas to inaugurate the Conference. When later on I had the privilege of inaugurating an RRC Conference of the Bombay Chartered Accountants Society, I followed my worthy senior by going in kurta and pajama to inaugurate the Conference.

Shri Sanatbhai had a great sense of humour. On a dry subject like taxation when the discussion is becoming dry and heavy he would add the necessary humour to make the situation light and clear. I remember one incident when Shri Sanatbhai was arguing in the High Court. The issue was whether a minor could be a partner. In that case, a minor was not admitted to the benefit of partnership, but he was directly made a partner. The person who was admitted as a partner was a sixteen year old. The department had contended that as the minor was not admitted to the benefit of partnership but was admitted as a partner, the firm was not validly constituted. When the discussion was going on Shri Sanatbhai added "My Lord, in this case as the person admitted was not a minor, but a major the question of a minor being admitted as a partner does not arise. The Hon'ble Court pointed out that the boy was sixteen years old. Then Mr. Sanatbhai replied "So, what, My Lords, see the name of the boy." It was something like Bikamchand Jain. The Hon'ble Court said "Bikamchand Jain." Shri Sanatbhai replied "Read it properly My Lords, it is Bikamchand Jain." The Court said "So, what?" Shri Sanatbhai humorously replied "My Lord, Bikamchand Jain is a Marwadi and in the Marwadi community the boy attains majority at the age of 15 and not 18. Therefore he is a major and can be admitted as a partner." The whole Court burst into laughter.

Another incident which I vividly remember in a case where Shri Sanatbhai was attending before the Tribunal. In that case, the assessee was a Maharaja who had won some prize in hunting. The issue was whether the prize won was taxable as income? The issue to be decided was whether hunting was an occupation of the Maharaja or whether the Maharaja was going for hunting occasionally and, as such, whether the prize won by the Maharaja was not taxable. The Hon'ble Tribunal asked Mr. Sanatbhai whether his client's occupation was hunting or he was hunting on holidays. Shri Sanatbhai replied "Sir, my client is a Maharaja for whom life itself is a holiday." I can multiply such incidents where a very light sense of humour of Shri Sanatbhai was reflected again and again.

Another personal incident that I remember is, unlike me Shri Sanatbhai was always tidy and careful and he would rarely forget things. Untidiness and forgetfulness were always with me and because of my forgetfulness, Shri Sanatbhai always used to call me "Mr. Professor." Once, both of us had gone to the department for appearing before the Appellate Authority. When the matter was over and we got out, Shri Sanatbhai forgot to pick up his brief and left it on the table. I quietly picked it up, thinking that I had a point to make. Afterwards I told Shri Sanatbhai that he had forgotten the brief and that I had brought it, Shri Sanatbhai quietly replied "In the company of a Professor like you, what else can I do, but to forget things." So the whole thing recoiled on me.

As I have narrated above, the concern and care shown by Shri Sanatbhai towards his juniors was something very remarkable. When I left his Chamber to start my own practice he was very much worried whether I could really cope up with the independent practice and succeed. Therefore, he said "Vijay, you can have your own practice, but in the evenings come to the office for a couple of hours so that by your leaving, the Chamber may not suffer. Though he covered it by saying that the Chamber may suffer, the real idea was to see that I had sufficient work to begin with my independent practice. Even after I was in full-fledged practice he would always make enquiries as to how I was doing or whether any help was required etc. He had always desired that we juniors must come up fast. When I was still a raw junior at that time Shri Sanatbhai remarked that one of the junior counsels was very much heard in the public by way of writing articles, giving lectures etc. As I had concentrated on learning, I had not bothered about writing articles or giving lectures. Once Shri Sanatbhai remarked "Vijay what is this, I am hearing so much about the other persons, but I am not hearing anything about my juniors". That really touched me. I decided that whatever maybe my view of thinking, I should make my senior happy. So I switched my gear and began to give lectures and write articles left and right. After one year I asked Shri Sanatbhai as to whether he was hearing my name as a speaker or as writer of articles. Shri Sanatbhai humorously replied "Earlier I was not hearing your name but now I am hearing your name too many times, more than necessary". When he replied, though on his face there was humour, I could find a sense of contentment that his junior was doing well. Such affectionate and fatherly care was always there in him. Therefore, I began to work harder so that

I would succeed in the profession, if not for my own sake, but to give happiness to Shri Sanatbhai. Therefore, I was very happy that I was achieving satisfactory progress in the profession that would make Shri Sanatbhai happy. It is not only the professional practice but in professional conduct also I am guided by Shri Sanatbhai's wishes and attitude. I would always see that as an Advocate or afterwards, my actions should not fall outside the professional etiquette circle which was drawn by my worthy senior. He is my idol, my inspiration and my model. During my career while introducing me as a speaker or as a chairman unnecessary compliments are showered on me but one compliment given by my senior colleague while introducing me will always be cherished by me. While introducing me he said "Mr. Patil's humility, honesty, fair play, learning etc. are so great that he is a real chela of his senior who is known for all these qualities." Of course, though I was quite aware that this compliment was most undeserving one, still it thrilled me to my bones that I was introduced as an ideal chela of my worthy guru.

I am supposed to write about the contribution of Shri Sanatbhai to our profession. Well, the contributions is so great and so multifarious that I cannot compile it in a para or two, but I will narrate an incident which will clearly illustrate the real contribution made by Shri Sanatbhai towards the profession. When Shri Sanatbhai passed away, one of the Commissioners of the Income-tax Department, remarked "Mr. Patil with the passing away of Shri Sanatbhai, the era of tax profession dominated by gentlemen like Sanatbhai has come to an end." Mind you, this remark was made when Mr. Palkhivala and Mr. Kolah were still alive. Of course, I was stupid enough to burst out by saying "No Sir, as long as I am there it will not come to an end" without realising the responsibility that it carried to follow the legacy of Shri Sanatbhai. This incident illustrated the contribution made by Shri Sanatbhai to the profession.

It is people like Shri Sanatbhai who made our profession really noble which is otherwise money minded and self centered.

Shri Sanatbhai retained his serenity and equilibrium under all circumstances. Once, I remember, Shri Sanatbhai was called to address a meeting at Andheri. It was raining heavily. As usual I was accompanying him. Somehow we managed to reach the venue in time. But the audience was hardly about 25. I was fuming that we were made to come all the way in the rain and here there was no audience. But that did not bother Shri Sanatbhai at all. He went on to deliver his talk as if there was an audience of 25,000 people. When I had a similar experience where there was hardly audience worth mentioning, to start with I was really upset. But immediately I was reminded of the above incident, and came back to normal state and delivered that talk as if there was a large crowd, thanks to my worthy senior. Another such incident I remember. We were to attend a case at Charni Road. The client had no car. Our car was also not available on that day. So we went by a taxi. While returning we did not get a taxi. The a BEST bus came. Shri Sanatbhai said "Come on Vijay let us go by bus." Before I could say yes, he boarded the bus. Of course I followed willingly. However, there was no vacant seat to sit. We travelled standing. Sanatbhai really enjoyed the standing bus ride. Another incident, once we had gone to Pune to attend a matter before the Tribunal. Our client had booked a single bedroom. The matter was soon over. We returned to our hotel. After lunch we returned to our room. There was only one bed. Shri Sanatbhai asked me "Vijay do you want to sleep? When I answered in the negative, he asked "Vijay, may I go to sleep!" Well imagine a senior asking his junior, whether he wants to sleep and after a negative answer, asking his permission to go to sleep! Another touching incident I vividly remember. A client from Nashik had accompanied Shri Sanatbhai to Delhi. The client was a young man of 25 years. After the matter was over, they returned to the hotel. Shri Sanatbhai was to remain in Delhi for another day. So the client was to return back alone. Sanatbhai enquired with him as to whether he can go back alone and whether he could go to the station alone. Even when the client told him that he knows Delhi well, Sanatbhai came down with the client, hired a taxi for him, and told the taxiwalla to take the client to the station. While narrating the incident to me, with tears in his eyes, the client remarked "Patilsab, you are known for your humility. But compared with your senior you are nowhere." His comment I wholeheartedly accepted.

Shri Sanatbhai's attitude towards his clients was also exemplary. I remember him telling me "Vijay always remember that you are a trustee of your client and as you know a trustee as a matter of right cannot claim any remuneration for the services he is rendering, and even though it is without remuneration he has to give his best while serving as a trustee. Keeping this in mind while you are dealing with your client,

whether to accept a particular person as a client or not is your discretion but once you accept a client you have to do your best without expecting any remuneration. The fact that a person has not paid you should not affect your performance or your duty as a lawyer trustee of your client. Shri Sanatbhai was known for his talking less. So also he never used to go on lecturing but sometimes some golden advices were falling from his slips. Of course, because of his attitude I know that Shri Sanatbhai had a lot of outstanding dues. As his junior I have also a lot of professional outstanding, but following Shri Sanatbhai's attitude I never harass the clients or the Chartered Accountants in respect of recovery of my dues. In fact that was also the advice given by my father, who was also a lawyer.

I also remember one incident which made Mr. Sanatbhai very happy. There was a case of a client who was not well to do. I was handling the case and the matter was before the CBDT. I had studied all the papers and I was asking Mr. Sanatbhai to go and appear before the Board in Delhi. The client was insisting that I must also accompany Shri Sanatbhai to Delhi and appear along with him. I know that the financial position of the client was not in good shape. Therefore, I told them that it was not necessary that both of us should go to Delhi. It was sufficient if Shri Sanatbhai went to Delhi. Not being satisfied with my reply they requested Shri Sanatbhai to persuade me to accompany him to Delhi. Shri Sanatbhai was too glad to take me along with him to Delhi. Then he asked me to accompany him to Delhi. I explained to Shri Sanatbhai that as the financial position of the client was very bad it would be an additional burden on them. I still remember the appreciation on the face of Shri Sanatbhai. He was very happy and said "Vijay, keep this attitude in mind that your clients convenience must be one of the factors that you must always take into account." Shri Sanatbhai always used to say "One looks at the amounts which were unrecovered, why do you not see the positive side — how much is recovered and if what is recovered is more than sufficient then why bother about the amounts which have not yet been recovered.

Shri Sanatbhai always insisted that the junior must be on his toes. He must prepare the case as if he himself is arguing and not just help the senior. At the beginning of my career, I was not knowing that Shri Sanatbhai used to test his juniors. When the matter was about to be heard, at that time, he would tell his junior to argue the matter. I had to undergo a similar test in the High Court matter. It was a writ petition for admission when the judges came to the court and they were about to sit in the chairs. Shri Sanatbhai told me "Vijay you argue this matter." Stupidly or otherwise I never lacked in self confidence. I accepted the challenge and argued and the matter was decided in our favour. The joy of Shri Sanatbhai was unbound. He said "Vijay you are the first person to accept the challenge successfully. All others said "No Sir, I am not ready to argue." I give this same advice and quote the above incident to my juniors but unfortunately not with much success.

The honesty and integrity of Shri Sanatbhai in all walks of life, particularly in payment of taxes was something extraordinary. Today when tax rates are 30-35% it is not something great to be an honest taxpayer, but when we were asked to pay a tax of 97.75% and along with wealth tax liability many times the rate would be going, more than hundred per cent — income-tax and wealth tax together, it would be an extraordinary thing to comply with such tax laws. I never saw Shri Sanatbhai complaining against such high rates of taxes. In fact, he was so particular about tax payment that if a particular expenditure was for the purpose of profession was debatable he would just not claim such expenditure while computing his income.

One incident that I clearly remember, Shri Sanatbhai had impressed his annuity deposit with the characteristic of HUF. The issue was whether the provisions of S. 64(2) would be applicable. The Hon'ble Tribunal held that the provisions would not be applicable because the partition of Shri Sanatbhai (HUF) who was the only co-parcener in the HUF was not possible. Therefore, to determine his share or his children's share for the purpose of S. 64(2) was not possible. Unfortunately the Department was not satisfied with the decision and took the matter to the High Court. Then Sanatbhai voluntarily offered that he would be paying the tax as if provisions of S. 64(2) would be applicable if the Department withdrew the reference.

Shri Sanatbhai was always very particular about his timings. I do not remember he being late any time. If the Tribunal was to start at 11.15 a.m. he would always be present in the Tribunal at 10.45 a.m. Similarly,

when there was a matter in the High Court which starts at 11.00 a.m. he would be present in the Court by 10.45 a.m. In the beginning I was finding it difficult to be in the Court or in the Tribunal before Shri Sanatbhai. Though he was time conscious, he was not perturbed by others not coming in time for their appointment with him.

The real integrity and character of a tax counsel is normally measured by its recognition by the department. The integrity of Sanatbhai was so much accepted by the department that many times the department relied on the opinion of Shri Sanatbhai for coming to a particular conclusion. The department was convinced that Sanatbhai would never give a convenient opinion to suit his client. Whatever opinion was given was with a firm conviction. The recognition by the department of the counsel's integrity for a fair opinion is something rare and Sanatbhai had such a recognition.

Today, the Income-tax Tribunal has many good traditions. In fact, it is no mean achievement that Income-tax Tribunal is treated as a model Tribunal. It has a proper judicial approach for which it was constituted. The reason for the establishment and continuation of this tradition of the Income-tax Tribunal is mainly because of the great contribution made by persons like Shri Sanatbhai, Shri Palkhivala and Shri Kolah. The sheer personality and character of these persons was so great that it was bound to impress the persons before whom they would appear. Therefore, one has to give credit to the three stalwarts for establishing the ideal tradition not only in the Bar but on the Bench too.

It maybe added that today there is cordial relationship between the Bench and the Bar in the Tribunal which is something rare. This is also because of the noble tradition set by these three stalwarts.

On we, the tax practitioners lies the great burden of carrying on the great legacy which we were fortunate to inherit from these three great leaders of our bar. It is a much cherished legacy which if kept intact and followed, much of the ills of tax administration particularly on the Appellate side could be removed.

Let me add, let the blessings of these three undisputed outstanding leaders of our profession guide us on the right path and lead us to the path of ideal professionalism which they had intended us to achieve.



Leaders in Taxation Law – A Tribute to Nani Palkhivala, R. J. Kolah and S. P. Mehta



Mrs. (Justice) Sujata Manohar

Member, National Human Rights Commission

[Former Judge, Supreme Court of India, Former Chief Justice, Bombay and Kerala High Courts]

If there was anything in common between the three tall men who stood above the rest at the Taxation bar in the last half century, it was their complete mastery over the law and their commitment to principles in their professional and public life. They came from very different backgrounds and had their own special method of advocacy. Their contribution to the development of law was decisive. As a judge, one learns early to discern the skills and drawbacks of lawyers appearing before the court. With Palkhivala, Kolah or Sanat Mehta, one could safely lower one's guard for a moment and enjoy the erudite exposition of law or a masterly exposition of facts, though often complicated by a plethora of figures.

By the time I started sitting on the taxation bench of the Bombay High Court, Kolah had almost ceased appearing in court. But while at the bar, we used to hear stories about Kolah's colourful personality and his repartees in court from his "junior" Dilip Dwarkadas, who was himself close to the top of the profession at that time. I remember Kolah as a tall, erect and in many ways, an enigmatic figure, striding across the bar library.

Sanat Mehta, by contrast, was gentle and soft-spoken, averse to flourishes or exaggerations. He was universally respected and held in high regard for his erudition and integrity. I had the privilege of hearing him in some tax matters. What impressed me was his quiet manner, complete mastery over the law and facts and the assurance that his personality conveyed, that he would not, under any circumstances, mislead the court. Such people are hard to find now. No wonder, he had a devoted following of juniors who, I am sure, miss him even now.

Nani Palkhivala, a great orator, an outstanding scholar and a humanist par excellence, became a legend in his lifetime. His book on Income Tax Law, written when he was a struggling junior at the bar, is now a classic. With typical humility he placed the name of his legendary senior Jamshedji Kanga in the forefront as its author. I had the privilege of hearing Palkhivala in a few tax matters. His clarity, precision and at the same time, eloquent advocacy produced many remarkable arguments in court. His inspired advocacy on constitutional issues in the Supreme Court created history. He persuaded the court to accept the basic structure doctrine and rescued the constitutional values for posterity — a service one cannot afford to forget. His annual lectures on the budget ultimately came to be held on the CCI Lawns which alone could accommodate crowds that came to hear him. He could address a gathering for hours, citing complicated figures without a single note in his hand.

In his later years, he became greatly concerned about the prevailing corruption or lack of probity in public life. He wrote books expressing his anguish. In one of them he talked about his countrymen who could create a great constitution, but did not know how to preserve it, who inherited great values but did not practise them. He turned to spiritual values to save the country's future.

But above all, he was a great human being — warm, affectionate and unassuming, willing to lend a helping hand to anyone who sought his help. All those who came to know him have experienced his hospitality and his generosity.

The taxation bar is indeed fortunate that it can lay claim to a man like Nani Palkhivala. He was much more than a taxation lawyer. But he has undoubtedly contributed to the enrichment of the taxation bar, like a jewel in the crown which can boast of the brilliance of outstanding lawyers.

It is only appropriate that there should be a special issue on "A Tribute to Stalwarts of Tax Bar." The junior bar must learn about the stalwarts and learn to cherish their discipline, their skills and above all their principled conduct.



Palkhivala and the Constitution of India



Hon'ble Shri Soli J. Sorabjee

Attorney General for India

On 16-1-1920 was born a child in Bombay whom his parents christened Nanabhoy. It was not an earth-shattering event at that time. In later years, he was known as Nani Palkhivala — a household name, not only amongst lawyers, but throughout the length and breadth of our country.

What was the constitution of this man who became an authority and a guardian of our Constitution in later years? What was his background?

Physically he was not impressive. A young, slim boy measuring about 5 feet 7 inches in height and not having many kilos to carry.

Nani Palkhivala was not born with a silver spoon in his mouth. He hailed from a humble Parsi middle-class working family. His ancestors were in the profession of making and fixing “*palkhis*,” namely, palanquins, to be fitted to horse carriages of those times. Hence the surname Palkhivala, which like many Parsi surnames, is associated with a particular calling or profession.

Nani Palkhivala's schooling was in Master's Tutorial High School in Bombay. He was a brilliant student and did extremely well despite his initial handicap of stammering which he overcame by sheer willpower. After matriculation he joined St. Xavier's College, Bombay and completed his MA in English Literature.

In younger days, he did take to music and played the violin reasonably well. But the spell of Apollo was short-lived. Music was not one of his passions in later life.

Palkhivala applied for a Lecturer's post at Bombay University. To his surprise and regret, a Parsee girl was appointed to the post. With admission to most other courses closed, he enrolled at Government Law College, Bombay. This is one instance how destiny plays a role in one's life. Had Palkhivala got the lecturer's post, we would have had a brilliant Professor but the world of law and public life would have been a loser. Nani was eternally grateful to the young lady Professor and treated her to a dinner for several years.

Nani had the good fortune of joining the chambers of the legendary Sir Jamshedji Kanga in Bombay in 1944. He had no Godfathers in the profession. His rise at the Bar was meteoric. Within a couple of years of joining the profession, he was briefed in every important matter in the High Court. He was the darling of the young members of the bar who would throng the court to listen to his arguments.

The first case of constitutional significance in which he appeared in the Bombay High Court was *Fram Nusserwanji Balsara v. State of Bombay*¹ in which various provisions of the Bombay Prohibition Act were challenged. He was the juniormost counsel in the case which was argued by Sir Noshirwan Engineer. Some students of Government Law College, Bombay and I had bunked our classes and gone to the High Court to witness the proceedings. I distinctly remember Nani sitting at the end of the row and passing on written chits to the other counsel in the case who along with Sir Engineer were G. N. Joshi and R. J. Kolah.

It was not long before Palkhivala started arguing cases himself. The validity of the Administration of Evacuee Property Act and the Bombay Land Requisition Act were challenged. Nani was in the forefront of the legal challenges to these Acts which, however, were repelled by the Bombay High Court. Those familiar

* (First Palkhivala Memorial Lecture delivered under the auspices of The Palkhivala Foundation, Chennai, 22nd February, 2003)

+ (Attorney-General for India)

1 AIR 1951 Bom 210 (FB)

with the legal profession know that a lawyer often makes his mark not only by the cases he wins but by the quality of his performance in cases where the ultimate result is not favourable. Abdul Majid² and Heman Alreja³ were two such cases in which Nani distinguished himself in 1950-51.

Another important case which Nani argued was the famous RMDC case⁴ which involved the question whether solution of a crossword puzzle in question depended on the exercise of skill or whether it was a lottery and chance predominated.

A case of constitutional significance which Palkhivala argued in 1954 and won before the Bombay High Court was the one concerning the interpretation of Article 29(2) and Article 30 of the Constitution. It related to the right of Anglo-Indian Schools regarding admission of students in schools teaching through the medium of English. The impugned circular issued by the State of Bombay was struck down by a Division Bench of the Bombay High Court presided over by that great Chief Justice, M. C. Chagla. Chagla was Nani's most favourite Judge. He considered Chagla a great Judge whose burning desire was to do real justice and, whose judgments in Nani's words, "had no dark nooks or misty crannies".

The State of Bombay carried the matter to the Supreme Court which upheld the judgment of the Bombay High Court and ruled that the impugned circular violated the fundamental right guaranteed under Article 29(2) of the Constitution. Nani argued the case brilliantly before the Supreme Court. He was hardly ten years at the Bar.

Despite his busy practice, Nani devoted time to teaching law to students and was a part-time Lecturer at Government Law College, Bombay. He endeared himself to students by his clear exposition of the subject — always with a dash of humour and wit. (At that time he was lecturing on the Evidence Act.) His was one class that I and other students did not bunk. Indeed, we all wished that his lecture would go on beyond the allotted time. Justice Chandrachud, who was also a part-time Lecturer, has written in his piece in a Marathi daily that he and Nani shared a horse-driven victoria to reach the Law College since they could not afford a taxi.

Nani's contribution to the development of our constitutional jurisprudence commenced with his appearances in the Supreme Court in cases involving interpretation of the Constitution.

In Bhanji Munji⁵, the validity of the Bombay Land Requisition Act was challenged. The Supreme Court applied the Gopalan⁶ doctrine, namely, that the freedoms relating to the person of a citizen guaranteed by Article 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen were deprived of his liberty by the law of preventive or punitive detention. Consequently, the Court ruled that when there is a substantially total deprivation of property which is already held and enjoyed, Article 19(1)(f) is excluded and is not applicable. One must then turn to Article 31 and see how far that is justified. Despite Palkhivala's forceful advocacy, the Supreme Court refused to test the validity of the Bombay Land Requisition Act on the touchstone of Article 19(1)(f). That was in 1954.

Later in February 1970, in bank nationalisation case⁷ this legal heresy which had a restrictive, indeed a pernicious effect, on the development of constitutional law was given a long-awaited burial. The Court held that Article 19(1)(f) and Article 31(2) were not mutually exclusive.

This to my mind was Palkhivala's signal contribution to the development of our Constitution by persuading the Supreme Court to remove the distortions that had crept in because of the earlier judgments. The *irony* is that Gopalan⁶, a case relating to the personal liberty of a Communist leader, was overruled in a case relating to property rights in the context of bank nationalisation.

2 Abdul Majid v. P. R. Nayak, AIR 1951 Bom 440)

3 State of Bombay v. Heman Santlal Alreja, AIR 1952 Bom 16

4 R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628

5 State of Bombay v. Bhanji Munji, AIR 1955 SC 41

6 A. K. Gopalan v. State of Madras, AIR 1950 SC 27

7 R. C. Cooper v Union of India, (1970) 1 SCC 248

Privy Purse case⁸ was another of Palkhivala's achievements. He was appalled by the breach of faith by the Government of India by passing a midnight executive order derecognizing the Princes. The pledge given to the Princes by Sardar Patel in the Constituent Assembly when the Privy Purse provisions were enacted was flagrantly dishonoured. He felt that the action of the Government of India apart from being unconstitutional was in breach of *constitutional morality*. He firmly believed that:

"The survival of our democracy and the unity and integrity of the nation depend upon the realisation that *constitutional morality* is no less essential than constitutional legality. *Dharma* (righteousness; sense of public duty or virtue) lives in the hearts of public men; when it dies there, no Constitution, no law, no amendment, can save it."

Freedom of expression and freedom of the press are the cornerstones of democracy, the Ark of the Covenant of our Constitution. A disingenuous attempt was made to stifle press freedom through the machinery of the import control regulations by imposing severe restrictions on the import of newsprint. Bennett Coleman, amongst other newspapers, challenged the import control policy.⁹ Nani was briefed. I was privileged to be his junior. Incidentally Palkhivala was a director of the national daily, *Statesman*, which fact also accounts for his deep attachment to press freedom. Nani's performance was superb. The propositions he enunciated were a model of clarity, marked by elegance of language. Some of them are reflected in the majority judgment of Justice A. N. Ray. For example, the passage: "Newsprint does not stand on the same footing as steel. Steel will yield products of steel. Newsprint will manifest whatever is thought of by man"¹⁰. It is a pity that counsel's arguments in important cases are not reported in the law reports. The Court struck down the restrictions. This judgment is another instance of the generous protection accorded to press freedom by our judiciary.

Rights of the minorities figured prominently in the Constituent Assembly Debates. Minority rights are indeed human rights and have been rightly guaranteed as fundamental rights in our Constitution. The minorities attached great importance to the freedom of religion and the right to establish and administer educational institutions of their choice. They gave up their demand for separate electorates in view of the guarantee of these rights as fundamental rights and their guardianship and protection by the Supreme Court. The fears of the minorities were dispelled, in the words of Rev. Jerome D'Souza, who represented the Indian Christian community, by

"The completeness, the generosity, the thoroughness with which individual rights have been safeguarded in the section of our Constitution devoted to fundamental rights, the way in which these fundamental rights were placed under the power and jurisdiction of the Supreme Judicature and the spirit in which those provisions were passed by this House."

State legislation encroaching upon the right of minority educational institutions became frequent. That led to St. Xavier's College challenging the legislation in the Supreme Court. As you may be aware, St. Xavier's College was Nani's *alma mater*. It was mine as well. We both appeared in the Supreme Court. We did not charge any fees. The crux of the matter was the autonomy of the educational institutions and what were the limits of governmental interference especially in the matter of appointment and dismissal of teachers and admission of students of the minority community. There was no dispute that the right to administer did not comprehend the right to maladminister. But where did administration of educational institutions end and maladministration begin? Nani eloquently and movingly expounded the legal position to the nine-Judge bench. The majority judgement¹¹ upholding the right of the minorities is a substantial contribution to our constitutional jurisprudence. It is heartening that the recent eleven-Judge bench judgment¹² has not departed from the salutary principles laid down in St. Xavier's College case.¹¹

No account of Palkhivala would be complete without mention of his magnum opus, *The Law and Practice of Income Tax*. It is not customary to cite textbooks of living authors. Palkhivala's treatise on income tax

8 Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85

9 Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788

10 Ibid. p. 823 (paras 79 and 80)

11 Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717

12 T.M.A. Pai Foundation v. Union of India, (2002) 8 SCC 481

was an exception. Lawyers, judges, members of the Income Tax Tribunal and income tax practitioners regarded the book as their Bible and invariably relied upon it. The work has secured national and international recognition. The first edition of the book was published in 1950 when Palkhivala was about 30 years old. Sir Jamshedji whose name appears first in the table of the book gracefully acknowledged that the credit belonged to Palkhivala.

It seems that there was something in Nani's genes which attracted him to the law of taxation. His talent in expounding the subject was matched by his genius in explaining the intricacies of the Budget to thousand of his listeners. His famous Annual Budget speeches had humble beginnings in 1958 in a small hall of an old hotel called Green Hotel in Bombay. He spoke without notes and reeled off facts and figures from memory for over an hour keeping his audience in rapt attention.

The audience in these meetings was drawn from industrialists, lawyers, businessmen and the common individual. Nani's speeches were fascinating for their brevity and clarity. His Budget speeches became so popular throughout India and the audience for them grew so large that bigger halls and later the Brabourne Stadium in Bombay had to be booked to keep pace with the demand of an audience of over 20,000. It was aptly said that in those days that there were two Budget speeches, one by the Finance Minister and the other by Nani Palkhivala, and Palkhivala's speech was undoubtedly the more popular and sought after. It was a phenomenon, which could come only from a genius in the art of communicating.

Palkhivala had deep respect, indeed reverence for the Constitution. He realised the importance of preserving the cardinal values of the Constitution, its basic and essential features. His favourite quotation was the statement of Joseph Story, the great American jurist, who said:

"The Constitution has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, *The People*".

As you may be aware these words of story were quoted by Sachchidananda Sinha in his inaugural address, as Provisional Chairman, to the Constituent Assembly on 9-12-1946.

Palkhivala believed that a Constitution is intended not merely to provide for the exigencies of the moment but to endure over the ages. He urged that we should get accustomed to a spacious view of the great instrument because "the Constitution was meant to impart such a momentum to the living spirit of the rule of law that democracy and civil liberty may survive in India beyond our own times and in the days when our place will know us no more". He pointed out that our original Constitution provided for stability without stagnation and growth without destruction of human values. He lamented that the recent amendments had only achieved stagnation without stability and destruction of human values without growth. Palkhivala did not at all believe that a Constitution is unamendable or cannot be changed. He shared the thinking of Thomas Jefferson who said:

"Some men look at constitutions with sanctimonious reverence and deem them like the Ark of the Covenant too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human and suppose what they did not be beyond amendment.... I am certainly not an advocate for frequent and untried changes in laws and Constitution... but I know that the laws and institutions must go hand in hand with the progress of human mind. ... As new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also and keep pace with the times."

Palkhivala appreciated the wise words of Pandit Nehru who expressed the same thought in felicitous language.

"A Constitution which is unchanging and static, it does not matter how good it is, how perfect it is, is a Constitution that has past its use. It is in its old age already and gradually approaching its death. A Constitution to be living must be growing; must be adaptable; must be flexible; must be changeable ... as society changes, as conditions change, we amend it in the proper way."

What outraged Palkhivala was the tinkering with the Constitution by the politicians, its frequent amendment as if it were a Municipal Licensing Act or the Drugs Act, the failure to preserve the integrity of our Constitution against many hasty and ill-considered changes, the fruits of passion and ignorance. His firm belief was that Parliament's amending power is not absolute, the amending power is subject to inherent and implied limitations which do not permit Parliament to destroy any of the essential features of the Constitution and thereby damage the basic structure of the Constitution.

The zenith of Palkhivala's fame and forensic success was in persuading the Supreme Court to accept the basic structure doctrine which it did by a majority in *Kesavananda Bharati case*¹³. I vividly remember the early morning conferences the two of us had those days in his room at Oberoi Hotel. Both of us were in our pyjamas. At one such conference, I nervously suggested the argument about inherent limitations on the amending power based on certain articles which I had read in the US law journals. He grasped the point, but was not quite convinced. A few hours later in the Supreme Court, he expounded the doctrine brilliantly. The labour and efforts which were put in the case were tremendous. The range of our research was far and wide. I remember the volumes of the Constituent Assembly Debates which I went through in order to prepare a "short note" for Nani. He did not like long and verbose submissions. To my mind *Kesavananda Bharati* was Palkhivala's greatest contribution to our constitutional jurisprudence. The judgment has been a salutary check on Parliament's tendency to ride roughshod over fundamental rights and its insatiable appetite to encroach upon fundamental rights. You may be interested to know that the Bangladesh Supreme Court has followed the Supreme Court judgment in *Kesavananda Bharati* and struck down a constitutional amendment.

Nani, however, was at his forensic best in his arguments before the Bench which was specially constituted to reconsider *Kesavananda Bharati*. In the words of one of the Judges on the bench "the heights of eloquence to which Palkhivala had risen have seldom been equalled and never been surpassed in the history of the Supreme Court".¹⁴

Decision of the Supreme Court in *Minerva Mills*¹⁵ was another of Nani's triumphant efforts to prevent the defacement and defilement of our Constitution. His unsurpassable advocacy in the case led the Supreme Court to declare that clause (4) of Article 368 of the Constitution which excludes judicial review of constitutional amendments was unconstitutional.

Nani's intimate knowledge of taxation law and mastery of constitutional principles were at play in the challenge to the validity of the Expenditure Tax Act. This was one of Nani's masterly but unsuccessful performances. Will the Supreme Court have time to repent its judgment in *Federation of Hotel and Restaurant*?¹⁶ Only time can tell.

Palkhivala's forensic skills and ability were not confined to taxation and the Constitution. His knowledge of economics and industrial law and labour legislation were in full display in the case of *Premier Automobiles*¹⁷ which dealt with the issue of fixation of prices for automobiles and also in the case of *Jalan Trading*¹⁸ in which the constitutionality of the Payment of Bonus Act was assailed.

Palkhivala's range of legal practice is also evident by his appearance and advocacy in *Seshammal v. State of T. N.*¹⁹ which involved the right of *archakas* in temples. In that case, Palkhivala expounded the rights which flow from the appointment of a priest or an *archaka* to perform religious functions and the impact and implication of that appointment in relation to the freedom of religion guaranteed by Articles 25 and 26 of the Constitution.

Palkhivala's forensic achievements were not confined to courts in our country. He represented India in three cases in the international fora. First, before the Special Tribunal in Geneva appointed by the UN to

13 *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225).

14 Justice H. R. Khanna

15 *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625

16 *Federation of Hotel & Restaurant Assn. of India v. Union of India*, (1989) 3 SCC 634

17 *Premier Automobiles Ltd. v. Union of India*, AIR 1972 SC 1690

18 *Jalan Trading Co. Pvt. Ltd. v. Mill Mazdoor Sabha*, AIR 1967 SC 691

19 (1972) 2 SCC 11

adjudicate upon Pakistan's claim to enclaves in Kutch. Another was before the International Civil Aviation Organisation at Montreal and later in appeal before the World Court at The Hague when Pakistan claimed the right to fly over India.

There have been lawyers who matched Palkhivala in erudition and legal knowledge. But for sheer advocacy Palkhivala was unsurpassable. Clarity of thought coupled with precision and elegance of expression, impassioned plea for the cause he espoused in the case, excellent court craft and an extraordinary ability to think on his legs rendered him an irresistible force and made him *sui generis*.

Another instance of destiny playing a part in Palkhivala's life and career is the offer of the office of the Attorney-General to him. He recounts the incident in his book *We the Nation*. It is worth reproducing in extenso:

"In 1968, Mr. Govinda Menon was the Law Minister in the Congress Government. He pressed me hard to accept the office of the Attorney-General for India. After a great deal of hesitation I agreed. When I was in Delhi I conveyed my acceptance to him, and he told me that the announcement would be made the next day. I was happy that the agonising hours of indecision were over. Sound sleep is one of the blessings I have always enjoyed. That night I went to bed and looked forward to my usual quota of deep slumber. But suddenly and inexplicably, I became wide awake at three o'clock in the morning with the clear conviction, floating like a hook through my consciousness, that my decision was erroneous and that I should reverse it before it was too late. Early in the morning I profusely apologised to the Law Minister for changing my mind. In the years immediately following, it was my privilege to argue on behalf of the citizen, under the same Congress Government, the major cases which have shaped and moulded the constitutional law of India — Bank Nationalisation (1969), Privy Purse (1970), Fundamental Rights (1972-73), among others."

Palkhivala was offered judgeship of the Supreme Court in the early sixties which he declined possibly for the same reasons which made him decline the office of the Attorney-General for India.

I wish destiny or some other force would have made Nani decline the office of directorship in the House of Tatas. He gave a lot of his time and energy to that excellent business house but which he could have devoted to the legal profession and its improvement and the reform of the legal system.

Palkhivala has received recognition from renowned academics. In the book *Working a Democratic Constitution* by the eminent Granville Austin, reference to Palkhivala occurs at sixteen pages.

Palkhivala has received citations and honorary degrees of Doctor of Laws from various universities such as Princeton University, New Jersey, and Lawrence University, Wisconsin, Annamalai University, Tamil Nadu University and the University of Mumbai.

The citation he received from Princeton University is worth reproducing as it epitomizes Nani's basic qualities:

"Defender of constitutional liberties, champion of human rights, he has courageously advanced his conviction that expediency in the name of progress, at the cost of freedom, is no progress at all, but retrogression. Lawyer, teacher, author, and economic developer, he brings to us as Ambassador of India intelligence, good humour, experience, and vision for international understanding...."

All these attainments to which I have referred testify to Palkhivala's brilliance, his eminence, his versatility, his phenomenal memory. But the quality of greatness which we rightly attribute to him lay in *his basic human qualities*. The foremost was his willingness to help persons in need without any show or publicity. Let me recount one instance. Dr. Badrinath of the famous Shankar Netralaya Hospital in Chennai, was invited for dinner at his home by Nani. After the dinner was over, Nani escorted the doctor to his car and gave him a small envelope saying this was a token contribution for the hospital. When Dr. Badrinath later opened the envelope he found in it Nani's personal cheque for Rs. 2 crores. A token contribution indeed!

Let me recount another instance. As a tribute to Jayaprakash Narayan who played an outstanding role in regaining freedom for India after the nightmare of the emergency, Palkhivala founded the Jayaprakash Institute of Human Freedoms. The purpose of the Institute is to strengthen the roots of Indian democracy

and to carry on the epoch-making work of that great patriot. A sum of Rs. 5,37,000 representing the entire profit from Palkhivala's 7th Edn. of *The Law and Practice of Income Tax* was donated to this Institute.

Palkhivala was of the firm view that some minimum qualifications should be prescribed for those who seek election to Parliament. His point was that you need years of training to attend to a boiler or to mind a machine; to supervise a shop floor or to build a bridge, to argue a case in a court of law or to operate upon a human body. But he was shocked that to steer the lives and destinies of millions of our fellow-men, there is no requirement of any education or equipment at all. His favourite quote was Dr. Rajendra Prasad's observation in the Constituent Assembly:

"I would have liked to have some qualification laid down for members of the legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law, but none for those who make it except that they are elected."

He frequently pointed out that it is open to the Prime Minister to select a minority of the Ministers from outside. And the advantage of such a system is that it enables the Prime Minister to have in his Cabinet some of the best talent available in the country. He endorsed Shri Aurobindo's belief that "State fails in its duties if the ruling class did not represent the best minds of the nation".

Palkhivala was not attracted by the rituals and the pomp and ceremonies of religion. He believed in and practised the essence of Zoroastrian religion to which he belonged, namely, "Humata, Hukhata, Huvarashta" — good words, good thoughts, good deeds. Shri Aurobindo was his favourite writer and thinker whose writings greatly attracted him. Palkhivala embodied the concept of plain living and high thinking. Success did not go to his head. Fame and fortune did not increase the hat size of the legendary Nani Palkhivala. There was never a trace of arrogance or conceit or pomposity in him.

Another outstanding human quality about Nani was that jealousy, or rather envy, the besetting sin, which cannot countenance the fame and success of others, never consumed him. Holier-than-thou attitude was alien to him. He was not the one to smile and shake your hand and thereafter stab you in the back. Backbiting and denigration of others was unknown to him. Humility and natural modesty were his hallmarks. He had no ego problems. The warmth of his friendship extended to all fellow human beings, whatever be their status in life. He was tender towards the bashful, gentle towards the distant and merciful towards the absurd. Thus Nani fulfilled Cardinal Newman's definition of a true gentleman. Of Nani, it can be truly said that he walked with Kings yet lost not the common touch.

The greatness of Palkhivala truly lay in his sincerity and commitment to spiritual values which made him a moral force in our public life. The fearlessness with which he spoke out, whichever be the party in power, made him the voice of conscience of the nation. And conscience for Nani was not an alibi but an ally, a constant anchor of his beliefs and actions. He kept the faith and held high the banner of freedom and the rule of law. He fully shared the belief of Justice Frankfurter that "Democracy is always a beckoning goal, not a safe harbour. For freedom is an unremitting endeavour, never a final achievement."

Regrettably, we live in times when there are no men and women to match our Himalayan peaks, when there is a crisis of moral leadership, when our political system and public life have more hypocrites, wheeler-dealers, schemers and cowards than at any time in our history. Nani was one constant shining star in the dark firmament. His passing away is indeed a real loss to the nation. As I survey the current scene in our public and private life, I am impelled to say: Nani thou shouldst have been living at this hour.

Of late, Palkhivala was deeply upset, indeed depressed, at the catastrophic decline in values in our public life. The onslaught of materialism and its effect on our youth bothered him very much. He was anguished at the deterioration which had set in our institutions. He felt that corruption which in some cases had not spared the judiciary whose independence he had staunchly defended was illustrative of the incredible debasement of our national character.

He lamented that the "Bar is more commercialised than ever before. Today the law is looked upon, not as a learned profession but as a lucrative one." He stressed the need to educate our lawyers better and not to produce "unethical illiterates in our law colleges, who have no notion of what public good is." He feared that our country was on a long slide towards darkness and obscurantism with no visible solution and sign

of hope. His mission was to launch a movement for the regeneration of values and to maintain and revive idealism in the youth of our country.

Palkhivala was ailing for a long time. It was painful to see that a person so eloquent and articulate was unable to speak or recognize persons except occasionally in a momentary flash. He answered the Inevitable Summons from his Maker on 11-12-2002. Earth received an honoured guest as Palkhivala was laid to rest.

I had known him for fifty years. My first professional association with him was in a matter relating to the Bombay Land Revenue Act in the Bombay High Court. It was an exhilarating experience. His conferences were short and to the point. He appreciated the inputs and research of juniors briefed with him. He treated them with kind consideration and encouraged them. When he was arguing and was on his legs and there was some point or decision I wanted to bring to his attention, it would be by passing a brief note. He would look at it and assimilate it in a few seconds.

I was frequently his guest at his lunches and dinners at home which were marked by complete informality and warm hospitality. In his home in Bombay or in the embassy at Washington he was a wonderful host who had his eyes on all his guests. He and his wife Nergesh, a noble lady who predeceased him, were my guests at my hill-station bungalow at Mahabaleshwar. Alas because of constraints of time, Nani's inveterate enemy, the duration was just two days.

I am loathe to lend books, because they are seldom returned. The book which I treasure the most are the two of Nani's books which bear the generous inscription: "For dearest Soli,

Who has done so much to uphold the sanctity of the Constitution,

Nani, 4-12-1974."

He was my role model in the profession and a true and dear friend with whom I shared many wonderful times and rich and stimulating experiences. For me, his passing away is a deep personal loss. It has left a void which will be very difficult to fill.

Rajagopalachari rightly said of Palkhivala, "He is God's gift to us." Nani Palkhivala's passing away has indeed left a dent in Indian humanity. Born of the sun he travelled a while towards the sun, and left the vivid air signed with his honour.

Yes friends, Palkhivala has departed from our midst. But he can never leave us, leave our minds and hearts where he is firmly enthroned. And it behoves us all, to carry forward the Palkhivala legacy of truth, goodness and beauty, deriving inspiration from his thoughts, his deeds and the many-splendoured life of this Man for All Seasons, the great NANI PALKHIVALA.

Source : (2003) 4 SCC (J) 33

We have published this article for the benefit of the professionals. We are thankful to Shri Soli J. Sorabjee, the Palkhivala Foundation, Chennai, and Editorial team of Supreme Court cases.

— Editor



S. P. Mehta – My Senior



Justice U. T. Shah (Retd.)

My association with Shri S. P. Mehta (Sanatbhai) was over fifty years, since 1940s till he died in March 1990. Therefore, to write about him would require a lot of thinking so as to cover various aspects of his glorious life-span. However, in this write-up I would refer to my experiences of him between October, 1958 (when I joined his chamber) and February 1973 (when I joined ITAT as a Judicial member).

I joined Shri Sanatbhai's chamber in Diwali 1958. What struck me the most was the way he used to keep his chamber neat and clean. There were hardly any extra papers except the briefs he was to argue, briefs for written opinion and some other drafting work all placed in their proper place.

At the beginning, he told me not to expect any financial help from him. But he assured me that I would start earning in due course of time! Meanwhile, I was advised to read all back volumes of reported cases in ITC and ITR and prepare notes for future use. At that time volume 35 of ITR was in progress. His idea was that I should acquire good knowledge of case law so as to better understand the work he was handling; viz., giving written opinions, discussion in conferences with clients and their advocates/CAs, following up cases he was arguing before appellate authorities and the High Court.

All these took three years before I earned my first fees with his blessings. The people who were earlier coming for drafting work to Shri Sanatbhai, started coming to me directly with an understanding that drafts be approved by Shri Sanatbhai for their satisfaction. Perhaps, this was what Shri Sanatbhai meant when he had assured of "I would start earning in due course of time."

One very important thing about Shri Sanatbhai was that we juniors had access to **all** the briefs which he was getting. If we wanted to study and prepare notes on any brief, we had full freedom to do so. He even used to give us briefs for written opinion in big matters to try our hand to prepare written opinion and then discuss with us critically. This gave us a lot of confidence and helped us to think systematically, analytically and logically.

Shri Sanatbhai was very well respected for his simplicity, honesty and integrity by all with whom he came in contact; viz., departmental officials, members of ITAT, Judges of the HC/SC, clients and their advocates/CAs. If he felt that there was something wrong in the matter, he would not hesitate in refusing to handle such matter. At the same time, if he felt strongly about injustice being done to a party, he would openly tell the authority concerned about it. This resulted in an excellent report between him and various authorities and also made him one of the top counsels in the field of taxation law along with the late Shri R. J. Kolah and the late Shri Nani Palkhivala.

Now let us turn to certain instances which would show Shri Sanatbhai's inimitable personality.

- A. During my "waiting period", I was approached by one party who wanted me to argue a case before the ITO. According to him the case was full proof as it was covered by one decision of the Supreme Court. He further assured me that fee would not be any problem. I told him to leave the case papers for my study and contact me after a couple of days. Meanwhile, I sought Shri Sanatbhai's views in the matter. He told me to return the case papers. I was taken aback. He further told me that in his chamber no original assessment work was handled. His chamber entertained only appellate work

before higher tax authorities, ITAT, the HC/SC. Further, if the case was allegedly covered by a decision of the Supreme Court, why can't the advocate argue the matter himself. Finally, he told me that in his order, the ITO would perhaps write "Shri U. T. Shah of Shri S. P. Mehta's chamber argued the matter....." This would not give any credit to you. It appeared to me that Shri Sanatbhai knew both the advocate and the ITO. Such temptation should always be avoided. However, he left it to me to take final decision. Instantly, I decided not to accept the brief and told Shri Sanatbhai about it. He expressed his happiness. When the party contacted me, I told him my decision and returned the case papers. The party was very much upset as his "plan" was overturned by my refusal!

- B. Once a leading personality of Bollywood wanted to visit a neighbouring country for a short duration. His IVC was held up in the Department. Shri Sanatbhai was engaged to argue the matter before higher tax authority. The said authority, at the outset, showed certain film magazines and national dailies to show how lavishly that party celebrated wedding of his near relation only a couple of days back but he had no money to pay outstanding tax dues which ran into a couple of thousand rupees only. Shri Sanatbhai excused himself and came out of the chamber of the authority without arguing the matter. He mildly told the CA why he had engaged him in the matter when there cannot be any sympathy for his client.
- C. Once in the ITAT Shri Sanatbhai was arguing a case from outstation. One of the members of the Bench (newly appointed) observed that but for the advocate's instigation, the assessee would not have filed the appeal. Shri Sanatbhai coolly kept the brief on the table and requested the member concerned to express apology for the unnecessary remark made by him. Shri Sanatbhai told the Bench that it would vitiate the relation between the Bar and the Bench if such careless remarks were allowed to be made without any basis. The senior member of the Bench told Shri Sanatbhai to proceed with the matter without making an issue on such thing. Shri Sanatbhai replied that there was no question of letting the issue go like that. He said that he would discuss the matter in the ITAT Bar Association and if need be, would write to the Law Ministry to be more careful in selecting members of ITAT. Ultimately, that erring member expressed his apology to Shri Sanatbhai in the chamber of the senior member of the Bench — over a cup of coffee.

I can go on and on writing about Shri Sanatbhai who endeared himself to whomsoever he met during his life time. He left us sad and sorry when suddenly he left the world on March 2nd 1990. He was my friend, philosopher and guide. May his soul rest in peace.



Tribute to Shri N. A. Palkhivala



M. K. Chaturvedi
Vice President (MZ)

Shri N. A. Palkhivala was an exceptional human being and a great lawyer. He was endowed with an outstanding judicial acumen. He was a great philanthropist. He was honoured not only by the law lords but also by the princes, politicians, plebs and plutocrats. He was gifted with the tremendous power of expression. He was a great orator. His life and achievements prove that backed by confidence, courage and conviction, man can achieve the impossible. Prestigious awards and titles were conferred on him by national and international organizations. He was acclaimed as the top lawyer of the 20th Century and lauded for his innovative genius. His success story fired the imagination of the younger generation of lawyers. He was an icon for them, a role model to be emulated. He touched the apex of glory, but success never gone to his head, something that is rare with human being.

Shri Palkhivala was my ideal during my college days. I made collection of his various articles and speeches appeared in the different journals and papers. I used to visit the courts to hear Shri Palkhivala during his Calcutta visits. I read various books suggested by him. Ideals are like stars. You will not succeed in touching them with your hands. But like the sea-fearing man on the desert of waters, you choose them as your guides, and by following them you will reach your destiny.

Shri Palkhivala was Tagore Professor of Law at the Calcutta University. The roll call of great names which have preceded Shri Palkhivala as Tagore Professors – were jurist of highest repute such as Sir William Holdsworth, Roscoe Pound, etc. I first met Shri Palkhivala when he came to Calcutta to deliver the Tagore Law lecture on the Tax Law. The University Hall was packed to the capacity and there was big crowd to attend the lecture of Shri Palkhivala. Good number of dignitaries were there. I reached the University hours before the lecture. Fortunately I got a good seat. When Shri Palkhivala entered, people greeted him with thunderous applause. After preliminaries there was some brief introduction. Thereafter, Shri Palkhivala took over the mike. There was pin drop silence in the Hall. Some big event was in the waiting. Suddenly resounding sound came from the mike :- “Income-tax is a tax on income but the word income is a dark cat in the bag of the Income-tax code”. Audience were almost mesmerized by the tone of the great orator. Thereafter he explained the history of tax law. How in England the tax was levied on the silver plates, windows and maid servants. How it has come to the present form. He referred to the Madras Gazette to indicate that how the people were harassed when the tax was first introduced in India. He said with reference to the said Gazette that many people committed suicide not because of the rigour of taxation but because of the inhuman trend of enquiry adopted by the tax collectors. He illumined the darkest nooks of the fiscal jurisprudence and explained how the tax law can be humanized. He did not lay emphasis on the sternness or majesty of justice but on its healing and protective power. I attended the complete series of his lectures. It was quite educative to me. I met him after the lectures. He was good enough to provide me the cyclostyled gist of the lectures. I find that good many Tagore Law lectures are now being published. But the Tagore Law lecture delivered by Shri Palkhivala is yet to be published. Indeed it would prove to be a pearl of great prize to all those who are concerned with the tax jurisprudence.

The book on the Income-tax law by Shri Palkhivala was my vede mecum when I was at the threshold of my professional career.

Next I met Shri Palkhivala at the Conference of the International Bar Association. Shri Ambalavaner, Barrister from Sri Lanka was presiding the Session. Shri Palkhivala was the main speaker. He delivered a very powerful speech. He said that the taxes are the life – blood of any government, but it cannot be overlooked that the blood is taken from the arteries of the tax payer and, therefore, the transfusion is not to

be accomplished on dictates of political expediency but in accordance with the principles of justice and good conscience.

Shri Palkhivala was the champion of legal pragmatism. He was not in favour of projecting the Goddess of Justice blind. According to him she should be blind indeed to favour or prejudice but clear to see which way lies the truth. He did his best to keep the stream of justice clear and pure. He fought for the cause of justice and was instrumental in shaping the present profile of law. He vehemently opposed all those who intended to deface and defile the law. With brevity and lucid style he was capable of projecting Himalaya within a flash of lightening.

In the year 1990, when I was posted at Hyderabad, I had the pleasure of hearing Shri Palkhivala in the case of HEH the Nizam's Jewellery Trust, reported in 35 ITD 402 (Hyd). He argued this case for three days. He presented the case in a most lucid manner. The law was on his finger tips. He explained with ease some of the most difficult propositions of law. He presented some very complicated issues in the simplest possible manner. Daniel Webster used to say that :- "the power of clear statement is the great power at the Bar". Shri Palkhivala had it in a pre-eminent degree. His arguments were effortless and spontaneous. They were tinged with the essential characteristics of his own personality – sweetness and light.

While at Mumbai, I had occasion to hear Shri Palkhivala in good many cases. He used to attend the functions of the Bar, where I had occasion to interact with him. Many people requested Shri Palkhivala to write his Autobiography. But he was reluctant. He never heeded to any such request. Probably he was inspired by the great Chinese Philosopher Lao Tse in this regard, who use to say:- "that which can be said is not truth. Virtue consists in being true to one self. Your individuality is not your own, it is delegated adaptability of God". Lao Tse the great philosopher was the friend of the King of China. Once the King of China made a request to Lao Tse to write a book. Lao Tse declined. King insisted. When the pressure mounted Lao Tse decided to leave China as it was difficult to defy the authority of King. When he was about to cross the border, custom officials asked him to pay the duty. Lao Tse protested. The King was informed. He promptly reached at the custom frontier. Lao Tse pleaded to the King to exempt him from the payment of duty as he was not carrying anything with him. King said: "you are carrying the wisdom of China, therefore, you got to pay the duty as per the law of the land". Lao Tse said: "I don't have any money, how can I pay?" King said: "you write book – I will treat this as payment towards duty". To pay such duty, Lao Tse had to write a book at the Custom frontier which was titled "Tao Te King". This book was written 2500 years back to pay the duty. It is relevant till today. And Lao Tse will be remembered for years to come for this priceless contribution to the treasure of knowledge. Unfortunately there was no King to persuade Shri Palkhivala to write his Autobiography. When we persuaded, Shri Palkhivala said that anything that is profound in life, deep or meaningful cannot be expressed in words. One must be true to self. He achieved for which Lao Tse was aspiring. The flowers simply live and grow, and no one denies that they are beautiful. The good man confers a blessing on the world by merely living.

Shri Palkhivala is no more with us. For years to come, memory will hold back the door and those who came in contact with Shri Palkhivala will recollect with nostalgic pleasure his unfailing courtesy, his unfeigned humility and his innate graciousness. With this I bid adieu to Sri Palkhivala.



A Tribute



Iqbal M. Chagla
Senior Advocate

I had the good fortune of knowing R. J. Kolah and Nani Palkhivala whose chambers adjoined the chambers of my senior K. H. Bhabha. Kolah and Nani were two stalwarts of the Bar, two experts in the field of Income Tax law, both rose from humble beginnings and both belonged to the pedigreed stable of Shri Jamshedji Kanga.

But there the similarity must end. Kolah was a rough diamond, gruff in his ways, forceful in his advocacy and one not to suffer fools gladly. But beneath the rather forbidding exterior was a man of great humanity and kindness and one who possessed interests that one would not readily associate with him. One was numerology, a science my irreverent mind could not accept any more than any religious dogma, but one that Kolah firmly believed in. Give him any name and he would tell you through the science of numbers, whether the person was sound or not.

His abiding passion, apart from the law was horse racing. He was a steward of the RWITC and a regular at the important races in England as well. On his table in his chambers was a splendid photograph of himself at the Epsom Derby dressed in top hat and morning coat.

Kolah was a giant in the field of tax laws, a field, alas, in which I must confess my ignorance. His knowledge of law, however, transcended the world of taxation so that he was offered a judgeship in the Supreme Court which he declined.

Kolah made a great friend. He had once requested me to appear in a company matter for someone he knew: I remember how keenly he followed the progress of the matter. He would discuss the case with me but not once did he suggest a different line of argument or a difference in approach (his seniority and the respect that was his due would have entitled him to do so and would not at all have been misunderstood).

He was also very friendly with the Ling family (the owners of Nanking the great Chinese restaurant that is no more). Many an evening he would be found at the restaurant sipping a bowl of sweet corn and chicken soup while advising Mr. Ling in his tax matters.

Nani Palkhivala was made in a very different mould. To call him "a tax lawyer" was to miss the essence of this man. He made the world his stage and he strode upon it like some great Colossus.

It is given to few to be considered a legend in their lifetime: Nani was one such. Not only because he rose from the humblest beginnings to become one of the greatest lawyers in the country; not merely because he was asked, more than once, to be a judge in the Supreme Court; not because he became a captain of industry; not because he was Ambassador to the United States; not for his myriad achievements and accomplishments; not even because his annual budget speech made him a household word in Bombay.

He was a legend for all of the above and most importantly, because he was so uniquely himself: a man of genius who never lost the virtue of humility; a man of singular simplicity graced with unbounded warmth and kindness; a man of letters as much as of the law.

Nani was unquestionably the greatest advocate that I have had the privilege of having heard, of having appeared with and, on occasion, having had the chastening experience of having appeared against.

Nani's greatness as an advocate can be attributed to an incredibly analytical mind, a prodigious memory and a lucidity that made the most complex argument simple to the meanest intelligence. Add to this a felicity of expression that elevated that argument to something that resembled an essay in classical prose and you have Nani Palkhivala.

Nani's contribution to the law is as no other lawyer can expect to equal. Apart from his abiding testament, Kanga and Palkhivala's treatise on Income Tax, Nani's contribution to the development of constitutional law is truly incredible. Bank Nationalisation, Privy Purses, Golak Nath, Keshavanand Bharathi, Minerva Mills were all virtuoso performances and each one of them conjures but one name, Nani Palkhivala. It is no exaggeration to say that if today we have a constitution whose basic structure is intact and unamendable and our fundamental rights inviolate, it is entirely due to this great man.

And so we salute these two great men, two men who from the smallest beginnings chose the complex world of tax laws to hone their skills and reach the pinnacle of the profession.



Three Stalwarts Who Outshone on tax Horizon



Y. P. Trivedi
Sr. Advocate

The three stalwarts who dominated the tax scenario during my time were Shri N. A. Palkhivala, Shri R. J. Kolah and Shri S. P. Mehta. I do not wish to underestimate others like Shri Nadir Shah Mulla who had amassed a vast clientele in the Tribunal and before the First Appellate Authority and Shri Tricumdas who was immensely loved by all Tribunal members and had also considerable practice before the Income Tax Investigation Commission. The others who gave strength, solidarity, respect and certain degree of enchantment to tax practice were Shri Nanchand Modi, Shri Arvind Patwa, Shri Dilip Dwarkadas, Shri F. N. Kaka and Shri J. P. Pandit.

Of course, the towering figure was that of Shri Nani A. Palkhivala. He was an advocate par excellence, persuasive to the last and though at times he would show histrionic agitation, he always had an eye to win his case. Apart from being a great Advocate with forensic eloquence, he was also a great lawyer, worked hard on facts and law, drew subtle distinctions in cases, where to an apparent mind, there may not be any difference. He was a voracious reader and had rare mastery over the English literature. 'Work hard' was his motto. Even while travelling with him, I had always seen him deeply engrossed with a book. Maybe, he took life too seriously.

Shri Palkhivala had the clarity of mind with which he could put the most difficult questions in simple language. His work as a Professor in the Government Law College was evident even in Court, where very often he was called a Professor. If tact is the prime requisite in Court, then Shri Palkhivala was the ultimate embodiment of that trait.

Shri Palkhivala was also a very versatile man, took interest in problems of public life, got himself associated with several social organisations. It was his exposure to taxation that virtually made him an Economist. Even though, he had not studied Economics as a subject in college, his opinions on economic matters of the State were held in high esteem. I for one thought about the limitations of his economic views, which were sometimes influenced by his political thinking. But his towering personality made people at large feel that those practising tax laws had sound knowledge of economics. He was very much sought after in industrial circles for adorning the Boards of their companies. He could have become a Judge of the Supreme Court at a young age and could have given a definitive mould to our legal system.

Even as an Ambassador to USA, Shri Palkhivala's brilliance was reflected on American soil. Though, some critics accused him for his flowery language, I knew that it was his natural flair and his choice of words was apt and suited to the occasion. On the whole, it never weighed on the listener.

Shri Palkhivala could have laid down law in his own clear language. But to the loss of the judiciary, he joined Tatas and thus the benefits of the knowledge of this luminous star were lost for deciding case laws. He was very simple at heart and at times almost childlike. He always cherished practising at the Income Tax Tribunal, which as an institution was very dear to his heart. However, we can say, he burnt his candles at both ends and it was tragic that the man who outshone himself by the gift of his gab was in the later years of life was made almost speechless. He brought a lot of prestige and reputation to tax practice like what Ravi Shanker did by bringing Sitar in the forefront amongst the string instruments. Time cannot erase the memory of his Budget Lectures, which started from old Green Hotel and ended at Brabourne Stadium. A phenomena, which may never be repeated for the next hundred years.

Shri R. J. Kolah was probably one of the finest gentlemen who shone in the Tax Bar. He had thunderous voice and with his transparency and forthright approach, he endeared himself to the Bar and Bench. I know of so many Judges in the Bombay High Court as well as in the Supreme Court who admired Shri R. J. Kolah's 'no-nonsense approach' and when there was scope for exercise of some discretion, their mind would tilt for Shri Kolah. He always encouraged Juniors and to an extent, he can be said to be a mentor who encouraged young Nani Palkhivala. He also had varied interests, which ranged from racing to perfumes. He was like a perfect Englishman, though Indian at heart. His love for racing was so immense that once he even returned a heavy brief in the Gujarat High Court just to be able to attend races on Jamshedji Navroji day, which was a holiday in Mumbai, but not in Gujarat. His lanky figure with top hat was always conspicuous on the racecourse, where he remained as Chairman of the Club for several years. He was very generous at heart and always liked to help Juniors. He was never over concerned with money. I distinctly recollect one occasion when I had taken one case to him of his old friend at racecourse and he refused to charge any fees in spite of lot of insistence from the client.

Besides tax practice, he had also specialised in Labour Law and was sought after by many employers. Appearing with him in one of the court cases, Shri H. M. Sirvai once told me that with his poor case he can make so much noise and if he had a strong case, then he would have probably blown up the roof of the High Court. I always admired him in spite of his strange beliefs in occultism and gemmology. He once told me that Alchemy is a Science and that mercury can be turned into gold and I listened to him with amusement and curiosity. Thus, he was a very simple man who was prepared to listen to anybody and everybody and sometimes even accepted their beliefs. Again, it was a great misfortune that in his last days, he lost touch with reality. This shows the grave professional hazard, which we the lawyers should bear in mind, because someday, our stock-in-trade; i.e., the mental faculty might get too tired and exhausted.

The last of the trio was Shri S. P. Mehta with whom I had good fortune to work and shape up my career. He was a rare phenomenon in our legal world, in that he was so saintly. Law and Tax Law were his pet subjects. Shri Mehta practised law, thought of law and probably dreamt of law. It was an 'Aklavya' approach. In the Chamber of Shri Purshottamdas Thakordas, he was considered as a brilliant and very sincere Junior and worked on several heavy matters. But fate drove him to the newly emerging tax practice. Those were the days when The Bombay Chartered Accountants Society was under formation, many Chartered Accountants who later became leaders in their profession were struggling with the Income-tax law and wanted a friendly person to guide them. Shri S. P. Mehta was soon accepted by them as their friend, guide and a philosopher. He was calm and collected and because of his sincerity and hard work, he was always appreciated in Court. Success came to him slowly, but firmly and soon he became the next in choice after Shri Nani Palkhivala. He was always simple, wore only genuine Khadi clothes and was strictly avoiding all those vices, which had become a fashion in legal fraternity. To his Juniors, he was like sage 'Sandipanni' where he treated all his Juniors as members of his family. He worked late hours every day and even till 8.30 to 9.00 p.m, people wanted to consult him. He had several memorable cases to his credit, but he never had any false ego or pompousness. His simplicity and tact endeared him to all with whom he came in contact. I feel that because of his sincerity and desire not to say 'no' to anybody, he was exploited by people, which ultimately resulted on his health.

It is strange that the three stalwarts were lost to the legal field within such a short span of time. I remember my other colleagues who were bright young lawyers, but were unfortunately taken away by the Providence in the bloom of their career. They were bright lawyers and they would have left a deeper mark if they had lived longer. But I have confined myself to the three stalwarts who have left their indelible mark on the sands of time.





M. L. Bhakta
Advocates & Solicitors

When the Federation National President Mr. Shivaram wrote to me to write an article on Mr. R. J. Kolah and Mr. N. A. Palkhivala for the Special Issue on “A Tribute to the Stalwarts of the Tax Bar”, I was thrilled at the honour, privilege and opportunity offered to me.

During my over 45 years of legal career, I have had the good fortune of close working with both Mr. Kolah and Mr. Palkhivala. Both of them were great lawyers, both coming from illustrious chambers of Sir Jamshedji Kanga, both having roaring practice and high reputation in the country and abroad, both contributed greatly to the development of law in tax matters, both highly respected by Courts and Judges all over the country, both recognised as men of integrity and character, both coming from Parsi community — which has given us many illustrious lawyers —, and above all both being great human beings.

If one has to cover two such great personalities in a single article, one would tend to start comparisons. Although both these stalwarts had quite a few points of similarity, they were totally different in many respects — one can say poles apart. Therefore, comparison between them is neither possible nor would it do justice to either of them. I have, therefore, taken liberty to write two separate articles on these two great lawyers with the hope and expectation that the Federation will pardon my impudence and accept the two articles for being published in the Special Issue.

Mr. R. J. Kolah – As I knew him

Mr. Kolah passed away in 1992 at the age of 88 years, after an immensely successful career spanning over 60 years. He had a flourishing practice in income tax and labour matters.

Mr. Kolah had a keen legal acumen. He was possessed of sharp intellect and quick grasp. His thinking was so fast that a few, who worked with him, could keep pace and that often made him lose his patience. He could not tolerate incompetence and would lose his temper when he found a solicitor, an advocate or a chartered accountant being unprepared at the conference with him.

It was entirely his industry, his knowledge of the law and his versatility that brought him to the front rank of lawyers. Although his speciality was in the field of labour and taxation laws, there was no branch of law that found him wanting; the Law Reports bear testimony to his wide and varied practice.

Mr. Kolah can best be described as a rough diamond. Those who heard him in Court or attended his conferences saw a person who was volatile in the extreme, often irascible and abrasive. But that rough exterior concealed a great kindness and consideration for others, to which all those who knew him will bear testimony.

Having come up in life starting his career as a petty clerk in a solicitor’s office, he always had great sympathy towards the poor. I have personally witnessed him spending his precious time advising poor people to resolve their personal problems. Once I saw him spending almost two hours with a steward of a hotel in New Delhi advising him not only on legal issues but also providing parental guidance on the marital problem of his daughter. Mr. Kolah was a very compassionate person and very often I had seen tears in his eyes when he listened to the problems of poor people.

My first experience with him was sometime in 1957, 1958 or thereabouts, when I went to hold a conference with him in a heavy labour matter. He had fully read the big bulky brief which was sent to him. He was very demanding and during the conference he asked me so many questions and clarifications that I was totally flustered. I almost had tears in my eyes, when I left his chamber. But, it proved to be my first lesson to work with a great lawyer like Mr. Kolah — to get prepared for all possible questions which may come from the senior (or even from the court). This experience helped me a lot in later years of my practice.

I had many occasions to brief Mr. Kolah and to work with him in a large number of heavy and complicated tax matters.

About his boldness in court, I would like to share one personal experience sometime in 1965 when, I was appearing with him before the Supreme Court bench headed by Justice J. C. Shah in an Income-tax appeal from the judgment of the Gujarat High Court.

Being a departmental appeal, Mr. S. T. Desai (the former Chief Justice of Gujarat High Court), who was the Counsel appearing on behalf of the department, referred to some portions of the High Court judgment and vehemently attacked its correctness. When he found that the Judges were in his favour, he concluded his arguments. Mr. Kolah was called upon to reply. In his reply he started reading the High Court judgment and — rightly so — being a well considered and well reasoned judgment of the Bench consisting of Chief Justice J. M. Shelat and Justice P. N. Bhagwati.

Justice J. C. Shah — who was known to be a very firm, strict and decisive Judge — told Mr. Kolah “Mr. Kolah, we have read the judgment and Mr. Desai has also read the judgment. There is no need for you to read it again”. Mr. Kolah — without being perturbed by the firm tone of the Learned Judge and without any hesitation, but with due respect in his tone, replied firmly “My Lords, Your Lordships have read the judgment in your way and my learned friend has read it in the way it suits him. Your Lordships will now read the judgment with me in my way”. The Judges quietly allowed Mr. Kolah to read the Judgment and advance his arguments to support it while reading. Ultimately, the Judges decided the appeal in favour of our clients, the assessee. I wonder whether any other counsel appearing on behalf of the assessee could have shown the courage to withstand the Court’s desire not to allow the judgment to be read. This incident clearly demonstrates how Mr. Kolah could not be cowed down by the strongest of the Judges and ultimately got justice for the client whom he represented.

Later, I came quite close to him and he treated me like one of his own kin. Whenever I did any of his personal work, he did not call me nor liked me to go to his chamber and would insist on coming to my office reasoning that for his personal work it was his duty to do so. I can never forget the kindness — only a great human being can do so.

I would like to share with the readers one more interesting incident. It was known that Mr. Kolah did not like to have a herd of juniors like other Counsel. At that time, he had only two juniors, Mr. Ramaswamy who mainly assisted him in labour and industrial matters and Mr. Dilip Dwarkadas, who was doing tax work. Sometime in early sixties I was surprised to see a new addition of a young man sitting in Mr. Kolah’s chamber and quietly doing his work. After sometime when we had occasion to talk about the new junior, Mr. Kolah — who normally was not one who would shower praises for any one — said,

“He will be another Palkhivala”. We all know who that junior was and we all know how prophetic the words have proved. You all must have guessed that the concerned junior was none other than Mr. Soli Dastur.

Apart from other things, he always took personal interest in me. In my career I have found very few people showing deep personal concern and affection towards me. I am grateful to God for having such good fortune to be associated with such good lawyer and very human individual who became my well wisher.

Mr. N. A. Palkhivala – The saviour of Indian Democracy

Whenever anyone is asked to write about Mr. Palkhivala (Nani, as he was popularly known) one would start thinking of the appropriate phrases or adjectives, one would use to describe him. What can one say? A great

lawyer, an eminent jurist, an outstanding personality, a brilliant scholar, a great philanthropist, an internationally recognised constitutional expert, a master in advocacy, one who contributed greatly to the development of constitutional law, the saviour of our democracy, an outstanding orator, a person bestowed with photographic memory, a highly successful diplomat and — above all — a great human being with kindness and affection in his heart. In my humble view, even these words fail to give a complete picture of what Mr. Palkhivala was. When one thinks of a great personality like Mr. Palkhivala, one runs out of epithets.

It is difficult to highlight any particular aspect of the life of a person like Nani who had already become a legend in his own lifetime. It is equally difficult to say something new about a person like Nani whose life, career and achievements have been in the public domain and public property for several decades.

As a lawyer I feel that the greatest contribution Mr. Palkhivala made to the country and to us Indians is his continuous endeavours to uphold the Constitutional Law. He dominated every leading constitutional case in the Supreme Court for over two decades in the sixties and the seventies. The case of Keshavananda Bharati must be considered to be his most glorious achievement in the Constitutional History of India, when he succeeded before a thirteen judge bench of the Supreme Court to uphold and protect the basic structure of the Indian Constitution. The judgment in that case has saved the citizens of the country from the machinations of politicians who seek to tinker with the basic tenets of our Constitution.

In the Court of Law, Mr. Palkhivala was a great lawyer. For sheer advocacy he was unsurpassable, his clarity of thoughts coupled with precision and elegance of expression, impassioned plea for the cause he expounded, excellent court craft and ability to think on his legs, rendered him an irresistible force. He had a photographic memory. He was truly a multi-faceted personality. He served the country in various capacities, as an Ambassador to USA and as a lawyer arguing the country's case before International Judicial Fora. His budget speeches in Mumbai year after year drew huge crowds and whatever he said or commented on the budget carried great weight with whoever was the Finance Minister. He was an orator par excellence not only of budgets but also on various subjects. He authored great books like "We the People" and "We the Nation". The book he wrote on Income Tax Law is one of the greatest treatises relating to the law and practice of income tax. He used to shut himself out completely for several weeks from all professional work, when he was giving the final touch to a new edition of the book.

I would like to share with the readers one personal experience of his dedication and commitment to protect our democracy.

I was fortunate to be a part of the team of lawyers who assisted Mr. Palkhivala in the case of Keshavananda Bharati before the Supreme Court. He had taken up the case as a crusade to fight for and protect the basic structure of the Constitution. I have never seen any lawyer who would expound any cause with such dedication and commitment as Nani did in that case. The case went on before the court for a number of weeks. On most of the days one would see Nani working on the case for almost 18 hours a day, including the time spent in court. Just to illustrate, on one occasion after the court rose for the day, he asked some of the members of the team to look up one particular point and instructed that the note prepared out of the research with the supporting court cases should be placed outside his hotel room at whatever time it was ready. The note and the supporting authorities were placed outside the room a little after midnight. One of the members of the team was assigned a duty to see Nani at 6 a.m. every morning, when he was having his tea. When the concerned member saw Nani at 6 O'Clock in the morning, he had fully considered the note and the authorities and instructed our colleague as to which of the books and authorities he would like to use in the court on the day.

When the Court finally decided the case and accepted that the basic structure of the Constitution cannot be amended by the Parliament, our democracy was saved. One has just to imagine how tough the fight must have been in court when Nani was opposed by some of legal luminaries of the country under the leadership of the Constitution expert like Mr. H. M. Seervai, the then Advocate General of the Maharashtra, who represented the Union of India along with a big battery of lawyers including the then Attorney General Mr. Niren De, the then Solicitor General Mr. Lal Narain Sinha, the Advocate Generals of various States and other Senior Advocates representing the States and supporting the Union of India.

One not very well known, but what in my view can rank as one of his greatest contributions as a saviour of Indian democracy is what Nani achieved after the success in Keshavananda Bharati's case. The Supreme Court decision in that case was not liked by the then ruling party whose attempts to make drastic amendments in the Constitution were put to an end. Therefore, the then Attorney General requested the Chief Justice India to constitute another 13 judge Bench to review the judgment in the Keshavananda Bharati case. The Chief Justice Mr. A. N. Ray accepted the request and constituted another 13 judge bench for the purpose of reconsideration of the judgment in Keshavananda Bharati case. It was obvious that this was being done deliberately with a view to reverse the earlier judgment for obvious political reasons. Palkhivala appeared before the Court seeking cancellation of the Constitution of 13 judge bench by the Chief Justice. The advocacy and eloquence of Palkhivala was of unparalleled merit in history.

After hearing the arguments of Palkhivala, the Chief Justice of India found that all his colleagues on the bench were inclined to accept the arguments of Palkhivala and he had no alternative than to dissolve the bench.

Justice H. R. Khanna in his memoirs refers to the arguments of Palkhivala by the words, "the height of eloquence to which Palkhivala rose that day has seldom been equalled and has never been surpassed in the history of the Supreme Court". The next day, Chief Justice unceremoniously dissolved the bench — as unceremoniously as it was previously constituted, and thus ended an inglorious chapter in India's constitutional history which you won't find mention of in any book; since there was no judgment, no order.

Sometime in 1965 one senior member of the Income Tax Appellate Tribunal ("ITAT") suggested to Mr. Y. P. Trivedi and me that there was a need to form an association of the Tribunal Bar and that the Bar should have good library, adding that he had given a suggestion to some senior members of the tax bar, but they did not have time. Y. P. and I took the initiative and knowing that the only person who could be the President of such an association being Mr. Palkhivala, we approached him with the idea. He not only welcomed the proposal and immediately agreed to be the President but also offered to approve the draft Rules and Regulations when prepared. In fact, he spent considerable time to help us finalise the Rules and Regulations and that is how the present ITAT Bar Association was formed. Mr. Palkhivala continued to be the President of the Association till his death and always took very active interest. Y. P. and I almost became self appointed Joint Hon. Secretaries, which we continued till 1979 when both of us were kicked up to be the Vice Presidents. During my tenure firstly as the Hon. Secretary and later as the Vice President of the Association, in spite of his very busy schedule Mr. Palkhivala always made himself available to guide us on all issues and to spare time to participate in all the activities of the Association.

Nani was active in public life. He was ahead of time, when he openly criticised the Government policies and advocated the need of liberalisation at a time of rigid state control. Nani Palkhivala was a great philanthropist. During his lifetime Nani made munificent donations to various charities and even after death a major part of his estate has been given to charity.

The President had conferred upon Mr. Palkhivala the national honour of Padma Vibhushan in 1998. If there is one Indian who deserves to be conferred Bharat Ratna, it is Nani Palkhivala.



A “Threebute” to Stalwarts



Jal Dastur

Chartered Accountant

1. It is, indeed, a happy thought, on the part of the Federation, to bring out this special issue. The choice of the stalwarts, to whom it is dedicated, is flawless and beyond reproach. I shall now pay my humble homage to the 3 departed souls, in the alphabetic order of their respective forenames. Since there are three of them, the tribute will really be a “threebute”!
2. Mr. Nani Palkhivala, apart from being an outstanding lawyer, was a master of English prose (though without, in the process, letting his writing become prosaic!). His felicitous use, of words, was such as to make an abiding appeal to the listener. What came from his head made an immediate impact on one’s heart. I shall give just one example in this regard. Many years ago, the State Government of the day, wanted to put the statutory seal on its ill-founded mind-set that children should only go to neighbourhood schools. The idea may have been well-intentioned, because the proximity of location is an undeniable advantage, as it saves both time and energy; and, as my father used to observe, with typical insight, a student’s time is the most precious of all, because he or she need every minute to prepare for tests and examinations. Going to a far-away school would, it is self-evident, take a heavy toll of the child’s scarce time-resources. Even so, it must be borne in mind that life is an equation, which requires everything in it, to be assessed relatively — and accordingly, against the extra expenditure of time, we must look at and set off the quality of the education. One may then find, on balance, that the plus points of a distant school outweigh the inevitable time-loss. This, moreover, is a purely private decision, which only the child’s parents can take, because they would undoubtedly know the child’s interests best (the child itself being clearly not mature enough for this task). The Government, on the other hand, wanted to come between the parents and the child and to usurp this role. Such a thing could have been understood, in an authoritarian regime, but no one would ever imagine that it would be sought to be imposed in a large and vibrant democracy like ours.
3. The controversy went to court and aroused much public concern, being reported, in the Press, at great length. I remember reading the reports every morning with avid interest. As would be expected, Mr. Palkhivala presented the case, with all his usual skill, and was, as was only to be expected, listened to with rapt attention by the Judges. Towards the end, he propounded a philosophic proposition which has made an enduring and indelible impression on my mental landscape. After exposing the inherent defects in the proposed scheme, he projected the idea that, in any event, this was a field which the Government was not competent to enter, because, quite apart from anything else, it had no business to poke its nose in this essentially personal area, the decision wherein should be left to the concerned family. Though the proposition was unexceptionable, what was far more exciting was the eloquent way in which he portrayed it. He merely said, with deadly and devastating accuracy:

“It is the right of a citizen, in a democracy, to go wrong, in liberty, rather than go right, in chains.”!

With one power-packed punch (the alliteration is incidental and not intended!), of a mere 21 words, he unobtrusively managed to demolish the whole fabric of the opposition’s case! I am sure that this must have had a profound effect, on the judicial psyche, in decisively resolving the dispute in favour of the citizen. I subsequently learnt that this expression was not his own and that it had been

coined earlier by another renowned jurist. Nevertheless, as in all such things, the credit lay in recalling it, and putting it into commission, at the right moment of time.

4. With his mastery over words, he would, there is no doubt, have delivered many stirring and sterling Judgments, if he had chosen to ascend the Bench. As a matter of fact, he was offered a Supreme Court Judgeship, which is normally bestowed only on a sitting Judge of a High Court, without any direct recruitment from the Bar (although there is no constitutional bar against it). In his case, though, an exception was made. If he respectfully declined this almost-unique honour, it was probably because he must have thought that, by being in the Bar, he could espouse the citizen's case, which he would naturally not be able to do, with equal force, from the Bench. In this connection, it may be relevant to note that a distinguished long-serving Judge of the Bombay High Court, who adorned the post for 17 years (including 6 as the Chief Justice), once observed, in private, that, on becoming a Judge, the zest, of life, had gone. Obviously, what he meant was that he had been reduced, from the active role of a player, to the passive one of an umpire!
5. When, in the mid-seventies of the last Century, the then Indian Prime Minister was accused of an electoral malpractice, she chose none other than Mr. Palkhivala, as her Counsel, despite the fact that he had opposed and defeated the Government, in court, on various issues. At that time, there appeared to be an upsurge of popular feeling, against her, which must, no doubt, have washed off on him as well. Whatever that may be, a lawyer is only concerned with the legal merits of his client's case, regardless of the public sentiment. He, therefore, accepted the brief, because, to use his own words, he thought that his client had a good case in law. Unfortunately, during the pendency of the case, Mrs. Gandhi brazenly elected to pre-empt the issue, by retrospectively amending the law in her favour. When this happened, Mr. Palkhivala, who had, so far, restrained himself, even during the onset of the infamous Emergency, finally had no hesitation in promptly returning the brief.
6. As is well known, Mr. Palkhivala was appointed, by the ruling Janata Government, as the Indian Ambassador, to the United States, during Mr. Carter's Presidentship. Even during his short 2-year stint, in the foreign land, he made an instant name, for himself, and a doctorate was conferred, on him, by one of the U.S. Universities. Some time later, his own country woke up, and the intention, to confer a doctorate on him was mooted by the Bombay University. This, sadly enough, did not see the light of day, because of some indescribably shameful protests, which had their origin in a heart-warming incident which had occurred when Mr. Palkhivala was the Ambassador. Apparently, at one function, he lent a helping hand to the President's aged and infirm mother — to the extent that he even picked up her sandals and assisted her in putting them on. This was the sublime summit of humility and humanity. Incredibly, in India, some people heaped eternal disgrace, on themselves, by accusing him of thereby degrading his Ambassadorial position — an act, for which he should have been warmly applauded, was condemned and used, instead, to denigrate him! Happily, history has the uncanny knack of making up for its past omissions, and, in October 1997, the Bombay University finally conferred a long-overdue honorary doctorate, in law, on him.
7. Strange though it may appear, Mr. Palkhivala became a lawyer more by chance than by choice. His first preference, after doing his M. A. in English Literature, was to become a Professor in English. Unbelievably enough, the college, to which he applied, rejected his candidature! In retrospect, this was the best thing that could have happened for the country — and for us, its people (to borrow from the title of his priceless booklet "We, the People"), inasmuch as this valiant fighter, for freedom and justice, was thereby made available to the nation at large. How, otherwise, would the basic structure, of our Constitution, have been preserved from executive onslaught (if he had not been there, in court, to persuade the Judges to dismiss the then Government's draconic and dictatorial proposals to, for all purposes, abolish the fundamental rights of the citizens)?
8. I have, so far, deliberately refrained from referring to Mr. Palkhivala's stupendous doings, in the tax field, because to think of him, only (or even primarily) as a tax lawyer, would be to do him a grave injustice. While he was never found wanting, in his defence of the tax-payer, his primary service

was to the citizens of the country — whose rights and dignity he did so much to uphold. However, since this is a feature in a Tax Journal, I cannot leave the tax arena untraversed. Even more creditable, than the various glorious tax-battles that he waged, was his landmark exposition, of the Indian Income-tax Law and Practice, which has, so far, seen as many as 8 editions. In fact, when he brought out his book, there was another writer, on the subject (whose name I shall not take), who dragged him, to court, for allegedly plagiarising his work. In the course of the suit, the Judges and the opposing counsel asked Palkhivala many searching questions, which a person, who was not a master of the subject, would not have been able to answer. His replies, to the questions, were so forthright and forthcoming — without recourse to any written material or external aid — that the Bench, trying the case, had no hesitation in dismissing the plaint.

9. Apart from the legal content, of the book, what was most remarkable (and, perhaps, more valuable) was its literary style. Embellished with relevant quotations, the touch, of his pen, is such as to make it appear that the legal commentary is a novel — which, once the reader picks it up, he would find it extremely difficult to put down. Frankly, I doubt whether there is any other book on tax, in the whole world, which is written with such flair and polish. The Preface and Introduction, to his book, contain metaphorical gems of English composition. While writing this piece, I read over them, once again, and I marked some 20 passages, which could rival anything from Shakespeare, Milton or Dickens. Consider, for instance, this allegorical pearl, of great price, from the Preface to his 7th Edition:

“..... the provisions of the Income-tax Act nowadays are like a railway ticket — good only for one journey in time from 1st April of one year to 31st March of the next, and sometimes not even for the whole of that journey.”!

I was actually and actively toying with the idea of reproducing more, if not all, of these precious passages — till the unremitting constraints, of space, forced me to abandon the ambitious thought.

10. The above is regarding his written exposition of the income-tax law. Perhaps, even more significant was his oral rendition, of the same, in the form of the annual Budget speeches, made by him, which have gone down in the annals of history. This was, in a way, an even greater challenge, because he had to communicate not with a person involved in income-tax (as in the case of a reader of his book), but with the layman, who was naturally innocent of any tax-knowledge; and, as such, the matter had to be explained, to him, in the simplest manner imaginable. Starting off from a small enclosure, in a hotel, he finally spoke at the largest available venue in the city of Bombay — even which proved inadequate to seat the thirsting throng, of humanity, that flocked, to listen to him, and yet was unable to find sitting accommodation! In view of the large crowds that he attracted, other parts, of the country, also made efforts to persuade him to speak there. One of his talks was delivered in Calcutta — the home of Communist thought. Since Mr. Palkhivala believed in free enterprise, there was naturally much apprehension, in the mind of the organisers, as to how his speech would be received there. As it happens, the West Bengal Chief Minister, Mr. Jyoti Basu, allotted the largest public place, in the city, for his talk. The real and final tribute came from the fact that, when the organisation, which sponsored Mr. Palkhivala, paid the rental for the premises, the same was returned, with an appreciative observation, from the Chief Minister, that no rent would be charged, as he had profited greatly from the discourse!
11. It is common knowledge that Mr. Palkhivala's memory was legendary. He could argue the most complicated matter, with hardly any notes in front of him. In an interview that he gave 20 years ago, to "The Bombay Chartered Accountant Journal", he revealed that he had cultivated his memory, very assiduously, and had managed to acquire the power of recall. In this context, Palkhivala recounted a story told to him, by his senior and co-author, Sir Jamshedji Kanga, who himself had a phenomenal memory. It seems that Mr. Bhulabhai Desai, who — apart from being a leading politician — was an eminent lawyer, in his own right, was once taking down notes in the High

Court Library. The famous British Counsel, Inverarity, considered to be one of the greatest lawyers who have ever practised in India, was passing by, and, picking up the sheets of paper on which Bhulabhai was writing, he advised simply:

"You must always make notes in your memory and not on paper."

Having said this, he promptly tore up the sheets! Palkhivala said that this incident made him realise that a public speech is much more effective, if notes are not used. The story goes that, in the law court, he would quote the page-number, from some authority, and, while the opposing Advocate was manfully struggling to locate the page, Palkhivala himself would rattle off the relevant passage from his memory!

12. Despite his fabulous achievements, Palkhivala was ever the monument of modesty and the soul of self-effacement. He was totally devoted, to his parents and was always at pains to assert (often with tears in his eyes) that they had, by their character and personal example, showed him how a human life should be lived. No wonder, then, that his *magnum opus*, on income-tax, is dedicated to the memory of his (and his co-author brother's) mother and father.
13. On going over what I have written above it is possible that a reader may get the feeling that I am a blind hero-worshipper and biased in favour of the subject of my writing. Nothing could be further from the truth, because whatever I have said represents my sincere feelings. This does not mean that he was without faults: no human being is. There are those who think that, by joining an industrial house, his professional independence was sometimes compromised. He consciously avoided politics, for this same reason, but joining industry also has similar hazards. Be that as it may, this was, when viewed in perspective, only a minor aberration.
14. I cannot fail to acknowledge, with gratitude, that, while penning the above, I have had the benefit of referring to "The Legend of Nani Palkhivala" by Mr. M. R. Pai who, by a cruel quirk of Fate, passed away, just 3 days ago.
15. Coming now to Mr. Rustom Kolah, he practised in Company Law and Labour Law, apart from Tax (both direct and indirect). He shared the signal honour, with Mr. Palkhivala, of having a Supreme Court Judgeship offered, to him, without his having ascended the High Court Bench. He, too, declined the same, since he had to answer the call of the Bar. Incidentally (though this is outside the personalised scope of this tribute), H. M. Seervai was another pre-eminent Counsel, who, when he was the Advocate General of Maharashtra, was offered a rare honour — in his case, the Attorney-Generalship of the country, which he was compelled to decline, in view of his single-minded commitment to his unrivalled and definitive masterpiece on the Constitutional Law of India.
16. Kolah's prime and distinguishing quality was that he was a fierce fighter, for the right cause, never afraid to speak his mind in the plainest possible terms — without the hackneyed fear or favour. In short, he believed in calling a spade, a spade — and not (if I may be pardoned for borrowing from playing-card terminology) a club, diamond or heart! While Palkhivala was persuasive, Kolah was inclined to be aggressive. He invariably spoke the ungarnished and untarnished truth. Truth is often bitter and he had the strength and courage not to dilute it by dressing it up (and thereby whittling it down!) in sweet and beguiling words. One has the psychological fear that such an approach may not find favour with the presiding dignitary. This, I believe, is not doing justice to the Judiciary, because a fair and impartial Judge (as, it goes without saying, all Judges must be and usually are) would appreciate plain speaking, for what it is worth, without taking any offence. Again, though Kolah may sometimes have appeared to be abrupt and impulsive, he was really quite rational and level-headed and fully in control of the situation.
17. It is said that Mr. Kolah never read legislative document (whether it be the Income-tax Act or the Finance Act or anything else) in the Bill-form. This may be considered unusual, but it had intrinsic

merits, of its own because the disadvantage, of reading a Bill, is that one gets certain first-impressions, which are firmly ensconced, in the innermost recesses of one's memory, and are thereafter difficult to dislodge, even though many changes may take place in the actual enactment. When, in contrast, a person reads only the Act, he is not handicapped by this hangover of the past.

18. I was advantageously placed, to be in a position to know Mr. Sanat Mehta personally, because he taught, in the Government Law College, when I was a student there. Unhappily, and as they say, the best-laid plans, of mice and men, are apt to go astray; and I could not capitalise, on this God-given opportunity, as I did not have the good fortune of being in the division to which he lectured. Income-tax was not part of the LL.B. course, and, therefore, this was not the subject which he taught. The subject, assigned to him, was **The Indian Constitution**, and those, who had the privilege of learning at his feet, were impressed by his comprehensive mastery of the subject. The test of a good lecture, whether in a college or in the outside world, is the audience-response, and this can be gauged from the fact that his class would always be well-attended, though it was the 1st lecture, in the morning-shift, which students are normally in the undisciplined habit of "bunking"! Of course, in the courts, he imprinted his mark on Income-tax Law, and Mr. Palkhivala himself has acknowledged that he made several perceptive suggestions on going over the proofs of his book. One respect, in which Mr. Mehta scores over both Messrs. Palkhivala and Kolah, is that he has left behind someone to wear his mantle and carry on the illustrious family-legacy in law.
19. I must shamefacedly confess that I have not been able to keep the time-limit, of 30th June, suggested by the organisers, and, while tendering my heartfelt apologies for any inconvenience caused thereby, I do simultaneously beg them to be kind enough to excuse me. At the same time, I do freely concede that, for breach of this time-limit, they would be entirely entitled to peremptorily reject this article out of hand! Before leaving this topic, it behoves me to record that the delay would have been even more gross, had it not been for the usual help and co-operation cheerfully extended by my computer operator (or, maybe, I should say computer co-operator, in view of his co-operation, just referred to!).
20. Apart from the time-limit, I fear that I may have also breached the size-limit of my contribution. Though the size has not been specified, I am afraid that this seems to have gone beyond a reasonable one. In my efforts not to aggravate my misdemeanour, I have, perforce, had to cut down on what I have said about the last two stalwarts. The problem is similar to what one encounters while answering an examination-paper: one writes so much, on the first few questions, that he has necessarily to restrict himself when tackling the remaining ones. The smaller space-allocation, to the last two stalwarts, is the direct result of this compulsive circumstance. The only irrelevant difference is that, while, in the examination-hall, the dilemma is regarding the distribution of time, here, it was regarding the distribution of paper-space.
21. I shall now conclude, on a cheering note, by raising 3 equal and hearty cheers one for each of the 3 solid stalwarts. On second thoughts, I reckon that it would align better, with this closing paragraph (particularly having regard to its numerical identity), if I were, instead, to give a 21-gun salute!



The Legacy of a Legend



H. P. Ranina

Advocate, Supreme Court of India

Nani Palkhivala possessed almost every quality that a citizen of a developing democracy like India needs. He deployed those qualities with great panache and passion to serve his country. He was a professor of law, successful taxation lawyer, an authority on public finance, a powerful critic of India's socialist economy, a diplomat and above all a jurist and a champion of democratic and civil rights.

He joined the Bar in 1944, then took up professorship at the Government Law College, Bombay before being appointed Tagore Professor of Law at the Calcutta University. Meanwhile, he had established himself as a successful taxation lawyer. His work "Law and Practice of Income Tax" was universally acclaimed.

He was a critic of India's "self-defeating brand of socialism", and reprimanded governments for their failure to invest in human capital. He argued that it was as important to invest in education, nutrition and public health as in factories and industrial plants. Once he mocked the much publicised but fund-starved poverty eradication programme of Indira Gandhi, as "treating cancer with quinine".

Nani put great emphasis on human character, basic values, financial integrity and intellectual honesty. He believed that Indians should continue to uphold these qualities having regard to our civilization of more than 5,000 years. He often used to tell me, "If only we Indians had half our intelligence but twice our integrity, India would be a great power not only materially but also morally and spiritually". He was extremely disappointed that the value system of Indians has at present fallen to the lowest depth of depravity where corruption, lack of civility towards fellowmen and personal greed have spread like a cancer in Indian society.

He had great faith in the youth of India and advised them to not just crave for material advancement. While he believed that creation of wealth and achieving financial strength are important, he advised that it is infinitely better to enhance one's standard of life by spreading knowledge and wealth, than recklessly pursue the goal of improving the standard of living.

What most people do not know is that Nani was a child at heart. He loved watching animals. Whenever he visited a city and his host asked him which place he would like to visit, he would invariably say that he would like to visit the zoo; and he really enjoyed himself when he went there. The last months of his life were spent by him watching the National Geographic, Discovery and Animal Planet Channels, apart from BBC World.

When he was India's Ambassador to the U.S., I visited him in Washington. On reaching the Ambassador's house after my long trip from Bombay, he told me with joy in his voice that he had booked tickets for us to go to a circus which was performing in the neighbouring State of Maryland. I mentioned that it would take quite some time driving down, watching the circus for about four hours and returning to Washington D.C. He insisted that we should stick to the plan and I realised that he was more keen to go to the circus than I was.

I had first-hand experience of his phenomenal abilities and advocacy when I appeared as his junior in the landmark decisions in the cases of Keshavananda Bharati, Lohia Machines Ltd. (retrospective amendment of

section 80-J); and several petitions under Hotel Receipts Tax Act and Expenditure Tax Act, just to name a few.

People from every walk of life had a claim on Nani Palkhiwala. He was a versatile person with so many achievements that we are not going to come across another legend for a very, very long time. It becomes very difficult when one is trying to pay a tribute to him to decide which aspect of his character should be emphasized. But there are two aspects of Nani which I would like to touch upon.

The next quality of Nani is the incredible humility of the man which I have experienced at first-hand. When I used to sit as his junior in Bombay House, I had first-hand experience of the courtesy with which he dealt with all persons who came to meet him, right from directors to peons. Every evening around seven we used to walk down to his Chamber in the High Court Annex where we would spend two-and-a-half hours holding conferences with professionals and clients. Again, he was humble enough to see every client to the door at the end of each meeting.

Nani deprecated the tendency to accumulate wealth. He believed in the principle of Trusteeship and felt that all wealth, like knowledge, has to be shared. In these days of spiritual illiteracy and poverty of the spirit, when people find that wealth multiplies and attains nothing, when people have to deceive their souls with counterfeits after having killed the poetry of life, Nani reminded us that civilisation is an act of the spirit of man. Material progress is not to be mistaken for spiritual advancement.

Nani practised what he believed in. He strongly felt that the virtues of self-discipline, self-restraint and self-development, which are the quintessence of Indian dharma and culture, are as fully relevant today as they were at their first teaching three thousand years ago. He realised that each man has to work out his own salvation and that everyone's own spiritual experience is vital to the attainment of the ultimate state of the soul's evaluation.

He had faith in the belief that there was a certain Destiny which controlled the lives of men. It is that Destiny that ultimately decided to take him away. However, we should not grieve. In the knowledge that during our lifetime there lived a person like Nani Palkhiwala, we should rejoice that many of us were witness to a legend painting the canvas of life with master-strokes of law and literature. We should rejoice that some of us were privileged enough to experience his immeasurable warmth and kindness.

He ardently believed that work is worship. He used to repeat the lines of a poet "blessed is he who has found his work; let him ask for no other blessedness". Let us follow his precepts and principles; let us emulate his high standards of life and living. That is when his soul will rest in peace.



Nani Palkhivala

- A Legendary Lawyer and a True Humanist



Bansi S. Mehta

Chartered Accountant

To write about Nani Palkhivala in a short article is about as impossible as is observed in our Sanskrit Subhashita in which the poet describes that even with the whole earth as the writing paper, the high mountain as the writing pen and the ocean as the ink pot would be wholly inadequate to truly describe and eulogise Goddess Saraswati. It is especially difficult for me, since in my more than 40 years of close relationship, I never stopped marvelling at his numerous qualities. Truly, he was not just a lawyer par excellence: he was a supreme human being.

I, therefore, thought to myself if I could just touch upon some of the outstanding qualities of Nani by recounting the first seven letters of the alphabet, A, B, C, D, E, F and G. Again, even under a chosen alphabet, I can only touch upon a quality that is rarely seen in others. Let me be more specific. I believe that –

- A is for analysis and assimilation;
- B is for brevity;
- C is for civility;
- D is for dignity and decorum;
- E is for his erudition;
- F is for his fearlessness; and
- G is for gentleness which was ever self-effacing and generosity.

A – Analysis and assimilation

One meets many outstanding lawyers, who can analyse a given provision or situation in threadbare detail. Nani, of course, could always do that. But, more importantly, Nani was a rare lawyer, who after a detailed analysis, could assimilate all aspects to fit into a whole picture and the remarkable part of this is that he could do it in just a few minutes. He had the knack of providing his assimilation to the judiciary by resorting to *reductio ad absurdum*, in which one shows that any other contrary conclusion would be not merely not justified, but plainly laughable. I recall that he had expressed an opinion that a particular Rule of the Income-Tax Rules – Rule 19A – was not consistent with the provisions of the Income-tax Act. Merely out of curiosity, once I asked him as to why he thought so. I can never forget the reply that he gave me. He said that, suppose the Rule were to say that the paid-up capital of the company will be multiplied by the number of Directors and the value of depreciation deducted therefrom to give “capital employed”. I was dumbfounded and I told him that would not be computing the capital of the Industrial Undertaking. He smiled and told me that, that is precisely the reason why in his view Rule 19A was *ultra vires*.

B – Brevity

I have yet to see a person who can express a thought in such few – but telling-words. His written opinions on complex questions are a testimony to this quality. Let me, however, recall one personal experience. Some time in 1960-61, our Firm had a case in which a Charity Trust claimed refund of the tax deducted at source from dividends on shares that were already sold by the Trust earlier, although, in the absence of the buyer registering himself in the records of the company, the dividend had been received in the name of the Trustees of that Trust. Prior to 1960, there was no deduction of tax at source from dividend and there was a deemed credit for income tax based on “grossing up”. Under that earlier existing legal position, Courts had held that such deemed credit cannot be allowed unless the claimant is a registered shareholder. When the matter was argued before the Tribunal, Nani opened his argument before the Tribunal: “Your Honours, the law is settled that only a registered shareholder can claim the deemed credit, so that being a registered shareholder is a necessary condition. In this case, Your Honours have to decide whether it is a sufficient condition.” Needless to point out that Nani once

again used his ability to argue following the *reductio ad absurdum* principle by asking the members of the Tribunal as to who should get the credit. He rhetorically pointed out that the beneficial owner cannot claim the credit because he is not a registered shareholder; and if the registered shareholder is also to be denied the credit, would it not mean that the tax deducted would be entirely forfeited by the Revenue? Needless to point out, within less than half an hour, the matter was decided by the Tribunal accepting Nani's submission.

C – Civility

Nani's civility knew no bounds. He made no distinction between seniors and juniors or members of judiciary, who struggled to understand the issue and those who had already grasped the issue. Every time in my early thirties I had gone to his residence for a conference, Nani unfailingly came out of his home and saw me up to the lift. I remember that in 1965 when there was a curfew order following the Indo-Pak war, I had to meet him for something urgent at his residence and since the usual queue of persons waiting to meet him was not there, after we finished our work, he asked me whether he can offer me any soft drink. Not merely that, he got up and fetched the soft drink himself and poured it in glasses. If only one were to compare his civility with the bluff and bluster that we see in some of our public personalities, we can hardly believe that such a person like Nani ever existed.

D – Dignity and decorum

I have heard from some lawyers that before Nani became a "talk of the town", the standard hallmark of advocacy was to use decibels. I was told that it was Nani who, in a manner of speaking, "pioneered" the persuasive style of advocacy. I have seen on several occasions that a particular member of the judiciary could not fully grasp Nani's submission and Nani never got tired of explaining the proposition in such simple terms that it was difficult to miss the core of his submission. Even when his adversary in the Court used language which was less than persuasive, Nani merely gave a simple smile, but rarely have I ever seen him interrupting his adversary.

E – Erudition

His erudition is, of course, legendary. His ability to cite a particular situation in support of his proposition was unparalleled in known history. I remember that once in mid 60's, the Finance Minister had levied very high taxes, but concluded his budget speech by expressing a hope that the Budget would lead to economic development. Commenting on that hope, Nani quoted Dr. Samuel Johnson. Let me paraphrase what he then said: " 'Triumph of hope over experience' was the terse comment of Dr. Samuel Johnson when he was informed about the second marriage of a named person whose first marriage was not an outstanding success."

On the argument, which was then heard in 60's about egalitarianism, Nani's comment was " You cannot crown mediocrity because there is so much of it around you".

F – Fearlessness

Whilst retaining his dignity and decorum, Nani personified fearlessness. He was never afraid to take up cudgels when he thought that that is what equity and fairness demanded. I recall one example of this. Nani was arguing before a single Judge of the Bombay High Court (who was later elevated to the Supreme Court) a writ petition challenging the censorship directions that had deleted several parts of Minoo Masani's "Freedom First". Whilst Nani argued the matter insofar as the writ petition was immediately concerned, he also spoke fearlessly about the draconian measures that were adopted by the Government under a dubiously declared emergency. The Judge very mildly enquired of Nani as to whether that was relevant for the writ petition that was being heard. Nani's fearless reply was: "My Lord, this is the only place where I can say this".

His giving up the brief of the then Prime Minister soon after declaration of the emergency showed that he was not afraid of personalities, no matter who they were.

G – Gentleness and generosity

With all the achievements that Nani had at a very young age and his reputation as an outstanding lawyer of the century, he was ever so gentle. He was always touched by the concern for an underdog. His generosity knew no bounds as was exemplified by his donating all his estate for a secular philanthropic cause.

As I said at the beginning, it is impossible to capture Nani's qualities in a short article. Indeed, I believe that the comment made by Bertrand Russell after Mahatma Gandhi died would be apt. He said that future generations would scarcely believe that a person like Mahatma Gandhi ever lived in flesh and blood. That would also be true for Nani Palkhivala.



Shri Palkhivala and Mehta - Unique Combination of True Professionals



P. N. Shah

Chartered Accountant

Shri N. A. Palkhivala and Shri Sanatbhai P. Mehta, two stalwarts of the legal profession, formed a unique combination in the field of taxation. Both of them admired Chartered Accountants. They had very high opinion about the accountancy profession and were always ready to associate with any educational activity organised by Chartered Accountants. If the law permitted, their involvement with the activities of the accounting profession would have enabled the Institute of Chartered Accountants of India to award to them a life membership of the Institute.

Shri Palkhivala and Shri Mehta were stalwarts of Tax Bar. They have argued before various Tax Tribunals, High Courts and the Supreme Court in many important tax cases. Whenever they found that in a particular tax matter the lower authorities have adopted an unreasonable attitude and tax is being demanded arbitrarily, they made it a point to argue the case before higher authorities in order to get justice for the taxpayer. They would always inquire about the financial position of the client for whom they argued the matter and would not charge fees if the financial position of the client was not good. Moreover, they normally did not charge fees when the matter related to a Chartered Organization. If a case is related to a Chartered Accountant or a legal professional they would not charge fees. One example which can be cited is about levy of wealth tax on outstanding professional fees when the professional maintained accounts on cash basis. This was the case of a Chartered Accountant and the result would have affected all professionals who maintained accounts on cash basis. They argued the matter before the Special Bench at Mumbai and also before the Bombay High Court. Since the case related to a Chartered Accountant and other professionals no fees were charged.

In 1958 Shri Palkhivala started addressing public meetings every year after the Union Finance Minister presented budget to the Parliament. The main purpose was to educate the public about the implications of the budget proposals on the common man, on the economy of the country and on our international relations. His post budget public meeting was followed by a special meeting organized by the Institute of Chartered Accountants of India next day. In this meeting he used to analyze each important amendment proposed in the Finance Bill for that year. In our country all major amendments in the tax laws are made through the Finance Bill every year and this practice was criticized by him every year. After presentation of the Budget all Chartered Accountants and others in tax practice used to wait for the day on which Shri Palkhivala would give his views on the budget. Besides, Mumbai, he also visited various cities and addressed public meetings explaining his views on the budget proposals. His last budget speech was in 1994. Thereafter, due to his health problems he discontinued attending these meetings. However, due to his affection for the accounting profession he attended couple of meetings organised by the Institute to discuss the budget proposals. At one of such meetings he expressed his satisfaction about the manner in which the budget proposals were dissected and analyzed by the speaker and he appeared to be satisfied that the public education work started by him was being continued by the Institute in a very satisfactory manner.

In 1984, while addressing a post budget meeting of Chartered Accountants, Shri Palkhivala referred to one of the controversial proposals contained in the Finance Bill at great length. This proposal related to insertion of section 44AB in the Income-tax Act relating to Tax Audit. He expressed his great satisfaction that the income tax department had decided to place confidence in the profession of accountancy through this measure which was a unique provision world over. He was happy that, with this provision, it will be possible to bring discipline in the matter of maintenance of accounts in the Corporate and Non-Corporate sector and the procedure for assessments by the tax department will be simplified.

Shri Sanatbhai used to regularly address post budget public meetings organized by Bombay Chartered Accountants Society. These meetings were attended by a large number of Chartered Accountants and Tax Practitioners. He used to address similar public meetings organized by the Institute and BCA Society whenever major amendments were made in tax laws.

Both Shri Palkhivala and Shri Mehta never tolerated any provision by which the integrity of a professional was doubted. One such instance related to deduction of tax at source from fees received by professionals. The Finance (No.2) Bill, 1967, had proposed to insert a new section 194A in the Income-tax Act providing for deduction of tax at source from professional fees, commission/brokerage and interest income. The Regional Council of the Institute, with the help of Shri G. P. Kapadia drafted a detailed Memorandum objecting to the TDS provision in-so-far as it related to professional fees. Shri Palkhivala and Mehta settled the final draft of the Memorandum. They took meticulous care to see that the memorandum was printed in a proper format and sent to all members of the Parliament and other trade and professional bodies. It was only due to their efforts that the provision was dropped from the Bill. After 20 years, the Finance Bill 1987, proposed to introduce similar provision for TDS. With the help of both the Advocates, the Institute, BCA Society and other professional bodies again submitted a detailed memorandum to the Government and the proposal was dropped at that time. Again in 1994, the Government tried to enforce TDS provisions in respect of professional fees through CBDT Circular No. 681 of 8-3-1994 which directed for tax deduction at source u/s 194C. The Chamber of Income Tax Consultants, Bombay Chartered Accountants' Society and other professional associations filed a writ petition in the Bombay High Court (209 ITR 660) which was successfully argued by Shri Palkhivala and the above circular was held to be illegal. It is rather unfortunate that section 194 J was introduced providing for TDS from professional fees in spite of our protest in 1995.

As an individual both Palkhivala and Mehta always believed that the professional should have courage, integrity and humility. Even in the present environment when we are all surrounded by corrupt officials and politicians they always believed that a professional should stick to his ethical behaviour. According to them, a true professional should resist all temptations and fight the war against corruption.

In one of the interviews given to BCA Society Shri Palkhivala expressed his tremendous faith in the future of our country in these words :

"I have great faith in the future of this country, tremendous faith. I think, this country has all the potential for being one of the great nations of the world. It has got the human raw material, it has got all the intelligence, all the talents, the spirit of enterprise, everything you want. I have had the good fortune to stay abroad for some time. And I can see that the Indian can hold his head high against his counterpart anywhere in the world. In other words, we have no less of the spirit of enterprise, intelligence, skills and technological potential than other countries. But, the real problem is that we do not have the quality of administration, and the quality of Government which we need. Now, that is why, in the short term, there are bound to be problems. In fact, things may get worse before they get better. But, the long-term view of this country, which I entertain, is a very bright one. I have no doubt that by the turn of this century, given the right type of leadership; we could make this country not the fifteenth poorest in the world but perhaps put it among the fifteen most progressive countries. That would necessarily, involve moral leadership. What this country needs, I have been saying, is not political leadership, it needs moral leadership. It needs to bring out the best of our citizens. Today our leaders bring out the worst in us. We need leaders who would bring out the best in us – leaders like Mahatma Gandhi, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad, Rajaji, Jayprakash Narayan and Acharya Kripalani who were wholly dedicated to the country and were not interested in making money or grabbing or retaining political power for themselves. Unfortunately, it must be our destiny to suffer at this period of our history. But out of the suffering some good will emerge. I believe in the profound truth:– Pessimism of the intelligence Optimism of the Will."

Shri Sanatbhai was active in his professional life till his departure in March 1990. BCA Society which was dear to his heart paid following poetic tribute in the editorial of its journal which equally applies to Shri Palkhivala.

"O Eternity.....
Open thy doors and hold.....
Here comes in thy fold

A sage....
In his silent steps
was ever a gentle breeze.....

of purity
of humility
of unassuming air and flair
that only a child can bear

O profession ...
Behold a very limb of thee
Going away
For he was a temple
Where thyself was worshipped as deity
With flowers of knowledge and
Learning ever fresh

O citizen....
In dire days of fetters
On your very liberty
He had a lion's rage ...
In abject loss of values
He disquietedly wept

O law,
Thy crooked corners and crevices
He ever laughed out hilariously
He taught us how to withstand
Thy frailty, frugality,
Thy onslaughts of retrospectivity.

He left an unfathomable legacy
For us all, and that is our solace,
That will lead us to march on and on
And to even die

To preserve values he cherished
For a real professional life."

The memories of both Shri Palkhivala and Shri Mehta are fresh in the minds of all professionals. We can do no better than follow their footsteps and try to be 'true professionals' of their vision while paying our tributes to them.



A Tribute to Stalwarts of Tax Bar

Shri N.A. Palkhivala and Shri S. P. Mehta



Arvind Dalal

Chartered Accountant

I deem it a privilege to be called upon and associate myself in paying a tribute to stalwarts, Shri Nani A. Palkhivala and Shri Sanat P. Mehta.

In the early years of my practice as a Chartered Accountant in fifties and sixties of the last century, I had occasion to approach Shri Palkhivala for his opinion in the various tax matters of my client and also to brief him in the matters of appeal to the Income Tax Appellate Tribunal. The appointment for the conference was usually in the late evening as he used to work in the Chamber till late night. The case for opinion or the papers relating to appeal were read by him very fast, as his grasp of the subject of the tax matters was very quick. The opinions given by him were very precise and categorical without any ambiguity. Likewise, the settlement of the draft of the appeals to the Tribunal was very clearcut and touching upon the subject directly and effectively.

He had a phenomenal memory of the case law on the entire gamut of the subject of taxation. No wonder, the judges impressed by the depth of his knowledge and answers given by him regarding his legendary book on the Law and Practice of Income Tax, in the course of a charge brought against him regarding the originality of his writing by an Author-Lawyer in the Madras High Court, paid rich tributes to his legal acumen and deep knowledge of the subject. I had the good fortune to attend some of the landmark cases he had argued in the High Court and more importantly in the Supreme Court regarding interpretation of the Rule 19A concerning Capital Employed. It was an unforgettable experience and the simple and the lucid manner in which he expounded the law of Income Tax led people to remark that attending the proceedings in the Court was like attending a class on easy lessons in Income Tax Law.

The Judges and the members of the Tribunal held him in very high regard and it was a special event, when he appeared before them in complicated matters involving high stakes.

This phenomenal exposition of the law was reflected in his annual budget speeches and the articles he contributed to leading newspapers on the Union Budget, as well as Income Tax Amendment Bills.

He was so much over burdened with the tax practice that he did not have time to read the brief before the hearing and many a times he read the brief on his way to the Airport and yet the deft manner in which he argued the case revealed his fantastically quick grasp and unprecedented memory. Due to his vast experience of handling matters in Tribunal, High Court and Supreme Court, the depth of his representation and the skill of his arguments yielded a very high success rate and the number of landmark judgments to his credit is extraordinarily large. No wonder that it was a very rewarding experience to engage him for complicated matters arising under the tax laws and privilege to be with him when they were argued.

I have equally good impressions of my association with Shri Sanatbhai P. Mehta. Whenever I approached him for legal advice in tax matters or for entrusting an appeal to Tribunal against the Orders of lower authority, he patiently perused the Orders and other papers. Often, the angle from which he looked at a matter, was quite different from traditional view taken by us, and his knowledge of the subject was

outstanding. The degree of expert knowledge is reflected by the fact that when Shri Palkhivala was unable to take up a matter he would direct the client to Shri S. P. Mehta.

Yet, Sanatbhai was a picture of humility and modesty personified. Always clad in immaculate white Khadi clothes, he was a picture of principles and idealism worth emulating by others in the field. Regarding the matter of saving tax at any cost, he would enquire whether one could eat more than ones normal quota of 'chapaties', if the resources through tax saving were available. This went home on the assessee who was persuaded not to indulge in artificial tax planning. If somebody offered to pay his bills in cash, he would inform the party that the amount would be recorded by him by issuing a receipt for the fees in the party's name. Thus, paying the correct amount of tax, however high, was an article of faith with him, which was unshakeable.

Sanatbhai was also highly respected by the members of the Tribunal and Judges of the Court. His presentation before the Court was direct and to the point without withholding any facts and also conceding fairly to the opposite side when there was a issue in their favour.

Sanatbhai's knowledge of the subject and his memory about the case law was also very impressive and reflected in his talks on the subject of tax laws before the professional bodies.

Both Shri Palkhivala and Shri Mehta believed in putting before the Judges the correct position of facts and law. It was this approach that built up reputation of both of them as Counsels of integrity, honesty and sincerity of purpose in presentation of their case. There are many judgments under the tax laws to the credit of Sanatbhai also, indeed the contribution made by both of them in the field of legal practice in tax laws is such that it has left an indelible imprint on vast canvass of law and practice of Income Tax.



Shri Nani Palkhivala - A True Democrat



Arun Sathe

Advocate

Shri Nani Palkhivala is dead. But people of India will always remember him as a great fighter for the cause of nationalism and democracy. Mr. Palkhivala was the person, who gave the meaning to the preamble of the Constitution of India. He made realize to the people of this country the true meaning of the word "We the people of India". The concept of basic features of the Constitution, rule of law, were made understood to the common people of India by Mr. Palkhivala. In the true sense of the term, he was a Democrat and a Nationalist to the core.

I came in contact with this great man sometime in 1972 when I was asked by RSS leader, Shri Moropant Pingle to look after the Income Tax problems and harassment faced by the RSS during those days. This was a period that Mrs. Indira Gandhi had started initiating I.T proceedings against RSS. This was also a period when RSS was seriously thinking of amending its constitution according to the need of the times. Many experts belonging to RSS from various parts of the country were holding meetings and were trying to codify certain terms. During one of the meetings, I realized that late Shri Baburao Bhide, well-known Lawyer from Pune and the Maharashtra Pradesh, in-charge of the RSS would be a key person without whose consent the amendment cannot be carried out to the RSS constitution. After the discussions, in one such meetings, it was decided that Mr. Palkhivala should be contacted and the matter should be discussed with him. I arranged a meeting at Bombay House wherein these experts of RSS as well as Baburao Bhide were present. The discussion went on. Mr. Bhide was not very much satisfied with the definition of the word "Shakha". Mr. Palkhivala called his Steno and dictated the meaning of "Shakha" and I still remember that Mr. Bhide immediately said this is a right definition and there was no further discussion on the subject. Necessary amendments were ultimately carried out subsequently during the Delegate's meeting of the RSS.

Sometime in 1973, Mrs. Indira Gandhi superseded three Judges of the Supreme Court, viz., Justice Shelat, Justice Hegde and Justice Khanna and Justice A. N. Ray was appointed Chief Justice of India. Some of us decided to hold a public meeting to protest Mrs. Gandhi's action since it was a direct attack on independence of judiciary. Being one of the conveners of the said meeting, I went to Mr. Palkhivala and requested him to participate in the said protest meeting. He readily agreed. It was a big public meeting in Bombay, which was presided over by Justice late M. C. Chagla and said meeting was addressed by former Chief Justice of India, Justice J. C. Shah, late Sanat Mehta and Mr. Palkhivala. Justice Shelat was also one of the participants in the said meeting. It was a beginning of fight for democracy in the decade of 70's. Then came the "Emergency". On 26th of June, Mrs. Gandhi declared "Emergency" and arrested many all over the country. To the astonishment of many, Mr. Palkhivala had been to Supreme Court to present Mrs. Gandhi's case on 25th June. On 26th afternoon, I was sitting at Hindustan Samachar's office and Mr. Vasantryo Deshpande of the said news agency suggested to me to find out from Mr. Palkhivala the happenings in Delhi since he had returned from Delhi on 25th night. I rang him up and he immediately called me to his office at Bombay House and before I could talk to him anything, he gave me a copy of the telegram which he had sent to Shri H. R. Gokhale, then Law Minister of India. The contents of the telegram as I remember, were as under:

"Morning measures taken by the Prime Minister are contrary to my life-long convictions and Prime Minister may be informed that I withdraw as her Counsel in the election matter".

There was nothing for me to discuss further with Mr. Palkhivala on the said day. This was a great protest against the imposition of Emergency in the country by Mrs. Gandhi. During Emergency, whenever I approached him, he helped us a lot. After Emergency was lifted, a felicitation programme for the then RSS Chief, Shri Balasaheb Deoras was organized at Shivaji Park, Bombay. Justice M. C. Chagla and Mr. Nani Palkhivala were the main speakers at the said gathering. I recollect that during Janata Party regime at the

Centre, RSS leader, Mr. Moropant Pingle came to me and told that the IT harassment is still on as far as RSS is concerned. I spoke to Mr. Palkhivala about it. He immediately asked me to accompany him to Delhi and we met Shri H. M. Patel, then Finance Minister and from there we went to call on Shri O. V. Kuruvila, then Chairman of the CBDT at North Block and harassment part was over thereafter. He argued the RSS case in the Income Tax Appellate Tribunal without charging any fees.

I have seen Mr. Palkhivala arguing many matters in the Income Tax Appellate Tribunal as well as in the High Court which are now considered to be leading judgments. One such matter was Dilipkumar Rai's who was a follower of Arobindo and was giving discourses on "Adyatma". The issue involved was whether the offerings received by Mr. Dilipkumar Rai were taxable income. Mr. Palkhivala was at his best. One could understand his in depth study and philosophical touch which he was giving while arguing the matter. In the RSS matter also, he put his best foot forward. Another matter, which I remember and which was argued by him for one of the Members of the Parliament, who was a practising Chartered Accountant. The point involved in the matter was whether the emoluments received by a Member of the Parliament could be treated as a part of his professional income. I still remember the lucidity with which Mr. Palkhivala argued the matter. There were many aspects of his life for young professionals to follow, not only his knowledge, but also convictions.

Mr. Palkhivala was a great admirer of Shri A. B. Vajpayee. He had great expectations from the then RSS and the Jana Sangh. He used to say so in clear terms whenever occasion arose.

I remember one instance, which I cannot resist mentioning here. In the 1996 General Election, BJP emerged in the Lok Sabha as the single largest group and Shri A. B. Vajpayee was elected as its Leader. Then President, Shri Shankar Dayal Sharma was hesitant to invite Shri Vajpayee to form the Government. During that period, somebody suggested to me to talk to Mr. Palkhivala. Accordingly, I called on him and asked his opinion. In no uncertain terms he said that Shri Vajpayee should be invited to form the Government and if necessary he is prepared to talk to the President and also take a public stand on the subject. I conveyed this to Shri Atalji as well as Shri Advaniji and told them to speak to Mr. Palkhivala on the subject. Mr. Palkhivala issued a public statement expressing his opinion. The President of India invited Mr. Vajpayee to form the Government.

The Government might have survived for 13 days, but as we know today, a beginning had started then. Mr. Palkhivala was not in good health for the last 3-4 years. Unfortunately, this Government could not make use of his talents because of his ill health. A true Advocate in defence of Democracy and Nationalism is no more. His arguments whether in Bank nationalization case or Keshavananda Bharati's case or in Meenakshi Mill's case will be remembered by all those who believe in rule of law and democracy. His work will inspire for many generations to emulate and take the cause of democracy and nationalism to greater heights. I pay my respect and humble tributes to this great soul.

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Shri Sanat Mehta - A Pragmatist



Arun Sathe

Advocate

I passed my commerce graduation from Bombay University in the year 1960 and was doing my post-graduation as well as law course immediately thereafter. After completing my graduation, I joined a leading Income Tax Practitioner, who had a very large practice in Bombay as well as in Thane. That is how I was introduced to Tax Laws. I was doing my post-graduation in law from Bombay University at that time only.

After completion of my education, even though I got enrolled as a Lawyer, I decided to devote my time to RSS work and went to Eastern Sector of India. My headquarters were in Calcutta. During that time, I have become friendly with Mr. Prafulla Goradia, who is now a BJP activist and ex-member of the Rajya Sabha. In the year 1972, I decided to settle down in Bombay and start my legal practice. Mr. Goradia, who was my friend wrote me a letter saying that by sitting in Calcutta, I may not be able to do much for you except introducing you to a leading Tax Lawyer of Bombay, one Mr. Sanat Mehta. That is how I was introduced to late Shri Sanatbhai. During my first meeting itself, he readily agreed to give me the guidance and asked me to come to Income Tax Appellate Tribunal everyday morning. Since IT was not a new subject to me, because of my little earlier background with a Tax Practitioner, I decided to do specialization in IT and started going to IT Appellate Tribunal. Shri Sanatbhai was a leading Tax Counsel of Bombay in those days and I was in need of a Guru, I got one. I used to watch and listen to his arguments every day morning on various tax matters. His arguments used to be very brief, but very much penetrative.

At the same time, as I have stated in the late Palkhivala article, I was asked by the RSS authorities to look after Income Tax problems of the RSS. Shri Sanatbhai had a very good rapport with the late Palkhivala and I decided to rope in Shri S. P. Mehta in the RSS matter. Shri Sanatbhai readily agreed and whenever required he used to join the conference with the late Shri Palkhivala in RSS Income Tax matters. He appeared in Income Tax Appellate Tribunal along with Shri Palkhivala. Like the late Shri Palkhivala, late Shri Sanatbhai also never charged a single rupee for the RSS matter. Many people may not be aware of this aspect. People were astonished to see him as one of the speakers in a then political/public gathering at Sunderbhai Hall in Bombay when a meeting was organized to protest against the supersession of senior most Supreme Court Judges while appointing the Chief Justice of India.

Late Shri S. P. Mehta was one of the main speakers along with the late Justice M. C. Chagla and late Justice J. C. Shah and late Shri Palkhivala. People of Bombay, particularly of the profession are not aware of this facet of his life. He was not just a Lawyer, but was a good human being with certain commitments. He was equally practical and a gentleman to the core.

I remember an incident when BJP nominated me as a candidate for Parliamentary election in 1989 from Bombay North West Constituency against Shri Sunil Dutt. As I remember, those were the Dipawali days. Before filing my nomination, I decided to take the blessings from the late Shri Palkhivala and Shri Sanat Mehta. It was a Bhaubhij day. In the evening, I went to his residence at Churchgate and I told him the purpose for which I have come to him. He gave me Rs. 1.25 which he had received from his sister on that day according to Gujarathi traditions and gave me his blessings. For me it was a big amount since it was given to me with full love and affection for a cause for which I was fighting in the Parliamentary election. Late Shri Palkhivala and Shri Sanatbhai and many others publicly supported my candidature by appealing to the people of the constituency to vote in favour of me.

As a Lawyer, I have seen him arguing number of matters in IT Appellate Tribunal as well as in the High Court of Bombay. I had an opportunity also to appear along with him in some of the matters. Shri Sanatbhai once told me that a Tax Lawyer should never lose sight that he has to see that the tax-payer gets the relief. Arguments should be scholarly but not create a situation that your client loses the relief. He was in that sense a pragmatic person. He will never lose his cool. There were many qualities in him which any budding Lawyer should inculcate in him. He had a clarity of thought. He will not miss a point even though his arguments used to be brief in nature. He would never make a wrong statement at the bar and would always address the court with all his humility, but with great firmness. This is a rare quality which we will never see in any lawyer. He never had any ego problems. In spite of his busy schedule, he would never say "No" to anyone for any appointment. His contribution to IT Bar is immense. He was one of the stalwarts of Bombay Tax Bar. I pay my respect to this great soul and I am sure that the coming generations of the Tax Bar will try to emulate certain qualities of this great Stalwart.

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Shri N. A. Palkhivala, Shri S. P. Mehta and Shri R. J. Kolah – A Tribute



R. V. Patel

Advocate

I am asked by the President of the All India Federation of Tax Practitioners Shri K. Shivaram to write on Shri Nani Palkhivala.

To write anything on Shri Nani Palkhivala and his qualities is a very difficult task for any individual because he was like a gem having multiferous facets all luminous. He was the tallest person in the profession. Not only that he was far excellence and intelligent but his grasping power was amazing. Before you speak something he could sense what you wanted to convey. In discussion he separated chaff from the grain in a second and spoke on the substance like a computer. His oratory was boundless and engrossing. Any one who heard him fell in love with his oratory. Therefore if you heard him once you will never miss him hearing again. He was eminent jurist and a giant in the profession, still he was humble to the core.

Once I had gone to his residence for a conference and he carried a chair from the terrace and made me to sit, which could indicate how humble he was. He was kind, compassionate and believed in religion philosophically. He was a voracious reader not only of law but of literature and philosophy.

Once in the Sales Tax Tribunal he had to interpret the phrase “used in the manufacture of goods for sale” Shri Palkhivala interpreted words not only goods used in the manufacture which form part and parcel of finished product but all those that assist manufacturing process and commercially needed fall in the phrase.

Shri G. N. Joshi, another eminent advocate was on the other side. He argued how one feels intuitively with reference to the phrase and also stated that Mr. Palkhivala’s argument does not fit in English language. This statement of Mr. Joshi was noted by Mr. Palkhivala from his junior, and when his turn came to reply, all present in the hall of the Tribunal were stunned to hear Mr. Palkhivala on what is called intuition and what is the English language. He climbed to the pinnacle on the subject of Philosophy with reference to intuition and so far as English language was concerned he started with alphabets a, b, c, and explained how the English language has to be applied in interpreting the phrase spoken earlier and what it was. One felt that he was sitting in a cinema house seeing what Shri Palkhivala spoke about.

About his compassion, I would like to quote one instance. I had given a brief of small person whose assessment was to the tune of Rs. 12,000/-. Other briefs were also with him on Central Sales Tax. He preferred to argue the brief given by me. On the other side Mr. M. C. Setleward, Mr. H. M. Seervai and Mr. M. P. Amin, Advocate General of Bombay were there to argue for the opponents. We were there as youngsters and the point was whether the law enacted was valid. The Bench constituted by Late Hon. Chief Justice Mr. M. C. Chagla C. J. and Mr. Justice Tendolkar, and the hearing lasted for 3 days. The matter was lost and the cost was awarded of Rs. 3,000/-. I felt mentally disturbed as to how it would be possible for my clients to pay fees of Mr. Palkhivala. Do you know when I expressed to him my predicament what he said in reply? He told me, Mr. Patel why are you worried about my fees, I will not charge a penny and will be prepared to pay the stamp duty which the clients paid on the writ petition. This was the man who did not look to the fees but showed compassion to a small person whose brief he took for argument. The case is reported in (1956) 7 STC 675 in the matter of *Dialdas Parmanand Kripalani vs. P. S. Talwalkar and Others*.

When I started practice I had on few occasions, requested him to come to Sales Tax Tribunal where, without any ado, he argued the case showing utmost courtesy to the Bench. On one of the occasions, I had

gone to him for Sales Tax Conference. The matter was discussed and I took a strong stand about what I had felt of the matter. He felt very glad to see that I took a firm stand on the question. Thereafter he made me to sit for 15 minutes when he advised me how an advocate has to act in his conviction. He said if you are convinced of the view, put it forcefully and expound the argument with full details and facts. He further advised me that in the profession the standard should be kept very high. He said that an advocate is the officer of the court and he should uphold dignity of the profession and of the Court. An advocate should place all facts before the Court in a clean and neat manner. Any fact found should be placed as it is and it should not be tampered with to get through the matter. His advice has made my professional career upright and fruitful. I owe a great deal of gratitude to him for taking interest though I was very young and a beginner in the profession.

In 1989 I had an occasion to brief him on the Works Contract. The arguments were drawn up by me in a written statement of about 40 to 50 pages. He sat with me in economy class on way to Delhi. He went through the same and informed me that there seems to be no answer to what you have stated in the note. The Supreme Court gave notice to all the States, and practically the entire Court room was full of advocates from different States. No sooner he entered in the Court room, the person-sitting in the front line stood up and requested him to take the chair and open the arguments. That was the love and respect he received from the Bar. The advocates were from all over the country. The constitutional point was decided within half an hour after his arguments and the Court adjourned for lunch-break. In the afternoon he had gone to give a talk to Defence Academy in Delhi. When the Court assembled the Court wanted to relegate all the matters to the respective High Courts but another Senior Advocate continued on the matter and informed me that I should call Mr. Palkhivala to address the Court on the question of 46th Amendment so that the decision made by the Court of removing all the matters and sending it to the respective High Courts may not come through. Mr. Palkhivala came on the next day and he vehemently and forcefully put up the case stating that 46th Constitutional Amendment needs a decision of Supreme Court. He went on to say to the Court that it will be improper for the Supreme Court to ask people to come back after twenty years is a wrong decision. The Supreme Court should hear the matters and decide the issues on Works Contract else it will involve considerable litigation. His persuasion paid dividend and the Court invited him to argue. His exposition was brilliant short but to the point. We have the Judgment of the Supreme Court (1989) 73 STC 370 (SC) in the matter of *Builders Association of India vs. Union of India*.

One can go on writing on him because there are occasions and circumstances in which he has played the valuable part. He was a man to whom God has given integrity in profession, intelligence, superb grasping power, absorbing oratory and utmost courtesy which have endeared him to the court and to the Bar.

One can say that the void is impossible to find a man of his eminence. He fought for Privy Purses case which were protected by Constitution of India. It was a very solemn promise. The Privy Purses did not equate with the sacrifice made by Maharajas of the State. One has to witness his oratory to understand his greatness. No sooner one speaks about Shri Nani Palkhivala, the mind can conjure up many things and makes one feel as if he is present even today. He was neither a Hindu, nor a Parsi or a Muslim he was great patriot in our Nation.

When the news of his sad demise was heard one felt as if he lost a very dear and near person. One feels whether a person of his stature will be ever found in the future in this country. The entire profession feels void. The judgments in the Income Tax Reports in which he appeared contain many Judgments which have laid down law and those Judgements have served as precedent in deciding issues even today. MAY GOD GIVE HIS SOUL ETERNAL PEACE.

SHRI S. P. MEHTA

Late Shri S. P. Mehta was a pure Gandhian, simple and erudite. What I said earlier of Shri Palkhivala apply to him because he used to follow the same principles which Shri Palkhivala adopted. I used to always say that Shri S. P. Mehta is courtesy personified. He used to wear pure Khadi throughout his life, and was modest and soft spoken. In the Income Tax profession he appeared in many cases and had good hold on law. He had large consultation practice. He appeared in Sales Tax cases too and got good judgments.

SHRI R. J. KOLAH

Late Shri R. J. Kolah was a very outspoken person and, will not gulp anything which affects his reputation. He used to hold at a time one brief, where after he never accepted another brief and awaited his turn to appear before the Court. I remember one instance. I was sitting before him when Mr. Mehta of Little & Company approached Mr. Kolah to accept a brief. He told him that I do not accept your brief because I am not an advocate of last resort.

He was humorous too. Another example which I remember is his wife used to manufacture perfume. She was not registered under the Sales Tax Act. He called me to advise her what she should do in the Sales Tax and told me that she is carrying on business without being registered. It is an offence and I should lodge a complaint so that the Government prosecutes her.

He used to appear also in Labour Law matters, and one of the judges from the Labour Court made an Order. He appeared before the Supreme Court against the Order. He said "I was here with a petition against a Farman of an emperor whose order is without jurisdiction and quite blank without any reasons. The Supreme Court respected him for his knowledge and for his frankness, admitted his petition. He appeared before our High Court in the Sales Tax matter of "Bombay Port Trust" on the question of forfeiture. He argued the matter and in a reply the Court told him to read some passage from a Judgment. He frankly replied that "I do not rely upon it. Therefore there was no point in reading it". That was the time when advocates acted very independently and fearlessly.

I have nothing further to add.



Memories of Mr. S. P. Mehta



Ajay Thakkar
Chartered Accountant

Memories, those unfaithful representers of past reality; yet the main witnesses to personal history, milestones on the road individually traversed, the pile foundations of our identity, indeed the sanity of the individual lies in the continuity of his memories. As I walk down the lane inhabited by these insubstantial shadows of the past, the path suddenly opens out to an expanse of brightness – created by vividness, vibrancy and substance; of memories well formed, of deep impressions made. As I approach the centre of this circle of clarity, a figure in white cuts loose and stands out smiling, exuding warmth – Sanat Kaka. Mr. Sanat P. Mehta, legal luminary; but to me Sanat Kaka.

There are few people who set their own benchmark and thereafter consistently raise the bar, thus becoming a benchmark for others; one such person was Sanat Kaka. One of my first memories is of Sanat Kaka and Justice J. C. Shah coming home to pick up father en route to Matheran for the first Residential Refresher Course of the Bombay Chartered Accountants' Society. I had heard a lot about Kaka from my father, who spoke very highly of him. Till that day Kaka was a blurry figure, distant, inspiring awe; awe not bred from fear but out of respect vicariously imbibed from father. When he came home that day and I was introduced to him; I saw a simple person dressed in white Khadi, wearing sandals, but what riveted my attention was his face – round with slightly protruding lips wreathed in a smile and affection dancing in his eyes. He spent the next fifteen minutes, before they left for Matheran, enquiring what I was studying, what I wanted to do in life. I was touched by his humility and concern; the awe diminished but not the respect. As I came to know him better, the respect grew unabated and so did my affection.

Each relationship is an experience, and cannot be described, for in the very attempt at description it loses its essence; so also in describing a person, we may describe the persona but will miss the soul. Therefore let me tell you of the qualities I admired in Kaka, and not disrespect his memory by trying to describe him.

The quality which had first struck me about Kaka was his humility. A humility born of deep knowledge, which recognizes the thresholds of personal ignorance. Humility not worn as a badge, but a humility nurtured to accept the limitations of personal knowledge though deep and vast. A humility bred on his innate simplicity, founded on human values, with deep roots in our culture. After father's death, each time I met Kaka he would enquire with great compassion how I was faring. In order to encourage me whenever I sought his opinion for a client, he would ask me what I thought was the position in law or the approach to the problem. I would give my views and Kaka would often endorse them to my clients in order to boost me. These acts of encouragement sometimes created piquant situations with my clients; they would chide that since I had known the answer why did we have to incur the costs of going to a Senior Counsel. Little did they know that they had experienced Kaka's unique way of expressing his terms of endearment.

Kaka had a great sense of humour, I think he like Oscar Wilde realized that life is far too important to be taken seriously. So often we rob tomorrow's memories, by today's economies. Humour teaches us to capture the present in the warmth of enjoyment.

Kaka had the gift of looking at the lighter side of life, thereby focusing on the brighter side. My remembrances of him reveal several incidents where there was always a quip on his lip. Let me share one such incident. Kaka had delivered his annual talk on the Finance Bill; under the aegis of the Bombay Chartered Accountants' Society, as usual after his talk he was surrounded by a horde of people each eager to ask him queries to relieve their doubts, so great was the pressure of the people surrounding him that Kaka could not get off the dais even after 10 minutes. Unflappable as always Kaka turned to me and announced "Ajay, I think the Society should let it be known that free advice should always be taken at

hundred per cent discount.” The crowd cleared immediately, permitting him to get off the dais. I am reminded of an old Chinese proverb “Enjoy yourself. It is later than you think..” A smile always lurked behind Kaka’s lips. Suddenly bursting forth or slowly blossoming, it was Kaka who taught me the value of a smile.

It costs nothing but creates much. It enriches those who receive without impoverishing those who give. It happens in a flash, but the memory of it sometimes lasts forever. The days that make us happy, make us wise.

I always admired Kaka’s dedication to work, it was this allegiance that had taken him to the pinnacle of his profession. I had once asked Kaka how many hours he spent in study each day in his humility he had stated not many. However when I persisted, he explained that in his younger days he had spent long hours at the altar of knowledge trying to understand, absorb and assimilate, whatever he could save he deposited and now he was happy to survive on its interest. The joy of living, I realized, comes from immersion in something - more accurately, anything – that we know to be bigger, better, more worthier and enduring than we are. Causes, ideas, people, above all continuities. Existence is a strange bargain. Life owes us little, we owe it everything. The only true happiness comes from squandering ourselves for a purpose.

Kaka was a true advocate, enshrining the principle of all advocacy that there is always another point of view, a different perspective, a contrary argument of which account should be taken before judgement is delivered. Kaka with his vast erudition of the subject had the gift of stating his arguments in a manner whereby the most abstruse and complex appeared simple and obvious. He had the knack of making the judge feel that what he was stating was in fact an expression of the judge’s own thoughts on the matter. Kaka had raised legal argument to a new art form – the clarity of his thought, the succinctness of his argument and the simplicity of his presentation rarely failed to persuade a judge to share his perspective on the case. Kaka was amongst those few great luminaries who helped to shape the Income Tax Law, by their counsel and advocacy.

There are so many things I have learnt from Kaka and an endeavouring to achieve them in a small measure, I know it is long way. The circle of brightness created by Kaka in my life, still shines in my memory. In his absence I find solace in the words of a sage “Keep your face to the sun and the shadows will fall behind.”



Shri N.A. Palkhivala and Shri S. P. Mehta



N. C. Mehta

Chartered Accountant

Founder President, AIFTP

I came in contact with Shri Nani Palkhivala through Shri S. P. Mehta. At various levels there being lot of sales tax litigation going on all throughout the country in which TISCO was involved, I was asked by him to go through the contentious issues for which I stayed at Jamshedpur for few days. After going through the detailed notes prepared about individual cases, Shri Palkhivala would advise to follow the path which was righteous and not merely lawful.

Whenever I used to enquire about his fees, while quoting his fees he would consider the weak financial position of the clients.

In one case there was heart-burning amongst members of the Sales Tax Practitioners' Association about levy of penalty by the Department on an incorrect interpretation of a provision of the Bombay Sales Tax Act. Members wanted Shri Palkhivala to argue the matter before the Bombay Sales Tax Tribunal. He accepted the request and argued the case, the Tribunal accepting the contention that penalty was not leviable in the circumstances similar to those which were stated before the Tribunal. After the matter was argued, I asked Shri Palkhivala for his fees. He enquired about the stake involved. Having been informed that the issue argued by him was a test case for the benefit of assesseees, he did not charge any fees.

He was very particular about the language spoken and written. Once he asked me as to how the word 'advisor' is being spelt, by us 'adviser' or 'advisor', though both were alright. And we fault to spell 'Palkhiwala' instead of 'Palkhivala'! Once after discussing a note, he phoned me to correct 'notwithstanding' appearing in the note to 'even if, etc.

Supreme Court judgment delivered on 16-4-1975 in the case of *Mod. Serajuddin vs. State of Orissa (1975 - 36 STC 136)* was a bolt from the blue for the export trade of the country. Along with a note from Shri Palkhivala, representation was made to the Union Government about amendment of the Central Sales Tax Act, 1956 so that exporter could purchase goods free of tax for being exported to other countries. Central Government wanted Shri Palkhivala to suggest amendment. The prepared draft was approved by Shri Palkhivala with an endorsement to the effect that the same should serve the purpose. The note was sent to the Central Government. While the language is not the same, suggestion came to be enacted as sub-section (3) of section 5 of the Central Sales Tax Act, 1956. Export trade of the country should be grateful to him.

Shri Palkhivala expressed his views about the Supreme Court judgment in Builders Association case (opinion was published in Economic Times) and considering the practical difficulties of determining taxable quantum for the levy of works contract tax he suggested to provide for compounding tax liability of the contract as at a reasonable rate, which is now being followed by the States in our country.

Shri Palkhivala was a spirit behind forming All India Federation of Tax Practitioners bringing under one umbrella all tax professionals having common objects and interest.

■ ■

Before my memories dry up



B. C. Joshi

Advocate

Past President of AIFTP

Shri Nani Palkhivala

1. The name Nani Palkhivala spelt then, as the only authoritative consultant in India for tax and also as a Constitutional Lawyer of international fame. I used to seek his opinion from time to time where I could not risk relying on myself. One day one businessman from Andhra Pradesh came and sought my advice which I gave in writing. He however stated that he would like to have darshan of Shri Nani Palkhivala and I said that he will have to pay for it. He said that he is willing to pay anything for it. I took him to Nani, showed my opinion, he wrote down below, "I agree". Normally I would have parted at that. I said to Nani that my client wants to have your darshan. Nani got up in his chair and greeted my client with smile and namaskar. My client had the satisfaction of having the darshan of a great personage.
2. Way back when I founded the Sales Tax Tribunal Bar I had some resistance from my other colleagues in STP Association. But Nani Palkhivala and Sanatbhai Mehta became our members willingly. We had occasions of social gatherings when if he could not come he used to send his wife to grace the occasion. We were happy that Mrs. Palkhivala was equally affable, jovial and had fraternal love for the Bar members.
3. Nani was for some time Government counsel. I did have some cases in the High Court where he was acting for the Government. I also used to engage him whenever my clients desired that the doyen of the profession be reserved. Nani was most polite, co-operative and displayed a deep sense of understanding the views of the other side. He had right from the beginning great religious bend. The Taviz case reported in 22 STC 219 (Bombay) was argued by him successfully. But he did not charge fees but preferred to have the Taviz from the dealer.
4. He helped me a great lot in my Bar Council Elections and he would religiously come to cast his vote and also direct his wife to vote, till he could do so. He has helped me in founding the All India Federation of Tax Practitioners and the grand success of 1974 All India Conference held under the auspices of the Chamber was much more due to his active co-operation and support.
5. Fate sometimes has queer turn. As a Bar Councillor, I had to sit as a Committee member to adjudicate upon a complaint filed against Nani by a Maharaja. Few in the Bar Council would venture to go through, a thousand page brief. I however summarised and gave a report that the complaint was not tenable. My report held the field but I do remember the politeness and humility with which he appeared before the Committee and displayed his case.
6. Later on I used to see him often for guidance, but I can never forget his smiling face and a greeting welcome. His greatest tribute is that when I think of him I see him before my eyes as he was 50 years back. It is difficult to find a substitute for the void created by his departure for the heavenly abode.

Shri S. P. Mehta

1. Sanatbhai was more of a colleague than consultant and in number of income tax matters I used to consult him. His approach to me was as a brother advocate, we being both almost of the same age. We used to seek his services for arguing sales tax cases which he did if he could spare time. His

simplicity, modesty, humility and calm and polite disposition, won respect of both the Bar and the Court. Professionally, he never used to miss a single line in the brief and his summarizing the brief displayed an industrious approach however taxing it may be.

2. He had an active role in helping the Chamber and the Sales Tax Practitioners Association. He willingly accepted invitation to take active parts in all seminars, and conferences. In fact he was inseparable part of any tax conference or seminar. He has encouraged me to establish the Tribunal Bar Association and to rejuvenate the Chamber.
3. He cherished Khaddar till last. I, Hemendra Shah and Sanatbhai usually would meet at the Court as good friends. Hemendra Shah had a routine dinner with him before the beginning of the vacation; i.e., twice a year. Both had time to chat with each other. None would believe that the sudden death of Sanatbhai seriously affected Hemendra Shah and he followed him to the other world.
4. I have seen him lecturing, I have seen him arguing, I have seen him drafting complaints but his thorough grasp of the subjects and direct approach, and simple but precise approach cannot be matched by others.
5. When I heard about his sudden departure from amongst ourselves I was really shocked and missed him a great lot. For some days I could not sleep with any peace. Then followed death of another close friend of Sanatbhai that is Hemendra Shah. That put me to days of sorrow. Time however had a healing effect. However memory does not play truant. I think of Sanatbhai I see him standing before me.

Shri R. J. Kolah

1. As regards Shri Kolah, I used to see him and greet him, that is while going down from the second floor office of the Bar Council or when I was passing by his chamber on the first floor. At times I have consulted him also. He was frank in expression while arguing and detested approach of adopting any false approbations or pscophancy for the judges. At times without mincing words, he could give incisive expression. But that was result of his self confidence and thorough grasp of law, his profound knowledge of income tax law particularly, and his strong faith that calling a spade a spade is better than pretentious exuberance of verbiology or felicity in expression. Even though he was a costly advocate he also used to take briefs where fees was not a consideration. In fact at times his drawer was displaying cheques received lying with him for days together. Money was secondary to him, faith in law, self confidence and uprightness were his sole guide.
2. He expired at a mature age but I am sure he must have breathed his last with a sense of fulfilment and satisfaction of having lived a perfect upright life.



The Inimitable Palkhivala



Sukumar Bhattacharya

Advocate

Past President of AIFTP

I had the privilege of meeting the late Nani Palkhivala on several occasions in the course of my practice in the field of income-tax. I recall with pleasure the discussions I had with him personally and I proceed to discuss some of them in the following lines.

Meeting with the great jurist had normally to be arranged through some firm of solicitors, and in the case that I am going to describe here, the solicitors were M/s. Orr, Dignam & Co. of Kolkata. The case was one concerned with the cost of loom hour by a Jute Mills Company based at Kolkata. The facts of the case were somewhat involved and the note prepared by me, running to about 30 pages, had been forwarded to the jurist at Mumbai for his perusal. He accepted the Brief and a meeting was arranged at the Great Eastern Hotel at Kolkata with him wherein a representative of the solicitors firm and myself were also present.

At the meeting Sri Palkhivala looked at the Brief for the first time, and it was done in our presence. Apparently, he had not been able to read the Brief earlier, and it was in our presence that he glanced through the thirty pages long Brief for the first time. I felt a little nervous, particularly when, I saw that he was just turning the pages, and were ready for discussions after devoting not more than five minutes' time over the contents. Then the discussions began, and I immediately found that in that short space of five minutes he had fully studied the matter and was able to refer to particular issues without looking at the Brief for a second time. I had earlier heard of gifted people having a photographic memory, but at that meeting held in the hotel, I was amazed to discover that the jurist sitting before us was such a gifted person. I was overwhelmed! Next day the case was heard, and in a very short while he finished his arguments, his opponent being the then Advocate-General of West Bengal. The judgment was delivered at the conclusion of the hearing and I came away happy that the verdict was in favour of my client on whose behalf Sri Palkhivala had argued.

The second occasion that I now refer to concerns a case of amalgamation between two large Indian Companies. Here too a voluminous Brief had been presented to him for his opinion, and myself and a representative of the Solicitors had gone to Mumbai where Sri Palkhivala had arranged a discussion. We met Sri Palkhivala at his residence at Mumbai and were told to wait as Sri Palkhivala was busy with another client. After finishing his business with that other person Sri Palkhivala came out of his chamber and requested us to accompany him in his car as he had to leave Mumbai immediately for Delhi by air. The Brief, in that instance was even more complicated than the earlier case narrated above. We had the pleasure of travelling with him from his residence to the airport in his own car, and once again I had the pleasure of hearing a gifted person possessing a photographic memory. He had not been able to go through the Brief earlier, and it was during our drive to the airport that he read through the Brief and acquainted us with his views even before we reached the airport. We needed some clarifications, and by the time we reached the airport all the questions were answered. His written opinion was received at Kolkata some time later, and it duly confirmed what he had said to us at the time of the car-ride at Mumbai.

I now write about a session at the University of Calcutta's Darbhanga Hall where he had delivered a series of lectures on being invited to do so on the evolution of the law on income-tax. If I remember correctly, there were as many as ten lectures, styled as Tagore Law Lectures. There was a sizeable crowd and I thrilled at seeing Sri Palkhivala delivering the entire series of lectures extempore without any recourse to notes during the two hours' peroration in respect of each lecture. It was highly educative and at the same time tremendously interesting. It was at these lectures that I learnt for the first time, about the existence of a tax named Window-tax prevailing for some time in England. It was indeed, a fascinating experience.

I met Sri Palkhivala several times at different airports waiting for his aircraft. He was never without some brief or other paper even when he was sitting at the airport. It was quite gratifying to me that on every such occasion he never failed to greet me in spite of his serious and onerous job of utilising the time in hand for reading his briefs.



My Tribute to the Two Stalwarts of Tax Bar



N. M. Ranka

Sr. Advocate

Past President of AIFTP

I had the proud privilege to have maiden meeting with the legal luminary late Shri Nani Palkhivala in mid 60s for consultation and conference in the matter of my client. As I reached Mumbai without prior engagement but was from Jaipur, was accommodated on the same day and was very well received. We had conference in a good atmosphere. He was all along having smile and treated very well. After consultation, I enquired of the fee. It was 30 guinea. I was surprised. But was told that one guinea is equivalent to Rs. 8/-; i.e., Rs. 240/- only. I deposited against receipt. Since then I had occasions to meet and consult many times. He developed love for me and had invited to his residence at Commonwealth and had also consultation apart from at the chamber in Mumbai High Court Annexe and at Tata House. I cherish memorable and unforgettable hospitality and excellent behaviour.

Once, when I had an appearance before the Mumbai Bench of Income-tax Appellate Tribunal, by chance on the same day he had also a matter to argue; but his matter was listed in the daily cause list after me. He politely requested me to permit him to argue earlier to me at number one as he had to go back for some other urgent matter. I still remember – I mentioned, "Seeking permission from me is not necessary – you have every right of priority over me". He was overwhelmed and expressed thanks. When the Court commenced, he made a mention that he has sought my permission, I nodded and the members permitted him to argue in priority. Some grace was maintained by Dr. L. M. Singhvi, Senior Advocate and the then President of Supreme Court Bar Association when he had the similar situation before the Rajasthan High Court. However, late Shri P. R. Mridul, Senior Advocate without seeking my prior permission, requested the High Court to permit him to argue in priority. The Hon'ble Court declined and mentioned that he should have sought my consent before making the mention. Then he looked at me. I being an old friend, stood up and accorded consent. However, the Hon'ble Court did not accept on account of his mistake of mentioning without prior consent. This shows the quality of the legal legend and the Court etiquette and respect for brotherhood.

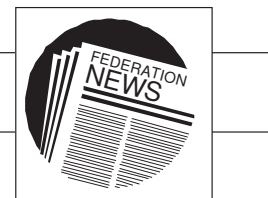
Over years we developed close friendship. When in 1984 I was President of Rajasthan Tax Consultants Association, the members desired to invite Mr. Palkhivala for a public lecture at Jaipur. I contacted on phone. He easily and readily accepted but with a rider that lecture should be organised jointly with other trade, industry and professional associations. The lecture was organised at Ravindra Manch, which was the only auditorium then existing at Jaipur, jointly by Rajasthan Tax Consultants Association, Jaipur Tax Consultants Association, Branch of the Institute, Federation of Rajasthan Trade & Industry, Jaipur Chamber of Commerce and Rotary Club. Very wide publicity was given. The capacity of the auditorium was less than 700 but I had to create capacity for more than 1,000. I had no other alternative but to permit 300 persons to sit behind the rostrum. He spoke on "India – Past, Present and Future" for more than 90 minutes. During the entire duration of his speech there was pin drop silence. He was extremely happy. It was his first public lecture at the Pink City. He visited my residence on way to the Airport. N. A. Palkhivala Felicitation Committee was constituted. I was member. At the time of felicitation speech at New Delhi he mentioned of the said lecture, enthusiasm in the audience, the arrangements and the wide coverage by media. He was a thorough "gentleman" with excellent behaviour, appreciable conduct and disciplined life. From a tax expert he became constitutional lawyer par excellence.

My acquaintance with late Shri S. P. Mehta is since 1967 when I had gone to meet for consultation at Mumbai. He was very soft spoken and thorough. Thereafter we had some joint appearances before the Settlement Commission at New Delhi as well as Mumbai. In some matters we had joint appearances before the CIT (Appeals) and Jaipur Bench of Income-tax Appellate Tribunal. Once, before the Jaipur Bench of the Tribunal, during our joint appearance, he desired me to argue and be by my side instead of arguing by himself. Once, when he had come to Jaipur for arguing a matter at Hotel Rambagh he invited me and introduced his daughter Ms. Arti Mehta now Mrs. Arti Vissanji. On my request he addressed at Rajasthan Tax Conference as early as in 1973 when I was President of Tax Consultants Association, Jaipur. I cherished his friendship.

He was so simple and homely that he attended marriage reception of my daughter Sunita, at Taj Convention Hall, Mumbai on 27th January, 1977, just on an invitation by post and deposited 'Chandla'. He also attended office opening function of my son-in-law in 1980. He was very simple, unassuming, soft spoken with smiling face and very dear to his colleagues and clients. He had a sharp memory.

I pay my tributes to the two stalwarts late Shri Nani Palkhivala and late Shri S.P. Mehta. Both were shining stars on direct tax laws and whose qualities deserve to be highlighted and adorned by the younger generation. I am extremely happy to learn that the Federation has made an appeal to the Government to establish a "Palkhivala Research Academy" on Direct Taxes in association with Federation and other professionals organisations. I am thankful to dear K. Shivaram, National President for special issue and for remembering three legends; i.e., late Shri R.J. Kolah, late Shri Nani Palkhivala and Shri S.P. Mehta.





1. Two Days Conference at Nagpur

A All India Federation of Tax Practitioners – Western Zone jointly with Vidarbha Tax Practitioners Association had organized two days Conference at Nagpur on 9th & 10th August, 2003. The theme was “Risk Management in Taxation”. Hon’ble Justice Mr. V. C. Daga, Judge Bombay High Court, inaugurated the conference. The indepth discussion on Search, Seizure and Survey has been discussed by the Faculties and Delegates.

2. Two Days Conference at Kolkata

All India Federation of Tax Practitioners – Eastern Zone has organized two days conference on the theme of “Emerging Requirement of Voluntary Tax Compliance and the role of the Tax Professionals” on 6th & 7th September, 2003, which will be inaugurated by Chief Justice of Kolkata High Court.

3. The National Executive Committee’s Meetings

4th National Executive Committee Meeting will be held on 6th September, 2003 at Kolkata.

5th National Executive Committee Meeting will be held on 27th December, 2003 at Kota

6th National Executive Committee Meeting will be held on 24th April, 2004 at Ahmedabad.

4. Annual General Meeting

Annual General Meeting will be held at Indian Museum Asutosh Birth Centenary Auditorium, 27, Jawaharlal Nehru Road, Kolkata – 700 016 on Sunday, September 7, 2003 at 8.30 a.m.

5. ITAT Bar Association’s Co-ordination Committee Meeting

ITAT Bar Association’s Co-ordination Committee Meeting is scheduled to be held on 2nd October, 2003. Members are requested to send the issues regarding ITAT for the consideration of the Co-ordination Committee.

6. Representation

Federation is in process of preparing detailed representation on pre-budget. Members may send suggestions for incorporating in the said memorandum.

7. International study tour to U.K. and Switzerland

All India Federation of Tax Practitioners – Western Zone is proposing to organize a study tour to U.K. and Switzerland from 15th May, 2004 to 26th May, 2004. Details of the programme will be sent to members in due course. Those who desire to attend the study tour are requested to inform the office of the Federation.



TAXCON-2003

The pleasant memories of the "TAXCON - THE JUBILEE CONFERENCE", held in the year 2001, are still lingering in the minds of all concerned at AIFTP, BCAS, CITC, STPAM and WIRC of ICAI. Though that conference was organised to celebrate the Jubilee Year for these associations, overwhelmed by the phenomenal response from all over India and encouraged by the grand success, it has been decided to make such conference a regular event in the calendar of all the associations. We have great pleasure in announcing second such conference, "TAXCON-2003", a joint endeavour of all the five premier associations to harness the best talent from all over India and to bring them on one stage so as to give the participants the benefit of their rich knowledge and experience. The details are:

CPE CREDIT AWAITED

Days & Dates : Thursday & Friday, 2nd and 3rd October, 2003
Time : 9.30 a.m. to 6.00 p.m. (Thursday); 9.15 a.m. to 3.30 p.m. (Friday)
Venue : Y. B. Chavan Auditorium, General Jagannath Bhosale Marg, Nariman Point, Mumbai – 400 021.
Fees : Rs. 1,500/- for Members (AIFTP, BCAS, CITC, STPAM & WIRC of ICAI)
 Rs. 2,000/- for Others
 (Inclusive of Conference material, breakfast, lunch and tea on both days)

PROGRAMME SCHEDULE

Inauguration and Key Note Address: Hon'ble Union Law Minister, Shri Arun Jaitley

Subject	Paper Writer	Rapporteur	Chairman
Business deductions – Depreciation, interest u/s. (1)(iii), bad debts, business loss & repairs	Firoze Andhyarujina <i>Sr. Advocate, Mumbai</i>	M. V. Purshottam Rao <i>C.A., Hyderabad</i>	Bansi Mehta <i>C.A., Mumbai</i>
Intricate issues u/s. 6(2) & 6A, r/w section 3 of CST Act	Nitin Shah <i>Advocate, Pune</i>	Nayan Sheth <i>Advocate, Ahmedabad</i>	B. C. Joshi <i>Advocate, Mumbai</i>
Current issues on taxation of individual, valuation of perquisites, taxation of housing societies.	Yogesh Thar <i>C.A., Mumbai</i>	Pinakin Desai <i>C.A., Mumbai</i>	N. M. Ranka <i>Sr. Advocate, Jaipur</i>
Levy of sales tax on intangible goods – Debatable issues	Janak Vaghani <i>C.A., Mumbai</i>	Rajesh Bindal <i>Advocate, Chandigarh</i>	N. C. Mehta <i>C.A., Mumbai</i>
Some issues in Capital Gains (Section 50C & Others)	Arati Vissanji <i>Advocate, Mumbai</i>	Gautam Doshi <i>C.A., Mumbai</i>	Arvind Dalal <i>C.A., Mumbai</i>

TALK ON CURRENT ISSUES

Subject	Speaker
Impact of Right to Information Act on Administration of Tax Laws	Rafiq A. Dada , <i>Sr. Advocate, Mumbai</i>
Controversial issue relating to - levy of sales tax on service contracts – Bonded Warehouse sales	Bharatji Agrawal <i>Sr. Advocate, Allahabad</i>
Tax Audit – Recent Issues	Narayan Varma , <i>C.A., Mumbai</i>

Please send your enrolment along with a cheque / demand draft of Rs. 1,500/- / Rs. 2,000/- in favour of "All India Federation of Tax Practitioners – Western Zone" to the office of the AIFTP.

Note : Only 500 participants will be enrolled on first come first served basis.

CONFERENCE COMMITTEE

Chairman: Nayan Parikh

Co-Chairman: Kishor Karia

Convenor: Vipul Joshi

Members:

Janak Raval, Keshav Bhujle, Kishor Vanjara, Nikita Badheka, Rajat Talati, Sanjeev Maheshwari, Vipul Choksi

Note: Outstation delegates may contact for accommodation and other assistance:

RECEPTION COMMITTEE

Kishor Vanjara, *Chairman*

Tel: 2202 3370/2204 1191 **Fax:** 2204 1858 **Mobile:** 9820186480 **e-mail:** k_vanjara@vsnl.net

Vipul Choksi, *Co-Chairman*

Tel.: 5633 3252/2265 8401-04 **Fax:** 2262 2000 **Mobile:** 9820145454 **e-mail:** vipul_choksi@rediffmail.com

Rajat Talati, *Convenor*

Tel.: 2266 4437/2266 4589 **Fax:** 2266 4437 **Mobile:** 9820155625 **e-mail:** talati@bom5.vsnl.net.in

ENROLMENT FORM FOR "TAXCON – 2003" ON 2ND & 3RD OCTOBER, 2003

Please find enclosed herewith a cheque/DD for Rs. 1500/- / 2000/- vide No. _____ dated _____ drawn on _____ Bank as enrolment delegate fees of Shri/ Smt./ Kum. _____ of M/s. _____ Address _____

Tel. Nos. _____ Fax No. _____ E-mail: _____

Date: _____

Signature

Reminiscences



Justice Shri U. T. Shah paying a tribute to Shri S. P. Mehta at the function of unveiling of portrait of Shri S. P. Mehta on 8th January, 1993.



Justice Shri U. T. Shah addressing at the function of unveiling of portrait of Shri S. P. Mehta on 8th January, 1993. Seen from Right to Left S/Shri Y. P. Trivedi, Hon'ble Justice D. R. Danuka, Hon'ble Justice U. T. Shah, N. A. Palkhivala, Hon'ble Justice B. P. Saraf and Sr. Vice President T. N. C. Rangarajan.



Shri N. A. Palkhivala addressing at the function of unveiling of portrait of Shri S. P. Mehta on 8th January, 1993. Seen from Right to Left S/Shri Y. P. Trivedi, Hon'ble Justice D. R. Danuka, Hon'ble Justice U. T. Shah, N. A. Palkhivala, Hon'ble Justice B. P. Saraf and Sr. Vice President T. N. C. Rangarajan.



Shri N. A. Palkhivala, Hon'ble Justice Shri U. T. Shah, Shri Sudhir J. Mehta and Shri K. Shivaram paying a tribute to Shri S. P. Mehta and Shri N. R. Mulla on the function of unveiling of portrait of Shri S. P. Mehta on 8th January, 1993.



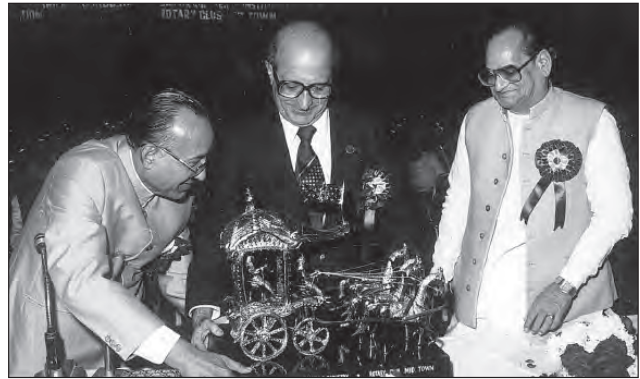
A memorable tribute to Shri R. J. Kolah at the unveiling of portrait of Shri R. J. Kolah, on 5th November, 1993.



Hon'ble Justice Mrs. Sujata Manohar, Hon'ble Justice Shri B. N. Srikrishna, Hon'ble Justice Shri D. R. Danuka and office bearers of ITAT Bar Association at the function of unveiling of portrait of Shri R. J. Kolah on 5th November, 1993.



Shri S. E. Dastur paying a tribute to Shri R. J. Kolah at the function of unveiling of portrait of Shri R. J. Kolah on 5th November, 1993.



Shri N. A. Palkhivala and Shri N. M. Ranka at the function of Rajasthan Tax Consultants Association.



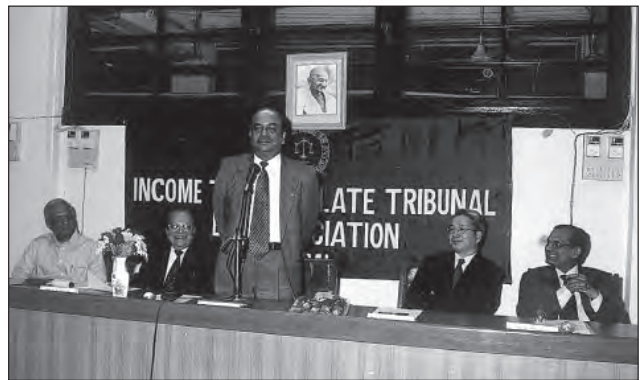
Shri S. P. Mehta and Shri N. M. Ranka at the function of Rajasthan Tax Consultants Association.



Shri S. P. Mehta and Professionals of Rajasthan.



Hon'ble Justice Shri B. P. Singh, Chief Justice of Bombay High Court, inaugurating the library of ITAT Bar Association on 9th November, 2001 which is one of the best libraries on Taxation – Contribution of the Tax Bar.



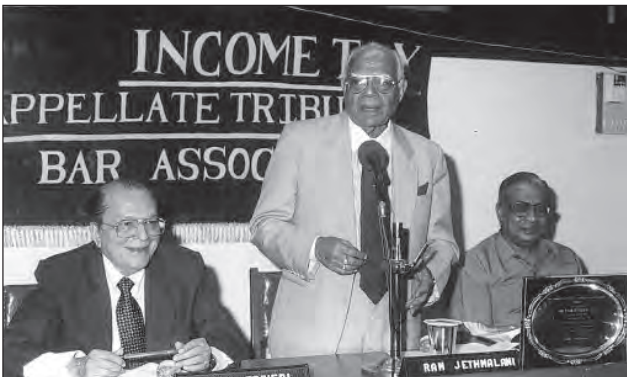
Hon'ble Justice Shri B. P. Singh, Chief Justice of Bombay High Court, addressing at the function of inauguration of the library of ITAT Bar Association on 9th November, 2001.



Hon'ble Shri Arun Jaitley, Law Minister inaugurating the five additional benches of Mumbai Tribunal on 16th February, 2001 – Contribution of the Tax Bar.



Hon'ble Shri Arun Jaitley, Law Minister addressing at the function of inauguration of five additional benches of Mumbai Tribunal on 16th February, 2001.



Shri Ram Jethmalani, Sr. Advocate, Shri Y. P. Trivedi (Right), Shri P. V. Rajagopal Rao (Left) President, ITAT, at the function of ITAT Bar Association. Spirit behind the formation of 5 additional benches of ITAT at Mumbai.



Justice J. C. Shah addressing on 12th November 1976, the foundation day of Federation. Spirit behind the formation of Federation.



Shri N. A. Palkhivala addressing on 12th November, 1976 foundation day of Federation. Spirit behind the formation of Federation.



Shri Nani Palkhivala delivering Keynote address at 1st All India Conference on Taxation on 12th November, 1976, foundation day of Federation.

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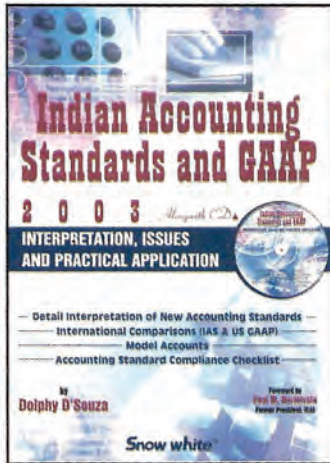
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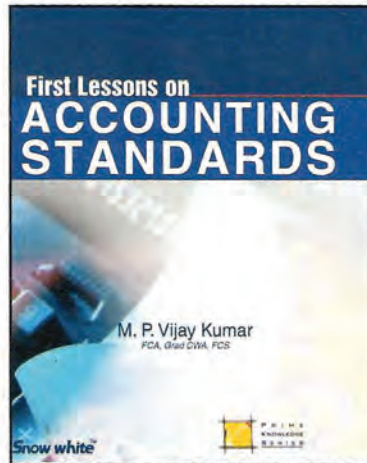
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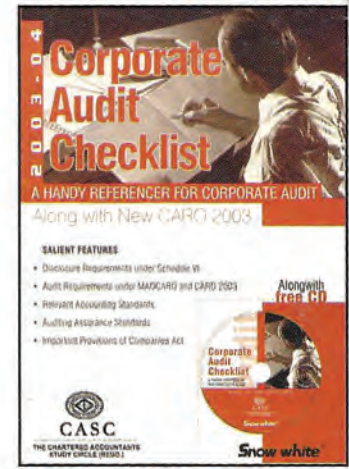
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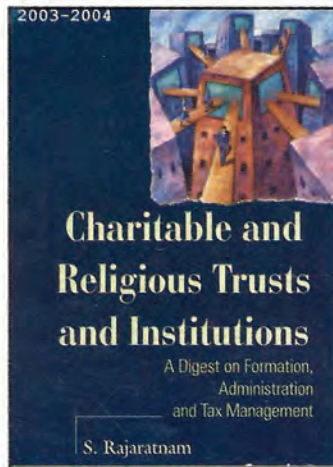
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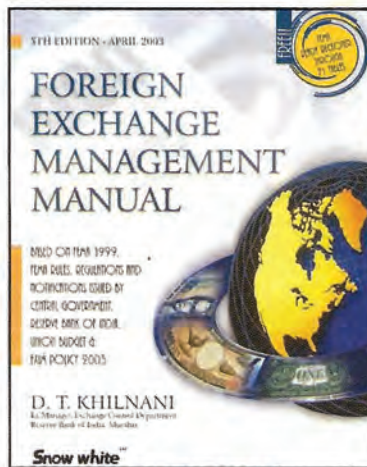
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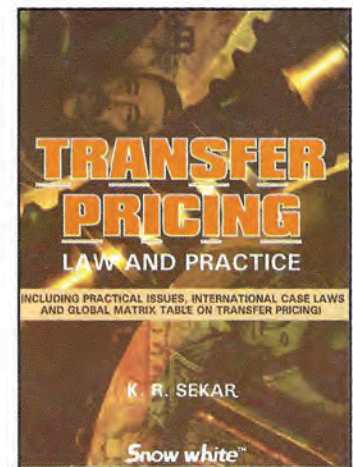
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