

MUSKAN SHOWS THE LIGHT
Sightless youngster encourages youth

INTERVIEWING DAWOOD
How a journalist missed meeting the Don

LAWLESS LAW STUDENT
Colleges for education, not violence

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Vasundhara Raje

Arvind Kejriwal

Anil Bajjal

V K Sasikala

Lalu Prasad Yadav

SPECIAL
Interview with
Colin Gonsalves
Right Livelihood
Award winner

FIGHT TO THE FINISH

Rajasthan Chief Minister Vasundhara Raje's safety valve Bill boomerangs; Delhi Chief Minister Arvind Kejriwal in last mile battle with Lieutenant-Governor in Supreme Court; and, Chief Justice of India wants a speedy trial of tainted *netas*

‘Current phase in India’s history is as dark as the Emergency’

The 65-year-old Senior Supreme Court Advocate **Colin Gonsalves** has been chosen for the prestigious 2017 Right Livelihood Award, widely known as ‘Alternative Nobel Prize’ which he will receive in Stockholm (Sweden) at a globally watched live ceremony on December 1, 2017.

Known as a fighter for the rights of the poor and the underprivileged for decades and setting many a legal precedent in the process, Gonsalves’ journey has been a fascinating one: from a civil engineer trained at the Mumbai Indian Institute of Technology in the mid-sixties to becoming the common man’s advocate. In the ‘80s, he established Human Rights Law Network (HRLN), which today has 28 offices across the country with over 200 lawyers engaged to work at the grass-roots level to aid some of the most vulnerable people in the country. **MAN MOHAN** spoke to Gonsalves at the HRLN headquarters in New Delhi. Excerpts:

On behalf of LEGAL NOTES, congratulations for winning the coveted award! Were you surprised?

Thank you. I was pleasantly surprised by the telephone call from Sweden.

How do you feel? Has your status gone up in the lawyers and judges community?

I am humbled, and I don’t take it as an enhancement of my profile.

Has any Indian won this award before you?

Some Indians have, but this time, it has come to India after a gap of 10 years. The award is a recognition of the immense work done by our (HRLN) team of NGOs and activists across the country, and we take this as a good sign of the people’s solidarity with us. For me, this is a salute to India’s social movement.

It has come at a time when it is being said by civil society that India is going through a dark period and human rights activists are under siege.

That is right. The ‘darkest period’ in India’s history continues to be the Emergency. But the current phase is equally dark – with incidents

such as the lynching of members of minority communities in the name of cow vigilantism or beef eating, and killing of human rights activists, intellectuals and journalists.

How do such global awards help in a functioning democracy which is riddled with many contradictions like human rights violations in various states?

There is support from the courts, but the government at the Centre and the authorities in the states pay no heed to them. The Central government, in fact, does not care a bit for such international awards won by Indians unless they are part of their ideology.

How does the international community look at such honours?

Internationally, for a person like me, the support for our cause becomes broader. The civil society in other countries opens up more and wants to associate with us. But at home, such awards don’t slow down the continuous threat to the lives of activists, lawyers and journalists who wish to highlight the plight of sufferers in society, whether they are people below the poverty line dying of hunger, or tribals who are being dis-

placed, or innocent men put behind the bars in the name of ‘love jihad’ or terrorism.

You are known to be a fighter for the rights of the poor and the underprivileged for decades, setting many legal precedents in the process. When did you start thinking of these people?

I was a civil engineering student at the Indian Institute of Technology (IIT), Bombay. While studying, I was drawn into an agitation caused by a massive railway strike in Bombay during the Emergency. Then I came in touch with a noted trade union leader, Datta Samant, and got into the field of law through his work with textile mill workers unions. After graduating from IIT, I commenced formal legal study from the Bombay University in 1979 and litigated my first case while still in law school on behalf of 5,000 workers locked out of their jobs.

You are fighting for the Muslim Rohingya refugees against their deportation to Myanmar? Is it a security issue as the Modi government has termed it?

I am appearing in the Supreme Court on behalf of 7,000 Rohingyas living in 23 settlements in Jammu & Kashmir for the past 10 years. There are about 40,000 Rohingyas refugees across the country. I visited Jammu to check whether there were criminal cases against any Rohingya. There were none. The Director General of Police also said that no Rohingya had been found involved in any case of terrorism or of being radicalised by Muslim fundamentalists. A similar statement was made by the state’s Chief Minister, Mehbooba Mufti, who said that “there is no evidence of their involvement in any criminal case”.

Then, on what basis has the Modi government accused the Rohingyas of being a security threat?

Union Home Minister Rajnath Singh and many others are bluffing. This merely shows the government’s double standards. Remember – during Sri Lanka’s fight against the LTTE, lakhs of Tamil refugees came to Indian shores. Most of them were LTTE supporters. But they were not declared a security threat. Rather, they were looked after well.

You have taken keen interest in legal battles ranging from the right to food to securing compensation for farmers and acid attack victims.

It is my passion that keeps me moving forward despite resistance from various quarters. These movements take a big toll on an individual’s life. For the Right to Food case, I went to the court 200 times, but not because it was a personal victory for me. I appeared for the People’s Union for Civil Liberties (PUCL)’s petition filed in 2001, which led to the apex court issuing 80 orders enforcing a midday meal for all schoolchildren. The battle was not fought by the lawyers alone. There were over 100 NGOs associated with the campaign. But the government fought us for every inch.

Malnutrition and hunger continues to be a major issue...

Nearly 70 per cent of India’s population is living below the poverty line; their livelihood depends on \$2 a day. Now it is not Africa but India that has become the ‘hunger capital of the world’.

You have made great use of Public Interest Litigation (PIL) to achieve many social reforms.

The PIL is a myth devised by the judiciary. Still, in a number of cases, remarkable re-

Q&A



Fighter extraordinary



Senior Advocate Colin Gonsalves is the Founder of the Human Rights Law Network (HRLN), India's leading public interest law group. Upon attaining his law degree in 1983, Gonsalves set up the HRLN and developed it into a national organisation.

Gonsalves transitioned his practice from the Labour Courts to the

Bombay High Court in 1984 and was designated as Senior Advocate, before moving onto the Supreme Court in 2001.

He has brought numerous precedent-setting cases to the SC and the appellate-level High Courts of various states. Amongst these cases was the "Right to Food" case, which involved

one of the greatest expansions of Constitutional rights seen by Indian society in the last several decades. He took up the cases of journalists fighting for the Majithia Wage Board award which was denied by many newspapers management.

Gonsalves has written, edited and co-edited a number of articles and books on a range of human rights law issues. He was presented with the "International Human Rights Award" by the American Bar Association in 2005. In

2010, he was conferred a Doctorate of the University, *honoris causa*, by the University of Middlesex, UK. He was also given the "Mother Teresa Memorial Award" for Social Justice "in recognition of remarkable contribution in legal services addressing human rights" in 2010.

On October 27, 2015, he was presented an award at the Centre for Reproductive Rights 2015 Gala in New York for his distinguished career as a champion for justice and women's rights.

sults have been achieved through this medium. Unfortunately, the government sees all the PILs as anti-establishment. The government becomes combative to oppose more or less every PIL. It exhausts the litigant and the lawyers both in terms of money spent and time consumed.

Isn't that strange?

Not only the authorities, but multinational companies, businessmen and whosoever feels threatened by the PIL jumps into a litigation to crush it. They find hundreds of ways to sabotage a good cause.

That is too bad, isn't it?

A PIL shows you the ugly side of the government. You see the nexus between the government, politicians, businessmen, manufacturers and fake NGOs created to win tenders for social and public welfare schemes. Despite the Right to Food, people are dying of hunger in many states. It may surprise you to know that a major contract for mid-day meal to *anganwadis* in Uttar Pradesh was allotted to late liquor baron Ponti Chadha, who had set up a food manufacturing unit for this purpose.

But there are many PILs which are frivolous or

were filed by 'insiders' to harass their departments or blackmail someone?

I agree. The PIL medium is now over-cooked, over-emphasized. But with every law comes its misuse. Take for example, the freedom of expression. The idea should be not to curtail the use but its misuse. Who hates PILs? Arguments against PILs are often by the same people who want to crush human rights. The PIL is the only instrument to correct the system. The courts have learnt to recognise the PILs involving vested interests.

Some lawyers attack PILs in courts?

Most of these advocates are on the panel of government ministries and departments. The government is the biggest litigant. In my opinion, half of government litigation is unnecessary, but it continues because of the nexus between the government officials and such lawyers. For these advocates, each case keeps their fee meter running. They are paid mind-boggling fees.

Why do you think so?

The entire working class now distrusts the judiciary. All tribal organisations are afraid of litigation as they are being displaced. Prominent judgments of the SC have created an army of slaves of

casual, contract and ad hoc workers in public and private sectors, instead of regularising them. All these people are scared of the judiciary. In their eyes, the judiciary has become a devil. About 50 per cent of the country's population lives in slums; they fear demolition of their homes. Street hawkers fear losing their business. Unorganised labourers are pushed into unemployment. Prisoners feel neglected; they live in pitiable unhygienic conditions in overcrowded cells.

You are painting a very grave situation.

We are heading towards a dangerous situation, towards fascism that crushes human rights. The judiciary must regain its popular mass base to serve every section of society in an effective manner. Unfortunately, the government treats the judiciary badly: the SC and HC judges are poorly paid. Their salaries should be, at least, 10 times more (than what it is now). This will eliminate corruption. The number of judges should be increased five times. The money spent by the government on the judiciary is 1 per cent, whereas it should be 3 per cent.

One sees ever-increasing population of lawyers graduating from colleges.

Our free legal-aid system is in a shambles. Judges don't seem to be interested in making it effective. There is no substance in its working. Of course, there is big infrastructure, there is huge money in it: seminars are organised, but there is no passion among the stakeholders. The system is devoid of heart, poor litigants have been fooled by the '*maya*' of free legal aid. It requires a total revamp; otherwise, it will die in a short while. The government and the judiciary should jointly

expand it up to the village and tribal level. It will increase job opportunities for lawyers; they won't have to beg for work standing at the entrance of the courts.

Fake encounters by the police and the army continue to be there despite courts taking a strong stand.

It continues to happen because men in uniform believe that they have a 'license to kill' — they believe that they are James Bond with the 'Right to Kill.' The orders come from the highest quarters of the government and politicians protect them. Unfortunately, the judiciary's appetite to check this menace has gone down.

We were associated with the extra-judicial executions issue on behalf of the victims' families. The SC in 2012 had ordered a probe into 98 fake encounter killings in Manipur and held that armed forces cannot use excessive force even in areas that come under the Armed Forces Special Powers Act (AFSPA). But we have noticed that, of late, the judiciary is not pro-active on this front.

Is it because of the current political situation?

May be. In Uttar Pradesh, these days, the political masters seem to have given a free hand to the police to eliminate criminals. Is this a humane way to tackle crime? In this process, political rivals will also be bumped off. It is creating tension in society, whether they are ordinary criminals, traders, social workers, RTI activists, lawyers and journalists. The nexus between the ruling class and the police is creating a new platform where they stand as a judge and a jury combined. Our society once again is inching towards an Emergency. **LN**

"It is my passion that keeps me moving forward despite resistance from various quarters. These movements take a big toll on an individual's life"

There is no rationale behind lawyers' fees – for conferencing and for each appearance in the court. Retired Judges in arbitration cases also charge huge amounts.

There is a need to set up a tribunal to set these things right and fix accountability. The justice system should be meaningful and affordable. The judiciary needs a drastic overhaul. The judiciary has lost its popular common man's base, while retaining the middle-class support.

"Nearly 70 per cent of India's population is living below the poverty line; their livelihood depends on \$2 a day. Now it is not Africa but India that has become the 'hunger capital of the world.."