

The Tails Side of the Judicial Independence – Judicial Accountability Coin

Justice S.H. Kapadia
(Chief Justice of India)

**The Ninth Nani A. Palkhivala
Memorial Lecture**

January 2012



Published by
Nani A. Palkhivala Memorial Trust

NANI A. PALKHIVALA MEMORIAL TRUST

We hardly need to introduce you to the life and work of the late Nani A. Palkhivala. He was a legend in his lifetime. An outstanding jurist, an authority on Constitutional and Taxation laws, the late Nani Palkhivala's contribution to these fields and to several others such as economics, diplomacy and philosophy, are of lasting value for the country. He was a passionate democrat and patriot, and above all, he was a great human being.

Friends and admirers of Nani Palkhivala decided to perpetuate his memory through the creation of a public charitable trust to promote and foster the causes and concerns that were close to his heart. Therefore, the Nani A. Palkhivala Memorial Trust was set up in 2004.

The main objects of the Trust are the promotion, support and advancement of the causes that Nani Palkhivala ceaselessly espoused, such as democratic institutions, personal and civil liberties and rights enshrined in the Constitution, a society governed by just, fair and equitable laws and the institutions that oversee them, the primacy of liberal economic thinking for national development and preservation of India's priceless heritage in all its aspects.

The Trust is registered under the Bombay Public Trusts Act, 1950. The Trustees are: Y.H. Malegam (Chairman), F.K. Kavarana, Banshi S. Mehta, Deepak S. Parekh, H. P. Ranina, Soli J. Sorabjee and Miss S.K. Bharucha (Member-Secretary).

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INTRODUCTION

The Nani A. Palkhivala Memorial Trust was privileged to have Justice S.H. Kapadia, Chief Justice of India, to deliver the Ninth Nani A. Palkhivala Memorial Lecture on the subject “The Tails Side of the Judicial Independence – Judicial Accountability Coin”.

In a brilliant lecture which reflects his commitment to judicial impartiality and fair play, Chief Justice Kapadia presents both sides of an important and complex subject.

The separation of powers between the Judiciary, the Legislature and the Executive is a fundamental feature of our Constitution. This separation would be meaningless if judicial independence is not adequately safeguarded. As Nani Palkhivala once said “If the whole Chapter on Fundamental Rights were to be deleted, the damage to the future of democracy and civil liberties would not be so great as would ensue from a fragrant erosion of judicial independence”.

The absolute necessity for judicial independence has often been emphasized at several previous Memorial Lectures and a wide interpretation has been given to this doctrine. Thus, Fali Nariman, when delivering the First Memorial Lecture invited attention to Article 142 of the Constitution which empowers the Supreme Court in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Emphasising the term “complete justice”, he argued that where in rare cases, a strict adherence to enacted law would lead to injustice, the Supreme Court is empowered to even go beyond the law. Similarly, in the Fifth Memorial Lecture, Soli Sorabjee argued that it is not sufficient that the Judiciary declare the law. It should also make a law where none existed and there is a crying need for it.

Chief Justice Kapadia fully endorses these submissions when he observes that statutes cannot provide solutions to every problem. According to him, judicial independence has a complex relationship with discretionary powers and Courts need these

powers to make meaningful decisions which reconcile the gap between “legislature rhetoric and reality”.

However, even while arguing in defence of judicial independence, he also highlights the need for judicial accountability. There are three aspects of this accountability to which he draws pointed attention. First, that Law cannot be divorced from morality; second, that judicial integrity is even more important than judicial independence; and lastly, that in the final analysis, the Judiciary is accountable ultimately to the people.

It is this accountability to the people which, in his opinion, distinguishes the accountability of the judiciary from the accountability of the Legislature or the Executive. However, he readily admits that the mechanisms by which this accountability is to be enforced have not been clearly defined. This has been the subject of current debate but as he cautions “the legal profession cannot standby passively while others co-opt the concept of judicial accountability and define it for their own narrow purpose”. There is therefore considerable merit in his submission that there is need for judicial reforms to build institutional capacity and increase judicial independence.

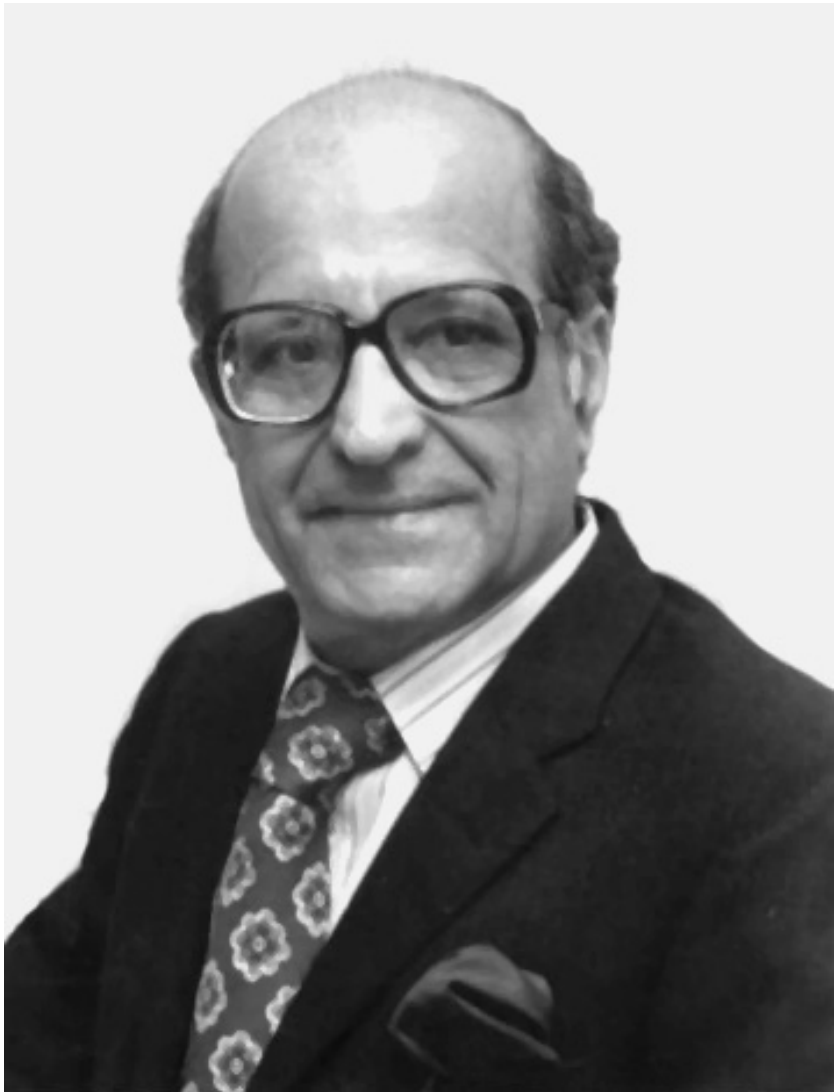
At a time when the Legislature and the Executive are under siege, the Judiciary remains the main bulwark for the protection of civil rights. The issue which Chief Justice Kapadia has raised are not merely timely but also extremely important, both for the Judiciary to understand and implement the highest standards of accountability but also for the general public to ensure that criticism of the Judiciary is not unfair or misinformed.

In giving a wide public distribution to this important lecture by Chief Justice Kapadia, the Trustees hope that the issues so ably propounded by him will generate a constructive debate and also promote a better understanding of the twin concepts of judicial independence and judicial accountability.

Y.H. Malegam
Chairman

February 6, 2012

Nani A. Palkhivala Memorial Trust



NANI A. PALKHIVALA

16th January 1920 - 11th December 2002

NANI ARDESHIR PALKHIVALA

In 1972-73 the full Bench of thirteen judges of the Supreme Court of India heard with rapt attention a handsome lawyer argue for five months before them that the Constitution of India, which guaranteed fundamental freedoms to the people, was supreme, and Parliament had no power to abridge those rights. The Judges peppered him with questions. A jam-packed Court, corridors overflowing with members of the Bar and people who had come from far-away places just to hear the lawyer argue, were thrilled to hear him quote in reply, chapter and verse from the U.S., Irish, Canadian, Australian and other democratic Constitutions of the world.

Finally came the judgment in April 1973 in *Kesavananda Bharati v. State of Kerala*, popularly known as the *Fundamental Rights case*. The historic pronouncement was that though Parliament could amend the Constitution, it had no right to alter the basic structure of it.

The doyen of Indian journalists, Durga Das, congratulated the lawyer: “You have salvaged something precious from the wreck of the Constitutional structure which politicians have razed to the ground.” This “something precious” - the sanctity of “the basic structure” of the Constitution - saved India from going down the totalitarian way during the dark days of the Emergency (1975-77) imposed by Mrs. Indira Gandhi.

Soon after the proclamation of the Emergency on 25th June 1975, the Government of India sought to get the judgment reversed in an atmosphere of covert terrorization of the judiciary, rigorous press censorship, and mass arrests without trial, so as to pave the way for the suspension of fundamental freedoms and establishment of a totalitarian state. Once again, braving the rulers’ wrath, this lawyer

came to the defence of the nameless citizen. His six-page proposition before the Supreme Court and arguments extending over two days were so convincing, that the Bench was dissolved and the Court dropped the matter altogether. Commented a Judge: "Never before in the history of the Court has there been a performance like that. With his passionate plea for human freedoms and irrefutable logic, he convinced the Court that the earlier Kesavananda Bharati case judgment should not be reversed."

This man who saved the Indian Constitution for generations unborn, was Nani Ardeshir Palkhivala. His greatness as a lawyer is summed up in the words of Justice H.R. Khanna of the Supreme Court: "If a court were to be made of the ten topmost lawyers of the world, I have no doubt that Mr. Palkhivala's name would find a prominent mention therein". The late Prime Minister, Morarji Desai, described him to Barun Gupta, the famous journalist, as "the country's finest intellectual". Rajaji described him as, "God's gift to India".

Nani A. Palkhivala, was for four decades one of the dominant figures in India's public life. An outstanding jurist, redoubtable champion of freedom and above all a great humanist.

Born on 16th January 1920, Nani Palkhivala had a brilliant academic career. He stood first class first in both his LL.B., (1943) exams and in the Advocate (Original Side) Examination of the Bombay High Court.

Nani Palkhivala was Senior Advocate, Supreme Court of India; Professor of Law at the Government Law College, Mumbai; Tagore Professor of Law at the Calcutta University; and a Member of the First and Second Law Commissions. He was elected in 1975 an Honorary Member of the Academy of Political Science, New York, in recognition of his

“outstanding public service and distinguished contribution to the advancement of political science.”

Nani Palkhivala argued a number of historical cases in the Courts of India and abroad, including the cases between India and Pakistan before the U.N. Special Tribunal in Geneva and the International Court of Justice at the Hague.

He authored a number of books including *The Law and Practice of Income-Tax*, a monumental work, which is the definitive treatise on the subject. His other books included *Taxation in India*, published by the Harvard University in the *World Tax Series*; *The Highest Taxed Nation in the World*; *Our Constitution Defaced and Defiled*; *India's Priceless Heritage*; *We, the People* and *We, the Nation*.

His expositions on the Union Budget in Mumbai and other places were immensely popular and attracted attendance in excess of 1,00,000. He eloquently espoused the cause for a more rational and equitable tax regime.

Nani Palkhivala was India's Ambassador to the U.S.A. from 1977 to 1979. He was in constant demand during this period and delivered more than 170 speeches in different cities, which included speeches in more than 50 Universities, on subjects as varied as Gandhi, the nuclear issue, human rights, India's foreign policy, civil liberties in India, Indian agriculture, apartheid and the Third World.

Two American Universities – Lawrence University, Wisconsin and Princeton University, New Jersey - bestowed honorary doctorates on him. Princeton was the first to do so on 6th June 1978. The citation reads:

“Defender of constitutional liberties, champion of human rights, he has courageously advanced his conviction that expediency in the name of progress, when 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 intelligent good humor, experience, and vision for international understanding. As we see the bonds of trust and respect grow between our two countries, Princeton takes pride in now having one of its own both in New Delhi and in Washington.”

Lawrence University honoured him with a doctorate of Laws on 28th March 1979. The citation said:

“What is human dignity? What rights are fundamental to an open society? What are the limits to political power? Ambassador Palkhivala, you, more than most, have pondered these great questions, and through your achievements have answered them.

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 organizations and multiple centres of civic power.

As past president of the Forum of Free Enterprise and as an industrialist, you have battled stifling economic controls and bureaucratic red tape. You have always believed that even in a poor and developing country, the need for bread is fully compatible with the existence of liberty...

You are also an enlightened patriot and nationalist. You have successfully defended your country’s cause in international disputes before the special tribunal of the United Nations and the World Court at the Hague.

Never more did you live your principles than during the recent 19 month ordeal which India went through in what was called 'The Emergency'. When those who had eaten of the insane root, swollen with the pride of absolute political power, threw down the gauntlet, you did not bow or flinch. Under the shadow of near tyranny, at great risk and some cost, you raised the torch of freedom..."

In 1997 Nani Palkhivala was conferred the Dadabhai Naoroji Memorial Award for advancing the interests of India by his contribution towards public education in economic affairs and Constitutional law. In 1998 he was honoured by the Government of India with PADMA VIBHUSHAN. The Mumbai University conferred upon him an honorary Degree of Doctor of Laws (LL.D.) in 1998.

Nani Palkhivala was associated with the Tata group for about four decades. He was Chairman of Tata Consultancy Services, Tata International Ltd., Tata Infotech Ltd., the A.C.C. Ltd., and Director of Tata Sons Ltd. He was President of Forum of Free Enterprise from 1968 till 2000, and Chairman of the A. D. Shroff Memorial Trust from 1967 till his death.

S. H. KAPADIA

Born on 29th September 1947. Enrolled as an Advocate on 10th September 1974. Practiced in the Bombay High Court, both on the Original Side and Appellate Side in Suits, Letters Patent Appeals, Writs, matters under Negotiable Instruments Act, Detention matters, matters under Bombay Rent Act, matters under Bombay Municipal Corporation Act including trials concerning fixation of rateable value, matters under Maharashtra Land Revenue Code including trials concerning valuation of properties for the purposes of fixation of NA assessments, challenge to the validity of notifications fixing Standard Rent, appeared in AOs, First Appeals under the BMC Act, Second Appeals as also in Land Acquisition References under the Land Acquisition Act as also in matters under Bombay Land Requisition and Acquisition Act. This is apart from the practice in Industrial Law and Services matters. Appeared as a counsel for the Department in Income-Tax matters. Appeared as a counsel for BMC in matters concerning rateable value and Octroi. Appeared as a counsel for Bharat Petroleum Corporation and Hindustan Petroleum Corporation in High Court and Supreme Court in connection with service matters including disputes concerning framing of Pension Rules. Also appeared for the Management and Unions in matters under Industrial Disputes Act, 1947 and ULP Act, 1972.

Appointed as an Additional Judge of the Bombay High Court on 8th October 1991 . Appointed as a Permanent Judge of the Bombay High Court on 23rd March 1993. Appointed as a Judge of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 on 15th October 1999. During the above period, decided important matters under PIL pertaining to CRZ, financial matters under RBI and Banking Regulation Act; matters concerning the

Constitutional validity of the 74th Amendment Act of 1992 dealing with Municipalities; matters under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976; matters concerning Mergers and Acquisitions; matters under Payment of Bonus Act; matters under Industrial Disputes Act. In addition to the above, dealt with matters under the Income Tax Act concerning Valuation of closing stocks, Accounting treatment to be given to Modvat Credit Convergence of Tax Accounting with Commercial Accounting, etc.

As a Judge presiding over the Special Court has dealt with Civil and Criminal matters including matters concerning corroborative value to be given to the Report submitted by RBI and JPC vis-a-vis Evidence Act. As a Judge of the Special Court, has also dealt with Accounts and Finances of Banks and Financial Institutions as also accounts of the Share and Stock Brokers as also matters under Contempt Courts Act where the Notified Parties had diverted their assets. As a Judge of the Special Court has framed Investment Schemes, Schemes dealing with Valuation and Disposal of Shares of Notified Parties as also Distributions of asset of the Notified Parties under the Act and declaring dividends to the Creditors of the Notified Parties.

Has keen interest in Economics, Public Finance, Theoretical Physics and Hindu and Buddhist Philosophies.

Appointed as Chief Justice of the Uttaranchal High Court on 5.8.2003. Elevated to the Bench of the Supreme Court of India on 18.12.2003.

Appointed as Chief Justice of India on 12.5.2010. Hon'ble Shri S.H. Kapadia, Chief Justice of India, due to retire on 29.09.2012 (F.N.)

The Tails Side of the Judicial Independence – Judicial Accountability Coin

by
Justice S.H. Kapadia*

I feel greatly honoured to be invited to deliver the Ninth Nani A. Palkhivala Memorial Lecture. I am sure that someone more suitable than I could have been chosen for the signal honour. I feel greatly handicapped in not being able to rise to this great occasion as my acquaintance with Nani Palkhivala is only through his writings; but my gratitude is great that I am chosen to deliver the Ninth lecture in this series. Clarity of thought, robust common sense and commitment in what he believed to be true made him achieve what he in fact did achieve. A man of sound common sense and great legal acumen, his talents were many splendors. Nani Palkhivala was an institution. All his achievements were solid because in whatever capacity he worked he left an indelible mark.

In the Unfathomable Unknown Nani was someone special, someone upon whom Providence always smiled. People welcome and appreciate talent not for sectional reasons but for excellence alone. Nani Palkhivala had these blessings of the Providence. He characterized an era. Various Judges of the Supreme Court in their autobiographies have referred to Nani's performance in

* *The author is the Hon'ble Chief Justice of India. The text is based on the Ninth Nani A. Palkhivala Memorial Lecture delivered in Mumbai on 14th January 2012 under the auspices of the Nani A. Palkhivala Memorial Trust.*

Kesavananda Bharati's case [(1973) 4 SCC 225]. Judges and Advocates who appeared with him and against him in Kesavananda Bharati's case are even today filled with admiration for the genius of the great lawyer in whom the creative spirit is revealed. He always showed respect and courtesy to the Judges. As I could gather from his writings and even from his arguments in courts and tribunals, Nani always respected his opponent(s). His greatest friend and opponent was the former Attorney General of India Shri Parasaran. What I could gather from these writings of Nani is that he was a man of conviction. He believed in Zoroastrian principles of fair play and justice. To him, these principles were sacrosanct. He not only believed in those principles but he actually implemented them in his daily life.

The remarkable thing which I notice from his arguments in constitutional matters is that his arguments were not "arguments of fear", they were "arguments of reality". His submissions in Kesavananda Bharati's case ultimately proved to be prophetic. It is said that "an idea is a greater monument than a cathedral". The doctrine of "basic structure" propounded by him in Kesavananda Bharati's case has today become an axiom. The future generation would be eternally grateful to him for making the Supreme Court accept the said doctrine, which has kept the structure of our Constitution intact, without getting dissipated. Nani was too vast and multi-faceted a personality to be pigeonholed in one category. I have gone through the previous lectures delivered by the eminent personalities in the lecture series organized by Nani A. Palkhivala Memorial Trust. They have all dealt with the legal acumen of Nani. They have all seen Nani as a lawyer par excellence, a brilliant economist and a visionary. I agree. However, above all, he was a great

human being with a sound spiritual base. He had no ill-will or jealousy. His philosophy was simple. “Believe in humanity and forget the rest”. This was the philosophy of Bertrand Russel who has been quoted by Nani in some of his writings. He believed in the revealed truth. He believed in the Unity of All Religions. He was a strong critic of intellectual dishonesty. In one of his writings titled “Unity of all Religions”, he has observed as follows:

“The quintessence of ancient Indian culture and of great religions flourishing today, can be reduced to the five immortal ideals which our rishis have been preaching for ages – Satya, Dharma, Shanti, Prem and Ahimsa. Satya, according to Nani, implied intellectual integrity, being true to one’s conscience”.

According to him, the middle path which Gautam Buddha preached is all about intellectual integrity. The word “Dharma” connotes righteousness which is the basis of Zoroastrianism. Clarity of thought is indicative in appreciation of principles underlying the value system. While analyzing Dharma, Nani has rightly observed that he had no hesitation in acknowledging the principle of “obedience to the unenforceable” – the norms of mobility and righteousness which are wholly unenforceable by law but which Dharma alone enjoins one to observe. I find this principle reiterated in number of his writings. He was a man who believed that God and Godliness are synonymous.

I intend speaking to you on the subject of judicial independence in general. You will ask me what I mean by judicial independence. Before answering this question, let me give you the source of the principle of judicial independence.

Henry II is recognized as the first English monarch to set up “a permanent court ... for the purpose of trying specific forms of action”. His judges were appointed at the pleasure of the King. If the King was not pleased with how the judge was carrying out his job, the judge could be removed from office with dispatch. They carried out their work as part of the King’s court and their activities were supervised by the King. With few exceptions, until the beginning of the 18th century, judges in England held office at the pleasure of the King and it was not uncommon for judges to be sacked by the monarch. Charles II sacked eleven judges during his reign, James II sacked twelve.

As England approached the 18th century, the struggle between King and Parliament came to a head. Parliament viewed the appointment of judges at the pleasure of the King as intolerable. How could judges oversee the abuse by the King of his powers if the King himself could shut the judges down?

Parliament abolished appointments of judges at pleasure by the Act of Settlement, 1701 and a new principle was substituted in its place. The Act guaranteed tenure for judges who could be removed only “upon the address of both Houses of Parliament”. Tenure was guaranteed *quamdiu se bene gesserint*. The translation from the Latin is “as long as he shall behave himself”. This principle lies both at the heart of both judicial independence and judicial accountability.

What is judicial independence? It is independence from politics. It is independence not only from the legislators and the executive, but also from the pressures of organized interest groups and popular sentiments. It must be borne in mind that love for justice is rare – what most people seek

is justice which favours them. The Indian Constitution aims to create checks and balances of its three main objectives – parliamentary democracy, separation of powers and judicial review over legislation – the first two are bound up with judicial independence. Although the character of independence differs among common and civil law countries, most Constitutions stress the need for judicial independence. According to Nani, independence of the judiciary is the cardinal principle of our Constitution. The case for promoting judicial independence is necessary to secure civil and democratic rights. Judicial independence has a complex interrelationship with discretionary power. Courts need discretionary powers to make meaningful decisions. It needs structural mechanisms that protect judges from internal and external pressures. Courts cannot be made instruments of State rule.

The evolution of judicial reasoning and a professionalized system of law makes it possible for judges to insulate themselves against clientelism, nepotism and political cronyism. Judges in every legal system need discretion to reconcile the gap between legislative rhetoric and reality. Statutes alone cannot provide solutions to every problem. We must keep in mind that Courts, particularly higher Courts in India, under our Constitution are often required to enforce countermajoritarian views. Independence of the judiciary is the constitutional right of all Indians. Judicial independence enables judges to follow facts and law without fear or favour, so as to uphold the rule of law, preserve the separation of powers and promote the principle of reasonableness.

Coming to the question of accountability, one must keep in mind the conceptual difference between judicial independence and judicial accountability. Judicial

independence is a value which underlies the existence of a rule of law, breach or infringement of which gives rise to a cause of action whereas accountability is a form of action and not a cause of action. Judicial accountability is a facet of judicial independence. I agree with Ronald Dworkin "Law is not separate from morality, law is department of morality". Morality must enter Legal Reasoning. The concept of "reasonableness" does not exclude notions of morality and ethics, though on the basis of morality law cannot be struck down.

Every era has its mood. The present decade universe is tinged with a profound cynicism about our institutions and a dark pessimism persists in the country. This has led, predictably, to call for greater accountability by democratic institutions. Even the institutions of business after the collapse of Enron call for stricter rules of corporate governance. Inter-corporate financial transactions are legally permissible as long as they are not used as a channel or as circuitous route through shell companies resulting in unreported economy which is a part of hidden economy or parallel economy. This problem can be solved to a limited extent through transparency and accountability both to the market and the investors. Some of the recent events have put accountability on the front burner.

In all democratic systems accountability has always been of prime importance. Institutions, including business, government and the judiciary, are expected to carry out their roles and responsibilities with integrity and efficiency in the public service. At the same time, there is also a recognition that "accountability" is a context driven concept. It is generally agreed that corporate directors owe legal, moral and social duties of various kinds; they have responsibilities to the company and to its shareholders,

its employees, its creditors, consumers and the public generally. The formal mechanism to enforce duties of directors is established by legislation. However, different rules of accountability must apply to MPs/ MLAs. They are accountable to the people who elected them. The same holds true for the judiciary. The question is “accountability to whom?”. So much of the criticism directed at Judges and courts these days is predicated on a distorted concept of accountability. Well funded and organized interest groups are campaigning to convince the public that judiciary is no different from the political branches of the government. This is a universal phenomenon. With the judiciary no longer sitting on public pedestal or enjoying the kind of societal esteem that sustained it in the past, one needs to consider various accountability mechanisms which prevail in various other jurisdictions across the globe. While doing so, one must keep in mind that courts are considered crucial to economic development not only because they resolve commercial disputes, but also because they allow citizens to bring actions to check bureaucratic and legislative powers. We need judicial reforms to build institutional capacity and increase judicial independence. Judgments create losers. Attacks on courts are, therefore, inevitable. The constitutionalization of rights increasingly implicates the courts in a broad range of policy issues.

In resolving disputes between citizens and State or in the matter of evaluation of constitutional issues, Judges are often forced to make decisions which are at times termed political. Judges are accountable to the people. Public and media criticism of the Judges and their judgments is a common feature today throughout the common law world. Like all other public institutions, the judiciary must be subject to a studied fair criticism. But,

what I am concerned with is a response to criticism which is irresponsible and illegitimate. As stated, love for justice is rare – what most people desire is justice which favours them. Keeping checks and balances in mind, we must select the best possible mechanism of accountability keeping in mind one basic principle – there is no wisdom in the choice of the path unless we know where it will lead. Thus, while choosing the accountability mechanism, the legal profession cannot stand by passively while others co-opt the concept of judicial accountability and define it for their own narrow purpose. There is lot of misunderstanding on the concept of “*We, the People*” enshrined in the Preamble to the Indian Constitution. In this connection also I would like to quote Nani who has rightly observed in the book titled “*We, the People*” that the expression “Constitutional Law” comprises not only the Constitution but also other parliamentary laws which supplement the Constitution and are concerned with subjects that are constitutional in nature. Our Constitution reserves no rights to the people by the exercise of which the people themselves can legally amend the Constitution, except by elected representatives to the Lok Sabha and State Legislative Assemblies who are pledged to bring about the desired amendment (see judgment of the Supreme Court in Kesavananda Bharati’s case, paras 1603-1621). One of the main reasons being that the Preamble recites that people of India have resolved to constitute India into a Sovereign, Democratic Republic to secure to all its citizens Justice, Liberty and Equality. Those who resolved to constitute India into a Sovereign Democratic Republic clearly intended that the differences of opinion would have to be resolved by the normal democratic process enshrined in the Constitution. The above discussion is only to highlight that while opting

for accountability mechanisms certain relevant factors are required to be kept in mind.

To my mind, judicial integrity is more important than judicial independence. The accountability mechanism should not only develop highly ethical and professional standards but also generate social legitimacy. The functioning of the judiciary is, at the end of the day, based on the doctrine of public trust. If Judges are to acquire judicial authority, they need the people to believe in their integrity and capacity to deliver socially meaningful judgments.

I would like to end this lecture by paying my tribute to Nani Palkhivala in the words of Cicero:

The life given to us by nature is short;
but the memory of a well-spent life is eternal.

The Ninth Nani A. Palkhivala Memorial Lecture
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NANI A. PALKHIVALA MEMORIAL LECTURES

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12.1.2005	Prerequisites of Freedom	Arun Shourie
16.1.2006	Separation of Powers: The Myth & the Reality	Dr. Bimal Jalan
15.1.2007	Making Globalization work for India	N. R. Narayana Murthy
11.1.2008	Judicial Activism - Boon or Bane?	Soli J. Sorabjee
5.10.2009	The Emerging Challenges to Civil Society	P. Chidambaram
14.1.2010	From Sampurna Swaraj to Sampurna Azadi: The Unfinished Agenda	Prof. C. K. Prahalad
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