

Sir Asutosh Mookerjee - The Renaissance Man: A Centennial Tribute

V. Sudhish Pai*

If greatness consists in the combination of character and intellect of the highest order and if it is to be judged by the enduring value of solid work done in the fields of thought and action and its lasting impact on people and events, Sir Asutosh Mukhopadhyay was undoubtedly one of the most outstanding men, one of India's greatest sons. Mathematician, lawyer, judge, jurist, educationist, he was all this and more- greatness personified, great in the truest and noblest sense of the term. 25th May, 2024 marked the centenary of his passing. It is appropriate that we remember him, draw inspiration from his life and work and light his memory.

Prof. Upendra Baxi perceptively remarked: "We live in an era of massacre of ancestors, indeed it is considered a public virtue and a sign of worldly progress. But collective amnesia of what happened in the past is not an estimable virtue. Without living in the past its recall is important, for its uncannily presaging a future."¹ We cannot forget or overlook the enduring relevance of past and its torchbearers. It is for that reason and in that spirit that we pay homage to the revered memory of such an all time great as Sir Asutosh.

The tender plant of Renaissance flowered in the alluvial soil of 19th-century Bengal. Renaissance is the revival of art and literature and all that is beautiful and refined under the influence of classical styles. It is the rekindling of interest in something, the resurgence of the finer things of life- civilization. It is a change in thinking – a kind of rebirth. A Renaissance man is a person with a wide range of talents and interests. Bengal was ripe for and witnessed such revival from the early 19th century with persons like Raja Ram Mohan Roy, Pandit Ishwar Chandra Vidyasagar, and Maharishi Debendranath Tagore. In the field of law there were pioneers like Sumboo Nath Pundit, Dwarka Nath Mitter, and Gooroodas Banerjee. In the mid-19th century, a triumvirate of extraordinary persons of the Bengal Renaissance was born. Gurudev Rabindranath Tagore (born 6.5.1861) who exemplified in his truly resplendent life extraordinary mastery of almost every form of art and literature; Narendranath Dutt, later Swami Vivekananda (born 12.1.1863) the great morning star of Indian spiritual Renaissance;

* Senior Advocate, High Court of Karnataka.

¹ Upendra Baxi, "Towards Climate Change Justice" 7 Journal of Human Rights and Environment, 7- 31 (2016).

Asutosh Mookerjee (born 29.6.1864) the pioneer and representative figure of the resurgence of science, law and education.

India was passing through a tumultuous period then. There was a small group of people who, in keeping with the best in our tradition, sought to create a synthesis of the old and the new, of Indian culture and western thought. Their influence on contemporary life and events was great. One of the most representative figures of this class of pioneers was Asutosh Mookerjee. There is a class of men, very small in number, which seems unable to make a definite choice or stick to one when it is made and who insist on an equal expression of all their multifarious gifts and create their own environment ultimately leading to their splendid success in life. Such pre-eminently was Asutosh.

When we think of Sir Asutosh, his life and work, the range of his mind and the gamut of his activities and achievements, we are simply astounded that so much could be achieved so excellently in the span of one life, which was not that long. To praise him or pay tribute to him is to paint the lily, gild refined gold and throw a perfume on the jasmine. So exemplary was he in his personal and functional qualities and accomplishments. Speech gives way to silence – the silence of worship and reverence. One is reminded of Arthur Mee's tribute to Socrates²: Asutosh Mookerjee was like a mountain peak dazzling in the last rays of the setting sun, a strange figure, almost lost to us in the mists of time, but living in the minds and hearts of men as long as right is might and life is stronger than death.

Asutosh Mookerjee was born on Wednesday, June 29, 1864, at 3.55 a.m. as the eldest child of Dr. Ganga Prasad Mookerjee and Srimati Jagattarini Devi. It was a respectable, noble and learned family. The great Krittibas who wrote the first Bengali version of the Ramayana was an ancestor of Asutosh. Another ancestor was Ramachandra Tarakalankar whom Warren Hastings appointed to the Chair of Nyaya in the newly founded Sanskrit College. The father, Ganga Prasad, was one of the earliest graduates of the Calcutta University and amongst the best known physicians. He was one of the first to write medical literature in Bengali. He accomplished a translation of Valmiki Ramayana in Bengali verse. That was published sometime ago by the Bharatiya Vidya Bhavan and the Asutosh Mookerjee Memorial Institute

² Arthur Mee, *The Book of Knowledge*, The Grolier Society, New York (1911); Arthur Mee, *Arthur Mee's Hero Book*, 118-126, Hodder and Stoughton Ltd., Toronto, London, New York.

under the auspices of his great grandson Justice Chittatosh Mookerjee. Such was the rich lineage of Sir Asutosh.

It is of significance that the young Asutosh happened to meet Pandit Ishwar Chandra Vidyasagar one of the pioneers of Renaissance once at the Mughal Sarai Railway Station and then at a book shop in Calcutta-Thackers Spink & Co where Vidyasagar presented Asutosh a copy of Robinson Crusoe with his signature. That was a prized possession of Asutosh. The great Vidyasagar appears to have been impressed with the young boy's earnestness and recognised in him a kindred spirit.

Asutosh had a disciplined and rigorous schedule which coupled with his innate brilliance enabled him to scale extraordinary heights. He was truly educated both in school and at home, the father imparting him lessons in various subjects. He was a mathematical prodigy. He became a member of the London Mathematical Society while still at school. He solved a large number of geometrical problems. Some of his solutions were so excellent that they were accepted as original contributions to mathematical studies and named after him as Mookerjee Theorems.³ His mathematical paper giving an elegant new proof of the 25th proposition of the first book of Euclid⁴ which he had prepared when he was 13 years was published in the *Cambridge Messenger of Mathematics*⁵ in 1881. His second mathematical paper in which he gave *Some Extensions of the Theorem enunciated by Salmon*⁶ was published shortly thereafter. He secured a first-class in B.A. and M.A. Mathematics and a Master's Degree in Physics. Displaying remarkable originality he continued publishing his papers in Mathematics some of which were quoted in text books. His classmates at the Presidency College, Calcutta included some all time greats like Swami Vivekananda and Brojendra Nath Seal.

He sat for the Premchand Roychand Studentship examination in 1886 in Mathematics, pure and mixed, and Physics and won the award. This was considered the coveted blue ribbon of University career in Calcutta. It is noteworthy that he was appointed an examiner at the MA examination in Mathematics the year after he himself took his Master's Degree. His love for

³ D K Sinha (Editor), *Mathematical Contributions of Sir Asutosh Mookerjee: Contemporaneity and Relevance*, Asutosh Mookerjee Memorial Institute, Kolkata, (2009). See also, A C Bose, In Memoriam, Calcutta Review, pp.57–72.

⁴ Euclid, *Elements of Geometry*, Book I, Proposition 25, Edited by Sir Thomas L. Heath, 1908.

⁵ N.K.Sinha, *Asutosh Mookerjee: A Biographical Study*, Asutosh Mookerjee Centenary Committee (1966); D K Sinha (Editor), *Mathematical Contributions of Sir Asutosh Mookerjee: Contemporaneity and Relevance*, Asutosh Mookerjee Memorial Institute, Kolkata, (2009)

⁶ Extension of a theorem of Salmon, *Messenger of Mathematics*, Vol.13, pp.157– 160, 1883–84.

Mathematics did not curb his interest in and attention to other subjects. His versatility was amazing. Asutosh turned out to be an intellectual giant. English, Sanskrit, Philosophy, History, Science and Law all attracted him. His mastery over Sanskrit, Physical Sciences, Law and Mathematics was so profound that he was looked upon as an incarnation of Saraswati, the Goddess of Learning. His reading was deep and extensive. His contributions appeared in well known journals of the day both in India and outside. He acquired knowledge of French and German also to study the works of famous mathematicians. Very early in life he became a Fellow of the Royal Astronomical Society, a Fellow of the Royal Society of Edinburgh, a Member of the Asiatic Society of Calcutta, a Member of the Royal Irish Academy, among various others.

Asutosh joined the law classes at the City College in 1884 where S.P. Sinha (later Lord Sinha) was one of his teachers. He attended the Tagore Law Lectures and for three successive years won the gold medal awarded for high proficiency in the subject matter of those lectures. The University authorities and the lecturers were astounded by the young Asutosh's expertise on these varied branches of law. Successive Vice Chancellors referred to his work both in Mathematics and law in highly appreciative terms. He won all the coveted prizes. To say that he was a genius would only be to err on the side of restraint.

Asutosh Mookerjee's association with and involvement in the activities of the Indian Association for the Cultivation of Science and in its development is worthy of mention. This is one of the most important aspects of his life- working experience and teaching Mathematics and Mathematical Physics which later shaped his vision of Science education in India. He joined the Association in 1887 having already acquired pre-eminence in the contemporary world of Mathematics equipped as he was with his ability in innovative research. He delivered lectures of an exceptionally high standard on Physical Optics, Mathematical Physics and Pure Mathematics- twelve lectures in 1887, twenty in 1888, thirty five in 1889 and twenty nine each in 1890 and 1891. He wrote seventeen full research papers- 15 on Pure Mathematics and 2 on Applied Mathematics. In 1906, Gooroodas Banerjee remarked that unmistakable indications of a brilliant future career were seen in Asutosh even many years earlier. His efforts in and contribution to the study and research in Science and Mathematics are monumental. It may be said that he created mathematical ambience, a whole culture for generations of mathematicians and was a maker of mathematicians.

To quote Sir William Brag: “A good student is like a fire which needs but the match to start it. It is a discipline to put the text book to one side and get out further knowledge by one’s own efforts.”⁷ Dr. R.P. Paranjpye⁸, a Senior Wrangler said that if Asutosh had made up his mind to devote himself entirely to the study of Mathematics he was sure to have secured a place in the front rank of world mathematicians. Sir Gooroodas Banerjee as Vice Chancellor of the University had made a desperate attempt to create a chair for Asutosh but he failed to collect even a sum which would yield a modest income of Rs.4000/- a year which was all that was thought would be sufficient to maintain him as a Research Professor. The result was that to quote Asutosh himself, “I drifted into law.”

In 1888 he took his B.L. degree and was articled to Sir Rashbehary Ghose, a revered name in the world of law and a close friend of Ganga Prasad Mookerjee. It is of interest that Asutosh had noted in his diary, which he kept as a student, on 7th February, 1886, “....In the afternoon, father and I saw Rashbehary Babu; he is of opinion that none but the best men ought to join the Bar, and the times are so hard that even these best men must wait before they can succeed...” He began his practice in the Calcutta High Court on 31st August, 1888. When Sir Rashbehary brought out the second edition of his Tagore Law Lectures on the *Law of Mortgage*, he was greatly assisted by his articled clerk and the great jurist acknowledged it in his Preface to the book.

For several years he diligently engaged himself in studying both from the original texts and under the guidance of eminent scholars the principles of Hindu Law and Mahomaden Law apart from other branches of law. With the combination of his extraordinary intellect and industry which he ungrudgingly offered at the altar of the profession, he soon made a mark and built up a large and lucrative practice. His great success was attributed to his forceful character, deep and extensive study, unremitting toil, brilliant advocacy, genial temper and extraordinarily quick grasp and comprehension, backed by total dedication.

⁷ Lalit Mohan Chatterjee & Shyama Prasad Mookerjee, *Representative Indians*, A.C. Dhar, The Popular Agency, Calcutta (1936)

⁸ Raghunath Purushottam Paranjpye (1876–1966), popularly known as ‘Wrangler Paranjpye’, was the first Indian to become (1899) ‘Senior Wrangler’ – the title bestowed on the student attaining the top rank in the undergraduate mathematics course of Cambridge University, a feat which was regarded very highly in Britain as an intellectual achievement. After his return to India (1902), R P Paranjpye became a professor of mathematics at Fergusson College, Pune, and later, its Principal. Subsequently, Paranjpye became the Vice Chancellor of Bombay University and Lucknow University. His legacy has inspired one of the earliest films in India – the (silent) documentary “The Return of Wrangler Paranjpye” by H S Bhatavdekar (1902).

In 1889 he became a Fellow of the Calcutta University and was elected a member of its Syndicate. While practising as a lawyer he obtained the Degree of Doctor of Law in 1894. He continued his scientific studies also. Sir Asutosh was appointed Tagore Law Professor at the Calcutta University in 1898, at the age of 34. The Tagore Law Professorship is considered the pole star on the eastern horizon of jurisprudence and in the roll of Tagore Law Professors one finds names of very eminent men whose works adorn the law libraries across the world. He delivered a course of lectures on the *Law of Perpetuities in British India*. The Law of Perpetuities, as a branch of the Law of Property, had as its object restraint on the creation of future conditional interests, aiming also at the prevention of non-alienation of property. The lectures were marked by thoroughness so characteristic of him. He discussed the subject in all its ramifications.⁹

His first lecture was on the Law of Perpetuities- its nature and place in jurisprudence, which he ended observing, "It will be necessary, as you proceed, to examine cautiously even the opinions of eminent judges in a spirit of criticism which will be possibly unbecoming in other branches of law."¹⁰ In the second and third lectures he discussed the rule against perpetuities- its origin and history in English Law and then its history in Indian Law. His fourth lecture was on the rule on perpetuities- its scope and corollaries. The fifth lecture was on the interests affected by the rule against perpetuities. The next two lectures were on the rule against perpetuities affecting limitations to classes and limitations to a series. Then he spoke on the rule against perpetuities as it affects powers. The next lecture was on the rule against perpetuities in relation to principles of construction. He then spoke on religious and charitable trusts, next on accumulation and finally on restraints on the alienation of property.

In the context of the rule against perpetuities- its history in Indian Law- he said, "You will not forget that the system of Hindu Law, as it has reached us, is not and does not profess to be exhaustive; it is a system which contains within itself the elements of experience in which new customs and new propositions not repugnant to the old law may be engrafted upon it from time to time as the change of circumstances and the progress of society imperiously demand."

⁹ N K Sinha, *Asutosh Mookerjee: A Biographical Study*, Asutosh Mookerjee Centenary Committee, (1966).

¹⁰ V. Sudhish Pai (ed.), *The Judicial World of a Multi-Splendoured Genius: Sir Asutosh Mookerjee* (Universal Law Publishing Co., New Delhi, 2014). Lecture I is at pages 96-110 in this book [pp.116 -127 @ 127 of the second edition]; that gives us ample foretaste of the vast learning and the masterly grasp of social and economic concepts of law.

Referring to and quoting ancient Hindu jurists, he pointed out that the process of judicial legislation was one of the recognised sources of law in many civilised States.

He concluded his Tagore Law Lectures saying, “It has been my constant endeavour to present to you not merely the precepts of the law as they are, but also the reasons for their present form. This process by which we trace legal rules and formulas to the first principles that lie at the foundation of our system of jurisprudence may occasionally appear to be dry and uninteresting; but once you are familiar with it, let me assure you, you will find nothing more stimulating to your intellect. Never forget that in the words of one of the foremost jurists of this generation (quoting from what Sir Fredrick Pollock wrote to his senior Lord Lindley), law is neither a trade nor a solemn jugglery, but a true and living science.”¹¹

Sir Asutosh had in him the making of a great leader and administrator. His impress is writ large over modern Bengal. In 1899 and 1901, he was elected to the Bengal Legislative Council representing the University of Calcutta and in 1903 he was re-elected as representative of the Calcutta Corporation. The same year he was elected to the Imperial Legislative Council as representative of the non-official members of the Bengal Council.

He distinguished himself as an educationist. Lord Curzon, the then Viceroy was deeply impressed by his work as a member of the Indian Universities Commission and considered him to be the one who could implement the Commission’s recommendations as embodied in the Indian Universities Act, 1904. He, therefore, decided to appoint him Vice Chancellor of the premier University of Calcutta. That necessitated his elevation to the High Court because until then no non-official had been appointed Vice Chancellor. Sir Gooroodas Banerjee was the first Indian Vice Chancellor.

Asutosh Mookerjee was appointed a judge of the Calcutta High Court in June 1904. This was in a way the fulfilment of a cherished ambition to follow in the footsteps of great judges and exemplars like Sumboonath Pundit, Dwarkanath Mitter and Gooroodas Banerjee. It also meant the opportunity to serve the University. While his elevation deprived public life and the nation of his active participation and service, it turned out to be a boon for education and the judiciary.

¹¹ Tagore Law Lectures -1898: *The Law of Perpetuities in British India*, University of Calcutta & Asutosh Mookerjee Memorial Institute (2014) p.301

His appointment as a judge and his tenure on the Bench significantly expanded the universe of judicial discourse.

For the next almost twenty years he adorned the Bench of the Calcutta High Court and in the words of Sir Lawrence Jenkins, the most celebrated of British Judges and Chief Justices: “Sir Asutosh may justly be said to be one of the brightest ornaments of the Bench of the High Court of Calcutta.” Of him it may be said as was said of Sir George Jessel, the illustrious Master of the Rolls, “There have been judges more learned, judges more subtle, judges more eloquent, but none who possessed his rare combination of clearness, vigour of understanding, varied knowledge, swiftness of apprehension, and mastery of legal principles. He had always the faculty of hitting the right nail on the head.” Sir Asutosh officiated as Chief Justice of Calcutta High Court for a few months in 1920 and 1923. He was felicitated both by the public and in the High Court. Few people have been considered brighter ornaments to the Court they presided over.

A couple of instances will bear out the excellence of every work undertaken by him. As a young lawyer appearing in a criminal appeal, with his keen knowledge of Mathematics he applied the laws of Hydrodynamics to successfully disprove the prosecution case against his client and secure his acquittal. As a judge he learnt and mastered a language- Arabic, read the original texts and delivered judgement. The usual practice was for newly appointed judges to be put on the Division Bench with Sir Asutosh presiding. He was a trainer of judges- ‘used as the break horse with each new judicial colt being harnessed to him,’ to adopt what Eardley Norton said of Sir Muthuswami Aiyar. One typical example of such a new judge sitting with Sir Asutosh was Sir George Rankin who in time became Chief Justice of the Calcutta High Court and thereafter was on the Judicial Committee. He was truly like a student and kept a notebook which had the senior judge’s suggestions and corrections.

A peaceful and orderly society is what all look for. Peace is the fruit of justice and it is justice which cements the fabric of a secure society. The concept of justice is concerned with the adjustment of human relations. It is however not in any ideal sense. Justice is administered according to law. Law is the means of ordering the lives of the people and the relation between man and man and man and the State. “Civilization involves the subjection of force to reason and the agency of such subjection is the law,” said Roscoe Pound. Law is perhaps the greatest integrating force in a pluralist society like ours. The hallmark of a society claiming to be civilized may be said to be its ability to do justice. A State is successful when the people have

the assurance that they are living in a just society under the protection of law and an adequate legal system. The judiciary and the legal system contribute to the existence of a just society and to the civility of the nation, the civilising function of the judge being the removal of a sense of injustice. Here comes the role of the judges and the lawyers.

Edmund Burke said that the law sharpens the mind by narrowing it; but in a few of our great judges law has lifted the mind to a level of comprehension and kindled a degree of humane ardour unsurpassed in any other profession. The individual contribution of judges is absorbed in the anonymity of the coral reef by which the judicial process shapes the law. In the course of a century the acclaim of a bare handful survives. Sir Asutosh belongs to that select class. He is rightly regarded as one of our most celebrated judges. To generations who have passed their lives in the law his is truly *clarum et venerabile nomen*.

He brought to bear on his work as a judge his inexhaustible energy, devotion, learning and that highest kind of integrity – the integrity of scholarship. As a judge he had an open mind till the end. He used to repeat that a member of the Bench ceased to be a judge if he were opinionated and did not keep an open mind till the end; when it is claimed by one that he knows everything it only shows his ignorance; it is never too late to be a student and that is no disparagement even for a judge.¹² As with all truly learned and great men, he said that after more than three decades of diligent study of law he had a more profound and abiding sense of ignorance than what oppressed him at the beginning of his career. He approached every matter and decided every case with utmost thoroughness and perspicacity. His scholarly judgements are monuments of perseverance and skill. He said that a judge should be considerate to the Bar and more specially help the inexperienced juniors, just as the Bar should be respectful, pleasant and firm to the Bench. Sir Asutosh also possessed utmost judicial integrity which is something much more than integrity in common parlance. Judicial integrity is essentially a passion for justice informed by a deep and abiding morality. It is the courage of conviction and the willingness to reach the result that a judge's understanding of the law tells him is right and not that which is most popular.

Asutosh Mookerjee believed and maintained that in order to formulate new principles of law one must so equip oneself as to be able to make a comprehensive survey of the great historic prospect which stretches out from the Roman times to its recent developments in all well-

¹² V. Sudhish Pai, *Sir Asutosh Mookerjee's Legacy in Law*, June 2024.

ordered polities. Such knowledge can never be fruitless, for it has been well said that law is but the product of human life, the expression of the human mind, the declaration of the social will for the satisfaction of human needs. He cultivated a thorough knowledge of almost every system of law. His quest for principles took him far afield to the decisions of American Courts, not merely the Supreme Court of the United States, but also of the State Courts, and to the decisions of the highest courts of the Colonies.

It is said that there are two things which a judge has mainly to do: to make the law wisely, “to fashion each stone he adds to fit the architecture of the vast fabric reared by the wisdom of past centuries” and also administer the law wisely.¹³ This ideal was always before Sir Asutosh. What the Advocate General said on Justice Mookerjee’s retirement: “No junior felt embarrassed in your court where good law was well administered. In the maze and labyrinth of adjudged cases you ever walked with a firm step holding aloft the torch of justice” represents perhaps the best and the most ideal in a judge. Asutosh Mookerjee was that.

A judge, said Justice Cardozo, must think of himself as an artist who although he must know the handbooks should never trust to them for his guidance; in the end he must rely upon his almost instinctive sense of where the line lay between the word and the purpose which lay behind it, he must somehow manage to be true to both.¹⁴ This ability is born out of wisdom—the gift of God. Justice Mookerjee had it in abundance. He shared the belief with Justice Holmes that “law like the life itself is not doing a sum, it is painting a picture.” The pictures he painted will be looked to and studied as long as the art of judging remains part of our heritage. He enriched legal thought and contributed to the development of law in such ample measure as is sufficient to confer immortality on any judge anywhere. Indeed, so qualified an appraiser like Justice Hidayatullah, places Sir Asutosh along with Justice Mahmood among the six most eminent judges that India has produced and says that his learning was vast, his knowledge deep and exact and his exposition of law complete.

His palatial three-storeyed house at 77, Russa Road, (now Asutosh Mookerjee Road) Bhowanipore, was known all over Calcutta as an abode of Goddess Saraswati. It was filled with books on all subjects, some of them not available anywhere else. His was perhaps the largest private library in India consisting of about one lakh books on every subject. Every room

¹³ Edward Manson, *Builders of our law During the Reign of Queen Victoria*, 1895. See also, *Sir Asutosh Mookerjee-An Obituary Tribute* in (1924) 39 Calcutta Law Journal, p. 59n.

¹⁴ Learned Hand, *Mr. Justice Cardozo*, Columbia Law Review, vol. 39, no. 1, 1939, pp. 9–11.

and every corridor had shelves with books running from the floor to the roof. The main library was housed on the second floor. It is estimated that he purchased books worth Rs.5 lakh or more in those days.

Sir Asutosh Mookerjee was an ardent student of American decisions and American legal literature. His collection of American law books and reports of the Supreme Court and State Courts had no compeer outside the USA. He had a collection of Canadian and Australian Reports as well. His judgements bear testimony to his knowledge of American precedents. Three of the lawyers – Dr Rashbehary Ghose (under whom the Judge himself had served his apprenticeship) Mr. Justice Lalmohan Das and Sastri Golap Chandra Sarkar also used to obtain through Sir Asutosh Mookerjee and study the American decisions.

While on the Bench he gave an astoundingly large number of judgments. There are more than two thousand reported judgments and they cover every aspect of law. All of them are eminently readable and authoritatively lay down the legal position with precision, clarity and elegance. To refer to and quote them is to string pearls as Justice Frankfurter said of the judgments of Justice Holmes. Referring to his judgements Chief Justice Dawson Miller of the Patna High Court said that ‘the name of Sir Asutosh Mookerjee was a household word throughout the High Courts of India, his judgements were invariably lucid and a masterful exposition of law on every subject with which they dealt, they had only to be quoted to command universal respect’. To him law was essentially a science of principles to be applied in the light of man’s social evolution and required from men of law the highest kind of integrity –the integrity of scholarship which he displayed in full measure as a judge. Many of his judgments have been referred to with approval by the Privy Council and the Supreme Court. They bear the unmistakable impress of his personality and have contributed in no small measure in shaping the law.

It is of interest and significance that even when he was concurring, Sir Asutosh generally wrote separate, comprehensive judgments adopting his own line of reasoning, referring to various relevant authorities and bringing to bear a fresh approach to the problem on hand. Equally interesting and significant is the fact that he is never known to have written a dissenting judgment. Perhaps the other judges always agreed with him.

In the 100th issue of the *Law Quarterly Review* in January 1985, its then editor P.V. Baker referred to Lord Denning’s many, many judgments for about 38 years as the abundant raw

material for the *Law Quarterly Review*. Justice Mookerjee's more than 2000 judgements provide us ample raw material for study and research, to enlighten and help the development of law. Through a study of these judgments we also endeavour to understand and appreciate the man and the judge and his judicial philosophy.

Sir Asutosh's eminence as a jurist was due to his great erudition and broad outlook. He did not belong to the class of lawyers who scored their triumphs by readiness in retort, resourcefulness, cleverness in cross examining or eloquence. He was a lawyer's lawyer and a judge's judge-every inch a jurist. As a jurist Asutosh was greatly influenced by the historical school in England led by Sir Henry Maine, who in turn was influenced by both the German Historical School of Savigny and by the Darwinian theory of evolution. This influence led him to apply to jurisprudence the historical and comparative methods. It was his belief that law and legal institutions must be studied historically for a proper understanding, that law is never static but evolves and assumes new forms with changes in society.¹⁵ He taught lawyers to look at the Indian law in its relation to other systems of law especially English law. He said that history involves comparison.

While he was aware of the significance of the past, he was conscious of the fact that law was made for man and not man for law. He has therefore been described as a historical and sociological jurist. He believed with Dean Roscoe Pound that law must be stable and yet it cannot stand still. His celebrated statement: 'Law is coeval with society and society cannot co-exist without law. Law had its origin in the remote antiquity... It has adapted itself notwithstanding all the imperfections of its mode of development through ages, to all the wonderful complications of modern life', brings out his concept of law and its significance. He was aware that there was no escape for the law from the struggles of life and that the course of law has to run parallel to the course of life. His approach to law and his judgements show his earnest desire to adapt the law to the needs of the society. Like all great men, he was ahead of his times in his juristic conceptions as also in other matters and problems facing society. It has been rightly said that being in the field of law meant to him being in a profession that is indispensable for the well being of our social life.

¹⁵ Amarendra Nath Mukherjee, *Sir Asutosh Mookerjee-The Jurist*, see V. Sudhish Pai (ed.), *The Judicial World of a Multi-Splendoured Genius: Sir Asutosh Mookerjee*

‘The jurist even as a spokesman for the court cannot escape from being himself’, as Hamilton said in *A Jurist’s Art*¹⁶. This is very true of Sir Asutosh also. In law, even when rules are compelling and cases fall upon one another in dull monotony, the manner and the personality of a judge appear in the interstices of his opinions and Asutosh was ever himself among his various brother judges, the distinctive style of his opinions always standing out. One cannot but notice with awe and reverence the glowing peaks in his judgments. His judgments bear the impress of a distinguished jurist evolving doctrines of law suited to the peculiar need and environment of India on the basis of theories of English Common Law and statutes. He would enunciate a principle and reason upon it closely and logically. His power of reasoning made it possible to distinguish with ease between different principles and to define the respective spheres of their application. “Nothing is omitted which he feels may be necessary in order to convince the suitors and the Bar of the correctness of his decision.”¹⁷ His judgements are a repository of all cases that might possibly have a bearing on the question at issue. To assess his juristic acumen one must consider his judgments in this light. He was not a mere analytical jurist. His greatness lay in his delineation of the subject matter of the *lis* from a historical and sociological perspective.

One such typical example is *Bhupati Nath Smritithirtha v. Ram Lal Maitra*.¹⁸ This is a classic judgment regarding dedication by a will. It was held that bequest to trustees for establishment of an image and its worship after the testator’s death is a disposition for a religious purpose and is valid under Hindu Law. As a historical and sociological jurist he gave sociological interpretation to legal concepts. He traced the development of law regarding Hindu deity as a corporation sole and pointed out the distinction between the spiritual and legal aspects of an idol. It was explained that the doctrine in *Tagore v. Tagore*¹⁹ re: the validity of testamentary bequests and gifts in favour of human beings has no application to directions for dedication of property. The true concept of dedication in Hindu Law was enunciated.

He looked upon the rule of precedents as the greatest safeguard of the rule of law and the most effective check on judicial arbitrariness and uncertainty of law. He cited the laws and case laws of different lands out of a ‘universal sense of justice which urges that all men are properly to be treated alike in the like circumstances’, as Llewellyn put it. Citation with him, it has been

¹⁶ Walton H. Hamilton, *The Jurist’s Art*, Columbia Law Review, vol. 31, no. 7, 1931, pp. 1073–93.

¹⁷ F.H. Lawson, *The Rational Strength of English Law*

¹⁸ 10 CLJ 355

¹⁹ (1872) 9 Beng. L.R. 377

rightly said, was not born of an infantile complex of seeking a juridical father. He did not rely on precedents out of laziness to rework a problem once solved or as a time and energy saving device. Rather, he was happy to note that the principle or idea which had struck him had already inhabited other minds and he always acknowledged his 'sources'. He quoted foreign precedents, as he himself said, merely to indicate that his conclusions were based upon substantial grounds of convenience and justice and not upon any artificial or technical reasons peculiar to any particular system of jurisprudence and more for the reason of illustrating the position that the conclusions which he reached were consonant with the principles adopted independently in other systems of jurisprudence. He thought that it was only prejudice and a spirit of conservatism, a blindness to the developing social needs and relations, which could shut out the use of that fruitful source of general principles.

But he was no slave of precedents and never hesitated to depart from them whenever warranted. He paid attention not so much to the actual decision of a given case as to the principle underlying the decision. As he said, quoting Lord Mansfield, 'the reason and spirit of cases make law, not the letter of particular precedents'.²⁰ He is compared with Sir George Jessel, M.R. who was always careful to examine cases cited before him to see whether they have been virtually overruled, although judges have not said so explicitly. He also demonstrated the truth of the old saying "no precedents can justify an absurdity."

We have the famous case of *Debi Prasad Chaudhuri v. Golap Bhagat*²¹ where it was held that alienation by a Hindu widow of her husband's estate effected with the consent of the next reversioner for the time being raises a rebuttable presumption of legal necessity. When a Hindu widow with the consent of the reversionary heirs alienated the interest inherited by her in her husband's estate, the transferee acquires a good title as against the actual reversionary heir at the time of her death. This was a trail blazing judgement in rendering which it is significant that Sir Asutosh had to differ from the views of so eminent a jurist as Sir Gooroodas Banerjee. It was approved by the Privy Council in *Rangaswami v. Nachiappa*²² where the Privy Council acknowledged the assistance it derived from the lucid and able judgements of the High Court. It has been aptly said that though as a High Court decision it was not binding on the Judicial Committee but seen in its true light and character it was one of those decisions which acquires

²⁰ *Fisher v Prince* (1762) 3 Burr. 1364

²¹ 17 CLJ 499

²² 46 IA 72; (1919) 21 Bom LR 640

a weight and effect much beyond that which can be attached to the relative position of the Court from which it proceeds.

Then again in the well known case *Chandra Benode Kundu v. Shaik Ala Bux*²³ he held that notwithstanding the importance of maintaining the authority of long established cases, the doctrine of *stare decisis* is not of universal application. When earlier decisions are plainly wrong and where there is a weakness in the reasoning on which they are placed resulting in practical injustice, it is the duty of the Court of ultimate appeal to overrule them. And presiding over a Special Bench he overruled the judgements which had held the field for over two decades. This is an example of judicial creativity and statesmanship to mould and adapt the law to meet the challenges and felt necessities of the time.

Sir Asutosh excelled as judge both in civil law and also criminal law. Though he did not have a wide practice as a lawyer on the criminal side he gradually blossomed as one of the distinguished criminal judges. His judgements on the criminal side were no doubt lesser in number but they are known for their astonishing vitality and demonstrate his vast erudition, his dauntless courage in upholding the law, his concern for individual liberty, his dignified judicial restraint, his keen juristic outlook. He had the antennae, indispensable for great judges, that registered feeling and judgement beyond quantitative proof and mathematical logic.

During his tenure as a judge Bengal was seethed in revolutionary movement. The Calcutta High Court stood as a bastion against executive high-handedness and to protect personal liberty and Sir Asutosh's role in this was no mean one. He insisted on strict compliance with procedural requirements, thereby reminding us of the truth of Justice Frankfurter's statement many years later that the history of liberty is the history of observance of procedural safeguards. He had a brave heart and that was the secret of his independence. Fearlessness is a *sine qua non* for the growth of the other noble qualities, wrote Mahatma Gandhi in *Young India*.²⁴ Walter Scott echoed the same sentiment when he said that without courage there can be no other virtue. It is the first requisite of a judge, for fearlessness alone can maintain the rule of law. He also showed as a judge that the ultimate guarantee of personal liberty is the personality of the judge and that liberty is safe not in the hands of the ignorant even with the best of intentions but with judges of adequate knowledge.

²³ AIR 1921 Cal 15: 31 CLJ 510

²⁴ Mahatma Gandhi, *The Gospel of Fearlessness, The Mind of Mahatma Gandhi*, 1930, pp. 1-2.

He took a very noble view of the legal profession and of the lawyers' role in society. The growth of his mind as a jurist is a very illuminating chapter of his life. In his famous address on the study of law at the Benares Hindu University he said quoting the renowned American jurist Joseph Story, "Lucubrations of twenty years will do little more than conduct us to the vestibule of the temple; and an equal period may well be devoted to exploring the recesses." He wanted the votaries to be conducted down the historic path of social and legal evolution. "The labyrinth" as he advised students, "was to be penetrated by skill and mastered by a frequent survey of landmarks." He reminded us that the study of law makes men acute, inquisitive, dextrous, prompt in attack, ready in defence and full of resources.

Among learned men of law he was more learned and he knew that those amongst whom he worked respected such knowledge. The atmosphere in the High Court those days was conducive to judicial learning. It has been said 'few men have written so faultlessly in a language not their mother tongue.' Judgements of some eminent judges not only decide the case on hand but expound the science of the law and philosophy and are also literary gems. You have a beautiful fusion of law, philosophy and literature. In his judicial pronouncements Sir Asutosh recognized the importance of the sense of legal history in ensuring that judicially declared principles advanced the interest of the society at large, though uttered in the context of individual cases. That is the relevance of the common law tradition of which he was a great exemplar. Some of his celebrated and path breaking judgements may be referred to.

In the well known case of *Pulin Behari Das* ²⁵ one of the most celebrated and classic judgements- he enunciated the *de facto* doctrine tracing the law from the 15th century, formulating principles of justice of the highest order and pointing out how this doctrine was important to avoid public inconvenience and chaos and have order in society. His enunciation of the *de facto* doctrine has been referred to with approval by the Supreme Court in *Gokaraju Rangaraju v. State of A.P.* ²⁶

Legal Remembrancer v. Matilal Ghose ²⁷ and *In re: Tarit Kanti Biswas* ²⁸ laid down unequivocally the contours and nuances of the contempt jurisdiction, tracing the law and its development from Blackstone's Commentaries onwards. It was pointed out that the jurisdiction

²⁵ 15 CLJ 517; 16 Ind. Cas.257

²⁶ AIR 1981 SC 1473

²⁷ 18 CLJ 452

²⁸ 26 CLJ 459

is invoked and punishment is meted out not to protect the Court or the Judges but to protect the public especially those subject to the Court's jurisdiction. The same view has been taken by the Supreme Court in re: *S. Mulgaokar*²⁹. This is of extreme significance even today. In both these cases Sir Asutosh endeavoured to reconcile and balance the freedom of expression of the individual and the Press on the one hand and the dignity of the Court on the other so that there is no interference with or embarrassment to the administration of justice.

The concept of jurisdiction was admirably and comprehensively enunciated in *Hridoy Nath Ray v. Ram Chandra Barna Sarma*.³⁰ This has been referred to *in extenso* and with approval by the Supreme Court in *Official Trustee, West Bengal v. Sachindra Nath Chatterjee*.³¹

He expounded the concepts of nullity and irregularity in *Asutosh Sikdar v. Behari Lal Kirtunia*³² and the doctrine of election of remedies in *Mst Gulab Koer v. Badshah Bahadur*³³. In *Kamini Debi v. Promoth Nath Mookerjee*³⁴ he said that the true maxim of law is to amplify its remedies and apply its rules to the advancement of substantial justice. *Balbhadra Prasad Singh v. Najiban*³⁵ contains a masterful enunciation of water rights.

*Manohar Mukherjee v. Peary Mohan Mukherjee*³⁶ is an outstanding judgement, a jurisprudential study in the real sense – a study of the fundamental legal principle, namely, enforcement of a religious trust concerning a private debutter.

In *Khublal v. Ajoydhya Misser*³⁷ it was laid down that a Hindu widow has a larger power of disposition for religious or charitable purposes or for what is conducive to the spiritual welfare of the deceased husband. Where alienation by a limited owner is impeached the test is whether the transaction is fair and proper, lawful and valid and justified by Hindu Law. Necessity is only one of the phases of the test of propriety. We see Sir Asutosh as a sociological and progressive jurist.

²⁹ AIR 1978 SC 727

³⁰ 31 CLJ 482

³¹ AIR 1969 SC 823

³² 6 CLJ 320

³³ 10 CLJ 420

³⁴ 13 CLJ 597

³⁵ 4 CLJ 370

³⁶ 30 CLJ 177

³⁷ 22 CLJ 345

*Rajani Nath Das v. Nitai Chandra De*³⁸ is a judgement conspicuous for its great industry and learning. It shows Sir Asutosh as a sociological jurist at his best. Under the Dayabhaga school an illegitimate son of a sudra is entitled as a 'Dasiputra' to a share of the inheritance, provided that his mother was in the continuous and exclusive keeping of his father and he was not the fruit of an adulterous or incestuous intercourse. He adapted the ancient law to suit the society of his time and balance the conflicting interests of an illegitimate son born of a continued relationship and the legitimate progeny. As a true jurist he was not swayed by popular sentiments. He reached the result which his understanding of the law and courage of conviction told him was right, not the one which was necessarily popular - a shining example of judicial integrity.

*Gurudeo Singh v. Chandrikah Singh*³⁹ - This is one of his classic judgements which greatly enriched the Law of Mortgages. While some other High Courts had taken a contrary view, the view expressed by Mookerjee, J that there could be no subrogation unless the prior encumbrancer was fully satisfied was approved by the Privy Council in *Janaki Nath v. Pramatha Nath*⁴⁰ and in *Madhoram Sand v. Krityanand*⁴¹. Accepting this view Sec 92 (para 4) of the T.P. Act was amended in 1929. The judgement remarkable for the keen analysis of the doctrine of subrogation earned him the name of Savigny of subrogation. He also expounded the scope of inherent power. It was held that the Civil Procedure Code was not intended to be, and is not, exhaustive. In matters of procedure the Courts have powers beyond those expressly conferred by the Code which binds the Courts only in so far as it goes. The powers are not rigidly circumscribed. The Court has inherent power to make an order essential in the interests of justice even when no provision of the Code directly authorises it, provided the decision is based on sound principles and is not in conflict with the provisions of the Code or the legislative intention. At Common Law the principle is that everything is permissible if it is not prohibited by law. Justice Mahmood took the same view in *Narsingh Das v. Mangal Dubey*⁴². This was followed in *P.R.M. Abdul Haq v The Katpadi Industries*⁴³. It is not only permitted but it is the

³⁸ 32 CLJ 333

³⁹ 5 CLJ 611

⁴⁰ AIR 1940 PC 38

⁴¹ AIR 1944 PC 96

⁴² (1882) ILR 5 All 163

⁴³ AIR 1960 Mad 482

duty of the judges to recall a wrong order. A judge should always be vigilant not to allow an act of Court to do wrong to a suitor.

Law knows of no finer hour than when it cuts through formal concepts and transitory emotions to come to the rescue of the oppressed. Justice Mookerjee always believed and said that procedure is the handmaiden of justice and if there was no procedure for something which the justice of the cause warranted or required, he would devise some procedure and render justice. His great passion was to do real justice. In that endeavour he moulded procedure and brushed aside the conservatism which fails to conserve and which nurtures the form at the expense of the substance. We hear echoes of this in his judgements.

In *Mohd. Akbar Zaman Khan v. Sukhdeo Pande* ⁴⁴ he held: “It would be a lamentable failure of justice if we were to hold that the Court is not competent to do substantial justice in a case where the rules framed were not carried out by the presiding officer with the result the petitioner found it impossible to deposit the money in the treasury within the prescribed period although he had done everything in his power.....” He emphasized that procedure is the handmaid of justice and cannot be permitted to govern where it ought to subserve. He explained that the maxim that an act of Court shall prejudice no man is founded upon justice and good sense and affords a safe and certain guide for the administration of law. He demonstrated the genius of common sense and how a judge has to make and administer the law wisely. It is an application of the principle of *nunc pro tunc* - now for then. The same view re: enlargement of time for something the litigant could not do for no fault of his was taken by the Privy Council in *Lachmi Narain v. Balmukund* ⁴⁵ and by the Supreme Court in *Mahant Ram Das v. Ganga Das* ⁴⁶.

Again, in *Mrinalini Devi v. Abinash Chandra Dutt* ⁴⁷ it was observed: “The Court must be careful that the ultimately successful party does reap the fruits of the litigation and not obtain a merely barren success, otherwise the result would be a failure of justice for the administration of which alone Courts exist.”

In a matter where he recalled an order after 13 years invoking the Court’s inherent power to discharge the duty cast on it as a court of justice, he said, “It would constitute a just reproach to the administration of justice by this Court if a litigant were sent from post to pillar and from

⁴⁴ 13 CLJ 467 (471)

⁴⁵ AIR 1924 PC 198

⁴⁶ AIR 1961 SC 882

⁴⁷ 11 CLJ 533 (540)

pillar to post without even ultimately obtaining a hearing on the merits of his case.” - vide *Kalyan Singh v. Ram Golam Singh*.⁴⁸

He said criminal courts, no less than civil courts, exist for the administration of justice and courts of both descriptions have inherent power to mould the procedure, subject to the statutory provisions applicable to the matter in hand, to enable them to discharge their functions as Courts of Justice.- vide *Pulin Behari Das* .⁴⁹

Referring to the Court’s power of interference in revisional jurisdiction to do substantial justice, he observed that the Court should interpose to prevent what may, otherwise, place one of the litigating parties in an unfairly advantageous position and thus turn out, in the end, to be the cause of an irremediable injustice to the other. - vide *Hemanta Kumar Roy v. Baranagore Jute Factory Co.*⁵⁰

Adverting to the maxim ignorance of law is no excuse, he said that no doubt “all men are presumed cognisant of the law,” but knowledge of the law is imputed to every person only because as Lord Ellenborough observed in *Bilbie v. Lumley* ⁵¹, there is no saying to what extent the excuse of ignorance might be carried if the presumption were not applied. - vide *Munjihoori Bibi v. Akel Mahmud*.⁵²

Such was his massive impact and enduring imprint on the legal system and the judiciary. We see him as a creative jurist and a master craftsman.

He lived a rich life packed with intense activity covering a wide range. Perhaps no other judge in India had such varied interests making such enormous demands on his time. Seldom has so much been packed in one human life and it was so very distinguished inspiring and ennobling.

He lived a rich life packed with intense activity covering a wide range. Perhaps no other judge in India had such varied interests making such enormous demands on his time. Seldom has so much been packed in one human life and it was so very distinguished, inspiring and ennobling. He said that it behoves the great to be ever active. It is impossible to estimate the magnitude of

⁴⁸ 31 CLJ 48 (51)

⁴⁹ 15 CLJ 517 (582)

⁵⁰ 20 CLJ 441 (445)

⁵¹ (1802) 2 East 469

⁵² 17 CLJ 316 (353)

the magnificence of his personality and contribution and do justice to the content of so manifold a nature and so full a life.

The greatest work of Sir Asutosh, it is truly believed, was in the sphere of university education. The transformation of the Calcutta University from a mere examining body to one of the greatest teaching universities in the East with Masters courses and research in different subjects was his lasting achievement. Having been appointed to the Senate in 1889 when he was 25, he was associated with the University for the remaining 35 years of his life. The history of the Calcutta University is more than half his biography. His broad statesmanship, his remarkable power of organisation, his versatility, his love for national culture, his courage and tact all came into full play in his work in the University. While the University produced many a distinguished son, none was so passionately devoted to her as he was. His Convocation Addresses delivered year after year, made one to feel the throb of his passion for reform and service.

It was Jefferson who said, “If you expect a nation to be ignorant and free you expect what never was and never will be.”⁵³ That is the importance of education. Education is the neatest agent of change and advancement and also essential for cherishing and protecting freedom. But education is not simply literacy, not just the imparting of the three R s. It is the transmission of vitality and enthusiasm as Dr. Radhakrishnan put it⁵⁴. Education is the manifestation of perfection already in man, said Swami Vivekananda⁵⁵. To enable one to act justly, promptly and magnanimously is the Miltonic aim of education. Education has been said to be the technique of transmitting civilization which is an act of the spirit. In order to transmit civilization education has to enlighten the understanding and enrich the character. Sir Asutosh said that it was elementary that the formation of character is of infinitely higher consequence than the absorption of knowledge. Education must arouse intellectual curiosity and confer the capacity to think clearly.

The Earl of Oxford and Asquith in a Rectorial Address to the students of the University of Aberdeen uttered some pregnant and eloquent words, “Keep always with you, wherever your

⁵³ Jefferson in a letter to Charles Yancey, Jan 6, 1816, *The Papers of Thomas Jefferson*, Retirement Series, Princeton University Press (2012) p. 328-331

⁵⁴ Gujarat Univ., Convocation Speeches: Dr. S. Radhakrishnan, available at <https://www1.gujaratuniversity.ac.in/data/pdfs/convocation-speeches/Convocation%20Speeches%20Dr.S.%20RADHAKRISHNAN.pdf>

⁵⁵ Letter of March 3, 1894 from Chicago to Singaravelu Mudaliar, Asst. Professor of Science, Christian College, Madras whom Swamiji affectionately called Kidi: See, *Letters of Swami Vivekananda*, Advaita Ashram (Publication Dept., Kolkata) p.68 @70

course may lie, the best and most enduring gift that a University can bestow- the company of great thoughts, the inspiration of great ideals, the example of great achievements, the consolation of great failures- so equipped you can face without perturbation the buffets of circumstance, the caprice of fortune, all the inscrutable vicissitudes of life.”⁵⁶ Perhaps no better conception of University could be thought of. In short the purpose of education is to make a better and fuller human being. Asutosh Mookerjee in his 35 years of association with Calcutta University earnestly endeavoured to achieve this. His efforts in establishing modern education in Bengal and making it accessible to a larger section of the populace were colossal.

The University Act of 1904 which sought to tighten British Government control over University administration was vehemently opposed. It was at this time of political upheaval and lack of credibility in the Government regarding University administration that Asutosh Mookerjee was invited to be the Vice Chancellor. The rest is history. Asutosh Mookerjee was most competent but fiercely independent. He proclaimed, “We stand unreservedly by the doctrine that if education is to be our policy as a nation, it must not be our politics; freedom is its very life blood, the condition of its growth, the secret of its success----there stands forth unshaken the conviction that our insistent claim for the freedom of the University is a fight for the most sacred and impalpable of national privileges.”⁵⁷ He was greatly impressed by the model of German Universities- how their admirable combination of teaching and original investigation exalts and ennobles teaching and enormously stimulates and facilitates research and their unbounded intellectual curiosity to facilitate instruction in all branches of human knowledge. He was indeed a leader and builder of institutions.

Asutosh Mookerjee became the Vice Chancellor of the Calcutta University in 1906 and held that office till 1914 and thereafter intermittently till 1923 when he declined further extension as he felt there were attempts to curb the autonomy of the University. Like Jefferson, the former U.S. President even more well-known as the Founder of the University of Virginia, Asutosh showed a passion for higher education. “Nothing is dearer to me than my University,” he said. He converted the Calcutta University into an academy for teaching and research, untrammelled by official control and interference. Realizing that development of a national language was necessary to arouse national fervour and create appreciation for national culture, he introduced Bengali as a subject in the Calcutta University. He introduced other Indian vernaculars too as

⁵⁶ October 25, 1910; See Supra note 10.

⁵⁷ Calcutta University Convocation Address, March 24, 1923 (his last as Vice-Chancellor)

subjects of study in the University. He had the intuitive gift of spotting men of unusual ability and that enabled him to usher in the Golden Age of the Calcutta University. It was Sir Asutosh who induced Sir C. V. Raman, Nobel Laureate, who was then Assistant Accountant General to take up Palit Chair of Physics in the University, and it was again he who made the choice of Dr. Radhakrishnan for the Philosophy Department of the University. He had also recognised the genius in Srinivasa Ramanujam. He was also responsible for the Calcutta University getting munificent donations particularly from Rash Behary Ghose and Tarak Nath Palit and, of course, the Maharaja of Darbhanga. In the words of Lord Lytton, “What the University is today is the result of Sir Asutosh’s work. For many years, Sir Asutosh was in fact the University and the University Sir Asutosh.”

Sir Asutosh was the one responsible for establishing the University Law College in Calcutta⁵⁸. Earlier law was taught in different colleges in the Province. It was in 1908-1909 that a separate college for the study of law alone was started. The first Principal of the Law College was S.C. Bagchi. Among the earlier teachers mention may be made of Gopal Chandra Sarkar Sastry, eminent writer on Hindu Law, Asutosh Mookerjee himself, Rajendra Prasad, the first President of India, Bijan Kumar Mukherjee and Sudhi Ranjan Das, both later Chief Justices of India.

Sir Asutosh was of the view that a strong, independent and competent Bar was essential for a strong and independent Bench. With a view to improve legal training he introduced in 1909 reforms in the University. He insisted on holding Moot Courts. He himself would be presiding over such Moot Courts on Saturdays and Sundays. For a proper and systematic study of the different subjects detailed Synopses of the entire syllabus were prepared and distributed free to the students. He also delivered special lectures to the law students on various subjects. Some of those who had the benefit of his direct training ultimately rose to the top of the profession and a few became distinguished judges and jurists.

His Convocation Address on 28th March 1914, at the end of his first stint as the Vice-Chancellor, drew the following editorial comment from *The Statesman* which was owned and run by the British: “We do not remember to have ever read such a lofty convocation speech from the Vice-Chancellor of any University in India or elsewhere. It throws a flood of light into the inner recesses of Sir Asutosh’s unique character and genius.”⁵⁹ In his opinion, the most

⁵⁸ Supra note 10

⁵⁹ Supra note 10.

essential feature of University life is absolute academic freedom. For him education was religion and freedom was the very breath of its existence. His last Convocation Address on 24th March 1923 was again soul-stirring. In his Convocation Address to the Mysore University in 1918, he warned that we should not simply be absorbed in contemplation of the glorious past, that we should not waste precious time and strength defending theories and systems which however valuable in their own days had been swept away by the irresistible avalanche of worldwide changes. To quote Rabindranath Tagore's tribute: "Asutosh Mookerjee touched the Calcutta University with the magic wand of his creative genius, in order to transform it into a living organism belonging to the life of the Bengali people. This was his gift of gifts to his country, but it is a gift of endeavour, of Tapasya, which will reach its fulfilment only if we know how to accept it." ⁶⁰

A versatile genius, he was for many years an enthusiastic member of the Asiatic Society which was set up in 1781 and was its Vice President and President. His numerous addresses to that body exemplify the catholicity of his interests and the wide range of his learning. His contributions enriched the Society's journal. He pleaded for an awareness of our historical and cultural heritage. One of the earliest research scholars in India who contributed original papers even to international journals, he did not give up his scientific studies when he joined the Bar or went to the Bench. He was the President of the Calcutta Mathematical Society which he founded in 1908 and guided its activities until his end. His connection with the Indian Association for the Cultivation of Science was profound. He presided over many of its sessions. He was the Founder President of the Indian Science Congress in 1914. He was Chairman of Board of Trustees of the Indian Museum. He was also Chairman of the Council of Imperial (now National) Library and of the Sanskrit Association. He was a friend of the Sanskrit Pandits and of their ancient learning and was anxious to revive its intellectual glory. He was equally keenly interested in Bengali and spoke of the glorious future of Bengali literature. He was the President of the Mahabodhi Society also.

He was an unfailing and appreciative patron to scholars and a loving and sympathetic mentor to students. He always radiated humane understanding and cultural warmth. Although his activities lay outside the field of politics, he was deeply patriotic. Writing of Asutosh in *Nature*, Professor Cullins remarked that "every earnest, intellectual worker, however humble or however eminent, would find in him a wise understanding friend, and could talk to him as to a

⁶⁰ N. K. Sinha, *Asutosh Mookerjee: A Biographical Study* Asutosh Mookerjee Centenary Committee, 1966.

co-worker and an equal. Specialists in the most diverse literary and scientific subjects would find him familiar with the latest relevant literature. To every band of men engaged in the quest after truth and light, his help and encouragement were greatly and unselfishly given, and in learned societies and gatherings he was a dominant figure, giving appreciation where it was due and advice where it was needed.”⁶¹

Although a staunch votary of enlightened liberal values and an ardent social reformer he did not forsake Hindu traditions and his advice to the students used to be not to denationalize themselves in their just admiration for all that was best in the culture of the West. When his eldest daughter was widowed at a young age, he performed her second marriage in defiance of all orthodox opposition. This was an example of his orthodoxy not being incompatible with modernism. His orthodoxy was perhaps a part of his nationalism. Outside court hours he could be seen in familiar Indian- Bengali costume. He would receive his European visitors also in that characteristic homely Indian style and he proudly said that he did not feel ashamed to expose his sacred thread to the gaze of foreigners. His orthodoxy was an expression of his respect for the past and was perhaps due to his profound historical sense. But he was never rigid. In his social outlook he resembled Iswar Chandra Vidyasagar whom he must have regarded as his exemplar. He was conservative to preserve what is good and liberal to make necessary changes. About him it has been said that he was a wonderful epitome of the combination of Indian and European cultures.

Possessed of a heavy physique and formidable whiskers and built on heroic mould, he earned a name for himself for his fearless fight against all wrongs and came to be known as ‘Bengal Tiger’. This fearlessness was a natural concomitant of his independence of character and the spirit of freedom which often brought him into conflict with the highest dignitaries of the British Government in India. “Freedom first, freedom second, freedom always” was his guiding principle of life. He personified the courage never to submit or to yield. Indeed he exemplified in his life what the poet said: *From compromise and things half done/Keep me with stern and stubborn pride/And when at last the fight is won/God, keep me still unsatisfied.*⁶²

Sir Asutosh retired from the Court at the end of 1923. He suddenly took ill and passed away on May 25, 1924. He had not completed 60. His life and work was thus unhappily cut short at

⁶¹ Supra note 7

⁶² Louis Untermeyer, *Prayer*, Modern American Poetry, 1919.

its zenith. But the light of his genius will continue to illumine the path for generations to come. The legal community, the world of education and humankind at large were diminished by his demise. Nature which had bestowed so many blessings and gifts on him failed to clothe his mortal frame with physical immortality. In his sudden passing people were unkindly reminded of the close proximity of Death to Life, a life so vigorous and lively. Across the spectrum his passing was condoled and rich tributes were paid to him.

The secret of Sir Asutosh's power, more than anything else, it is believed, is *Synthesis* – a word which he and his colleagues used very often in their monumental report on the Calcutta University. It is a happy synthesis between the East and the West, between idealism and pragmatism, between nationalism and universalism, between self assertion and self abnegation – that explains the greatness of the man and the strength of his unique character. This was Renaissance at its best of which Asutosh Mookerjee was both a product and a builder and promoter. Indeed, synthesis and accommodation have been the hallmarks of Indian ethos which was eloquently expressed by Dr. Radhakrishnan: “Why look at things in terms of this *or* that? Why not try to have both this *and* that?”⁶³ He aimed at excellence in all that he did and exemplified in his life the great Chandogya Upanishadic verse: *yadeva vidyaya karoti, shradhaya, upanishada, tadeva viryavattaram bhavati* – whatever is done with vidya (knowledge), shradha (faith, conviction, dedication – the totality of positive attitudes) and upanishad (deep thinking- contemplation) becomes supremely efficient.

How would history view Asutosh's work and character? It is best to refer to what his distinguished son Syama Prasad Mookerjee wrote:

He dominated the minds of his countrymen and shaped their affairs in far too many departments- all with the same sheer plenitude of masterful control- for us now to predict that here only is his title to abiding renown. In daring, in determination, in massiveness of intellect, in strength of character, Asutosh belongs to that brotherhood of adventurers who in ages past had founded states and kingdoms. He belonged to the race of heroes of action, the true *karmaveers* of ancient Indian conception...In boldness of conception, in fertility of resources, in resoluteness of purpose which grows stronger after each defeat, in courage of heart and deftness of hand, which seeks to dare all and do all, Asutosh was almost without a peer. To

⁶³ See, Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (New Delhi: Oxford University Press, 1972) p.318

him man was the creator and not the creature of circumstances; and he always impressed others as a supreme architect, a builder-up of the destinies of our society and nation.

In him was a dual personality acting in perfect harmony - the man of action and the man of imagination. He was a great powerhouse of ceaseless practical energy as also a superb dreamer of dreams. But he was far from conjuring up shimmering utopias of fancy. It cannot be said of him 'a beautiful but ineffectual angel beating in the void his luminous wings in vain'⁶⁴. He had, as Tagore said, 'the courage to dream because he had the power to fight and the confidence to win'. This imaginative and speculative quality formed the guiding principle of all his practical schemes. Another supreme trait of his mind which rendered possible the crowded magnitude and extensiveness of his achievements was his boundless, robust optimism. It was not the happy-go-lucky, carefree optimism; he had that hope and that faith in the future which could move mountains. In the wildest of storms his sheet-anchor could hold. Dr. Radhakrishnan particularly struck by the significance of his innovations said "Genius anticipates experience".

He was two generations ahead of his times with his forward-looking mind and far-seeing spirit. He sought to infuse into the lifeless torpor of his countrymen the sanguine elixir of which he had himself drunk. He shared the religion of Swami Vivekananda -Glory to God in the Highest and Service to Man. Life piled upon life were all too little for the service of his country. But he was taken away rather early at the height of his powers and glory. And we are but left with an unfulfilled dream of what might have been.

Some of his thoughts and utterances bear repetition and are equally relevant even now. "Remember that it is not enough to be a good man and to achieve success in life. There is a loftier ambition than merely to stand high in the world; it is to stoop down and lift mankind higher. There is a nobler character than that which is merely incorruptible; it is the character which acts as an antidote and is preventive of corruption.... Be not content merely to avoid evil and the forces of corruption. Society requires not passive resisters but active helpers. It lies in you to illuminate the perfection of an unselfish culture with the light of devotion to humanity."⁶⁵

⁶⁴ Arnold, Matthew, "The Study of Poetry." Essays in Criticism: Second Series, Smith, Elder & Co., 1888, pp. 1-30.

⁶⁵ Sir Asutosh Mookerjee, Convocation Address at Mysore University, Mysore (1918).

His life's work is best described in his own words. "The felling of trees, the digging out of stubborn roots and stones, the draining of marshy soil, the clearing of obstructive weeds and finally the toils of ploughing and sowing: Now, at last, the fruits of all this labour begin to show themselves...the cultivator has done his best."⁶⁶ What he once said- 'Great comfort springs from the consciousness of rectitude of purpose, from the conviction that the cause to which one devotes all his strength and for which one renounces the ordinary delights of life, is a high and sacred one', ⁶⁷ brings out his personality and attitude to life.

Sir Asutosh's personality was the sum total of all his achievements and more. As Radha Binod Pal said, "Nothing in Sir Asutosh could absorb the whole man, nothing human was alien to him, truly a Renaissance character. One most fruitful aspect of Sir Asutosh's life illustrates Bagehot's emphasis on the importance of influence-wise and honourable persuasiveness- exerted from outside upon those wielding power, he had the gift of conveying his personality on paper, thereby vastly extending the range and depth of his influence and his resourcefulness and will could fuse many discordant notes to make possible many impossible things."⁶⁸ He added that none could avoid the consciousness of that piercingly searching attention of the Bengal Royal Tiger's exceptionally shining eyes.

Sir Asutosh had that 'comprehension and expanse of thoughts which at once fills the whole mind,' so that the aggregation of his work to be seen in his exceptional mastery of almost everything that he touched in his truly resplendent life, attains the ripeness and sublimity which only the very great can achieve. He can be said to have belonged not merely to his generation, but to a line, which reflecting the genius of the human race, has moved with unbroken continuity through the centuries. The three great driving forces of civilization- science, law and education found a remarkable meeting point in Sir Asutosh. He was thus the very spirit and embodiment of the Renaissance and his contribution was substantial and significant. He received no material reward but had the immense satisfaction of his own sense of duty well done and winning the lasting love and gratitude of his fellowmen in abundant measure.

⁶⁶ N. K. Sinha, *Asutosh Mookerjee: A Biographical Study* Asutosh Mookerjee Centenary Committee, 1966; Sir Asutosh Mookerjee: A Tribute (On 150th Birth Anniversary of Sir Asutosh Mookerjee), University of Calcutta and Asutosh Mookerjee Memorial Institute, 2013.

⁶⁷ Calcutta University Convocation Address, March 28, 1914; A C Bose, In Memoriam, Calcutta Review, pp.57–72.

⁶⁸ Supra note 10.

Sir Asutosh was indeed a multi-faceted and many splendoured gem. He touched life at many points and left his indelible impress on men and matters. It is 100 years that he is no longer with us, but his trail remains unblazed. It will be so. We may try to emulate him but we must fail because Sir Asutosh was an artiste and it can be said of him as was said of Beethoven: He traversed all, he comprehended everything. He who follows him cannot continue, he must begin anew, for his predecessor ended only where art ends. But his life and work are as relevant today as ever. They will continue to inspire and ennoble us. We treasure his memory and cherish his ideals and aspirations. He was a genius and “in all true genius there is a touch of art and art is immortal.” He was truly a rare pilgrim of eternity who scaled high peaks of excellence.

Carlyle in his French Revolution describing the Battle of Valmy, notes the presence of Goethe- ‘One of the sort called Immortal, him mark.’ ⁶⁹ This aptly applies to Sir Asutosh.

⁶⁹ Thomas Carlyle, Critical and Miscellaneous Essays, in 29 The Works of Thomas Carlyle 1 (Centenary ed., Chapman & Hall 1899) (vol. IV of 5).