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# **Lady Templeman-Master Singhvi Memorial Travel Fellowship 2016**

‘Please, are you my advocate?’ A man bent by age, clutching a scrap of paper with a High Court stamp on it, looked at me hopefully. Four days after being called to the Bar by the Inn, I was flattered to be mistaken for a competent advocate, but I could do no more than apologise and say that I was not: this was a humid morning in New Delhi, some four thousand miles from the only High Court I might claim to have studied.

I had been fortunate to receive the Inn’s Lady Templeman-Master Singhvi Memorial Travel Fellowship to visit India and find out first-hand more about the country’s legal system, and was now stood in a courtyard just outside the Delhi High Court waiting for a visitor’s pass. The most striking feature of the Indian court system to the casual observer is the crowds: every court I visited had standing room only by the time business got underway each morning. The visual force of these crowds is heightened by the requirement that all Indian advocates – whether they be trial counsel or discharging a solicitor’s functions – must attend court wearing a gown and bands. Broad rivers of court dress roll along the corridors.

I had expected the courts to be busy, if not to quite such a degree: the Supreme Court has jurisdiction over around 1.3 billion citizens, far outstripping any other common law court. The volume of population is not, though, the sole explanation. Through talking to advocates and seeing court business itself I began to understand some of the other reasons for the courts being so packed. One is the way in which courts are resourced: ongoing disputes between executive and judiciary about the power the Supreme Court has arrogated to itself to appoint its own judges mean that the higher courts are short of several hundred judges, while a lack of administrative staff means those judges who are left often have little time to sit down and write judgments, contributing to delays. The other is the way court business itself is conducted. The civil courts use the Indian Civil Procedure Code, enacted in 1908, which lacks the kind of case management powers the Woolf reforms yielded in English courts, and which expects almost all business to be transacted before the courts themselves. This created lengthy cause lists which had a large number of interim and final matters mixed in together, even in the Supreme Court. This resulted in the number of matters heard almost invariably being exceeded by the number of cases to be heard, with interim matters sometimes waiting for days while the court dealt with a final matter higher up the cause list.

The advocates I spoke to were frustrated by this, not least because it meant they often prepared to go to court to no avail. It also meant cases dragged on for decades: litigation twenty or thirty years after the event was not uncommon, and one advocate told me he had just argued a case before the Supreme Court which his grandfather argued at first instance forty years ago. In consequence, there is currently a backlog of nearly thirty million pending cases nationwide.

The benefit for the observer was that Supreme Court advocates could expect to be in court every day and, in any event, on their feet several times every week: this meant they were consummate trial counsel. Dr Abhishek Singhvi, my host, had on one occasion fully prepared to argue a Supreme Court matter about the sale of a property in Mumbai; the court adjourned the matter as soon as it sat, but immediately Dr Singhvi, outpacing the rest of us, hurried over to the High Court to argue a case concerning railway wagons instead. The number of cases advocates deal with in any given week, and the breadth of practice which is still the norm at the Delhi Bar, mean advocates possess great flexibility and intellectual acuity. One area, however, in which the advocacy I saw differed sharply from English practice was the high speed with which even many of the best senior advocates I saw spoke: intriguingly, this never seemed to be an issue for the judges’ comprehension of their arguments.

I was on my own for much of the time I was in the country, which – not least because people were often surprised I was alone – meant that I had many more interesting conversations than I might have had otherwise, usually with complete strangers. Whether standing in the colonnade of the Supreme Court or travelling in a sleeper train compartment I had enlivening discussions about topics ranging from the historical development of constitutional theory starting with Aristotle to the aircraft carriers of the Indian Navy. Many of these strangers also insisted on buying me a cup of tea, a kindness which was most welcome.

These conversations revealed some common themes. Non-lawyers and lawyers alike were curious to know how India and Indians were perceived in Britain, and what the EU referendum result might mean for India’s relationship with the UK. Many lawyers wanted to compare the extent to which English and Indian procedure remained the same, and to compare approaches to human rights. One topic which was a particular concern of younger advocates was diversity at the Bar, with some labelling the Supreme Court Bar an old boys’ club: it was a small comfort to them that the question of access to the profession was by no means exclusive to Delhi.

I then visited the National Law University (NLU) in Jodhpur and became, for what I expect will be the only time in my life, a visiting law lecturer, speaking to first-year undergraduates on the history of common law (a thousand years in fifty minutes), and to postgraduates on the effect of the Woolf and Jackson reforms. Indian law students work tremendously hard, with an LLB requiring six days of lectures every week for five years: this produced listeners who were perceptive questioners, and who almost certainly knew more law than I did.

During my stay, I had the opportunity to do many other things I had never done before, some obvious, like riding a camel, some less so: I was allowed to paint the flank of an (alive) elephant at a wildlife sanctuary in Jaipur, and so decided to write clause 40 of Magna Carta, albeit in a slightly truncated form. Whether, in fact, anyone else has been foolish enough to attempt this in the last 801 years, I cannot say: in any event, it piqued the curiosity of the staff, leading to a conversation about their right to a fair trial in the Indian Constitution (indirectly derived from clause 39 of Magna Carta), which was, I hope, a small contribution to legal goodwill in the broadest sense.

I would like to thank my host, Dr Abhishek Singhvi, for his generosity in organising the travel fellowship which his late father, Master Singhvi, first instituted; to Mr Amit Bhandari, who kindly arranged the details of my stay in India and put up with my questions; to Mr Sohan Lal Sharma, Registrar of the NLU; to Major Kamalesh Singh of the Border Security Force; and to the Inn’s scholarship committee and scholarships officer.

**Ralph Morley**



*To no one will we sell, (to no one will we deny), or delay right or justice.*

*Magna Carta, as recorded on the side of an elephant*