

DEDICATED

TO

KHURSHED FRAMJI NARIMAN.

THE

HERO OF THE TRAGIC EPISODE.

AS A HUMBLE TOKEN AND MARK OF APPRECIATION OF THE
COMPILER, FOR HIS UNTIRING ZEAL, INEXHAUSTIBLE
ENERGY, REMARKABLE PATIENCE AND COURAGE, FEAR-
LESS INDEPENDENCE AND ABOVE ALL MARVELOUS
INTELLECT, DISPLAYED DURING THE TEDIOUS
COURSE OF THIS LONG DRAWN-OUT TRIAL.

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Mr. K. F. Nariman, B. A., L.L. B. M. L. C. Bombay.

Harvey - Nariman

LIBEL CASE.

WITH A BRIEF HISTORY OF THE DEVELOPMENT DEPARTMENT,
IMPORTANT EXTRACTS FROM 'MEARS COMMITTEE' REPORT
LEADING UP TO PROSECUTION, COURT PROCEEDINGS
INCLUDING THE STATEMENT OF DEFENCE, JUDG-
MENT IN FULL, WITH PRESS COMMENTS,
ILLUSTRATIONS ETC.

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“FOREWARD.”

The proceedings in the Police Court was only a culmination, the final stage of a long drawn-out and vigorous struggle that had first started some years ago in the Legislative Council of the Government of Bombay.

Perhaps no other member in the Council or Public worker outside had devoted so much time, attention and energy on this very important subject of the Development Department as Mr. Nariman. Either in the series of the searching interpellations or in his usual trenchant sarcastic and logical speeches he disclosed remarkably close study of minute details of this intricate subject and supplied a wealth of information that has as much astonished his non-official “Colleagues” as bewildered the Government benches.

Even a lawyer could understand and appreciate the difficulties of the defence in a case of this description.

To give the reader an idea of the enormous nature of the undertaking, we will consider a few out of the multifarious activities involved in such a trial. To collect materials and informations treated as confidential and official secrets from the hostile camp, to be prepared to cross examine a technical expert at considerable length on points bristling with technical details, to meet and answer the intricate points of law constantly raised by one of the ablest Criminal Counsels or by the Court, to inspect and study the voluminous and confusing records official and private and at the same time to keep constant and vigilant eye upon the movements and attitude of the several merchants and contractors in the City and Suburbs, to apply for immediate search warrants after due care and investigation, but the most difficult task of all was the collection of witnesses, persuading them to step into the box and make startling disclosures, often incriminating themselves, such was the multifarious and gigantic task with which Mr. Nariman was faced singly and simultaneously and a perusal of this book will give the readers an idea of the magnitude and enormity of this great undertaking. That Mr. Nariman faced through this terrible ordeal and came out triumphant will ever redound to his credit and glory.

By a strange and lucky coincidence the case terminated at a critical time in the Political History of the Country and it was a lucky coincidence that the Judgment was delivered only a few days before the landing of the Parliamentary commission in India who had come to visit this land to investigate and judge about the fitness of the Indians to administer in their own affairs ; so far as this Presidency was concerned that fitness and efficiency of our foreign rulers was amply demonstrated and proved by a single individual in the course of this long trial and as one of our comrades rightly remarked, the proper course, in view of this disclosures would be to appoint a Commission of Indians to inquire into the fitness of the foreign rulers to continue their domination in this Country.

It will not be out of place to mention here that I was very lucky in having the opportunity of assisting Mr. Nariman in all technical questions in Engineering. For this reason I had to be by his side, during almost all the hearings of the case and hence, being in possession of nearly all particulars regarding the case, I ventured to compile this book.

With these few words I commend this to the general public and assure them that it is a work of as great Political importance as of legal constitutional interest.

THE COMPILER.

PREFACE.

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Bombay will not for many a year cease to curse the day on which the Government of Sir George Lloyd (Now Lord Lloyd) embarked on that reckless venture of expanding the habitable area of the City to provide additional housing accommodation for its growing population.

The Development Department which was instituted to carry out the various Development projects, has such a sorry record of achievements to present to the Bombay Public in return for the lavish expenditure of several crores of hard earned Rupees remorselessly piled up by the public tax-gatherer that the man who presided at the head of this Department has discreetly retired from the scene of his achievements to explore the means of easing his conscience during the remaining days of his life. One of the remarkable facts of English History consists in the traditional policy of sacrificing a national hero to right a national wrong. In the words of Voltaire when Admiral Byng was executed "In England it is thought necessary to kill an Admiral time to time to encourage the others." But in the History of the British Empire it is a traditional policy that a higher appointment usually awaits the audacious "Mandarin" who distinguishes himself in India by riding rough-shod over the expressed wishes and tender susceptibilities of its timid peoples. Whilst in the 18th Century Warren Hastings was impeached for seven long years for looting the Begums of Oudh, Lord Lloyd is rewarded with the High Commissionership of Egypt for endowing Bombay with a perpetual legacy in the shape of increased taxation to meet the interest charges on crores of Capital irrevocably lost in the Back Bay Bungle.

Indians are known as well for their sensitive as for their forgiving nature. The material losses, tremendous though they have been, will have to be met and would have been met without much agitation if the Government had not added insult to the injury by challenging the fundamental rights of civilized subjects to criticise the doings of the Government in the execution of its Development projects. The Government decision to sanction the prosecution of Mr. Nariman—that intrepid champion of public liberty and rights—raises grave constitutional

issues which lie at the very root of the modern conception of democracy. Our benign Government is never sick of crying for co-operation from the non-official population. In decrying the activities of non-co-operators, the Anglo Indian Press never tires of appealing to "Sober India" of adopting Constitutional methods in criticising Government actions. And now when Mr. Nariman pays them the compliment of following up their suggestion and adopts rigidly constitutional methods of asking questions and moving resolutions in the Legislative Council, of appearing before a Government-appointed Committee at the latter's request and of fearlessly giving replies in unequivocal terms to questions put to him, he is made the victim of a police Court prosecution extending over thirteen months and financed by the Government Exchequer. Mr. Nariman's strenuous constitutional fight in and outside the Legislative Council has placed our Official and Anglo-Indian friends in the unenviable position of hypocrites who find themselves hoisted with their own petard. The successful culmination of the Harvey-Nariman case must above all be reckoned as a complete vindication of the birth-right of every Indian Citizen to criticise fearlessly the doings of the Government of the country and its accredited servants in a perfectly constitutional manner.

But this is not all. For the ordered progress of the Country, it is imperatively essential that in future-God forbid-when Committees like the Mears' Committee are appointed to enquire into the working of the Public Departments, witnesses summoned by and appearing before such Committees must be deemed as privileged persons having perfect freedom to furnish the Committee with all information in their possession without risking the breach of the Law.

The Harvey-Nariman case has demonstrably proved that outsiders cannot have access to the same sources of documentary information of which the Departments concerned make a close preserve. The information supplied by non official witnesses cannot, therefore, be of the nature of legally admissible proofs, but inferences based on such information are not necessarily to be dismissed as of no value.

If the Mears' Committee had only followed up the lines of inquiry indicated by Mr. Nariman, they would, assisted by the "Official Records," have come to the same conclusion as arrived at by the learned Presidency Magistrate, who remarked in the 'Judgment' "The accused had proved that some officers of the department were corrupt and some of the witnesses did state that these officers said that they had to charge a high commission as it had to be shared by higher officers." When the Mears' committee were given

certain informations to investigate, the stereotyped reply to witnesses was to the effect that they could not go through 'tons and tons of papers.'

In one respect the prosecution of Mr. Nariman was a blessing in disguise. It gave him an opportunity of exposing to public view, on the strength of Official records, what passes under the elusive title of efficiency in Government Departments. This 'superstition of efficiency' is as real and hard to die as that instrument of many an act of injustice done to India—'Prestige.' Indians of high accomplishments are often pronounced unfit for high official appointments "in the interests of the efficiency of service." The powerful searchlight with which Mr. Nariman has reconnoitred the field of 'efficient administration' in the Development Department might very well spare Indians wringing their hands in despair for want of such 'efficiency'? Let us see what efficiency meant in the Development Department? We learn that one of the ingredients of efficient administration lies in deliberately misleading the Public by telling them that the work of the Department is 'progressing steadily' whilst Sir Lawless Hepper had the temerity to admit that at the time he made this statement the work was not being satisfactorily done. What better standard of efficiency could be imagined than that of employing petrol-supply Companies to supply building materials, of giving building contracts to people unknown to that trade and in preference to long-standing firms of experienced contractors? It is not inefficient to pay Rs. 14,000 for a bill of Rs. 140 and not to detect the error for some years. Indian Engineers are not qualified for higher executive appointments as they have not attained that standard of efficiency which enables European Engineers, to conceive the idea of buying 20 ton Cranes costing about £ 9,000 a piece and with nothing so heavy as 8 ton load to pick up and to dispose them of as scrap iron ultimately. It is a glorious conception of efficiency to requisition the services of an elephant's trunk to pick up a needle. These few illustrations culled from an endless volume of efficiency exhibits, might well be supplemented to "What Britain has done for India?"

It would not be surprising to imagine that soon after the prosecution of Mr. Nariman started in the Police Court and Mr. Nariman commenced exposing the scandalous activities of the Development Department, the Government must have felt a little uneasy inasmuch as its well advertised intention of protecting its higher officials against unwarranted allegations, proved to be ill-advised. Instead of removing suspicion from the public mind, the evidence led by Mr. Nariman simply confirmed the Public opinion and long before the learned

Presidency Magistrate delivered his famous judgment, the public could not but feel convinced that Mr. Nariman's allegations of corruption amongst some high officials of the Department were substantially correct. The unexpected turn which the case took was shattered the Government prestige. At several stages during the hearing of the case, opinions both in Indian and European circles were freely expressed that the Government could save its face better by withdrawing the case. The General member was certainly talking with his tongue in the cheek when he defended sanctioning the prosecution on the ground that Mr. Nariman would not otherwise have had such an opportunity for bringing to light the facts disclosed in this case. The Development Department had landed the Bombay Government into such a desperate situation that it has proved to have been impossible to preserve prestige and at the same time to discover loop hole for escaping from the awkward situation. History teaches us that irresponsible Governments never show the weakness of admitting their mistakes till they are buried under the ruin wrought by their follies. The ill-advised prosecution of Mr. Nariman has not only battered to pieces the prestige of Bombay Government, but has justified some of the Bombay Public into looking with suspicion on the doings of the high paid officials of the Government. If High officials can be induced by free supply of various domestic needs such as tins of ghee and gallons of petrol, and motor accessories to allow contractors to bill twice for each item of store supplied to the Department if a High official could not be expected to accept tender for disposal of surplus stores unless his palm is thickly greased it would be living in a fool's paradise to expect the Bombay public to have an iota of faith in the honesty and integrity of its public officials. Could any impartial man have any doubt as to where Mr. Manekchand Jivraj's five thousand rupees went, before he got his tender for surplus steel bars accepted? Is it possible to reconcile honesty of administration with a systematic ordering out of unnecessary large quantities of materials? It is for persons placed in high quarters to convince the public that the dredgers and plant and machinery costing enormous sums of money were not ordered out with the deliberate intentions of reducing unemployment in Great Britain. These orders, fantastic in size and cost, fit in exactly with the then prevailing craze of "BUY IMPERIAL GOODS" and such half-baked schemes like export and trade facilities Acts.

Will it not be fair for Lord Lloyd to hand over his so-called private files for inspection to an impartial tribunal of judicial men so that the public may know under what circumstances the George Lloyd Dredger came to be ordered out before the Scheme was sanctioned.

It is not possible to recall any instance in the whole history of British Administration in India in which a single individual has shown such unprecedented courage in successfully shouldering an almost impossible task of bringing to public knowledge in a convincing manner, the lack of honesty and systematic corruption which is rife in certain Government departments. Mr. Nariman can now claim to stand in a class by himself.

Mr. Nariman's dauntless fight against the mighty powers and resources of a strong Government will ever remain a unique achievement in the history of a people's struggles for the assertion of its true rights. That Mr. Nariman should have carried on this fight to a successful end and not be ruined financially and otherwise is really a matter of agreeable astonishment to the public in general and his numerous friends in particular, who have in the past had the sad experience of seeing people ruined simply because they dared to run their head high in exposing the scandalous doings of Government departments. This is mainly so because of Mr. Nariman's profession which does not for its living depend upon Government patronage or the truckling of high placed officials. Whilst rejoicing at this happy result, we do not at any rate desire to undervalue the enormous sacrifice of time, energy and money which Mr. Nariman has so selflessly made in the sacred cause of defending public rights.

ERRATA.

PART I.

Page	Line	For	Read
30	16	„ presidency	„ Presidency
„	39	„ tenour	„ tenor
31	2	„ „	„ „
33	13	„ block	„ blocks
48	33	„ memorandom	„ memorandum
50	29	„ purview	„ perview
74	38	„ felt	„ left
107	30	„ Skyes	„ Sykes
118	23	„ altered	„ ordered
131	2	„ For	„ for
132	19	„ return	„ retain

PART II.

22	36	„ extent	„ extend
35	34	„ that in	„ that niether in.
40	28	„ not make	„ not made
46	4	„ figure	„ figures
„	6	„ make	„ makes
62	34	„ far	„ for
87	4	„ Rs. 190	„ Rs. 90.
117	25	„ those other	„ those of other
161	16	„ large	„ larger
167	4	„ stantorium	„ stentorian
182	32	„ correspond- ence	„ correspondent
188	37	„ bad	„ lead

PART III.

9	30	„ large	„ larger
13	21	„ privileged	„ privilege
34	23	„ assuming	„ Assuming
„	38	„ give	„ gave
38	27	„ if	„ on
54	14	„ And	„ An
63	29	„ Indian	„ India

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