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Book Review: Before Memory Fades... An Autobiography

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Keywords

Supreme Court of India, Judicial Activism, National Emergency, Indian Constitution, Public Interest Litigation, Bhopal Gas Tragedy



BOOK REVIEW: BEFORE MEMORY FADES.... AN AUTOBIOGRAPHY

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Abstract

Title: Before Memory Fades.... An Autobiography

Author: Fali S. Nariman

Language: English

Year: 2010

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Total Pages: 454

Keywords: Supreme Court of India, Judicial Activism, National Emergency, Indian Constitution, Public Interest Litigation, Bhopal Gas Tragedy

Book Review

"The most important thing in the Olympic Games is not winning but taking part; the essential thing in life is not conquering but fighting well."

- Fali S. Nariman

Before Memory Fades ... An Autobiography (2010) is an autobiography of an eminent jurist Fali S. Nariman who has been senior advocate of the Supreme Court since 1971 and was nominated as a member of Parliament from Rajya Sabha from 1999 until 2005. Nariman was decorated with India's second highest civilian award *Padma Vibhushan* in 2007 and had previously been honored with the award of *Padma Bhushan* in 1991.

The book gives not only a chronicle of Nariman's life but also an account of Indian political and legal history. The biography discusses the landmark cases fought by Nariman and a commentary of various landmark judgments over the period. It begins with the formative years of the author, portraying the devastation of a refugee family from Burma who had been uprooted from hearth and home, it further discusses Nariman's schooling and reason for choosing law as a profession.

The chapter titled *More Watching than Pleading* talks about Nariman's early days at the Bar and the fond memories of occasionally receiving a brief in the form of *Brief for Consent Decree* on which Nariman would mark the fee of one gold mohurs, though the customary fee was two gold mohurs (Nariman, 2010). In one of the chapters, Nariman also discussed an incident in which a judgeship was offered but Nariman declined it for financial reasons. Whilst sharing this incident, Nariman (2010) mentioned his daughter Anaheeta's excitement over the judgeship offer and how much Anaheeta wanted Nariman to be a judge.

In the book, Nariman (2010) discussed prominent members of the bench before becoming and while a sitting judge, including Justices M.C. Chagla and Justice Tyabji. Nariman also shared the does and don'ts for young lawyers learned through experience at the Bar over more than 60 years. In the book Nariman (2010) discussed in detail the constitutional developments made by the judiciary, interpreting amendment powers of parliament from the *Shankari Prasad's* (1951) to the *Minerva Mills case* (1980). The author gave detailed insight of the times of National Emergency in 1975, while acting as the Additional Solicitor General of India. Nariman (2010) also recalled when Justice Jagmohan L. Sinha pronounced the judgment in the election petition filed against former Prime Minister Indira Gandhi in which Gandhi was held guilty of corrupt practices and was disqualified from holding any public office. In the book, Nariman (2010) narrated defiance against the emergency imposed by Mrs. Gandhi, by resigning from the post of Additional Solicitor General of India. The autobiography also gives due credit to the brave judge Justice H.R. Khanna for making judgement in the *A.D.M. Jabalpur Case* (1976) eventually paying the price by losing the Chief Justiceship to the junior Justice Beg.

The *Bhopal Case Tragedy case* (1991) in which Nariman represented the Union Carbide Corporation was discussed in detail. After this case Nariman's image as a human rights lawyer was tarnished and as a "fallen star" to which Nariman defended himself citing the constitutional

right of the accused to be represented by a lawyer of choice. Nariman (2010) also discussed the principle of non-presumption of guilt and lashed out at the human rights lawyer violating the human rights of the accused by stopping lawyers from taking the cases.

The biography presented various instances in which Nariman stood for principles and refused to represent the State of Gujarat after it failed assurance given by Chief Minister of Gujarat Keshu Bhai Patel to stop the burning of churches and bibles in various parts of the state. Nariman did not shy away from criticizing a win. In the Chapter titled *A Case I Won - But Which I Would Prefer to Have Lost*, Nariman (2010) discussed *Supreme Court Advocates-on-Record Association v. Union of India* (1993) better known as the *Second Judges case*. Nariman criticized the collegium system of appointment of judges wherein the top five senior most judges of the Supreme Court recommend the appointment of judges. While criticizing the first case regarding the appointment of judges, Nariman (2010) discussed the decision in S.P. Gupta's (1982) and *Re Presidential Reference case* (1999), in which Nariman (2010) considered the idea of a National Judicial Commission as an excellent one.

In the chapter named as *Judicial Governance and Judicial Activism*, Nariman traced the history of Judicial review in India. Public Interest Litigation evolution and use of Article 21 for judicial governance by the supreme court was discussed. With election politics in India, the phrase, *all power corrupts - and the fear of losing power corrupts absolutely!* has relevance. Nariman (2010) cautioned against judicial abuse by stating that we don't need judges who behave like 'Emperors'. "*Ample judicial power administered with ample judicial wisdom' is the need of the hour; not curtailment of judicial power, but maturer wisdom in its administration.*"

As a nominated member of Parliament for Rajya Sabha from 1999 to 2005 Nariman (2010) shared parliamentary experiences in the upper house. Nariman discussed how in the initial two years of the term it was not possible to effectively contribute to the parliamentary proceedings due to his law practice at the Supreme Court and in the third year it was decided that the law practice must give way. Nariman (2010) shared wanting to bring the private member bill named *The Disruption of Proceedings of Parliament (Disentitlement of Allowances) Bill* (2004) which was appreciated by all the other MPs, but the Bill lapsed and went into oblivion after the end of Nariman's term in office. While in parliament, Nariman drafted and introduced other bills such as

The Judicial Statistic Bill (2004) and *The Constitution (Amendment) Bill* (2004) which are credited to Nariman.

In the final chapter of the book titled *The Finishing Canter*, the author discussed the great diversity of India. Particularly the thanking the secularism of India. Nariman (2010) said “*I have lived and flourished in a secular India. In the fullness of time, if God wills, I would also like to die in a secular India.*”

In *toto* the book deals with the following subjects:

- The sanctity of the Indian Constitution and attempts made to tamper it.
- Landmark cases that have impacted India and the interpretation of the Constitution.
- Relation between Judiciary and the Legislature in India.
- Lessons for Young Lawyers.
- Menace of corruption and the means for combating it.
- Means of restoration of the low credibility of the legal profession.

The book is an autobiography of an extraordinary person who lived an extraordinary life. It is useful for the law professional and the lay reader who have an interest in Indian Constitutional History and Law as a profession. It is highly informative with various anecdotes of non-Indian personalities and is quite thought provoking and educative.

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