



The Law, Literature and Diaspora Lecture Series
Lecture 2

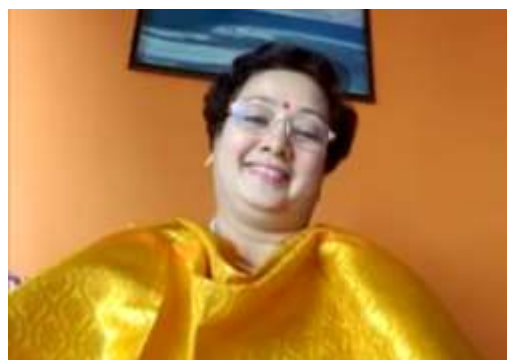
LAW AND LITERATURE AND THE INDIAN DIASPORA IN COLONIAL AFRICA
By Advocate and Author Pheroze Nowrojee on 20 August 2020

CoHaB Indian Diaspora Centre (CoHaB IDC) in collaboration with the Mumbai University Department of Law and The WW University of Muenster, Germany, had organised the second lecture in the international interdisciplinary Law, Literature and Diaspora Lecture Series, on '**Law and Literature and the Indian Diaspora in Colonial Africa**' which was delivered by noted human rights activist, advocate and author Pheroze Nowrojee on 20 August 2020 through a webcast that was attended by around 150 participants and invited guests from colleges and universities from all around India, New Zealand, Australia, South Africa, Germany, USA and Canada. Advocate Nowrojee is a Senior Counsel in the High Court of Kenya. He is also a renowned author. His awards include the International Commission of Jurists (Kenya) ICJ Jurist of the Year, 1995, the International Bar Association (IBA) Bernard Simons Human Rights Prize, 2002-2004, the Law Society of Kenya Roll of Honour, 2005, the Maasai People Safeguarding Rights Award, 2007, and the CB Madan Constitution Prize 2014, the Bharatiya Pravasi Samman Award by India, 2007, and the South Asian Studies Council's Annual Gandhi Lecture at Yale University, 2017.

Commodore Srikant Kesnur, Director, Maritime Warfare Centre and OIC Naval History Project, chaired the lecture and gave his remarks. Professor Nilufer E. Bharucha, Director, CoHaB IDC, and Professor Rajeshri Varhadi, Head, Department of Law, jointly welcomed all the invited guests and participants. In her welcome address, Professor Varhadi spoke of how there are deep connections between India and South Africa especially Mahatma Gandhi's connection. She then welcomed the guest speaker, Advocate Pheroze Nowrojee and thanked him for accepting the invitation to deliver the talk. She also welcomed Commodore Srikant Kesnur and lauded his academic interests and said that he would positively impact the listeners with his remarks. She also thanked University of Mumbai's Vice Chancellor and Pro-Vice Chancellor for encouraging the organisation of such diverse programmes. She then welcomed Professor Klaus Stierstorfer, Chair British Studies & Vice Dean of Philology, Spokesperson Collaborative Law and Literature Research Centre, WW University of Muenster, who also gave the valedictory remarks. She thanked Professor Nilufer Bharucha for conceiving this unique law, literature and diaspora series. She also welcomed all the invited guests and participants.



Professor Nilufer E. Bharucha
Director, CoHaB IDC, University of Mumbai



Professor Rajeshri Varhadi
Head, Department of Law, University of Mumbai

Following Professor Varhadi's welcome, Professor Nilufer Bharucha too mentioned how the inaugural lecture received a good response and the second lecture in the series is testimony to the fact that a strong connection has been developed between law and literature. She then formally introduced Commodore Srikant Kesnur. She mentioned that apart from his responsibilities as Director of Maritime Warfare Centre, he has a PhD from Mumbai University and five postgraduate degrees in Science and Social Sciences. He has also been a writer and Chief Editor with 9 books and journals published for the Indian Navy. He had been the Defence Advisor to the High Commission of India in Nairobi, Kenya. Professor Bharucha mentioned how the Commodore regularly takes part in dialogues on the subject of India and Africa and how his experience and doctorate too in the said area makes him an authority on the subject. She then invited the Commodore to deliver his remarks.

Commodore Kesnur began by thanking the organisers for giving him the opportunity to chair the lecture. He mentioned how the themes of law and literature in colonial Africa are challenging and was looking forward to how the speaker handled those. He mentioned how law deals with human conditions and dilemmas and thus its going hand in hand with literature is a given. He also said how the themes of displacement and dislocation and of adapting and adjusting to host cultures are dealt with in diasporic literature. He mentioned how colonial diaspora came with its own subtext. He said it was fascinating to see how the diasporic texts came together in this diaspora. He then said how Advocate Pheroze Nowrojee is the best speaker to talk about this relation as he is an advocate, an author and a diasporan himself. After formally introducing Advocate Nowrojee, Commodore Kesnur then introduced him in his personal capacity as someone who has known Advocate Nowrojee over the years. He highlighted how Advocate Nowrojee is respected and revered throughout Nairobi and that as a lawyer he is a great listener. He also gave a personal anecdote to illustrate the generous nature of the speaker. The Commodore then invited Advocate Pheroze Nowrojee to deliver the lecture.



Commodore Srikant B. Kesnur
Director, Maritime Warfare Centre and OIC Naval History Project

Advocate Pheroze Nowrojee began by thanking the organisers of the lecture. He then proceeded to give the definition of poetry by W. H. Auden. He said the definition by Auden also applies to the literature of the law. He said how the literature of the law is by the judges and the lawyers, whereas the literature about the law is by writers who may or may not be lawyers. He said how the writers may not always admire law and gave the example of author Dickens, who although he wrote a lot of literature about the law, it was mostly unflattering. Diasporic writers and those from the Empire unfortunately do not admire law although they write about it in a fascinating manner. He mentioned how one does not find fascination but condemnation of the law and its processes. He mentioned how the political habitat of the Indian Diaspora was the British colonies. The Empire's experience for us was that of legal authoritarianism and social humiliation. Diasporic literature is thus polemical according to Advocate Nowrojee. It is further disputatious as the writers are asking the fundamental questions about the

coloniser's rule. Thus, as the law in the colonies because of these disputes was largely oppressive in nature, the literature in the colonies was of defiance and resistance to the oppression and daily punishments.



Advocate and Author Pheroze Nowrojee
Senior Counsel, High Court of Kenya

The lecture touched upon the close connection between the events, reactions and responses in India to those in the diaspora because of the shared oppression. Some of the major influences were the Gadar movement, Arya Samaj, Mahatma Gandhi and more importantly the Indian freedom movement. Therefore the critical influence on the literature of the colonies was the resistance in India. It is therefore seen that in East Africa, not just the statutes but the words of the literature of the law were also taken from India. This was in addition to what was created in the colonies too. Africa not only shared the oppression but also the inspiration from India. One of the best literary responses from the colonies was from Robert Sobukwe, President of the Pan African Congress in South Africa. His words in May 1960 about how the history of the human race has been about the struggle for removal of oppression and how glad he is that the human race made its contribution, were inspired by the Indian freedom movement.

Advocate Nowrojee cited another example of this struggle against oppression and the denial against the rule of law in Kenya which by the year 2000 was in the 22nd year. By then the African National Congress was in its 34th year. When Advocate Nowrojee in his conversation with Albie Sachs, freedom fighter and Judge in the Constitutional Court of South Africa, asked Sachs how he dealt with oppression and that Kenya doesn't have a national party like the ANC, he turned around and asked the speaker, whether he thought what he was doing was right. On getting an affirmative answer, Sachs further asked what the reason was to stop. As an individual, one must pursue right till it is re-established. Advocate Nowrojee said, that is the power of memorable words, of the literature of the law - they restore.

To illustrate this further, Advocate Nowrojee read out the concluding part of the speech by Nelson Mandela that he gave on 20 April 1964 from the dock of the defendant at the Rivonia Trial. He said famously,

I have dedicated my life to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all people will live together in harmony and with equal opportunities. It is an ideal for which I hope to live for and to see realized. But, My Lord, if it needs to be, it is an ideal for which I am prepared to die.

These words spoke to all those who believed in freedom and dignity. They not only affected the subsequent generations in South Africa but also impacted school children till freedom was achieved.

Advocate Nowrojee further spoke on how Jawaharlal Nehru's refusal to plead his case in 1942 in Gorakhpur left a mark on the colonial minds. He spoke of T.S. Eliot's 'Burnt Norton' which talks about the fickle nature of words and cautions lawyers as well as poets. However, lawyers know the use and more importantly the power of words. It is the justice of their course and the injustice of their clients' oppression that move them to shape other words. They have a literary ability to use words to move others. Advocate Nowrojee talked about how the reason we share the same inspiration is because we shared the same oppression.

Referring to Thomas Metcalf's *Ideologies of the Raj*, Advocate Nowrojee spoke of the two sharp divisions in the ideology of the Raj reflected in the law and the literature of the law to further explain his point of view. In the contesting ideologies that Metcalf pointed out, diaspora was a critical factor and now the diaspora was impacting the Indian freedom movement. How we viewed the machinery of the law was common in India and the colonies.

Advocate Nowrojee mentioned how although lawyers' foundation remain strictly in law, they turn to literary expression as part of their learned persuasion. Going back to Mandela and Nehru's unsworn statements, he said that their words expose the injustice of the prosecution, thereby redefining the unjust trial. Their individual struggles also embody the struggles of the millions.

In conclusion, he mentioned that although literature is a powerful tool in a criminal defence, it should not be at the expense of forgetting the law and more importantly the accused person's safety. Using another example, that of Fidel Castro, Advocate Nowrojee said how literature in law is also used in the courtrooms when the one speaking is addressing others outside the court, talking to the followers or the general public. At the same time, literature is used by oppressors to make repression seem less. He gave examples of Ngugi wa Thiongo's *Detention : A Writer's Prison Diary* and Chinua Achebe's *Things Fall Apart* citing how they reflect the sentiment.

Finally, he concluded the talk by quoting part of Lord Atkin's dissent in the famous *Liversidge v Anderson* trial in 1942:

I view with apprehension the attitude of judges who on a mere question of construction, when face to face with claims involving the liberty of the subject, show themselves more executive minded than the executive.

Note: The list of all content referred to by the speaker is given at the end of the report.

The lecture was well received by all participants and Advocate Pheroze Nowrojee received accolades for presenting the topic in such detail. Professor Klaus Stierstorfer gave his valedictory remarks. He began by thanking the Speaker Advocate Pheroze Nowrojee and said that it was indeed our privilege to hear him talk. He spoke of the long standing academic research partnership that the Muenster University shared with the University of Mumbai. He was indeed happy that the triangulation between India, Africa and Germany was a start of another long and fruitful journey. This was also evident as the lecture was attended by a few participants from the University of Abuja, Nigeria. He further thanked the efforts of Professor Bharucha for organising this talk and hoped that many more such activities are conducted on these lines.



Professor Klaus Stierstorfer
Chair British Studies & Vice Dean of Philology, Spokesperson Collaborative Law and Literature Research Centre,
WW University of Muenster

Ms. Kirti Risbud, Research Associate, CoHaB IDC offered the formal vote of thanks.



Ms. Kirti Risbud, Research Associate, CoHaB IDC, University of Mumbai

You may view the entire lecture here:

[The Law, Literature and Diaspora Lecture Series, Lecture 2: Law and Literature and the Indian Diaspora in Colonial Africa by Advocate and Author Pheroze Nowrojee on 20 August 2020](#)

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- Nehru's phrase: ***Mary Benson The African Patriots: The Story of the African National Congress of South Africa*** (London, Faber, 1963) 186. The phrase was later to be the title of Mandela's book of his writings and speeches: ***No Easy Walk to Freedom*** (London, Heinemann Educational Books, 1965 with an Introduction by Oliver Tambo), which was published while he was already in prison. A more recent edition has an extremely valuable Introduction by William Gamede (Cape Town, Kwela Books, 2013) contrasting the Zuma leadership trends with those of the 1994-1999 Mandela/ANC Government.
- A Kenyan Trial: ***Pheroze Nowrojee A Kenyan Journey*** (Nairobi, Manqa Books, 2015) 164-165.
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Judge Broomfield on
Gandhi:

Ramachandra Guha Gandhi :The Years that Changed the World 1914-1948 (Penguin Random House India, 2018) 159-160, where, on Bloomfield, Guha writes: "The son of a London Barrister, he had spent almost two decades in the Indian Civil Service. (at 159).

Executive minded
judges:

Liversidge v Anderson (1942) A.C. 206 per Lord Atkin, at 244-245. Nearly forty years after his dissent, Atkin was vindicated in the same House of Lords. In *Regina v Inland Revenue Commissioners ex parte Rossminster Limited* (1980) 1 All ER 80, 93; (1980) AC 952, 1101, Lord Diplock stated: "For my part I think the time has come to acknowledge openly that the majority of this House in *Liversidge v Anderson* were expediently and, at that time, perhaps excusably, wrong and the dissenting speech of Lord Atkin was right."

Date: 20 August 2020

Place: Mumbai