

## The Ethics of Defying the Invincible THE MEMORABLE CASE OF “O DWYER Vs NAIR”

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At the beginning of the Civil Disobedience Movement initiated by Gandhiji a certain booklet which warned the people of India of the consequences that would follow not immediately but far in the future, was in wide circulation. The name of the booklet was GANDHI AND ANARCHY. It was written by Sir Chettur Sankaran Nair, a former President of the Indian National Congress and subsequently a member of the Viceroy Executive Council. When people see irresponsible behaviour by lawyers, legislators, bank managers etc. today they are reminded of this remarkable prophesy. Sankaran Nair had warned that exactly what we see around us today would happen if Gandhiji's advice was accepted. If students indulge in strikes, if lawyers and others walk out of courts in protest, venerable institutions would lose their sanctity and coming generations would show disrespect and discontentment towards carefully built-up precedents and traditions, the result would be anarchy.

Anarchy in its true sense was considered by the Greeks as a situation where the people governed themselves with a minimum of governance. Later on, it came to mean conditions that are chaotic and confused. Leadership, sound

organizations backed by force where necessary and above all respect for authority are required for the healthy growth of any nation.

Gandhiji's inspiration for civil disobedience was the 19<sup>th</sup> century essay by an American admirer of India Henry David Thoreau. He is often quoted world wide as an advocate of “Minimum Governance”. Indians have a way of advocating “Maximum Governance” - in other words, a Ma- Bap– Sarkar. Experience shows that both extremes are undesirable.

Sankaran Nair's Prophecy has come true. People should have a sound education and also exercise prudence and self restraint about public issues. Only this can ensure progress. Thus shall and only thus can “Freedom grow from Precedent to Precedent”.

Sankaran Nair had to pay a heavy price for his prophesy. Many Indians mistook him for a sympathizer and supporter of English rule, even though he resigned from the plum post of being a member of the Viceroy's Executive Council. The Hindu Newspaper of Madras railed against Nair as a turn court. The English considered him a

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maverick and an ingrate. After all he held a same position in the Viceroys' Executive Council with the same portfolio of subjects as Lord Macaulay and before that a Justice of the Madras High Court. A passage in his booklet became the subject of a celebrated case. He had written against the repressive measures in the Punjab, against the Jalianwala Bhag in particular. This caused offence to the British Governor of the area Sir Michael O'DWYER. He filed a case of defamation against Nair.

The case went from court to court and finally to the Privy Council in London. Nair could have apologized and could have let it go but possessing a very healthy, bristling sense of self respect and knowing he was right, an apology was unthinkable for him. The famous judge Justice McCardie was presiding and the jurors except one found him guilty. Nair paid an enormous sum in pounds sterling as damages rather than apologize. The amount would have been much higher if the cost of litigation to the other party had also been included in the judgement. Nair was saved from this and further financial ruin by the dissenting view of one juror. This dissenting juror was none other than the famous Professor Harold Laski of the London School of Economics. If the jury had been unanimous, the court could have had to recover full costs from Nair. While resigning from the Council Nair was asked by the Viceroy, whom he would recommend to be appointed in his place. Nair who never lost an opportunity to put the English in their place, pointed to his splendidly liveried peon, Shyamlal, and said he would do splendidly because the British may appreciate a lackey. He was implying that no self respecting person would serve the British after Jalianwala Bagh. Both the Viceroy, Lord Chelmsford, and Nair have commented on this incident in their respective memoirs. No Indian or Britisher had dared to speak or face the Viceroy with such insouciance. Nair says that he felt that the British

needed such a shock at that juncture! The success of Sir C. Shankaran Nair in bringing about important reforms in the Government of India including the Act of 1935 upon which the post independence structure depends – has not yet been fully appreciated.

### Epilogue

Long after his retirement Sir Michael O'Dwyer, Lt. Governor of The Punjab, fell to an assassin's bullet while coming out of a church in England after a meeting. It happened in 1940, twenty two years after Jalianwala Bagh. The assassin was Udham Singh who as a young lad was witness to the Jalianwala Bagh incident and was a survivor. The order to fire on that fateful day, 13<sup>th</sup> April, 1919, (Baisakhi) when traditionally people gathered in that garden or Bagh. Coming from surrounding villages, they had no idea of the Prohibitory orders in force. It was the beginning of the end of the British Empire. The firing order was given by a shell-shocked veteran, out of the First World War trenches, with a name similar to that of the Governor. His name was Brig. General Reginald Dyer. Within a year he suffered a stroke, was totally bed ridden and lingered on for some seven years. Dyer came from a family established in India. His grandfather founded a famous Brewery in India, the products of which are still in great demand.

Ironically, Mr. Winston Churchill then in the opposition criticized severely this firing on civilians. Thereafter it was ordered that any shooting other than in war should be only below the knees after due warning and all other means of crowd dispersal had failed. Churchill warned that this action would cost Britain its Eastern Empire.

Churchill's warning came true. In the event we may conclude that Nair's prediction also came true.