

A BIOGRAPHICAL SKETCH

SRI BENEGAL NARSINGA RAU—B. N. Rau, as he was known in his later years—had a career of singular brilliance from his early boyhood, obtaining a first class in every examination in the Madras University and standing first among the successful candidates on every occasion. He graduated in 1905 with a triple first in English, Physics and Sanskrit (adding a first in Mathematics in the following year) and won all the academic prizes and medals that were open to him. With a Government of India scholarship he proceeded to England and joined Trinity College, Cambridge, where he won a “major” scholarship, again being first in the competitive test in his first year. At the end of his career at Cambridge, the choice lay before him of either accepting a Fellowship at Trinity or entering the I.C.S. He chose the latter and returned to India in 1910.

As an I.C.S. officer, he was posted to (undivided) Bengal, where he spent about fourteen years. For a brief period he had his training as an executive officer; but by temperament he felt a preference for a judicial post and served as a judge in several districts, mostly in East Bengal, acquiring an intimate knowledge of the civil and criminal laws of the land.

The quality of his work as a district judge in Bengal attracted official notice, and the Assam Government offered him in 1925 the dual post of Secretary to the provincial Legislative Council and Legal Remembrancer to the government. It meant a different type of work; but even more attractive was the change from the humid, malarial districts of East Bengal to the bracing hill-station of Shillong. For a period of about eight years he served the Assam Government,

but his duties were not strictly limited to the posts that he officially occupied. The provincial government was quick to see that his knowledge and talents could be used with great advantage in other spheres. When the Simon Commission toured India in 1928-29, he drafted the Assam Government's memorandum pleading for a generous financial deal for the province from the proceeds of the duty on tea. So favourable was the impression created by the memorandum on the Commission that the Assam Government decided to depute him to London, after the third Round Table Conference in 1933, to present its case before the Joint Select Committee of Parliament.

Sri B. N. Rau's wide knowledge of constitutional affairs was also utilised for a more general purpose. Sir John Kerr (at that time Governor of Assam) wrote to him about the proposal then under the consideration of the Joint Select Committee that seats in the new Council of States should be filled by election, on the basis of the single transferable vote, by the members of the provincial legislatures. The Joint Select Committee had asked Sir John Kerr to prepare a note on the manner in which the system could be worked. He passed on the request to Sri B. N. Rau as being more competent to deal with the problem than himself.

On his return to India in 1935 he could have gone to the Calcutta High Court as a judge; but the Government of India was eager to borrow his services, if he was willing to make the sacrifice, for work in New Delhi in connection with the new constitution.* This appointment (which he accepted)

* The Chief Secretary to the Bengal Government wrote to him:

"The appointment (with the Government of India) is likely to last for one year and might continue until the introduction of provincial autonomy. Your name has been suggested for this appointment, but before proceeding further, I should be glad to know your own views in the matter. Acceptance of the appointment would mean that you would have to forego any chance of acting in the High Court which might occur between now and the introduction of provincial autonomy, say, at the beginning of 1937."

proved to be the beginning of a new career; and in many ways it marked a period of intense activity in spheres for which he was well qualified by his earlier experience and talents.

The introduction of the constitution of 1935 had pushed to the forefront the intricate problem of revising all the existing Central and provincial statutes to bring them into accord with its provisions. The task involved enormous industry, a meticulous knowledge of the laws of the land and a high standard of draftsmanship. He accomplished it in less than eighteen months, thus enabling the constitution to be brought into operation without any delay.

On the completion of this assignment he could have continued to function in the Reforms Office of the Government of India. But Sir Maurice Gwyer, the first Chief Justice of India's Federal Court, was anxious to have him as a colleague; and one of the qualifications for appointment as a judge of the Federal Court was a minimum of five years' experience on the bench of a High Court. He, therefore, went to the Calcutta High Court, intending thus to qualify himself for a place on the Federal Court. His term as a judge was, however, not destined to run a smooth course. First came a dispute about wages and working conditions on the old G.I.P. Railway which had to be referred to a court of enquiry presided over by a High Court judge, and Sri B. N. Rau was invited to be its chairman.

Shortly after the completion of the enquiry a second interruption occurred, when the Government of India felt that Hindu Law reform, however desirable or acceptable to progressive opinion, could not be undertaken piecemeal. A committee, it was suggested, should first survey the entire field and make a report, as the ground-work for a series of planned reforms of different parts of Hindu Law. The choice for the chairmanship again fell on Sri B. N. Rau.

Even while this enquiry was in progress, came a difficult, complex and, for India at any rate, a new problem—that of

the equitable distribution of the waters of the Indus and some of her tributaries among several regions of undivided India. The main disputants were Sind and the Panjab; but there were others almost equally interested in an equitable solution, Bikaner, Bahawalpur and some other Princely States. His work as the chairman of the Indus waters Commission provides an illustration of the untiring industry, thoroughness and impartiality with which he tackled every problem. He familiarised himself with all aspects of the problems of irrigation, and the report that his committee submitted in 1942 on the dispute has been regarded, not only in India but outside, as a classic on riparian rights, covering the subject with great legal knowledge and technical accuracy.

After formal retirement from the Indian Civil Service early in 1944, he was persuaded by Sir Tej Bahadur Sapru (who enjoyed the confidence of the Maharaja of Kashmir) to accept the post of Prime Minister of that State. He served the State, in a sphere that was new to him, for about eighteen months. Differences with the Maharaja complicated his task and he offered his resignation in December 1944; but by June 1945 he felt that he could no longer carry on the administration of the State without a free hand and resigned the post. In a letter to the Maharaja he wrote:

“ Briefly, Your Highness, I have been conscious for some time that we do not see eye to eye on certain fundamental matters of external and internal policy. And that leads, as it must lead, to disagreement in many a detail. I have never questioned, and I do not now question, the position that in all these matters Your Highness’s decision must be final. The Prime Minister must either accept it or resign. To accept it without conviction would not be fair either to Your Highness or to the State, and I am grateful to Your Highness for letting me resign. . . . I need not repeat to Your Highness that if in the days to come I can be of any service to the State, wherever I may be, that service will be rendered gladly and freely.”

At that time, the Second World War was in its final stages, and preliminary moves had already been initiated by the Viceroy, Lord Wavell, for breaking the political deadlock in India on the cessation of hostilities. Sri B. N. Rau had served for broken periods before and during the war in the Reforms Office of the Government of India, sometimes officiating as Reforms Commissioner. He had acquired an intimate knowledge of various facets of the constitutional problem, to which was now added the somewhat brief experience of administering as Prime Minister the State of Jammu and Kashmir.

On relinquishing this post, he was asked by the Government of India if he would consider the offer of a permanent judgeship of the Calcutta High Court. He replied in a brief letter to the Viceroy's Private Secretary, expressing gratitude for the consideration shown; but the offer was declined on the ground best stated in his own words:

"If personal prospects were all, a decision would have been easy; but I have now reached a stage in my official life when they ought to cease to count, and I have therefore to look at the matter from another point of view. The big thing before India is now Federation. I have spent, off and on, over a dozen years in the study of constitutional law in general and the Indian Constitution in particular; and within the limits permitted to me, I have had some share in the working out of the details of the federal scheme now taking shape. If, therefore, I have any choice, I should like to stay on here until Federation, in whatever form it ultimately comes, is an accomplished fact. This will mean the abandonment of any prospects in the High Court, or anywhere else *via* the High Court, but such things are inevitable."

The Viceroy, appreciating his point of view, placed him on special duty, with the status of a Secretary, on the Governor-General's Secretariat on the Reforms side. For nearly a year he occupied this post, until he became Constitutional Adviser to the Constituent Assembly on its establishment in July 1946.

During the two following years, he was kept busy with a number of other important assignments, very different in character, in addition to the main one of assisting the Constituent Assembly. Sir Jeremy Raisman, who was Finance Member during the greater part of the Second World War, was interested in introducing legislation for an estate (or death) duty. Taking advantage of his deep knowledge of Hindu Law in all its branches and his legal acumen, Sir Raisman asked him for the draft of a measure, with the main details worked out. The draft was later revised and modified, again by its author, under instructions from Sir Jeremy Raisman's successor, Sir Archibald Rowlands. The present law on the subject is largely modelled on this revised draft.

Another assignment, however interesting it might have been from the legal standpoint, was altogether unrelated to his official position and duties. Considerable interest had been roused in India, shortly after the end of the Second World War, in what have since come to be known as the Indian National Army trials. The first of these, involving three officers of the Indian army who had joined Netaji Subhash Chandra Bose's liberation forces in Malaya, had attracted a great deal of attention. The trial took place in Delhi's historic Red Fort and chief among the lawyers engaged for the defence was Sri Bhulabhai Desai, who argued the case with remarkable ability. The line of defence was suggested in a carefully drafted memorandum by Sri B. N. Rau.

An accidental meeting in New Delhi in December 1946 with U Aung San, Burma's young and brilliant Prime Minister, led to a quick decision by the latter to have Burma's Constitution framed on the principles and by the methods India had adopted. Burma's Constitutional Adviser was deputed to New Delhi where he spent some weeks in the early part of 1947 for daily and detailed consultations with Sri B. N. Rau. Later, in August of that year, he was invited to Rangoon to witness the passage of the final draft of Burma's Constitution. The first

draft had been framed with such care and precision that the subsequent task of her Constituent Assembly was greatly simplified and the constitution was adopted far ahead of schedule.

All these were in reality side-occupations, however important in themselves. How he could find time for tackling the great problems placed before him was a matter of astonishment even for those who were aware of his capacity for hard, unremitting work and his brilliant versatility. None of these problems interfered with his main task of dealing with the post-war constitution of India. Almost immediately on joining the Governor-General's Secretariat, early in September 1945, he worked on the draft of an Indo-British treaty, assuming that the main principles of the Cripps offer of 1942 would be the starting point for fresh negotiations. The draft was ready for preliminary discussions with the relevant authorities in India by the end of November of that year.

In 1946, despite the Cabinet Mission's historic statement, little positive progress was made with the preparation of the constitution. The first session of the Constituent Assembly could not meet until December 9, 1946 though the Cabinet Mission's statement had been published on May 16 and the office of the Constituent Assembly came into existence early in July. All through the intervening months (between July and December) there were inconclusive discussions between the leaders of the Congress and the Muslim League about the interpretation of the Cabinet Mission's statement and the composition of the interim government. Sri B. N. Rau was frequently consulted by both sides on specific issues. Indeed, on one occasion (in September 1946) Mr. Jinnah had a discussion with him which covered almost every point. Pakistan and its viability were one of the main subjects to be discussed, judging from pencil notes recorded at the time.* Mr. Jinnah seemed more or less satisfied, at any rate temporarily, both as regards the procedure that the Constituent Assembly was

* For Mr. Jinnah's note and the reply, see the Introduction.

likely to adopt and the functions of the interim government. When the negotiations took a more difficult turn later (in November 1946), Lord Wavell suggested to Mr. Jinnah the desirability of another such discussion. That, even if one took place, seemed to have had no effect on the subsequent developments.

Only in 1947, after Mr. (now Earl) Attlee's declaration on 20th February in the House of Commons foreshadowing the inevitability of Pakistan, did the Indian Constituent Assembly get down to serious business. The preliminaries were quickly settled, mainly because of Sri B. N. Rau's skilful and competent handling of the several issues, and the Constituent Assembly was able to commence the detailed consideration of the draft constitution, section by section, in the late summer of that year.

The declaration of Independence on 15th August, partition, the numerous and difficult problems to which it gave rise and the extremely heavy strain of dealing with the influx of refugees reckoned by the million had little effect on the course of the Constituent Assembly. By October of the year, Sri B. N. Rau was able to leave for the U.S.A., Canada, Eire and the United Kingdom for personal discussions with leading constitutional authorities in those countries.

The study tour, apart from proving valuable in reaching tentative decisions on certain provisions of the Indian Constitution, led to fruitful contacts. An interesting personality whom he met in New York in November 1947 was Dr. Chaim Weizmann, the distinguished founder of the State of Israel. They discussed then, and again in an exchange of letters later, the possibilities of Israel assisting India in her economic development.

Justice Felix Frankfurter of the Supreme Court of the U.S.A. was another with whom he came into intimate contact. The impression on the former must have been profound; later, he stated to Sir Girja Shankar Bajpai, at that time

Secretary-General to the External Affairs Ministry: "If the President of the U.S.A. were to ask me to recommend a judge for our Supreme Court on the strength of his knowledge of the history and working of the American Constitution, B. N. Rau would be the first on my list".

Before the commencement of the Constituent Assembly session in July 1948 for a detailed discussion of the draft constitution, the President (Dr. Rajendra Prasad) suggested in a letter to Sri B. N. Rau a preliminary personal discussion 'point by point' at Simla. The President also referred to other points in his letter: in particular, to India's position in the Commonwealth. Observing that Sri B. N. Rau's paper on the subject of India and the Commonwealth was "a useful and thought-provoking paper, intended to stimulate discussion rather than to offer advice," he added, "the question needs to be discussed on a plane higher than that ordinarily allotted to other questions of policy and you have raised it to that plane. It will, of course, be for the government and the members of the Assembly to take the decision in the matter, but it is useful and as well that people generally give thought to it".

The President also referred to the possibility of his being offered a new assignment by the Prime Minister and sought his reactions. In reply Sri B. N. Rau wrote:

"The Prime Minister has not mentioned anything to me; but I should like you to know what I feel generally. It is now nearly two years since I first took on my present job as Constitutional Adviser; and when I took it, I made it a condition that it should be on an honorary basis. It has largely been a labour of love all through, and I have been doing it in spite of various difficulties. Indeed, there were moments when, but for the fact that *you* were the President and perhaps needed me, I should have liked to retire from the scene. We are now nearing the end of our labours in the Constituent Assembly and I hope you will be able to spare me as soon as any work which is congenial to me offers itself."

With the Constituent Assembly busy over the detailed considerations of the provisions of the constitution, guided by the drafting committee, the main task of the Constitutional Adviser, as he had pointed out in his letter to the President, had virtually come to an end. But other problems were emerging, complex from a constitutional lawyer's point of view. For instance, the Nizam's advisers were claiming the right for Hyderabad to appeal to the U.N. Security Council against India's intervention in the State in 1948. Could an Indian State exercise such a right; in other words, did the Security Council have jurisdiction over relations between India and a Princely State?

The brief on this subject was prepared by Sri B. N. Rau in close consultation with the Prime Minister and the Minister who administered the portfolio of the States, Sardar Vallabhbhai Patel. Sri A. Ramaswami Mudaliar argued the case before the Security Council in Paris in October 1948 on the lines of the brief. Sri B. N. Rau was sent on the Indian delegation to the U. N. General Assembly that year, mainly to assist India's spokesman on the Hyderabad issue. But he made his mark as an outstanding delegate, especially in the committee of the General Assembly which considered, for the first time, the peaceful uses of atomic energy.

Encouraged by the general support promised by a number of delegations, Sri B. N. Rau's name was proposed at that session for one of the vacancies in the International Court of Justice at the Hague. His prospects seemed good in the initial stages of the complicated ballot. But later a deadlock ensued, with India and Greece tying for the last place, followed by Yugoslavia in the vote. For reasons which had nothing to do with the merits of the candidates concerned in the contest, several Powers, which had earlier promised to support India and had voted accordingly in the preliminary ballots, suddenly switched over to Yugoslavia's candidate. Sri B. N. Rau was, however, elected at the same session of the General

Assembly to the International Law Commission, and continued to be a member until he was elected to the International Court of Justice at the end of 1951.*

The Hyderabad issue threatened to come up again before the Security Council in the spring of 1949, and Sri B. N. Rau was deputed by the Government of India to argue the case for India on this occasion. His reputation as a skilful and brilliant advocate had already been established in U. N. circles. There was little for him to do of any substance in the Constituent Assembly, though he utilised his visits to London for personal discussions with the Lord Chancellor and Sir Stafford Cripps

* A Brazilian colleague (also elected by the U. N. General Assembly in 1948) described him in the following terms in an article in a Brazilian journal towards the end of his term of office:

"In 1947, the Assembly 'in acknowledging the utility of creating a Commission composed of persons of acknowledged international legal competency and who jointly represent the first forms of civilisation and the principal systems of law', elected the 15 members of the Commission.

"I shall never forget that first meeting (in 1949), that first contact with men so different, coming from such different latitudes, representing juridical systems and forms of civilisations so diversified, some even opposed to each other.

"The meeting had been called in order to establish the activity programme of the Commission. After a long discussion during which all the members had talked with the exception of one member of the Commission, the second Vice-President, Sir Benegal Rau, who had been taking notes, started to speak; and with a very clear voice and melodious accent he read what he had written from the notes he had taken. His language was almost precious due to its perfection. The way of talking was elegant and somewhat remote—as if the speaker were not there. . . . But he was there. . . . And the solution he proposed was practical and under the circumstances the only one capable of satisfying everybody. Agreement was immediately reached. The Commission was able to start in the following session on its work, knowing what it was doing.

"A man of angelic appearance, extremely sweet in manners, a full idealist, but capable of dealing with reality and coldness from the right angle and not in a dreamy way, Sir Benegal is a man possessing the gift to surprise us when we least expect it. I do not wish to imply that Sir Benegal will solve a conflict which presents itself to many historical fates. It is not my purpose to give Brazil the hope that Sir Benegal may be able to bring peace and free us from the threats which are accumulating in Korea and China. But it is, indeed, a privilege to be able to put before the eyes of my countrymen such a beautiful expression of humanity, representing the highest and noblest human expression, indeed extremely human, the mirror of a culture many thousands of years old, which employs the language of the West in a better way than Occidentals do, because they do not possess the sense of eternity, of the everlasting. And it pleases me, in addition, to acquaint the Brazilian people with the fact that I work abroad in their name alongside Sir Benegal."

on the question of India retaining, as a republic, her membership of the Commonwealth. He drew up in April 1949, at the Lord Chancellor's request, a formula briefly stating the Indian and the British points of view.

It should not be assumed that this formula was easily acceptable to the British Government. In February of that year, Lord Jowitt, the Lord Chancellor, referring to a broadcast given by Sri B. N. Rau from Lake Success on "India and the Commonwealth", had commented in the course of a letter:

"It is true that it is of the essence of our Commonwealth that all its members are equal in status. It is, of course, a club from which any member can resign, if he is so minded.

"The only doubt I have is with regard to the first question you formulate: 'Is there room within the Commonwealth for a State with a republican constitution?' I think you deal with this in much too cavalier a fashion.

"Yet we can help each other and we shall each need the other's help in the difficult days that confront us, and I believe this help could be better given if we both belong to the club." *

The Constituent Assembly was drawing to a close towards the end of 1949, and Sri B. N. Rau had already proved his worthiness to represent India at the U.N. on such issues as Hyderabad and Kashmir. Sir G. S. Bajpai was aware of the great respect in which he was held and the influence he wielded on his colleagues. As he wrote later, "though he came late into the profession of diplomacy, in the three years that he represented India at the U.N. he made a deep impression, both on the Security Council and the General Assembly by his fairness, sincerity and the crystal-clarity of his mind".

When India was elected a member of the Security Council, Sri B. N. Rau was the natural choice of the Government of India, with the rank of an Ambassador. During this period,

* The text of Lord Jowitt's letter is to be found on p. 353 of this volume.

in rapidly failing health, he worked hard as India's spokesman on such diverse topics as Kashmir, atomic energy, the future of the Italian colonies in Africa, Korea and China. Such was his sense of duty that within four weeks of undergoing an operation for cancer, he was in his seat in the Security Council, arguing the case on Kashmir from India's standpoint. He had also the satisfaction of having laid the enduring foundations of an Afro-Asian group in the U.N.

The work, especially in the Security Council, was hard and exacting. The preparation of his speeches on delicate issues like Kashmir involved a great deal of labour. Outside the U.N. he was much in demand, both as India's spokesman and as an earnest seeker after world peace.

By the end of 1951, he had reasons to fear a recurrence of cancer. He yearned for a position in which he could give some attention to his health. Moreover, India's term as a member of the Security Council was coming to an end, and he could hand over the responsibilities as India's permanent delegate to the U.N. to a successor, happy in the thought that he had done his best to maintain his country's reputation high.

It was in such circumstances that the invitation came to him from the External Affairs Ministry to stand for election to the International Court of Justice for one of the vacancies due to occur at the end of that year. The election came without much effort at canvassing by the Indian Delegation. When he was leaving New York early in 1952 to take his seat in the court at the Hague, his successor asked him for advice on the policy to be pursued by him. He replied: "Whatever be the theme, let your language be soft, but make your facts deadly".

He was not destined to serve on the International Court for much more than a year. By the summer of 1953 it was clear that his old trouble had returned in an aggravated form, beyond the resources of his medical advisers. As he lay ill

in a Zurich hospital, in October of that year, beyond hope of recovery, there was a moving incident. An unexpected visitor called on him, the late Mr. Ghulam Mahomed (at that time Governor-General of Pakistan). Leaning heavily on crutches, with his own health shattered by a paralytic stroke, he said in a voice that was hardly audible, "Come and be my guest at Karachi. We will look after you. We have no one like you in Pakistan".

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Anyone reading this narrative might imagine that life for Sri B. N. Rau was an unbroken series of successes. As a record of achievements in a world of events such an inference would probably be right. He had, however, his full share of sorrows and disappointments about which even those near him knew very little.

What sustained him through such a life no one can really tell. But there are glimpses of the influences which seemed to have guided him. One of the frequently-quoted passages in his speeches in the U.N. and outside was the following from a biography of Gladstone:

"We believe in no man's infallibility, but it is restful to be sure of one man's integrity."

In a memorable speech on Gandhiji that he delivered in Philadelphia in October 1950 he said:

"The atomic bomb is the greatest explosive force that we know in the physical world today. Yet, what starts this tremendous explosion is one single neutron—an infinitesimal, invisible particle which, acting as a kind of gun, first sets off two other guns and then each of these two sets off two others and so on, until there is a terrific force of almost earth-shaking dimensions. What is true of the physical world is also true of the moral: there also we may have vast chain-reactions radiating from a single individual. One of the lessons which we may learn from modern science, therefore, is the importance of the infinitesimally small and, by analogy, the tremendous potential worth of the individual human person and the immense

value of individual freedom. If a single individual, organisation, or country can set in motion the right kind of idea, it may ultimately move the whole world."

Late in life, he had come into contact with Einstein and Gandhiji; and the influence of these two eminent personalities was great. He had a vision of the future which he placed before his audiences in the U.S.A. in words of superb quality:

"Let us consider for a moment man, not as an individual, but Man in the sum, Man with a capital M. The earth which he inhabits is a small planet revolving round an insignificant star (for that is what the Sun is)—so insignificant that if by any cosmic cataclysm it were to disappear, the event would not even be noticed from the remoter parts of our own galaxy, let alone the innumerable other galaxies in the Universe. On this planet, which is many millions of years old, Man is a very recent arrival, compared with other forms of life. His normal expectation of life is about 70 years. Thus on the purely physical plane, he is a mere speck in space and time. Most of his life is a struggle for existence, leaving little time for higher thought. And yet look at his achievements in the few thousands of years since civilisation began. 'Perched precariously on this rotating speck of mud and water' that we call the earth, Man, in the brief intervals of struggling to live, has by mere force of thought penetrated into the deepest mysteries of the Universe; has discovered the laws of the infinitely vast spaces around us as well as of the infinitely small world within the atom, and is now in the process of creating a miniature Sun that we call the hydrogen bomb. When we contemplate these truly wonderful conquests of external Nature, have we no reason for hoping that he will—before very long—discover the laws of his own well-being and learn to conquer himself rather than destroy himself? Surely, the end of all his labours could not merely be the destruction of the race."

These passages reflect, in language of which he alone was capable, the sentiments which moved him in all his actions and moulded his outlook on life. Some months after his election to the International Court in 1952, Justice Frankfurter

of the Supreme Court of the U.S.A. said to him in the course of a letter:

“Remembrance of you will, I am confident, be among the very last to fade. My talks with you (in October 1947) were among the pleasantest and most satisfying of all my experiences in Washington. On more than one occasion I said behind your back—and so I shall dare offend your modesty and say it to your face—that you are one of the few people I ever encountered who had a deep, instinctive sense of justice. I begrudged the years you gave, I am sure conscientiously, to diplomacy and rejoiced when you took your rightful place on the court.”

Such was the measure of the man who represented India for a time in the United Nations and the International Court of Justice. He went somewhat before his time, but with the satisfaction of having won many friends for India in the United Nations and maintained her reputation high in the world.