

## Conversation with Justice JS Verma

### **Bar & Bench: Could you tell us a bit about your decision to take up law as a career?**

**Justice Verma:** The decision to take up law and to be a lawyer was really not my own, it was my father's. We had no legal background in the family. I don't know why my father was so fascinated by this profession that he wanted me to be a lawyer. So, in a way it was very unwillingly that I obeyed him and became a lawyer.

Even after graduating with a law degree, I was not keen to join the Bar. I was very reluctant to join the Bar and my reluctance was for a reason. I had no idea of the legal profession and I thought decent people don't become lawyers. My father then suggested that I should join GP Singh (who later became a Judge and then Chief Justice) for six months and he introduced me to him. So, I started working with GP Singh in November 1955.

I was still not sure; but then within a month of working with him at Rewa (Madhya Pradesh), I changed my mind.



Madhya Pradesh HC: Justice Verma started his practice as a junior to lawyer GP Singh who later was designated as a HC judge and retired as Chief Justice of MP High Court

I said, "Well, I could be in the profession". GP Singh was the top lawyer there on the civil side. He was very ethical, industrious and obviously excellent lawyer. After all these years I can say that he has been one of the most ethical persons in the legal profession that I have known.

### **B&B: And what were the initial years of your career like?**

**JV:** I joined the District Bar at Satna. I was lucky that within 2-3 years I was considered to be one of the top lawyers on the civil side in that region. I was the retainer for all the big industries and companies. Then, in 1964, the M.P. High Court under Chief Justice PV Dixit decided to recruit two persons to the higher judicial service directly as District Judges from the Bar. Just to test myself, I also applied to see how I would fare. I was selected for the post but I didn't join. Well, everyone in the Bar thought I was a fool, including my senior Justice GP Singh. I was doing very well, so I refused the offer.

Later, the Chief Justice actually told the Advocate General and the Law Minister “Why don’t you force JS Verma to permanently shift to the High Court?” The Law Minister, Gulsher Ahmad came home and said that this was what the Chief Justice had said. I shifted permanently to Jabalpur in 1967. After a couple of years, a post for Deputy Advocate General was created when AK Chitley was the Advocate General. He said that the post was created for me assuming that I would accept it. But I told him that I was not someone who will take orders from any one. He said that I had a bright future to become a judge for which this was going to be a qualification. I told him I was not very keen on that and I liked being a free bird. However, I eventually became a judge in 1972.

**B&B: You were so averse to the idea of joining judiciary. How did you then decide to join the judiciary?**

**JV:** Frankly, I was conscious of the fact that I had been a very intolerant person; not one having a congenial temperament. So I thought it was best to continue at the Bar where I was the master of my will. On June 19, 1972 when I went back to Jabalpur from Delhi, Justice GP Singh told me that a week back, the Chief Justice drove down to his residence and told him, “I have come with a specific purpose; I want to make Advocate JS Verma a judge in the High Court. If I ask him directly, he will decline. But I also know that he respects you, so if you give your consent he will not decline”. Justice Singh told me that it was a very awkward situation for him as the Chief Justice was very persistent. So, ultimately Justice Singh gave his consent and he told me that my name had already been sent with his consent being treated as my consent on June 16. I was quite confused but I didn’t say anything; but within myself I was thinking why bother as no one is going to accept my nomination. My age was 39 then; to be High Court judge at 39 was unlikely when the minimum age of the High Court judge was above 45 to 50.

Five names were sent and only two were cleared. One was mine and the other was of RK Tankha. So that is how I became a judge!

**B&B: Do you regret leaving the Bar?**

**JV:** I have no complaints or grievances that I didn’t continue at the Bar. You can contribute much more as a judge than as a top lawyer, because you have the last word. Money was never important although I was lucky at the Bar. But the honor which you get and the satisfaction you get of having contributed to the development of law and trying to do justice to the best of your capability is incomparable.

The only regret, if you can call it a regret, is when I find that things in the court are not as they ought to be and when the senior-most lawyers, the leaders of the Bar, do not stand up for its correction. Even when the judges go wrong, they have to be told. I would always welcome some senior lawyer or even a junior lawyer telling me that I am wrong. We are all equally fallible. So when I see that total inertia or lack of will to

Speak out, probably because the Chief Justice or any Judge will not be very happy; that is when I wish I was there.

**B&B: Can you share your experience as High Court judge and then as Supreme Court judge?**

**JV:** I became a judge in 1972 and emergency was imposed in 1975. Large numbers of people had been detained without trial and several High Courts had given relief to the detainees by accepting their right to petition for *Habeas Corpus*. I was at the Indore Bench and presided over the Division Bench. Several *Habeas Corpus* petitions came up. So incidentally or rather fortuitously, I was the first to deal with the objection on June 26, 1975 that they were not maintainable. I rejected that objection and not only entertained the petitions but also released many people who were detained. I continued to do so for two months and then, there was change of roster. The new judge (I will not name the judge) started dismissing the petitions.

Then, in 1980, the election petition came up against V.C. Shukla. His election had been challenged on the ground that he had been convicted in the “*Kissa kursi ka*” case and sentenced for 2 years. His argument was that an appeal had been filed and the sentence had been suspended. I heard that case and I set aside his election. I said, “The conviction is not wiped out unless there is an acquittal...merely suspending the sentence does not amount to acquittal”. During my time in Rajasthan as Chief Justice, the salaries of the judges were revised. As a consequence of one of my judgments in the Rajasthan High Court, Dalits were allowed entry in Nathdwara Temple in Rajasthan.

In the Supreme Court, I handled many important matters like the Srilekha Vidyarthi, the Hawala case, the Vishakha judgment, and the Second Judges case.

**B&B: From the Supreme Court you moved as the Chairman of National Human Rights Commission (NHRC). How was the experience there?**



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**JV:** Well, I had to take that assignment because only a former Chief Justice could be made the Chairman but I am glad that I went there. The intervention of the NHRC after the Gujarat communal violence has become an example for the world. The day I took over on November 4, 1999 I had to deal with the aftermath of the Orissa cyclone and the rehabilitation of people there. We expanded the meaning and scope of human rights to include public health and social security as human rights issues to cover HIV/AIDS, and other critical issues, including the 'right to food' or the 'right to be free from hunger' etc.

People first thought that I was crazy to treat them as human right issues. We handled the rehabilitation of people after the Gujarat earthquake also. Also, what you are seeing with regard to the convictions in Gujarat, all those incidents are mentioned in our orders of April 31 and May 1, 2002. So when I look back, I think ultimately I have been able to contribute more as a judge than I would have done as a lawyer.

Also, NHRC is a very important institution. The NHRC and the Supreme Court complement each other. This relationship between the two institutions can ensure a much better protection of human rights throughout the country because NHRC can provide that foundation which is very often needed in the Court but which the Court by itself can't do.

**B&B: In an interview with CNN-IBN, you said, "I cannot say that there has not been a single corrupt judge even in the Supreme Court." What are your thoughts on corruption in the judiciary?**

**JV:** I said that long back in 1998, soon after my retirement. I only spoke of things that were in the public domain. The unsuccessful impeachment proceedings against Justice V. Ramaswamy were in public domain. The Judges Committee had convicted him but it was the political clout, which let him off. So I wouldn't be speaking the truth if I didn't say this. Of course, I have known much more.

I have always promoted self-regulation to ensure that outside intervention is not made, which ultimately is happening now. I think that is against self-respect. I was apprehending this even when I was in the High Court of Madhya Pradesh. I used to caution that "let us ensure that our behavior is impeccable, so that no one can say anything and if it doesn't happen someone else will step in". Actually, it was Justice Venkatachaliah who, in 1993, took a step further and constituted a committee in which I along with Justice Pandian and 2 High Court judges drafted the resolution for the code of conduct for judges called the Restatement of Values of Judicial Life.

It did not, however, materialize during Venkatachaliah's time because some judges did not like it. As soon as I took over as CJI that was my top priority; and I made a declaration of my assets. I constituted a committee to revisit the resolutions, which were completed by the end of April. On May 7, 1997 the last working day of the

Supreme Court, I called a full Court meeting. We considered these three resolutions and passed them unanimously.

**B&B: What were the three resolutions?**

**JV:** One was the Re-statement of Values that is loosely called the Code of Conduct, which is currently being incorporated in the Judicial Accountability Bill. The other was for declaration of assets by all the High Court and Supreme Court judges, which I had already done earlier. The third was an in-house mechanism to enquire into allegations of misconduct against any judge. Everyone signed and it was adopted unanimously. I sent the resolutions to all the High Courts and on December 1, 1997, I sent those resolutions to the Prime Minister with my letter saying I have done what I could have done but a law needs to be enacted to give it legal sanction.

I pursued the matter even after my retirement. I wrote a letter to the Prime Minister on April 7, 2005 sending those resolutions again and that is what appears to have triggered the Judicial Accountability Bill etc.

**B&B: What are your thoughts on the appointment of the Supreme Court judges to various commissions and tribunals post retirement?**

**JV:** Except for the statutory appointments like that of NHRC Chairman, which have to be made, it should be kept to the minimum. Also, once you mandate that there will be no extra payment for these posts that will take care of a lot of other things. There are innumerable commissions. The Nanavati Commission has been in existence for quite a long time. Has he been able to find out anything more than what the NHRC's report of 2002 contains? In addition to that, he is known to be doing arbitration. I am told that many persons heading commissions, even the Law Commission are doing arbitration. How can you do that while you are getting the salary of the Supreme Court judge, occupying official residence, and getting all the perquisites of sitting judge? I guess it suits the government to keep the judges in good humor.

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In a very recent case, a judge, who was yet to retire, had been recommended by a Chief Justice to take an appointment to some office after both had retired. In that context, when you say that only the judges should man certain offices, I won't blame the people when they think the judges are distributing the offices only amongst themselves.

Even post-retirement the conduct of the judges should be regulated. What the government should do is give the salary as the lifetime pension to the judge. And if the Prime Minister, President or Governor etc. in a matter of national or public interest, seeks any opinion we should be bound to give that opinion. The President and the Prime minister have consulted me after my retirement on various issues. Giving the salary as pension is government's decision but the public exchequer would save money because if you calculate the total amount of money paid to the former Chief Justices of India and former Supreme Court judges in arbitration etc., it would be many times more than the salary of all the retired judges.

Also, I don't think the recent judgment that all Chief Information Commissioners must be retired judges is correct. There is no law to be decided; you only have to apply the law, which is already present. Why do you need judges alone? Why can't a lawyer be appointed? Why can't any other bureaucrat or a law professor be appointed? Why can't a social activist be appointed? Take the example of Aruna Roy, who was the prime mover for the RTI Act; is she less qualified than any High Court judge? Now these are things which really attract justified criticism.

**B&B: You had envisaged the collegium system of judicial appointments. Do you think the collegium system has failed?**

**JV:** My "Second Judges" case only formalizes the existing practice and the convention right from the time of Nehru. So, what I have said in the judgment is formalizing the convention which was being practiced right from the beginning and that is how the appointment process under Articles 217 and 124 was understood. All these arguments are theoretical. None of them is consistent with the earlier practice, which I was involved in the appointments from 1978 to 1998. Even before my judgment, when I was in the High Court, this was the practice that was followed and the executive never made an appointment without the consent of the Chief Justice. My judgment says that the issue of non-appointment on the ground of antecedents is with the executive, and if the executive doesn't choose to act, the judiciary cannot be blamed for the same.

The President returned the files of Justices Bhalla and Vijendar Jain for the government's reconsideration. There was no unanimous decision in either case. I have said, unless there is a unanimous decision, the executive is not bound. There was strong dissent by Justice B.N. Agarwal in those cases, why did the executive appoint? All I can say is that the "Second Judges" case says what was already being practiced. In the Supreme Court, for every appointment I made, I consulted half a dozen lawyers; and their names are mentioned.

**B&B: Do you think the collegium system should be revisited?**

**JV:** Ultimately irrespective of the system in place, it is the honesty of the purpose and the honesty of the human agency that is going to decide. When the executive was predominant, extraordinary judges like Justices G.P. Singh, Chittatosh Mookerjee, P.D. Desai, M.M. Ismail, and Alladi Kuppu Swami were not brought to the Supreme Court. Instead other judges (I don't want to name those judges) were brought to the Supreme Court, none of whom were considered superior to them. What is needed is that both judiciary and executive should act honestly and not arbitrarily.

**B&B: What needs to be done to improve the standards of subordinate judiciary and to bring more young lawyers into the judiciary?**

**JV:** We need an All India Judicial Service (AIJS). I have been saying this for the last 25 years. The 14<sup>th</sup> report of the Law Commission headed by Motilal Setalvad recommended the same thing. That is one thing that will improve the quality of the subordinate judiciary. These days, lawyers are busy minting money and are declining lateral entry into the High Courts and even the Supreme Court. So with an All India Judicial Service you will have superior subordinate judges available for the High Courts and the Supreme Court instead of promoting these subordinate judges who are not of that level.

**B&B: You said that the Vodafone judgment is wrong and flawed. Why do you say so?**

**JV:** It is *per incuriam*! A three-judge Bench ignoring *McDowell*, which is a larger bench judgment, is against judicial discipline. The 3-judges were entitled to a different view but they should have referred the matter to a larger Bench; they could not bypass *McDowell*. Secondly, according to me this judgment is not correct on merits too because *McDowell*, in substance says you don't go by the form but you see the substance of the transaction to determine the tax liability. Now here they have gone by the form, which is incorrect. This is what was said in Ramsay's case in 1982; and it has been said in clear terms that moral foundation is as much available to taxation law as it is to welfare legislation.

There is also another reason. You permit illegitimate tax avoidance in this manner that increases tax burden on the honest taxpayer. Above all, does it fit into the constitutional philosophy of distributive justice under Articles 38 and 39 of the Constitution? The commitment of the judges particularly of the Supreme Court and the High Courts should be to the Constitution and not to the ruling party. So, according to me it is flawed.

Also, why is there such furor over retrospective tax amendments? Retrospective



amendment is permissible. Go back to the *Bengal Immunity* case. All you need to do is to add an Explanation. This Explanation can have two purposes. One is to clarify and the other to make an additional enactment. Now if retrospective legislation is permitted, interpret that Explanation as an additional legislation. It is permissible. What is needed is a clarification only because the Vodafone judgment is apparently in conflict with *McDowell*, which is the law of the land and a Constitution Bench judgment. Therefore, to clear any doubt about the meaning this Explanation can be added. Even if it is interpreted as retrospective legislation, that is also permitted. It is the entire corporate lobby, which is making a big hue and cry, but that should not affect the Supreme Court. So ultimately, as I said Vodafone constitutes a trinity of infamous judgments of the Supreme Court, which are best forgotten as soon as possible. The trinity consists of the *Habeas Corpus* judgment, which by amendment of Article 359 was nullified, the JMM Bribery case, which is yet to be nullified; and this is the third case.

**B&B: You had demanded that K.G. Balakrishnan should quit as NHRC chief. What do you have to say on this?**

**JV:** All have said this including me but it has fallen on deaf ears. People talk all kinds of things against everyone; that has to be ignored. But if any allegation or accusation is made against a person holding a high position, which is supported by *prima facie* evidence, then he must step down and explain it, if it is untrue; but step down till his name is cleared. I said that for YK Sabharwal as well, who was facing identical allegations. So there is no doubt that there are enough reasons for these persons to step down, but no one steps down these days.

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**B&B: What are your thoughts on the current system of legal education in specific reference to five-year law course and National law Schools?**

**JV:** I too was involved in this process from the beginning and this 5-year course has made a lot of difference. Now by choice, law has become one of the top priorities like medicine and engineering. Today, a law student is much better equipped than we were at the corresponding age. When I graduated, I knew nothing; I had not even seen an All India Law reporter! The quality of legal education has improved tremendously. Now we need to improve the quality of subordinate judiciary, which will automatically improve the quality at higher level.

**B&B: What advice would you give to young lawyers?**

**JV:** Well, develop an analytical approach and think for yourself. When you prepare a case, prepare not only for your side but also prepare for the other side, so that you are never taken by surprise even if it is a bad case, which you may lose. I am convinced that howsoever bad the situation is, a person with intelligence, industry and integrity is bound to succeed.

**B&B: What interests you other than law?**

**JV:** I try to involve myself in matters of public interest to best to my ability. I spend time with my family. I am not a very social person. I am a member of many clubs but I never go to any of them.