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## **SINDH IN THE SUPREME COURT** **B. Mallikarjun, Ph.D. and M. S. Thirumalai, Ph.D.**

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### **MR. BHATNAGAR'S GREAT SERVICE TO HIS COUNTRY!**

Fortunately for all of us, the curtain has come down on the question of retaining or not retaining the name Sindh in the Indian national anthem. The Supreme Court rejected the plea of Sanjeev Bhatnagar as a *publicity interest* litigation, not a *public interest* litigation, and imposed a fine of Rs. 10,000 on him for 'wasting the valuable time of the court.'

Mr. Bhatnagar has done great service to his country through his misadventure, we should say.

### **A TEAM OF BENGALI AND SINDHI WARRIORS TO THE RESCUE**

Both the Attorney General of India Milon Banerjee and senior advocate Ram Jethmalani (Truly a great combination of a Bengali gentleman with a Sindhi gentleman in support of the retention of the word Sindh in the Indian national anthem, which is in Bengali! What better defense team can one offer?) argued that any tampering with the original script of the anthem would lead to its distortion and a great deal of discontent among the large population of Sindhis in India and abroad (PTI report dated May 13, 2005). The Attorney General pointed out that the Constituent Assembly in 1950 adopted the national anthem when Sindh was already a part of Pakistan. He argued that "any tampering with the poetic language or the text would stir a hornets' nest encouraging demands for inclusion or deletion of words in the national anthem." A very wise counsel, indeed.

### **A SPIRITED DEFENSE IN FAVOR OF SINDH**

According to a PTI report dated April 27, 2005, Ram Jethmalani "gave vent to the hurt feelings of millions of Sindhis across the world, including himself." The report indicated, "the petition contained "blatant lies, irresponsible statements" and propounded the interest of Pakistan. Pooh-poohing the apprehension of an international arbitration by Pakistan over inclusion of the word 'Sindh' in the anthem, he said the neighbouring State had never even thought of doing so in the last 55 years, but the petitioner seemed to know in advance what it was going to do in the future. Is the petitioner the person who typifies the interest of 100 crore population of India," the noted lawyer asked and chose to answer the self-posed question by saying "till date none had ever opposed to the recitation of the national anthem in the public functions day in and day out across India." Splendid and spirited argument, indeed!

### **SINDH CIVILIZATION - A BEDROCK OF INDIAN CIVILIZATION**

Mr. Ram Jethmalani went several steps further. How can a senior counsel whose life is strewn with many a significant battle on behalf of democracy and other causes stop with simply stating his case? To quote the report cited above, Jethmalani gave the petitioner a lecture on the word "Sindh." "He said when the world was taking pride in the fact that the first civilization was started in Rome, it was discovered later that the Indus valley civilization was the oldest. The word "Indus" was derived from "Sindhu", the river on the banks of which the world's oldest civilization thrived and the national anthem, described by Mahatma Gandhi as a devotional hymn, sings the praise of such civilization. The petitioner does not know this golden chapter of Hindustan and wants to destroy it by seeking deletion of the word "Sindh" from the national anthem." (He could have added or cited the beautiful poem on the unity of India by Subramania Bharathi in which the unity theme centers around the Sindh river and Sindh, and, of course, South Indians claim that the Sindh civilization is a Dravidian civilization.)

### **PARLIAMENT CAN MAKE CHANGES IN THE NATIONAL ANTHEM**

Jethmalani argued, "It was nobody's argument that Parliament could not make changes in the national anthem as and when the occasion arises, but the court could not direct it to make changes." This last bit of Jethmalani's argument seems to be sidestepped by the Supreme Court in its final judgment, when the honorable judges compared a national anthem to a classic which may not be altered even by its own author. We believe that Ram Jethmalani will not agree to this declaration.

### **THE PRONOUNCEMENTS BY THE HONORABLE JUDGES**

The PTI report dated May 13, 2005 says, "Justice Lahoti, writing for the Bench, said 'the national anthem is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not like making changes into it. Any tampering with the script of the poem would be showing disrespect to the great poet Rabindranath Tagore.' ... a national anthem was a hymn or a song expressing patriotic sentiments or feelings. 'It is not a chronicle which defines the territory of the nation which has adopted the anthem,' it said. The national anthem did not and does not enlist the States or regional areas which were part of India at the point of time when the anthem was written by Gurudev Tagore, the three-Judge Bench said. 'Nor is it necessary that the structure of the national anthem should go on changing as and when the territories of the internal distribution of geographical regions or provinces undergo changes,' Justice Lahoti said. Had it been so, then with the creation of the new States like Uttaranchal, Jharkhand and Chhattisgarh, the national anthem would have to be modified to accommodate the names of these States, he said and added 'the obvious answer is - no.' The court said the hue and cry raised over the issue by the petitioner did not amount to raising of any constitutional issue nor referred to any breach of his fundamental right."

### **THE LIKELY NEXT ROUND**

Very interesting arguments and very interesting questions. The next round is going to be on what a classic is , whether describing a national anthem as a classic is a correct

characterization, whether a national anthem is part of the "basic structure" concept of the Constitution of India (so that even the Parliament may have difficulty in altering it), whether a national anthem is immortal and inalienable, and whether it can ever be altered, etc.

Meanwhile let us all be happy that the place for Sindh in our national anthem is assured.