Professor Pradyumna Kumar Tripathi: A Tribute

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The recent sad demise of Professor P.K. Tripathi marks an end of an era of pioneering modernizers of Indian legal education and research. It is important, I believe, to recall the context of his achievement if we are to honour the man and the scholar.

When Professor Tripathi came to the task of pioneering leadership of modernization of Indian legal education, the landscape was remarkably bleak. The concept of full-time law studies was virtually unknown. Lawyers, not all of exceptional qualities, and a few with talent for teaching, comprised the bulk of law-teaching profession. Law colleges and university departments offered only part-time two-year LL.B. programme; even LL.M. studies were part-time. Full-time law teachers and students were a rare phenomenon; LL.B. degrees the easiest to obtain; no noticeable application of the mind was required to graduate, even with distinction. No practical training programmes existed. The tradition of legal writing, beyond textbooks, was still nascent. Colonial patterns of legal education, firmly in place for decades, made any alternative way of doing legal education almost inconceivable. Quality control and ideas of excellence were remote from the minds of leading lawyers and Judges, who believed that legal education began only after the law degree certificate was somehow at hand.

Three events, occurring within a decade, however, testify to new beginnings: the establishment of the Indian Law Institute, the enactment of the Advocates Act, and the Gajendragadkar Report on Legal Education. The first marked national concern with advanced legal research; the second was the invention of a three-year law study programme (with core and optional curricular components); and the third provided for greater academic direction for the reformation of Indian legal education, marking a significant involvement of the University Grants Commission, especially in the development of postgraduate legal education and faculty improvement. The 1961 Advocates Act conferred superintendence of professional legal education specifically on the statutory Legal Education Committee within the Bar Council of India. In each of these developments, Professor Tripathi played a determinative role.

Each development marked a greater engagement of the Indian judiciary, legal profession, and the academy in the remaking of Indian legal education. The relationship between the three classes of actors was also marked by not always creative tensions and by struggles for power for control over the
direction of change and the pace of transformation. New patterns of social cooperation had to be forged within a legal culture in which the Judge and senior lawyer claimed hierarchic, even feudal deference from the law teacher. The reformist law teacher was required to render hierarchic tribute, even while making scope for the emergence of patterns of grudging respect for the professional academic. This role entailed a whole range of negotiation skills, which Professor Tripathi possessed in abundance.

The Golden Jubilee of the Constitution, and the Supreme Court, has already been variously celebrated. Fifty years after the Indian independence, however, the history of Indian legal education remains in search of gifted raconteurs. As and when that task is seriously addressed, the scope for informed assessment of Professor Tripathi’s contributions will also expand.

Professor Tripathi was fortunate to have as wayfarers in the long and risky journey some of India’s most eminent innovators: Professors G.S. Sharma (Jaipur), Anandjee (Benaras), A.T. Markose (Cochin) — all eminent scholars who were catalysed by the legendary Professor R.U. Singh (Lucknow). The distinctive feature of their camaraderie, despite all the professional and personal differences, lay in the common cause of professionalizing legal education. If law teachers are today held high in social esteem, they owe much of their institutionalizz to the inaugural institutional labours of these five men. Quite simply, modernization of legal education and research would have simply not occurred at the same pace if these men (there were unfortunately very few women academics at that point of time, a fact that imbued the reform agenda a distinctly patriarchal character) did not happen to it. At the same time, but for the dedication of a great many scholars of their generation, these five men would have found their role even more arduous.

These Five Horsemen, as it were, through their diverse labours, brought to a decisive end the ancien régime of Indian legal education. They insisted that:

— As far as possible, legal studies should be full time; graduation in law must increasingly reflect serious commitment to learning the law;
— The modes of teaching law should imbibe public virtues, that is legal pedagogy and research should be the carrier, the social critique of legal happenings and events;
— Legal research may not be divorced from teaching; indeed, good teaching and research form Siamese Twins;


— Teachers and students must develop the art of exegesis, without losing sense of the social context of legal decisions and states of affairs;
— Traditional modes of examination (external and mechanical, modes of third-party assessment, where the examiners remained totally divorced from the daily context of teaching and learning) should give way to internal evaluation;
— New ways had to be found (such as the semester system) of managing imaginatively and efficiently teaching and learning time;
— Postgraduate education should be intensive and should primarily be devoted to specialization, in ways that promoted both sound scholarship and a high rate of return to law-teaching career;
— Resources should be raised for planned development of library resources;
— Continuing faculty improvement should be a high priority.

All this is, more or less, generally accepted today. It is important to acknowledge that this was not always so. Institutionisation of new ways of legal education and research entailed creation of new social markets for professional legal education and research and the all-important tasks of carrying conviction to indifferently educated, but still somehow highly successful, lawpersons (Judges, lawyers, public officials trained in law) that India’s “developmental” needs may no longer be served by the colonial patterns of legal education.

As the second generation innovators know, this latter has never been an easy task,2 given the utter lack of humility and openness to learning, by the most eminent Indian Justices and the eminences at the Bar and the insolence of State and Union Law and Education Ministers. Indeed, the first generation of innovators of legal education seem, in retrospect, to have been more fortunate in terms of the potential of multi-sectoral collaboration.

In any event, the legacy of the pioneers beyond this agendum is not easy to summarize. The pioneers were a diverse lot, after all. Their social

2 Generational lines are somewhat difficult to draw but by the "second generation", I refer to the following agenda of struggles to:
— Ensure that State Governments ensure the same level of funding to law colleges as to arts, science, and commerce colleges;
— Secure acknowledgement of legal studies as an aspect of social and human sciences;
— Reshape pedagogy and curriculum in the direction of greater social relevance;
— Revitalize the LL.M. programme, through the introduction of foundation courses in legal theory and social and legal research methods (and to add a third year for those who would pursue the degree on a part-time basis);
— Introduce clinical legal education and legal services components;
— Find/create social markets for even a more thoroughgoing renovation of legal education through the 10+2+5 programme;
— Ensure residential campus-based-single-faculty law universities, the prototype of which, stands furnished by the National Law School University of India, Bangalore.
imagination of the future of Indian legal education and research varied a
great deal. Professor Gyan Swaroop Sharma went the farthest in his
insistence on sociological understanding of Indian jurisprudence and legal
development. Dean Anandjiwala pioneered teaching and research in labour law
and jurisprudence. Charles Alexandrowicz, T.S. Rama Rao, B.S. Murthy,
M.K. Nawaz, R.P. Anand, Nagendra Singh (though not a law teacher) and
R.P. Dholakia laid the foundations of public local law in Indian
scholarship. But, given the exploding importance of constitutional and
administrative law, the pride of place, among the innovators, was claimed by
public law scholarship, led mainly by P.K. Tripathi, A.T. Markose and M.P.
Jain.

The "legacy" that I speak of, however, is one of curricular and pedagogic
reforms, which they initiated and had mixed reception. Clearly the most
lasting impact is visible, across generations, among the Central and State
universities where the Departments of Law remained responsible for
undergraduate teaching. These institutions were better poised than most law
colleges across the country (with slender full-time staff, underdeveloped
libraries and large enrolments) to seize the moment for ushering in some
lasting changes. Clearly, in these latter institutions, conditions remained
hostile to change. Even today, generations later, too many law schools in
India have yet to move towards renovation of Indian legal education.

The crucial aspect of their collective legacy lay in the creation of cadres
of competent and dedicated teachers, a vibrant research culture, and in the
production of outstanding students who served not only the growing needs of
sound legal education and research but also created a cadre of
knowledge-based lawyers and public administrators. Many Indian appellate
Justices owe their exalted positions, and proud performance, to the collective,
and at times unremitting labours of these five men and their honoured
colleagues. No tribute to Professor Tripathi would be complete outside this
frame of juris-generative collectivity.

Prad (as he very unusually suffered me to call him!), I know, would not
have wholly agreed with my privileged construction of this collectivity. He
would have had no difficulty with the acknowledgement of his peers. But he
would have articulated a sense of injustice. It was his view (which he in
several personal conversations, at length, indicated to me) that the Delhi
experiment was unique. To be sure, Delhi and Benaras (as well as
Chandigarh, Agra, Jammu, Jodhpur, for example) showed the way, Delhi
having a situational (cosmopolitan) advantage. But Prad displayed also a
very strong sense of selfhood, which marks the ways of "leadership" in India,
often manifested as narcissism, a love of the Self, that often overrides the
Other. Duties toward a nascent historiography of Indian legal education,
however, stand served a whole lot better through this form of contextuality.

II

I arrived at Delhi University far too late for a participant observer status
in relation to the "modernization" programme. I had met Professor Tripathi
during my first year and half stint at the Indian Law Institute (1967-68).

When I invited him to my home in Sydney (1970, when he was visiting the
Melbourne Law School), Prad was warm in his appreciation of my work (as
well as Krishna Mohan Sharma, still teaching at the University of New South
Wales.) He advised me to keep up my good work and urged me to return to
India when a Chair became available. In his estimate, given my young age,
this would happen 15-20 years later. That I would be invited within two
years of his forecast did truly astonish both of us; but he was urbane and
gracious in his reception of me (by this time he had already moved to the first
ever full-time Member of the Indian Law Commission.) Our professional
interaction was brief, however, since his return to the Law School coincided
with my assumption of the office of Vice-Chancellor of South Gujarat
University (1982-85). We did not relate institutionally since 1985, when I
returned to Delhi, save when he returned to Delhi Law School from the Law
Commission. He remained somewhat unhappy that I was not effective in
restoring his old house in Cawley Lane on the Delhi University campus.
When he returned to Deanship for a brief while, he cautioned me, in a
friendly way, against acceptance of assignment of Vice-Chancellorship of
South Gujarat University, Surat.

However, there were times (especially during his long and first ever law
academic's tenure as a full-time Member of the Indian Law Commission)
when I was privileged with long narrative conversations concerning the
School and legal education. I also read everything that he wrote (he made
this possible by resisting the temptation to go to print too often) and I always
benefited from what I read.

Despite these compensations, I thus missed having a full ringside view of
Professor Tripathi's leadership style. But he generated an astonishing wealth
of collegial narratives, through which I feel able to situate Prad's claims to
his "uniqueness". There is no doubt that he was an intense person, who
evoked hero-worship as well as character assassination. If the "loyalists" at
Delhi University Law School worshipped him, his detractors had to scrape
the barrel, as it were, to discover a virtuous trace! The truth about his
personality lay uncomfortably in the middle.

It is a rather harsh thing to say but all narratives, based on anguished
experience of his colleagues, suggest that Professor Tripathi himself operated
the dichotomous logic of the friend and the enemy. The slightest formal or
informal opposition or criticism to his leadership style or concrete policy
proposals (or even his academic writings) often carried the risk of enduring
hostility. "Friends" were colleagues who so internalised this impending
hostility as often to become sycophants, a feature that deeply irritated Prad
but one that he still found useful. "Friends" had to be rewarded; "enemies"
punished. (A powerful Dean always had enough leverage to distribute
rewards and sanctions.) This binary distinction did not, for Prad, mean the

3 Prad obviously never read Carl Schmitt, who built around this distinction a theory of
governance and public law and much else besides: see, for a recent efflorescence,
(2000); Jacques Derrida, The Politics of Friendship (1997; London, Verso); Chantal
lack of space for adversaries, people whom one can respect because of an honest difference of opinion and from whom one may even learn. But he acknowledged these sparsely.

A future biographer of Prad (it is astonishing indeed that there exists no biography of an Indian law teacher) will have to concern herself with the origins and mutations of this style of academic leadership. Widely prevalent even now, despite substantial degree of democratization of the campus life, academic feudalism was the defining feature of academic culture in which Prad and his equally gifted colleagues, came to maturity.

Professor Tripathi, like his peers, subscribed to a command and control model of directing transformation in legal education. Yet the very reforms he initiated seemed to make this model of leadership increasingly insecure. Management of innovation tormented him because he realized that the very features he so prized as a teacher and educationist contributed to subversion of authority.

The pedagogy he founded (a distinctive Delhi version of the Langdellian “case-method”, in itself a fascinating saga of indigenisation of American pedagogic imports) entailed a questioning mindset among teachers and students. Students trained to raise acute questions concerning judicial and legal decisions were bound to carry their interlocution to the Delhi Law Dean’s doorstep. Colleagues, so many of them sponsored by him for the Ford Foundation exchange program, returned with new ideas of collegiality. Trusting them with powers of evaluation of their own students made hegemonic assertion over them more perilous than ever imagined, in the first flush of reforms.

Mutation of the authoritarian pattern of doing things thus emerged as an unanticipated, latent, and to Prad as counterproductive outcome for the reform of legal education. Professor Tripathi sought to advance his pioneering vision and agenda by drawing bright lines between permissible and forbidden academic dissent. “Guided democracy” in the period of transition is not an unfamiliar theme and although he would have criticized this approach in national and regional politics, Tripathi saw very little in enacting a command and control model for managing innovative legal education.

4 I suggest to the UGC Panel on Law, as well as my eminent colleagues directing master’s and doctoral dissertations, a research agenda directed to individual and social biographies of innovation in legal education and research.

5 He (with Dean Anandee of Benaras Law School), made the most of the Ford Foundation’s inclination, in the sixties, for the Faculty improvement programme involving, rightly, an asymmetrical exchange of the Faculty; under his leadership a considerable number of Indian law teachers earned their doctorates from American law schools. This decisively marked an end to the more generous, University of London lead (under Professor Allen Gledhill) of the Indian post-colonial commonwealth legal education.

6 My own value preferences lie in the opposite direction and I can honestly say that I was able to enact them at the Law School as Prad’s successor to the Deansship and as Vice-Chancellor of Delhi University. I do not believe that values informing the processes of transition can be separated from results that are achieved or follow. But views on such matters may differ, even profoundly, and I respect Prad’s way of relating means and ends, even when I could never have practised these myself. As a matter of fact, Prad’s legacy in the management of legal education and research seems more institutionally lasting than “ultra-participatory” ways of fostering collegiate responsibility. His lead today is more universally followed by his former students and colleagues, now at the helm of managing yet another transition; indeed, those who may not be counted in this category also show strong allegiance to this model of leadership and management.

7 The situation has improved noticeably after the late eighties and Justices remain less reticent to cite Indian scholars. Tripathi wrote in an era when it was considered inappropriate by Justices to cite a living author! He nevertheless delighted in calling out passages from the Supreme Court decisions where whole paragraphs appeared from his books without any source acknowledgement!

8 The lack of availability of his texts, at this point of time, may provide a part of the explanation. The way, in which textbooks are written, with very little mention of scholarly contribution, may also have contributed to this situation of indifference. A major
own former students who guide research, edit law journals and occupy leadership positions have so internalised Prad's insights that acknowledgement of what he actually said seems superfluous, a scarcely sound academic practice! A wider explanation may also be found in the changing agenda and patterns of the Supreme Court decision-making; for example, the doctrine of "reasonable classification" (which Prad critiqued so remarkably) is no longer at the centre stage of contemporary constitutional jurisprudence. I mention these factors at random here in the hope that some day the question of appropriate measure of impact of Indian legal scholarship on development and adjudication may be thought worthy of research. It remains equally important to ask why contemporary scholarly writing on public law is so forgetful of the work of their predecessors in the field.

More important is the first question concerning the model that Prad evolved. At one level, the level of his literary practice, one may that he exemplified the virtues of critical fidelity to judicial discourse.9 Argus-eyed, Prad never missed internal inconsistencies in judicial decisions; and he felt that it was the duty of scholars to highlight, though in urbane ways, shoddy judicial performances and to acclaim those that responded to the virtue of judicial coherence. But he believed strongly in the institutional integrity of court; Prad believed that each Justice signing an opinion was an equal author of the decision as his remarkable article, in the Journal of the Indian Law Institute, concerning contributions of Justice Gajendragadkar demonstrated.10 While himself well-versed in comparative constitutional jurisprudence, Professor Tripathi stressed the relative autonomy of the Indian approach to interpretation.

Beyond this, the substantive components of his model are more complex. If Professor Tripathi had a distinctive theory about judicial process, he allowed it to emerge through episodic commentaries rather than by its full-fledged articulation. I believe it fair to say of his implicit theory that it was liberal positivist. His corpus presents, overall, a finely nuanced view concerning legitimacy, and therefore the limits, of judicial power.11 This signified that Justices should not be, or seen to be, politicians in judicial robes.12 Judicial "populism" was anathema to his implicit theory of constitutional adjudication. Professor Tripathi did not think that sociology of law type perspectives were relevant to the craft of judging. What mattered to him were not the raw social and political context of legal development but the ability and the potential of judicial power and role that allowed juridical translation of the social.

This having been fully said, it must (in all fairness) also be said that Professor Tripathi remained animated (to evoke Professor Sanford Levinson’s germinal phrase) by a "constitutional faith". It was an article of faith with Prad that the constitutional rule of law was an "unqualified public good" (he would have here evoked E.P. Thompson’s characterization to so describe the rule of law, in its "progressive" aspects). Prad had little use for Marxian critiques of the rule of law model, Indian-style. His corpus does not elaborate Indian constitutionalism as a reign of terror coexisting with the vaunted rule of law. In his view, the task of constitutional scholarship lay in the quest for understanding and explanation of the foundations of Indian constitutionalism, not in the shaking of the foundations. They may use polemics (as he so abundantly did) but not to the point of questioning the authority of authority. For, if you take this away what remains is constitutional chaos. The principal task, according to Prad, of legal scholarship is not to aid and abet this chaos but to bring into being the significant forms of meaning that reinforce legal authority.

These are important insights, which reject constitutionally ordained forms of impatience (like mine) with unconstitutional, and fully violent, patterns of Indian governance and development. From my standpoint, what matters are constituencies of hurt and harm created and sustained by these acts of interpretive collaboration among Justices and jurists.13 I recognize that this is an important matrix of creative dissensus. Evaluating constitutional development and interpretation beyond the legal doctrine, extending juristic labours to a fellowship of suffering for the recurrently disenfranchised constitutional underclasses, summons traumatic transformation of inherited modes of doing constitutional theory and practice. I persist in my belief that a "jurist" must at all times be an anguished and engaged citizen. I realize, of course, that neither of us can have the last word, though each one of us would want to have the final say. Even when I fancy that my "final" say is more radically democratic than Prad’s, I have also to acknowledge the fragility of this saying. Constitutional theory and practice is produced and consumed by the constitutional haves. To bring to it the tasks of caring for the constitutional have-nots (in Babasaheb Ambedkar’s idiom the atisuds) is an insurrectionary enterprise, whose future must always remain in peril.

For fifty long years, the constitutional provision, which enables the elevation of a jurist to the Supreme Court of India has been consistently ignored. This has deprived India of its best prospect of conversion of a law

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9 He showed us the virtues of close reading of decisional texts, at a time when "headnote" reading of cases sufficed even for eminent Justices and law persons.

10 Prad was not overly troubled by the fact that Brother Gajendragadkar never authored a dissenting opinion, usually considered to offer a window to individual judicial worldview.

11 In his germinal article, in Columbia Law Review, on "Precedent in Indian Law" so abundantly suggests, Professor Tripathi adhered to a view of judicial creativity held within the confines of an internal discipline of the tradition of adjudication. See, for a bibliography of his writings, Mahendra P. Singh (Ed.) Comparative Constitutional Law (Eastern Book Co., Lucknow, 1989).

12 And, I suspected that he felt somewhat affronted by my The Indian Supreme Court and Politics (Eastern Book Co., Lucknow, 1980).

Professor into a Justice. The prospect of having our own equivalent of a Felix Frankfurter has been wilfully squandered.

The analogy, if I may say so, is wholly accurate. Justice Tripathi would have provided a heroic model for judicial self-restraint, like Justice Frankfurter. Like him, Justice Tripathi would have asserted that Judges may not watch election returns in reaching their decisions. Like Frankfurter, Tripathi on the High Bench would have, at the same time, constituted workable boundaries against judicial activism as well as judicial abdication. Like Frankfurter, he would have been discerning concerning creative uses of judicial role and power, held within articulate bounds of judicial self-discipline. Equally, Tripathi would have imparted elegance to the appellate judicial prose.

His non-elevation exemplifies India's constitutional misfortune, by now the custom of the Indian Constitution that says, contrary to its original intention, that no jurist may ever be elevated to the Supreme Court. Indian citizens thus remain unaccountably deprived of potential judicial contribution of Indian jurists.

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By way of a tribute and a memorial to Prad I have to insist we need to revisit his insights into constitutional theory and practice, in the context of the contemporary anxiety concerning the very future of Indian constitutionalism. I can do no more here than to say that Professor Tripathi summons us all, as he did during his tumultuous lifetime, to a faithful historiography of transformative modes of legal education in India. While I do not advocate "ancestor-worship", I do suggest that the massacre of ancestors remains violently inimical to the future of Indian legal education and research.

To end on a rather personal note, I grieve with Dr (Ms) Kusum Tripathi at Prad's sad demise. And I hope that Parag Tripathi, now a successful lawyer, pauses time and again, on the typical (and often tragic for Indian democratic destiny) runaway escalator of appellate lawyer's prosperity track, to return to his illustrious father's anxious interrogation concerning the future of Indian constitutionalism. Nothing is, unfortunately, more corrupting to this cause than a successful career at the Bar and the Bench. I know how proud Prad was at the distinguished potential and performance of Parag, who was also our common student. I want him to know that both he and I look forward to his contributions to the remaking of Indian public law in the midst of a human rights denying rampant economic globalisation, the new theology of development unfortunately so enthusiastically embraced by today's Bench and the Bar.