

“The Rise of the Rest”:India

By

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Recently I read Fareed Zakaria’s book The Post-American World. The first chapter is entitled “The Rise of the Rest.” The first sentence states: “This is a book not about the decline of America but rather about the rise of everyone else.” China and India are perhaps foremost among the countries Zakaria views as on the rise.

In the fall of 2006, I was a member of an American legal delegation to China. It was my third trip to China over a 29-year period. I knew from these ventures that, without question, China is a nation on the rise. Its progress toward a modern economy and society over a three-decade period is truly remarkable.

I could not verify Zakaria’s thesis as to India, however. I had never been there; and although I knew something of its history, particularly during its time as a British colony, it had never been a major focus of my attention.

Last fall a letter from Wallace Jefferson, Chief Justice of the Supreme Court of Texas, invited me to serve as a United States delegate to a U.S.-India Law Forum in March 2009. I knew India was growing in importance and that I should be more knowledgeable about it. After appropriate reflection, I therefore accepted. Fortunately, Leona could accompany me.

Our departure date, February 28th, was a cold, rainy Saturday. We left to drive to the Raleigh-Durham Airport a bit later than we should have and grew somewhat anxious when an accident on I-40 slowed traffic there to a crawl. We made it to the airport in adequate time, however, only to find that our flight to Newark had been delayed.

A leisurely lunch while watching the second half of the UNC-Georgia Tech basketball game occupied some of the waiting time. Our 2:15 flight eventually departed at 5:40. This, we projected, would get us to Newark about an hour before our 8:40 p.m. flight to Delhi. We could not have foreseen that our plane would be required to circle for a while before landing in Newark. Ultimately, we arrived at our Delhi flight gate in time for a quick salad before boarding.

The twelve and one-half hour flight was surprisingly easy, largely because it was night by U.S. time and we thus slept or rested approximately two-thirds of the way. It was around 9:20 p.m., Sunday, March 1, India time, when we landed in Delhi.

The Delhi airport is large and modern. Security is highly visible. Many of the men wear dark British khaki shirts with tan pants and side arms. Some sport a khaki version of what SWAT teams wear in the U.S., complete with baseball caps. They carry automatic weapons. All are Delhi police.

We proceeded through immigration quickly and easily. Fortunately, our bags had arrived with us. People to People International handled our arrangements, and its representatives – Balu Menon, Siju Mangot, Manoj Abraham, and Sandeep Singh – greeted us outside the baggage area. The signs said “Namaste!” – the Indian word for “welcome.” Our necks were draped with a garland of bright marigolds colored orange, yellow and white.

A large orange coach transported us from the Delhi airport to our hotel, about a 40-minute ride on a four-lane road. The good road notwithstanding, travel was slow. The reason: there are all sorts of vehicles on the road – cars, trucks, rickshaws, bicycles, scooters, motorbikes, and a variety of animal-drawn carts. There are pedestrians and animals as well, less

so in the city than in the country, but they are there. Lane shifting is routine, and the only rule of the road seems to be that smaller vehicles yield instinctively to larger ones.

Our hotel is the Lalit InterContinental in the center of Delhi. It is very modern. The lobby is spectacular in white marble with antique bronze sculptures, colorful modern tapestries, and a huge sculpture of three bulls. It is readily apparent that there are guests from all over the world. As at the airport, security is omnipresent and very visible.

By the time we settled in, it was bedtime on India's clock. I had slept reasonably well on the plane, so was doubtful that I would be ready for slumber again. But I was; the long trip had drained my energy more than I realized.

Monday, March 2, 2009

Sounds of rather eerie Indian music drifted through our room from the outside in the early morning. Our hotel provides a gourmet buffet breakfast, and we enjoyed it for the first time.

Afterward our group gathered for an orientation briefing by Richard Pena, President of the American Bar Foundation and the Delegation Chair, and Mr. Balu, our local guide. We were advised that we would be meeting with government ministers, members of parliament, judges, bar leaders, other lawyers, law professors, and law students. There were reminders that we would be diplomats, representing both the United States and its legal profession. We should be polite and politic. Certain topics, such as Pakistan and government corruption in India, would be embarrassing to our hosts and thus should be considered taboo. The most important mandate was to be flexible.

We would begin, however, with a “cultural day.” This means we are not in professional meetings, but rather are tourists, visiting some of the significant sites and gathering a feel for the country of our hosts.

Delhi has a population of 16 million people. It is really eight cities. Seven constitute old Delhi, where we are today. The eighth was built by the British during their rule.

Priti is our guide for the day (and yes, she is pretty). We drove by the Red Fort, which is unrestored since the days of the Raj. There were multiple beautiful parks and gardens in the cultural center. Fruit markets were abundant. Among the novelties observed were dentists and barbers performing their tasks on the streets, and a small boy receiving an outdoor shampoo.

Our first stop was at the Jami Masjid, the largest mosque in India, built by the Emperor Shah Jahan in 1656. It was under construction by 5,000 workmen over a six-year period.

We joined both other tourists and worshipers. I also observed a black cat who seemed quite at home; I did not know at the time that I would not see another cat while in India.

Shoes were forbidden in the mosque. Arms had to be covered above the elbows. A cover was provided for women.

The mosque is huge. Its square courtyard can accommodate 30,000 people at prayer times. Obviously, this is the major mosque in the region. An extensive balcony provided a seat for the Emperor.

Following our visit to the mosque, we boarded bicycle rickshaws for a quick dash through the crowded streets of Chandi Chowk. This experience provided our first real taste of life in the crowded urban areas of India. The streets are narrow and jammed with people, animals and bicycles. There is barely opportunity to glance at the kaleidoscope of colorful images that assaults us from every angle. Tangled masses of overhead wires are ubiquitous. We

are baffled as to how they sort through them to find the correct one when they need repairs.

Dogs are omnipresent; all of them are skinny. I got a glimpse of a monkey climbing a wall and entering an open window.

Street vendors of all sorts peddle their wares: fruits, cloth, basic commodities of various types. The people were friendly; many smiled and waved as we passed.

As we leave the rickshaws, hawkers of various goods, and beggars, surround us. Our guides assist us in escaping them and re-boarding the bus. They prefer that we not donate to the beggars or buy from the hawkers. If we really want a hawker's goods, they instruct us to board the bus and let them make the purchases for us.

Our next stop was at the memorials adjacent to the historic cremation site. A parade of Indian families visits the memorials with us. The Hindus do not bury their dead; they cremate them, usually by the banks of a river. Nehru, the first Prime Minister of India, was cremated here.

We walked to the memorial for Mahatma Gandhi. It is a flat, black marble slab with an eternal flame, surrounded by a peaceful garden – simple, in keeping with his simplicity.

“My life is my message” was Gandhi's slogan. A woman once asked him to tell her son to stop drinking sweet drinks because they were bad for him. He told her to return in a week, which she did. He then told the boy he should stop drinking sweet drinks. When the woman asked why he could not have done that the previous week, he replied, “Because then I was still drinking sweet drinks myself.”

We soon passed the ruins of the sixth city of Delhi, built in 1540 by the Emperor Humayan. The outer wall remains. Humayan's tomb, constructed between 1565 and 1572 A.D., is our next stop. It was the precursor to the Taj Mahal, the beginning of the Taj brand of

architecture. The idea is that the Emperor is resting in his paradise. Humayan must have thought highly of his barber; a brown tomb on the premises contains the barber's remains.

A buffet lunch at a restaurant followed: a variety of Indian foods, with fruit and cake for dessert, for about \$30.00 per couple.

Lotus Mall, the finest crafts mall in India, was our after-lunch destination. It is a cooperative of weavers. Everything is handcrafted, so labor is the main element of the cost of production. A master craftsman explained their work to us as we sipped tea secured from a mountainous region to the North. We were told that the silk used is the strongest in the world except for a spider's web. These carpets can last hundreds of years.

On the return trip to our hotel, we went through numerous new roundabouts. The government has employed private companies to beautify them, and they are characterized by lovely flowers everywhere.

The ride was through the political heart of the country. We saw the Parliament Building, the president's house (it was the vice consul's when India was under British control), and India's equivalent of the Pentagon. At the India Gate, a war memorial to the Indians who died fighting for the British, we posed for photographs. A beggar with a cobra in a basket played doleful music, to which the cobra swayed back and forth. I got close enough to the cobra to get a picture, but no further.

A Chinese dinner in our hotel's Indian restaurant concluded our "cultural day." It had accomplished our host's purposes: we indeed had more knowledge of, and a better feel for, the country whose legal system we are set to explore. The day has been pleasant but tiring. Still more intense ones lie ahead.

Tuesday, March 3, 2009

The bus ride from our hotel to the Amity Law School, where we would begin our professional program, took an hour. For the first time, we were in some countryside where we saw straw huts in which people obviously lived. I noted that the people take pride in their space; even when it is small and dingy, they appear to dust and clean it constantly.

Much construction is underway, providing work for lots of people. We saw oxen pulling loaded wagons, bicycles, scooters, small cars and vans, an occasional medium-sized car, and an occasional tractor. A herder drove a group of goats on the freeway. They were likely going to join a larger herd lounging in a nearby field.

Allison Colvin, a lawyer from Reno, Nevada, described the typical scene as a juxtaposition of beauty and junk. She had it right. There is much of indescribable beauty mingled with junk and seemingly ubiquitous trash.

Over 500 colleges and universities in India now offer the LL.B. (Bachelor of Laws) professional degree. Unlike in the United States, where legal education is a three-year, post-graduate program, in India it is a five-year, essentially undergraduate degree. Students are selected based on their performance on an entrance test, which is comprised of objective papers on general awareness and legal aptitude. Subjects that are typically covered are based on knowledge in law, analytical reasoning, and current events of national and international importance, with special reference to law, general sciences, history and geography of the country, Indian policy and economy. The upper age limit for admission to the five-year law programs is usually 20 years (most U.S. students would start law studies at age 22 or later). Amity University, where we will spend our morning, educates students from kindergarten through all levels of a university. Amity Law School has been ranked as one of the top ten law

schools in the country and was the first law school in Delhi to start a five-year integrated LL.B. program. The methods of teaching include lecture discussion, case law analysis, moot court training, project assignment and placement programs. The school also organizes seminars in contemporary legal issues, conducts clinical courses, and trains students in legal research and writing. Our professional program here focused on the structure of law schools in India, the curriculum, job prospects for students, clinic and pro bono work by students, due process and human rights aspects of the curriculum, and student composition.

Upon arrival we were treated to tea and cookies. We progressed to a large upstairs hall with tables arranged in a square, where our delegation sat with faculty members. Students filled chairs at the edges of the room.

Friendship candles were lighted. Mr. Lalit Bhasin, President of the Society of Indian Law Firms, welcomed us and extended greetings to the students. He is a very influential member of the bar of India, and he will join us for most of our events in Delhi. He notes, particularly, that both of our countries are committed to the rule of law.

Our delegation leader, Richard Pena, responded with a warm statement of friendship, stressing the importance of cooperation between the U.S. and India. “We come in friendship and peace to further the relationship between our two great democracies,” Richard said, “and to build a bridge between the members of our profession. This is a bridge to the future for two countries that share a passion for the rule of law.” He noted that there were many distinguished people here, but that the students were the most important ones.

Professor M.K. Balachandran, the school’s Director (we would call him Dean), recounted the history of the school and its accomplishments. Amity was started by Dr. Ashok Chauhan, a great philanthropist, in 1999 to provide excellence in legal education and to produce quality

lawyers with good moral principles and great human values. It is a private law school. Its students participate in national and international competitions; they have won 14 moot court prizes for Best Speaker.

Legal writing is a fourth-year course. The students prepare an article-length piece. A dissertation, again of article length, is required in the fifth year.

Students can secure a two-year extension but must finish in seven years. Some then gain admission to LL.M. (masters) programs, sometimes on scholarships. They are placed in law firms both in India and abroad, in prestigious judicial clerkships, and in various public service agencies such as legal aid.

Following the formal presentations, there was a spirited exchange with the students. They were especially interested in LL.M. degrees from U.S. law schools and what they could do with them; the effects of U.S. immigration laws should they come to the U.S. to study and then want to stay; and the time needed for resolution of cases in the U.S. (we learned that court delays and backlogs are a huge problem in India). We discussed methods of alternative dispute resolution, such as arbitration and mediation, used to ease court dockets in the U.S. The students had difficulty understanding the concept of “private judges” now in use in the U.S.

The interchange with the students continued at an informal reception. They were particularly interested in the utility of an LL.M. degree from a U.S. law school and in employment opportunities in the U.S. I found myself touting the LL.M. program for foreign students at the Duke Law School, which my paralegal from many years ago, Jennifer Maher, oversees. Three interested students gave me their e-mail addresses, which I later gave to Jennifer. She has since sent them information about the Duke program.

The students were bright, energetic, idealistic and enthusiastic. Probably because of the time I spent in legal education – 12 years as an adjunct professor at the University of North Carolina School of Law, and 7 years as Dean and Professor of Law at Campbell University – this was, to me, the most enjoyable of our professional programs.

We had lunch and spent the rest of the day at the India Habitat Centre, a convention facility. There were three paneled presentations: (1) an Indian lawyers' panel, (2) an Indian law scholars' panel and (3) an Indian parliamentary panel. Lalit Bhasin remained with us and basically presided.

The lawyers' panel featured Rom Jethmalani, age 85, who was presented as the undisputed leader of the India Bar. We would spend more time with Rom, and I became convinced that the description is accurate. He has served in both houses of the Parliament of India and in various ministries of the Indian government. He is indeed a legend in the Indian legal community.

Rom noted the basic belief of the Indian culture that when guests arrive, it is a visit of God. We, he said, were more welcome than others because we represent a great democracy. They too are a democracy, but a much newer one – only 60 years old. He stressed the importance of the individual in a democratic republic.

The drafters of the Indian Constitution came to the U.S. to see what we had done. They established a judiciary that they could be proud of. In recent times it has fallen some, but they are working to restore its stature. Their courts often follow and cite U.S. cases. There are now, he says, over one million lawyers in India. The leaders of the Freedom Movement in India were mostly lawyers.

With the exception of the far left and the fundamentalist fringes, people here like America and the American people. Even those who do not admire Americans often send their children to American universities.

In Rom's view, the events of September 11, 2001 made our two countries even closer than before. The U.S. and India are partners in the war against terrorism, though no one has successfully defined terrorism.

He very much wants to see that democracy never falters again in Pakistan. He hopes India can have U.S.-led cooperation in this effort.

The importance of education in bringing about improvements was stressed. "Those who walk in search of knowledge," he said, "walk in the feet of God." He had an interesting paraphrase of Lord Acton's dictum that "power corrupts, and absolute power corrupts absolutely." "Power corrupts," he said, "and the prospect of losing power corrupts absolutely." Toward the end of the lecture, we learned that Jethmalani is the only Indian lawyer ever to receive political asylum in the U.S. When Indira Gandhi declared a state of emergency and suspended elections, as president of the Bar of India he attacked her premise, denying the existence of a state of emergency. As a consequence, he lived in Detroit and New York for a time until it was safe for him to return to India.

The scholars' panel (three professors, two women and one man) started by noting India's great diversity: geographically, linguistically, politically, and religiously. It was noted that all the mountain ranges are connected with some god, and that there is a lot of law in India about the gods.

A lot of the reform movements have been to make things better for women, but there is still a hierarchical structure in the society. Women obtained the right to vote because they were

active in the independence movement. (During the question and answer session, I congratulated them on this, noting that it was almost a century and a half after independence before women got the right to vote in the U.S.)

Political equality did not bring social and economic equality, however. There is still a caste system; but Bollywood, their movie industry, is now the melting pot for everything. Discrimination in compensation for women is largely in the “unorganized” sector of the economy; in the construction industry, for example, on paper men and women get the same compensation, but in reality women are paid less.

The quality of the 1950 Constitution was “very high,” but it was implemented in a context of feudalism and nascent economic development. In spite of all the difficulties, India “has traveled a long way” and has “tried to uphold the values of democracy.” Minority religious groups have ruled the majority, but not in the name of religion. Indian Muslims are supposed to be the most open community in the Muslim world. Muslims are participating through all the parties in Indian politics without having a “Muslim Party” of their own. They are highly discriminated against. Minorities are not happy with the way India has dealt with many things.

Indian-style democracy has really gained ground in the country. Security problems are becoming dominant, however, with concerns about both domestic and international terrorism. India is surrounded by a “ring of fire,” with Pakistan, in particular, being “very dangerous.” The nation states, the panalists say, should adopt a principled position opposed to terrorism and commit themselves to the elimination of terrorism wherever it is found. It is everyone’s responsibility, and dealing with it requires a combined effort.

There was brief discussion of the problematic nature of teaching in the Indian classroom because of the different religious groups represented. The male panelist advocated disassociating terrorism from religion, however.

Dr. E. M. Natchiappan, a member of Parliament from Tamilnadu, then addressed us generally about the legislative branch. He is a member of the Congress party. He noted India's friendly trade relations with the U.S. and predicted that the two countries will be even closer in the coming years. In the current universal economic meltdown, they do not expect much assistance from the U.S.

In the exchange that followed the panels, Rom Jethmalani acknowledged that the law students' concerns about delay and backlogs in the Indian courts are well-founded. Mr. Bhasin expressed the view that there are too many laws. The government, he said, is the largest litigator. The people are looking for alternatives to both litigation and arbitration. Mr. Bhasin always advises his clients that a bad settlement is preferable to good litigation. There is now an organization, to which private firms subscribe, whereby they agree to resolve cases privately.

An exchange of gifts and a time for photography followed the panels. We were then treated to a buffet dinner. At its conclusion Rom Jethmalani invited us to a dinner party at his home the following evening.

The day has been long and filled with activity, but we are accomplishing our purposes: we are considerably better informed about our host country, and we believe we have been good representatives of ours.

Wednesday, March 4, 2009

A large orange bus transported us to Gurgaon, a modern commercial area of New Delhi with numerous skyscrapers. We visited the main office of Kochhar & Co., one of the largest and

fastest-growing law firms in India. It has offices in Atlanta, Bangalore, Chennai, Gurgaon, Hyderabad, Mumbai, New Delhi, Singapore and Tokyo. There are 27 partners, 104 associates and 12 of counsel and consultants. It has a strong litigation practice, but it is otherwise a full-service commercial practice firm. Its hourly rates are U.S. \$350.00 per hour for a senior partner and \$150.00 per hour for an associate.

K.V. Singh, a partner, presented a very professional summary regarding the firm, making concise use of Powerpoint. He depicted a law firm with a truly national presence and international tentacles (offices in Atlanta, Singapore, Tokyo). It represents many Fortune 500 U.S. companies. The firm's motto is "Service with a Passion!" It inculcates in its members "a proactive, modern and responsive culture."

The lawyers want their clients to feel that they understand every aspect of the client's needs. Each member of the firm is expected to know and implement every aspect of this policy.

They take a strong "hand-holding" approach. Absent some return indicating that the client has received the advice sent to it, the lawyer calls to inquire. The advice given is "business-oriented, practical, and innovative, with an emphasis on clarity." They strive to be accessible to clients, to have a quick response time, and to maintain high ethical standards. In the ethical area, they do not even give gifts, which is part of the legal culture; they claim to be unique in this respect. They do not extend favors of any kind, which is difficult in the legal culture of India. Instead, they get and keep clients by achieving results.

A rapid response to client needs is emphasized. They cited as an example a case in which an American company had been trying to secure a license for two years; they secured it for the company in four months.

The firm has a close working relationship with law firms in cities in India where it does not maintain an office. The representative client list which they showed us was indeed impressive.

Ford Motor Company had used other law firms in India. Kochhar & Co. challenged Ford to think of the best law firm it knew of in India. Then, “try us in a small matter.” If it found Kochhar only slightly better, it was advised that it should not change; if substantially better, it should give Kochhar more of its work. The result was that Ford gave Kochhar all of its work.

Syed Naqvi, one of the partners, is one of only eight lawyers in India who practice water law. He noted that our countries share a passion for an independent judiciary whose purpose is to discover the truth. Because India lacks a water-law jurisprudence, it draws heavily on U.S. law in this area. There is an opinion by U.S. Supreme Court Chief Justice John Marshall that Mr. Naqvi frequently cites in the courts of India.

Mr. Naqvi ventured the sobering opinion that if there is a World War III, disputes over water and rights to it will be extensive and important. Our two countries share a lot of common elements and will need to cooperate if that occurs.

From the Kochhar law firm, we proceeded to Quattro BPO Solutions, a leading “outsourcing” company. Quattro is a BPO company, based out of India and led by Raman Roy, who is widely regarded as the pioneer and “guru” of the Indian BPO industry. His first foray into outsourcing was in 1952, when he established a financial resource center for American Express. Success with that encouraged him to create a back-office operation for G. E. Capital in the mid-1990s. In March 2000 Raman established Spectramind, which became the largest third-party BPO company in India. He then established Quattro BPO Solutions in January 2006. The company strives to provide clients with innovative solutions at lower costs through a

combination of tools, platforms, and business practices. In the legal area, its services are targeted to company general counsels, law firms, and intellectual property firms. Quattro's range of services includes litigation support, contract management, and patent services.

We were told that all leading U.S. banks outsource. This firm has several Fortune 500 clients. It has 11 processing centers across seven countries.

Any account less than \$1 billion it regards as small or medium-sized. The firm works with the fraud and risk management units of large banks. CitiBank is a client. Quattro has contracts with banks in Africa, South America, and the Middle East.

Much of its legal work is in litigation support. It supports law firms, mostly large, in the U.S. and Great Britain (more from Britain than from the U.S.). Some sole practitioners also use its services. Intellectual property matters provide the largest amount of its legal work. The work is performed by Indian lawyers.

The document review and analysis aspect of modern law practice is the main impetus for outsourcing. Because of global economic circumstances, there is now considerable bankruptcy and foreclosure work. The bulk of this firm's work is for creditors, but some is for debtors. Bankruptcy lawyers outsource a lot of their paperwork. It is mainly just gathering information rather than actual legal analysis.

The firm conducts numerous pilot projects. A firm looks at supplementing its resources in this way, and then moves from a pilot project to what they call "full ramps."

They stress that they are not in the practice of law. They do not give legal opinions. But they have many lawyer employees who perform document review, analyze data, and the like. They assist firms in organizing and establishing processes. Their value, as they view it, is in putting process in place for lawyers. They contend they are not replacing lawyers in the U.S.

We were at the firm when it was morning in India, night in the U.S. and Britain. We observed a large room with numerous booths where their lawyers work. It was almost empty, but they assured us that if we could return after dinner, it would be humming.

We next met in a small library with The Honorable Union Minister for Law and Justice, Mr. T. K. Viswanathan. Mr. Bhasin informed us that Mr. Viswanathan had been the eminent leader of the National Congress and had held other positions of distinction in the government of India. Mr. Viswanathan then told us that as a young member of Parliament he had traveled to Boston, the West Coast, and other prominent places in the U.S. He has known every U.S. President since Eisenhower, who was a great friend of India.

He continued by saying that the current Prime Minister, an economist, is encouraging friendship with the U.S. He views the present as the best time in U.S.-India relations. “Now,” he says, “we are working together for a better world.” In his view India has benefitted greatly from its relation with the U.S.; it has obtained several good ideas from us.

Mr. Bhasin indicated that Mr. Viswanathan has promoted legal communications between several countries. Mr. Viswanathan advocates public service (“giving back”) by lawyers. The national law schools, Mr. Viswanathan says, sustain democracy. He sees a need for an international academy for lawyers and would donate his own land for one. We are all a creation of the same God, he says, and our outward differences are temporary.

Mr. Viswanathan thinks very highly of former President Bill Clinton, who spends time in New Delhi often on his way to and from other places. Mr. Viswanathan is delighted that Hillary Rodham Clinton is the U.S. Secretary of State. Because of Obama’s election, he now thinks of the U.S. as having no prejudice of any kind.

After lunch we visited the Supreme Court of India, where we sat in on a portion of an argument before a three-judge panel. Fortunately for us, the argument was in English. Other legacies from the days of English rule are apparent: the advocates address the justices as “My Lord,” and the advocates as well as the judges wear black robes. Lots of people in robes stood outside the courtrooms.

The case challenged the denial of an application for admission to a medical school. The rhetoric was somewhat confusing to us because the lawyer used the first person in advocating the client’s position – for example, “My Lord, what am I to do? I did what I was supposed to. Etc.” The counsel in opposition spoke less but seemed to have more impact.

We were privileged to meet with the Chief Justice. He informed us that he always gives some time to members of the profession from other countries. He is from the southern part of India, and we were informed that he has risen through the ranks on the basis of competence and integrity.

The Supreme Court of India is clearly very different from that of the U.S. or any other appellate courts with which U.S. lawyers and judges are familiar. Judges typically come here at age 58 and retire at age 65. Some then do arbitration work. Their court has original jurisdiction over numerous matters; our appellate courts, over almost none – they only pass on matters appealed from the trial courts.

The court’s case load is huge, and it has a large backlog. There are not enough courts to handle the litigation. Normally two judges sit on a case; if they split, it is then heard by a three-judge panel. When there are constitutional questions, five judges sit. They are trying to resolve more cases through arbitration or mediation. A 65% settlement rate is achieved in mediated cases, but they need more trained mediators. The Chief Justice noted that the U.S. Supreme

Court (he has visited it and sees no comparison) decides only about 70 cases a year. “I figure they could take a few more cases,” he said jokingly.

Legal precedent is important in the Indian system. They follow the U.S. Supreme Court case of *Marbury v. Madison*; and they draw on American, Canadian and Australian decisions. In addition to hearing cases, the Indian Supreme Court has final review over all government activities. The Speaker of Parliament once expelled some members, and the decision was challenged. The Speaker argued that he alone had jurisdiction over the matter. The Supreme Court ruled that it had power to review the issue, and it upheld the expulsion.

The Chief Justice determines how many justices sit on a panel and which ones they will be. India’s Constitution contains a Bill of Rights, and many cases relate to the enforcement of fundamental rights thereunder. Under Article 32, anyone can file a petition in the Supreme Court for any writ, including habeas corpus. Because of the Court’s heavy caseload, however, people are encouraged to file in the High Courts instead. Parliament can amend the Constitution, but the Supreme Court has held that Parliament cannot change certain basic provisions.

This was our evening for dinner at Rom Jethmalani’s home. Rom has a nice home with a large yard in the heart of the city. He served us an extensive, outdoor buffet dinner. Servers in white uniforms were there to address our every need or want.

The partners and associates in his law firm attended. They are very bright and articulate. I spent some time at a table with Saurabh Ajay Gupta, an elegantly dressed woman who has practiced with Ram for 24 years. I also talked to some of the younger lawyers.

Late in the evening Rom himself spent some time at my table. I learned more about his time of political exile in the U.S. He had a daughter living in Detroit, so he went there first. Later he came to New York at the invitation of some of the leaders there.

In the course of the evening Rom gave me a document he had written entitled “Manifesto of an Embryonic Party.” It is too lengthy to summarize here, but he basically analyzes current conditions and calls for an informed and active citizenry. His foremost concerns are corruption and terrorism.

The time with Rom Jethmalani has been a highlight of the trip. I wish I had known him longer and could know him better.

It was quite late when we left Rom’s to return to our hotel. The day had been long and full, but good. Again, we clearly had accomplished our purposes.

Thursday, March 5, 2009

This morning delegates from the People-to-People group visited Hindu College to participate in the Sixteenth Madhu Bhasin Memorial Lecture on legal issues concerning national security. The lecturer was Professor Ranbir Singh, Vice Chancellor, National Law School University, Delhi. The lecture series was established by Mr. Lalit Bhasin, now President of the Society of Indian Law firms, to honor the memory of his deceased wife who was a member of the University’s faculty. Mr. Bhasin is a friend of our group and has accompanied us on several occasions while we have been in Delhi.

Before the lecture, candles were lit to honor Ms. Bhasin’s memory. It was noted that while she is deceased, her memory lingers. Mr. Bhasin offered a poignant introduction of both the series and the lecturer.

The speaker commenced with a “conventional wisdom” aphorism: “Everything has been said before, but as no one listens, we must say it again.” He then addressed the need for comprehensive counter-terrorism laws. He advocated a strengthening of law enforcement and

investigative agencies and a redefining of internal security. Any political system must change with the times, he said, and the challenging times in which we live evoke the need for change.

National security, he continued, is not just a matter of defining crimes. Rather, the whole system is involved. If we do not say “never again” to some things in the struggle against terrorism, there will be no improvement.

Everyone is responsible to everyone for everything because everything affects all of us.

Professor Singh cited the movie “Mr. Smith Goes to Washington” for the proposition that the most important fights in which to engage are those thought to be hopeless. He quoted George Bernard Shaw to the effect that while it may be nice to be drunk occasionally, it is necessary to be sharp most of the time. His conclusion was that we need to be sharp about these national security issues.

A period for questions and responses followed. Rick Stone asked about the tension between national security concerns and individual constitutional rights. The response was that while this presents a difficult challenge, we cannot take measures that fall outside the rule of law.

A woman asked if this is not even more complicated in India than elsewhere because of outdated laws and an antiquated judicial system. She believed a person must look over his or her shoulder regarding everything he/she says in India.

Professor Singh’s response was that the absence of laws was not the question. The laws, he said, are adequate, but too many of them are observed in the breach. Thus, the problem is one of inadequate implementation and enforcement, not inadequate laws. India is a “soft state,” an immature democracy.”

Lalit Bhasin indicated that the Society of Indian Law Firms, of which he is president, is investigating the High Court because of this. We know, he said, that there is a lack of political

will. Lawyers led the struggle for freedom in India, and there are lawyers in high positions in India now.

Mr. Bhasin then recognized a distinguished soldier and statesman who opined that political motivation too often dictates policy decisions. He thinks India is following a “protection” policy.

Mr. Bhasin recognized an elderly distinguished scholar who questioned whether a policy toward terrorism could ever again succeed in India. He does think the recent events in Mumbai have sensitized everyone. Professor Singh responded that it is a matter of national political will.

Bill Price referred to his community’s experience with the 1990s bombing of the Federal Building in Oklahoma City, Oklahoma. A new center was started as a result. He said the same response seems to be occurring in India. The preventive side is, in his view, more important than the protective side. There is a need to infiltrate terrorist organizations and secure intelligence. There are not enough police officers to always succeed at protection.

Judge Ann Alton perceived in the comments a need for a more responsive judicial system. She suggested allowing the old (current) system to complete the old cases, but creating a new one to deal with new cases. This should result in expedited resolutions.

Mr. Bhasin responded that there is already a two-track system in place, but they still have backlogs. 40,000 cases are pending in the Supreme Court of India. There is an awareness of the problem.

Hank Barnette inquired whether any mechanism in India allowed the country’s leader to make exceptions to constitutional rights, as Hank said the U.S. President can. In responding Mr. Bhasin noted that India has a Parliamentary system, and that the Parliament is supreme and cannot be overruled.

A woman in the audience questioned whether India has the database it needs for national security prevention. The speaker responded that some thinking outside the box in this area was needed.

Barry Evans noted that he is from New York City and had witnessed the twin towers at the World Trade Center burning. He feels no safer now than he did in 2001, notwithstanding considerable effort. Airport security is not really great and has produced enormous inconvenience. He admonished India to avoid the U.S.'s mistakes.

In response to a question whether a country can be made safe by controlling its borders, the speaker noted that we are all under surveillance with cameras everywhere. He agreed, however, that the issue remains important.

Rick Stone noted a similar time in Europe in the 1970s, with internal terrorist organizations in Germany and Italy. Both organizations were broken, so India and the U.S. might do well to study what those governments did.

Richard Pena then thanked everyone on behalf of our delegation for including us in the program. Dr. D.N. Gupta and Ms. Sutrichto Gupta made concluding remarks and thanked us for our participation in the program. Ms. Gupta invited us to the buffet luncheon which followed, and we attended with pleasure.

In the afternoon we spent the better part of an hour at the last house in which Mahatma Gandhi lived. It is more or less a Gandhi museum now, with quotes from him and facts about his life on the walls throughout the house. Gandhi's life was very interesting and important, and I could easily have spent more time here.

We concluded the professional part of our program with a visit to the High Court of Delhi. It is the rough equivalent of our state supreme courts in the legal hierarchy, but in its

functions it appears more like our lower courts. The general milieu was like that in an urban district court (our lowest) in North Carolina.

A retired member of the Court had died, and we sat in on a portion of a ceremony honoring his life and work.

The President of the Delhi Bar Council and other bar leaders met with us prior to our meeting with the Chief Judge and six of the senior judges. The bar leaders told us that only the judges retire; the lawyers do not. The President of India appoints the Chief Judge and judges of the High Court. The judges are appointed from the recommendations of the Chief Judge. Judges cannot be removed except by impeachment. Because of its location in the capitol, this is one of the most important of the High Courts in the country.

The Chief Judge and judges were very welcoming. The Chief was confident that we would find India very exciting. He let us know that, like the Supreme Court of India, they often follow the decisions of other countries' courts, especially those of the U.S. He advised that there is no time limit on arguments in the High Court, and most of its decisions are published. Mr. Bhasin thanked the judges for their hospitality, and we then enjoyed tea and cookies with them.

We were on our own for dinner. Leona and I had an excellent dinner in the hotel restaurant.

The professional part of our program had ended. I was quite satisfied that we had accomplished its purposes. Clearly we are better informed about an important, relatively new democracy and its legal system; and we are content that we have ably represented the world's oldest surviving democracy and its legal community.

Friday, March 6, 2009

We boarded a large orange coach again for the trip from Delhi to Agra, where we will see the Taj Mahal. This provides our first extensive exposure (several hours) to the Indian countryside. On the outskirts of Delhi we observed a large site that has been cleared for construction of the Delhi metro.

We passed wheat fields and saw workers crushing sugarcane to make juice.

It was common to see cows lying on the medians. We were told they lie there because the breeze from passing vehicles keeps the flies away.

The trip took most of the day. Upon arrival in this city of 2.1 million people (not large by Indian standards, we were told), which was the capital of the Mughal Court in the 16th and 17th centuries, we checked into our hotel. We then visited the Agra fort. It was built by the third emperor in the Mogul Dynasty. It is an imposing structure with beautiful interior gardens surrounded by stunning red walls and white marble buildings. Constructed between 1565 and 1573 A.D., its massive red sandstone ramparts form a crescent along the west bank of the Yamena River. A deep moat, once filled with water from the Yamena, surrounds the fort. It was once filled with alligators and crocodiles to keep the enemy out. Indian women in their colorful saris were omnipresent.

This is where the builder of the Taj Mahal was imprisoned by his son. We climbed stairs to an upper level and a white marble enclosure to see the prison. A marble lattice-work provides a view to the horizon, and we could see the Taj shimmering in the afternoon heat across the river. It is sad to think of Shan Jahan living his final years in this gilded cage across the river from the magnificent monument he built to the love of his life.

There has been a jewelry business here since 1862. There is also an embroidery establishment. The Mogul queens' jewelry is here.

A late buffet at our hotel ended the day. We will rise early tomorrow to see the Taj Mahal.

Saturday, March 7, 2009

We were up early to board the bus at 6:00 a.m. to visit the Taj Mahal. There were two small lines at the entrance when we arrived: one for men and one for women. The reason for the separate lines became evident when we entered the gate; everyone received a "pat down" search, the men from male guards and the women from female guards.

The lines grew longer as we waited for the gates to open. The reasons for getting there early became evident.

I always carry a legal pad for notetaking on such occasions, but this time the pad was confiscated at the gate. I have had that problem at only one other place in the world, the Kremlin in Moscow; and there the guide ultimately persuaded the guards to allow me to keep it. Here, I had to deposit it at the guard station and pick it up on the way out. No reason was given, and none was apparent.

Our tour of the premises commenced in a large garden area, well manicured and quite beautiful. We then passed through a large gateway arch and saw the Taj in the emerging light of the rising sun. The early morning air was pleasantly cool, and the site is all one might expect. Intricately designed in pristine white marble, the mausoleum was built by Shah Jehan as a memorial to his queen, Mumtaz Mahal.

The Taj Mahal is said to have taken 22 years and 20,000 craftsmen to construct. It is perfectly proportioned with minutely detailed marble in-lays. It marks the most developed stage of Mughal architecture and is considered one of the eight wonders of the world.

Upon entering the structure, one views the decorative in-lays and carving. There is writing and black onyx set into the white marble surrounding each of the arched entryways into the tomb, and there are intricate and colorful floral and geometric patterns meticulously set into the marble. The writing is slightly smaller at the bottom and grows larger as it moves upward, creating the optical illusion that it is all the same size.

We paused here for a group picture, and there was considerable individual photography. It is a good thing we have pictures, for words cannot fully capture the images.

Our last activity as a full group was a stop at a marble factory. It manufactured many attractive products, and some of our members shopped extensively.

We parted from there in two groups. Most boarded a larger bus to return to Delhi for flights back to the states, while six of us boarded a small van for a trip to Ranthombore National Park. The trip took the entire afternoon. It was mostly through countryside, first on four-lane roads, then on two lanes, and finally on a single lane that turned to dirt. We were seeing rural Northern India, even more so than on the drive from Delhi to Agra.

In the late afternoon our driver, Raj, stopped beside some small huts in the open countryside. A woman was cooking supper over a small fire behind one of them. There were several small boys (I would guess ages 5 to 10) playing catch with a green cricket ball. Rick Stone from Portland, Oregon, and I joined them for a few rounds of catch. When we were ready to leave, Rick told them we were from the United States and asked if they knew about the United States. He received blank looks. “America,” he said, “do you know America?” Again, blank looks. He then said, “Barack Obama?” One little boy replied, “Ah, Barack Obama!”

We arrived at our Ranthombore lodge, Dev Vila, in the early evening. It is rose colored with a lovely central courtyard surrounded by a covered walkway. We had excellent Indian cuisine for dinner in the lodge’s cozy dining room.

We were scheduled to rise early the next day to see the wildlife, so we retired for the night soon afterward.

Sunday, March 8, 2009

We again rose early. Tea and coffee were available in the reception room. We were to depart for the park at around 6:00 a.m.

We have an experienced guide named Rajeesh. He has worked in the tiger park since the age of 10 and has been a guide for 20 years.

While our days have been on the hot side, the jeep ride from Dev Vila to the park was cold. The park is open for only part of the year for two 3½- hour safari sessions (roughly 6:30 - 10:00 a.m. and 2:30 – 6:00 p.m.). The park is divided into five zones, and only four jeeps and four lorries are allowed in each zone during a single session. There is a stiff penalty, suspension or revocation of a guide’s license, for violating the rules; thus, the rules are taken very seriously.

The morning was disappointing only in that we did not see a tiger. We did see plentiful wildlife, however: antelopes (a larger variety and a smaller one), some very large deer and a herd of smaller ones, and a tree absolutely full of monkeys. It was an entertaining and extraordinary spectacle, the absence of tigers notwithstanding.

By mid-morning when we returned to Dev Vila, the temperature had warmed considerably. For the first time on the entire trip, the schedule allowed us to relax a bit. Leona and I read by the pool, and I swam a few laps.

At 2:30 p.m. Rajeesh returned, and we reboarded the jeep for transport to a different zone in the park. The terrain is wooded grassland up against the steep escarpment that surrounds the park. Again, we saw a variety of wildlife: a crocodile, deer, monkeys, a chipmunk or two and a large hawk. But still no tigers.

Rajeesh is quite focused on finding a tiger, however, and quite experienced about how to do it. He stood in the back of the jeep, scanning the dusty road for tracks (“pug marks,” he calls them). The tigers, he says, like to use the roads to move about.

At one point he spotted a fresh pug mark. We followed it for half a mile or so until it disappeared into the grass on the uphill side of the road. We doubled back. Rajeesh was confident the tiger was in the rugged woodland above us. Much of the terrain there was heavily shaded, so it was difficult to see. Rajeesh had the jeep stopped in the shade and we waited. Another jeep joined us, and the guides conversed in low voices. Rajeesh clearly had senior-guard status.

It appeared to us that the two guides reached an agreement. The younger guide took his jeep off the main road up a track into the grass where Rajeesh had indicated. There was an exclamation, and they pointed. It took me some seconds to get focused, but I then saw clearly a mother tiger with her two yearling cubs. We spent about an hour and ten minutes watching the three tigers sit, lie, and move about. At one point we changed our location to obtain a better view as the tigers moved downward to a creek bed.

We were at a distance of about 100 yards from the tigers. At one point Rick Stone stepped out of the jeep to take a picture. Rajeesh told him in no uncertain terms to get back in immediately. The tigers, he said, are accustomed to the jeeps and will not be attracted to them; but once a human leaves the jeep, he is highly vulnerable to an attack. Needless to say, Rick complied.

We considered ourselves very privileged to get this extended look at tigers in the wild. In the modern world, not many people get to do that.

We returned to Dev Vila around 6:00 p.m. It had been a splendid day. The evening allowed further relaxation to prepare us for the coming long ride to Jaipur.

Monday, March 9, 2009

The greater part of the day was spent in a van ride from Ranthombore National Park to Jaipur. We again observed life in the huts and small villages of Northern India.

Our late afternoon arrival in Jaipur allowed time for brief shopping, but little else. Leona and I had a leisurely dinner in the hotel restaurant. We had a very bright, pleasant young waiter with whom we enjoyed conversing.

Jaipur, the capital city of the Northern Indian state of Rajasthan, is one of the most vibrant and colorful cities of India. It is known as “the pink city” due to the extensive use of red sandstone and similar material in its buildings. It is famous for its colorful culture, forts, palaces, and lakes; and it has a rich and eventful past.

Tuesday, March 10, 2009

Once again we began our day early, this time with a drive outside of Jaipur to the ancient capital of Amber to see the Amber Fort with a guide named Abi. The great wall there resembles the Great Wall of China.

We had the novel experience of riding an elephant up a long hill to the fort. A multitude of “volunteer” photographers took pictures as we climbed; later, all wanted to sell the pictures to us. I bought one that I liked and refused the other would-be sellers (more about that later).

Next to the Taj Mahal, this is the most visited site in India. From here warriors defended the city. Bow and arrow was the common method, but we saw places from which boiling oil was poured on the invaders.

Fresh fruit and vegetable stands dotted the nearby landscape. We were told that they receive fresh fruits and vegetables each morning. They have no means to preserve those left over from the day before, so they throw them into the streets where the animals eat them.

We next visited a carpet factory and observed carpet making. It takes three people five to six months to make the kind we saw. I made one purchase there: a black tie with pictures of the Taj Mahal imprinted on it. Leona bought pajamas for each of our daughters.

Jaipur has an observatory with the world's largest sundial. It was built between 1720 and 1724 A.D. To arrive at Indian Standard Time from it, you add 37 minutes to what it shows. I tried it, and it worked. I posed for a picture in front of it. There are two pots on the premises that are considered the world's largest silver articles.

Following lunch, we visited Bhandari Jewelers with its exquisite hand-crafted accessories embellished with glittering stones, silver and brass artifacts, and silver and paper paintings. The merchandise was impressive, and some members of our group shopped here extensively. While it was nice, I saw nothing here that I needed.

The afternoon activities ended with a stop at the Elephant Festival. This is a traditional event held the day before the Hindu holiday known as Holi. It is held in a facility that resembles our baseball stadiums, and attendance is excellent. There are people sitting in the stands and on the ground. Elephants that have been elaborately painted and decorated parade around the field, and there are judges who reward those deemed the best.

As we left the stadium, a hawker who, in the morning, had tried to sell me photos of Leona and me riding the elephant, made another attempt. It is mind-boggling to contemplate how he found us in that mob of people. His offering price was considerably reduced from that of the morning but still more than I was interested in paying. Ultimately, I offered him 60 rupees (about \$1.25) for the six photographs. At that point, he knew it was that or nothing, so he accepted.

After dinner we walked a few yards from our hotel to observe the first fires of "Holi." All day we had observed as people put together materials – small trees, leaves, etc. – for the evening fires. They were scheduled for lighting at 9:00 p.m. The one we observed was close to the scheduled time.

We first watched the activity from across the road, then returned to the hotel side to stand on the outskirts of the gathered crowd. Some of the revelers were intoxicated, and we soon returned to the hotel. We had seen all that was necessary to acquire a feel for the occasion.

Wednesday, March 11 – Thursday, March 12, 2009

This is our last day here, and our schedule is light as we prepare for the long plane ride home. The hotel allowed us to keep one of the group's three rooms in which to store luggage. We checked out of our room around 10:00 a.m. and read at leisure in the hotel lobby.

At 11:00 a.m. Raj picked us up for a trip into the city to observe the celebration of Holi. This is a very colorful holiday. Various colored powders are for sale everywhere as the people prepare for Holi. The powders are then placed on faces and clothes. More significantly, paint in multiple colors is widely available, and it is thrown on people more or less at will. We had debated whether we could subject ourselves to this, but because our bags would be packed and we would not be able to change clothes before the flight home, we stayed in the van except when we could safely exit from it. Our faces were powdered and some of us got powder on our clothes, but the powder was easily washed or brushed off. The paint, obviously, would have been a different story.

Although Holi is a religious holiday, extensive consumption of alcoholic beverages characterizes the observance. We saw a good many people who really should not have been on the streets.

We made a final shopping excursion at a store owned by one of Raj's relatives. Lunch followed in a nice restaurant. We then had a bit more time to relax at the hotel before departing for the Jaipur airport. A short (less than an hour) flight returned us to Delhi. Keith and Barbara Wilkey were flying American Airlines to St. Louis, so we departed from them there. Rick Stone from Oregon, Scott Ellison from Texas, and Leona and I had a fourteen and one-half hour Continental flight from Delhi to Newark. We arrived in Newark around 4:30 a.m. EST on Thursday, March 12. We told Rick and Scott good-bye there as they left for flights to Portland and Houston. An 8:10 a.m. Continental flight brought us to Raleigh-Durham Airport at 10:10 a.m.

We were delighted to be back at home, but the memories linger, and we continue to process the experience. Fareed Zakaria is clearly correct in placing India among the countries on the rise. It has buildings more modern than we see in this country. It has well-educated, very intelligent professionals and innovative business people. It is a relatively new democracy, struggling to be a great one. It is clearly making progress on many fronts.

Simultaneously, its government is so riddled with corruption that the building housing the Ministry of Social Justice and Empowerment actually bears a sign directing people not to extend bribes to government officials. Poverty is so prevalent that one rarely exits a vehicle without encountering beggars. Some are men, some are women – often carrying babies, and some are children of all ages. The child poverty and exploitation depicted in the current movie “Slum Dog Millionaire” is unfortunately all too real. The beggars often are quite aggressive and persistent. Some are significantly handicapped. Neither they nor the aggressive hawkers of goods leave a positive impression and enhance the business climate.

As we leave this grand learning experience, we wish our fellow democracy well.
Hopefully, Fareed Zakaria is right, and it is indeed on the rise.