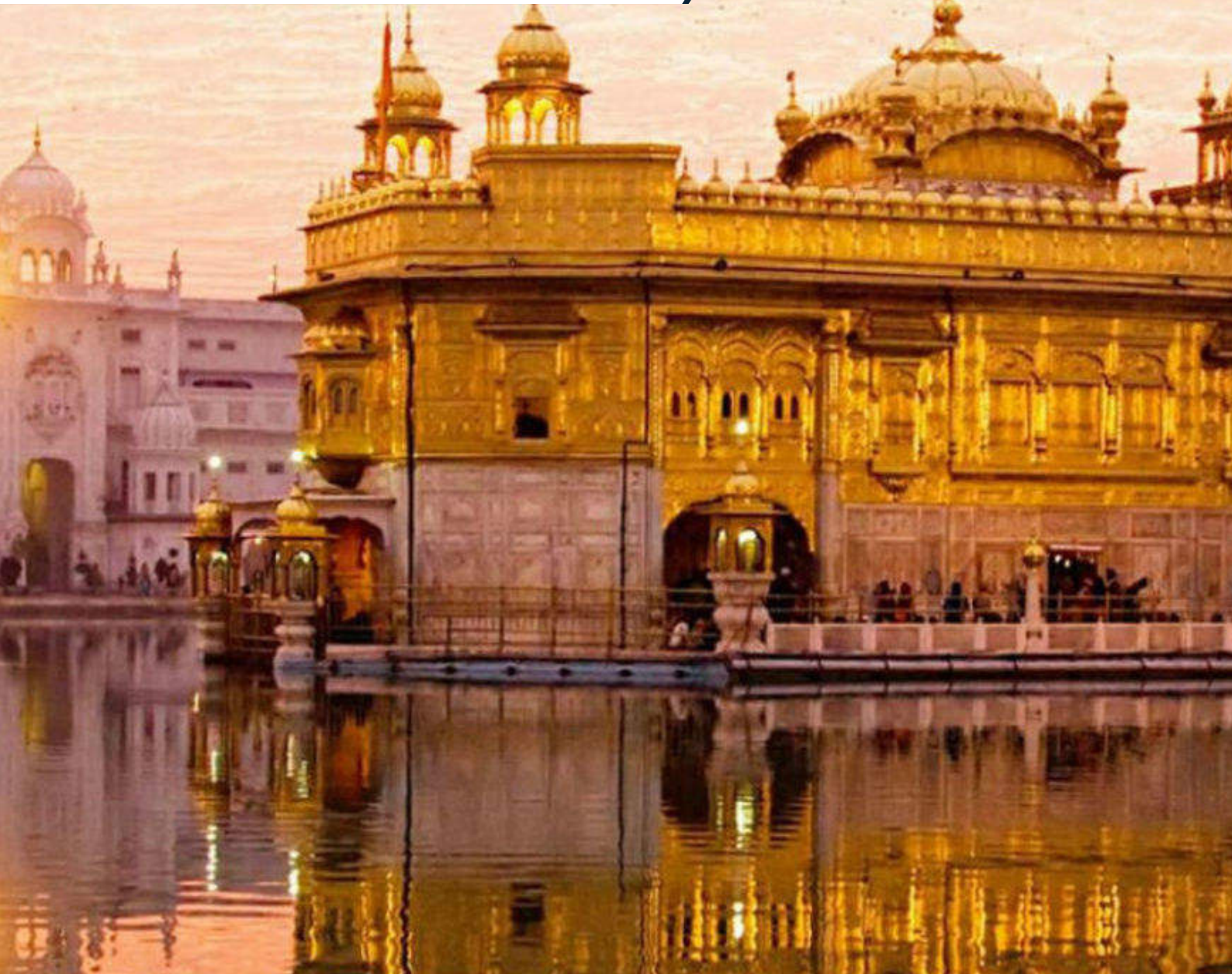


# PRAYAS4IAS

AN INITIATIVE BY THE PRAYAS INDIA

**SPECIAL ISSUE JULY WEEK 2**



# Special Issue

## July (Week 2)

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## **All about Sir Chettur Sankaran Nair**

(Source: [Indian Express](#) )

**Context:** Filmmaker Karan Johar recently announced his decision to produce the biopic of Sir Chettur Sankaran Nair, an acclaimed lawyer and judge in the Madras High Court and one of the early builders of the Indian National Congress who had also served as its president in 1897.

### **Details:**

- Nair was known for being a passionate advocate for social reforms and a firm believer in the self-determination of India. But what really stood out in his long glorious career is a courtroom battle he fought against the Lieutenant-Governor of Punjab, Michael O'Dwyer.
- Nair had accused O'Dwyer in his book, 'Gandhi and anarchy' for being responsible for the atrocities at the Jallianwala Bagh massacre. Consequently, he was fighting against an Englishman, in an English court that was presided over by an English jury. In all senses, the case was bound to make history.

### **The rebellious lawyer**

- Nair was born in the year 1857 in Mankara village of Malabar's Palakkad district. He belonged to an aristocratic family and his great grandfather was employed by the East India Company to enforce peace in the Malabar region.
- His grandfather was employed as the chief officer under the Civilian Divisional Officer. Nair was drawn towards Law while he was completing his graduation from Presidency College in Madras.
- After completing his degree in Law, he was hired by Sir Horatio Shepherd who later became the Chief Justice of the Madras High Court.
- Since his early days as a lawyer, Nair was known for his defiant attitude. Raghu and Pushpa in their book noted an instance when he went against a resolution passed by Indian vakils (advocates) of Madras stating that no Indian vakil would work as a junior to an English barrister.
- Nair firmly opposed this resolution on the principle that no lawyer should be denied the right to choose a senior that his client liked. His stance on the issue made him so unpopular that he was boycotted by the other vakils, but he refused to let that bother him.
- Similar experiences would become a norm throughout his career. If he believed in something, he stood by it, whatever be the opposition he faced. When the 1908 Montague-Chelmsford reforms were being discussed, he wrote an article in the Contemporary Review criticising the English jury for being partial towards Englishmen.
- This infuriated the Anglo-Indian community who petitioned the Viceroy and the Secretary of State for India objecting to his appointment as high court judge the first time.
- He was equally despised by the Brahmins in Madras. "Though once a president of the Congress, Nair took a lukewarm interest initially in the organisation as it was dominated by Brahmins and he found his position not agreeable," wrote Raghu and Pushpa. Consequently, when he was nominated to the Madras Executive Council, the Brahmin community in Madras wrote to the Viceroy asking him to not appoint him since he was anti-Brahmin.







- Nair's fearlessly brusque and outspoken nature also made him extremely unpopular among his colleagues and peers. He was once described by Edwin Montague, the secretary of state for India as an 'impossible person'. "He shouts at the top of his voice and refuses to listen to anything when one argues, and is absolutely uncompromising," he is known to have said (as cited in Raghu and Pushpa's book).
- Despite his many critiques, Nair's presence as a lawyer and social reformer in Madras was formidable. In 1897 he became the youngest president of the INC in the history of the party till then, and the only Malayali to hold the post ever.
- By 1908 he was appointed as a permanent judge in the Madras High Court. In 1902 Lord Curzon appointed him a member of the Raleigh University Commission. In 1904 he was appointed as Companion of the Indian Empire by the King-Emperor and in 1912 he was knighted. In 1915 he became part of the Viceroy's Council, put in charge of the education portfolio.
- As a Madras High Court judge, his best-known judgments clearly indicate his commitment to social reforms. In *Budasna v Fatima* (1914), he passed a radical judgement when he ruled that those who converted to Hinduism cannot be treated as outcastes. In a few other cases, he upheld inter-caste and inter-religious marriages.
- As a fervent freedom fighter, he firmly believed in India's right for self-government. In 1919, he played an important role in the expansion of provisions in the Montagu-Chelmsford reforms which introduced a system of dyarchy in the provinces and increased participation of Indians in the administration.
- In Nair's biography, written by his son-in-law, the eminent diplomat and the first foreign secretary of India, KPS Menon, the latter noted that the measures in the 1919 reforms were far more liberal than what was originally proposed by the government in 1916. The credit for this, Menon wrote, lay largely with Nair and his uncompromising stance as part of the Viceroy's Executive Council.
- And when the massacre of Jallianwala Bagh happened, he thought nothing about resigning from the Viceroy's Council in protest. Nair's resignation shook the British government. In the immediate aftermath, press censorship in Punjab was lifted and martial law terminated. Further, a committee was set up under Lord William Hunter to examine the disturbances in Punjab.
- It was during this same period that Nair wrote 'Gandhi and Anarchy', which was published in 1922. In the book, Nair spelt out his critique of Gandhi's methods, especially those of non-violence, civil disobedience and non-cooperation. He believed that any of these movements was destined to lead to riots and bloodshed.
- In the same book, he also accused O'Dwyer for his coercive methods that led to the death of hundreds of innocent men and women at Jallianwala Bagh.
- Thereafter, O'Dwyer sued Nair for defamation in England, with the expectation that an English court would side with him. As was well known, a large section of the English people did strongly believe that General Dyer's act at Jallianwala was justified and was in fact responsible for saving Britain's empire in India.

#### **A historic courtroom battle**

- The trial before the King's Bench in London went on for five and a half weeks. It was the longest-running civil case at that time and received extensive press coverage. From the very beginning of the trial, the courtroom remained crowded and distinguished people would come to witness the proceedings, including on one occasion the Maharaja of Bikaner.
- The 12-member all-English jury was presided over by Justice Henry McCardie, who from the start of the case, made no attempt to hide his bias towards O'Dwyer. So were the other judges, who were also equally unfamiliar with India and Indians.
- O'Dwyer was defended by Ernest B. Charles who defended his client as a paragon of men who had successfully averted a mutiny. "Charles' words were clearly meant to kindle the sympathy of the English jury for their own people. He exaggerated the perils the English bore to protect the Empire. Indians, of course, were portrayed as rebels, extremists and seditionists," wrote Ragul and Pushpa.



- Nair's lead counsel was Sir Walter Schwabe who had recently returned to England after having served as Chief Justice of the Madras High Court. Two days after the trial began, instead of being allowed to call the defendant's witnesses which was usually the case, he was interrogated by McCardie who asked him if he intended to prove whether General Dyer was right or wrong in opening fire at the crowd at Jallianwala.
- At this juncture, McCardie pointed out to the jury, "the safety of the Indian empire was the proper issue there and the safety of the wider empire to which we belong. It may be that a man is bound under critical circumstances to what appear to us in London to be repellent steps which are necessary in the wider stages of the world" (as quoted by Nair in his autobiography).
- Similar interjections on the part of McCardie was common throughout the trial, much to the surprise of Nair, who having served as a judge himself was aware that the role of the judge was to ensure a fair trial rather than influencing it with his own opinions.
- Eventually, O'Dwyer won the case with a majority of 11 against one. The only dissenting judge was Harold Laski.
- Nair had lost the case and was held guilty for defaming O'Dwyer. He had to pay £500 and expense of the trial to the plaintiff. O'Dwyer stated that he would be willing to forgo the penalty, provided Nair tendered an apology. But Nair remained undeterred. He would rather pay the damages than apologise for writing what he knew was the truth about Jallianwala Bagh.
- Since the verdict was not a unanimous decision, Nair had the option of another trial. However, he refused to go ahead reasoning: "If there was another trial, who was to know if 12 other English shopkeepers would not reach the same conclusion?"
- Though Nair had lost, the trial had a resounding impact on the British empire in India. At a time when the nationalist movement was gaining momentum, Indians saw in the judgement a clear bias of the British government and an effort to shield those who committed atrocities against their own people. The verdict was momentous in that it strengthened the determination of the nationalists to fight for self-government.
- Nair passed away in 1934 at the age of 77. His legacy was carried forward by his large family of nine children and grandchildren, most of whom were celebrated names in their own fields.
- His eldest daughter was K Parvathi Ammal who later became Lady Madhavan Nair upon marrying eminent lawyer and judge of the privy council Sir Madhavan Nair. Her name and also those of her children have been given to several streets in Chennai.
- Nair's son R M Palat was also a lawyer and a politician belonging to the Justice Party. His grandson Kunhiraman Palat Candeth was a senior army officer who played a commanding role in the liberation of Goa from Portuguese control in 1961. Nair's nephew, VMM Nair is currently the oldest surviving Indian civil servant.

### **All about the 1955 police action at Golden Temple**

(Source: [Indian Express](#) )

**Context:** *The SGPC has decided to organise an event to mark the anniversary of police action at the Golden Temple on July 4, 1955.*

#### **What was Punjab Suba movement?**

- Punjabi Suba movement started in Punjab soon after the Independence. Shiromani Akali Dal was spearheading the movement for a Punjabi speaking state. However, there was also opposition to this idea.



- Those in favour of demand of used to raise slogan Punjabi Suba Amar Rahe and those opposing demand were raising slogans in favour of 'Maha-Punjab'. It was on April 6, 1955 that Amritsar DC banned the slogans of 'Punjabi Suba' and 'Maha-Punjab' fearing law and order problem.
- "It is suspected that slogans like Punjabi Suba or Maha-Punjab Amar Rahe (Long Live Punjabi Suba or Maha Punjab) or Punjabi Suba Zindabad or Death to Punjabi Suba, Sine Vich Goli Khavange, Punjabi Suba Banavange (we will take a bullet on chest for Punjabi Suba) can violate the law and order. Hence such slogans are banned under Section 144," the order back then had read.



### **What had happened after the ban?**

- SAD took it as an attack on freedom of speech and expression. After the ban was imposed, SAD held a meeting on April 24, 1955 in Amritsar and passed a resolution to start peaceful non-violent protest from May 10, 1955 if the ban on Punjabi Suba slogans was not revoked.
- Tallest SAD leader of that era, Master Tara Singh, courted arrest on May 10, 1955 along with other SAD workers while violating ban order by raising Punjabi Suba slogans.
- The arrests of SAD workers continued across Punjab. Around 400 SAD workers were arrested in Ludhiana.
- Everyday, 20 to 50 SAD workers would come to Akal Takht for praying. Then they would go outside raising Punjabi Suba slogans to court arrest.
- Some leaders backing the idea of Haryana including, Ram Sharma, and Chaudhary Shri Chand had supported the SAD agitation.
- Freedom fighters and senior Congress leaders like Kedar Nath Sehgal, Abdul Gani Daar and Prof Mota Singh also supported Akalis and criticised ban on Punjabi Suba movement.
- Professor Mota Singh had said, "The agitation by SAD is not communal and it is not against Hindus even slightly."
- A convention was called in Delhi on June 7, 1955. It was attended by leaders like Kedar Nath Sehgal, Ram Sharma, Left leaders Sohan Singh Josh and Harkrishan Singh Surjit, Chaudhary Bhan Singh and Randhir Singh. Leaders at this convention criticised ban on slogans and expressed sympathy with Akalis on the issue.
- The non-violent movement reached its peak in July and large number of volunteers reached Akal Takht. It shifted the focus of Punjab government on Golden Temple. Police presence around Golden Temple was increased.
- Several weapon licences were cancelled. Government also attempted to take away the traditional weapons from Akal Takht. These orders, however, were not compiled by SGPC.

### **How did police action at Golden Temple unfold?**

- It was at 4 am on July 4, 1955 that Deputy Inspector General of Police Ashwani Kumar led the police with shoes on inside the Golden Temple premises.
- The community kitchen was captured and langar was stopped. Police also took away utensils. Guru Ramdas inn was also raided and head priests of Golden Temple were arrested.
- Police also raided the office of SGPC and SAD, which were part of Golden Temple premises. Police used teargas shells in parikarma of Golden Temple.
- A flag march was carried outside Golden Temple. The main entrance of Golden Temple was closed during the time and the whole action lasted for a day. According to police, 237 persons were arrested during action.



### What was the fallout of police action?

- This police action only strengthened the agitation. Around 8,000 volunteers were arrested in the first week of July. Around 12,000 volunteers were arrested in agitation to lift ban on Punjabi Suba Slogan.
- Finally, CM Bhim Sen Sachar lifted the ban on Punjabi Suba slogan on July 12, 1955. However, Master Tara Singh was released only on September 8, 1955.
- SAD also demanded inquiry and action against responsible persons for July 4 police action at the Golden Temple.
- After meeting an SGPC delegation in Chandigarh in September that year, Sachar visited Golden Temple to seek apology for July 4 police action.

### All about Cairn going after Indian assets

(Source: [Indian Express](#) )

**Context:** Britain's Cairn Energy Plc has secured an order from a French court authorising the freezing of 20 Indian government properties in Paris valued at over 20 million euros, the London-based Financial Times reported Thursday. This is the first court order secured against India to enforce a \$1.2-billion arbitration award that Cairn Energy had won against the Indian government in the retrospective tax dispute. The Finance Ministry said it had not received any communication in this regard from any French court, and that it was trying to ascertain the facts.

### What is the dispute about?

- The arbitration between India and Cairn challenged the India retrospective taxation policy.
- In 2012, India brought in legislation mandating retrospective tax demands over deals going back to 1962 in which shares in non-Indian companies were transferred to an Indian holding company.
- In 2006, Cairn made a bid to consolidate its Indian assets under a holding company — Cairn India Limited. In doing so, Cairn UK transferred shares of Cairn India Holdings to Cairn India Limited, essentially transferring shares in non-Indian companies to an Indian holding company.
- Later, when Cairn India divested roughly 30% of its shares through an Initial Public Offering, mining conglomerate Vedanta Plc acquired most of Cairn Energy, but Cairn UK was not allowed to transfer its 9.8% stake in Cairn India to Vedanta.
- Indian tax officials said that capital gains tax of over Rs 6,000 crore is payable by Cairn UK for the transactions in 2006, even though the transactions had previously been cleared by them.
- In fact, the Supreme Court had ruled against the retrospective reading of the law by tax officials in the case of Vodafone. However, Parliament passed a law mandating retrospective taxation over “transfer of Indian assets.”
- This retrospective taxation, Cairn argued, was in breach of the UK-India Bilateral Investment Treaty which had a standard clause that obligated India to treat investment from UK in a “fair and equitable manner”.

### Why is Cairn going after Indian assets?

- In December last year, a three-member international arbitral tribunal ruled unanimously that the Indian government was “in breach of the guarantee of fair and equitable treatment”, and against the India-UK Bilateral Investment Treaty, and that the breach caused a loss to the British energy company and ordered compensation of \$1.2 billion.
- The Indian government is yet to accept the arbitration award. Cairn Energy is going after Indian assets overseas to recover the compensation. In May, Cairn began the process of extracting the \$1.2 billion.



### **Why has India not accepted the award?**

- Since the arbitration award was delivered in Hague, India has moved an appeal in the Netherlands.
- A similar arbitration verdict was delivered in September last year in favour of Dutch telecom company Vodafone.
- The award requires India to pay \$5.47 million to Vodafone as partial compensation.

### **What are the assets Cairn is going after?**

- Cairn Energy has so far registered the arbitration award in several countries, where it has identified Indian assets worth over \$70 billion.
- This includes jurisdictions in the US, UK, Canada, Singapore, Mauritius, France and the Netherlands. In the US, Cairn Energy has chosen New York to sue India because it has located substantial assets it can recover the compensation from in that jurisdiction.
- Specifically, Air India's United States operations are headquartered in this district at 570 Lexington Avenue, New York, New York, 10022.
- According to the Financial Times report, the French court, Tribunal judiciaire de Paris, on June 11 agreed to Cairn's application to freeze (through judicial mortgages) residential real estate owned by the Government of India in central Paris, particularly the in the 16 Arrondissement of Paris, a marquee neighbourhood in which a residential property, according to the newspaper, has served as the residence of the Deputy Chief of Mission at the Indian Embassy.

### **What are India's options going forward?**

- While it is the first one to succeed for Cairn, the French court order boosts its chances in other jurisdictions.
- The assets will be tangled in legal dispute and India will join a list of countries that includes Pakistan, Afghanistan whose assets were seized abroad.
- Unless it can be proved that the arbitration awards against India are mala fide in the appeals, the award can be enforced in foreign jurisdictions. However, a settlement between the two parties cannot be ruled out.

### **Is there any Indian precedent for such seizure of property belonging to foreign states?**

- Seeking courts' intervention in enforcement of arbitration awards against foreign states is fairly common.
- Last month, in a case filed by two Indian private companies for enforcement of arbitral awards in their favour, the Delhi High Court directed the Embassies of Afghanistan and Ethiopia to file affidavits disclosing the assets owned and held by them in India.
- While KLA Const Technologies sought to recover approximately Rs 1.72 crore from the Islamic Republic of Afghanistan in enforcement of an arbitration award in which the Supreme Court had appointed the sole arbitrator, the other Indian firm, Matrix Global Private Limited, sought to recover Rs 7.60 crore from Ethiopia.
- The ruling by Justice J R Midha was looking into the question of whether a "Foreign State can claim Sovereign Immunity against enforcement of arbitral award arising out of a commercial transaction?"
- "A Foreign State does not have Sovereign Immunity against an arbitral award arising out of a commercial transaction. Further entering into an arbitration agreement constitutes waiver of Sovereign Immunity. The agreement by the respondent to arbitrate the disputes would operate as a waiver of the said requirement. When a Foreign State enters into an arbitration agreement with an Indian entity, there is an implicit waiver of the Sovereign Immunity, otherwise available to such Foreign State, against the enforcement of an arbitral award," the High Court held.
- "In fact, the very underlying rationale of international commercial arbitration is that of facilitating international trade and investment by providing a stable, predictable, and effective legal framework



within which commercial activities may be conducted to promote the smooth flow of international transactions, and by removing the uncertainties associated with time-consuming and expensive litigation. Otherwise, the very edifice of the international arbitration ecosystem would collapse,” it added.

