

ROLE OF LAWYERS IN NATION BUILDING*

Hon'ble Mr. Justice Dipak Misra**

Building of a nation is fundamentally dependent on the foundation of good governance that is controlled by rule of law. In a State that treats rule of law as sovereign, anarchy gets no room to stay. In a developing nation, learning of law to practice as a principle of morality, in the ultimate eventuality, converts the nation to a developed one lawyers, from time immemorial, with the accuracy and diligence, have splendidly carved out a separate place for themselves. They constitute the subtle nerves of the spine of the nation, because their role is not only vital but also sacrosanct.

While discussing about the role of lawyers in building of a nation, it would be highly inappropriate to ignore the historical contribution of the lawyers as a class. For that it is necessary to understand the essential nobility of the profession and to get support from the past, to discern and analyze how the predecessors in interest of the profession conducted themselves in the field of law, literature, culture and greatly played the pivotal and seminal role in the freedom movement.

Speaking about the role of lawyers, Lord Denning had expressed the view in the following words: "As an advocate he (a barrister) is a minister of justice equally with the judge." The lawyer, as a class, has an obligation to see that the rule of law is maintained. A lawyer is a better upholder of law on all occasions, in all circumstances and at all times. It would not be out of place to state that a lawyer is a 'man for all seasons'.

The Bar is a public institution, and is under the legal obligation to impart wholehearted co-operation for the development of law. Some eminent lawyers, immediately after coming into force of the Constitution, become jurist consultants as some of them authored books trying to make law a legal science. The lawyers endeavored the raise the head of philosophy of legalism in addition to making it a science. Thus, they played a coveted role in converting the law

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to a social, philosophical, metaphysical and spiritual science. Development of jurisprudence can never be the prerogative of the adjudicator.

In the beginning, it is necessary to clarify that I may refer to the role played by the eminent advocates in the freedom struggle of our country; but my constant endeavour would be to project their glory in the field of law, rationality and propagation of modernism with the aid of creative craftsmanship. I think it condign to delve into the past not for the sake of nostalgia, but for comprehending the entire gamut of historicity. The history has a specific purpose in the setup of a civilized society. One may feel that the history is nothing but a biographical sketch of certain personalities, but a perception of history should ordinarily be not narrowed to that extent. Personalities do occupy the center stage in history, and one cannot say that they come like water and go like wind, but the natural ethos which is sacred and sacrosanct is the invitee of time. Not for nothing, it has been said that one can magnify one's mind by real understanding of history and glorify the future. The study of the past has to be done with anxious objectivity and total detachment believing in the conception of perpetual shift of time, for time that has passed, in a way is present albeit not to disturb the present generation, but to function as a beacon or guidepost for the posterity. Whatever high pedestal they may speak from, the conception of jurist conscience is also in the domain and realm of advocacy.

Let us sit in a time machine and peep into the past. The lawyers who were eminent in their own field but got intrinsically involved in the freedom struggle of India where their reasoning, rationality and logical faculty helped to solve many acute problems. Their participation in the Legislature, however limited was forceful and beneficial; their handling of political situation was totally different. The father of our Nation, Gandhiji, was a lawyer. He started his practice in India and thereafter shifted to South Africa. It is worth to note that Gandhiji was an excellent draftsman and his representations to the authorities used to be very logical, straight, unambiguous, succinct and based on ethical and natural legal paradigm. He believed in truth while practicing as a lawyer, and acted as a conciliator. One example would be sufficient. In his autobiography *My Experiments with Truth*, he has narrated how he required a prosperous businessman to confess his guilt and after the Court sentenced him keep the judgment in a frame for posterity to see and realize.

In pre-independent India, the other eminent lawyers who plunged into the freedom struggle were Motilal Nehru, Shard Chandra Bose, Chitranan Das, Gopinath Bardolol, Gopabandhu Das, Bhulabhai Desai, Mahadev Haribahi Desai, Durgabhai Deshmukh, Dr. Mukund Ramrao Jaikar, Bal Gangadhar Tilak, Lala Lajpat Rai, Madan Mohan Malviya, Ganesh Vasudev Mavalankar, Mazrhor Haque, Firoze Shah Mehta, Dr. Shyam Prasad Mookharji, Kanaiyalal Manoklal Munshi, Acharya Narendra Dev, Sardar Vallabhbhai Jhaverbhai Patel, Vithalbhai Patel, Dr. Rajendra Prasad, Chakarvarty Rajagopalchari, Dr. Bhimsen Sachr, Kitchalew Saifuddin, S. Satyamurthy, Purshottamdas Tandon and Asif Ali.

While talking about this brand of lawyers, it is worth noting that Bhulabhai Desai had played a main role in the *INA Trial*¹ where his main contention was that a member of the subject country has the right to wage war for securing freedom.

Sir Alladi Krishna Swami Aiyer, a lawyer, was also a freedom fighter. He was the acknowledged leader of the Madras Bar. After independence, he became a member of the Drafting Committee of the Indian Constitution.

Dr. B. R. Ambedkar started practice at Bombay in 1924 and at the same time, started his career as a social worker, writer, politician and socialist. His image as a jurist gained wide recognition, and he emerged as a leader of the depressed class. He was the Chairman of the Drafting Committee which framed the Constitution of India.

At this juncture, I think it appropriate to narrate an incident how a person fighting his own case became a successful and astute lawyer. Shri. Ved Vyasa was appearing in a case which was a dispute between him and the AIR Ltd. before Sir Douglass Young, the Chief Justice of Lahore High Court. The Learned Chief Justice remarked: "Why don't you become a lawyer?" Ved Vyasa took the advice and became a lawyer. As it happened, he successfully practiced Company Law and Taxation, and was regarded as one of the best lawyers on Company Law in the country.

Another great lawyer in the post-independent was Vishvanath Shashtri, who was at one time was a leading practitioner in the Supreme Court. He was an authority in Taxation Law and

¹ *State v. Mohd. Arif @Ashfaq and Abu Hamad; Sadakat Ali v. State*, MANU/ DE/ 8492/ 2007.

remembered Privy Council judgments on his fingertips. He was a simple man, and in fact in his office there was no chair or fan. He used to travel to the Supreme Court from his residence from Nizamuddin by train, for which he had a monthly pass. He donated his life-savings to the Madras University.

The name of the first Attorney General of India Motilal Sheetalvad requires special mention. He was an advocate of great integrity, a lawyer with enormous clarity and tremendous precision. Undoubtedly he had an unmistakable role in the growth and interpretation of constitutional provisions. He had straightforwardness, forensic skill, and clarity of expression. To borrow the words of Meharchand Mahajan, one of the eminent Chief Justices of India: "Sheetalvad was a jurist of international reputation and used to say quite often that no welfare State can flourish and effectively function unless there is an administration of justice and *sine qua non* for the same is the closest cooperation between the Bar and the Bench." His contribution to the law is immense as invincible from various interpretations of the constitutional provisions by the Apex Court while he as the Attorney General argued the matters.

Another illustrious lawyer who became a household name in India is Nanabhoy Palkhivala. Palkhivala studied in the chamber of Sir Jamshedji Kanga. He had started without any ladder but his incomparable energy, phenomenal brilliance, profound analytical skill and unsurpassable humility took him to great heights. He became an expert in Constitutional and Taxation Law. He was an advocate *par excellence* with profound oratory skill and magnetic touch of memorization of speech. It has been said that he single handedly did the work *Kanga and Palkhivala Commentary on Indian Income Tax Act*. He argued with tremendous skill and conviction in such cases which can never be forgotten. One which is compelled to recall is the *Nationalization* case², *Privy Purse* case³ and *Keshavnanda Bharti*⁴. In *Keshavnand Bharti*⁵ case, Palkhivala advanced the theory of Basic Structure of the Constitution which included guarantee of the basic human rights to all of its citizens to ensure justice, liberty and equality. He also identified various other facets, namely, supremacy of the Constitution, sovereignty of India, secular character of the State, federal structure, balance between the Legislature, the Executive,

² *R. C. Cooper v. Union of India*, 1970 AIR 564.

³ *Madhav Rao Jivaji Rao Scindia v. Union of India*, (1971) 1 SCC 85.

⁴ AIR 1973 SC 1461.

⁵ *Ibid.*

and the Judiciary, and over all the power of the judicial review. Praising him H. R. Khanna, J. in his *Neither Roses Nor Thorns* has stated thus: "The height of eloquence to which Palkhivala reached on that day had seldom been challenged and never been surpassed in the history of the Supreme Court."

While talking about eminent lawyers, one can never forget the contribution of H. M. Seervai. His *Treatise on the Indian Constitution* has become the hallmark of his glory; judges from the western world have profusely borrowed the principle from his conceptions, and law in many countries has developed on the bedrock of his book. Nothing can be a better description, a better encomium.

C. K. Daphtary who later became the Attorney General of India was an excellent speaker, and had the ability to drive home complicated matters by which the controversy appeared to be quite easy.

In the early years of the Constitution, Nambiar had a great role in assisting the Bench in appreciating subtleties of the Constitutional Law.

At this juncture, I think I should take a leap to the present scenario. At the very outset I must say that the present may expose certain loose joints, and may look disturbing as if there has been guillotining of hope; but I, being an incurable optimist, having faith in the growth of man, transcendental super-human consciousness, and the very purpose our having assembled here to dialogue intellectually to usher in the cure for the loose joints and to specify the role in building of the Nation by the process of therapeutic administration of idealistic view which would curtail and destroy any kind of disorder, refuse to yield to a pessimistic projection.

We have talked about the past and viewed reminiscence its glory, but he who views the present in pessimistic manner is engrossed in melancholia, is suffering from psychosomatic maladies. We have to abandon the concept of decadent aristocracy. We are required to abandon any kind of pessimistic view. We have to look at the future with a laser beam. We must remember the words of the mystic poet William Blake that 'Great things are done when man and mountain meet; this is not done by jostling in the street.' How shall we do it? I may humbly say I am not a physician, but I have the prescription from experience and some study. The present generation of lawyers must

remember the principles to become great lawyers, for only great and dedicated lawyers are in a position to sustain the democratic body polity. Hence, I do not refer to the term successful lawyers as is understood in common parlance. I may hasten to add 'Greatness does encompass success, but not *vice versa*.'

I proceed to enumerate the prescriptive follow up in seriatim so that younger generation can make them their motto:

1. Anyone who enters into the profession must have the sacrosanct feeling that he has entered inside a temple, and the purpose is to serve the cause of justice.
2. He should harbor the conviction that nothing can lay a foundation stone for success other than hard work.
3. He must believe that he can succeed, and then alone he can pave the path of success.
4. He should concretize the confidence, step by step, with humility and respect destroying all conceptions of fear.
5. He should avoid any kind of envy, as envy destroys the basic marrows of the human soul, and when soul is lost no action can ever be good or just.
6. He must believe in *purshartha* as the pure philosophers of India have always said 'The *purshartha* meets and joins hands with *bhagya*.' The saying '*Bhagyam phalti sarvatra nach vidya nacha parusham*' should be regarded as partial truth. It is because *karma* and *bhagya* go hand-in-hand to have tryst one day.
7. He must not be worried of losing battles, but must prepare himself to fight the war as winning the war is the embodiment of greatness. Small battles do not matter in life.
8. He must conceive of big things in life as the *Vedic* seers have said one becomes what one wants to be. It has been so said in *Bible*.
9. He must develop the sense of introspection to analyze and find out his weaknesses. Justification of weakness is no excuse.

10. Acceptance of one's own limitation is a step towards achievement of nobility. Demosthenes, one of world's greatest orators was unable to speak. To train himself to speak he put pebbles in his mouth near the sea shore, and shouted raising his voice so that he could address a large gathering. This means no effort goes futile.
11. He must interpret what troubles him, and would train him to be adept and competent, not to run away from any difficult situation; and embolden him to face the problem with an immense sense of responsibility and rationality.
12. He must be an inspired being and inspiration must come from research.
13. He must remember life kicks every moment, and asks one to live. However to live does not mean to exist, but to live with a purpose, and the purpose here is to learn and only learn.
14. There must be respect for seniors as the elementary principle behind this concept is that 'today you respect so that you will command the same tomorrow without any effort.' Let it be noted 'today' is inherent in 'tomorrow' which is encapsulated in 'today'.
15. Presentableness in outer form is not a small thing to be left out. One may not be ostentatious but there should be aristocracy in simplicity. A lawyer has to be an aristocrat in his thought, and should be yearning for learning.
16. He must thrive for rule of law and have compassion for the poor so that liberty lives in human souls, and does not become a mere part of a statue.
17. He should abandon fixity of notion, and be progressive in outlook.
18. He should sanguinely believe that judiciary is an institution of serviceability, and he, being an officer of the court is an unshakeable pillar of it.
19. He must develop a sense of humour so that he can accept things of life as the life of a lawyer is full of events.

20. A lawyer must get the idea embedded in his heart that 'one may be destroyed but can never be defeated.' He must fight for *Lokdharma* as well as *Rajdharma* till his death.
21. A lawyer must have patience, perseverance, politeness, punctuality, passion for knowledge, and must develop the Newtonian Complex every moment.

I have enumerated in my humble way what I have thought sound for the younger generation. I may state, with all the humility, that in this field, in which you are in, there never had been and there never would be any generation gap as this is the field of activist cell of your body to make you the pink of perfection.

