

# DEVOLUTION FOR DERIVING MOTIVATION AND INSPIRATION FOR PURSUING THE COURSE OF LEARNING\*

**H**aving enjoyed a summer sojourn followed by the pleasure of rains,

unprecedented during the last 60 years in Delhi, we have assembled here to celebrate the Commencement Day in Campus Law Centre, Faculty of Law. When Prof. Mool Chand Sharma asked me to be here amongst the teaching faculty and law students, for this day, I had no reason to forego the opportunity. A judge remains a student throughout his career. As a judge, he learns everyday by reading and then listening to learned addresses by the eminent counsel.

I have the advantage of having two brilliant alumni of this institution present by my side today. When I was a Judge in the Delhi High Court, I had the privilege of brother Justice Vikramjit Sen, appearing in many cases before me as a counsel, and today I share with you a secret which probably even brother Vikramjit may not know. Whenever he argued a case before me, he was always so forceful and persuasive that I found it very difficult to decide against him, and if at all I had to write the judgment against his client, I would delay my judgment so as to first forget his submissions and then write the judgment. Another alumni present is Mr. Rohinton Nariman. During the last week, for almost 3 days, I have been listening to him, in a case before us, on various aspects relating to banking law, law of pleadings and interpretation of documents. He has held the Bench spellbound, throughout his learned address, and I have no hesitation in admitting that he has added much to my knowledge, not only by citing precedents but also by demonstrating skills of reasoning.

Being in the Campus Law Centre and spending any time amongst learned teachers and students craving for learning, for me, is a time spent on learning.

Friends, believe me I am not going to inflict any speech upon you. A Judge is a most inappropriate person to be invited as a speaker or to enjoy listening to. Francis Bacon says – “Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident.” All these qualities, if available in a judge, make him an introvert and he ceases to be an extrovert, excepting through his judgments. How should one rate a judge who speaks too much? I am reminded of an incident which happened a few years before in the Supreme Court of India. Mr. Soli J. Sorabjee, the present Attorney General for India, is also known for his ready wit and quicksilver tongue. An Hon’ble Judge of the Supreme Court, known for his volatile temper (which resulted in many eminent counsel having decided not to appear in his court) would occasionally succumb to Sorabjee’s wit and humour. Soli was trying to persuade the court to post the matter for final disposal on a miscellaneous day so that it could be disposed of early in view of the urgency involved for Soli’s client. The presiding Judge asked: “How much time would the matter take?” Replied Sorabjee: “It is a very short matter My Lord, it may take 3 hours on the outside.” The presiding Judge was visibly annoyed. He observed – “But you said it was a short matter.” Quick came the reply from Soli – “Fifteen minutes for me – fifteen minutes for my

learned friend – and two and half hours for My Lord.” The annoyance of the presiding Judge instantaneously turned into a smile and the matter was posted for hearing on a Friday.<sup>1</sup>

It is said that an orator convinces his followers, not his opponents. A lawyer, by forensic casuistry, convinces his opponents, not his followers.<sup>2</sup> A judge has neither followers nor opponents and he can never convince a lawyer.

I made it clear to Prof. Sharma that I may not deliver a very learned speech on any intricate subject of law. If you are expecting me to do so you may be disappointed. Being a professor of law, Prof. Sharma is witty and intelligent. Persuasively he argued – “the Commencement Day is devoted for deriving motivation and inspiration for pursuing the course of learning so as to dedicate the students to promoting the modern and justice oriented education. We would like the students to share your vision and insight.” Friends, I am not one who was born with a golden spoon in his mouth nor am I one who has had the privilege of having received his education in prestigious institutions like Faculty of Law, University of Delhi. I have yielded to Prof. Sharma’s insistence but subject to the condition that I would only be putting forth a few random thoughts on whatever I feel about legal education and what I expect from law students and legal professionals. I am here for that purpose.

My dear young friends! The very fact that you have chosen law as a course of study and the legal profession as a career, bears testimony to the fact that you are intelligent. You are adventurous. You enjoy facing challenges in life. Above all, you love democracy, aspire for peace and prosperity and you have belief in the rule of law. According to Joseph A. Wapner, “Lawyers are given a place of privilege in this society. They are allowed to toil in the majestic edifice of law. This provides them with dignity, challenging work, social power – and often an excellent income. For those privileges, the least they can do is behave with respect toward the institution that gives meaning to their lives: the law.”<sup>3</sup>

Sir Edward Clarke, K.C., a famous member of the English Bar, once said that success in the profession depended on three factors. The first, to have an infinite capacity for hard work; the second, to have no money, and the third, to be very much in love with the profession. A capacity for hard work, combined with such powerful incentives, will no doubt carry one far towards success, of course, with other qualifications necessary to attain it.<sup>4</sup>

The chapter on fundamental duties, contained in Part IVA of the Constitution, must be learnt by heart by every student, not only the student of law. Article 51A makes provisions for ten fundamental duties, cast on every citizen of India. From the point of view of students, I would like to mention only two out of the ten. It is the duty of every citizen (i) to develop the scientific temper, humanism and the spirit of inquiry and reform; and (ii) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. The message for student community is clear and laudable. A few days ago I read a message which His Excellency – the President of India – Shri A.P.J. Abdul Kalam delivered from Tawang, at a height of about 22,000 feet in the extreme north-east of India, touching the border of China. He said that during the last one year he had met nearly 2 lakh students from all over India and has two messages from these visits. One, that the youth of India want peace, prosperity, happiness and safety. They want to live in ‘developed’ India. The second message is that most Indians – experienced and old, energetic and middle aged, young and innocent – all look to religion for solace and security. According to Shri Kalam, to realize the vision of a developed India in 2020, we need to intensively work on five important areas, one of them being education and health care. The enlightened citizens can only emerge out of an education with a value system, transforming religion into a spiritual force and economical

development. It is the integrated development of all these similar aspects from which would emerge a society with peace and prosperity in abundant measure.

The human body is the most precious and incredible gift which God has given us. The mind lives in the body and Swami Vivekanand used to say – a healthy mind lives in a healthy body. Health has to be not only physical but also intellectual and spiritual so as to energise the body not only externally but also from within. Seeds of knowledge are sown in the brain and also in the heart. They germinate and blossom into flowers at both the places. The flowers sown in the brain would make a useful person for yourself, imbibe such qualities in you as would make you perfect for fighting adversities and in carving out a place for yourself in the society. However, it is the seeds of knowledge sown into your hearts which enable you to develop into a person useful to the society. Education is in vain unless it helps to understand the vast expanse of life with all its subtleties, with its extraordinary beauty, its sorrows and joys. You may win a degree, you may have a series of letters after your name and you may find yourself in a very good job but you will never be able to repay the obligation of God in creating you unless the process your mind leads you to such intelligence and usefulness as can serve the society. To adjust to this, your dreams have to be bigger, your ambitions higher, your commitments deeper and your efforts greater.

Ours is a constitutional democracy. The Constitution of India is the greatest of all such documents in the world. Probably, it is the only constitution which is given by We – the people of India – to themselves. It is the only document, with the Preamble constructed by using just 84 words to begin with and which has been grafted like a *Shloka*, *Mantra* or *Richa* and in my humble opinion, contains the gist of the Constitution. The preamble promises to all the citizens of India – Justice, Liberty, Equality and Fraternity. Justice, placed at the top of the goals, sought to be achieved by the Constitution, is three dimensional – social, economic and political. None of the goals can be achieved, except by observance of the rule of law which in its turn depends on men of law who are shaped in schools of law.

You all know that the edifice of our constitutional democracy has been made to rest, by the Founding Fathers, on three pillars namely – the legislature, the executive and the judiciary. The history of the last 55 years bears testimony to the fact that while there is no dearth of laws, while the executive has almost surrendered itself to politics, it is the judiciary which has continued to discharge its constitutional obligations without committing the breach of trust, reposed in it by the Constitution and in the present set up it is the last hope of ‘we the people’. What is the material of which this indispensable pillar of democracy is made ? It is the rule of law and the men of law. The judiciary consists of judges who are chosen out of lawyers who in their turn are shaped in law schools. One of the solutions to delays – much talked about, the demand for liquidating the arrears and preventing docket explosions-lies in appointing efficient, competent, qualified, dignified and well-mannered Judges, with the capacity of disposing of cases by bestowing careful attention and writing good and correct judgments. The judgment of justices should be the judgment of the Constitution.<sup>5</sup> The character and the strength of the judiciary depends on the same qualities of legal professionals and there lies the significance of legal education which gives birth to legal professionals.

The purpose of legal education can be two-fold. One, to be a responsible law abiding citizen and the other, to adopt law as a profession. The fundamental principles of law and a basic knowledge of Constitution should be made compulsory at 10+2 level of education. Every student before opting for a chosen course of study, suited to his aptitude, should have acquired some basic knowledge of law. An academic degree of law can also be devised which would testify to the student having acquired the knowledge of law though not enough for law as a profession. The professional course of study in law, after the basic legal education to begin with, should then

be diverted into specialized courses of study, suited to a particular branch of law or a particular nature of career which the student proposes to follow after completing his study. From my practical experience at the Bar and as a Judge, I can say with confidence that there is scope for medical, engineering, accounts and other science and arts graduates to take up the law as career. I have seen a good number of medical, engineering graduates and chartered accountants opting for all-India services such as IAS, IPS, IFS etc. or for business management and thereafter, they shape up as very competent and meritorious professionals. A similar change is needed with reference to law. Suitable courses of studies have to be devised so that graduates from other branches of science and technology divert themselves to law so as to shape as highly qualified and specialized law professionals, catering to the needs of the particular type of litigation.

The importance of legal education, as highlighted in the Constitution of India, was well set out by Supreme Court in *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730. One para from the judgment of the Supreme Court is almost precis of an essay and provides illuminating reading. To quote—

“we have to consider the combined effect of Article 21 and Article 39A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures ‘justice, social, economic and political’. Article 39A of the Constitution provides ‘equal justice’ and ‘free legal aid’. The State shall secure that the operation of the legal system promotes justice. It means justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39A mandates that the State shall provide free legal aid by *suitable legislation or schemes or in any other way* to ensure that opportunities for securing justice are not denied to any citizen by *reason of economic or other disabilities*. The principles contained in Article 39A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way – by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) *to provide free legal aid ‘by suitable legislation or by schemes’ or ‘in any other way’*, so that opportunities for securing justices are not denied to any citizen by reason of economic or *other disabilities*. (emphasis supplied). The above words, occurring in Article 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all-round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in courts and other forums demand that the service of competent persons with expertise in law is required at many stages and at different forums or levels and should be made available. The need for a *continuing and well-organised legal education*, is absolutely essential, reckoning the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast numbers of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only, if

adequate number of law colleges with proper infrastructure including expert law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The 'deficiency' should be located and correctives should be effected with the cooperation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters. As in this case, a sole government law college cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for the establishment of private law colleges. If the State is unable to start colleges of its own, it is only appropriate that private law colleges, which are duly recognized by the University concerned and/or the Bar Council of India and/or other appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the label of self-financing institutions, the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure and for appointing competent teachers and staff. The private law colleges, on their own, may not afford to incur the huge cost required in that behalf. The 'standard' of legal education and discipline is bound to suffer. It should not so happen for want of funds. The 'quality' should on no account suffer in providing free legal aid and if it is not so, 'the free legal aid' will only be a farce or make believe or illusory or a meaningless ritual. That should not be. It is in that direction the grants-in-aid by the State will facilitate and ensure the recognized private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well-trained or properly equipped law graduates in all branches year after year. That will in turn enable the State and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily flowing from Articles 21 and 39A of the Constitution were totally lost sight of, by the Government, when it denied the grants-in-aid to the recognized private law colleges as was afforded to other faculties. We would add that the State has abdicated the duty, enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39A of the Constitution mandates or casts a duty on the State to afford grants-in-aid to recognized private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear." (Para 17)

The law has been reckoned also to be an instrument of social justice. In foreign universities, the curriculum lays great emphasis on the impact of law on the society and its development.<sup>6</sup> The recent judgments delivered by the Supreme Court which have struck headlines in the newspapers also make it clear that even a Judge can be a powerful social reformer and can provide direction to the movement of the nation when others fail to do so.

There have been talks about deficiencies in our legal education system. I would propose, let all those talks be relegated to the times of the past; they need not be told and retold as they have lost much of their relevance with the advent of the national law schools and 5-years course of study in law schools which are catching up fast. Study in law is no more an evening pastime. The admissions in law colleges are becoming competitive. Experience will dictate need for improvements, wherever needed. Education, in mere abstract theory of law, used to be equivalent to learning for trade – no use unless tried on experience. Five years curriculum is a step in the direction of real professional education. The curriculum is devised by the combined effort of the Bar Council, the University Grants Commission and legal academicians, taking care

of theory and practice. A few significant changes are clearly perceptible. Like other professional courses of study, just as medicine, audit and accounts, architectural engineering etc. now a student of law, armed with a bachelor's degree, is fit and confident to hold a brief and enter the court room. The second difference is that the family monopoly in the profession is breaking, giving way to such brilliant professionals making their entries in the profession, as could not have been thought of earlier. Thirdly, the traditional role of the lawyer stands discarded as outdated. The lawyer of the 21st century has several options open and available to him. He may go in for active litigation practise or may opt for mere chamber practice or just table work, confined only to drafting and giving opinions. He may choose to take up employment under government or semi-government bodies, multi-nationals or firms of professionals or else in industry or business, advising the employer on legal issues and taking care of his legal interests. If, in litigation he has the choice of specialization, opening several lucrative avenues which are available in plenty such as arbitration, intellectual property, cyber laws, environmental disputes, international disputes and so on. There are lawyers who are earning not less than one lakh per day and engaged solely in drafting international covenants, treaties and similar documents. You can be a judge-advocate in the defence services. You can be a free lancer, just liaising and making a fortune out of it. The association of clinical instructions, moot courts, debates, seminars, workshops, practical training and similar such activities have become a part of 5-years' course of study and have made all the difference. You will have an opportunity of learning from close quarters and participating in all these activities in your campus and except for making a reference, I do not propose to spend any time on dealing with them. There are a few points on which I wish to invite your attention which, only a person like me, who has had the advantage of learning as a lawyer, as a member of the subordinate judiciary, as a judge of the High Court and now of the apex Court, having seen the profession from several angles, can tell you.

The first point is you must have a good command over the language which is the medium of your instruction. Not only should you be able to use the language correctly but you must be able to use the language for the particular purpose at hand. In other words, you must first acquire effective communicative skills or communicative competence which in its turn depends on a rich vocabulary. You should be able to choose out of several words the most correct and appropriate word to deliver your message. The advantage of using chaste language is that the reader or the listener is able to receive the same thought which its author proposes to deliver. Once you have a reasonable working knowledge of the language, the best way of acquiring proficiency and perfection is to play language games. Having the highest degree of love and respect for the mother tongue, I must tell you that, as a law professional, knowledge of English and not only knowledge of English but proficiency and perfection in the English language is a must. Globalisation and liberalization have posed the question of foreign lawyers and law firms as also educational institutions, entering in our country. It cannot be and should not be prevented, in my humble opinion. Rather, the Indian legal academicians and law professionals must strive for raising their own standards so that the foreign aspirants think twice before setting foot on the soil of India.

Secondly, apart from learning the law you must develop creative and critical reasoning skills. The profession of law is the most challenging of all the professions in the world. Freund states – “that any academic discipline, worthy of the name, must equip the student with the capacity to think critically. He has further deprecated the tendency of academic institutions to indoctrinate the disciples. It is Freund's view which I fully endorse that legal education needs to teach both – the law and its context, social, political and theoretical. It is the combination of these that renders the law a particularly valuable educational discipline.”<sup>7</sup> Presence of mind, ready wits and a sense

of humour are the prime possessions of a legal professional. You must develop the capacity of wriggling out of most difficult situations, solely by your quick wits and sense of humour.

Let me give you one or two examples. They are on the lighter side but make you learn, what is drafting and principles of interpretation.

**[Prof. P. Thomas' wedding]**

**[Approved/Not approved/Note approved]**

To sharpen your wits mere reading of law will not do, you must have interest in creative arts or develop some hobby. Young boys and girls who excel in painting, dancing, music or sports can learn things with ease and keep themselves away from worry and tensions. That apart, fine arts imbibe culture in the personality and bring out the hidden potentials of the individual.

Thirdly, there must be discipline in your life. It would be futile to expect order in society from anyone who has no order in his personal life. A disciplined person makes the best use of his time and God gifted faculties of intellect. He cannot afford to waste the time, talent and energy which are the most perishable commodities and cannot be regained, once lost. While taking serious instructions in law in the campus you should find time either in the late evenings or in early mornings or else in the weekends and if not then, at least during long weekends and vacations for your hobbies and sports.

Fourthly, you must also read literature other than law. Literature other than law would act as fertilizer, germinating seeds of knowledge, sown into your hearts as distinguished from the brain. It would develop a spiritual bent of mind which would shape your character and provide you with the strength to withstand testing times which more or less do occur in the life of everyone. There is so much to read in law and so many classics available in legal literature that one life may not be enough to satisfy the lust for reading and learning the law. You may also read biographies and autobiographies of eminent judges, jurists and lawyers. To illustrate only a few, My Own Boswell by Hidayatullah and a series of books known as Miscellanea by him; Roses in December by M.C. Chagla; My Life, Law and Other Things by M.C. Setalvad; Legend of Nani Palkhivala; Life Sketches of Justice Jagan Mohan Reddy; Biographies of Lord Denning, Lord Atkin, Justice Frankfurter and a host of such similar authors.

Lastly, I would strongly advise teachers to involve the students in social service projects. Prof. Madhav Menon, a well known name in the field of legal education has narrated his own experience. During the Ahmedabad earthquakes, the students of National Law School of India University of Bangalore were sent to Gujarat. They served the earthquake victims and saw with their own eyes the catastrophe and misfortune which nature's fury can cast on human-beings. Having spent some time there, their thinking and their approach towards education and life changed drastically. They became more humane and more dedicated and sincere students with a determination to do something positive and constructive in their lives so as to make the world a better place to live in.

Before parting, I quote a passage from an essay authored by T.P. Kelu Nambiar, a Senior Advocate in High Court of Kerala, which contains an enlightening and inspiring message to the new entrants to the profession. "I should deprecate the summary enrolment of advocates. These professional green horns seem to start with the presumption that their enrolment certificate is an Aladdin's Lamp, from day one of their setting up shop in the profession. They should try to make the profession purposeful, realizing that there is no use searching for the black box after the crash in a professional mission. Remember, there is no Professional Calamity Relief Fund (PCRF) for lawyers. The new entrants to the profession should be committed to certain benchmarks of progress. Falun Gong is alien to the legal profession. The legal profession is a profession greater

than the greatest. And great achievement in this profession is possible only through sustained effort, for, as Orwell said, to see what is in front of one's nose needs a constant struggle. Remember, advocacy is not a commodity available for purchase. Every contention should be preceded by strenuous research and reflection. The profession consists of the eminent, the prominent and the dubious. Acquire massive legal knowledge, but do not lose your professional wisdom in knowledge. I wish to tell you, loud and clear, that your dreams and desires should be all about law; and thus only you could be a lawman, on cloud nine. Rip Van Lawyers should wake up to this exhortation. Discern the discipline of law and the law court, remembering that the court is not a club; your territory is the legal profession. And there is no 'Oscar' for advocacy."<sup>8</sup>

**Reference:**

1. *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730.
2. 'Legal Education: Contemporary Trends and Challenges' – Dr. M.F. Naseem, Bar-at-Law, Karachi, AIR 1998 Journal 23, 24.
3. 'The Role of the Bar in the Preservation of the Rule of Law' – Justice J.S. Verma, (1995) 1 SCC (J) 11.
4. 'Legal Education in India – Past, Present and Future' – Dr. Justice A.S. Anand, (1998) 3 SCC (J) 1.
5. 'Law Students, Lawyers and Judges in the New Millennium' – Justice M. Jagannadha Rao, (2000) 8 SCC (J) 1.
6. 'Valedictory Address of Hon'ble Mr. Justice R.C. Lahoti, Judge, Supreme Court of India at M.M. Singhvi Memorial All-India Moot Court Competition', (2002) 4 SCC (J) 1.



\* Speech delivered on Commencement Day Campus Law Centre, Faculty of Law, University of Delhi on 11th August, 2003, at Delhi.

1. 'Whither Thou – Advocacy?' – K.K. Lahiri, Advocate, Supreme Court (Supreme Court Bar Association Journal, Vol. 1, May 1988, p. 88).
2. Rambling Thoughts About The Bar and The Judiciary – T.P. Kelu Nambiar, 2003 Samatha Law Journal, Part 1, pp. 82, 84.
3. Lawyer's Wit and Wisdom, p. 164.
4. Samatha Law Journal, *ibid.*, p. 85.
5. Samatha Law Journal, *ibid.*, p. 87
6. Legal Education: Contemporary Trends and Challenges, – Dr. M.F. Naseem, Bar-at-Law, Karachi (AIR 1998 Journal 23, 24).
7. Legal Education: Contemporary Trends And Challenges, *ibid.*
8. Samatha Law Journal, *ibid.*, pp. 89, 90.