

LAW – MEANS OF SOCIAL REVOLUTION*

It gives me immense pleasure to find myself amidst the members of

the Bar Association of a newly established High Court with the Chief Justice as the head of the State Judiciary associated by Justice R.C. Garg who hails from my own parent High Court, and Shri Ravindra Shrivastava as the first Advocate General of the State. I congratulate you all on the establishment of the High Court of Chhattisgarh.

While it is an event to be celebrated, we cannot be unmindful of the higher responsibilities which you have volunteered to shoulder upon yourselves. Voltair had said - "It takes centuries to build an empire; it takes only a moment to demolish it." You have to develop and give shape to a High Court Bar.

The Constitution of India has assigned a place of distinction to the judiciary. The judiciary is the sentinel of democracy, rule of law and fundamental rights. It has to safeguard the supremacy of the Constitution. While Parliament writes the letter of law, the judiciary tells what it means. Judiciary also enforces the rule of law. Justice Untwalia has compared the judiciary to "a watching tower above all the big structures of the other limbs of the State" from which it keeps a watch like a sentinel on the function of the other limbs of the State as to whether they are working in accordance with the law and the Constitution, the Constitution being supreme. (*India v. Sankalchand Himatlal Sheth*, AIR 1977 SC 2328). The faithful allegiance of the judiciary, as an institution, to the Constitution has earned it a place of pre-eminence over the other two political branches of Government, viz., the legislature and the executive. Indian Judiciary has justified the role assigned to it in the Constitution and no wonder it has emerged as most powerful of similar institutions in other democratic countries of the world wiewding such width of jurisdiction as others may not.

Judiciary is a part and parcel of legal profession. Judges are the products of the Bar. An independent and enlightened judiciary cannot be thought of without an independent and enlightened Bar. Today is an appropriate occasion for introspection by legal profession. Are we discharging our duties which the Constitution contemplates of being discharged by the men of law? Have we come up to the expectations of the founding fathers of the Constitution and the builders of this great democracy, that is India?

Of all the professions the profession of law is the noblest. Law is a means of social revolution. The carriers of this revolution are the members of the bar. The contribution which the lawyers made in the independence movement of the country is a matter of record in the history and hardly needs to be told.

Law is nothing but principles of ethics and morality codified. Lawyers are the flag bearers of these principles in action. The legal profession consists of those who are intellectually elevated, have coverage of conviction and the strength to pursue a cause. As their primary duty is to assist in performing the sacred task of Justice administration they have to have purity of purpose and probity in their professional and personal life style. In

the very nature of their profession in which they are bound to deal with the clients and act in the courts, they must inspire confidence and earn goodwill. To appear, plead and act for others being an exclusive privilege of the law professionals and the complexity of the function requiring an expertise in performance, the lawyers profession has become monopolistic. The monopoly has been given a statutory recognition. According to Justice Krishna Iyer, such monopoly obligates the lawyers to observe scrupulously those norms which make him worthy of confidence of the community in him as a vehicle of social justice. "Law is no trade; briefs no merchandise".

Mr. Justice Crampton, a great Irish Judge, beautifully summed up the ideals of an advocate in these words "The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and be retained and remunerated, often inadequately, & for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer."

It has been very aptly said, there is no royal road to success in advocacy. No book can teach the art of advocacy. It can be learnt only in the hard school of life. A single quality of head or heart does not make an advocate; it is the entirety of personality which counts. Justice P.B. Mukharji said, the advocate is a totality of diverse capacities whose individual enumeration never explains the finished product. Listing the qualities that go to the making of a good advocate has never succeeded. Advocacy is a very human affair. The raw material of the cases that comes before the Court is instinct with passions, struggles, rivalries, desires and emotions which human relationship produces. Chronology, candour and clarity are essential qualities of an advocate. No one makes a good advocate who only reads the law. A great advocate requires to know a good deal of human life and its accessories. Emergencies in court should never find an advocate wanting. A well-equipped mind and a well-informed intellect are great assets for an advocate. The intellectual metabolism needs to learn the secret of that great capacity of quickly learning a subject and equally quickly forgetting it when his particular work is done. It would be a mistake to assume that the life of an advocate is lived in a state of perpetual excitement and in the midst of brilliant fireworks where the stage is always illuminated and the audience full and responsive. It will be an equal mistake to assume that legal profession is a dull life. A lawyer has a subtle sense of humour. To succeed in profession he is to possess a humour which will make him laugh at his own inadequacies, a humour which can ward off the Judge's anger, a humour which forgives his opponent, and above all a humour when he sees his client making a mess of his facts in the witness box. An advocate will have to learn that no situation is desperate enough and there is always a miracle waiting to happen to rescue him from what otherwise might appear an impossible situation. The miracle may not happen but what is indeed in the advocate is the expectant attitude and the buoyant personality. To achieve such a life, Lord Eldon advised the advocate "to work like a horse and live like a hermit". [See - Introduction to Advocacy And Cross-Examination by Sarkar]

Lord Justice Scarman has said that they are the experience, character and mature talent which are the winning combination of a lawyer. Though, of course, he warned that the basic

qualities and experience which imbibe the skill in an advocate are capable of being used but also capable of being misused or abused and need to be surrounded with safeguards.

The Courts frequently refer to lawyers as their 'officers'. K.L. Gauba in *Battles At The Bar* states beautifully brings out the resemblances between the lawyer and the soldier. It is amusing to read the comparison as articulated by him. He says —

“it is true there are some resemblances between the lawyer and the soldier.

Both are considered mercenaries: a lawyer is hired by his clients, the soldier by the politicians; - both fight for purposes and causes not their own. They are equally inspired by lofty motives - the lawyer the success of his client; the soldier the victory of his country.

A soldier is best equipped with the newest weapons; a wise lawyer goes into battle with the latest reports! Both soldiers and lawyers have unwritten codes of honour and gallantry. Both careers call for courage and have their risks. If you are too bold in one, you may lose your life; if you are too bold in the other, your licence.

There are other resemblances too between the soldier and the lawyer. When the Colonel is getting too old to fight, he may be promoted General; when the barrister is getting too old to argue, he may be elevated to a place above the bar of controversy. A General, when too old to remain a General, is often just young enough to take his place among the Field Marshalls. And not infrequently judges ripe for retirement are called upon to serve Law and Justice in higher Courts.

But when any lawyer or soldier has no prospect of promotion or elevation; when he has reached an age where he is neither inspired nor tormented by ambition; when the controversies in which he has been engaged have been settled; when the soldier has done his fighting and the lawyer his talking; when treaties have been signed and judgments delivered; -then, they may both tarry by the market-place, watch the passing multitudes, live the moments of battle, answer queries and explain how they came by their scars.”

While I congratulate you all on this momentous occasion, when you are having your own State and your own High Court, I may remind you of the additional and onerous obligation invited by you unto yourselves. You have to shape a High Court Bar. You have to develop traditions and lay down precedents worth being emulated in the times to come. The coming generation should feel proud of its elders and ancestors. They must have the tales to tell about your glory. You have to make this High Court the real temple of justice.

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* Speech delivered at the reception function hosted by HC Bar Association on the occasion of establishment of the High Court of Chhattisgarh.