

HUMAN RIGHTS & THEIR ADVOCATES*

The simplicity, humility and yet the height of excellence, reflected in her

lecture of the day, reminds me of a real life anecdote from a biographical account of the great Judge Benjamin N. Cardozo. When he was invited to deliver the Storrs Lectures at Yale, with humility he responded by saying that he could not accept the invitation because "I have no message to deliver". When it was suggested that he might explain to the law students the process by which he arrived at the decision of a case before him, he at once replied, "I believe I could do that." A year's reading and study, in the midst of judicial labors, told him what his message should be. The four Lectures which he delivered are available in book form as "The Nature of the Judicial Process." In his Lectures, he has presented the part played by the judges as the selective agents of societal evolution, and the intellectual methods by which their choices are made and their results attained. It was indeed a message of such vital import and such charm of expression that it hastened his progress from the New York Court of Appeals to the United States Supreme Court. He was aware that his conception of the judicial process was not the generally accepted one; and he had a slight hesitation about the publication of his lectures. With a touch of humour, he remarked, "If I were to publish them, I would be impeached." It is the later times which have justified that Cardozo's understanding of the judicial process in its highest reaches, as not discovery, but creation; that the doubts and misgivings, the hopes and fears, are part of the travail of mind, the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born.

I am told that sister Sujata was given a reasonable notice of time for preparing the memorial lecture to be delivered today. Like Cardozo, she must have prepared the lecture during her Human Rights labors as the member of National Human Rights Commission. The historical events, HR philosophy, analytical study of judge-made law in the two countries, thoughts and the message, contained in her lecture of the day, moving around INHR documents of great significance and impact, are result of empirical research and not of theory. Her lecture has the strength of removing doubts and misgivings, of rejuvenating hopes and alienating fears, is full of creative thoughts and has the potential for allowing new principles to be born. I hope that her today's lecture will be a trend-setter in development of human rights jurisprudence in India and U.K. It has been a treat to the soul to hear a few anecdotes relating to late C.K. Daphtary from her – the anecdotes not only entertaining but also educating and inspiring.

Ladies and Gentlemen! I have some special reason for being here today. I have high regards for Mr. Ashok Desai, President Inns of Court (India) Society, whose invitation for me to be here today was nothing less than a mandate and I had no other option but to obey. And then, I have special regards and affection for sister Sujata for she is the one with whom I sat on the Bench in the Supreme Court of India on the first day of my elevation and she is the one who gave me my first lessons in the law and practice in the Supreme Court of India. On 9th December, 1998, I had the privilege of being a member on the Bench which she presided; and today I could not have missed the opportunity of being on the dais, from which she would be delivering the lecture and I would have the honour of presiding!

Bid and humour are the strongest weapons in the armoury of any successful lawyer. I am reminded of a story, told to me by a very eminent Judge. In a ticklish case, opposite at the Bar, the

Judges saw one of the lawyers, armed with a number of books, obviously containing authorities in support of his case while the lawyer on the opposite side was just standing by himself. To the first lawyer the Judge remarked – “Mr. Counsel, you seem to be supported by a strong armoury on your side”. The lawyer replied – “I do need a rich armoury on my side to win the battle against the bids and sense of humour which are the prime possession of my learned opponent”. I think the opposite lawyer must have been C.K. Daphtary.

Mrs. Justice Sujata Manohar has very rightly said that human rights are natural, sacred and something basic to the creation of a new social order and global justice. She is also right in observing that each of the articles contained in Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Constitution of India has an input for development of human rights jurisprudence – an insight which she has.

That the lectured has achieved its purpose, is writ large from the volume of questions, showering by the members of the august audience. I can appreciate the concern of the society as reflected in the questions. In spite of availability of State, Judiciary and Human Rights activists, why is there so much violation of human rights? In our country itself, we witness incessant violation of human rights and that too often at the hands of the State. There are other powerful democratic and civilized countries of the world wherein, violations do not ordinarily take place within the country but these countries go out to other countries and there they commit grossest violations of human rights. What is the reason? Can it not be stopped? This is the grave concern, noised in the questions.

I am reminded of a story narrated by none else than His Excellency, the President of India, Dr. A.P.J. Abdul Kalam. On last Tuesday, His Excellency spent sometime amongst the Judges of the Supreme Court and there he told this story from Islamic mythology. He said –

“When God first created the human being, it took million and millions of years to get the right human form. He went on experimenting and finally he realized the human configuration he wanted. Once realized, He gave life. First the man opened his eyes and said, “I thank you, Almighty. Second thing he did, he smiled. Almighty was very happy, that his creation had done two right things. Then, God was preoccupied for some time later when God looked at the man he found something missing in him. He generated the fire in milli-seconds and created Shaitan (devil) out of the fire. He asked Shaitan to prostrate before the first human being as he is His image. The Shaitan refused to prostrate. He said, “Oh! Almighty you have created me out of fire, I am a superior creation”. The God was taken back. He thought for a while and decided to integrate the man and Shaitan into a one single system, that are the human beings what we are.”

We as human beings are not just men alone; we are men and *shaitan*, integrated into one being. The proportion of the two may differ from individual to individual but none is immune from the influence of *shaitan*. When he overpowers, we ourselves become violators of human rights; and when *shaitan* is weak and man is strong within us, then we are the protectors of human rights. This battle between men and *shaitan* is as old as the creation of universe itself and birth of human being. According to Hindu mythology there was *Ram Rajya* followed by *Traita* and *Dwapar* and then the present *Kaliyug*. Even in *Ram Rajya*, there were instances when human rights were violated though the number of such instances were very small. In *Kaliyug*, the number has increased.

The fight will continue. Our effort should be to increase the number of protectors and strengthen them. Each one of us shall have to allow the man in him to overpower the *shaitan* in him.

I thank you all for giving me this opportunity of spending a very useful evening with all of you today.

I do not have the privilege of having heard or seen – much less met – the legendary lawyer M.C. Setalwad. My encounter with him was only through his autobiography, 30 years age in 1974, when I purchased the 1971 reprint of the 1970 edition, which I was lucky enough to get for a price of just Rs. 30. In the prefatory note, he has said that he had always disliked talking about himself and that is why he was not inclined to author his autobiography. However, at the end, he told to himself that he was naturally proud of what he had been able to achieve in the profession and of the service, he had rendered to the country in different fields, and yet, he was humble enough to say, that what he had attempted to set down in the book was an account of his life “first of all for my own satisfaction and because *it might be* an encouragement to others”. He was sure of his being proud of his satisfaction but he only hoped that ‘his life’, ‘his law’ and ‘his other things’, could be an encouragement to others. What was his hope, has turned out to be certainty for many of which I am one.

From his autobiography and from what his contemporaries told about him with authenticity, M.C. Setalvad was a multi-faceted personality, which bloomed in its full, when he was decorated with *Padam Vibhushan*. He was a lawyer, extraordinary and a gentleman, par excellence. He commanded the respect and admiration of the Bar, the Bench and the friends alike. The clear stream of reasons, ever-flowing in his mind, never allowed the cobweb of confusion to develop in it. Brevity was hallmark of his expression. Amongst the greatest lawyers which this country has ever produced, it may be difficult to find a parallel to M.C. Setalvad who was blessed with the capacity of putting-forth volume of reasons in smallest number of words and in briefest possible space of time.

Honesty and Human Rights have something in common and what is that common is to be found and reflected in the personality of M.C. Setalvad and so also in the contents of the lecture of the day. I can do no better than to quote Justice V.R. Krishna Iyer, who in his inimitable choice of words and style says – “The Indian advocate has a high role to play and challenges to face, in this sense. But he cannot fulfil this people oriented obligation if he has not a certain professional integrity, fundamental commitment and fearless dedication to values of justice and freedom which are the soul of the World Human Order. The Bar is the sword of justice and enemy of authoritarianism. And the Bench is its senior partner, as it were. Together, they guarantee that right shall prevail over might, that justice shall not oppress the weak.” Justice Krishna Iyer quotes the observation of late D.N. Pritt on M.C. Setalvad – “Motilal Setalvad was by far the most powerful living advocate in the world of law I have known where Anglo-Saxon jurisprudence is practiced.” And then Krishna Iyer pays his own tribute to Setalvad by saying - “He was powerful because he was a paragon”; “He was frightfully honest and so was a fright to the dishonest.”

We shall remain ever grateful to M.C. Setalvad for his contribution to jurisprudence. Nothing could have been a better tribute to his greatness than this lecture on ‘Human Rights Jurisprudence’ delivered by none else than Mrs. Justice Sujata Manohar.



* Speech delivered at C.K. Daphtary Memorial Lecture on “Human Rights Jurisprudence – India and UK” on 30th July, 2004, at New Delhi.