Binding Bonds Between Bar and Bench

Hon'ble Mr. Justice Palok Basu
High Court of Judicature at Allahabad

The binding bonds between the Bar and the Bench were established and continued ever since the framing of Letters, patent dated 17.3.1866, framed under the Charter Act of 1861, which had made provisions for enrolment of legal practitioners and their disciplinary control, simultaneously with the creation of the High Court. As far as the records indicate, the High Court of Judicature at Allahabad had only six Advocates and a very few legal practitioners in the year 1866 when it made a modest beginning with a Chief Justice and five Judges. Those two paragraphs of the Letters Patent may be usefully quoted here: -

Admission of Advocates, Vakeels and Attorneys

"7. And we do hereby authorize and empower the said High Court of Judicature at Allahabad to approve, admit and enrol such and so many Advocates, Vakeels and Attorneys as to the said High Court shall seem meet and such Advocates, Vakeels and Attorneys shall be and are hereby authorized to appear for the Suitors of the said High Court and to plead or to act or to plead and act for the said Suitors according as the said High Court may by its rules and directions determines and subject to such rules and directions.

8. And we do hereby ordain that the said High Court Judicature at Allahabad shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorneys at Law of the said High Court and shall be empowered to remove or to suspend from practice on reasonable cause the said Advocates, Vakeels or Attorneys at Law and no person whatsoever but such Advocates, Vakeels or Attorneys shall be allowed to act or to plead for or on behalf of any Suitor in the said High Court except that any Suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a Co-suitor".

The enrolment of persons desirous of practising before the High Court and

the Subordinate Courts was thus regulated by the High Court. By and large, the working conduct of the legal practitioners was also looked after by the High Court. Though the Legal Practitioners' Act of 1879 came out with formal regulatory provisions concerning the enrolment of the legal practitioners, but from a close scrutiny of those provisions it transpires that the variety in the class of legal practitioners continued to exist even after the passing of that law. Moreover, there were restrictions on the right to practice conferred on classes of legal practitioners and though some ancillary powers were conferred on the Bar Councils, the power to proceed against legal practitioners for professional or other misconduct remained with the High Courts. Enquiries could be conducted by District Courts or Bar Councils if any matter of misconduct was entrusted to it by the High Court. After about fifteen years of gaining independence a central body of Advocates was thought to be created by law, which would have all powers, rights and duties concerning enrolment and enquiries for misconduct of legal practitioners. Consequently, the Advocates Act (Act No. XXV of 1961) was passed which consolidated all laws regarding legal practitioners and established State Bar Councils and Bar Council of India with complete autonomy with regard to legal practitioners' enrolment, their continuance and enquiry into their misconduct. The main features under the Advocates Act are:

Coming into existence of All India Bar Council and common Roll of Advocates; an Advocate being entitled to practice in any part of the country and in any court thus integrating the Bar into a single class of legal practitioners, codifying uniform qualification for enrolling oneself as Advocate from out of whom some may be designated as senior Advocates, and most important of the features being the creation of an autonomous Bar Council for the entire nation and one for each State.

Now the provisions of the Advocates Act are the only provisions, which are attracted for enrolling an Advocate, his continuing as such and removal of his name in case of his misconduct, if so held by the Disciplinary Committee of the Bar Council concerned.

The scribe of these lines began his life as an Advocate being enrolled in the first batch in 1961-62, and if he has been able to achieve or attain anything, it is only because he chose to become an Advocate. The year 1961-62 was the beginning of the transition of the system of regulating 'practice' of Advocates by

the autonomous bodies. The High Court was no more the guardian of the profession of law. It was the good fortune of the scribe to have practised before the courts of lowest jurisdiction to the apex court of the country, finally concentrating on practising in this High Court. The spacious courtrooms of the gorgeous building of the High Court were agog with intellectual fervour, full of debates on legal precepts in highly disciplined court proceedings. It was a treat to watch legal stalwarts as Sri K.L. Misra, Sri S.C. Khare, Sri A.P. Pande, Sri S.N. Kakkar, Sri Ambika Prasad, Sri Jagdish Swarup, Sri R.C. Ghatak, Sir C.S. Saran, Sri M.L. Agarwala, Sri S.N. Mulla, Sri P.C. Chaturvedi, Sri T. Rathore, and a host of other eminent members of the Bar arguing intricate questions of law and placing their arguments with perfect marshalling of facts. They are no more with us but have left permanent impression of their skill, court-craft and intellectual superiority. Such eminent Judges as Sri Bishambhar Dayal, Sri V. Bhargava, Sri S.N. Dwivedi, Sri A.P. Srivastava, Sri S.K. Verma, Sri W. Broome, Sri Gangeshwar Prasad, the legal acumen of each of whom was of highest merit, were seen participating in the legal debates in their respective court rooms with such intensity and sincerity that one felt bad when lunch recess or close of working hours interrupted the sublime atmosphere in the Court. We are lucky that some of the classical Advocates and Judges are still amongst us from whom the scribe and the like of him get inspiration and guidance.

Notwithstanding the fact that the guardianship of the High Court has ended viz-a-viz the legal profession some constitutional and statutory provisions still exist which have maintained the thread of amity between the Bench and the Bar intact. Article -217 (2) of the Constitution of India, apart from other provisions, provides that a person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and has for at least 10 years been an Advocate of a High Court. Not only this, one might happily note that by Article ? 124 (3) of the Constitution, apart from other provisions, it has been laid down that a person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and has been for the last 10 years an Advocate of a High Court, or of two or more of such courts in succession or is, in the opinion of the President, a distinguished jurist. These two constitutional provisions have made it possible for an Advocate to transform himself into a Judge and thus assume the capability of deciding himself a matter today the like of which he was arguing yesterday. Therefore, the qualities imbibed in that person as an Advocate

continue to thrive even after his appointment as a Judge and for this reason, his anxiety, love and regard for the profession which made him a Judge, remains the same. Therefore, the Advocate's gene ingrained in a person such as the scribe is likely to last till his ultimate breath and the constitutional recognition of the unending relationship between the Bench and the Bar compels such Judge always to look to the Bar with high aspirations, sincere expectations and for genuine guidance.

The scribe had suggested on two previous occasions to bring about compulsorily a qualification of three years practice as Advocate for recruitment as Munsif in the relevant Rules. In fact Andhra Pradesh Rules were quoted extensively which have gone to the extent of giving weightage to candidates having practised as Advocates for more number of years than three. It was thought that the sobriety and cool temperament specially required for a judicial Officer would be naturally acquired by a candidate who may have practised in courts for three years and had attended the Chambers of some senior Advocates. While the suggestion of the scribe was perhaps pending consideration, the Hon'ble Supreme Court has in its landmark judgment in the Judicial Officers case laid down that three years practice as Advocate is and would be pre-requisite qualification of those who want to compete in Munsif's Examination. It may be respectfully submitted that it required the matured thinking of the Hon'ble Supreme Court to lay down three years practice as essential qualification of a Judicial Officer which alone, according to the scribe's thinking, was the solitary method of disciplining the raw student from an University on his entering the said service. Legal profession is a hard task master once the student joins the Chambers of a senior Advocate and rubs his shoulder with other Advocates in the court's his temper and attitude are bound to mould adequately and if he is selected as a Judicial Officer, the members of the Bar will not be foreigners to him and the working in his court is bound to be streamlined. The Hon'ble Supreme Court has immeasurably contributed to the harmonious working of the Bench and the Bar in the years to come by its aforesaid judgment and the scribe humbly congratulates the Supreme Court on its farsightedness in this regard.

Work culture alone can be the obvious link to keep the Bench and the Bar jointly engaged in legal pursuits. There cannot be a good judgment unless there is active cooperation of the Bar and there cannot be good arguments unless the

Judge's receptivity is broad based. In this connection the scribe recalls how his Senior Sri Shamsuddin Ahmad taught him the day-to-day practical working in the courts. The Senior Advocates contribution in shaping the juniors attending his Chambers during "training period" had been unique and unparalleled. The "training" left everlasting impact in the career of the new-entrants. It is in this period when the new entrant is taught how and why peaceful co-existence of Bar and Bench is imperative for dispensation of justice. At least one year's training in a senior Advocate's Chambers appears the need of the hour. In fact, the relationship between the Bench and the Bar has to be made so harmonious that the Court's atmosphere becomes sublime. But, if either side loses melody or goes out of beat or plays unmindful of the tunes, the sublimity is bound to be lost. There is nothing more jarring to the ears than an ill measured and out of scale symphony. Problems highlighted these days, would reduce and eliminate, if the work in courts continues normally. If the Chief Justice of India can, not as of necessity but as of utmost sense of urgency, work for half an hour more every day and hours more individually on selected days, with which the entire cooperates, there is no reason why all efforts should not be concentrated to revive the sense of urgency in the litigative infrastructure of the judicial system. It is bewildering when at times complete apathy is shown to the work culture by resorting to strikes or boycott of court-work even by lawyers and that too in the high Courts also. One cannot suppress his anguish at the startling figures obtained from all the districts when the lawyers had struck work in the courts. In the year 1992 all the 63 districts of Uttar Pradesh were affected by strikes. Out of 254 working days, districts Lalitpur, Pilibhit, Faizabad, Jaunpur, Sultanpur, Ghaziabad and Aligarh faced boycott and strikes for 178, 146, 129, 117, 111, 103 and 100 days respectively. Apart from these, there were 15 districts where boycott and strikes were between 80 and 100 days; in 17 districts, it was between 50 and 80 days; in 10 districts it was between 25 and 50 days and in remaining districts it was below 25 working days. The reasons thereof are more agonizing, some of which may be usefully quoted here:

Death of son, nephew, parents or other near or distant relations of lawyers or of Presiding Officers posted in the districts; death of a film actor; inactiveness of Police in arresting an accused; a murder by extremists/terrorists; non-declaration of holiday on account of local religious day; annual Election in a Bar Association; theft in the house of Advocate; irregular or non-supply of electricity and water;

severe cold, heat or rain; transfer of Judicial Officer from the district; non-availability of court fees stamps, etc. etc.

No one would disagree that the aforesaid reasons or the like would not justify abstention from working in courts. Who can dispute that the faith of litigants in the judicial system alone can perpetuate the democratic fabric of our motherland. Foundation of the rule of law is dependent on a cause being taken up in courts and decided in accordance with law with the assistance of the lawyers. If a litigant does not get the opportunity to get his matter decided through courts of law and the established legal methods, he is bound to develop frustration and look out for extra-legal methods. If this attitude develops in the litigants, it is likely to result in raising mafias and criminal gangs as also encourage anti-social elements. Therefore, the scribe has taken steps to immediately start dialogue with all concerned so that no strike is resorted to and the grievances are redressed at the earliest. Some other Hon'ble Administrative Judges have also accepted the suggestion of opening dialogue by all Judicial Officers with concerned persons, the moment a problem is noticed. It shall have to be ensured that the situation is not permitted to drift up to a stage of striking work or boycott of court work by employees or advocates. There is nothing, which cannot be settled and solved by a dialogue by sitting across the table particularly when the members of the Bar and the Bench are so well known to each other from before. There is just no scope for confrontation between the Bar and the Bench. The existence of one ensures the existence of the other. No outside agency can or should be called to intervene in finding out solutions to mutual problems, if any.

There is no choice for the citizens of this country but to rely upon lawyers and the courts, should any difficulty or grievance relating to personal or legal rights arise. The faith of the citizens in the Judiciary is absolute. Simultaneously, it speaks volumes of the integrity of the advocates when it is noticed that the clients/litigants hand over their valuable documents and money to their counsel without any hitch or hesitation and repose complete confidence in them. In return the Advocate is to assure a sincere professional discharge of his duty and nothing more. The fees of an advocate for his professional activity is a legitimately bartered earning in recognition of his professional ability. But his primary duty remains towards his client and not to himself. Many administrative difficulties also crop up because of forcible continuous closure of court’s working. Monitoring the actual functioning of the courts and their output of work becomes difficult and

elusive. Similarly, a Judge or a Judicial Officer is so appointed not to show his prowess. His appointment is not synonymous with exhibition of power of a Judge for, a Judge is appointed only to perform his duties. No decision of a Judge should be accentuated with anything but sense of duty and discharge of the oath that is administered to him. The only thing a Judge or Judicial Officer has to remember is that litigant's interest is supreme. Therefore, a conscientious officer of the Court can ill-afford to boycott work and thereby force the litigant to go back in a pensive mood.

This State has drawn many of its political leaders from out of the members of the Bar just as so many eminent administrators and Judges. Therefore, all the three wings of the State machinery, the executive, the Legislature and the Judiciary have a persisting common link between them and that is the Bar. In fact, the Bar has grown in its numerical strength tremendously. The members of the Bar have to be the best security of the Bench while the persons manning the Bench have to be the well wishers of the members of the Bar by upholding the rule of law, impartial conduct and unimpeachable integrity. It appears auspicious to notice a change in the thinking of the younger members of the Bar thus discarding strike or boycott as a mode of solution to any problem and it is so heartening to think that the glory of the courts will be enhanced by the new generation of Advocates by understanding each other responsibility and limitations and the two inseparable wheels, will carry forward the chariot of justice to the envy of every adversary and to the satisfaction of all concerned. To the scribe and the like, the glorious traditions of the Bar and Bench are objects of worship and the binding bonds between them are inseparable. Secure and steadfast.