

Sri S C Khare-A Tribute

The Hon 'ble Sri K N Singh

The Chief Justice of India.

A PERSON, with tall frame, fair complexion, raised forehead, deep piercing eyes, clad in black Khadi Shervani with Churidar pyjama, appeared before the Returning Officer on behalf of my opponent at the election of membership of the District Board, Allahabad in 1950. Soft spoken and analytical and without rhetorics he persuaded the Returning Officer to reject my objection within minutes of my submissions. That was my first encounter with Sri S C Khare. Subsequently, he congratulated me on my success at the election. Afterwards I came to know that he had been my family lawyer. Seven years later on his persuasion, I joined his Chamber as his junior and learned my first lessons in constitutional and Civil laws under his able guidance. In course of time we developed friendly terms with one another. He, however, maintained strict discipline amongst his juniors and would not brook any slackness in their work either in chamber or in the court. He was a hard task master and would not tolerate any casualness either in the preparation of a draft or analysis of authorities, or in arguments. He made it clear to his juniors that there was no short-cut in the profession of law and that hard work, study and dedication to the cause of the client was the only path to success. In his chamber, I had to work for fourteen hours a day for several years; this moulded my future. Sri Khare had so much faith in his juniors that he would not take over the arguments from them even if the Bench was hostile to his junior's submissions. He would very often tell the client that he would accept the case on the condition that his junior would argue while he would guide him.

That is how Sri Khare encouraged me and other juniors to gain confidence in court. I am reminded of an incident which would show Sri Khare's greatness, love and affection towards his juniors. After the General Elections in 1957, against the order of the Election Tribunal an appeal was provided before the High Court for the first time under the amended Representation of Peoples Act. The first election appeal in the High court of Allahabad was filed by Sri Khare and he asked me to argue the same before a Division Bench consisting of Vashist ,Bhargava and ML Chaturvedi, JJ. I worked day and night with the help of the client and prepared the case thoroughly under the guidance of Sri Khare. Just before the commencement of the arguments, I found great stalwarts of the Bar including the Late Sri GS Pathak, Sri RS Pathak (then working as a junior to his father), Sri Jagdish Swarup who later became the Solicitor General of India and many other eminent seniors ranged against me. Hardly had I opened the arguments when Mr Justice Bhargava lost his temper finding that the very first election appeal was being argued by a junior. He was greatly annoyed and expressed surprise that Sri Khare should have chosen to be away leaving the case to be argued by a junior of the standing of only a few months in the High Court. The Judge could scarcely conceal his annoyance. He suspended the hearing and directed me to call Sri Khare to proceed with the argument. I felt humiliated and rushed to Sri Khare who was arguing in the adjoining court and told him of my plight and the court's insistence to hear him. Sri Khare said, 'Go and argue the case yourself. The client has engaged you. He has full confidence in you and make the court receptive by the force of your arguments.' He refused to come to my aid and left me to my plight. I conveyed to the Court that Sri Khare was not free and that I had to continue with the case as the client wanted me to do so. Mr Justice Bhargava who was known for his brilliance expressed his displeasure in strong terms but the other Judge quietly directed me to proceed with the case. I went on to argue the case for 10 days. Although initially I felt humiliated in the court by the hostile observations of Mr Justice Bhargava but in retrospect I find that the episode helped me to gain confidence. Later a number of appeals were listed before that Bench and whenever I made a request to the Bench for adjournment to enable Sri Khare to argue the case, the Court declined the request. With the result I had to argue many an appeal. For almost 10 months, I had to appear before that Bench in election appeals and it was a great experience. It gave me strength enough to face any court. This could be possible only because of the confidence Sri Khare had res posed in me. He always told his juniors not to gloat over their success in court or to blame the Judge for their failures.

The story of the post-Constitution period of the Allahabad High Court is by and large the story of the genius of Sri Satish Chand Khare-legal luminary and a jurist of exceptional brilliance in the legal firmament. He excelled not only in Constitutional Law but also in Civil Law, Service Jurisprudence, Administrative Law, Laws relating to Land Reform, Rent Control, Tax and, above all, the Election Law. On the promulgation of the Constitution of India, a new jurisdiction was conferred on the High Court under Articles 226 and 227 of the Constitution of India. It gave rise to complex questions of Constitutional Law with which the lawyers practising in the High Court were at that time wholly unfamiliar. The Constitution opened up fresh avenues of litigation arising from the expanding horizon of Judicial Review of executive action, in the context of the Fundamental Rights and the Rule of Law. Sri Khare rose to the occasion to meet the challenge and within a few years, he acquired a complete mastery over the constitutional law. He rose to the pinnacle of the law man ship and reigned supreme as a great constitutional lawyer. He commanded a large practice in the High Court between 1953 and 1980 which may be appropriately termed the 'Khare Era' in the history of the Allahabad High Court.

Sri SC Khare was born in 1912 in Ahiyapur in the city of Allahabad. His father the late Sri Sankatha Prasad was a Zamindar having considerable property. He received his education in Modern High School, DAV College and Government Intermediate College, Allahabad. He took his Degree in B.Sc. (Hons) in the First Division securing First position in the Allahabad University. Though by temperament he had great love for Science, under the influence of his elder brother Sri BN Khare he obtained the Degree in Law securing the first position in the University in this examination also. In 1938 he joined the Allahabad District Bar but could not devote much time to law as he joined the Freedom struggle for the emancipation

of the Motherland. Patriotic fervour made him plunge into the Freedom struggle. He courted arrest in the great Satyagrah Movement on the call given by Mahatma Gandhi. He suffered imprisonment in the 'Quit India Movement'. He was confined to jail four times. Incarceration and dehumanizing treatment meted out to him by the then British rulers could not deter him from his chosen path of service to the Nation. During the 'Quit India Movement' Chittoo Pandey, a local Congress leader of Ballia had declared independence. The declaration of independence had an electrifying effect on the Freedom Movement in the eastern districts. But the 'independence' could not survive long, as the British rulers struck with brutal force and overpowered the local leaders in the district. A veritable Reign of Terror followed. Atrocities were committed on the people of Eastern district especially in Ballia. Houses were burnt and razed to the ground. Women were dishonoured and property confiscated. The local residents were reduced to mere dumb animals. None came forward to protect them.

On his release from prison, SC Khare along with the late Sri Gopalji Mehrotra who later became a Judge of the High Court visited Ballia to collect information and to help the terrorstricken people. Sri Khare had to undergo great hardship as people were scared to tell the truth regarding their torture and suffering as they were apprehensive of reprisals by the British. Sri Khare consolded and encouraged them and fought for them in courts and yet they were hesitant to give shelter to him for the night. The District Magistrate and the police ensured that Sri Khare and his friends were not given any shelter. Sri Khare who had an iron will and indomitable spirit was undaunted and continued his mission. At night he would sleep on the Railway platform. His fact finding mission was successful. The Congress took steps to boost the morale of the local residents and legal action was taken to protect their rights. During this period Sri Khare came in close contact with Pandit Jawahar Lal Nehru, Lal Bahadur Shastri, Acharya Narendra Deo, Purshotam Das Tandon, Firoz Gandhi, Dr Ram Manohar Lohia and many other leaders of that time. Ballia chiselled the legal scientist in Sri Khare and it left a deep and indelible imprint on his career. It gave him indomitable courage and iron will to protect the poor and needy and to fight against injustice.

Approximation of law and life, inspired Sri Khare to make deep studies of Constitutional Laws of other countries. He minutely scanned the decisions of US Supreme Court, Canadian and Australian Courts and the English Courts. He never lost sight of the fact that India was different. He always remained a master of foreign legal decisions but never a slave to it. He was conscious that an indigenous jurisprudence had to be developed.

Sri Khare completely dedicated him self to the subject of law. It was a usual sight to find him awake browsing through the files and books and exploring the layyirnth of law till late in the night and often in the early hours of dawn. Like a true scientist, he built the structure of his arguments. The beauty of his organisation of submissions coupled with the grit and determination with which he marshalled the facts for the legal proposition to be advanced, the incisive logic with which he dissected the provisions of law, and the specificity and brevity with which he dealt the telling blows in the court arena, left his opponents amazed and astounded. The knowledge that Khare was going to appear in a case caused trepidation to many and meant sleepless nights for most of his opponents.

Sri Khare's excellence was not confined to any single branch of law. His arguments have left deep impress on Constitutional Law, Civil Law, Administrative Law, Service Law, land Reforms Laws, Rent Control, Tax and Election Law. It is a tribute to his erudition, scholarship and indigenouness that he holds the envious record of having argued before 24 Full Benches of Allahabad High Court. He was associated with most of the important cases which came up before the High Court between 1953 and 1980. So enormous is his kitty of cases that it is not possible to catalogue all the important cases he has argued.

Dr Ram Manohar Lohia's case marked a turning point in his career. Dr Lohia was detained in 1955 for spearheading an agitation against increased rates of irrigation for water supplied from canals to cultivators. The question was whether Section 3-B of the UP Special Power Act violated Article 19 (1)(a). The significance of this case lies in the fact that Article 19(2) had been amended by the Constitutional (First Amendment) Act 1951 so as to permit reasonable restriction on ground of 'public order'. The matter was res integra. The argument of Sri Khare led to the exposition of Article 19(1)(a) in the new context and also quashing of the detention. The Supreme Court approved the High Court's view (AIR 1955 Alld. 193; AIR 1960 SC). Thereafter there was no looking back and Sri Khare went on crossing one milestone after another. Scores of Full Benches were argued by him and he could always persuade the Court to accept his views.

Sri Khare had an extraordinary forensic ability. Possessed of a sharp intellect, his strength lay in analysing statutory provisions in a manner almost unrivalled. He would simply read the section of a statute before the court in a manner which would project his submission highlighting the legislative intent. He had complete mastery of the art of interpretation of statutes and the Constitution as a result of which he was able to persuade the court to strike down a number of laws. In Administrative Law he had a unique record of success in the court. The entire law relating to the election and removal of a Member of Municipal Board, no confidence motion, and removal of President in the State of UP was laid down by the High Court with the assistance of Sri Khare. The notable decisions being Bhagwan Das vs. State of UP; Sarup Singh vs. Election Tribunal; Tara Chand Modi vs. LC Agarawl; Mangla Prasad vs. District Magistrate and many others. With the assistance of Sri Khare the doctrine of ultra vires received considerable polishing by the Allahabad High Court in State of UP vs. Murtaza Ali (AIR 1961 Alld 477); Parmeshwar Dayal vs. Additional Commissioner, Lucknow (AIR 1964 Alld 7); Khuda Dad Khan vs. State of UP (1979 ALJ 1249). There was hardly a field of law over which Sri Khare did not have a complete mastery. He argued scores of cases pertaining to law of elections under the Representation of Peoples

Act and the Local Bodies and he made great contribution to the development of election law. Some of the notable election cases argued by him which were later upheld by the Supreme Court are Vashisht Narain Sharma vs. State 1954 SC: Raj Narain vs. Indira Gandhi and many others. In Service Jurisprudence, he persuaded the High Court to accept the principle of the applicability of Article 311 of the Constitution to a temporary Government servant. The law reports bear testimony to his forensic ability and articulation of principles of law and it is not possible to refer to all the important decisions in this short article.

In his personal life, Sri Khare was fond of simple living. In spite of huge practice and considerable wealth, he led a simple life with no trace of ostentation. Affluence never changed his concern for the poor. His doors were always open to the needy. I do not know of any instance where he might have returned the brief of a litigant on the ground of his inability to pay his fees. Almost every weekend juniors would flock to him on Friday and Saturday evenings to have their share of drinks and culinary delicacies.

He had struggled the hard way to attain the top and 'hard work' was the *mantra* which he passed on to the juniors. He supervised their work closely and paternalistically. In the court room, Sri Khare kept himself away in cases where the briefs were entrusted to a junior for arguments. The junior had to face the court all by himself. This is how the junior could gain confidence and learn the court craft. Truly, he was a great teacher, Guru and guide. Some of his juniors attained high positions in legal world. Apart from me, the late Mr Justice Yashoda Nandan and Mr Justice VN Khare were juniors in his chamber. Sri NC Upadhyaya who was my contemporary was junior in the chamber of Sri Khare. He also acquired prominence in the field of law and attained the coveted office of the Advocate General. The path shown by Sri Khare and his teachings has left an indelible mark on me guiding me in my journey to the pinnacle of the Apex Court of the country. I shall ever cherish his memory.

Sri Khare was courteous to the court. He never raised his voice in court even if the Bench was hostile and aggressive. He was witty and sharp and always ready with a repartee. I recall an incident when Sri Khare was arguing the case of determination of a civil servant before a senior Judge of High Court. The Judge said, 'Mr Khare does your conscience say that this case should be admitted and relief be granted to the petitioner.' Pat came the reply, 'My Lord, I have not taken the oath of office to consult my conscience while arguing a case. My conscience is not to be consulted in every case.' The Judge kept mum as the reply disarmed him and placed him in an embarrassing position. It is the duty of a Judge to consult his conscience in administering justice and not that of a lawyer. Sri Khare had eminent contemporaries as his adversaries in court like S/Sri GS Pathak, KL Misra SN Dwivedi, SN Kacker and Shanti Bhushan.

Sri Khare was fond of throwing large parties. Drinks and foods were served in plenty at his parties. The members of the Bar had great love and affection for him. He was secular and above sectarianism. He never indulged in loose talks. Nor could he stand anyone talking of scandal in his presence. His life and contribution shall always be cherished for long by generations of lawyers to come.

Veritably he was a forensic Leviathan whose Himalayan heights many would try to scale but few might attain. It would be a befitting homage to him in the 125th year of the High Court to pledge to emulate him.