

LATE SHRI C.K. DAPHTARY

FULL COURT REFERENCE IN THE MEMORY OF LATE MR C.K.
DAPHTARY BY THE HON'BLE CHIEF JUSTICE OF INDIA

(February 21, 1983)

Mr Attorney General, Dr. Singhvi,
Members of the Bar and Ladies and
Gentlemen.

The Attorney-General and the President of the Supreme Court Bar Association have spoken with great feeling about Mr C.K. Daphtary, whose death, a few days ago, was mourned all over the country by friends of law and liberty. Mr Daphtary's life is a man of law's tale; his passion was the liberty of the people and his concern the independence of the judiciary. My Brethren and I share the sentiments expressed by you today. If there were an occasion on which one could not say "I have nothing more to add", it is this. I feel that I must add a few words to yours in order to complete the record, as best as mortals can complete such a record.

It was wayback in 1942 that I first heard Daphtary soon after I passed my Law examination. The Bombay Bar was then studded with legal luminaries like Motilal Setalvad, Bhulabhai Desai, K.M. Munshi, G.N. Thakore, Gajendragadkar, Tendolkar, J.C. Shah and A.G. Desai. In the midst of this galaxy of lawyers, Daphtary had carved out a unique place for himself by the simple charm of his manners and by his robust common-sense. He was not versatile like Vishwanath Shastri, nor did he have the case-law at his finger tips like him. He was a master of facts and, therefore, a master of any situation. He subordinated law to the facts and presented his facts in a manner so dextrous that the law on which the other side relied seemed to have no application. He was fluent, but not eloquent like Bhulabhai Desai, though he had a baritone voice of great surity. He was learned but not in the mould of Motilal Setalvad. He was courageous but he did not employ the invective of F.E. Smith. He combined in himself much of each of these great men and gave to the splendid combination a shape of its own by the charm of his personality and the grace of his words.

While at the top of the profession, he had hardly any equal at the Bar for persuasive reasoning, and for presenting a case by appealing to the commonsense of the Judge. I remember a case in Bombay which he argued under one of the war-time Acts in 1944. Making bricks without a licence was declared an offence by one of the orders issued under the Defence of

India Act, and Daphtary was arguing on behalf of a person who was convicted under that Order. When he rose to challenge the conviction in the High Court, he said in his inimitable style that there was a difference between caking, baking and making bricks, and his client was caking the bricks, not making them. Making bricks, he said, was the result of first caking and then baking them.

His methods were straight and simple and he went about his business unruffled, with a minimum fuss. Indeed, as an advocate he had few equals and as a lawyer he had few superiors. He had no pretensions to burning midnight oil over his briefs and yet, he was rarely taken by surprise by an unforeseen situation during arguments. He never put his case too high and was quick to admit the defects of his case with a disarming frankness. And I consider it necessary to mention that even at the height of his powers, he never bullied or challenged the Judge. His most formidable weapon was his air of reasonableness and his mastery over words which he used for making his point with the aid of homely similes. He did not challenge. He charmed. And his opponents were not called upon to yield; often the opposition dissolved.

Daphtary was a widely travelled person whose professional success enabled him to sample the mixed delight of foreign travels — a thing of joy which, for obvious reasons, is the despair of us Judges.

Daphtary was a lively conversationalist and an engaging post-prandial speaker, possessed as he was with a fund of anecdotes. Indeed, by his wit and humour, he became not only a carrier but the creator of anecdotes. Once he cited a book in the Bombay High Court and the Judge, not having a copy of it, asked Daphtary to lend his book. When the Judge opened the book, he found that there was a bug in it. And the Judge expostulated: "Mr Daphtary, there is a bug in the book which you have given me." Daphtary replied promptly, "My Lord, some bugs are ambitious."

As a talker, he was at his best when he was in a reminiscent mood, especially when his thoughts went back to his early days at the Bar. He would then tell his story with a mischievous twinkle in his eye and with an evident enjoyment, both in the tale and in the telling of it. He had, undoubtedly, a fine sense of humour but I would prefer to put it by saying that he had a fine sense of fun. But then, he did not create fun by gossiping about people. He disliked idle gossip as much perhaps as he disliked abstract ideas. His gaiety and sense of fun were neither artificial nor superficial and beneath them lay concealed a core of gentleness and generosity which grew with the passing of years.

Daphtary played golf but he was no golfer like his son Anil. He joked more than he played. And that is not the way you make bogeys and birdies. But he played for fun which sums up his faith. His real addiction was the large number of books which he read and the large cigars which

he smoked like Asquith and Churchill. He changed from the cigar to a pipe after he suffered the first heart attack, but his first love was still the cigar. While an Advocate-General in Bombay, he would leave his chamber hurriedly with a cigar in his mouth and rush to the court on being informed that his case was about to be called out. The corridors outside the court-rooms in the Bombay High Court have broad stone-railings and Daphtary would keep his burning cigar on those railings and enter the court-room. The argument over, he would pick up the cigar, light it and go back to his chamber. In fact, one way of finding where Daphtary was arguing his case was to look out for the place where the cigar was lying. We, briefless young lawyers, used to chase the cigar to seek Daphtary in order to hear him. And to hear him was like morning dew. In recent years he was afflicted by failing health and the sense of being forgotten by his friends. On the death of his son about three years back, I phoned him to say that I wanted to meet him. When I went to his house, he said: "Oh! you have really come." "What's that?" I asked. He replied: "My old friends are slowly forgetting me. Quite often they phone me to say they are coming, but they never turn up. I wait, wait and wait for them." It was pathetic to hear a joyful Daphtary speaking so sadly about life's experiences. Perhaps, the death of his only son and the illness of his wife had drawn heavily upon his inner reserves.

Daphtary and his wife made a remarkable couple whose radiant devotion to each other was enhanced by their joie-de-vivre. In spite of his own failing health, he watched over her in her illness with a tender consideration peculiarly his. He lost heart on the death of his son but even then, nothing could mar his innate sense of goodness. Indeed, after his son's death one could see in him a strange blend of sentimentality and stoicism.

In the death of Daphtary this court has lost a true friend who, casting everything aside, rose in its defence whenever it was under any attack. You, the members of the Bar, are bound to miss him. But we, on this side, will miss him more. And may I express the hope that though Daphtary is gone, this court will continue to have many more friends like him at the Bar.

My Brothers and I share your feelings and join you in expressing our heartfelt condolences in the bereavement of Mrs Daphtary and the members of her family.

**REFERENCE BY SHRI LAL NARAIN SINHA, ATTORNEY-GENERAL
OF INDIA**

The cruel hand of death has snatched away from us a beloved leader, friend, philosopher and guide five days ago. Mr Chandra Kishan Daphtary will no longer grace our Law Day function, no longer guide us in difficult times through which Judiciary and the Bar and the country as a whole are passing.

Mr Chandra Kishan Daphtary has been described variously as an eminent jurist, ablest among lawyers and doyen of the legal profession whose great forensic reputation has made his name a household word in the country. Our Vice-President has compared him to that great lawyer and Lord Chancellor the Earl of Birkenhead. It is with trepidation that I rise to pay homage to this great man.

Daphtary was, in the truest sense, a Renaissance man. He combined in him the finest virtues of the East and West. Born in the year 1893, he went for his studies at a tender age to England. When he went as a young boy, the story goes that he had a name tag tied to him. He was educated in that famous English public school, St. Paul's and thereafter at that great centre of traditional values, Magdalene College, Cambridge, where he secured first class in classics tripos. Thereafter he was called to the Bar at Lincoln's Inn. Mr Daphtary utilised in full measure the opportunities that were offered to him during his stay in England, particularly at Cambridge, to widen his horizons. Not many may be aware of the proficiency which C.K. Daphtary had in the field of western music, so much so that for some time he used to be a music critic for a British newspaper.

That Mr Daphtary quickly rose to be a leader of the Bombay Bar is known to all. The rise is all the more remarkable in view of the galaxy of leading lawyers at Bombay at that time. He was full of anecdotes about the many colourful personalities at Bombay with whom he had occasion to appear as a junior from time to time. He was equally at home, arguing complicated questions of law and fact or dissecting witnesses in cross-examination, using the most civilised language possible. Apart from purely legal issues, he also kept the moral issues in any litigation in the forefront. He became Advocate-General of Bombay in April 1945. It is a great personal tribute to him that after Mr Motilal Setalvad was appointed Attorney-General for India, the post of second Law Officer also went to the Bombay Bar.

Mr Daphtary was appointed the first Solicitor-General of India in 1951 and in due course he became the Attorney-General for India in 1963. For almost three decades, he dominated the Bar of the Supreme Court, first as a Law Officer and then in flourishing private practice.

The number of important litigations in the Supreme Court which Daphtary conducted are legion. Any researcher into the records of the decisions will find his name associated with almost every important decision since the inception of the Supreme Court. It will, therefore, be fortuitous to refer to any particular case or his role in any one of them. What can, however, be recounted is the universality of the love and respect that was enjoyed by him from the Bench, from his colleagues, and particularly from junior members of the Bar. He had kind words and great patience in dealing with juniors. There are so many instances of the kindness, help and guidance which juniors at the Bar received from him.

Mr Daphtary's varied experience included appearances before International Tribunals and a spell in Parliament, as a nominated member of Rajya Sabha. The award of Padma Vibhushan was in recognition of his services to the nation. These bear eloquent testimony to his versatility.

Mr Daphtary had the broad outlook of a nationalist Indian. His wife came from a well known Bengali family. When I once asked him the significance of his surname 'Daftri' he explained that the family had carried the surname from Uttar Pradesh from where they had migrated.

I asked him whether he could follow Urdu he immediately recited a few Urdu couplets.

His fame had reached Patna before I had the first opportunity of meeting him in 1953 for a consultation on behalf of the State of Bihar.

The consciousness that I was going to meet a giant in the profession made me somewhat nervous but when we met he bestowed such affection and took such personal interest in me that I soon forgot the great gap which existed between us. Thereafter there were numerous occasions when we met and I carry such happy memories of those meetings.

Once when he visited Patna in a case I invited him for tea. He stipulated that he will have nothing except a cup of tea but when he came he had completely forgotten the stipulation and throughout he was in good humour.

Providence had planted in Mr Daphtary many exceptional qualities. He had the gift of a quick grasp of a case and mastery over language. His advocacy was superb. He knew exactly what to say and when to say and even more what not to say. His brilliance combined with his delightful sense of wit and humour and unshakable integrity gave him a unique personality. His life was gentle, and the elements so mixed in him that nature might stand up and say to all the world, "This was a man."

The closing years of his life were very sad indeed. The passing away of his only son was a crushing blow and his passing away is the most cruel shock that providence could have given to his widow.

May God give her the strength to bear this tremendous loss and may the soul of the departed leader rest in peace.

**REFERENCE BY DR. L.M. SINGHVI, PRESIDENT OF
SUPREME COURT BAR ASSOCIATION**

Daphtary's death marks the close of an era in the history of our legal profession. He died full of years and honours, deeply loved, affectionately remembered, fondly cherished, universally respected. He died without any suffering or pain. He was, as it were ready to go. There was no hurry, no hustle, no hassle. There was peace and repose on his face when we took his mortal remains to the crematorium and we all felt :

Life's race well run
Life's work well done,
Life's victory won,
Now cometh rest.

Daphtary was the doyen of the Indian Bar. He inherited that mantle from Setalvad. The two of them were like twin colossi on the Indian legal scene. They were quite unlike each other but they belonged together and complemented each other. They were like the two sides of a vintage coin, I would call it the commemoration gold coin of a glorious age of our legal realm. It was a happy coincidence that they made up a team and they happened to be the Attorney-General of India and the Solicitor-General of India respectively for a period of nearly 11 years. Characteristic of Daphtary's ease and charm and of his regard and loyalty for Setalvad is a letter Daphtary wrote to Setalvad on April 25, 1961 under the mistaken impression that Setalvad had on that date completed 50 years at the Bar. He wrote : "Really, I should have been present in person on your doorstep to greet you at the time of your rising. But alas! I have never been able to acquire healthy animal habits." He added : "I wish you many more years of active life, so that the profession may continue to have before it what it so badly needs at present — a vital exemplar not only of superb forensic skill, but, what is even more important, of the maintenance, observance and furtherance of the highest traditions of right thinking and right conduct." Both Setalvad and Daphtary were such vital exemplars. The longevity of these two great leaders of the Bar strengthened our traditions and was a source of strength and inspiration to us all.

Carlyle said in one of his essays that a well-written life is almost as rare as a well-spent one. Daphtary's life was truly well-spent but it could not easily be matched in cold print. Words would often be inadequate vessels to capture and contain a life so full and rich and so replete with colour and sparkle. Daphtary was connoisseur of words and he knew their limitations. Perhaps that is why, Daphtary has left us no autobiography. He lived a magnificent life and did not want to spoil it by writing about it

in the first person singular. I used to go to him quite often and one of my pet themes was to prod and pester him with the suggestion that he should write his autobiography for I believed it would be a notable chronicle of law and a memorable contribution to the literature of law. Often he would evade the issue or digress by cracking a joke. Sometimes he would appear to agree with me that he should at least write his reminiscences, if not a full-length autobiography. The last occasion, which was quite recent, when I brought up the subject, he said in his inimitable way: "You know, Singhvi, the unwritten autobiographies are the best." And he left it at that. Perhaps we owe it to ourselves to commission a biography of the Supreme Court and its Bar to tell us of our heritage and our horizons. What would such a biography of an institution contain? A biography may be described as a field, spade, digging of roots and a gathering of flowers. The biography of the Bar and Daphtary's biography would offer us the fertile and evergreen field of law, the conventional spade of our profession, the refined tools of his superb forensic acumen and skill, an inspiring awareness of our role and our roots as a profession, and the heartwarming and joyous vista of a valley of flowers of personal, professional and institutional achievements. His life would in a sense be the story of Indian law and lawyers at its engaging best, without a dull moment.

Every distinguished lawyer has some special ability or quality which makes him what he is. Some have great learning, others have great capacity for sustained work; some have great eloquence, others have great persuasiveness; some are endowed with quick and clear understanding, others have a felicity of expression and a way of putting their points across; some have a profound grasp of the first principles; others are gifted with an uncanny memory which stores up, like an album of photographs, citations and ratio decidendi and obiter dicta of case-law; some have cold, rational logic, others have sturdy, practical commonsense. A combination and permutation of some of these qualities in different measures identifies the style of each advocate and gives that style an individuality. Daphtary possessed many of these qualities, some of them in an exceptional measure. He was shrewd, deft and forthright, urbane, courteous and considerate. Perhaps he was not as hardworking as some other great lawyers. Instead, he was extremely quick to grasp and to assimilate. Daphtary once told Chagla, somewhat self-deprecatingly, as was his wont, that his philosophy of life was minimum work in return for maximum results. If Daphtary practised this philosophy of life to perfection, that was because he was thorough on the points that mattered. As an arguing counsel, he delivered easily and without any labour pains. He could make a most intricate proposition of law look obvious, logical and right. He had a knack of understanding points of law and facts swiftly and of stating them crisply and simply. He was not a voracious reader but he absorbed what he read. His knowledge did not sit upon him as a burden or a deadweight. He never looked and never sounded bookish. Pedantic or ponderous show of learning was alien to

his style. He had a vast experience to match and temper his extensive knowledge. He had a sense of occasion which was unequalled. He had a silver tongue. His words were well chosen. He had an exquisite sense of humour. There was wit in his wisdom and there was wisdom in his wit. He was a great raconteur. His anecdotes and epigrams always went home. He was frank and friendly and yet formidable in his retort and repartee as also in his remarks and reactions. It was said by Lord Chesterfield more than two hundred years ago that wit is so shining a quality that everybody admires it, most people aim at it, all people fear it, and few love it except in themselves. If we all loved Daphtary's wit that was because he used it with good nature, to put everyone at his ease, to make his point without hurting. He was capable of using wit in a devastating manner but he did it rarely. Most of the time, his wit was "like the sun in the temperate zones, without scorching". So great was his reputation as a wizard of wit and as a great master of the art and craft of advocacy that a very large number of entertaining episodes, telling anecdotes colourful phrases and conversational quips, fit for all seasons, are ascribed to him. He have it on the testimony of Mr Justice Hidayatullah that when he was elevated to the Supreme Court, he was told by Mr Justice Vivian Bose: "Be careful of Daphtary. He is inclined to pull the leg of a Judge if he gets a chance." There was no dearth of such chances for what Daphtary's friends called his genius for innocent mischief for which Daphtary took no personal responsibility as he traced it all to the date of his birth. My impression is that he pulled not only judicial limbs but the limbs of his learned friends at the Bar also, but he did it in a very subtle way and only once in a while. He often pulled my leg for being a puritan but condoned my lapses because I belonged to his fraternity of pipe-smoking.

It was always a privilege to appear in a case which he might be doing. He was quick to appreciate junior members of the Bar whether they appeared with him on the opposite side. I remember an election appeal in which I was appearing for the election petitioner and Daphtary led a distinguished battery of my learned friends on behalf of a cabinet minister in the Central Government. He had torn my case to pieces by sheer advocacy and had created an impression that the election petitioner had no case. After many days of arguments when I happened to succeed eventually in persuading the court to my point of view, my reward came in the form of very generous and sincere appreciation from Daphtary which meant so much to me. I learnt, as we all learnt, a great deal from him in making a choice of the point or points to be put in the forefront and in anticipating Bench queries and reactions. In that he was like a great chess player but he was extremely fair, fair as fair can be. He had great tenacity but he did not like to press a point beyond its strength and capacity. Sometimes when he thought that one or more of the judges on the Bench took too articulate or vigorous a position with which he could not agree, he would say so firmly, pass on to another issue and come back to it with a persuasive charm and in a more

receptive and hospitable ambience. He was also ready to concede if he found a point unarguable, more so when he appeared on behalf of the State or the authorities. He was not egocentric. He would never belittle anyone. Many of his jokes and anecdotes were at his own expense. He liked life. He liked people. He tried not to see the faults of others. Nor did he see himself as the axis or the epicentre of the universe. Like Voltaire, he enjoyed pricking bubbles of solemnity. There was in his temperament a high degree of tolerance, objectivity, dispassion and openmindedness, and this I saw in an extraordinary measure as his personal adviser and advocate. The President of the English Bar told me last summer what an awesome responsibility it was for him to advise Lord Denning as his client in the recent episode which led him to resign. To be Daphtary's counsel was also awe-inspiring because he was the classic example of a lawyer's lawyer. It was, however, easy because of his intrinsic objectivity and sense of humour. He was capable of being objective even where he felt strongly and passionately about something.

Mr Daphtary was present as Advocate-General of Bombay when the Supreme Court was inaugurated in 1950. The office of Solicitor-General was created in 1951. Daphtary adorned that office from 1951 until the year 1962. He became the Attorney-General of India in 1963 and remained in that office until 1968. Law reports abound in innumerable decisions of this court in which Mr Daphtary led the battle array for the Union of India, for the States and for private parties. After he relinquished the office of Attorney-General, he was nominated to the Rajya Sabha. He was elected as President of the Supreme Court Bar Association in 1969, 1972, 1975 and 1976. In the year 1972-73, I was Vice-President of the Association, with him as the President. It was during this year that the supersession created unprecedented turbulence. He had to leave that morning for Jammu and therefore he rang me up very early in the morning. When I pleaded with him to cancel his visit owing to the magnitude of the problem, he said he was turning his "vice" into virtue. He also asked me to consult with Chagla. During that year and later, he became the quiet conscience and the articulate voice of the Bar. Though he was a Member of Rajya Sabha and had every equipment to make him the greatest living parliamentarian of his time, his heart was in the Bar and the Bar was his chosen forum.

Mr Daphtary's services to the Indian Bar and to the Supreme Court Bar Association were of an abiding and enduring nature. They cannot be merely inventoried and catalogued numerically because they came to be woven in the texture and fabric of what we are or may aspire to be. His leadership was wise, moderate and far-sighted. He was courageous and fearless, candid and uncompromising, firm and unbending when it came to fundamentals. On the other hand, as a liberal and a moderate he was also prepared to see the opposite point of view, and to give respect and

accommodation to it. We always turned to him for advice and guidance and he gave it unstintingly. In recent years he did not come to the court except on the Law Day. He liked the idea of Law Day meetings and was very pleased when I discussed the proposal with him in 1979. He was very sorry that he could not attend our last Law Day meeting on November 26, because he became unwell in the early afternoon and asked me to convey his greetings to everyone on that occasion. His son's death, his wife's illness and his own failing health made him unhappy but he never lost his equanimity and composure. Nor did he lose his interest in law. On human rights and public interest issues, he had broad sympathies with new developments in this court but he wanted us to hasten slowly and with a sense of continuity and coherence in our legal system. Not only were his mental powers unimpaired until the end, his heart was in the right place. A little over a year ago, he helped to found the Indian Centre for the Independence of Judges and Lawyers and became one of its honorary members. He remained President of the Bar Association of India until his death.

Many former and sitting judges and many lawyers have asked me to convey to this court and its Bar their heartfelt homage to the memory of Mr Daphtary. Mr M. Hidayatullah, Vice-President of India and our former Chief Justice asked me in particular to associate him in paying a tribute to Mr Daphtary whom he has aptly described as a household name in the world of law.

We mourn the passing away of Mr Daphtary and are saddened by the departure of that luminous glow of human warmth and the symbol of the greatness of our profession, from our midst. He is no more but his spirit will always be with us as a loving legacy and as a living testament. We convey our deep commiseration and condolences to Mrs Daphtary who was an ideal consort and companion to that many-splendoured man. With all the other members of Mr Daphtary's family, we share their grief for he belonged as much to our family.

SHRI C.K. DAPHTARY: THE DOUGHTY CHAMPION OF THE BAR AND THE JUDICIARY

by

V.G. RAMACHANDRAN*

It is with mixed warmth and nostalgia appropriate for an octogenarian member of the Bar that I ruminate over the erstwhile golden age of the Bar, when the rank and file of the profession stood stout to uphold not only the dignity of their own learned profession but also to defend the Independence of the Judiciary. Unfortunately in the last decade they were needlessly maligned and criticised by the bureaucracy of the day who felt chagrined at honest judicial verdicts against them. It is thus that I pay my humble tribute to the late C.K. Daphtary who was a leader par excellence of the Bar, a veritable and stout champion of the Bar and the Judiciary. He lived and practised at a time when giants of the profession like the late Messrs M.C. Chagla, M.C. Setalvad, N.C. Chatterjee, and others shone. Curiously the doughty champions of the Bar with excellent forensic abilities were mostly drawn from the Bombay Bar. Even now the Bombay Bar practising at the Supreme Court are of high mettle. True there are outstanding legal luminaries drawn from other States such as Uttar Pradesh, Madras, Calcutta etc., the late Mr Erdley Norton's jibe at the Madras Bar comes to my mind. When the Bar was allergic to support him in the famous case of *Sullivan v. Norton*¹ vis-a-vis privilege of counsel to cross-examine high V.I.P.s of the State on their dubious deals unbecoming of their status, Mr Norton merely said 'the Madras Bar is but a walking library', meaning they are deeply learned but lack guts! Of course as a Madras jurist I may add there are a few exceptions but generally the Bar all over India is slowly losing its guts! This modern phenomenon has to be remedied soon in public interest.

Mr C.K. Daphtary was not only an encyclopaedia of legal knowledge but a stout and staunch fighter in and outside the court for the independence and dignity of the legal profession. He was forthright in his defence when the Bar or the Judiciary were maligned. But he never hit below the belt. He fought honourably and like a good knight errant intent upon victory. Thus he figured at the Bombay Bar and later at the Supreme Court Bar, as the Solicitor-General of India and lastly as the Attorney-General of India.

After Mr C.K. Daphtary retired from his office of Attorney-General of

India he continued to practice for some years with the same vigour. He was the distinguished President of the Supreme Court Bar. He further distinguished himself as a sound Indian jurist in many international forums. He was the President of the Bar Association of India for many years, a capacity in which he was also editor of *The Indian Advocate*. A look back into the President's page in *The Indian Advocate* will show how boldly and justly he championed the cause of the Bar and the Judiciary. He was for robust constitutionalism and patriotism. Thus vis-a-vis the Law Day of November 26, 1979, he said :

In a sense, 'Law Day' is as important an occasion as Independence Day or Republic Day for it signifies the acceptance of a Constitution that was framed after a long and detailed discussion by a body which comprised men with diversified experience in many walks of life and represented the outcome of much long and devoted labour. . . .The last few months have witnessed a number of political crises which, *given legislators of goodwill amenable to reason and compromise and not intent upon their self interest and aggrandisement by way of self or power*, were capable of being met satisfactorily by conventions and agreements within the Constitution. *Unhappily that was not so* and ultimately the crises resulted in dissolution of Parliament.

In another issue of the *Indian Advocate* (1978) he had a jibe both against the lawyers and against Justice Krishna Iyer, who in a case under the Industrial Disputes Act posed an obiter that "lawyers constituted among others an 'industry' ". Said Mr C.K. Daphtary, "There is a hint in the judgment that the avocation of lawyers might be looked upon even as a business or a trade. We lawyers must ask ourselves whether we ourselves have not contributed to our own decline from the original high position that the profession held and whether with necessity, now-a-days of mixing in the market place with the public, we have not forgotten some of our tradition and our code of ethics."

Thus spoke our Bar leader to rouse the profession to a sense of high values and uphold the good traditions of the Bar. He exhorted them to equip excellently their knowledge and insisted on a high standard of legal education and active apprenticeship which is sadly lacking in the last one decade and more. Though he criticised the Bar for lagging behind in observing the moral code, when occasions arose he championed the Bar when Judges sometimes illtreated them. He also championed the cause of the Judiciary. In 1971 a booklet sponsored by one O.P. Gupta and others published allegations that a Judge made up his mind about the decision of a case and would not hear the arguments of counsel and manipulated to get the erroneous judgment delivered from another Judge of the Bench, thereby ascribing dishonesty to the Judge. The Supreme Court Bar protested against such a libel on the Judges. It was Mr C.K. Daphtary in his capacity as leader of the Bar who filed a miscellaneous petition under the Contempt of Courts Act, 19 2 for action in contempt against Mr O.P. Gupta and other contemnors who had the audacity to circulate the booklet. The

attack of O.P. Gupta was on a retired Judge Mr Justice Shah. The arguments of Mr Daphtary in that case were superb and the court convicted O.P. Gupta though it levied a sentence of only two months.²

C.K. Daphtary had appeared in many notable cases involving constitutional and administrative law where he invariably put the case fairly and ably. Even when representing the State, he was fair to the respondent citizen. He was ready to support any good public cause. He was keen on legal aid being given to the poor. Former President Shri V.V. Giri won his Election Case before the Supreme Court through the good efforts of Mr C.K. Daphtary.

In the days of Emergency and the passing of the 42nd Amendment Shri C.K. Daphtary showed his high mettle and forthright denunciation of Parliament abrogating or eroding the rights of the citizens and the curtailing of the powers of court to review unconstitutional Acts. In the symposium held under the auspices of the Bar Association of India he observed :

The Constitution at present is a balanced one holding the balance between the Judiciary, the executive and the legislature; and it is important to ensure that this balance is not disturbed. . . the majority of the writ petitions (under Article 226) are by reason of administrative orders which are either oppressive, arbitrary, unthinking, unjudicial by quasi-judicial organs or lacking in natural justice. If (by amendment) the words 'and for any other purpose' are taken away from Article 226 and the fundamental rights jurisdiction — jurisdiction to issue a mandamus or a certiorari etc., upon the breach of fundamental rights, the resulting Court remedy is only vested in the Supreme Court. So the aggrieved citizen has to traverse more than thousand miles from his home to seek a costly remedy in Delhi.³

Later, at the second symposium held in May 1976, he again criticised the Constitution (44th Amendment) Act that was passed particularly vis-a-vis the new obnoxious Articles 31-C and 31-D whereby courts are shut out in respect of matters covered by those Articles. He called out: "Look at these articles which are horrifying not only in their possibilities or its probabilities but also its certainties."⁴

After the Emergency was over Mr C.K. Daphtary felt greatly relieved and said :

The dark days of the Emergency have come to an end. The caucusocracy which spread fear all over the country has left us and has been banished, it is hoped for ever. All the freedoms have been returned to the citizens but it is yet to be seen whether they are able to manage their freedoms so as to preserve and maintain the right balance between the exercise of their liberties and the necessary amount of control by the authorities. . . . There was however a much more subtle attack on the profession as a whole. . . . The basic idea is to

undermine the Independence of the Profession as a whole and reduce it to a tool of the executive authority to make lawyers 'Yes men' ready to approve and applaud every move of the party in power whether legislative or executive.⁵

This is evident enough of Mr C.K. Daphtary's keenly felt regard for civil liberties and his valiant lead to the Bar during times of peril.

His career at the Bar was robust and meteoric. Truth was never a casualty in Mr C.K. Daphtary's hands. Citizens of India felt grateful to him. It is a great privilege to join in this tribute to the memory of this great legal luminary, C.K. Daphtary. In 1969 when I mooted the idea of starting the *Supreme Court Cases*, the then Judges of the Supreme Court and leaders of the Bar welcomed the idea. Mr C.K. Daphtary especially was most keen on it. I personally miss the Trojan figure of this great stalwart and live on memories of the past grandeur that enlivened the legal profession in my own time.

I pray with all brother members of the Bar that the Indian Bar may produce men of Daphtary's model to stand by the rule of law and to uphold the highest traditions of our profession.
