

ADDRESS BY THE HON'BLE MR. JUSTICE C.K. THAKKER, CHIEF JUSTICE,
HIGH COURT OF JUDICATURE AT BOMBAY, AT THE FULL COURT REFERENCE
TO LATE MR. NANI ARDESHIR PALKHIVALA, ON THURSDAY, THE 19TH
DECEMBER, 2002.

My esteemed colleagues, Mr. Vahanvati, Advocate-General, Mr. Dhakephalkar, President of Advocates' Association of Western India, and representative of the Bar Council of Maharashtra & Goa, Mr. Dada, President of the Bombay Bar Association, Mr. Mehta, President of Bombay Incorporated Law Society, Members of the Bar, Ladies and Gentlemen,

Today we have assembled here to mourn the sad demise of Mr. Nani Ardeshir Palkhivala, one of India's eminent jurists, philanthropist and legal scholar who left for his heavenly abode on 11th December, 2002.

Nani Palkhivala was born in Bombay on 16th January, 1920. He obtained his M.A. and LL.B. degrees from the University of Bombay. He was enrolled as an Advocate on the Original Side of the Bombay High Court in 1946. He started his career in the Chamber of Sir Jamshedji Kanga. For many years, he was Professor of Law at the Government Law College.

Nani Palkhivala soon built up reputation as one of India's leading specialists in the field of income tax law. A book "*The Law and Practice of Income Tax*" authored by him became an authority on the subject. Palkhivala appeared in a number of leading cases in the area of constitutional law, including the historic *Keshavanand Bharati* case. He also argued several important cases before foreign courts, including the International Court of Justice at Hague. He was a Member of the First and Second Law Commissions of India.

In April, 1979, Palkhivala was conferred an honorary degree of Doctor of Laws by Lawrence University, Wisconsin, USA. A portion of the citation read thus:

I quote:

" As India's leading author, scholar, teacher and practitioner of Constitutional Law, you have defended the individual, be he prince or pauper, against the state, you have championed free speech and an unfettered press; you have protected the autonomy of the religious and educational institutions of the minorities, you have fought for the preservation of independent social organisations and multiple centres of civic power. ... Never more did you live your principles than during the ... 19 month ordeal which India went through in what was called 'The Emergency' ... Under the shadow of near tyranny, at great risk and some cost, you raised the torch of freedom. ... "

Unquote.

Rich and well-deserved tribute, indeed.

Palkhivala served as Ambassador of India to the United States of America. In recognition of his contribution to Jurisprudence, in 1998 the President of India conferred upon Palkhivala the title of *Padma Vibhushan*.

Besides the field of law, Palkhivala was also interested in the world of business and industry. He was on the Board of Directors of many leading Companies, the Tata Group, being one of them.

Palkhivala also contributed articles for newspapers and journals in India and abroad, and made hundreds of speeches. Special mention must be made to his annual lectures on budget. Thousands of citizens rushed to the venue to hear his budget speech. Among the books he has authored are *Our Constitution Defaced and Defiled*, *A Judiciary Made to Measure*, *India's Priceless Heritage*, *We, the People*, and *We, the Nation*.

Apart from qualities of head, Palkhivala had all the qualities of heart. He had respected one and all. He was a man full of warmth, love and emotion. He was God-fearing and humble. He had enriched India's public life. He will always be remembered for his erudition, eminence, grace and unfailing courtesy.

Though Palkhivala is not with us today, one would recall that "the fact that we cannot see our friends or communicate with them after transformation which we call 'death' is no proof that they cease to exist".

I am reminded of what Alic Cary said:

I quote,

" Ye doubting souls, from doubt be free –
Ye mourners, mourn no more;
For every wave of Death's dark sea,
Breaks on that blissful shore. "

Unquote.

In this hour of grief, on behalf of my esteemed colleagues, on my own behalf and on behalf of all of you assembled here, I convey my heartfelt condolences to the members of the bereaved family. May the Almighty give them strength to bear this great loss and may the departed soul rest in eternal peace.

My Lord the Chief Justice, Hon'ble Judges of the Bombay High Court, Mr.Rajiv Patil, representing the Bar Council of Maharashtra & Goa, Mr.Rafiq Dada, President, Bombay Bar Association, Mr.P.K.Dhakepalkar, President, Western India Advocates Association, Mr.Prakash Mehta, President, Incorporated Law Society and friends.

We stand here today in humble deference to the Majesty of God, who can create a person like Nani Palkhivala, give him liberty to write his own history and then order that even such a person shall become a part of history. We stand here today in the realization of the omnipotence of God who liberates the soul from the body and yet ensures that the spirit and the fragrance will live on forever. We stand here today to pay homage to a man on whose passing away, the entire country has paid glowing tributes with affection. Nani Ardeshir Palkhivala, a man for whom no amount of praise can ever be adequate.

My Lord the Chief Justice has dealt with Nani's life and illustrious career. In a sense it is difficult to highlight any particular aspect of the life of a person who had already become a legend in his own lifetime. It is difficult to say something new about a person whose life, career and achievements have been in the public domain and public property for several decades. Every chapter of the story has already been written and read, so many times over.

After Nani got his Law Degree, in 1944 he appeared for the Advocates O.S. Exam., one of the most difficult examinations at that time. Only a handful passed every year. Between 1944 and 1950, in a short span of six years, Nani had already made his mark. There had never been such a phenomenal rise at the Bombay Bar. His knowledge of the fundamentals of the law gained during the time he spent studying for the Advocates O.S.Examination stood him in good stead throughout his life. He was at perfect ease with every branch of law, whether it was constitutional law, corporate law or income tax law. For income tax law he had a special affinity and the book he wrote, to which his illustrious Senior, Sir Jamshedji Kanga generously lent his name, is one of the greatest treatises relating to the law and practice of income tax.

But the precincts of the High Court and the limits of a legal practice could not contain a man of such varied talents. The legal world was not big enough. There were several claimants for his attention. Industry recognized his worth and he joined the Boards of several Tata Companies. Ultimately he rose to be the Vice Chairman of Tata Sons. He was active in public life and economic affairs. He spoke of tax reduction and liberalization at a time of rigid state control. He was a prophet who spoke before his time. But for us lawyers, his greatest contribution will always be measured in terms of what he did for constitutional law. He dominated every leading constitutional case in the Supreme Court in the 60s and 70s.

In 1999 there was a function to felicitate Nani at which the then Governor of our State, Dr.P.C.Alexander described Nani as the best Finance Minister this country never had. He was quite right. Nani was larger than any post. A law office or a ministerial berth was not big enough for him. He felt constrained and restricted by office. Perhaps this was why he consistently declined every major office that was offered to him over the years.

And in the end if I were asked to select two words to describe Nani Palkhivala I would settle on the words "passion" and "commitment". His life was all about passion and commitment. There was passion in his advocacy. There was commitment in his life and concern for his country. He was passionate in his belief in freedom, freedom of all kinds, of thought and expression, the freedom to pursue business and professions. It was the same passion that electrified the mind which could illuminate a dark room. It was the sense of commitment that gave him sincerity of purpose and breathed life and vigour into the causes he espoused.

And finally today, we grieve because the world has lost a giant. But we must take solace from the fact that Heaven will surely be a better place.

ADDRESS BY MR. P.K. DHAKEPHALKAR, PRESIDENT, ADVOCATES' ASSOCIATION OF WESTERN INDIA, ON THE OCCASION OF THE FULL COURT REFERENCE TO MR. NANI A.PALKHIVALA, ON 19TH DECEMBER, 2002.

My Lord the Chief Justice, the learned Advocate General and the President of Bombay Bar Association.

I fully endorse the feelings expressed by you Sir, and I wish to add few more words of my own about the great legend, Nani Palkhivala.

It was Winston Churchill, who said that one mark of a great man is the power of making a lasting impression upon the people he meets and another is so to have handled matters that the course of after events is continually effected by what he did. Nani Palkhivala loved and respected by millions, fulfilled both these hard tests.

Some time in the year 1989 I had an occasion to meet the great man personally and he made a lasting impression on me. In those days I was Secretary of the Association and we decided to invite Shri Nani Palkhivala in the Bar for delivering the lecture. I went to his office at Bombay House on 3 - 4 occasions prior to finalization of the lecture. Even though I was a junior, he treated me with dignity and personal warmth. In the second or third meeting, when I came to know that his birthday was on 16th January, I told him that my grand father, who was a Mofussil Lawyer also shares his birthday with him. Shri Palkhivala, upon mentioning this aspect, looked at me warmly and said, "young man, in that case, you should call me Nana and not Nani Palkhivala". Nana, in Marathi means 'grand father'.

He had great respect for the Advocates Association of Western India. While the details regarding the time and the dates were being finalized in respect of the lecture, he gave me specific instructions that the President of the Bar Association should not come down at the gate of the High Court to receive him or to leave him. He came to our Bar Room, he spoke and he conquered. His beautiful lecture in the Bar Association is still remembered by all the members who attended it.

Palkhivala, beyond the question, was a legend and an outstanding man. He played many parts with great distinction. He remained close to the heart of power for decades. But, the corroding power of power left his inborn simplicity and humbleness untouched. He was a living example of the Sanskrit verse " VIDYA VINAYENE SHOBHTE".

In the Court of Law, he was a great lawyer. He argued well, good humored and used the gentle rapier to get his foe down, taking care, not much blood was shed. As is well known, his greatest achievement in the court of law was to protect the basic structure of the Constitution. For sheer advocacy, Nani Palkhivala was unsurpassable. His clarity of thoughts, coupled with precision and elegance of expression, impassioned plea for the cause he espoused, excellent court craft and ability to think on his legs, rendered him an irresistible force. He had a phenomenal memory. For his prodigal memory, he was once called a reincarnation of Lord McCaulay. His great asset was his ability to master any aspect of law. It was not an over night acquisition. Sheer hard work and long years of study brought him to this position. From his childhood, Shri Palkhivala utilized every moment of his life for acquisition of knowledge. He could arrange in his mind all the points in an orderly and logical manner. Before he took up any brief, he would study it in depth. He once said " in arguments or discussion, the courage and conviction of the person arguing the case can change the thinking of the audiences". Once he argued India's case against Pakistan in respect of the Runn of Katch and Civilian Aircrafts over flying India, which will go down in legal jurisprudence as a landmark argument. In the International Court of Justice at Hague, Palkhivala stunned every one by his brilliant oral advocacy without reading from a written text, as is the practice of all other councils. To me, one of his greatest virtues as a lawyer was he single handedly restored the sagging prestige of lawyers in this country. Because of his all round ability, he was undoubtedly the Indian Lawyer of the century.

He was truly a multi-faceted personality. He was an Orator par excellence not only on budgets but also on various subjects. He traveled across the length and breadth of the country and did great service to the nation in public education by giving innumerable lectures. The theme everywhere was, freedom and democracy, a rational economic policy, which liberated and encouraged the initiative and creative ability of the people who built up the national economy and the need for public morality, based on India's traditional value. He came to be considered as a conscience keeper of the nation and as one who dared to speak the truth howsoever bitter it was to the Rulers and the establishment. He was indeed a modern day "LOKHITWADI". In latter years of his life, he was not shy of telling the people the way in which India was being governed. In 1990, he wrote.... "the most persistent tendency in India is to have too much government but too little administration, too many laws but too little justice, too many public servants but too little service, too many controls but too little welfare". But above all, he always believed in Indian democracy. He delivered all his lectures without a single piece of paper in hand. He held audiences spellbound wherever he went. He was not a mere Orator but a phenomenon. All his lectures were given for strengthening the democracy and Constitution.

He authored great books, like "We the people & We the Nation" with a view to evoke the conscience of the people for protecting the democracy and well being of nation. He practiced what he preached. He appeared, helped and defended every body, cutting across all political lines. He appeared for Indira Gandhi and after proclamation of emergency, he promptly returned the Brief. When RSS was under Income Tax scrutiny, Palkhivala saw it as a harassment, arising from political considerations and helped the organization to defend itself. He had great sympathy for economically backward and socially oppressed classes. He addressed big rallies arranged by Shri Kanshiram when Kanshiram was a Union Leader in the Ordinance Factory at Pune.

He used to support the public causes by giving donations. Few examples are, for years together, he gave 10% of his income to Bhartiya Vidya Bhawan. He also donated a huge sum of Rs.2 crores to Shri Shankar Netralaya at Chennai.

Throughout his active career, Shri Palkhivala practiced "SWADHYAY" i.e. self development. He believed that every moment of his life should be spent in learning Patriotism was a virtue which he shown through his acts. He never wore his patriotism on his sleeves but felt deeply for the country, its people and heritage.

He had respect for all the religions. "Sarvadharm Maitri Pratishthan, at Bhartiya Vidya Bhawan, of which he was a Chairman, was an activity close to his heart. He was a Hindu, a Muslim, a Parsi, but above all, he was an Indian first.

His last words in a lecture which he delivered to Australian College of Defence & Strategic Studies were "...today the unity and integrity of India seems to be at stake, but even this shall pass away. Indian society in course of time acquire the requisite political culture, the attitude and habits of tolerance, mutual respect and goodwill, which alone can make democracy workable".

The real tribute to Shri Palkhivala would be that all of us work towards bringing his dream of Indian Democracy, come true.

Rajaji once said Palkhiwala was a Gift of God to India. God has taken back his Gift. May His soul rest in peace.

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**ADDRESS BY SHRI R.A. DADA, PRESIDENT OF THE BOMBAY BAR ASSOCIATION,
ON THE OCCASION OF THE FULL COURT REFERENCE TO MR. NANI
A.PALKHIVALA, ON 19TH DECEMBER, 2002.**

My Lord the Chief Justice, Hon'ble Judges of the Bombay High Court, ladies and Gentlemen.

On behalf of the Bombay Bar Association, I endorse the sentiments expressed by my Lord the Chief Justice and the Advocate General of Maharashtra.

We mourn the passing away of Shri Nani Palkhivala. We, the members of the Bar, have suffered a personal loss. We express our condolences to the members of Mr.Palkhivala's family and his legend of admirers.

The story of Mr.Palkhivala has become a legend at the Bar. He overcame a great handicap of stammering before becoming an outstanding Advocate.

My generation of Lawyers are full of memories of Mr.Palkhivala's amazing prowess. In this Courtroom, we have witnessed Mr.Palkhivala expounding complex legal propositions, the concept of trust, and the basis of capital and revenue.

It is important to note that Mr.Palkhivala's dearest concern was the People of India. His book "We the People" brings out in sharp focus the rights and duties of Indian Citizens to protect and preserve democracy.

Mr.Palkhivala's most glorious contribution was his exposition of the doctrine of the basic structure of the Indian Constitution. The judgment in the Keshavnanda Bharti case has saved succeeding generations of Indians from the machinations of those who come on popular franchise and seek to tinker with the basic tenets of our Constitution.

Mr.Palkhivala was extremely polite and rarely angry. Two instances in his life show his strength of character. At the time, when an attempt was made to interfere with the independence of the Judiciary by superceding some Judges, Mr.Palkhivala was in the forefront of protest. The second instance was when he returned the brief of the Prime Minister of India at the time of emergency. Mr.Palkhivala stood for a strong judiciary and democratic values which we are all proud of.

Mr.Palkhivala served the country in various capacities: as an Ambassador and as a Lawyer arguing India's case before International Judicial Forums.

On this sad day, we the members of the Bar must resolve to guard and preserve the values he fought for.

Mr.Palkhivala led by example. He was one of the noblest sons of India. In the pages of history he will be classified as a gentle colossus, the like of whom we may not see again.

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ADDRESS BY MR.PRAKASH MEHTA, PRESIDENT, THE BOMBAY INCORPORATED LAW SOCIETY, ON THE OCCASION OF THE FULL COURT REFERENCE TO MR. NANI A.PALKHIVALA, ON 19TH DECEMBER, 2002.

Your Lordship the Chief Justice, the Hon'ble Judges of the Bombay High Court, Mr.Vahanvati, the Learned Advocate General, Mr.Rafiq Dada, the President of the Bombay Bar Association, Mr.Dhakephalkar, the President of the Western India Advocates Association, Colleagues and Members of the family of Mr.Palkhivala.

On behalf of the Bombay Incorporated Law Society I respectfully agree and adopt what has been submitted by the learned Advocate General and my esteemed colleagues before me.

Mr.Palkhivala or "Nani" as he was endearingly known in the profession was a pillar of strength and support to most of us Solicitors when he needed advice – especially in difficult and intricate matters OR with his most able advocacy where fundamental issues were involved. Despite his eminence, he never lost his genial nature and given a cause, was accessible to one and all.

On behalf of the Bombay Incorporated Law Society, I wish to convey to the members of the family of Mr.Palkhivala our sincerest condolences.

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