

OCCASIONAL PUBLICATION 98

IIC

The Other's Shoes

by

Prabha Sridevan



INDIA INTERNATIONAL CENTRE
40, MAX MUELLER MARG, NEW DELHI-110 003
TEL. : 24619431 FAX: 24627751



OCCASIONAL PUBLICATION 98

IIC

The Other's Shoes

by

Prabha Sridevan

The views expressed in this publication are solely those of the author and not of the India International Centre.

The Occasional Publication series is published for the India International Centre by Kanwal Wali.

Designed and produced by Naveen Printers, F-11 B, Okhla Industrial Area, Phase-I, New Delhi - 110020 Ph.: 011-40523313, Website: www.naveenprinters.com

The Other's Shoes*

This is a sharing of my journey as a lawyer and as a judge, and about the right to dignity. This right precedes the Constitution; it probably dates to when we became homo sapiens and expected to be treated with dignity. In our Preamble, 'We the people' solemnly resolved to secure to all citizens, Justice, Liberty, Equality and Fraternity. Fraternity, which is the least understood term, assures the dignity of the individual.

But first, let me tell you how I became a lawyer and about that journey.

Was it easy becoming a lawyer, and then a judge? people ask me. It was, in a way, and therefore my experience is not the standard sample case for other women. I joined law college 13 years after my basic degree, my marriage and my children. It was only because my husband was a lawyer. After I got enrolled, I had no trouble finding an office, because I joined my husband's firm. I learnt the work along the way, not really expecting to head the office. And the clients who came to our office did not really see me either—I was 'invisible'. They headed straight to the male juniors. I can't blame them, they probably thought that this lady is there for what is politely called 'tax purposes'. Slowly, they accepted me, and realised I actually 'worked'. This went on comfortably and I trundled along.

However, life has a way of kicking people, and my husband died in 1993 when he was just 54. I had to learn everything, running the office, handling the cases; I was now in fast-forward mode. Our work was a mixed bag: we did civil cases, both

* Lecture delivered at the India International Centre on 22 July 2019 by Justice Prabha Sridevan in the Women in Law series.

appellate and original; writs; family court; and so on. My clients, who came from the districts, mostly appellate clients, were very loyal to me. Many of them came in mofussil buses and did not know English. They did not leave us after my husband passed away. Some of my corporate clients left me, politely and apologetically, but left they did. This was an important lesson that stayed with me, and was very useful in my years as a judge. The sense of fairness, equality and inclusiveness did not necessarily come with English education, urban polish and genteel appearance. A client from Tiruvarur, a small town in my state, slapped another man who said, 'Now that Mr. Sridevan is gone, this lady will close office', until he begged for mercy, and my client pardoned him, brushing off the dust. He proudly came by bus to Chennai just to tell me this. I was not sure if I should be happy or not!

After a while, the city and corporate clients too came to consult me. They probably thought I had by then proved I was serious about my work. This was another lesson, a man can just be himself, but a woman has to prove herself.

In 1995, I became President of the Women Lawyers Association, and became involved in legal awareness programmes. I remember a visit to Pappireddipatti, a town in Dharmapuri district, where I went to spread legal awareness. It was hot, it was dry, and it was not, one, a swanky town. But the number of women who walked in with infants and toddlers! It was amazing. They were not brought there as people are during elections or for important rallies. They came on their own, they listened, and they asked questions. I knew then that women wanted to know about their rights.

My term as President came to an end. But I knew that I could not stop educating women regarding their rights, and how to assert them. In 1998, some women lawyers gave an interview to *Tamizh* magazine, mentioning sexual harassment at

the workplace. Other members were in a frenzy, afraid that they would not be 'allowed' to practice if their husbands and family members read about the hazards of the workplace. They resolved to remove the members who 'spoke'. Muzzle truth and all will be well. Nothing is new, it has always happened and sadly will always happen. Some of my friends and I resigned from the primary membership. Muzzling the members who spoke to the journalists was wrong, no doubt about that. However, is not the apprehension of the members rooted in reality? Even today, women's safety is obtained only by sequestration. Their apprehension must be understood, and for that I needed to know where they came from. They wanted to practise, they did not want to be barred. Not every woman is an intrepid glass ceiling-breaker; most of us do a balancing act. Many years ago, I used to act in plays. In a play by Maria Fornes, I was the maid. How I hated the mistress who sat on a sofa while I slogged. Mind you, it was only during rehearsals. What about the reality of the people who work as maids, cleaners, etc.? If slipping into their shoes for a few hours made me so resentful, what was a day-after-day-after day reality like? This was yet another lesson.

Not every woman is an intrepid glass ceiling-breaker; most of us do a balancing act. Many years ago, I used to act in plays. In a play by Maria Fornes, I was the maid. How I hated the mistress who sat on a sofa while I slogged. Mind you, it was only during rehearsals. What about the reality of the people who work as maids, cleaners, etc.? If slipping into their shoes for a few hours made me so resentful, what was a day-after-day-after day reality like? This was yet another lesson.

Then, in 2000, I was elevated as a judge. I attended a meeting in January 2001 designed by the NGO Sakshi here in Delhi. I heard of the myths, the mental baggage and the prejudices that lurk dangerously inside us which result in irreparable injustice to the one who knocks for justice. It was a judge's duty to see clearly and equally. That is where and when I heard of Justice Claire L'heureux Dube's

advice about ‘walking the mile in another person’s shoes’. If you did, the search for justice will be clearer. I have tried to walk in the other’s shoes, I am sure I must have failed and faltered at times, but I sincerely tried. The Sakshi meeting greatly helped me to see things as a judge should. I owe a great deal to Naina Kapur and her team.

Now I will share with you five cases that came before me. In two of them, the state defaulted in respecting the fundamental rights of the other. Everywhere there are two groups, one is ‘Us’, the other is ‘Other’.

‘Us’ is numerically, economically, politically, socially and/or otherwise more powerful than the Other. It is the duty of the state and all its organs to constantly mediate the gap between Us and the Other, and bring them closer. This duty is many times more urgent and imperative when courts and judges are concerned. That is why we are there, the judges, to close the gap and not to make the Other feel increasingly Other.

politically, socially and/or otherwise more powerful than the Other. It is the duty of the state and all its organs to constantly mediate the gap between Us and the Other, and bring them closer. This duty is many times more urgent and imperative when courts and judges are concerned. That is why we are there, the judges, to close the gap and not to make the Other feel increasingly Other. I will explain this othering through one of my experiences. I was with a group of people at a gender sensitisation workshop. All of them were from the north of our country, except for me. After the sessions, we were relaxing and chatting. In a few minutes, everyone who was chatting in English, lapsed into Hindi. I can understand Hindi, but not much. I can speak a

bit, but not well. I stayed quiet for a time. Then I said, ‘this too is exclusion by a majority’. None of my friends meant to be unfair, all of them were sensitive people, and yet they excluded one person. This issue of empathy and inclusion is

an unceasing process which requires constant self-examination and monitoring. The best among us nod at times. Now I will tell you about the cases that came before me.

The first case is that of Nathalie's father.¹ A Frenchman who did not know English came to our country to visit Mata Amritanandamayi. His passport and other belongings had been stolen, and was wandering around. From Kerala, he came to Kanyakumari in Tamilnadu. He was probably begging, as he had to survive. The District Collector of Nagercoil was informed that too many mentally unwell persons were roaming the streets, and decided it was time to do something about this too. She rounded them all up—there were 115 of them—and all of them were summarily diagnosed as mentally unwell by two doctors. The magistrate was instantly satisfied that they were indeed so, and issued reception orders. It was clear from the records that these 115 persons were treated as mere chattels, rounded up, their hair trimmed, they were given a bath, they were sent to doctors, who 'duly certified them as mentally ill'. The 115 persons were not Us but Others, you see, so it is alright to deal with them in any manner, since they were poor, and maybe mentally ill. It was upsetting to see the way in which the police, the doctors and the learned judicial magistrate had dealt with this group which, on the face of it, is a group without power, but nonetheless a group of persons entitled to protection of human rights. When the matter came before the Court, we requested an expert body to examine these persons. They took three weeks to examine them all. Finally, less than 10 of them were found to be mentally ill. Of course, all of them were poor. Their autonomy was violated, and they had been treated as though they had no rights of their own. I quote from the judgement:

It would be better, in fact imperative, that the police, the doctors and the judicial officers put themselves in the shoes of

these marginalized groups of persons who are treated as if they are non-persons before they deal with their rights. Every person wandering on the street is not mentally ill. The police should not 'round up' people as if they were stray cattle and deal with them as such. Each individual should be dealt with as a separate case, he/she shall be treated as a human being with all the Constitutional rights.

Everyone here may close their eyes for a moment. Imagine you are in a country where you cannot speak the local language and lose all your belongings. I will stop here. It is scary. It scared me. This rounding-up ended on a positive note, but only because there was a foreigner involved. His daughter filed a habeas corpus petition which came before the Division Bench. If Nathalie's father had not been among them, the others who are our citizens may well have spent the rest of their lives inside. They are poor and the rejects and invisible, and who really cares. However, a responsible state must care. The Constitution does not give it any other option.

The next case is the Coimbatore Bomb Blast case.² One of the witnesses had said that after the explosions, the police arrested many young Muslim men who were asleep in their own homes. The prosecution marked a videotape as an exhibit, in which the scene of occurrence, the damage, etc. were recorded. In it we saw young men photographed in rows of eight or nine. They were not photographed because they were found near the scene of occurrence, or because they had engaged in some act that gave rise to suspicion. Those photographs were taken only because they belonged to that community. I still remember how those young men stood; their body language was eloquent. It must have affected the innocent ones and diminished them, and angered them too. And it was again the state as police which disregarded their rights and trampled on them.

During the Constitutional debates, Dr. Ambedkar had said that when discrimination ceases, minorities will vanish. This case told me that the vanishing point is far, far away. Criminal cases tell us so much about our country and our people, about our social fabric, what arouses violence, about gender imbalance, who can afford legal assistance since it is mostly the poor and weak who get caught, how communities are arranged in a geographical space and much more. They are real eye-openers. The Trial Court asked the accused what they had to say regarding sentencing, and one of those comments is important. ‘The serial explosions at Coimbatore were only the culmination of the failure on the part of the agencies of the state, police department and judiciary.’ We can say so many things in response and in defense of police procedure, but walk in his shoes and you will understand that this is his truth. This is what life has taught him. I am treated as an accused, just because I am what I am—I am sleeping, I am pulled out, taken to the police station and photographed. In fact, that accused said anyway, even outside we live in exclusion, the jail makes no difference. I must tell you that the Sessions Judge walked in their shoes, and saw that they did not even have access to adequate legal aid, and gave reasons why he was not awarding the death penalty.

In the next case, the state had no role directly. This is case of a home-maker.³ You may know about it. A child lost both her parents in a motor accident. Her grandparents filed for compensation before the Motor Accidents Claims Tribunal.

The insurance company filed an appeal against the compensation awarded by the Tribunal. Two important grounds were raised: first, there was only one accident, so the child cannot claim compensation under two heads. The second was there was no evidence that the mother worked! If the insurance company had placed its feet in that poor child's shoes, maybe no appeal would have been filed, and we may not have a judgement on the economic value of a home-maker's work. The lawyer said that too high a compensation has been given for the mother's death. I wondered then, how much is a mother worth? What does a woman who works 24x7 feel when she is not described as a 'working woman'? I knew that the moment had come for the Court to speak about the work that a woman does at home. I told Justice Sivagnanam, who was with me on the Bench, that we should write about this. It was not a ground that was raised by a party, but it had to be written, and if the Supreme Court rejected it on technical grounds, so be it. We would have made people think about the work done at home by a woman, the balancing act that every woman who has a career has to do. 'Does your wife work? No she is just at home.' To treat her work as 'nothing' is to deny her right to dignity and the respect her work deserves. Merely because women are not paid for it does not take away its value. That is why it had to be economically valued. Here, I would like to quote from Justice Sotomayor's autobiography *My Beloved World*. It is not really to the point, but it is noteworthy: 'To say that a stay-at-home mom has betrayed her potential is no less absurd than to suggest that a woman who puts career first is somehow less a woman.' My colleagues, Justice Raviraja Pandian and Justice P.K. Misra, called me after this judgement was pronounced and said they wished they had written this judgement because they agreed with me totally. I was touched by their frankness, but while they saw it, they did not live the woman's life, and perhaps that is why they did not write it. That is why the shoes are so important. Wearing the other's shoes is not easy, they will pinch, they will hurt and you will want to throw them off. But wear you must to understand how the other feels.

The third case is of pavement hawkers being sought to be removed.⁴ The building near which they were hawking was a heritage building, and the corporation authorities were well within their rights to issue eviction notices. But what will happen to those people who had been earning their livelihood there for so many years? It would be like cutting off their lifeline. What would we feel if from tomorrow our source of income stops? The hawkers had been earning their livelihood by catering to the needs of ordinary persons like commuters who take the suburban trains and purchase something urgently needed on their way home. Street vending has been a profession for so many years. We had to do a balancing act: while upholding the eviction notices, we had to see that their right to livelihood was not taken away. We requested the Advocate General to see that they are accommodated in a place not too far from the present location otherwise they would lose their clients. The right to carry on trade or business on street pavements, if properly regulated, cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use.

In the National Policy for street vendors, the state has taken note of its Constitutional obligations.... The National Policy also took note of the relocation and rehabilitation and states that street vendors are most vulnerable to forced eviction and denial of basic right to livelihood. It causes long-term hardship, impoverishment and other damage including loss of dignity. Therefore, no street vendor should be forcefully evicted and they would be re-located with adequate rehabilitation only where the land is needed for a public purpose of urgent need. The National Policy has also laid down overarching objectives to provide and promote a supportive environment for earning livelihoods to the street vendors as well

as ensure absence of congestion and maintenance of hygiene in public spaces and streets.

We quoted from the judgement of the Constitutional Court of South Africa in *Port Elizabeth Municipality vs Various Occupiers*.

It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when state action intensifies rather than mitigates their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence.

What applies to homes also applies to sources of livelihood like shops. State action cannot intensify the marginalisation of the poor, instead of mitigating it. As I said earlier, the state cannot make the Other feel more Other and excluded. In this case, the Advocate General reported to our satisfaction that the hawkers would be accommodated in a complex nearby. This is an example of how we mediated between the parties.

The next case is that of the Compulsory Licence.⁵ This came after I retired from the High Court, and I was Chairman of the Intellectual Property Appellate Board (IPAB). The medicine Sorafenib Tosylate, marketed as Nexavar by Bayer, is a palliative drug for patients suffering from renal cell carcinoma (RCC) and hepato-cellular carcinoma. The cost at which Bayer sold it worked out to about ₹2, 80,000 per month, and very few in India could afford such an expensive

drug. NATCO applied for a compulsory licence stating that access to the treatment of cancer is denied particularly due to the high pricing of the product, and that they would be in a position to make the product available to the public in India at a cost of less than ₹10, 000 for one month, and that at such a price, even the government agencies would come forward to offer financial assistance to the patients. Bayer declined, and that is how the case came about. When the matter was argued, I mentioned the name of one of the richest persons in India who alone could afford the medicine, and asked the counsel for Bayer if the rest of India should gently die. He said I was being unfair. I was not, I was curious, as I knew I could not afford it at that price. It was impossible not to feel the pain of a person who is doomed, not because the cure for his disease has not been found, but because the cure is placed out of reach by companies. The Act uses the word 'affordable'. Bayer argued that they could not afford to sell it at a lower price. But the affordability is with reference to the public who purchases the medicines. This case taught me that in every intellectual property case, public interest is an invisible figure which cannot be ignored. This voice is not heard aloud, but the judge must hear it. Druker, the pioneer who

The medicine Sorafenib Tosylate, marketed as Nexavar by Bayer, is a palliative drug for patients suffering from renal cell carcinoma (RCC) and hepato-cellular carcinoma. The cost at which Bayer sold it worked out to about ₹2, 80,000 per month, and very few in India could afford such an expensive drug. NATCO applied for a compulsory licence stating that access to the treatment of cancer is denied particularly due to the high pricing of the product, and that they would be in a position to make the product available to the public in India at a cost of less than ₹10, 000 for one month, and that at such a price, even the government agencies would come forward to offer financial assistance to the patients. Bayer declined, and that is how the case came about. When the matter was argued, I mentioned the name of one of the richest persons in India who alone could afford the medicine, and asked the counsel for Bayer if the rest of India should gently die. He said I was being unfair. I was not, I

was curious, as I knew I could not afford it at that price. It was impossible not to feel the pain of a person who is doomed, not because the cure for his disease has not been found, but because the cure is placed out of reach by companies.

invented the drug marketed as Glivec of Novartis fame, is reported to have said that most scientists

...are engaged in research primarily motivated by the pursuit of knowledge as a means to help patients. For many of these scientists it is, therefore, of great concern that the results of their efforts

can't reach patients and save lives because of pricing strategies and patent policies such as 'patent evergreening' (minor changes to existing molecules designed to extend patent monopolies) used by partners further down the drug development process.

So pricing has nothing to do with the efforts of scientists. They want their invention to reach patients. There are millions of my brothers and sisters who are less fortunate than those gathered here, and whose right to live is as precious. This again was another facet to dignity, the right to health care.

In another case, the appellant had been proved to have sexually abused a little boy and killed him. It came up in appeal. The main witness was a young girl who was one of his victims. But her evidence showed she had gone out with him several times. So the argument was, would she have gone if she had been abused? I wondered why a child would repeatedly go out with a stranger. If a stranger touched me in an unwelcome way, will I still go? Did that mean he was really innocent? Something did not quite work there. I had not heard of 'grooming' then. I called an expert, Vidya Reddy of Tullir, and asked her, and she said this was common in child sexual abuse cases. So I knew that the main witness was telling

the truth. Because, I wondered, what if I was the child? I learnt that a child could be 'groomed' by the abuser. Children are, in a way, Others too.

Albie Sachs, a reputed judge, refers to Gandhiji's *My Experiments with Truth* and says if one immerses oneself thoughtfully and sensitively in certain experiences and draws conclusions, one would arrive at the experiential truth. I could go on with many more cases. Beneath the bamboozle of legal jargon, and the hereinbefores and the whereats, there are lives with rights. Wearing the Other's shoes helps remove the inequality. That is why judges should wear them. Not just judges, every member of our society should. Only then will we realise that there is no Other, there is only Us.

Notes

¹ <https://indiankanoon.org/doc/1113887/?type=print> *Nathalie Vandenbyvanghe vs The State Of Tamil Nadu* on 19 September, 2008 (Justice Prabha Sridevan and Justice V. Periya Karuppiah).

² <http://indiankanoon.org/doc/681409/> *A. Thajudeen (A3) vs State Rep.* By The Ad. S.P. on 18 December, 2009 (Justice Prabha Sridevan and Justice M.Satyanarayanan).

³ <https://indiankanoon.org/doc/931785/> *National Insurance Co. Ltd vs Minor Deepika* on 27 April, 2009 (Justice Prabha Sridevan and Justice T.S.Sivagnanam).

⁴ <https://indiankanoon.org/doc/1604088/> *K. Balasubramanian vs The Commissioner* on 20 November, 2009 (Justice Prabha Sridevan and Justice Satyanarayanan).

⁵ *Bayer vs Union of India and others* OA/35/2012/PT/MUM (Justice Prabha Sridevan and Mr. D.P.S.Parmar)(IPAB) 4.3.2013.

About the Author

Prabha Sridevan has a degree in English from Stella Maris College, Chennai. She began practising law in 1983, and from 2000 to 2010, she was Judge of the Madras High Court. From 2011 to 2013, she was Chairman of the Intellectual Property Appellate Board.

Now retired, Prabha Sridevan is a translator of fiction from Tamil to English. She has two published books to her credit, one of which has been shortlisted for the VOW Translation Award.



The India International Centre was founded with a vision for India, and its place in the world: to initiate dialogue in a new climate of amity, understanding and the sharing of human values. It is a non-government institution, designed, in the words of its founder president, Dr. C.D. Deshmukh, to be a place where various currents of intellectual, political and economic thought could meet freely. 'In its objectives, the Centre declares its purpose as being that of society to 'promote understanding and amity between the different communities of the world by undertaking or supporting the study of their past and present cultures, by disseminating or exchanging knowledge thereof, and by providing such other facilities as would lead to their universal appreciation.'

₹ 25
for members