

Convocation Address to be delivered by Hon'ble Mrs. Justice B.V. Nagarathna, Judge, Supreme Court of India at 11th Convocation of National Law University, Delhi on 14th September 2024.

Topic: From Text to Society: Practicing Constructive Citizenship in Legal Service

- **Hon'ble Sri Justice Manmohan, Acting Chief Justice, Delhi High Court & Chancellor, NLU Delhi, who was also my classmate at the Campus Law Centre, Delhi University;**
- **Hon'ble Ms. Atishi, Minister of Education, Law, Justice and Legislative Affairs, Govt. of NCT, Delhi;**
- **Hon'ble Sri Justice Chandra Dhari Singh, Judge, Delhi High Court;**
- **Sri Justice J. R. Midha, Former Judge, Delhi High Court;**
- **Prof. G.S. Bajpai, Vice Chancellor;**
- **Prof. (Dr.) Ruhi Paul, Registrar;**
- **Faculty and students of NLU, Delhi;**
- **Graduating students and their proud families;**
- **Distinguished invitees;**
- **Members from the media;**
- **Ladies and Gentlemen;**

Namaskar and a very good Morning

I. Introduction:

I am delighted to be addressing this ecstatic audience at the 11th Convocation Ceremony of National Law University, Delhi, one of India's foremost institutions of legal education and scholarly legal thought. I thank Hon'ble Shri Justice Manmohan, Acting Chief Justice, Delhi High Court & Chancellor, NLU Delhi and Prof. G.S. Bajpai, Vice Chancellor, NLU, Delhi for inviting me to deliver the Convocation Address this morning.

To commence, I extend my hearty congratulations to the graduates on their remarkable achievement! Having surmounted academic challenges and displayed moral tenacity over half a decade you now stand at the threshold of countless future triumphs. To the proud parents, grandparents and supportive loved ones, my sincere felicitations! I also commend the invaluable efforts of the Faculty and Staff of the National Law University, Delhi, whose guidance, dedication and sincerity in upholding institutional values and standards have been instrumental in the graduates' journey.

Batch of 2024, today is your day! Look around and take it all in. This marks a stage in your life as a student and the beginning of your career as a legal professional but remember you continue to remain students of law. As graduates of this esteemed

institution, your journey into the intricate tapestry of legal practice begins today. Whether you embark on the corridors of corporate law, navigate the thrilling seas of litigation, or explore the realms of specialized legal fields, the lasting mark of your legal education will forever be intertwined with your professional pursuits.

The National Law University, Delhi, with its motto of **'nyāyastatra pramāṇam syāt' (There shall justice prevail)** has cultivated your intellectual competency and imbibed within you the unwavering pursuit of justice. It is now up to you to forge this shared foundation into practice. Over the coming years you will find that when the most rigorous intellectual training in academic discourse needs enrichment, you will appreciate the beacon of your alma mater and the connections you made here as guiding your path, whether in law or your personal life.

When Dr. S Radhakrishnan, the President of India, inaugurated the University of Jodhpur, in August 1962, he said – *“I hope that the young people educated in this University will go forward not as prisoners of the past, but as pilgrims of the future.”* Contained within those words is great wisdom about the role of Universities such as NLU, Delhi and that of students who are lucky to pass through its portals. Professor Upendra Baxi wrote almost forty years ago in the Journal of Bar Council of India that our legal education system must be geared ‘towards a socially relevant legal

education'. Bearing in mind the vision of NLU, Delhi that its graduating students be products of a socially relevant legal education and addressing the challenges of the new millennium while upholding India's Constitution, I have chosen the theme for my convocation address as "*From Text to Society: Practicing Constructive Citizenship in Legal Service*".

Amidst the euphoria of graduation and transition into the real world the inquisitive mind would fairly ask, "**How should young lawyers evolve for themselves a rightful place in the profession and the society?**". Upon reflection, I find that the simple answer to this difficult question lies in the Member of Constituent Assembly and a Minister in the Union Government Smt. Rajkumari Amrit Kaur's vision of constructive citizenship. In 1961, while delivering her acceptance speech for the René Sand Memorial Award, evincing her erudite thought and practice-chiselled advocacy, she postulated that construction of bonds between people built on personal or local relationships, including active contributions to society such as social work should form the bedrock of citizenships. For more correct reasons than one, such plural, creative and enterprising membership of society was rightly termed by Amrit Kaur as 'constructive citizenship' as only such enterprising membership could ensure that women be members of

a State who not only obey laws but also have an active sense of being an integral part of the State.

The Indian administrator and educator, Rt. Hon'ble V.S Srinivasa Shastry formulated three basic postulates of ideal citizenship.

First, a sense of public spirit, or the desire to sink one's own personal ends in the larger interests of the community; the anxiety to subordinate individual gains whenever necessary for the benefit of the society, of which, he is a member;

Second, practical common sense, a shrewd eye on the affairs of the world;

Third, the ability to understand and appreciate what lies at the bottom of the welfare of the society i.e., what are the different elements that contribute to create that welfare.

I find that members of the Bar, due to their intellectual, ethical and practical education, understanding of legal apparatus and Indian societal constructs are most suitable to be both constructive citizens and ideal citizens in the eyes of Sri V.S. Srinivasa Sastry. Even more so, your generation, dear graduates, sitting at the intersection of traditional legal practice and radical transformation in information dissemination and 21st century leap-frogs in technological interaction with the entire country finally has

an actual opportunity, skills and responsibility to truly democratize the legal system.

Constructive contributions to society as a vision of citizenship move the fulcrum of citizenship away from state controlled legal rights towards active participation in local and national fellowship. Functionally, constructive citizenship manifests through the daily exercise of rights and duties and the opportunities which the state affords to the individual for developing faculties. Progress of India along right lines could be ensured only if citizens play their rightful part in building up the structure with solid foundations.

This leads me to explore the idea of citizenship its political and philosophical thought and the nature of an individual's duties to society and discern how law graduates can be '*ideal*' and '*constructive*' citizens.

II. Duties:

This brings me to the role that duties play in citizenship. While rights dominate discussions about citizenship and rightly so, it may be important to also recognize that the preservation of liberty and the health of any democratic society depend on the active fulfillment of civic duties by its citizens.

Liberty cannot persist without a corresponding ethos of individual responsibility. Being a free member of the community carries with it not just a privilege but a responsibility as well. A

free society probably demands more than any other that its members be guided in their action by a sense of responsibility which extends beyond the duties exacted by the law. The Constitution of India recognizes this principle in Part IV-A. Fundamental Duties, encoded in Part IV-A, are not enforceable by law. Yet, they are meant to guide conduct in civic and social life.

Citizenship can exist and flourish only under certain cultural conditions. It requires the cultivation of certain virtues – patience, tolerance, respect for law, and promise keeping. These virtues are the lifeblood of a well-functioning democracy, ensuring that citizens engage with each other as well as with the state in a spirit of goodwill. In the absence of these virtues, citizenship can become hollow, reduced to a set of legal entitlements without any deeper sense of commitment. Worse still, a society lacking in goodwill, promise keeping, and trust may not be able to enforce most of its legal entitlements.

III. Historical roots of civic duties in India:

Ancient Indian society evolved on the principle of *Dharma* wherein a citizen had both rights and obligations which were expressed in terms of duties i.e. *Dharma* to oneself, to one's family, to other fellowmen, to the society and to the world at large. The ancient Indian legal theory based on *Dharma* was for the establishment of a social legal order free from conflicts,

exploitations and miseries. Such a law of *Dharma* was a model for the universal legal order.

The duties in the Constitution could be located, before elsewhere, in the Preamble which contains the ideals and aspirations of the people of India and the declaration to fulfill those. It secures to all the citizens “liberty of thought, expression, belief, faith and worship”, but at the same time, the Preamble also declares, albeit subtly, duties when it proclaims that citizens “shall promote fraternity, assuring the dignity of the individual and the unity and integrity of the nation.” This is an under-studied yet significant declaration of duties by our Preamble.

Later of course, the Parliament made express what was implied, by enacting Article 51-A. Article 51-A states that it shall be the duty of every citizen of India *inter alia*, to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; to value and preserve the rich heritage of our composite culture; to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

IV. Lawyers as constructive citizens:

If we all worked for the common good the concept of citizenship would take a new look and selfishness would be removed from all forms of organizations. Dear graduates, this day onwards your rightful part in the building of India is dignified by the stature of an Advocate. Beyond the quotidian affairs and goals of a citizen, the practice of law calls for no limitation on the good a lawyer should dutifully and lawfully do for the fellowship of citizens. Within the profession, this duty *firstly* necessitates a humanistic and sensitive demeanour and outlook. A case file is not a mere chronological index of events, rather it speaks of human struggles and sufferings at all stages of life. Beyond the stark letters of legal text, legal practice exist in shades of grey that obligate you to choose the 'right' path in a *lis*. It is incumbent upon you to recognise that your pragmatic actions as lawyers must be principled, limited by legality and emboldened by morality. *Secondly*, your contributions to the society must go beyond legal practice. Pursuance of the goal of constructive citizenship demands that young graduates creatively employ their energetic faculties and technology in advancing access to justice. I implore all of you to dedicate some time beyond your regular schedules to *pro bono* advisory and propagation of constitutional methods, values, rights and welfare schemes.

In his speech at the close of the Constituent Assembly, Dr. B.R. Ambedkar said:

“If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means that we must abandon the bloody methods of revolution...When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods.”

Drawing much force from Babasaheb’s words, it is my unshakeable belief that a lawyer’s most seminal contribution as a constructive citizen is the propagation of constitutional methods. The Constitution is neither the product nor the exclusive domain of Lutyen’s Delhi but breathes in an unheard perspective on every crossroad of this country. As a guardian of rule of law and spearheads of constitutional methods, a lawyer treads onto a desired path, which is eloquently spelt out in the preamble of Indian constitution. Continuation of our pledge to constitutional values requires every generation of young lawyers to take to every corner of the nation the vitality, utility and belief in constitutional

methods and values. Incumbent generations not only have the pivotal obligation to sustain the structure but also the onerous duty to progressively pass it to the next generation while retaining its central character.

Duties towards Court:

Dear Graduates, today standing before you, I am reminded of the words of Sir Edward Coke, the 16th century eminent English jurist. He remarked,

"There is no jewel in the world comparable to learning; no learning so excellent both for prince and subject as knowledge of law."

Today, you join the ranks of those entrusted with this precious jewel of legal knowledge.

More than a career, your path is a calling—one that brings with it profound responsibilities and the power to shape the very fabric of our society.

You are now the guardians of rule of law, the pillars of justice, and the proponents of truth. Your relationship with the court is paramount in upholding the integrity of the judicial system. As is often remarked, a strong bench needs a strong bar.

I implore you to cultivate respect and unflinching obedience in your ***duties towards the court:***

1. Act with dignity and respect: Always maintain decorum in the courtroom. Your behavior should reflect the gravity and importance of the legal proceedings.

2. Uphold the integrity of the judicial system: Never engage in practices that could undermine the court's authority or the public's faith in the legal system. In your career, you will inevitably face ethical dilemmas that test your principles. You may find yourself torn between your duty to your client and your commitment to truth and justice. You may be torn between temptation and your duty to your client.

You may encounter clients who make unethical requests or find yourself tempted to use purely legal technicalities to circumvent justice. In these situations, have the courage to stand firm in your ethical convictions. Mahatma Gandhi demonstrated through his practice that "it was not impossible to practice law without compromising truth."

Gandhi's approach extended beyond individual cases to a broader view of the lawyer's role in society. He saw lawyers not just as advocates for their clients, but as agents of social change and harmony and as social engineers at the vanguard of social movements for peaceful revolution and change for the better.

3. Refuse to use illegal or improper means: As the Bar Council of India Rules state, you must "refuse to represent any client who

insists on using unfair or improper means." Your ethical compass should always point towards justice, even when faced with challenging circumstances. Dear graduates, you must remember that your training at this premier institution is to make you more than a "hired gun" or a "legal mechanic".¹ You should not allow yourself to become a rubber stamp of your client. Chagla, C.J. in his autobiographical work *Roses in December* eruditely writes that a lawyer must represent a client in good faith, not mislead the court, and not withhold anything from the court that he is compelled to reveal. While a client would advance everything under the sun as presentable and arguable, it would impair the justice system to allow misconceived and inadmissible evidence and arguments to be wilfully advanced.

4. Constitutional Methods advocacy: You, as an Advocate, must endure to convince action groups and society of the vitality of constitutional methods. For the day Advocates view constitutional methods as electives and not their mandate is the day public confidence in law and community will shatter.

5. Prolix submissions: Frivolous petitions and intentionally prolix submissions or filibustering, shall I say, convert the Court into an exclusive regime of the 'other' that the citizen is not supposed to understand and only piles on pendency. Dear graduates, you have

¹ Justice A.K. Sikri (Retd.), *Constitutionalism and the Rule of Law: In a Theatre of Democracy*

a responsibility to constructively establish before your client their rights and obligations and not engage in misuse of forums by instituting frivolous petitions and lengthy submissions. An advocate must never allow themselves to be used as masks for a busy-body merely to harass litigants or the State or deliberately approach wrong forums or protract litigation on the instruction of the client.

Linked to the responsibility to not misuse is the need to prepare and build your competency. Possibly, to impress clients, particularly corporates and clients who value prolixity, solicitors and advocates have taken to lengthy pleading losing sight of relevancy. Please shun such practices.

Duties towards Clients:

Your clients will place their trust in you during some of the most challenging moments of their lives. You must honor this trust by:

- 1. Providing competent representation:** Continually hone your skills and knowledge to serve your clients to the best of your abilities. It is unfortunate that today, young members of the legal fraternity that represent the indigent are viewed as less successful. Undeterred of these perceptions, you must resolve to ensure for the indigent the most competent representation possible. You must also not view free legal aid and advice to the poor as legal

aid lacking in quality. The cause of justice must motivate lawyers rather than the remuneration or fees that it would fetch.

2. Emotionally Intelligent justice:

2.1 Beyond the letter of law, you must facilitate an emotionally intelligent path to justice by taking into account the emotional dimensions of your client's problem by empowering and actively involving parties in problem solving.²

2.2 In recent years, under the guise of disseminating legal literacy, a disheartening practice has been adopted by some lawyers on social media to solicit clients by invoking a sense of dread, especially in matrimonial matters, and marketing 'saving tactics' that scuttle or bombard the legal process. Dear graduates, as constructive citizens you must ensure that your advisories to clients are not laced with a side-step of the law but find a balance between your duty to the client and the court.

3. Maintaining client confidentiality: Respect the sanctity of attorney-client privilege, but also be aware of the ethical boundaries when that confidentiality might need to be

² Ipshita Sengupta, *Nurturing Caring Lawyers: Rethinking Professional Ethics and Responsibility in India*

breached for the greater good of justice and in the interest of legal & judicial system.

- 4. Avoiding conflicts of interest:** Always be transparent about potential conflicts and prioritize your clients' interests over your own. Disclose any such conflicts at the very commencement of a potential professional engagement or ideally disengage or refuse to be engaged *viz.* decline a brief owing to a potential conflict of interest. You may lose a brief but you will earn the respect of your client who would commend you for your uprightness and straightforwardness and get you more briefs and legal work. In short, never have an agenda against your own client who has placed his faith, trust and legal problem in your hands. To cheat a client is as bad as misrepresenting a case before a court of law. Speak the truth from the files and the records of a case or otherwise it would result in miscarriage of justice and clogging the justice dispensation system with many more appeals, revisions, etc.
- 5. Communicating effectively with clients:** Keep your clients informed, explain complex legal concepts in understandable terms, and manage their expectations realistically.

Duties towards nation and community:

As members of a privileged profession, you have a special obligation to ensure access to justice for all. The 42nd Constitutional Amendment and Article 39-A of our Constitution mandate the provision of free legal aid to ensure that "opportunities for securing justice are not denied to any citizen by reason of economic or other disability." Remember, the measure of your success should not be merely financial, but also the positive impact you make on society.

As constructive citizen lawyers and beneficiaries of a socially relevant legal education, I hope that you will extend your duties far beyond the confines of courtrooms and law offices.

1. Duty towards the nation: As lawyers, you are the custodians of the rule of law, your actions and decisions will contribute to the strength and integrity of our legal system and to rule of law, which is the bedrock of our democracy. Rule of law means, no one, howsoever high or low, is above the law.

1.1 Dear graduates, lawyers and courts must be a beacon in upholding rule of law.

1.2 Therefore, it is the primary duty and the highest responsibility of lawyers and Courts to be vigil to arbitrariness and maintain the confidence of the

litigant public in the purity of the fountain of justice and thereby respect rule of law.

1.3 As officers of the court and constructive citizens your advice must not negatively impact rule of law, public interest or embolden criminals and cheats who pose an obvious threat to society.

2. Duty of brotherhood and promoting harmony:

2.1 In an increasingly polarized world, you have the responsibility and unique opportunity to bridge divides and foster understanding. Dear graduates, you must embrace a problem-solving approach that goes beyond the adversarial method. The modern approach calls for more collaborative and holistic legal practice. Alternative Dispute Resolution (ADR) is becoming increasingly important, and Mahatma Gandhi was an early proponent of such methods. This approach not only resolves the immediate dispute but also preserves the relationship between the parties – an outcome that Gandhi saw as the highest aim of legal practice. As you navigate your careers, be open to these approaches when they serve the interests of justice and your clients. The intent of a socially relevant legal education would stand unfulfilled if the interest of fees

of a few more court hearing dates or conferences precludes you from advising for an alternate resolution.

3. Duty to protect the environment and duty towards children and future generations:

3.1 Dear graduates, if you would take something from this lecture, let it be this. Today, we stand at crossroads demanding pertinent and urgent decision making on environmental questions. Your generation must proactively lead and define the lawyer's active role in safeguarding our planet. Consider incorporating environmental consciousness into your practice, advocating for sustainable policies, holding polluters accountable and representing social action groups in climate action litigation.

3.2 Whatever the motivation behind incomprehensible legalese, your generation must contribute to taking the essence of law beyond lawyers. This, I view, would be your generations' most constructive contribution to law for other citizens.

A legal culture that actively educates itself on interdisciplinary developments, technological advancements and also educates the citizenry on its rights and liabilities would contribute

to a culture of accountable and swift legal adjudication. The formal legal system provides the framework for enforcing rights. However, the day-to-day functioning of this system relies heavily on the moral character and ethical behavior of its citizens. When individuals uphold virtues such as promise keeping, they create an environment of trust and reliability. This trust is fundamental to the enforcement of contracts because it ensures that parties entering into agreements can reasonably expect that commitments will be honored without resorting to legal action.

Likewise, goodwill fosters a spirit of cooperation and reduces the likelihood of disputes and conflicts in neighborhoods keeping them peaceful and safe. Moreover, when citizens consistently demonstrate these virtues, they contribute to a culture of accountability and responsibility, which ensures transparency in public administration. It forces public administrators to be transparent in their decision-making processes.

In this way, constructive goal of active advocacy and virtues that follow have implications for private as well as public law.

V. Citizenship as fellowship:

Having detailed the duties encoded in our Constitution, I shall now proceed to reinforce the point that they represent only one dimension of citizenship. Beyond these formally recognised duties lies a richer and broader understanding of what it means to be a

citizen. This understanding is deeply rooted in the relationships and shared experiences that bind individuals together. It is here that we find the concept of citizenship evolving from mere duty to something more profound — a sense of fellowship or fraternity which transcends any attempts to define it legally and is expressed through daily acts of solidarity and service, reflecting a commitment to the collective well-being of society.

A lawyer's commitment to constructive citizenship is a novel perspective to the noble traditions of our profession. I am saddened to learn that even in the 21st Century resolutions are passed by bar Associations 'banning' any member Advocate from appearing for an accused. Such wilful denial of right to representation and disregard of duties is a public choice irreconcilable with the constitutional methods and the solemn goal of providing access to justice.

Dear graduates, it is my earnest expectation that despite expectations and pressure, you will find within yourself the resolve to choose logic over dogmatism. To constructively disagree is not to affront but to humbly contribute to the development of thought. Despite Rajkumari Amrit Kaur's respect for and relationship as a mentee of Mahatma Gandhi, she did not foreclose herself from disagreeing with him on the women's movement, even publicly.

VI. Conclusion:

Citizenship being a form of membership is a multifaceted concept — it is legal, contractual, moral, and communitarian all at once. But if forced to describe it, I would borrow from Kaur’s vision of constructive citizenship as an ever-evolving goal mapped by each generation’s freedom to define goals of “freedom” and “equality” differently, and continuation of customs practiced and developed by citizens who have a deep commitment to the shared life of a Nation.

Dear graduates, *status quo* leaves much to be desired in the path of constructive citizenship. Prolonged pendency and misconduct by some members of the Bar has marred the reputation of the legal profession in public eye. I hope that as members of the Bar and as constructive citizens, your generation will redefine the goals of citizenship keeping *the spirit of persuasion, of accommodation and of tolerance* in sight and strive towards achieving them.

One last thought of my lecture today.

One important facet of the lack of diversity in our legal profession is gender. Out of 788 judges in High Courts in India, only 107 are women (13%). Women constitute only 15% of enrolled lawyers in India. Most women are forced to drop out of legal practice in the middle of their careers: in 2022, Reuters reported

that 60% women lawyers leave practice between 35-55 years of age, in the prime of their careers. A large majority of these women (82%) cite the lack of a work-life balance as the prime reason for dropping out. A special report on gender diversity in law firms in India revealed that only 27% of lawyers working in Indian law firms were female. A study by Bar and Bench (2021) revealed that only 2.04% of State Bar Council representatives in India are women. The Bar Council of India has no women representatives at all! These disturbing figures are not mere statistics. They represent missed opportunities, unheard voices, and important perspectives of which our legal system has been deprived. As constructive citizens it is your responsibility to provide and create spaces for more women, in fact all genders to actively participate in the profession without fear or hesitation.

Dear graduates, as you step into the world of legal practice, academia or into the corporate world carry with you the weight of your responsibilities and the power of your knowledge.

Congratulations once again, and may you go forth to illuminate the path of justice with the light of your knowledge and ethics to always guide you.

I once again thank the National Law University, Delhi for inviting me to deliver the Convocation Address this morning.

I thank you for your kind attention.

Namaskar!