



FROM THE CHAMBERS TO THE COURT

Sharing Memories and Experiences

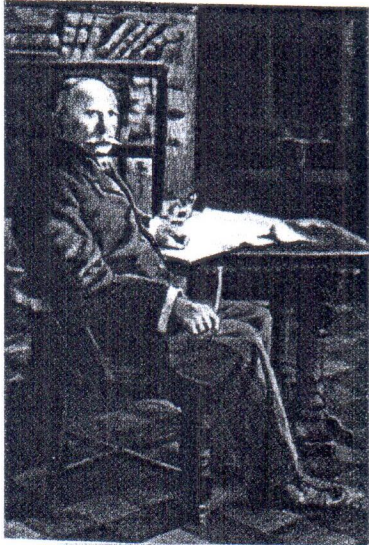
■ ANIL B DIVAN (SENIOR ADVOCATE)

On 12th November 1951, I was enrolled as an advocate, and have practised for over sixty-four years. Sharing my memories and experiences with the younger generation would give me great pleasure, though it may risk boring the reader. But I have decided to embark on this dangerous adventure.

MANEKSHA'S CHAMBER

On 9th January 1952, I joined the chamber of M L Maneksha (Bar-at-Law) on the recommendation of my uncle, M C Setalvad, then Attorney General for India. C N Daji, K S Cooper, and S K Desai were already chamber juniors. Maneksha was a self-made man who practised in the Small Causes Court, went to England, and qualified as a barrister. He was an outstanding lawyer with a prodigious memory and a deep baritone voice. K T Desai (later Chief Justice of the Gujarat High Court) and P N Bhagwati (later Chief Justice of India) preferred him as a leading, arguing counsel and appeared with him in many cases.

Maneksha's favourite seat in the Bar Library (which he was first to enter every morning) was right in front of the portrait of the incomparable J B Inverarity. Maneksha argued the famous R M D Chamarbaugwala Prize Competition litigation and succeeded in invalidating the statute both before Justice S T Desai and the Appeal Court in Bombay (Chief Justice Chagla and Justice Dixit). The decision was reversed in the Supreme Court where Chamarbaugwala's case was argued by M C Setalvad, the then Attorney General¹ [AIR 1957 SC 699].

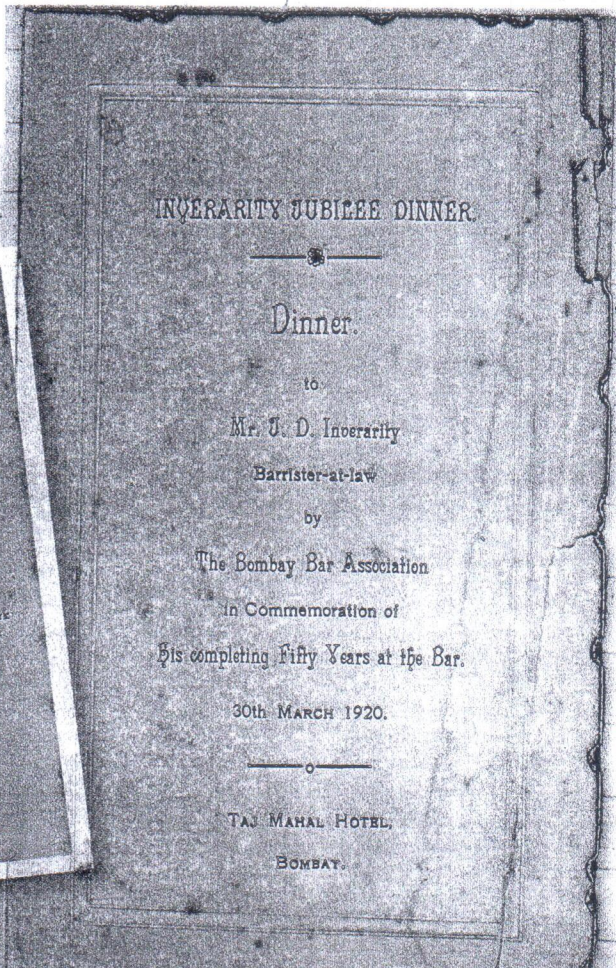
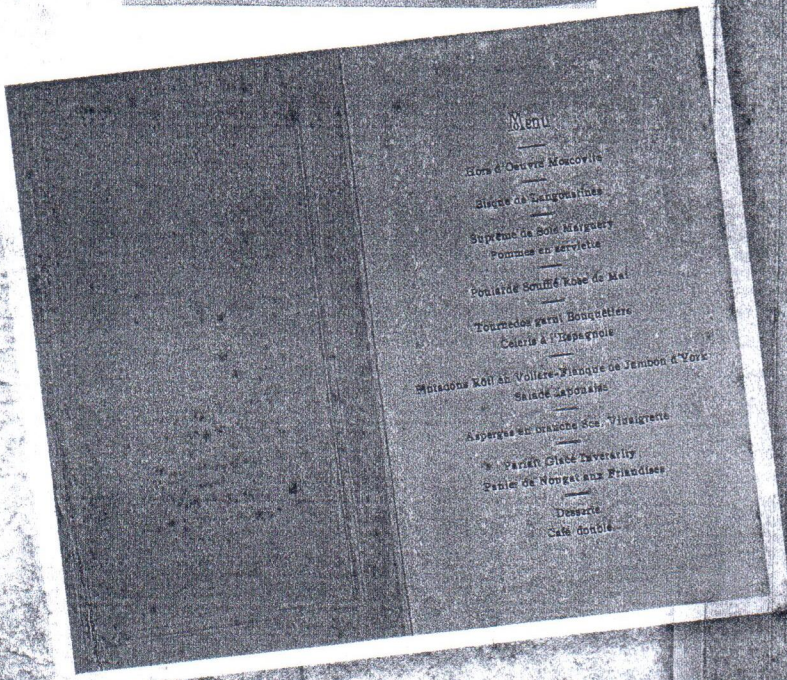
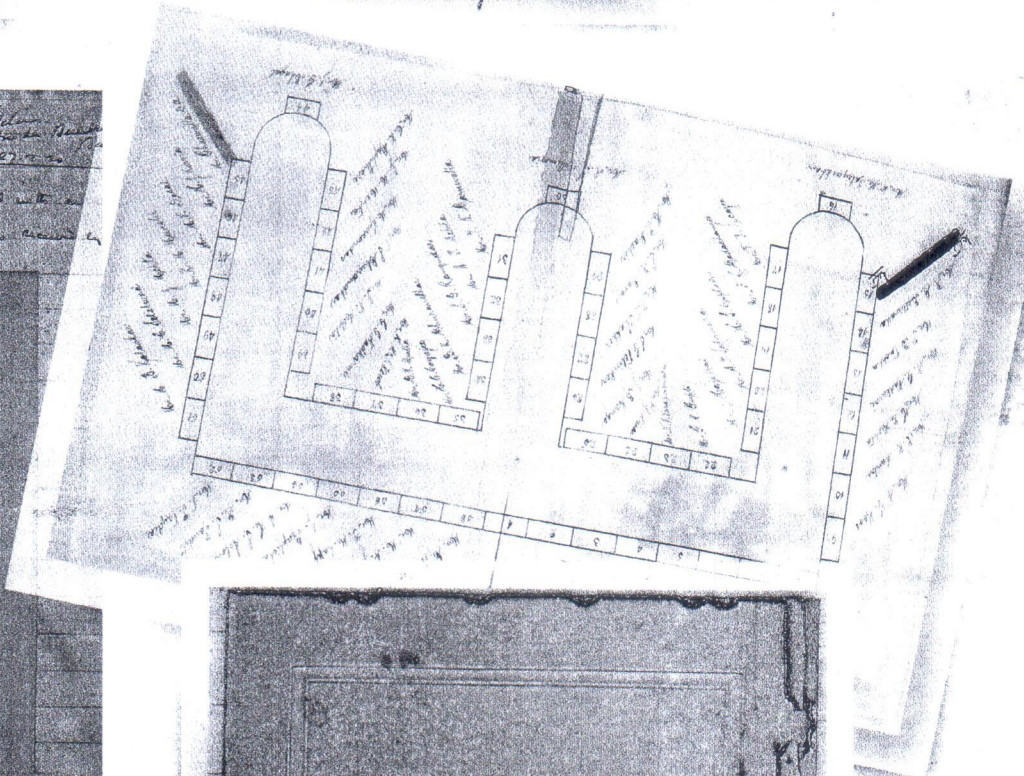
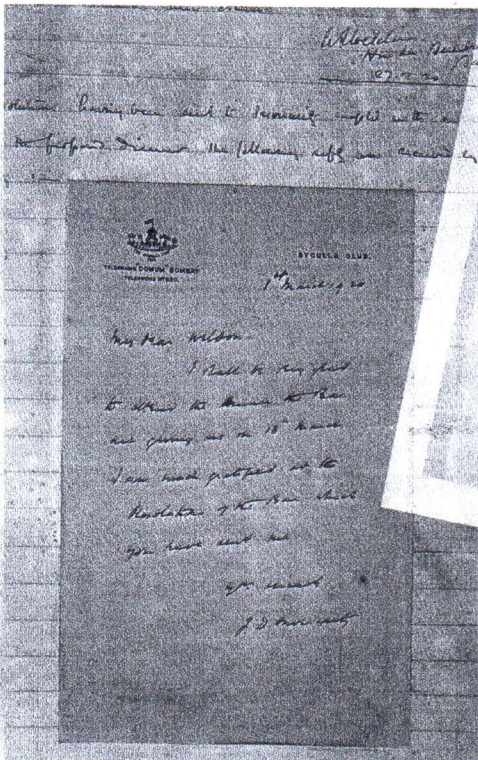


J D INVERARITY

This tablet was erected, by order of the Chief Justice, to the memory of **JOHN DUNCAN INVERARITY**, Bar at law, who practised in these Chambers from the time the High Court Buildings were opened in 1879 until his death on 4th December, 1923.

Clockwise from left

Tablet to honour Inverarity stands in the High Court building premises (Room No.7); Seating arrangement and menu card of the dinner organised for Inverarity by the Bar in 1920; 'Thank You' note from him, accepting the invitation from the Bar for this dinner.





The Supreme Court, applying the doctrine of severability, upheld the statute while directing that it would only apply to gambling competitions and not to competitions involving substantial skill. In that litigation, N A Palkhivala assisted Maneksha as a junior, instructed by Gagrath & Co. I had a small brief of 4 GMs (₹60 only) to look up authorities.

Maneksha, assisted by P N Bhagwati and myself, appeared in a seminal case under Article 20(3) of the Constitution—Narayanlal Bansilal v. Maneck Phiroz Mistry [AIR 1959 Bom 320]. An inspector, under the Companies Act 1956, desired to examine Narayanlal on oath, while, in official reports, there were allegations that Narayanlal had committed criminal offences. The petitioner urged that he, being accused of an offence, could not be compelled to give evidence by reason of Article 20(3)² (Rule against self-incrimination) and hence Section 240 of the Companies Act 1956 was un-Constitutional. However, we failed, as the court, including the Supreme Court [AIR 1961 SC 29], throughout held that Article 20(3) did not apply to proceedings initiated by the inspector under the Companies Act 1956, but applied only to criminal proceedings where formal accusations were made.

Maneksha was strict both on ethics and etiquette. When his elder son, Nariman, qualified as a solicitor, he asked him to take separate residence on the ground that a barrister and solicitor ought not to stay together.

H M Seervai, the famous Constitutional author and Advocate General of Bombay, was the first pupil of Maneksha—a requirement for the Advocate (OS) examination. After passing the examination, Seervai joined the chamber of Jameshedji Kanga.

EARLY DAYS AT THE BAR

I started my practice at the Bombay High Court on 9th January 1952. On 17th April 1972 was my first appearance in the High Court in a consent decree before Justice J C Shah a brief passed over by K S Cooper who happened to be busy in another court.

I was looking at my old fee books and discovered that my income from 9th January 1952, when I entered the portals of the High Court as an advocate till 31st March 1952 was nil. From April 1952 to March 1957, it rose from ₹23 per month to about ₹450 per month. From April 1957 to March 1962, it rose from about ₹450 to about ₹2,200 per month. From April 1962 to March 1969, it rose from about ₹3,100 to ₹10,000 per month. By 1972, I was in good practice and was designated as Senior Advocate by the Bombay High Court on 13th September 1972.



The Government Law College in Mumbai has given the legal profession several luminaries.

THE ALMA MATER

The two years spent in the Government Law College Bombay (June 1949 to April 1951) were definitely the most exciting and formative years of my career. Do you know the distinguished faculty we had? Y V Chandrachud, N A Palkhivala, B J Divan (later, Chief Justice of the Gujarat High Court), and V S Desai and J R Vimadalal (later, High Court Judges) were part-time professors, while T K Tope (later, Vice Chancellor) and Principal S G Chitale were permanent faculty. In addition, our Fellows in 1949 included M H Kania (later, Chief Justice of India) and S K Desai (later, Judge of the Bombay High Court). This distinguished faculty was instrumental in igniting love for law, for which I owe them a perennial debt of gratitude.

During my law college days, Muralidhar Bhandare and I shared the same bench and a lifelong friendship ensued—a friendship we still cherish and reinvigorate on the Delhi Golf Course.

ANECDOTES FROM THE COURTROOM

When I joined the Bar in 1952, M C Setalvad was Attorney General, practising at the Supreme Court. C K Daphtary was Solicitor General—in my opinion, Daphtary was ‘nonpareil’ the greatest advocate I have ever heard of. There are many stories about his wit and repartee, which have become part of the folklore of our Bar.

Daphtary had been appearing in the International Court with Palkhivala and was absent for a considerable time from the Supreme Court. On his return, he appeared before Justice Hidayatullah, who remarked, “Mr Daphtary, there is no point in your Special Leave Petition, except that you are appearing before us after a long time.” Daphtary quickly responded, “Why not celebrate the occasion by granting leave?” Hidayatullah broke into laughter and said, “Leave Granted!”

M P Amin, who succeeded Daphtary as Advocate General, was a persistent, patient, polite, and persuasive advocate who could convert a losing case by sheer force of advocacy into a success story.

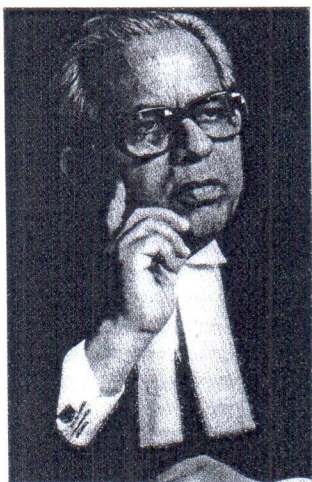
Chief Justice Mahajan had come to Bombay and addressed the Bombay Bar, where he generously mentioned an incident praising M P Amin, who used to carry a hearing aid. Mahajan told us that he was a little brusque and rough in his remarks when Amin appeared before them. Amin switched off his hearing aid and, instead of looking at the judges, turned his face and refused to argue. This led to a stalemate till Chief Justice Kania persuaded him to continue his argument with appropriate remarks, saying that there was no intent to insult him.

In 1959–60, I had the good fortune of appearing as a junior in the Supreme Court of India before Constitution Benches. In my first case as a junior, Purshottam Trikamdas led M R Mody and myself in a case involving stock exchanges [AIR 1961 SC 21].

When I went for a conference with Purshottam Trikamdas, I addressed him by his first name as “Purshottam”. He was delighted and told me that this was the correct way to address any member of the Bar because we are all equal. But in Delhi, people addressed him as “Sir”, “My Lord”, “Distinguished Senior”, and sometimes even “Your Excellency”.

The second case which was ultimately settled, and was linked to the State of Punjab v. Sodhi Sukhdev Singh [AIR 1961 SC 493], was a land acquisition matter, concerning Lady Dinbai Petit’s Estate. K S Cooper and I appeared in the Supreme Court, led by Visvanatha Sastri, before a Constitution Bench.

An amusing repartee is worth recalling. The issue was the extent of Crown privilege in not disclosing documents. An English authority was cited *Duncan v. Cammell Laird*³. In that case, the question was whether plans in relation to the construction of a submarine ‘Thetis’, which had sunk during trials killing the crew, were to be disclosed. The refusal of disclosure by the Crown was upheld.



Yeshwant Vishnu Chandrachud, the 16th Chief Justice of India, has decided on more than 800 cases, including well-known ones such as that of Shah Bano (1985) and the Indian cricket match-fixing scandal as Arbitrator (1990s). He was also faculty at Government Law College.

Visvanatha Sastri was reading the judgement and it appeared that one of the English judges in another case had consulted a Scottish Law Lord, who was not on the Bench. Gajendragadkar leaned forward and whispered something in the ears of Sinha (Chief Justice of India) and then the judges shook with silent laughter—in those days, the Bench would rarely interrupt the counsel making an argument.

After Visvanatha Sastri concluded reading the case, Sinha leaned forward and remarked, “Mr Sastri, would it be proper for a member of the Bench to consult another judge who is not on the Bench?” and the Bench broke out into loud laughter. It was a caustic remark against the English judges. But Viswanatha Sastri, in his emphatic southern accent responded, “My Lords, this happens here every day, but the Englishman is honest enough to mention it in his judgement.”

MAINTAINING INDEPENDENCE

For the Indian legal profession and the Bar Associations, the continuous challenge is to preserve the Rule of Law, founded on the independence of the judiciary, which is the guardian of basic human rights. It must be the endeavour of each and every generation of the members of the Bar to fight this never-ending battle.

The Bombay Bar Association has always been at the forefront of this battle in maintaining the independence of the judiciary and the Rule of Law. The Bombay Bar Association is a hundred and fifty years old. I wish it many more years of glorious existence.

REFERENCES

1. State of Bombay v. R M D Chamarbaugwala – AIR 1957 SC 699.
2. Article 20 Protection in respect of Conviction for offences:
 - (1) ...
 - (2) ...
 - (3) No person accused of any offence shall be compelled to be a witness against himself.
3. 1942 Appeal Cases 624.

FOR THE INDIAN LEGAL PROFESSION AND BAR ASSOCIATIONS, THE CONTINUOUS CHALLENGE IS TO PRESERVE THE RULE OF LAW, FOUNDED ON THE INDEPENDENCE OF THE JUDICIARY, WHICH IS THE GUARDIAN OF BASIC HUMAN RIGHTS.