



A Curated Conspectus of the Life, Love, Law,  
Literature and Laughter of Albie Sachs

## THE AUGUST CASE – VIDEO TRANSCRIPT

### CHAPTER: ARE PRISONERS A VULNERABLE GROUP?

THANDI MATTHEWS

Judge Albie, we've spoken a lot about vulnerability and our duty as citizens or the constitutional imperative to protect those most vulnerable in our society. But there are certain members of our society that we don't consider to be vulnerable or entitled to the same rights that we are entitled to.

A case that I found very intriguing was that of *August*, which related to the rights of prisoners to vote. What were your thoughts on that case?

JUSTICE ALBIE SACHS

It was fairly early on in the Court, and accidents shouldn't play a big role in outcomes. But it just so happened that Justice Johann Kriegler, who had been the head of the Independent Electoral Commission that handled our first elections, was on long-leave sabbatical when the prisoners right to vote case came to the Court, and Arthur Chaskalson asked me to look after it.

The issue there was that Parliament had adopted an election law that set out all the people who had rights to vote, where their names should be registered, and lots of little details about voting. It said nothing about prisoners, and it gave the Independent Electoral Commission the power to arrange for registering voters, getting them on the voters roll and so on. And quite a wide discretion to help people who are elderly and infirm and people of that kind. And the IEC are working. And they discover it's so difficult to deal with prisoners. Where do you say is their place of residence? Is it their home? Is it where they're locked up and so on, and it takes time and it's expensive. And we would rather spend the money on ensuring that elderly and infirm people are located and given the chance to vote. Lawyers for Human Rights hears about this. A prisoner named August who is used as the nominal person applying. And he says, '*...I want to vote, and they refuse to register me...*' and the case comes up to the Court.

### CHAPTER: SHALL WE HEAR THE MATTER?

I think the first feeling was... let's let the IEC decide, it's a kind of an administrative matter. ~~These are my feelings.~~ And I think the initial discussion, it was going along the lines of, there are no prospects of success. And I made an argument in favour of allowing prisoners the right to vote. I'd been a prisoner. I'd heard stories from our prisoners on Robben Island. How political prisoners have been helped by the common law prisoners. We knew about how many people were sent to jail because of the impact of racism and apartheid and so on.

But it was more than that. We wanted the theme of rehabilitation, reintegration into society, assuming a sense of citizenship to be promoted and not to be undermined. So, I persuaded my colleagues, let's hear the matter, and we hear the matter.

#### CHAPTER: SHOULD THE RIGHT TO VOTE BE LIMITED?

And the main legal point that's made is that maybe Parliament can limit the right of prisoners to vote. We don't say yes. We don't say no, maybe. But an administrative organ can't do that. And I found an American case where a very conservative Supreme Court Chief Justice had made that point that the legislature maybe can deprive prisoners of the vote, but administrative offices can't. They have to function within the law, do their best to enable people to have their vote.

Now, I felt very deeply about the issue. It wasn't simply an aspect of our democracy. Our whole struggle in South Africa was about the vote. One person, one vote was our equivalent of independence. We were an independent state. The franchise was used to reserve sovereignty for the whites only, with a sprinkling of subordinate subaltern roles for people of Indian origin and of mixed descent. So, it was central to our nationhood, having the vote, and it did something more. It was the highest, most intense form of equality in our country that was shared. The one thing, the only thing shared, maybe, maybe other than our air, by all South Africans, the exalted and the miserable, is the right to vote.

#### CHAPTER: WHY THE VOTE MATTERS

So, I wrote with quite a strong degree of passion, about why the vote mattered, especially in South Africa. It was quoted in the Canadian Supreme Court in a case afterwards. And it ends up by saying *it's not only the role that the vote played in nationhood, it brought everybody together in a common polity*. And it quite literally says **everybody counts**. And that was the phrase used by the majority in the Canadian Supreme Court, where they said parliament doesn't have the power to take away the vote from anybody. You go to jail and your punishment is serving the sentence, it's not being deprived of your civil rights.

#### CHAPTER: RESTORATIVE JUSTICE

And for me, the idea of restorative justice was always very, very strong. Okay, people do horrible things and there has to be a response and sometimes it can be a very severe response.

But to encourage people to assume their responsibilities, to feel connected, rather than to feel totally segregated, cut off, and belonging to another kind of a world, I felt that was part of our function. The function of the law of the Constitution. It fitted in with the theme of Ubuntu and so it's become one of my most quoted statements in legal judgments.

Richard Goldstone came around to my chambers afterwards and congratulated me. Richard was a very fine lawyer. He brought his judgments out very quickly, and I always thought of him as very serious, because I'd only seen him sombre on TV and so on, in fact, he was the one who cracked the most jokes at our meetings. If there were little frivolous arguments and quarrels, you know, he would intervene. And very neat, very professional, very quick judgments. But you wouldn't find a poetic phrase, it literally says that everybody counts. And maybe it's more useful, in some ways, his approach than mine. But he appreciated the comment I made, and I appreciated the praise from him.

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