



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

## THE CHRISTIAN EDUCATION CASE – VIDEO TRANSCRIPT

### CHAPTER: CORPORAL PUNISHMENT AND THE RELATIONSHIP BETWEEN RELIGION AND LAW

THANDI MATTHEWS

One of the earlier cases that you dealt with on the relationship between religion and law in our society was the 1998 case of Christian education. It had to do with corporal punishment. Could you speak more to what was happening at that time?

JUSTICE ALBIE SACHS

The Christian education schools, you could feel the panic in the papers they submitted to the Court. The new government in South Africa had passed an Education Act that forbade corporal punishment in schools. They've come from the US because they believed that corporal chastisement of errant boys would save their souls. It was fundamental to the very nature of the school. It wasn't just something that they did in the course of discipline. It was core to what identified them as an educational institution with a religious core to it. They were finding it increasingly difficult to get permits in the United States to impose the corporal chastisement. They came to South Africa and certainly to their credit, they hit black bums as well as white bums, defying the apartheid rules. And now, suddenly, there's this new law that's going to smash them to smithereens. They came straight to the Constitutional Court.

So our first time the Christian Education Case comes, we say no, you can't come straight to us, you've got to go to the High Court now. They go to the High Court, they lose the case. The High Court says that the judiciary doesn't have the authority to prevent the education department from making this a universal prohibition. It's not targeting them, it's just saying nobody can do it; no different from any other school. So, they take the case on appeal to us, and I'm asked to attend to it.

CHAPTER: WHERE PERSONAL EXPERIENCES COLLIDE

I am very secular, I'm worried. I have two personal experiences that were quite profound; that collide in my memory in relation to this. The one is rights of conscience and the importance of conscience for human beings. The battles I had as a youngster-- half the boys in my school were Jews, half Christian. I'm a Jew - Jewish background - but I'm not religious. My parents are not religious, I grew up in a secular home. It was very difficult to defend my right to be secular, difficult not to pretend to believe. It's much easier to go along with the others. And I had to make certain choices myself. Hard, hard, hard choices. Age of 13, do I have a bar mitzvah or not? And my feeling was that if I don't believe that there's a God, it would be disrespectful to me and to God, if God exists, to pretend the belief I don't have. I'm all on my own. My parents are saying, if you want a bar mitzvah, you can have it, we'll support you. If you don't want a bar mitzvah, you can have that, we'll support you.

It brought home to me how central conscience is to a human being. And it made me hugely respectful of the beliefs of others totally different to mine. And many religious beliefs are bizarre to non-believers. That Jesus lay under a stone, the stone lifted, and he rose... for believers, it's part of the miracle, it's faith. For non-believers, it's extraordinary. And you can go through religion by religion to find things of that kind. That's not the issue. The issue is the significance of the belief for the believer. So, I'm much more responsive to the claims of the Christian education people than my Christian colleagues. I just feel that they are just impatient with it. That's the one side.

#### CHAPTER: THE INJUSTICE AND PAIN OF PHYSICAL PUNISHMENT

The other side is the school I'm at, I had the misfortune to be the only boarder in the class, and the housemaster, who was our teacher, was a sadist. He would find fault with me every day and say, '*See me in my study at six o'clock.*' Six o'clock, I'd have to go there, bend over, drop my pants and he would give me six of the best with the cane, for nothing. I was a goody goody. I wasn't a troublemaker. But he would find some pretext. We didn't know about psychosexual stuff in those days. So, the injustice of physical punishment, the pain of physical punishment, it was something that literally bit into me as a child.

#### CHAPTER: I'M IN SOLITARY CONFINEMENT, AND I HEAR THE SCREAMS

Years later, I'm in solitary confinement, Wynberg police station, locked up, completely alone, nothing happening. And my cell is on the edge of the court. Every day at about 5.30, I hear the juveniles being caned. I don't see them, I just hear the screams. Wack, the scream. Wack. Wack. The screams get louder and louder. It's like animals screeching. I cover my ears and I can't bear it. It's almost worst when you can't see it. You're just hearing the sounds, you're hearing human beings crying out like

that in terrible pain. So, I have that hatred of physical punishment, corporal punishment. It's cruelty. And a strong belief in rights of conscience. The two are now colliding in relation to the school.

#### CHAPTER: CONSTITUTIONAL PROTECTION OF CHILDREN'S RIGHTS

In the end, I decide, it's clear, our Constitution speaks about protecting everyone from violence, from public or private sources. Strong position against violence. Our Constitution has got very strong protection of children's rights. And this is in the sphere of public education. So Parliament has a right to say no corporal punishment in any school. At the same time, it's not blotting out the identity of this community in terms of following their beliefs they can provide the chastisement in their homes, provided it doesn't transgress the laws relating to assault, and that's left open. It's saying it's not a complete extinction of their beliefs, but they can't do it in the more public arena of the school.

#### CHAPTER: REASONABLE ACCOMMODATION AND DISABILITY LAW

And I use a phrase there about reasonable accommodation, and it's a phrase I got from disability law. I don't remember a single case on disability law in my 15 years on the Court. And I would have appreciated [it] very much, having belonged to Disabled People of South Africa for a number of years. A wonderful organisation... 'Nothing about us without us.'

I came up with that notion of the democracy of the disabled. You all had that commonality of some kind of disability and the kind of freak affect, and the way society deals with you. It gave us an enormous bond, and working together was something very affirmative and very strong and positive for me.

The case never came, but I did pick up from disability law the principle of reasonable accommodation, that it was important, for example, for people in wheelchairs that public authorities, busses, people designing buildings, had to create whatever was reasonable to enable disabled people to ride on the busses, to enter the buildings. And that had to be put into the planning. But if the investment was so enormous that it just couldn't be sustained and it would destroy the whole project, then it wouldn't be reasonable. That's one of those areas of blurring the law for the sake of maximising positivity, with not a kind of rigid all-or-nothing approach... reasonable accommodation.

#### CHAPTER: VOICES THAT SHOULD BE HEARD

And I'm not sure what happened to the Christian education schools, if they still continue. I had a little piece at the end that got picked up by the Child Rights Unit. I said, '*It's a pity that the boys themselves weren't consulted.*' These are now teenagers, and their views should have been gained.

Maybe they would just be loyal to their parents. Maybe they detest, I don't know. But their voices should have been heard. The children's rights people throughout the world were very happy with that statement that they should be given a voice.

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