

National Seminar

“Emerging Challenges Before Indian Judiciary”

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गुरुर ब्रह्मा गुरुर विष्णु, गुरुर देवो महेश्वरा ।

गुरुर साक्षात् परब्रह्मा, तस्मयी श्री गुरुवे नमः ।।

सर्वप्रथम सभा में उपस्थित गुरुजनों को मेरा नमन व वन्दन ।

श्री डी० एन० गुप्ता, अध्यक्ष मेरठ कालेज कार्यसमिति; डा० एन० पी० सिंह प्राचार्य मेरठ कालेज मेरठ, श्री मुकेश चन्द्र अध्यक्ष विधि विभाग मेरठ कालेज मेरठ, इस सेमिनार के संयोजक डा० वर्मा, कालेज के अन्य प्राचार्यगण, बन्धु न्यायमूर्ति सुधीर अग्रवाल, दिल्ली से आये बन्धु न्यायमूर्ति श्री मृदुल जी, श्री वानी, सदस्य विधि आयोग, विधि के प्रिय छात्र-छात्राएं, उपस्थित देवियों एवं सज्जनों सभी को मेरा अभिवादन ।

मेरठ कालेज का प्रांगण मानो मेरे घर का आंगन । जहां मैं बचपन से आता जाता रहा हूं, खेलता रहा हूं, व जहां बाद में मैंने विधि की शिक्षा प्राप्त की है । वह आंगन जहां मेरे पिता ने भी शिक्षा व दीक्षा ली थी । वह आंगन जहां मेरे पितामह ने विधि की शिक्षा कई वर्षों तक दी । उस आंगन में मैं आज अपने गुरुजनों के बीच खड़ा हूं अतः आप स्वयं मेरी खुशी का अनुमान लगा सकते हैं ।

प्रायः मेरठ कालेज जैसी शैक्षिक संस्थाओं में मैं कुछ सीखने व आचार्यों के श्रीमुख से कुछ सुनने के लिए ही आता-जाता रहा हूं । परन्तु आज मुझसे यहां कुछ बोलने के लिए कहा गया है । औपचारिकतावश यह आवश्यक भी है और मात्र औपचारिकता निभाने के लिए ही कुछ कहने का प्रयास कर रहा हूं ।

Now I turn towards the topic for today's discussion which happens to be in English. I may therefore, be excused for switching over to English.

The subject of the national seminar “Emerging Challenges Before Indian Judiciary” has acquired great importance as our countrymen have placed judiciary on a very high pedestal. “We the people of India”, acknowledges that judiciary is the only organ of Indian democracy which can keep everyone within the bounds indicated by the Constitution.

In this connection, I would like to quote our Prime Minister Dr. Man Mohan Singh, from his speech delivered at the conference of Chief Ministers of the States and the Chief Justices of the High Courts. I quote “There is growing dissatisfaction regarding the functioning of the

executive and the legislature and their ability to deliver effective governance to meet the needs and challenges of our times. In this background, it is a matter of great satisfaction that the public at large continues to hold our judiciary in high esteem.”

However, lately it has also shown some signs of stress.

Indian judiciary in many senses is primitive, colonial and even feudal. It has many challenges to face. The list of such challenges is endless. Some of them have been described as delayed Justice, arrears/pendency of large number of cases, judicial activism or overreach, threat of contempt of court or judicial terrorism and many other such things. However, I would not like to dwell upon them as they are all very frequently talked about subjects everywhere.

I would like to confine my address to the role of judges and advocates in the matter of dispensation of justice as without these two justice delivery system can not work.

Justice is a divine function. It is sacred and Holy requiring excellence of the highest decree. It is a combination of Law, equity and good consciousness aimed at public good. Roman statesman Cicero once said “The Chief law is public good.” In this limited sense, it embodies the traits of 'Dharm' under the Hindu religion though the field of 'Dharm' is wider and superior as it includes within its fold not only the legality or illegality of an act or omission but also morality and immorality of a deed. The essence of 'Dharm' is the beautiful blend of Law, righteousness and justice.

Dr. A.P.J. Abdul Kalam former President of India had repeatedly emphasized:-

“Where there is righteousness in heart,
there is beauty in the character;
where there is beauty in the character,
there is harmony in the home;
where there is harmony in the home,
there is order in the nation; and
where there is order in the nation
there is peace in the world.”

“सूर्य प्रत्यक्ष देवो” ।

In Indian mythology Sun is regarded as a demi God.

The word divine actually refers to celestial bodies particularly to the Sun. A judge who dispenses justice by putting sincere hard work to the best of his ability, living a life of a hermit, keeping himself away from worldly life, burning himself day and night alone discharges the divine function.

Perfect justice, therefore, is an attribute of the divine and none of us, talking of judges, is divine with the exception of some like my brother Justice Agarwal. Therefore, perfect dispensation of justice is something which eludes us.

Lawyers form the backbone of the judiciary. The legal profession is considered to be a noble profession. Noble not for the reason that at one time it used to be dominated by noble men but for the reason that lawyers never use to espouse their own cause. They always raised voice on behalf of the sufferer and fought for public good.

I am reminded of a film which I saw in my childhood probably, if I remember correctly, it was **Pukar**. It was a film by **Sohrab Modi**. It was based upon the life of emperor Jahangir the just. The story goes like this. An arrow from the palace killed a Washerman, who was washing clothes at the bank of a river at night. His widow was veiling and crying. She had no courage to demand justice as she was conscious that the fatal wound was inflicted upon her husband by none else than someone from the Royal family. At this stage, one of the courtiers of emperor Jahangir enters the scene. He listens to the entire story, assesses the situation and decides to take up the cause of the widow. He encourages the widow to demand justice. It was late in the night. He leads the widow to the palace gate followed by members of the Washerman community. He asked the widow to pull the rope of the bell of justice, which was hung outside the palace. It was well known that Jahangir would always be ready to administer justice even in the odd hours. The bell was very heavy and the rope was stout. The veiling widow could not pull the rope with enough force to make the bell toll. The courtier keeps encouraging her but she was unable to ring the bell.

He waited for some time with patience and then came forward to support the weeping widow. He helped her with one of his hands in pulling the rope. Ultimately, the bell tolled. Emperor Jahangir walks in on the balcony of the palace. He listens to the grievance of the lady Washerman and assures her of justice the next day.

At that time as of my tender age, I could not understand the implication as to why the courtier did not use both his hands. He deliberately refrained in applying both his hands as it was not his personal cause. He in fact was adorning the robes of a lawyer and had confined his role to that of assisting the sufferer in demanding justice. This in fact is the true and correct role of a lawyer but today how many of us are conscious of the professional ethics. The profession of law has been sullied. Lawyers have started identifying themselves with the litigants cause and instead of helping the litigant or assisting the court have started looking towards the successes of the litigant represented by him.

In short, what I want to convey is that the present generation of lawyers and judges, by and large, ignores justice. They want success and recognize the sovereignty of the State and attempts to enforce its commands. This is troubling the placid waters of the Indian judiciary.

If lawyers are polluted and judges are contaminated, the institution of justice which is said to be the seat of God is bound to collapse.

So the major challenge faced by the Indian judiciary today is how to protect and preserve the independence of the judiciary and to check the lawyers and judges going astray.

To my mind the only thing required is to have noble men in the noble profession, who are alive to the triple role assigned to them (i) of assisting the bench in dispensing justice; (ii) serving as ambassadors of the bench; and (iii) acting as watchdogs of the people to ensure that their confidence in the judicial system is not undermined. Simultaneously, judiciary ought to be manned by judges with vision, wisdom and compassion, who can look after the interest and welfare of the underprivileged and deliver justice to them. In this connection, the only reform needed is the right choice for the constitutional post of a judge. This one radical reform would go a long way

in tackling most of the other challenges facing the judicial system. I may clarify that by no means, I want to convey that the present system of appointment of judges is not conducive or workable.

I may be excused for saying, we are not equipped to face the challenges emerging before the judiciary in the modern day. Many of the other issues which are emerging are mostly on account of globalization, scientific advancement and development and due to environmental hazards. The other challenges are due to extensive legislation, continuation of old laws without any revision, enactment of new statutes but with no or debate and the advent of laws relating to intellectual property, cyber laws etc.

The list is long and the time is short. Therefore, I conclude expressing my sincere gratitude to the organizers of this seminar and thanking them for giving me a privilege to stand before such an august gathering.

I wish the seminar a great success and hope that during the technical session the eminent speakers would enlighten the public on the subject with their valuable views.

In the end, I salute my alma mater.

Jai Hind