

KEYNOTE ADDRESS

BY

**HON'BLE MR. JUSTICE P. SATHASIVAM
CHIEF JUSTICE OF INDIA**

AT

**THE LAUNCH OF REDEFINING LEGAL PRACTICE FOR
ADVOCATES-GENERATION NEXT-CONTINUING LEGAL
EDUCATION TO YOUNG LAWYERS AT DISTRICT LEVEL**

ORGANISED BY

THE TAMIL NADU STATE JUDICIAL ACADEMY, CHENNAI

AT

TAMIL NADU STATE JUDICIAL ACADEMY, CHENNAI

ON

15.12.2013

Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, my esteemed colleague and Judge of the Supreme Court, Hon'ble Mr. Justice Rajesh Kumar Agrawal, Chief Justice, Madras High Court, Hon'ble Mrs. Justice Chitra Venkataraman, Hon'ble Mr. Justice R. Sudhakar, Judges of the Madras High Court, Mr. A.L. Somayaji, Advocate General, Madras High Court, Mr. C.V. Karthikeyan, Director, Tamil Nadu State Judicial Academy, other distinguished members of the Bar, invitees and guests:-

I extend my warm greetings to all the dignitaries present in this august gathering. I am delighted to inaugurate the programme "Redefining Legal Practice for Advocates – Generation Next", organized by the Tamil Nadu State Judicial Academy. The task bestowed on every State Judicial Academy is onerous and tedious. However, I have noticed that the Tamil Nadu State Judicial Academy has always disbursed its duties at ease. I am very happy and proud to say that this academy is playing an influential role in the process of redefining the legal practice in India.

Justice Chitra Venkataraman has requested me to address the gathering on '**Skills in Advocacy – Bench & Bar Relationship – Ethics in Judiciary**'. Although this remains the most deliberated

topic of all times, still the relevance has not lost. Thus, the onerous task of dispensation of justice requires more than mere knowledge of law.

Our conception of 'law' depends more on which side of the Bar we are sitting, than on what kind of education we have. Years of experience has taught us that law as an institution, and adjudication as a system is perceived differently by different participants in the process, like the Bar, the Bench, the Academicians, the Politicians and the People. At the same time, we know that 'law' exists in number of 'sites'- not only in the Courts, but also in our government offices, on our streets, and even in our homes. Thus, no understanding of this institution can be complete without a holistic understanding of all its expressions.

More often than not, we, the members of the Judiciary both the Bar and Bench, limit the essence of Law within the four corners of the process of adjudication alone, because it is this adjudication we witness the most. But for anyone who intends to make the promise of law and its lofty objectives good, law must be understood in its totality. Even the process of adjudication must happen from the prism of law's totality, and not merely from its partial conceptualization.

All of us in the judiciary see ourselves fulfilling a societal role. Even a superficial look at the growth of jurisprudence of the Apex Court and High Courts will point to the fact that the honorable Judges have always tried to fulfill their duties, while considering themselves accountable, foremost, to the aspirations of the people of India, as expressed in the values of the Constitution. Any process of adjudication must be seen through this conception of judges' and lawyers' duty.

A careful learner of our adversarial system will observe that 'law' is not a 'certain' entity. No number of statutes, rules and guidelines can make all cases definitive. Therefore, 'law' emerges as a contested reality, a site of disagreement. And in most cases, all the adversarial parties have a point. The court's conclusion then boils down to which decision would result in 'Justice', or which decision would be the correct decision to make. This aspect of judicial discretion has been subject to a variety of jurisprudential treatises.

Our experience has been that the Court is essentially an institution, which delivers justice. This is a duty placed on the Court by the Constitution. Article 142 of the Constitution mandates that 'the Supreme Court in the exercise of its jurisdiction may pass

such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it..." The next question is, what does this concept of "complete justice" mean? This "complete justice" must be a product of the internal values and morality of the Constitution itself. It refers to the inclusiveness of the Constitution, to the promise of protections under the Fundamental Rights in Part III and emancipation under the Directive Principles of State Policy in Part IV of the Constitution. It is often remarked that the Constitution intended to initiate a 'Social Revolution' in India. Thus, the concept of "complete justice" under Article 142 must reflect that aspect of the Constitution, which intends to bring dignity to the toiling masses of the country.

As Justice Sahai once said, "*Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way.*" It is this role, which the Constitution grants to a Judge of the Apex Court. And it is this role that the Court has tried to fulfill in a number of cases, like providing protection to women from sexual assault in ***Vishakha vs. State of Rajasthan***, and providing protection to minor children being adopted by foreigners in ***Lakshmi Kant Pandey vs. Union of India***.

Clearly, the role of a judge is a moral one, and is not merely a bureaucratic post. And with this role, a judge has to encounter many moral dilemmas. In the recent past, there was a case dealing with the right of a mentally disabled woman to bear a child. The woman, who was in a government run mental asylum, was raped, and became pregnant. The High Court had ordered the termination of pregnancy as it considered her incapable of fulfilling the role of a mother. It would be insensitive to consider the case as a mere legal matter. In that case it became even more difficult as both the sides, those supporting and opposing termination of pregnancy, expressed their good-will for the woman. There was a clear moral dilemma. Even though we ultimately disallowed the termination, we did it with a sense of sincerity and hope that what we did would be for the best. There lie the trauma of a judge- we, with all our limitations, are bestowed with a great constitutional duty. We can never ensure its fulfillment, but we can at least do our best towards the achievement of "complete justice". The role of Bar creeps in as a learned assistant to the Court, here the lawyer is not a contesting party but takes the role of a facilitator and helps the court to arrive at a justifiable solution. In my cognizant view, the relationship of

Bar and Bench is paramount for delivering complete justice as contemplated under the Constitution.

Truly the justice delivery system is not one man's legion rather it is the collective efforts of the Bench, Bar, administrative staff and clerks who steer the day-to-day working of the profession. Hence, administration of justice is a joint venture of which all are equal participants and we are together accountable to the public.

Freedom of speech may have been guaranteed to all the citizens of the country by the Constitution. The lawyers and judges exercise this very right to secure justice. They thus not only possess the requisite weapon of freedom of speech but also have the benefit of the opportunity for its effective views for positive ends. They wield a most potent tool in their hands and have the capacity, capability and opportunity to take the concept of legal activism to newer heights, to a state where there shall be no scope for injustice. It is mainly due to the vast responsibility vested on their shoulders, they are considered to be an important limb in the administration of justice.

Justice Sri Maurice Gwyer said, "every member of the Bar is a trustee for the honour and prestige of the profession as a whole". I

would also join him in his statement with an addition, that every member of the Bar and Bench must bear in mind that it is expected of him that "never by any act or word of his will he show himself unworthy of the great tradition which he has inherited".

Advocates are as much devoted to justice and fair play as the Judges. I say this because the Advocate today is the Judge of tomorrow and if a lawyer is not devoted to justice and fair-play, it is impossible to make good the same by crossing over from Bar to the Bench. Judges dispense justice in Courts with the help and assistance of Advocates. If there is decline in the efficiency of the Bar, it will be reflected in the caliber of the Bench. The Bar should be fearless in order to serve the end.

A good judgment reflects the assistance that a Judge received from the Bar on either side. A great Bar, endowed with ability, integrity and independence, is necessary to keep the stream of justice - pure and unsullied. Bar is the nursery for the Bench because it is in the practice days that the lawyers acquire the knowledge and hone their skills in the process. The proficiency and maturity acquired during practice come handy if the gentlemen are persuaded to sit on the Bench for larger roles in the administration of justice.

Fearlessness is the hallmark of the legal fraternity. In order that judicial administration continues to thrive and be ever vigilant, in order that the judiciary discharges its obligations to the people of India in the manner expected of it and in order that the rule of law prevails so that democracy is sustained in our country, the legal profession must remain independent and must assist fearlessly.

The legal community in India has a glorious past. It is important to remember the great visionaries in the profession who enriched the field of law with their acumen and erudition. Their contribution has to be kept in mind so as to feel inspired and motivated.

The members of the legal profession have to bear in mind that the system does not exist for them. It is they who exist for the system. They have to be more accommodating with the needs of the changing times. The Bar and Bench in India serve the judicial institution that is overburdened. In order that the system should survive, and in order that the public faith in our administration of justice continues unabated or uneroded, the system has to work overtime so as to meet the newer challenges. In this onerous task, no one connected with the administration of justice, can afford to be idle. This applies to the lawyers' community as well. In the face

of such pressures on the time of the judicial system, there is no scope for any let up. Any wastage of precious judicial time, of necessity, must be viewed as a criminal wastage.

In spite of various authoritative judicial pronouncements on the subject, and assurances to the contrary given by the leading members of the Bar, strikes and boycotts of the courts continue to be witnessed in different States at different points of time. The legal fraternity has to remember that boycotting the courts or indulgence in strikes so as to disrupt the functioning of a court is akin to cutting the very branch of the tree on which one is precariously perched.

Evolving aspect of law

It is my considered view that legal education and training is an on-going process. Law is one branch of learning that has never stagnated. No one can claim to be perfect in legal knowledge. Indeed we all, whether Judges on the Bench or lawyers in the Bar, strive to achieve perfection. But in the fast changing socio-economic norms, the developments in the law have been fast paced. One needs to keep oneself abreast with the latest in law unless one is resigned to be outdated.

Several new avenues have opened up for legal profession. Human rights, environmental law, Cyber-law, intellectual property rights, arbitrations are some of the new fields. The numbers of lawyers are increasing. Therefore, there is a need for young lawyers to search new fields, seek new frontiers.

Between the affluent class and the indigent, there is a vast middle class of clientele, which is in need of dependable legal services at reasonable rates or fees. It is possible for the Bar Association of each court to offer dependable legal services at standard rates or fees, with the support of leaders of the Bar. It is a matter of formulating a scheme and implementing it scrupulously. There are many sound lawyers whose services could be availed for this purpose. The Bar is, by and large, prepared to make a sacrifice of its monetary interest, provided they get recognition and respectability in return. The Bar Council of India can formulate schemes and implement the same with the help of Bar Associations and State Bar Councils all over the country.

Code of Conduct

The judiciary is perhaps India's most respected institution and the opportunity to be integral part of this institution is indeed very

honoring for all of us. The public esteem and credibility it enjoys deserve to be cherished and preserved. However, there is, unfortunately, a growing crisis within it. The manifestation of this crisis lies not only in the ever increasing arrears of cases in Courts, and the consequent delays in our justice delivery system, but also in the steady decline in the reputation of the judiciary as also of the legal profession. This institution unlike the other institutions in the democratic setup thrives only on the trust and the confidence reposed by the people. Thus the virtuous image of the institute in the eyes of the public is paramount for the dispensation of justice. We should always conduct ourselves befitting to the status we hold. Although, I have repetitively said this in all the meetings I have attended, still the statement does not loose the relevance.

The judiciary is viewed as a shield for the common man against the abuse of power and arbitrariness. Indeed, it has often been said to be a beacon of hope to the common man. Its position, priority and operations, as well as how the various stakeholders in a democratic setting activate and appropriate its role and interventions, reflect the judiciary's importance to the well-being of modern democracy. Observing, that the working of the judiciary has

a profound effect on the administration of the country as a whole, we should be more mindful in our actions.

Final Remarks:

The perception of justice itself is changing in contemporary times. The conventional functions are assuming new dimensions with the expansion and diversification of judicial assignments and changes in the expectations of society. Therefore a good judge should be articulate, patient, well read, firm but not draconian, kind but not soft, he must be non-judgmental, open minded, and he must be the master of his court. Above all, he must be incorruptible. At the same time, both the Bar and Bench has a duty to keep a vigilant eye to prevent parties from abusing the process of court, rules of practice or procedure or even administrative guidelines framed for ensuring efficiency.

I am of the considered opinion that both Judges and Lawyers have great role to play and they should make heartiest and transparent efforts to strengthen the judicial system.

The 21st century poses several challenges, as law becomes an integral aspect of our lives and court decisions affect issues that directly matter to the people. In this scenario, both Bar and Bench

must strive to maintain public confidence in the rule of law. The performance of the judiciary is judged both by the number of persons using the system and by number of persons to whom it bears fruit. Litigation has been on an increase year by year and it can certainly be taken to be an indication of the faith that the people has reposed on the judiciary. It is my firm belief that all those who work here as judges, as counsel and as administrative staff should make their best endeavors to fulfill these aspirations.

In my concluding words, I wish to emphasize that although the 'People of India' does not elect the members of judiciary yet the judges and lawyers are ultimately accountable to the people. Hence, if our republic is to live up to the promises in the Constitution the judges and lawyers have an important role to play. The justice system is the principal instrumentality in satisfying the undertakings in the Constitution. Therefore, 'we the sentinels of the judiciary' must strive to ensure to the litigants, easy access to the Court as well as guaranteeing early finality of dispute resolution thereby upholding the integrity and efficiency of the institution, which we are all part of.

Thank You!