

“MY DREAM OF AN IDEAL JUSTICE DISPENSATION SYSTEM”

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Introduction

It is a great honor to be asked to give a lecture to celebrate the 150th anniversary of the founding of this Government Law College. Thanks for inviting me here today.

The topic “My dream of an ideal justice dispensation system” often lends itself to utopian visions that can seem abstract and dauntingly difficult to implement but I selected this topic and decided to speak on it because my dream begins in a very tangible place here in this auditorium with you.

In my dream lawyers have a critical role to play. It is the students of great institution like this as the next generation lawyers who will be responsible for building upon whatever gains we have made in justice dispensation, repair our errors, and defend those democratic institutions which are needed for justice dispensation. There is no one better suited for this task than lawyers, and so it is on you as lawyers that this responsibility will fall.

Lawyers must view themselves as public servants no matter what their chosen field of practice, no matter what side they take on a case. By learning the law you are given power. Your voice becomes louder and clearer. Through your arguments you can shape and even change the law. You can ensure the law's implementation. It is a power, though, that comes with a duty. The law that you invoke is not yours, it is the peoples. Part of the duty in being a lawyer is working to make sure there is justice not just for some, but all people.

I want to talk to you about main challenges that we face for ensuring justice dispensation to everyone in this country. I also want to talk to you about some aspects of legal education that I think you should reflect upon while at law college because I believe that the success and failure of justice dispensation in this country in the years to come would to a large extent depend on you. I am very optimistic. I have no doubt and have full confidence in your ability to provide to the country an ideal Justice Dispensation System

Challenges to Ensuring Justice Dispensation:

When we talk about a justice dispensation system we assume that the ideals of justice are being articulated at some higher level of government – be that Parliament or state legislatures, the Supreme Court or lower courts. However, what ideals of justice are articulated at the top of

the judiciary are influenced by the access ordinary people have to lower courts. Oliver Wendell Holmes observed “The life of the law has not been logic; it has been experience.” A law that is healthy and vital is shaped from the context in which we live. It is in the individual cases where the hard choices are made, our legal principles crystallized, and our faith in justice reaffirmed. If people do not have access to the courts at all levels of the judiciary then we are missing voices, problems, and perspectives that enrich the ideals of the law enunciated at the top or at any other level of the judiciary. Our ideals of justice are not so much created and refined by logic as they are by experience.

Let me also tell you that the obligation of dispensation of justice is not only of the courts, but also of the government, civil society and the public. Lawyers play an important role in ensuring justice is dispensed in each of these realms. Those trained with legal education can be a part of crafting systems within the government to dispense justice. They can also work to increase legal literacy amongst the people. When people know their own rights they are more likely to successfully assert them without the need of court intervention, and if that is not possible they are likely to bring matters to the court.

The last resort of people is, of course, a court of law. Effective justice dispensation through the courts requires at least three elements:

Access to courts, effective decision-making by judges, and the proper implementation of those decisions.

Let us start with access to the courts. We have made satisfactory success in opening the doors of courts in this country to many for whom earlier it was a dream. The provision of free legal services to the poor through forums under Legal Services Authorities Act and some other legislations have contributed considerably in this field. Further, Public Interest Litigation has allowed civic-minded citizens to file petitions on the behalf of others whose rights are being violated. The judiciary has a track-record of actively intervening on the behalf of many of the country's poorest and most disadvantaged.

When we talk of justice, it means a constant and perpetual desire to render everyone, his or her due. This, in turn, means that the court must in every way find legal techniques to provide relief to the one who has been deprived of what was due to him or her. It is, therefore, said that justice is the ultimate objective of law. Our Constitution injects justice, equity and good conscience into Indian way of life.

Despite successes in the sphere of access to justice by opening the doors of courts to the people, it is common knowledge that the judiciary faces a large backlog of cases which in the end results in denial of real

access to the courts for far too many on account of delay that takes place in many cases in dispensation of justice.

The belief that when a dispute goes to the Court it will be resolved, in accordance with the existing law, by an independent judge, and justice will thereby be done to them, prevents people from settling disputes privately by application of force. When we catch a person committing a crime, we, instead of punishing him, hand him over to the police for trial before a court of law, in the belief that the court will administer law impartially and punish the wrongdoer. Similarly, when there is invasion of our civil rights or a civil wrong is done to us, we go to a court of law, for redressal of our grievance, instead of taking the law into our own hands, in the hope and belief that in a reasonable time, we will get justice from the courts.

It is a matter of satisfaction that the public at large continues to hold our judicial institutions in high esteem, despite their shortcomings and handicaps. Yet, there are serious concerns about the efficacy and ability of justice delivery system to dispense a speedy and affordable justice. Questions on the credibility of judiciary are being raised due to mounting arrears of cases, delays in disposal, high cost of obtaining justice and occasionally because of lack of probity in some sections of judiciary. We can rightly take pride for the quality and effectiveness of our judicial system. Yet, we cannot deny that it suffers from serious deficiencies, requiring immediate steps to improve its performance, so as to render

prompt and inexpensive service to its consumers. If people loose faith in the justice dispensed to them, the entire democratic setup may crumble down. To retain the trust and confidence of people in the responsiveness and ability of the system, it should be capable of delivering quick and inexpensive justice.

No one can progress unless he dreams. No one can seek reforms unless he imagines. But, there cannot be any progress in dreams and reforms in imagination. Self-realisation, self-criticism and self-judgment are the three angles of any reforms. To reform, one needs a scientific theory with an applied science. One, without other, is infirm. We have philosophy and ideals on the reform of judicial system in abundant measure, but hardly any scientifically analysed proposals with a practical outlay. The need of the hour is to identify the shortcomings and remove them to the extent it is possible.

An Ideal Justice Dispensation System should necessarily have the following attributes:

1. Speedy and affordable quality justice;
2. Independent judiciary;
3. Ethics and honesty in governance;
4. Social relevance, dynamism and pragmatism.

Many a times, many suggestions by many, including me, have been made at different forums. The need is to act upon them swiftly and decisively.

1. Speedy and Affordable Quality Justice:

When we talk of 'delay' in the context of justice, it denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court. An expected life span of a case is an inherent part of the system. No one expects a case to be decided overnight. However, difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span and that is when we say there is delay in dispensation of justice.

Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the very capability of the system to impart justice in an efficient and effective manner. Long delay also has the effect of defeating justice in quite a number of cases.

The problem is much more acute in criminal cases, as compared to civil cases. Speedy trial of a criminal case considered to be an essential feature of right of a fair trial has remained a distant reality. A procedure which does not provide trial and disposal within a reasonable period cannot be said to be just, fair and reasonable. If the accused is acquitted after such long delay one can imagine the unnecessary suffering he was

subjected to. Many times such inordinate delay contributes to acquittal of guilty persons either because of fading memory or death of witnesses or the evidence is lost or the witnesses do not come forward to give true evidence due to threats, inducement or sympathy. Whatever may be the reason, it is justice that becomes a casualty.

It is high time we make a scientific and rational analysis of the factors behind accumulation of arrears and devise specific plan to at least bring them within acceptable limit, within a reasonable timeframe.

The real problem is that the institution of cases in the Courts far exceeds their disposal. Though there is a considerable increase in the disposal of cases in various courts, the institution has increased more rapidly.

One of the main solutions is increasing the strength of judges in various courts. The existing strength is inadequate even to dispose of the annual institution. The backlog cannot be wiped out without additional strength, particularly when the institution is likely to increase and not come down in coming years. Other measures necessary are - augmenting of infrastructure, introducing shift systems as an experiment in some Magisterial Courts, granting at least limited financial autonomy to the judiciary, concept of Judicial Impact Assessment, introducing Case Management and Court Management, classification and assignment of

cases in a scientific manner, more thrust on ADR Methods including Lok Adalats, and modernization & computerization of courts.

Video conferencing is a convenient, secure and less expensive option, for recording evidence of the witnesses who are not local residents or who are afraid of giving evidence in open court, particularly in trial of gangsters and hardened criminals. This is in addition to savings of time and expenses of traveling. Recently, Code of Criminal Procedure has been amended in some States to allow use of Video Conferencing for the purpose of giving remand of accused persons thereby eliminating need for their physical presence before the Magistrate. We need to make extensive use of this facility.

Training of Judges and Judicial Staff:

Regular training and orientation sharpens the adjudicatory skills of Judicial Officers. If judgments at the level of trial courts are of a high quality, the number of revisions and appeals may also get reduced. If the Judge is not competent he will take longer time to understand the facts and the law and to decide the case. The training needs to include Court and

Case Management besides methods to improve their skills in hearing cases, taking decisions and writing judgments.

Carrying out of judicial reforms and implementation of new initiatives require participation of and concerted efforts from not only Judges but also from Court personnel, who manage the system.

Discretionary Prosecution:

It is difficult to enforce the formal system of charge and adjudication in respect of all the offences irrespective of their nature, implication and magnitude. There are simply too many offences, too many offenders and too few resources to deal with them all. In some countries, including U.K., the principle of discretionary prosecution has replaced the principle of obligatory prosecution. A case is sent for trial only if the prosecuting agency is of the opinion that the prosecution of the accused would be in public interest. We can consider and opt the same principle with such modifications as may be deemed appropriate in our circumstances.

Legal Assistance:

A large majority of our people still live below the poverty line and are hardly able to afford two square meals and a shelter on their head. It would be unrealistic to expect them to afford the services of a competent advocate. Efforts have been made by governments from time to time to

address the issue of granting legal aid to the poor but, enough has not been done and the system requires further augmentation and strengthening, particularly on giving such people services of good and competent lawyers and not just lawyers. Unless the advocates provided (by legal services authority) are competent and hard working, no useful purpose is served by making their services available to the poor litigants. Legal Service Authorities have to take suitable steps to ensure that they empanel only reputed counsel of proven ability and integrity, in whom the poor litigants may repose trust. There is reluctance on the part of senior counsel to come forward, to provide legal aid to the needy persons. They have to be persuaded to acknowledge their social obligations and provide their service to the weaker sections, without expecting any remuneration either from them or from the Legal Service Authorities. In developed countries viz. United Kingdom, the Government maintains a panel of very competent and experienced advocates for providing legal aid to the defendants in criminal cases and pays adequate remuneration to them. In our country, the State cannot afford to pay the fee being presently commanded by successful Advocates. It must nevertheless pay reasonable compensation, so as to attract talented and reasonably experienced advocates to legal aid panels. Legal services authorities should ensure that such panels are manned only by service oriented advocates and are not used for the purpose of doling out favours to the kiths and kins of the powers that be or to advocates who do not want to

work hard and join such panels merely for the purpose of earning their livelihood.

Legal Literacy:

The benefits of social welfare legislations have not been able to achieve their intended purpose due to ignorance on the part of the target citizens about the availability of various welfare schemes initiated by the governments from time to time. Legal literacy will make the citizens aware of their legal rights and obligations, including their right to receive legal aid from the State. The services of law students can be effectively utilized in spreading legal literacy and facilitating negotiated settlement of disputes. Legal aid camps are an effective tool for spreading legal literacy, encouraging people to resolve their disputes amicably and availing the benefit of legal aid, wherever required by them. I will urge all the students of this illustrious law college to devote part of their time in attending legal aid camps and spreading legal literacy. Not only will they be able to serve the weaker sections of the society, they will also prove to be better lawyers and better human beings.

2. Independent Judiciary:

An independent judiciary is the backbone of a good judicial governance. Rule of Law and judicial review are the basic features of Indian constitution and independence of judiciary is an essential attribute of

Rule of Law. Administration of justice requires judiciary committed to the constitution and law of the land. Judiciary must, therefore, be free from pressures or influence from any quarter. The oath which Judge takes before he enters upon his office, requires him to perform the duties of his office without fear or favour, affection or ill-will. This solemn affirmation is the bedrock of the faith of litigants in the judiciary. The ultimate saviour of an independent judiciary is a brave and fearless judge who truthfully discharges the duties of his office without in any manner being influenced from any quarter. A judiciary manned by judges with vision, wisdom and compassion can do more justice and the welfare to the underprivileged than all the laws and policies we can think of.

Sir Harry Gibbs, Chief Justice of Australia defined an independent judge as:

“That Judge who has nothing to hope for, nothing to fear, in respect of anything done in the performance of his judicial functions, that Judge who is able successfully to resist pressures of any kind.”

The concept of judicial independence, takes within its sweep, independent from any pressure or prejudice. It has many dimensions including fearlessness of other centres, whether economic or political and freedom from prejudice acquired and nourished by the class by which the judge belongs. The judiciary stands between the citizen and the state as a

bulwark against executive pressure, excesses and misuse of power by the executive. It is, therefore, absolutely essential that it should be free from executive pressure or influence and our constitution contains elaborate provisions to secure this requirement.

3. Ethics and Honesty in Governance:

Integrity, impartiality and fairness of judiciary are the main sources of public acceptance of its authority. The very existence of judicial institutions depends upon the judges, who constitute the system. They should never forget that they hold the office of a judge as a public trust and therefore, should continuously strive to retain the confidence reposed in them by the people. No system of justice can rise above the ethics of those who administer it. Lord Denning has stated *“when a judge sits to try the case he himself is on trial before his fellow countrymen. It is on his behaviour that they will form their opinion of our system of justice.”*

Judges do not have the power of sword or purse. They only have the moral authority based upon the confidence of the public in them and so long as they maintain that authority their orders will be respected and complied. It is necessary to maintain highest standards of integrity, rectitude and impartiality, so as to maintain that confidence.

A Judge should be conscientious, just, impartial, indifferent to private, political or partisan influences, indifferent to public praise and

fearless of public clamour. He is expected to administer justice according to law and not allow other affairs of his private interest to interfere with the due performance of his duty, nor should he administer the office for the purpose of advancing his personal aims or increasing his personal popularity.

Our courts have, to a very large extent, justified the confidence reposed in them by the common man. Unlike members of other services, only occasionally complaints are heard against the members of judiciary. At the same time, it cannot be denied that stray complaints have started emerging and showing their ugly face. The instances of corruption, wherever they surface, have to be ruthlessly curbed with a firm hand. A Judge, who is prone or susceptible to corruption cannot have any place in the system, which should not hesitate in weeding out the deadwood, the corrupt and the insolent.

The High Courts should meaningfully and effectively exercise powers conferred upon them by Article 235 of the Constitution so as to maintain highest level of integrity, honesty and fairness. Action against erring judges should be prompt and effective. I am happy to note that by and large wherever such instances have come to the notice of the High Courts, they have not hesitated in taking a firm stand and ruthlessly curbing such tendencies.

Judicial restraint and discipline are also as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint is humility. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. A judge ought to be bestowed with the sense of complete detachment and humility. A Judge should never be heard claiming with egotism that a particular judgment was written by him or a particular sentence or decree was passed by him. He should be polite, detached and humble, active in body, but detached in mind.

4. Social Relevance, Dynamism and Pragmatism:

Another aspect to be highlighted is the Latin maxim *Boni Judicis est ampliare jurisdictionem*, that law must keep pace with society to retain its relevance. It must continue to govern our justice delivery system. If the society moves but the law remains static, it shall be good for neither of them.

More than fifteen years back, the Supreme Court in ***Delhi Judicial Service Association v. State of Gujarat***, said: “... ..In interpreting the Constitution, regard must be had to the social, economic and political changes, need of the community and the independence of judiciary. The

court cannot be a helpless spectator bound by precedents of colonial days, which have lost relevance.”

Lord Denning has beautifully said “every new decision or every new situation is a development of law. Law does not stand still. It moves continually. Once this is recognized, then the task of the judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason laying brick on brick, without thought to the overall design. He must be an architect thinking of the structure as a whole building for the society, a system of law, which is strong, durable and just. It is on his work the civilized society depends.”

Legal Education:

Students are my architects and, therefore, I now want to address main aspects that I think one should focus on during legal education at the esteemed institution like this. Your legal education will help determine how skilled and what type of a lawyer you become. I think discussing legal education is especially pertinent to today’s topic because what education law students receive will also deeply shape how justice will be dispensed in this country in the years to come. With that in mind, there are five critical components to legal education that I think you should consider. First, work to get a well-rounded, inter-disciplinary education.

You should embrace the inter-disciplinary elements of your education to get a well-rounded perspective on the world. Whether through your classes or your own personal efforts, learn about history, philosophy, science, literature and art. These disciplines will serve you well as a lawyer. The law is grounded in history and philosophy. Many of the biggest controversies in society today involve science. Literature and art will help you learn that the world can be understood in many different ways. An inter-disciplinary, well-rounded education allows you to prepare for whatever you may confront in life whether in the law or outside of it.

Second, think about theory while you are here. When you read a case don't just examine the facts and the holding, but reflect upon the theory and context behind the decision. If a particular issue strikes you research it further and write about it. Consider submitting your work to the law review. There are still many areas of the law that need to be more fully explored by scholars and students like you. Moreover, when you study the theory behind the law you are learning principles you can apply to any case.

Third, learn about law and globalization while at law college. Dean Harold Koh of Yale Law School asks students to consider three aspects of law and globalization: the law *as* globalization, the law *of* globalization, and the law *in* globalization.[Harold Koh, "Dean's Welcoming Speech 2006"

Aug. 30, 2006] Let's examine each of these briefly in turn to get a sense of this relatively new field.

The law as globalization. This means that the spread of law worldwide is a feature of globalization just like global communication or global culture. Of course, the sharing of legal knowledge between countries is not new. India has looked abroad for inspiration for its law since independence. The Indian Constitution's political structure was influenced by Great Britain, the Fundamental Rights by the United States, the Directive Principles by Ireland, and its federalism by Canada and Australia. When drafters of constitutions in other countries undertook their task, they too looked to other countries for inspiration. Recently, the drafters of the South African Constitution deliberately cast their gaze to constitutions across the world for inspiration for their own constitution.

Similarly, courts of different nations look to the decisions of other courts for insight or guidance to a topic before them. This too is not new. What is new is that the decisions of courts from around the world are now just a mouse click away. This increased interconnectivity brings advantages and disadvantages. It is an advantage because we can learn from the experiences of other countries and when applicable have our discussions shaped by the reasoning of courts in similar situations. However, there are also potential pitfalls. There can be literally hundreds of decisions on any given topic from other countries around the world. We

can become overwhelmed by the sheer immensity of information we are presented with. Furthermore, many of the experiences of other countries may be only partly relevant or not relevant at all. It is learning to discriminate amongst all the information presented in a globalized world that makes a good lawyer.

Let's now turn to the law *of* globalization. This means that globalization comes with its own unique set of laws and legal institutions, whether it is human rights treaties or WTO trade law. An increasing number of cases involve or are informed by this law *of* globalization. It is imperative that we understand and shape this emerging law.

This brings us to the law *in* globalization. Here, the word "law" is used normatively, in that law is not just a set of rules – dictators and tyrants can impose those through force – but instead law has a moral authority, law brings justice. We must understand how we can use the law to blunt the harsh edges and control the dark sides of globalization. As long as people have humanity so must their law, this is no different in a globalized world.

Turning from globalization and the law, let me discuss a fourth aspect. I think that before you go out of the law college, you should engage in public service as part of legal education while you are here. There are a number of ways of doing this. One is working at the legal aid clinic at the

Government Law College. Such work not only trains you in skills you will need to be a successful lawyer, but also allows you to give back to the community around you. You will discover challenges in public service work. You will also develop a greater understanding of the perspectives of those you help. That greater understanding will in turn increase your desire to help.

This brings me to the fifth and last aspect of your legal education. Reflect upon your values while at law college. What will you stand for? What will you fight for?

Gandhi and Nehru were trained in the law, as were many of our other independence leaders including Dr. Ambedkar, a distinguished alumni of this school. So were great leaders for freedom and equality in countries around the world. The challenges our country faces today may be different than those it faced at the time of our founding fathers, but the need for lawyers committed to the public service is no less, need for values is no less and the need to improve the reputation of lawyers as a class, is no less. Final judgment is yours.

Conclusion

It is important that we are asked to dream of utopias. To ask not just what is, or what seems possible, but what could be. In the first part of this lecture I outlined some of the challenges facing justice dispensation in our

country, and hinted to some answers. I limited my grand pronouncements about the future and instead chose to spend the second half of my talk on discussing legal education. I did so because lawyers will be important practitioners and in many ways the architects of justice dispensation in the future. If we have good lawyers – by which I mean well-rounded lawyers, grounded in theory and research, adaptive to a changing world, committed to the public service, and motivated by strong values – then we have reason for great hope. Whatever utopias we strive to reach that journey begins here. That is why I am so thankful that I was asked to come today to celebrate the 150th anniversary of this illustrious institution that has already produced so many distinguished alumni. The strength of institutions like the Government Law College and the potential of students like yourself gives us confidence that the future of justice dispensation in this country is bright.

Let me end by acknowledging that it is difficult to achieve the perfection but one can always strive to excel and if one continues to walk on this path tirelessly, many, if not all, problems could be overcome. Many thanks and best of luck.
