

EMERGENCE OF NEW LAWS AND JUDICIARY

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Hon'ble The Chief Justice Mr. Justice Sen, Hon'ble the Law Minister Sri R. S. Gupta, Justice Raza, Justice Mathur and Justice Gupta, Mr. D.P. Gupta, Brother Judges, past and present, members of faculty and trainees.

First of all on my own behalf and on behalf of my wife I would like to thank the Chief Justice Mr. Justice Sen as well as Mr. Justice Gupta for having invited us to come to Lucknow and inaugurate this programme. This first of all gives us an opportunity and I let out the secret that it has given us an opportunity of visiting this great city for the first time. We are indeed very happy and glad to be here in the city of the "Kababs and Nawabs" as justice Raza rightly quoted but what has given us greater happiness is to see this Institute. I heard a lot about it but today I have seen myself as to how good the Institute is, how efficiently it is working and as to how modern it acts and futuristic it is in its thinking. Cyber Laws is a thing of the present and of the future.

We are now in the 21st Century. In the last 20 Centuries, the last one century has done maximum and has progressed the most in which there are much scientific achievements and as such that one Century by itself achieved more than all the earlier 19 Centuries. This obviously shows the rapid progress, the rapid change which is taking place and unfortunately as far as we are concerned the laws which we have, enacted in the 19th century and when you see the Evidence Act, the Criminal Procedure Code and most of the basic laws what we have of 19th Century. So finally we have now awoken up to the fact that the world is changing very fast and we have to keep pace with it. This is the second model law of UNCITRAL, which has been adopted in the country

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by the enactment of the Information Technology Act of 2000. The first of model law of UNCITRAL, which we adopted, was the Arbitration Act, 1996. When that Act was passed by the Parliament and became a law here, it revolutionalised the law of arbitration in India and at that point of time, I remember, I have attended a large number of seminars to educate the people about the new law and now we have the I.T. Act of 2000, which is again based on UNCITRAL and I am very happy and I must congratulate Justice Gupta and members of Faculty for having arranged this seminar and training programme on this law which is very complex. It is a thing, about which I personally know nothing, I do not know how to operate a computer, but this is a thing, which we are going to face; the problems are going to arise.

The society is becoming a paperless society for us brought up in a world of paper for us to comprehend that you will soon have possibly a library with no books in it. You will have offices where there are no papers and you will have written contracts, you will have binding contracts without there being signature in the ordinary sense, for us to comprehend that is to be very difficult, but we have to keep pace with the society and it is therefore very necessary firstly, for the judicial officers to do the work properly that each one of them must be made computer literate. We have to keep pace with that and we must know what is about and I am quite sure that this seminar which I am inaugurating today is going to educate you at least on some aspects of the cyber laws, not all the aspects which will help you in discharging your duties. Justice Gupta has mentioned in his opening remarks that we need to have good judicial officers. He has mentioned that there is need to do away with the three years period, which is required as an eligibility condition. I agree with him whole-heartedly but that is my personal opinion. It is very necessary today that we should do some soul searching. Today for a common man, for a common citizen judiciary, which is at a very high pedestal, which is to be put on a higher pedestal is a last resort for looking into the redressals. We cannot fail the common man. We have to live up to the aspirations of the people. There are various constraints in which we work but we must make a good beginning and the beginning is made by correct recruitment of the judicial officers. Why the greatest importance is given to the subordinate judiciary?, is deemed to come into the contact with the common man, not to Supreme Court nor the high Court but it is the Munsif and the Magistrates. They are the foundation of the edifice of the judiciary, which we have. It is of utmost importance that the foundation should be strong. That foundation has to be firm and that can be done only with a good mixture of cement and sand.

Only three days ago I was dealing with a case in Supreme Court when I was told that out of forty vacancies, which were advertised for recruitment as a subordinate judge, only eight people could be selected. Now that cause some serious thought. If out of hundred vacancies only forty are advertised and out of forty only eight are selected what is going to happen? I think there is some thing wrong somewhere. If we expect, I personally believe that if we expect a candidate to know all the law and he fails because he does not know the law that possibly may not be a proper approach in making selection. What we have to see while recruiting a judicial officer is that what is the type of raw material we have. If the raw material is good, the quality of cement is good, mixing is proper then it will lay a strong foundation. What is his background, what is his integrity, what is his education, how intelligent is he, what is his IQ level. What is his awareness about the problems of the public, what is the general knowledge that possibly may be more important at the time of recruitment. Then to see how much law he knows. Because once you recruit, you have such a very good, such a wonderful judicial Institute here where the law will be taught to him here but what you have recruited is a rough diamond of good quality, which you will chisel and sparkle in this Institute. The mistake, which we ordinarily may commit in making a recruitment at a subordinate level is, apart from any thing else, how much law does he know, that approach is not good from different point of view. If we see that what we get and what we may recruit a people of integrity, honesty, hard work, reasonable amount of intelligence and basic knowledge of law, there is no reason as to why you should have any vacancy in the subordinate service and why your judicial service should not be amongst the best in the world. That is one aspect, which I have mentioned with regard to the requirement of three years eligibility condition that depends on the law, which you made. If your statutory rules do not do away with this, there is Supreme Court to reconsider what it has said earlier but in this side there is a lot of merit in doing away with this, three years eligibility condition.

A judicial service, which is so higher, should at least be at par with the Indian Administrative Service, having all India Competition. Recruit the best people in the country and your standard will go up. With regard to the Cyber Law I have already pleaded a lot about my ignorance. Ignorance in the sense that I do not know even how to operate the computer, but one thing is there with regard to the extent of fines. My brother justice Mathur mentioned that fine is one crore in one case, fifty thousand or ten thousand in another case. I do believe that we tend to have a misplaced sympathy for the wrong doer.

Why should we say that a fine of one crore is too high, fine of ten thousand or fifty thousand is too high? Why should we have sympathy with the wrong doers? If you do not commit any sin, if you do not commit any crime you should not be bothered about the fines. Today in a city where you locked your doors, you bolt your windows, you are afraid of a thief but in other parts of the world where the fines are deterrent, really deterrent, you can go out of the house without locking any doors or you may say that the punishment of cutting hand is inhuman but you may give trouble yourself because you committed theft. If you do not commit a theft you may not be punished. Result is that you will have a most peaceful and lawful society. These fines are meant to be deterrent. In Singapore I remember, long ago if you crossed the road at the wrong place you immediately have to pay a fine of fifty dollars. If you parked your car at the wrong place you will pay five hundred dollars as fine. Here, what is a challan you have, fifty rupees which even cheaper than a cup of tea somewhere, so people do not mind breaking law because they can afford and get away with it. You are having a law less society. Therefore, in this I.T. Act of 2000 you have heavy fines. I think that is called for, in any case with the extent of devolution, which took place today the fine may be very heavy but in due course of time it would be light. I do hope that keep on changing by adding, increasing the figure, so that if you hack on some body else's computer, it destroys that system. If you are able to decipher somebody else's signature and take away his money from his Bank, you should really be punished. There is no question of having any sympathy for him, as he is a wrong doer. I do not believe in having sympathy for a wrong doer. We have misplaced sympathy for him. I think, something, which we should reflect, think and consider even when we are dealing with cases under other branches of law.

As far as Intellectual Property is concerned, I can only say that it is a very complex law but looks very simple one. I had an occasion to deal with a number of cases of Intellectual Property not only as a layperson but also as a judge on the original side and one principle, which I followed, and which I believe it was this we sometimes tend to forget is that what is Intellectual property. Intellectual property is what the words really convey. It is the property of an intellect. It is a property belonging to the person who has produced it. Dealing with some matters, which tend to think an ordinary matter. It is a business matter and nothing very serious. If somebody else's has used a trademark, somebody else has used a copyright, what difference does it mean? But if you view it from a different angle that it is a property of the intellect

produced by an intellectual person and somebody else is using it, it is nothing short of theft; be it like I have worked hard earned wages put it in my pocket and somebody else has stolen it or taken away from my pocket.

Now in a matter like this where you feel as a judicial officer that there has been a deliberate attempt by a person to infringe it, or infringe a trademark or a copyright, then you have to come down heavily on that. There is a large number of cases, a catena of authorities which show that there is violation of trade marks or not, there is infringement of copy right or not, that apart, keeping the basics in mind, in the case of Intellectual property if you regard this as a property, as a theft, theft of somebody's valuable commodity, approach it like that. There is no reason as to why this extent of infringement, which is taking place, should not come down. I would ask myself this question why this particular word is being used by new manufacturer. Is it not trying to take advantage of somebody else's established business? If he has come down heavily on it. 'Capstan' or 'Capsten'. You change it slightly. If they have different meaning but the fact remains that this is a person infringing, is encroching on somebody else's territory. There will be a lot of instances during this training programme which will be taught to you but basically basic underlying principle of all the Intellectual Property is this and nothing else but it is a law which is important. We are having seminars on Intellectual Property for a number of years and this is combined with the seminar on Cyber Law which is a new law. I again say that Intellectual Property seminar or the training course is not going to be the last one nor is the cyber law going to be the last but it is the first, but it is certainly not going to be the last one.

With these few words I have a great pleasure in inaugurating this training and research programme. I wish the trainees a lot of success. I am quite sure with the efficiency with which every thing has been done in this Training Institute, and all of you have come here to participate in this programme will benefit immensely by it. Group discussions are being held. To my mind there is no better way of teaching or learning than by having Group discussions and by writing papers thereof.

With these few words I once again like to thank Chief Justice and Justice Gupta for inviting both my wife and myself to come here and to be with you.

Thank you very much.

