

**Address by
Hon'ble Mr. Justice Manepalli Narayanrao Venkatachaliah
Chief Justice of India**



भारत के मुख्य न्यायमूर्ति, माननीय श्री न्यायमूर्ति मानेपल्लि नारायणराव वेंकटाचलया
Hon'ble Mr. Justice M.N. Venkatachaliah, Chief Justice of India

Chief Justice Sri Khanna, Chief Minister Sri Mulayam Singh, Justice Agarwal, Justice Brijesh Kumar, Justice Khare, Justice Goyal, Director of the Institute, Shri Srivastava, my esteemed and learned brother Judges of the High Court, members of the judiciary, distinguished invitees, ladies and gentlemen,

It has been a beautiful morning. I once read in the papers that the Chief Minister had been invited to a gathering like this and it almost embarrassed him by trying to extract a promise for some help. The Chief Minister showed one-upmanship. He told

them that as his name was 'Karunanidhi', he would give immense amount of 'Karuna' to the people but he had no money. But I have found this Hon'ble Chief Minister charmingly simple. As his commitment to the judiciary is his commitment to the democratic values, I can assure him that the track-record of the 'Indian Judiciary' is second to none in the world. Our peaks are as high as anywhere in the world.

I have been a student of constitutionalism. I have seen how lawyers and judges have protected the values of democracy and personal liberty, even if their own lives were in danger. We have a tradition. And that is what sustains this country. You may have a constitutional document with very lofty expressions and words. If you don't have the constitutional culture, that is a mere piece of paper. This constitutional culture comes out of the spirit of liberty that lives in the hearts of men. If it dies there, nobody can replace it; no document can replace it. If it is alive, it is only then a constitutional document means something.

I am very happy to be in Lucknow with a full heart. I find that the Chief Minister is committed to the values of democracy. That is what is manifest by his undertaking to support this Institute.

I am reminded of a very interesting conversation, which I had repeated elsewhere before. The Lord Chancellor of England, who is coming to India during the last week of this month, once asked the Chairman of the Law Commission of Australia, Justice Kirby, as to what Justice Kirby thought about the future of the courts. Justice Kirby told the Lord Chancellor that he was very happy that the Lord Chancellor thought they had any future at all. Lord Dunhill once said that in Britain had business methods been as antiquated as its legal methods, it should have been a bankrupt country long ago. This is something, which is said not in condemnation of the system; it shows the concern for it. Concern arises when there is something to be preserved.

If somebody asks me today whether I share the pessimism – the voice of the Cassandra of doom – that judicial system is going to collapse under its own dead weight, that it has out-lived its utility and existence, that its methods are archaic, – I would, in all sincerity, in all humility – with the authority of a humble servant of the law for 44 years – say, I won't agree. That is not to say that we have a perfect system in position. That is not to deny the failings of the system, its shortcomings or that measures are required to

update its functioning. But when I, sincerely, looked at it, I found that it is the human factor that has let it down. It is idle to say that the system is outmoded or archaic. This is the system, which functions in all common law jurisdictions.

The British have admired the Continental positive-law system across the Channel. But they did not adopt it. Because the inquisitorial system of the Continent had taught the British a lesson. Lord MacDermott, for his beautiful Hamlyn Lectures some 30 years ago, wrote a beautiful book, published by the Hamlyn Trust in 1957, if I remember as right. He traced how torture – police torture – originated from judicial methods of the inquisitorial system. Through a clear quirk of events in England, the Star Chamber methods emerged – and the trial couldn't proceed until the accused consented to the jurisdiction of the Star Chamber. In order to make him consent, they would send him on the racks. That is how the history of torture commenced. They paid a bitter price for this inquisitorial system, and I can very well understand why they have great reluctance to accept the Continental system.

The position today is that we value a system, which has a career judge, not an ad hoc judge, inseparable for the purpose of one case. And a career judge has to live up to his traditions, live up to his reputations, as a judge. Then we have a system of a learned man in law—a lawyer assisting the parties. He was, at one point of time, not supposed to stipulate a fee. He had a small pouch in the back of his gown, wherein a grateful client would put whatever he thought the lawyer earned. A lawyer could never sue his client for his fee. We have changed all that. We have a system where falsehood, false evidence was put to the fire of oral cross examination. Witnesses have run away from court at the searing cross examinations they had to face. There are great cases where some great cross examiner comes. You know how Lord Halsbury as a lawyer told his client Oscar Wilde : 'You can't stand Edward Carson' – one of the greatest cross examiners of his time.' He asked him to run away from England. That famous wit thought that he was a little cleverer than the lawyer, and when he was placed to the cross examination, he had to drop the jaw and confess to his guilt. If you see great cross examiners, – you know the great trial Lords of England and America – you have something which is, perhaps the culmination of professional abilities and faculties. We have devalued them. The human factor has betrayed the system and, I am sure, with a little adjustment, the system requires' we have to put in a little more inquisitorial element. For that matter, every

system, either adversarial or inquisitorial, has some element of the other. Every inquisitorial system has its own adversarial aspects and an adversarial system has its own inquisitorial aspects.

In some areas, this role of a judge, as a mere umpire, may not be fully satisfactory. There may be class of cases where, perhaps, a little more inquisitorial element may have to be introduced. These are all the matters of genius of the system in its working. The basic framework you can't change. If there is any possibility of supplanting this with a better system, possibly other countries would have done it. Till now, human ingenuity has not been able to supply a better system. There is no point in cursing it. You have got to work it out. There is no other alternative, till, perhaps, somebody, brings down that judicial Shangrila –judicial El-Dorado, where possibly everything will be quite at-hand. That's far far time away, and I don't expect it in my life time.

You are left with this system, you have got to work it. Those, who don't have faith in it, have no business to meddle with it. No lawyer or a judge, who does not believe in the system, has any business to deal with it. I have heard many people, particularly those who have reached the evening of life, cursing the system and saying that it is something, which has collapsed. On one occasion, a retired judge shared a platform with me and began to say something about the system as having collapsed and things like that. I told him it is the privilege of Minerva's owl to see the light in the later years in darkness. Those, who let light come, do not have to shed this kind of clearer sight in the evening of life.

I implore you all that 'kindly dispel this sense of self pity'. Every civilisation, perhaps, has absorbed some degree of self-criticism, but if it degenerates into self-pity, you will not be able to work the system.

I am of the view that, with some management inputs, some change in our judicial personnel, you can, dramatically change the scene. I think bad legal education, bad management – bad management of the court dockets – and bad utilisation of the technology are the sole causes of the impasse that we find ourselves in today. We must imbibe higher dom of court technology, court management, and, perhaps, a little more discipline, a little more accountability. I am reminded of a great American judge. It was

said that it was the negligence of destiny that prevented him from coming to the Supreme Court and giving it the leadership. That was Judge Learned Hand. Somebody wrote about his life. The book was called "The Spirit of Liberty".

The author,* in his 'introduction', said : "Learned Hand has left his work so unadvertised that though he has no superior in the jurisprudence of the English speaking world, at the time this is written, not a single book title card in the vast catalogue of the Library of Congress bears his name. This is hard to believe; still it is true."

So, leave your work unadvertised. The moment you praise your own work, it invokes counter criticism. The acceptability of your work is proportional, inversely proportional, to the advertisement you give to it. This is where the judge's personality suffers. You have spoken about my humility. I am a low profile judge. I don't believe in a judge advertising himself. I do think that my limitations of learning and my abilities, my friends give credit of to me as my own modesty, as my humility. Once Churchill was told that Clement Attlee was a very modest man, he retorted 'Yes, yes, he has very much to be modest about'. This is perhaps a very appropriate analogy so far as I am concerned. I have very much to be modest about and I think that is how I can explain.

But the point is that today judges are becoming more prominent than profound. They are now in a mood of conquest. There is a sense of judicial euphoria : you can do anything : you can banish poverty by a judgment. I find, a little more introspection about the limitations of judicial system than its possibilities and potentialities is called for. We have a system, which is as strong as the judges can make it. There is need for a good deal of restraints, good deal of circumspection. And whenever a judge goes into an excursion about matter which is, dangerously, in the bottomline of what is adjudicable and what is not, the point of temptation is reached. You find in the particular facts of the case that your own philosophy, your own sympathy, your own compassion, your own value system, is not reflected in the law, or in the constitutional provision. The choice, then, is—as one author put it – between cold impersonal logic as a law on the one side and warm compassion and the human need as a fact situation on the other. For a human being, the choice is obvious. The dry abstract law with the furtherance and restraint, it counsels, is less tempting. This once I give expression to my own view and give some

* The Spirit of Liberty : Papers and Addresses of Learned Hand – Collected, and with an Introduction and Notes, by Irving Dilliard, Published May 5, 1952.

relief in a case, an urgent human need is met. Yet, in the whole system, cracks develop. We see the culmination of it in the pronouncements almost going haywire. There is no legitimacy of reasoning.

The whole system is sustained on the integrity of judicial legitimacy by logic. You must reason out a judgment from first principle, principle after another principle, to the third, and then reach to a particular conclusion, which has a logical and legal legitimacy. When we find that the law is unable to do what you think is the compelling need of justice in a particular case, you bend the law. This becomes addictive. One step leads to another. Ultimately, we cannot retrace our steps. This problem is met only by proper training, proper perception. I mean by training a very comprehensive concept. You must develop a judicial personality. A judge is known by what he is prepared to forego. Judge is known by his ability to come to a judicial conclusion which may, perhaps, be against his own personal wishes. A judge is known by the nittygritty of legal process. And this is absolutely necessary at every level of judicial functioning. I believe that with the kind of intellectual material that we have in the judiciary, mostly in the superior judiciary and in the subordinate judiciary, this country's legal system could be, perhaps, the finest in the world. But what is lacking is a coherent logical consistency. This can be achieved by discussion, by exchange of views, and, possibly, by evaluation of our own faults and shortcomings.

The institution, that I have had the privilege of laying the foundation of – it is my prayerful wish – trains judicial personnel to become not only good judges, but great human beings. If a man is not a respected human being—respected by the members of his family, by his friends, by his colleagues, and thought very highly of in a matter of his moral attainments, it is very unlikely that he will become a good judge. Judicial qualities are, entirely, different from those that pass off today as attainments. A purely intellectual mind, a purely logical mind, or a mind capable of legal certainties will not answer my definition and conception of a judicial personality. I believe that my respect for a judge would be to the measure in which he answers the requirements of judicial restraint, judicial sobriety, judicial circumspection and ability to know, far ahead of the events, what an undesirable or unpremeditated quirk in the direction of the law he produced. Unless we are able to see far ahead where a particular change in the law that we give indication of will take, it will be very difficult to predicate how the process in the hands of other judges

would get promoted. Recently – as recently as ten years ago, when Lord Denning was in the prime, he wrote a judgment as Master of the Rolls. He said a very simple thing. He said that not only the procedure must be fair and reasonable but the result that you reach must also be fair and reasonable. There is nothing wrong about this. It is a very beautiful statement. But the House of Lords came down upon him like a ton of bricks. They said : “Well judge, your statement that the executive must absolutely satisfy the procedural fairness and also reach a conclusion which you consider fair and reasonable, is not correct law. They have a right to come to a wrong conclusion, if the procedure is right. You are not a judge of the reasonableness and the fairness of executive action of the executive agency”. The Law Lords said, “This must have been very far from the mind of learned Master of the Rolls. But if this is what he meant, he meant to change the law and change the law wrongly. You must accommodate the wrong views of others, provided the decision making process is correct.” We find today that whatever occurs to our limited conceptions as unreasonable, we declare it to be unreasonable on the basis that we have the power to sit, virtually sit, in judgment over a decision. We need a little amount of circumspection and training.

This institute will, I am sure, grow up, grow well, and make its contribution to the stability of the judicial system. In England, the Judicial Studies Board has been functioning for 17 to 18 years now. Till 1985 they were only concerned with criminal justice training judicial personnel in criminal law, particularly in the consistency of criminal sentencing. Thereafter, they have their own system for various disciplines of civil law—family law and systems for training the Members of the Tribunals and Chairman of the Tribunals. They have, as a matter of policy, avoided an academic Director of their Judicial Studies Board. If you see the logic of it, they want the judges to take time off their judicial work and work with the subordinate judiciary in the various disciplines in which training is to be required. One observation there is that in the process, we train ourselves. I think that is equally important that we do, in the process, train ourselves. Look at the system in its broadest perspective, see its hopes and its fears, its strengths and weaknesses. And the highest discipline is to find out under the Constitution, under the distribution of powers, under the doctrine of separation of powers, where judicial power will stop, which is the dividing line between adjudication and usurpation of legislation and a willing

determination not to cross that line. This I hope will be one of the areas in which we collectively think, evolve norms of our own conduct.

I am grateful to you for giving me this opportunity of being with you. This institution is my prayerful wish, will be one of the ideal institutions of the country, which will make a crucial contribution to the shaping of judicial personalities, who will, in turn, shape the political and legal institutions of this country.

Thank you.
