KEYNOTE ADDRESS

Justice Y. K. Sabharwal *

Indian Law Institute (ILI), was conceived as an institution in 1956 by visionaries that include Dr. Rajendra Prasad, the first President of India, Pt. Jawahar Lal Nehru, our first Prime Minister, Justice S.R. Das, the then Chief Justice of India, Dr. K.M. Munshi, Shri M.C. Setalwad, the then Attorney General for India and Shri C.K. Daphtary, the then Solicitor General of India. In the discipline of law, it has now developed into a seat of learning that is acclaimed the world over.

Modelled initially as a society on the pattern of American Law Institute to co-ordinate the task of collation, classification and analysis of law with a view to bring about sound legal reforms, this body has assumed larger responsibilities during the last five decades. It has blossomed from an Institute based in Delhi into a deemed university with a true pan-India status, having presence at regional levels in the form of eleven state units.

Following the spirit in which the first President of India described the institute in his inaugural address on 12th December 1957, ILI has worked in the area of legal learning and research as a silent soldier "free from the din of courts and also away from the controversy of the legislature". ILI has evolved, in the process, into a model centre for improving legal education and research in India. It not only possesses one of the leading law libraries in Asia but also publishes journals, periodicals and books connected with the discipline, which are received universally with reverence and great expectations.

This the year as part of Golden Jubilee Celebrations, ILI has organized a number of interactive programs including the International Conference for the inaugural of which we are all assembled here today. The august presence of His Excellency, the President of India in this inaugural session is a matter of great pride and honour for us. The fact that the Head of the State graciously blesses us today, re-assures us that the cause espoused by ILI would continue to receive unstinted support and recognition from the highest offices in this country even in the future. This we take as all important in this era when we are witnessing all-around a spurt of activity for legal reforms.

India, we perhaps do not need a reminder, is a country eternally wedded to the principles of secularism and democracy that promotes, among all, fraternity and assures to each individual optimum opportunity to aspire for, and achieve, personal growth while working for unity and integrity of the nation. In order to attain these broad objectives, our Constitution secures to all its citizens justice, liberty and equality. It establishes a system of governance dividing the state power amongst the three chief organs creating a mechanism of checks and balances to ensure that rule of law always prevails.

Ever since the dawn of civilization, the maintenance of law and order has always been the prime concern of every organized society. Towards this end, like every modern state, India has also established and seeks to sustain a system of criminal justice administration which is effective and at the same time responsive while being responsible. Over the years, as a result of a number of factors which need not be re-counted here today, the justice delivery system, particularly under the criminal jurisprudence, has come under great stress. This appears to be a universal phenomenon to which India is no exception. Of course, in the context of India-specific concerns, the sheer numbers of ever-mounting arrears of cases have made the task more and more daunting.

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While judiciary looks up to the other two organs of the State for succour in the form of additional infrastructure, optimum judge-population ratio, financial autonomy, modernization and procedural reforms, in which direction several positive steps have been taken in the recent past, judiciary has been trying to address itself to its responsibilities even within the existing constraints. The anxiety has been to ensure that the edifice does not crumble under its weight. Expediting the procedure of appointments to the vacancies at all levels in the hierarchy, allocation of increased man-power to deal with sensitive issues like cases of corruption, putting in position the courts of special magistrates to deal with petty offences, establishment of night courts are some of the initiatives of the judicature, the results of which already seem to be encouraging.

Given the fact that effectiveness of the criminal justice system is invariably the decisive factor as to the level of peace, harmony and stability in the society, reforms in the area of criminal jurisprudence appear to us to be the key to ensure that rule of law prevails. The widening base of market economy, globalisation, the reach and effects of giant advancements in technology coupled with hyper-active fundamentalist forces in different nooks and corner of the world have added to the challenges for the criminal justice apparatus of modern states, giving international dimensions to the problem. The scourge of terrorism that plagues almost every region and continent today is one of the bi-products of the above and cognate factors. It is meaningless for any country today to claim to be an island in itself, aloof of what is going on elsewhere. There is an imminent need and occasion for the votaries of democratic principles and those who cherish human rights to approach the subject of reforms in criminal justice system in a more concerted manner. For this, it is imperative that we take on board the opinions and initiatives of jurists in different countries.

The International Conference being inaugurated today aims to focus not only on the challenges of terrorism to the criminal justice system but also seeks to examine the possible shift from justice model to crime control model. One of the areas of major concern to these pioneering efforts for curbing crime by investigating agencies of different countries, as also of international police agencies, is the blight of seemingly uncontrollable money-laundering business. Success of ongoing endeavours in all these areas, as indeed of International Criminal Court, depend on exchange of ideas, fine-tuning of the national systems, co-operation and co-ordination including the sincere and unqualified mutual legal assistance. The world seems to have undergone total transformation in the post 9/11 scenario. India has been at the receiving end of terrorism for many decades now. Yet, there has been a qualitative difference in India's answer to this challenge as compared to some other countries. Though almost creating a war-like situation where target of terrorist elements has been the unity and integrity of the country, India has scrupulously avoided treating it as an issue that needs to be dealt with through military law. We have abstained from adoption of such anti-terrorism measure as would permit indefinite detention of suspects, without trial or without legal remedies. We have yet not undertaken experiments like limited controls over individual liberties. We hope to gain from the experience of other jurisdictions in this area. While tailoring our rejoinder to provocation of terrorism, India has consistently taken care not to abandon the human rights regime in the enforcement of law qua the terrorists or their associates.

When Terrorists and Disruptive Activities (Prevention) Act, 1985 (TADA) and its successors were enacted, the judicial organ had stepped in to sober the efforts of the other wings of the state. These measures were, by and large, the traditional responses in the form of special law and special courts with special procedure, though subject to virtually similar rigours of evidentiary admissibility rules as would apply to ordinary crimes. Since Indian view-point has always considered conservation of the rule of law and respect for individual liberty to be important components in the understanding of security, certain additional checks were introduced like the compulsory review. When Prevention of Terrorism Act (POTA) was enacted in 2002, in the wake of brazen

attack on Indian Parliament, the legislature deferred to the views of judicial organ by incorporating all the checks against abuse of such special measures as had been suggested by the Supreme Court in the case of *Kartar Singh* v. *State of Punjab*[1] in the context of TADA. For over two years now, India opts to deal with the hazard though ordinary law.

India has tried to follow a path wherein "Rule of Law" continues to be the fundamental benchmark. Under constant gaze of judicature, our law ensures basic rights even to those who are suspected of involvement in terrorist crimes. The rights consistently insisted upon by Indian jurisprudence include right to life & liberty; right against torture or inhuman degrading treatment; right against outrages upon personal dignity; right to due process & fair treatment before law; right against retrospectivity of penal law; right to all judicial guarantees as are indispensable to civilized people; right to effective means of defence when charged with a crime; right against self-incrimination; right against double jeopardy; right of presumption of innocence until proved guilty according to law; right to be tried speedily in presence by an impartial and regularly constituted Court; right of legal aid & advice; right of freedom of speech besides right to freedom of thought, conscience & religion.

The approach of judiciary in India to the issues that arise has invariably been that it may be appropriate for the courts to have due regard for the opinion formed by the executive as to the existence, or extent of, challenge to the national security. But at the same time, the state action making inroad into the personal liberties or basic human rights of an individual must always be subject to judicial scrutiny on the benchmark of objective proof, relevant material adduced in accordance with law and through a procedure which passes the muster of fairness and impartiality. We hold the conviction that mere *ipse dixit* of the executive as to the complicity, or suspicion of complicity, in such crimes on the part of an individual cannot be blindly accepted as the final word by the judiciary. Judicial organ refuses to abdicate its responsibility to ensure that all organs of the state are governed by the principle of "rule of law". It is a measure of maturity of Indian state that the other wings concede this position.

Even though the legal measures have been kept tamed with attributes of humane approach, the hydra of terrorism and disruptionist forces continue to bleed us, essentially due to sustenance and strategic support provided by elements that have trans-national roots. This necessitates that we hone and sharpen our responses with greater emphasis on international cooperation.

Hon'ble the Lord Chief Justice of England and Wales, Hon'ble the Chief Justice of Canada, Hon'ble the Chief Justice of Pakistan, Hon'ble the Chief Justice of Singapore, Hon'ble Judge of the Supreme Court of Nepal, the High Commissioner for Canada in India and jurists of stature from different jurisdictions are some of the luminaries who have been kind enough to accept our invitation to join us on the platform of this international conference. They bring with them their rich knowledge and expertise on the subject from which we hope to advantageously derive wisdom. Their respective presence in this forum itself vouches for the fact that peace-loving people in all such corners of the world as are afflicted by the menace of terrorism, one way or the other, carry within them deep concern for the humanity and share hope to find an early solution that would help win over those who have gone astray rather than being barbaric so as to demand eye for an eye and tooth for a tooth.

We hope that the deliberations in this international conference would produce fruitful results and suggestions. India firmly believes that for the sake of future of human race as a whole, each modern state is under an obligation and, therefore, must be legitimately concerned about its citizen and do everything that

[1] (1994) 3 SCC 569.

needs to be done for their general protection and of the national security. The dilemma that we face involves the question as to how, in the face of activities like terrorism and organized crime the basic human rights are to be guaranteed while restoring the general feeling of security all around without abandoning the very values which a democratic society is avowed to protect.

Like everyone else participating in this Conference, I am equally eager to hear the words of wisdom and sage advice of His Excellency, the President of India which we hope would set the tone of discussion in the sessions that are to follow.