

WELCOME ADDRESS*

Justice Swatanter Kumar

Society and law have one common feature i.e. both are essentially mutable and progressive. Law is required to regulate social behavior of society. Thus, it must change according to the needs of the society while keeping pace with its development. The administration of justice is intended to protect not only the rights of the individuals but also that of entire humanity, particularly against crime.

Crime Control Model and Justice Model are two separate value systems. While there can rarely be any conflict between justice and prevention a crime, get any fractional conflict in the criminal justice system can be avoided by entirely focusing on imposition of punishment for past offences and creating a separate post-sentence civil-commitment system, which should exclusively be devoted to prevention.

Terrorism has its own unique problems. One school of thought is that the method of combating terrorism may result in possible conflict between respect for human rights and Combating terrorism. It again could be resolved by objective thinking, that both are aimed at respect for human dignity.

In the present days, money laundering is a global phenomenon. It was from an increasing awareness of the huge profits generated from this criminal activity which in 1980s attracted the attention of the concerned quarters. Organized crimes of drug trafficking, prostitution, sale of illegal arms and cyber crimes have become the best source to legitimize the ill-gotten gains. Money laundering, thus, processes these criminal proceeds to disguise their origin.

International Criminal Court exercises a limited jurisdiction in regard to offences of restricted nature. Greater acceptance of role of this Court is desirable in the interest of rule of law.

A slight insight into the statistics of these crimes collected by the National Crime Records Bureau, Ministry of Home Affairs with reference to India shows that between the years 2001 to 2005, there is a fall in raids by more than 50% but the seizure/confiscation of Indian and Foreign Currency increased by 45%. There is also a tremendous increase in imposition of fines on the offenders.

In offences relating to Narcotics and Drug Trafficking, in 2001, 24377 cases were registered while in 2005, 29421 cases were registered. These figures indicate the gravity of the menace which is threatening the entire world and also exhibit the pressing need for the International community to seriously cogitate and suggest result-oriented solutions during the course of this international conference. Deliberations on these subjects would reflect the view of the world in relation to the issues which are haunting and threatening the global harmony and humanity.

Dr. Kalam's extraordinary humility and urge to learn is demonstrated in his comment made in the year 1992 while in a function organized at National Chemical Laboratory where he was addressed as 'Mr. Technology of India' to which he reacted by saying "... but can I tell you that your Mr. Technology of India is also 'patent illiterate of India' ". The Institute which was inaugurated by the first President of India 50 years back could not have hoped for any better event than that for its Golden Jubilee International Conference be inaugurated by the President of India, as the Chief Guest. Sir, I extend you a very warm welcome on this occasion.

An execution is the end fruit of law. How effectively the court orders are executed is the real test of

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administration of justice. Hon'ble Mr. Justice Y.K. Sabharwal has acted without fear and favour in his judicial career and has demonstrated to the country at large that orders of the Court are to be respected and enforced. It could truly be said about him, "for him judicial function is divine duty and his ability to enforce hard decisions displays rare steel." I, on behalf of all concerned, convey my heart-felt gratitude to him for agreeing to preside over this function and welcome you, Sir, to this International Seminar.

Dr. H.R. Bhardwaj, Hon'ble Union Minister of Law and the Chairman, International Centre for Alternative Dispute Resolution, in his distinguished capacities has contributed and pioneered, constructively in enactment new economic laws and social welfare legislations, which have a far-reaching effect on both national and international administration of criminal justice as well as control of crime. I welcome you Sir, on the occasion of this International Conference.

Journey of Hon'ble Mr. Justice K.G. Balakrishnan from the lowest Court of Munsif in Kerala Judicial Services to the senior most judge of the highest Court of the land, has been one of great humility, important judicial pronouncements and keen interest in the activities directly related to administration of justice. His ideologies of a Social Welfare State, professional responsibility of counsel and dignity of justice delivery system are demonstrated in his judgments. I take this opportunity to welcome you Sir to this Golden Jubilee International Conference.

I also welcome Mr. Milon K. Banerji, Attorney General for India, who has a long and outstanding professional career and is an awardee of Padma Vibhushan.

Large number of foreign delegates from Nepal, South Africa and Bangladesh including Hon'ble the Chief Justices of England & Wales, Canada, Singapore and Pakistan, Hon'ble Judges of the Supreme Court of India. Hon'ble Judges of the Supreme Court of different countries, High Court Judges from different countries, Hon'ble Judges of Delhi High Court, Hon'ble Judges from 19 High Courts of the country are participating in this conference. Nearly 1650 registered delegates including the Judges of Higher Judicial Services, Vice Chancellors, professors, Government and non-Government Members and non-members of the Indian Law Institute, students from different Institutions are going to participate in the deliberations of this International conference. It is truly said:-

‘Vasudheva Kutumb akam’
‘Mansah Vachshah cha karmana;
kurute swagatam – atra, bharatam’

The entire world is one large family and every member of which should welcome the order from heart, by thoughts and through karma, so I do stand here to extend a warm welcome to all the members of this family on the Inaugural Session of this International Conference.

CRIMINAL JUSTICE SYSTEM IN INDIA: CURRENT CHALLENGES

*Justice K.G. Balakrishnan**

The criminal justice system is a collective enterprise authorized and supported by the legitimacy and coercive power of the state to create and administer law. It is first and foremost a formal system oriented for the control of human affairs. Every society attempts to work out practical solutions to legal and operational problems in the administration of criminal justice in accordance with its political philosophy, experience, resources and the state of society itself. Conservation is the most difficult hurdle in the process of reform, although there is growing realization that the system requires some changes. Our system of administration of justice is a transplanted one which has taken roots in this country but still has colonial vestiges and by a process of change, it has become a new system to cater to the needs of the people of this country.

I hope, as far as possible, the seminar organized by Indian Law Institute would discuss main theme of transnational perspectives of the criminal justice system and excellent ideas may emerge from such discussions.

The most important requirement of food administration is its promptitude. A speedy trial is a constitutional right of every accused. If he is guilty, he is to be punished and any delay in punishing the guilty would be ineffective in controlling the crime, which is the basic goal of the criminal justice system. The efficacy of any justice system can be judged by the speed by which the cases are disposed of. Prompt decisions taken by the Court would have greater impact on the individual involved in the crime and on the social fabric in general. Generally, delay is put at the doorstep of the courts overlooking the crucial role played by other components in the system, particularly the police and the prosecutors.

Delay in the investigation of crimes or the haphazard way in which the cases are investigated, greatly contribute to the delay in dispensing prompt justice. In many courts, the public prosecutors are not appointed in a timely manner and their services are on occasion not readily available to many courts. In some states, there are not sufficient numbers of analytical and forensic laboratories and quite often, the investigating agencies wait for the chemical analyst's report for long periods whereby the filing of the final reports is inordinately delayed. The speed of the trial in criminal cases is often determined by none other than the offender himself. In the garb of a fair trial, he would try all possible means to delay it under a misconception that the longer he is able to prolong the trial, the better his chances of escaping from the clutches of law would be. Many of these factors are not within the control of the courts.

A prominent feature of the court system is the lack of adaptive institutional activity. It is only through planning and development based on research that any organization can adapt itself to its changing needs. It is said that the courts are more conservative and not adequately innovative. The existing system with its thrust on social justice and equity is constantly faced with dilemmas based on value perception and attitudinal change. In vast majority of subordinate courts, the scope for upholding these values is reduced considerably due to routine work. The concept of crime control, maintenance of law and order, social harmony, adherence to procedure established by law, protection of human rights are important goals of the criminal justice in this country, but unfortunately our courts are flooded with cases under Section 138 of Negotiable Instruments Act, 1881 traffic offences, excise offences and so many other petty matters of routine nature. Unless we take serious steps to have better court management and bring about some reforms in judicial administration, the

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basic values which we intend to protect through our criminal justice system are not going to be preserved but would perish.

Regardless of the academic controversy as to whether there is a good criminal justice system or not, we are concerned with the evaluation of the performance and impact of the existing arrangements for the administration of criminal justice, and exploring possible avenues of improvement if the overall performance is found to be inadequate or unsatisfactory. Our system should cater to all possible challenges especially in view of the new pattern of crimes happening throughout the country. Terrorism, cyber crimes, white collar crimes, should all be curbed and there should be an organized endeavour to control anti-social behaviour to attain social harmony through law and its enforcement. Indian Law Institute has now become a deemed university and we have an excellent research wing which can contribute to the development of the law and justice system of our country. This institute was started with that vision and ideas in mind by the great sons of this country. Let us hope that we will fulfill their dreams.