

COMMONWEALTH JUDICIAL EDUCATION INSTITUTE

Second Biennial Meeting of Commonwealth Judicial Educators

Sandals Grande St.Lucia Spa & beach Resort

November 30 - December 1, 2003

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Keynote Address

by

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of

The Supreme Court of India

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I feel privileged to have been invited to this Second Biennial Meeting of the Commonwealth Judicial Educators. I am deeply thankful to Sir Dennis Byron, Chief Justice of the Eastern Caribbean Supreme Court and Honourable Judge Sandra Oxner for making my visit possible to this lovely, friendly and hospitable island. Because of their friendly gesture I got the unique privilege of being the first Indian representative to attend this meeting of this august body.

I will try to give brief sketch of the whole Indian Judicial system. As you know India is a large country and now there are thirty (30) States. Each State has eight (8) separate Language, though in Northern India, Hindi is the main language of communication. Most of the major States have a High Court. There are 18 high Courts. In some States there are 40-50 Judges in the High Court. Chief Justice is often a Senior Judge from another State. The Supreme Court of India is at New Delhi, the National Capital of India. There are 25 Judges in the Supreme Court of India and, mostly the Chief Justice of the various States High Courts are appointed as Judges of the Supreme Court. Out of the present 23 Judges, 20 are former Chief Justices of the State High Courts. Age of retirement of the Judges of the Supreme Court is 65. In all the High Courts language used is English; though in subordinate Courts, in some States, the local language of the State is being used as State language.

We inherited the judicial system from our English orders. Three High Courts were established by the Charter of Queen Victoria. They are even now known as Chartered High Courts. In India, Anglo-saxon jurisprudence, based as Common Law systems is being followed. Many of the statutes, such as, Evidence Act, Cr. P.C. Penal Code. CPC etc are old Statutes, they are still being followed with slight amendments.

India became independent in 1947 and as we wanted our Constitution to rule our country, a Constituent Assembly was formed and the Constitution of India was adopted on November 24th of 1950 and thereafter various High Courts were established in the States. Till then, there were only certain provincial High Courts in the princely States. When India became a Democratic Republic and we gave ourselves to the democratic form of government, and a police State changed into a welfare State; and securing social, economic and political justice became the primary aims of the Democratic republic. The State was enjoined by the Constitution to endeavour its utmost to create a social order in which justice in all its phases, liberty, equality and fraternity was secured without discrimination to all citizens. Thus there arose the Constitutional obligation to work for achievement of justice, economic, social and political for all in the country. Legal education assumed importance only from that period. Though the same was being neglected for long period, now everybody feels the necessity of better legal education is a chain of National Law Schools, in several Cities of India.

Indian Judiciary is independent and I must say Judges are held in high esteem and Judiciary is trying to maintain its independence. There are various factors which contribute to this situation.

As regards appointment of Judges there is not much interference by the executive for the time being. Judges of the High Courts and Supreme Court are appointed out of panel prepared by the Chief Justice. The Executive can reject the names only for valid reasons. Sometimes they may delay it, seldom the names were rejected.

Judges are normally selected from the Bar and the Service. One-third is from the Senior District Judges. Two-thirds from the Bar.

Advocates from the age group of 42 to 55 are generally considered for appointment from the Bar.

Now there is a proposal for forming a National Judicial Commission (N.J.C.). The bill is pending with the Parliament. The provision in the proposed N.J.C. is that the Commission shall consist of Chief Justice of India, two senior Judges, the law Minister and a person to be appointed by President on a nominations by the Prime Minister. The bill is pending with the Select Committee. The bill could be passed only by two-thirds majority of the members of Parliament as it requires a Constitutional amendment.

Various discussions are going on about the proposed National Judicial Commission.

Earlier there was a proposal to invest the N.J.C. with disciplinary power over Judges but later that proposal was dropped as it would amount to an interference with the independence of the judiciary.

Removal of the judges also could only by the process of impeachment. So far no body has been removed from judgeship by impeachment; though in one case the impeachment proceedings culminated in parliamentary debate.

But recently two Judges of the High Court were asked by Chief Justice of India to resign and they did. Some complaints were received by the Chief Justice and a committee of three (3) Judges was asked to enquire into the matter and it gave a report to C.J.I. and the Judge was asked to resign. In another case the police suspected corruption and some people were arrested in a bribery case and a judge was suspected to have been involved in it. At the request of Chief Justice, that Judge also resigned.

The removal of judges by impeachment is also under severe criticism. The impeachment proceedings were originally thought of as a means to avoid executive from the process of removal of judges. But in reality the Parliament is very much influenced by the Executive and removal by impeachment virtually amounts to a political decision made at the initiative of the Executive.

Moreover, the members of the Legislature are not experts to decide the competence of the Judges. The impeachment itself requires reconsideration.

The Indian Courts, viz. High Court and Supreme Court are powerful judicial bodies. The Constitution of India gives Superior Courts the power of judicial review. Any legislation passed by the Legislature can be declared by these courts as null and void if it is opposed to the provisions of the Constitution. Any State action can be challenged in these Courts if it is violative of the fundamental rights guaranteed under the Constitution. Any executive action if it violates the principle of equality, freedom of speech and expressions, freedom of religion, freedom of trade and business.. etc and could be struck down by the Courts. Any State action which violates "right to life" guaranteed under Art. 21 — could be struck down. So the courts are given wide powers. In small States like Kerala about 30,000 writ actions are filed every year challenging state actions. Of course many of them may be frivolous petitions.

Public interest litigation also another form of avenue to challenge the illegal actions of the executive. If any State Authority is not exercising its power or fail to discharge constitutional obligations or duties the courts are invested with the power to issue Writ of Mandamus. Though the politicians and bureaucrats are worried over this court's power, they cannot possibly curtail that power and there is overwhelming support by the people. So long as courts are impartial and non- corrupt and they are, by and large, the common man repose confidence

in courts.

I do not want to dilate much on this as the time is short. Coming to the question of Judicial Training till now the judges of superior courts do not get any regular training and they are not prepared to accept they are required to be trained. Unless that mind set is changed and feel that whatever the high position he occupies and whatever experiences he has, law being a vast ocean, he shall continue to be a student of law, and then only it is possible to attract the judges of superior courts for training.

Often the Judges of Superior Courts are learned and experienced. You see, the Judges are mostly surrounded by people who would say to them that they are the greatest Judges on earth and once they start believing, rather than simply enjoying the praise, they are finished and they would no longer be amenable for any training or continuing legal education.

In India, Government has spent huge amount of money and has started a Judicial Academy at Bhopal. A full time director has also been appointed and things are getting started. Certainly Judges are required to be trained. There is now a new wave of litigation. Many of the subjects are totally new. The whole range of physical and natural science subjects play a role in making legal policies. The new subjects include biodiversity, biotechnology, information technology, environmental science, air and space technologies, ocean and marine science, forensic science, petroleum and mineral-related subject. At least the Judges should have some basic knowledge in these subjects. Moreover, the training will give them a new perception and outlook. The words of Great Judge Benjamin N. Cordozo are apt to be quoted:

"The training of the judge coupled with what is styled judicial temperament will help in some degree to emancipate him from the suggestive power of individual dislikes and pre-possession. It will help to broaden the group to which his subconscious loyalties are due".

December 2, 2003.