

THE PILLARS OF THE JUDICARY*

Assam is the gateway to the North-East.* It has a rich history of art,

culture and traditions. It is the seat of the great historic *Kamakhya* temple and the *Vasistha Asram*. *Pragjyotishpur*, the famous seat of learning, and the *Navagraha* temple, the great centre of astronomical studies, are here. This land has witnessed great socio-religious reforms initiated by Shri Sankardev and Shri Madhabdev, who, by their example and precepts, actively contributed towards redeeming the society from the evils of discrimination based on caste distinction.

This part of the country is dominated by the mighty Brahmaputra river which has its origin in Tibet. From ancient times India's North-East has been the meeting place of many communities, faiths and cultures. It is a place of magical beauty and bewildering diversity; there are more than 166 tribes, speaking many languages. The jungles of Assam are dense, its rivers powerful and rain storms sweep across the hills and plains, during the annual monsoons. The North-East is different, in the lushness of its landscape, the range of communities and geographical and ecological diversity, to most other parts of the sub-continent. In winters, mist carpets the valleys but swirls around the travellers in hills during the summer rains, creating an enchanting and romantic atmosphere.*

Assam has preserved its culture, traditions and art inspite of the passage of time. Assam is perhaps known for two things: Tea – a source of refreshing and most common everyday drink of the people, and Kaziranga – one of the most visited wildlife reserves of India.* The humble people of this land love sports, fine arts, music and dancing. They just win the hearts of others. It is a privilege and joy to be here.

Assam has a strategic location on account of the borders of this region touching Myanmar, China, Bhutan and Bangladesh.*

We have all assembled here for an auspicious event *i.e.* laying the foundation of the additional building of the Gauhati High Court. My thanks are due to the State Government which has made available the land and the funds for the construction of this building.

It is said in Shrimad Bhagwad Gita:—

[Behind every good happening there are five essentials:

1. Noble Purpose; 2. Dedicated Person (Karta);
3. Infrastructure/Sources; 4. Relentless Efforts, and
5. Support from destiny.]

The Gauhati High Court was inaugurated on 5th August, 1948 by Shri Harilal J. Kania, the first Chief Justice of India. The foundation laying ceremony of the present building of the High Court was performed on 21st February, 1954 by Dr. Rajendra Prasad, the first President of India. For more than 50 years, the High Court has been functioning from its present campus. The volume of work has witnessed an unprecedented increase. The members in legal fraternity have multiplied. More court rooms are needed to cope with the increasing demands on the justice system. The additional building of the High Court would be more convenient and facilitate better access to justice. This is a noble purpose. Those who have been instrumental in planning the

construction of additional building, securing allotment of land and enabling this day to come true, are dedicated persons who, I am sure, must have mobilized all resources within their reach. Needless to say, they all must have invested their relentless efforts. However, the purpose, the dedication, the resources and their efforts would not have yielded any result if the Supreme Power and the Goddess *Kamakhya* would not have showered their kindness and given their support. We all gratefully acknowledge the same.

Since we are witnessing the foundation laying of the building of the High Court, which is rightly called a temple of justice, it is an appropriate occasion to recall, what justice is and what people expect from the High Court which is an epitome of justice delivery system of the state and how far those expectations can be fulfilled and how. Ever since humanity was born, there has been need for justice. And, ever since the concept of state was born, one of the most important functions of the state has been to dispense justice. In every civilized society governed by rule of law “the fair and speedy delivery of justice is undoubtedly the noblest of human aspirations. It must remain our constant goal”.¹ This assumes a great significance in the constitutional democracy of India as the solemn promise made in the constitution, to the people of India, is to secure to all its citizens justice – social, economic and political.

High Court

According to Articles 214 and 216 of the Constitution, there shall be a High Court for each State. Every High Court shall consist of a Chief Justice and such other judges as the President may, from time to time, deem it necessary to appoint. High Court is the supreme judicial institution of the State Judiciary. It is not subordinate to any one; not even the Supreme Court. In the speech² made by Shri Harilal J. Kania, the first Chief Justice of India, on January 28, 1950 at the inaugural of the Supreme Court of India, what was stated about the Supreme Court of India, applies fully to the High Courts also. Borrowing therefrom, I venture to say that the High Court stands firm and aloof from party politics and political theories. It is unconcerned with the changes in the governments. The court stands to administer the law and it has goodwill and sympathy for all but is allied to none. It has to play a great part in the building up of the nation and in establishing the roots of civilization. The courts administer justice according to law. They interpret the laws made by legislature. They do not make the laws. They compel the executive to honour the rule of law and enforce the law of the land. Thus, under the constitutional scheme, the judiciary works always in co-ordination with the legislature and the executive and at no time the performance of duty by the courts can be construed as obstructive or its attitude, antagonist.

The High Court is not just a building made of bricks and mortar. It is an organic living institution. Its limbs are the Chief Justice, the judges and the members of the Bar.

The Chief Justice: A leader

The Chief Justice is the leader of the institution and captain of the team. A responsible leader continuously engages himself in the performance of his duty. An exemplary leader does everything which he is supposed to do without being required to do so. He has to communicate, contribute and offer. By continuously engaging himself in performing the duty with perfection, he communicates the significance of discharging one's duty. A responsible leader continues to contribute even after he has completed his assigned work. Availing every opportunity for doing what will help others to complete their work in a better way is an offering. These qualities taken together make the leader exemplary and his service divine. The behaviour, conduct and practice of the leader influences the behaviour of the people around him. He is the one, who knows the way, shows the way and goes the way.³ It is therefore very necessary for a leader to behave in the best manner and set examples and standards so that members of his team are inspired in the right direction. A good leader assists in the development of more good leaders. Excellence begets

more excellence. The responsible leader knows, himself, that there is no one above him on whom he shall pass the blame or responsibility. He must succeed in inculcating, in his team, the sense of joint responsibility and joint endeavour so as to shine together⁴.

Puisne Judges: Team Members

Howsoever well-versed and enthusiastic a leader may be, no institution can achieve prosperity, success, right policy and sound growth unless the team members are prepared to combine and contribute on the path of the right leader. That team succeeds whose leader is a visionary and team members, missionary. The puisne judges in any High Court, like members in the team, can make a difference. Understanding, communication and dialogue are the foundation, and focus is on humility and the need to “over-perform and under-play”. Each member must strive for excellence, having clearly understood the goals. Not to get bogged down by petty issues – is the hallmark of the key team members. Bonding and building, creating discipline and preparing for hard work and sacrifice are the traits to be nurtured as much as sincerity and uprightness⁵.

Members of subordinate judiciary

The subordinate judiciary is the most significant limb of the justice delivery system, as it is the judiciary at the grass-root level. Members of the subordinate judiciary come in close contact with the people and the society. Being in the trial courts, they are closer to the litigants. From the point of view of justice dispensation, they have some advantages but they have some disadvantages too. The advantage is that they are nearest to the realities and in any dispute, before them, they are the best suited to discover and identify, where lies the truth. At the same time, they are more easily susceptible to being infected by such weaknesses and ailments which are, otherwise, prevalent in the society and eating into its roots. I am one of the strong defenders of the members of subordinate judiciary and I have always maintained that judges of the subordinate judiciary cannot be branded, en-bloc, as corrupt. Such generalized observations are highly exaggerated and unfortunate. But it cannot also be denied that stray instances of corruption have started emerging and showing their ugly face. Though judges are human-beings, but in the very nature of the function which they discharge, their duty is divine. If courts are temples of justice, they are the judges, who perform the worship of Goddess of Justice, seated therein as deity. The judges do so by discharging their duty, everyday, to the best of their ability, knowledge and judgment. Duty, equivalent to worship, is sacred and must be performed religiously. Ever flowing stream of justice is compared with the sacred river, Ganges. People who have committed sins and suffered misfortune take a dip in the holy waters of river Ganges to purge their sins. No judge can be tolerated as polluting the sacred water of Ganges by committing sins while seated in the temple of justice. The conduct of judges must be exemplary and an example to the society, around them and, to which they belong. They must remember that they are always under the gaze of the people.

There is need to take precaution and insulate the subordinate judiciary from infections of corruption and inefficiency which are spreading in the society like an epidemic. I wish to make it very clear and let it go as my message to the judiciary in India, that no instance of corruption in judiciary shall be tolerated and, once brought to notice, shall be dealt with, promptly and with a firm hand. A judge who is corrupt or is prone or susceptible to corruption shall have no place of survival in the Indian judicial system. I call upon the Chief Justices and the judges of the High Courts to rise to the occasion and crack the whip on corruption, whether inside or outside the judiciary. I would look forward to a declaration, taken like a vow, by the judges of the High Courts to see that the subordinate judiciary, in their State, is totally corruption-free, efficient and can be set as an example or role model for the judiciary in other States. The Supreme Court has

made it clear, time and again, by its pronouncements, that Article 235 of the Constitution has tremendous potential which vests the High Courts with the judicial, administrative and disciplinary control over subordinate judiciary. The High Court should meaningfully and effectively exercise this power, as often as needed, to secure performance of high levels of integrity, honesty and competence from the subordinate judiciary. The High Courts should not hesitate in weeding out the dead wood, the corrupt and the insolent.

The Vigilance Cells in High Courts have to be activated. Action against deviant and erring judges should not be delayed. I expect the Chief Justices of the High Courts to personally monitor the working of Vigilance Cells or Registrar (Vigilance).

The guidelines laid down by the Supreme Court, in the *Nadiad case*,⁶ are intended to protect the judiciary from outside interference and secure its independence. These guidelines should not be misunderstood as having provided total immunity to members of the subordinate judiciary to do whatever they wish to do. Once the Chief Justice feels convinced that a strong *prima facie* case of indulgence in corruption by a judicial officer has been made out, permission for lodging the F.I.R., for initiating and completing the investigation, under the ordinary criminal law, and sanction for prosecution should be allowed, so as to act as a deterrent and to set an example for the fence-sitters. Suggestions from well-meaning persons have been received that there should be a mechanism vested with police powers to investigate into complaints of any act, committed by any member of the subordinate judiciary, punishable under the criminal law, including cases of corruption. Such machinery shall be absolutely under the control of the Chief Justice.

This statement of mine should not be treated as a call for creating terror in the subordinate judiciary. In the case of '*K*', *A judicial officer*'⁷ speaking on the relationship of High Courts with members of the subordinate judiciary, I have said - "The role of High Court is also of a friend, philosopher and guide of the judiciary, subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition, if committed once innocently or unwittingly. Pardon the error but not its repetition."

The principles of ethics and morality have to be told and taught to the entrants in judicial service, at the threshold and then re-told and reaffirmed, at periodical intervals, in such a way that they are imbibed into the personality of the holder of any judicial office. The Assam State Judicial Academy can be a centre for imparting such learning.

Members of Bar: Bench & Bar relationship

Members of the Bar are officers of the court. But for their contribution, the chariot of justice cannot move. They have to be learned, as the judges learn from their addresses, made in the court everyday. The vocation of lawyers is a profession and not business where earning is the motto. The Bench and the Bar form a noble and dynamic partnership geared to the great social goal of administration of justice and that consideration puts the lawyers, appearing in the court as a class by themselves. An advocate is not only an officer of justice but also a friend of the court. Any conduct of a member of the Bar which is unworthy of him as an officer of justice, cannot be justified by stating that he did so in the interest of his client, much less in his own interest.

There is a powerful tradition of rectitude, honourable conduct and dedicated service to the cause of justice, built up by members of the Bar in this country. It was the contribution made by the members of the legal profession which earned freedom for India. The constituent assembly which gave us the Constitution was drafted mostly by lawyers. We can legitimately feel proud of the intellectual and moral stature attained by the members of the Bar of this country and the highest possible standards of honesty and probity, laid down by them.

The Bench and the Bar – both are partners in pursuit of justice. Both of them are meant to serve the society. According to Professor Del Vecchio – “He who submits himself truly to the ideal of justice overcomes himself as an individual, since he identifies himself universally with others, beyond the sphere of physical appearance and following that equivocation which proclaims to meet the law of his spirit as a rational event, he enters the kingdom of the eternal and the absolute.”⁸ The difference between the quest of the man in the street and that of the Judge and advocates, for justice, is that the later class of persons is meant to be dedicated to the pursuit of justice and seeks it scientifically by employing ordered knowledge, contained in the form of law and by scientific means, found both inside and outside the law. Such a sense of dedication or consecration, combined with a scientific technique, constitutes the common ground between members of the Bench and the Bar in every country and in all ages⁹. The lawyer’s duty is beautifully summed as being towards five Cs: Country, Community, Client, Court and Colleagues which may aptly be called lawyers’ *panch shila* i.e. the five principles underlying lawyers’ fundamental duties.¹⁰ I would close this topic by quoting the Preamble to the chapter on standards of professional conduct and etiquette, framed by the Bar Council of India, the apex body of the legal profession. It says – “ An Advocate shall, at all times, conduct himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate.”¹¹

Lawyer and Advocate - the two words themselves imply that they stand for upholding the cause of justice and assisting in the administration of justice. At no cost, any honourable member of the legal profession shall do anything that obstructs the delivery of justice or holds to ransom, the justice delivery system.

Judges and Lawyers generally; their obligation to society

Judging is no longer easy. The traditional function assigned to the judiciary, that was much in place in the nineteenth century of being an arbiter of disputes between citizens *inter se* has radically changed in the twentieth century. In the process of judicial review, the judiciary is often pitted against the executive, inviting critical observations, at times that government is being run by the judiciary. And this has resulted in creating, sometimes, tensions between the judiciary and the other branches of government. The problem is, at times made worse by the strong language in which Judges sometimes express themselves in striking down governmental action or the decision of executive. Nobody likes being told publicly that he is wrong and, less so, that he has acted contrary to law. They would prefer not to understand the process and counter threats are not uncommon. In modern times, with the expanding horizons of administrative law, the judiciary is under continuous pressure to discharge its role with pro-activity under the constitutional system. This should be done with sobriety and by explaining with reasons, accompanying the commands issued, so that the explanation is available to the larger audience of policy framers and public generally. Madam Justice Beverley McLachlin of the Supreme Court of Canada has noted, “Judging is not what it used to be. Judges are more important now: judges are more criticized. And judges face more difficult tasks than they ever before faced in the history of the Commonwealth.” Lord Donaldson, the former English Master of the Rolls says, “Judges are without constituency and answerable to no one except to their consciences and the law.” Once the judiciary has entered into the arena of public interest litigations and started touching policy matters, the concept of accountability has become all the more significant. For the present, it is sufficient to note that justice is a consumer product and must, therefore, meet the test of confidence, reliability and dependability like any other product, if it is to survive market

smoothly. Judicial responsibility, accountability and independence are in every sense inseparable. They are, and must be, embodied in the institution of the judiciary. In the memorable words of Lord Devlin, "the prestige of the judiciary and their reputation for stark impartiality is not at the disposal of any government: it is an asset that belongs to the whole nation."¹²

I would like to remind all my brother Judges to recall and remember the "Restatement of Values of Judicial Life" considered in the Full Court Meeting of the Supreme Court of India on May 7, 1997 and adopted in the Chief Justices' Conference in December 1999, for due observance by all the Judges of the country. The sixteen-points standard of conduct for Judges laid down therein, all by way of rules of self-imposed discipline, are like 'ten commandants' and those are not meant to be exhaustive but illustrative of what is expected, by the society, of any Judge. We have accepted the principles adopted the same as resolutions but we are yet to put them in practice, fully and wholeheartedly. Let it be done. It is never late to make a beginning.

I have very briefly touched upon the role of Chief Justice, the judges of the High Court, the members of the subordinate judiciary and the members of the Bar in upholding the constitutional democracy which is very dear to our hearts.

The Gauhati High Court is fortunate to have an erudite scholar and hard working Chief Justice with all good intentions. He has come here to serve the cause of justice and cater to the justice-demands of the people, here. He has a team of well-versed judges, communicating and associating with him as willing team members. Members of the Bar are co-operative, responsive and well-meaning. They all have a legacy of high traditions which they are maintaining and further enriching. This is what your Chief Justice has always been telling me. There is hardly any message which I can give you. Yet, I felt like sharing these few thoughts with you.

Our ancestors have paid a very heavy price for earning this democracy. They have laid their lives and undergone unbound sufferings. We have to remember their contribution, made in giving us a free India – an India which is a sovereign, socialist, secular, democratic republic. Justice, liberty, equality and fraternity are not only the objectives of our democracy, they are also the constituents thereof. I am reminded of the golden words of Justice Aharon Barak, the President of Supreme Court of Israel, who said that existence of any democracy cannot be taken for granted; the fight for its preservice is incessant. "If we do not protect democracy, democracy will not protect us"¹³ "The need to watch over the rule of law exists at all times. Trees that we have nurtured for many years may be uprooted with one stroke of the axe. We must never relax the protection of the rule of law. All of us – all branches of government, all parties and factions, all institutions – must protect our young democracy"¹⁴

The Judges and the lawyers are charged with the duty of maintaining constant and vigilant watch over our basic values and protecting them against those who challenge them. There can be no democracy and no civilized society without an effective justice administration system. The state is obliged to do whatever it can for making the justice administration system effective. Their administrative and financial wings must faithfully and generously discharge this obligation of theirs.

Lord Denning in his benchmarking style had maintained, "When a judge sits to try a case...he himself is on trial – before his fellow countrymen. It is on his behaviour that they will form their opinion of our system of justice. He must be dignified – so as to earn the respect of all who appear before him. He must be alert – to follow all that goes on. He must be understanding – to show that he is aware of the temptations that beset everyone. He must be merciful – so as to show that he too has that quality which 'droppeth as the gentle rain from heaven upon the place beneath'.¹⁵ "No system of justice can rise above the ethics of those who administer it."¹⁶

While we are a witness to the foundation laying of the additional building meant to house this great institution – the Gauhati High Court at Guwahati, let this thought go into the foundation of our thinking and the personality of all of us that the courts do not exist for lawyers or the judges. It is the other way round. The Courts, the judges and the lawyers, all exist for the seekers of justice. They are those whom we are all meant to serve. Justice is for the people and the judges and the lawyers are only administrators and ministers. Remember what Abraham Lincoln said, as early as in the year 1850 – “Resolve to be honest at all events; and if in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.”

Epilogue

The lawyers and Judges, the legislators and the politicians, the administrators and executives are all busy persons. They all complain that they cannot find free time; life has become hectic and it is a rush hour all the time. I appeal to each one of them that it is good to be active and keep yourselves busy in activity but the question is: does your activity result in any productivity? Activity consumes time but may not give any results. Productivity gets you results and frees you from shackles of time. Test your every activity on the touchstone of productivity.¹⁷

I am thankful to you for listening to me with patience. Before I take your leave, I feel inclined to share a Pauranic story with you which I think would be appropriate to the occasion. It was told to me by Shri Rajendra Babu, the former Chief Justice of India, whom I succeeded and, if I can say so, this was by way of his parting thought – a personal gift – to me:

“Lord Shiva and Parvathi, in their usual excursion in the skies, noticed that a large number of people were taking dip in the Holy River Ganga. On seeing this, Parvathi asked Lord Shiva – Do all those who take dip in the River Ganga get salvation? Lord Shiva pointed out to Parvathi that he will put some of these people to test and demonstrate to her as to why some of them do and some of them do not attain salvation though they all take dip into the same water of River Ganga.

Saying so, Lord Shiva descended to the earth along with Parvathi. Lord Shiva then assumed the form of a man with some serious skin ailments and orthopaedic problems, squatting on the banks of the River Ganga with Parvathi as a beautiful damsel standing beside him. Parvathi appealed to the passers by to help her in giving bath to Lord Shiva in the River Ganga as that was the only remedy to cure him of the diseases he was suffering from. When several people offered her help just to be in the company of a beautiful woman rather than help Lord Shiva, take bath in River Ganga, who was suffering from disease, she imposed a condition that one who comes out to help her, will have to be a person who has not committed any sin in his life. On hearing this all those who offered their help backed out. Then a young man appeared and told her that he would help them. He jumped into the River Ganga, had a dip, and came back to her, even after noticing the condition imposed, of not having committed a sin in his life, in order to help her.

The young man helped Lord Shiva in taking a bath in the river. When Lord Shiva appeared in his real form and blessed the young man, Parvathi asked the young man as to whether he had not committed any sin in his life. He replied to her that, of course, he could not claim that he had not committed any sin in his life, but he believed that a dip in holy Ganga would wash away all his sins and with that faith he helped her. Then Parvathi realised that all those persons, who offered their help earlier, did not believe in the expiation of the sins by taking a dip in holy River Ganga. Those people who do not believe in what they do, as the young man believed in what he did, cannot attain salvation. It is

only when one has firm faith or trust in what he does, can he attain success in life or even thereafter.”

The moral of the story is: It is the faith which brings the result. The power and strength of any justice delivery system is derived from the faith of the people in it. Unfortunately, in recent times, there has been a decline of that faith. We have to restore it. The people of the country to whom we hold out the hope of justice, being administered by the combined effort of the judges and lawyers, must strengthen that faith so that if they come to the courts, the injustice done to them shall be undone. Let it be our goal. Let it be our determination.



* Speech delivered at the Foundation Stone Laying Ceremony of the Additional Building of the Gauhati High Court on 7th August, 2004.

* ‘North-East India’ Brochure published by Department of Tourism, Government of India.

1. Cooke, Lawrence H., Quote IT-II by Eugene C. Gerhart, p. 208
2. 1950 SCR Journal, p. 1.
3. T.C. Goel, *Deft Definitions*, p. 77.
4. G. Narayana, *The Responsible leader, A Journey through Geeta*, pp. 8, 10, 34.
5. T.O.I. Speaking Tree – *Climb Every mountain, Search High and Low* by Rakesh Saxena.
6. AIR 1991 SC 2176.
7. (2001) 3 SCC 54.
8. Quoted by Mr. Justice M.H. Beg, *Role of the Bench and the Bar*.
9. *Ibid*.
10. Subramanyam’s Commentaries on the Advocates Act, 1961, p. 297.
11. *Ibid.*, p. 297
12. Dato’ Dr. Cyrus Das, former President, CLA; Senior Advocate, Malaysian Bar, “Law and Judges”, pp. 255-265.
13. Aharon Barak, *The Supreme Court 2001 Term, Foreword: A Judge on Judging; the Role of a Supreme Court in a Democracy*, *Harvard Law Review* Vol. 116, No. 1, November 19, 2002, pp. 36-37.
14. Aharon Barak, *Ibid*, pp. 37-38.
15. Edward Heward, *Lord Denning – a Biography*, [3rd Indian reprint, 2003] Universal Law Publishing Co. Pvt. Ltd., p. 236.
16. Report of the National (Wichersham) Commission on Law Observance and Law Enforcement, 1929.
17. Purity, August 2004, p. 12.