

RENAISSANCE IN JUDICIARY*

PRELIMINARY

I am thankful to the members of the Harvard Club of India and its officer-bearers, especially Meera, for giving me this opportunity of interacting with all of you this evening. Since we are meeting soon after Diwali, the festival of lights, let me open by wishing all of you a very happy and prosperous New Year. May Goddess Lakshmi shower prosperity, health and all that is good in life on everyone of you. May you achieve what you aspire for.

Let me open with a few introductory remarks:

- (i) Most of you and I are well-known to each other, and therefore, I would be informal during my conversation. Let me tell you I am not a good speaker and certainly not an orator. My introduction with advocate Ms. Meera relates back to a few years when I came on transfer as a Judge of Delhi High Court and she, as a lawyer, appeared before me. I was impressed by her simplistic and innocent way of presenting her case before the court. In spite of the formal, and at times tense atmosphere in the court where serious business is transacted, she looks like a sweet little girl; apparently it is for this reason that I could not deny or decline her invitation for meeting all of you this evening and having a dialogue with you.
- (ii) Do not for a moment get an impression that I am going to deliver any sermons to you. My concept is to have a dialogue with you. Conversation has an edge-over one-way speech. So apt is an illustration. I have a rupee; you have a rupee; two of us taken together have two rupees. I give my rupee to you, you give your rupee to me; each one of us again has one rupee and collectively we have two rupees. Take another situation. I have a thought and you have a thought. Taken together we have two thoughts. I give my thought to you and you give your thought to me. Each one of us has two thoughts each and collectively we have four thoughts. That is the advantage of indulging into a dialogue rather than a speech. I hope whatever I speak would be accepted by you as initiation of just an informal dialogue.
- (iii) Initially, I had an impression that I am going to spend this evening with law students hailing from Harvard, most of whom would be practising law as profession and therefore the subject 'Renaissance In Judiciary' was chosen so as to dwell around law. However, later, only a day before, I was informed by Meera that the gathering may not necessarily consist of legal professionals alone. I took Meera's permission to make a departure from the subject and dwell a little around too and I hope I have also your permission for doing so.
- (iv) And lastly, I propose to take only a few minutes. Still whenever you feel I have done enough, please unhesitatingly give an indication and I will stop. I am reminded of an anecdote. A politician enjoyed the reputation of being a poor speaker, used to delivering lengthy speeches but without substance. One day, while addressing a gathering, he said – today I am going to speak to you on the milk of human benevolence. Somebody from the audience remarked – we hope that the milk is condensed.

My introduction

I am obliged to my predecessor speaker for introducing me so well. The way I have been presented before you is suggestive of a belief in legal circles. The weakest case gets a forceful presentation at the hands of a successful lawyer. The members of the august gathering here were mostly born with golden spoons in their mouth. I come from a very modest background. To begin with, I have been a District Court lawyer, handling trial cases and at times appeals in District Court. I had the distinct advantage of having the first lessons in legal profession, sitting at the lotus feet of my revered father who was a living example of saintly idealism in legal profession. High degree of ethics and devotion which he observed while discharging his duties as a legal professional are rare and it is difficult to find a parallel to match with. Some of them I could learn. God has been very generous and kind to me. He has showered His kindness and generosity on me, always much out of proportion with what I have ever deserved. This is the secret of my journey from a District Court lawyer to a Judge of the Supreme Court. I have never bothered for the coming tomorrow and never carried any regrets of the day gone-by. I live in present and feel happy if I have been able to discharge the duties of the day to the satisfaction of my own inner conscience. I accept the things as they are and as the destiny has shaped them for me.

This day

Our day of meeting is not without significance. Yesterday we have celebrated the Childrens' day in the memory of late Jawaharlal Nehru, the first Prime Minister of India, a great visionary and a great man. His speech, delivered at midnight when the hands of the clock struck 12 have gone down into the history as a document consisting of one of the most memorable speeches ever delivered. In one of his letters written to children he says – and what he says deserves to be received by each one of us as message for ourselves –

“Our country is a very big country and there is a great deal to be done by all of us. If each one of us does his or her little bit, then all this mounts up and the country prospers and goes ahead fast.”

On 12th November we celebrated the 185th Birth Anniversay of Baha'u'llah, the founder of the Baha'i Faith. In one of his proclamations he says – “God grant that the light of unity may envelop the whole earth, and that the seal, ‘the Kingdom is God’s’, may be stamped upon the brow of all its peoples.”

We have celebrated Diwali. The Indian tradition of festivals has its own philosophy which though known is less understood. There is an immortal *vedic mantra* in *Brihadran Yakaupanishad* which says—

Lead from the unreal to real

Lead from the darkness to light

Lead from death to immortality

Dussehra, Diwali and Holi are the festivals which are epitomes of each line in the abovesaid *mantra*. The mythological story of Holika and Prahlad which I do not find to be a myth but believe to be a part of the history is symbolic of triumph of immortality over death. Dussehra is symbolic of the triumph of truth over falsehood. Diwali, the festival of lamps and lights is symbolic of the triumph of light over darkness.

When I speak of Diwali, I am reminded of my childhood days and a small but significantly inspiring memoir, befitting to narrate in the context of renaissance. When it would be time for worshipping the Goddess Laxmi, Goddess Sarswati and Lord Ganesh, the girls would make *rangoli* in a big *thali* and decorate it. Therein would be placed 21 lamps. We the boys were assigned the duty of filling the lamps with oil and placing a wick in each of the lamps and light them. We would light one lamp and with the help of that lamp, by bringing it in contact with other lamps, light each one of the lamps. It is always a sight to see several beautiful lamps lit together and collectively fighting against the darkness of the darkest night of the month. After the worship has been performed, the lamps from the altar of Goddesses Laxmi and Sarswati and Lord Ganesh would be picked up and sent to each one of the rooms in the house. This exercise had many inspiring messages. One, to fight against the darkness it is not the sun alone but a small earthen lamp consisting of moulded earth, a few drops of oil and few shreds of cotton, entwined together to give the shape of a wick and igniting the spark to light the lamp would be enough. All the lamps collected together would then depart to different corners, one each, spreading far and wide the light of prosperity, knowledge and wisdom. The process of lighting different lamps with the help of one lamp had a message – just as a lamp lights hundreds of other lamps and yet remains lit, so those who are enlightened can enlighten others and yet remain enlightened themselves.

Renaissance in Judiciary

Given the subject 'Renaissance in Judiciary in the next millennium' I was wondering what the subject proposes to indicate or suggest. I looked into the dictionary. Therein 'renaissance' is defined to mean – a new birth, the revival of arts and letters, the transition from the middle ages to the modern world. To understand the renaissance of judiciary in the new millennium let us first understand what judiciary is.

Judiciary is a collective name, assigned to a class of persons, entrusted with the task of administration of justice delivery system in any democratic or civilized society. The greatest and unique service which the judiciary delivers to the society is that it listens and it decides. The biggest cause of unrest in the modern society is that nobody is prepared to listen to the other. And why the unrest is not set at rest is because nobody is prepared to take responsibility of taking decisions. The judiciary naturally becomes the darling of the masses because it listens and decides; decides fearlessly and boldly. It does not matter to a Judge who will be pleased and who will be disappointed by his decision. It does not matter for him who wins and who loses. What matters to a Judge is what are the dictates of law and where lies the justice and there the Judge leans.

It is often said that there is huge backlog of arrears and the judiciary is crumbling under its own burden. Little does any one realize what are the root causes. According to the report of Law Commission of India, the judge-population ratio in India ought to be 101.5 per million while it is only 10.5. The strength of judiciary in India needs to be increased ten-fold. The judiciary is discharging its constitutional and social obligation with one-tenth strength. Then, it is starved for funds, for manpower and for modernization. The Judges work in a tense atmosphere and under tremendous pressures with almost no outlet for their tired nerves. Yet, the judiciary is subjected, at times, to severe criticism.

India is not a litigious society. The increasing number of pending cases is not an evidence of inability of a system to handle the arrears; the increasing number of cases in the courts bears testimony to increasing faith of the masses in the Indian judiciary. They are confident that their grievance would be heard and determined in accordance with a known methodology, with transparency and by assigning convincing reasons for decision either way. There may be delay but there would be justice done at the end.

That is the reason that strange issues are propping up before the courts for decision and methodologies are being innovated to take care of newer demands. Have a little peep into the diverse issues which the Courts of law are called upon to determine—

- (1) Sustainable development - enforcement of rights of a future generation which is yet to come in existence as against the present day generation.
- (2) Right of a newly born baby to mother's milk.
- (3) Renting out of the womb by mother and disputes as to paternity, motherhood, guardianship and custody of the baby born or yet to be delivered.
- (4) Human cloning and intricate questions as to privacy, secrecy, copyright and fraud related therewith.
- (5) Defining a document, for example, a print out of a message received on computer which is neither written nor typed nor signed nor thumb-marked - can it be called a document and the problems of proof related therewith.
- (6) Intellectual property and software if can be called 'goods'. The human intellect converted into a software if sent across the borders or exchanged for value would it be "goods" in the sense known to the law of the day so as to be liable to customs duty or sales tax.
- (7) Theft of time - For example I purchased 100 hours' time on internet. A hacker breaks into my system and learns the password so as to utilise for himself the time purchased by me. Does he commit the offence of theft, as defined by the penal law of the day, which speaks of theft of property. Whether time is a property?

These are a few examples other than a host of others referable to international issues consequent upon the globe shrinking as a result of advancement in the field of science and technology, genocide, space and naval territory evasion etc.

Indian judiciary innovated letter petition and public interest litigation jurisdictions, making a departure from traditional ones. The Indian constitutional courts have allowed access to citizens by sending letters, which will be treated as petitions by those who, on account of poverty, ignorance, social fetters or other factors, cannot afford to approach the court either personally or through lawyers. Public interest litigation has given a new vista to the constitutional power exercisable by writ courts where the cause is not referable to an individual but concerns the society at large or a sizable section thereof.

I was on a private visit to a place in Rajasthan. There, a gathering of intellectuals invited me to spend an afternoon with them. One of them asked a very embarrassing question to me – Is it not correct that what you call 'judicial activism' is at times 'judicial terrorism'? I was amused at the ignorance of the gentleman. However, politely I explained to him that we do not trench upon the well defined territories amongst the three constitutional wings of governance. We act like an alarm clock. If somebody is sleeping while he should be at work,

mindful of his obligation, then we sound like an alarm clock. Once we see that the person is awake, we tell him what is his obligation or duty to the society and if sense dawns upon him, our duty comes to an end. The judicial activism is, thus, nothing but a mere judicial alarm to awaken those who are in deep slumber.

Necessity is mother of invention. Some say – an unknown devil is better than the known one. Alternative Dispute Resolution systems have been invented. The most successful of them has been Lok Adalats or Peoples' Courts. The beginning of the previous century witnessed emergence of arbitration and the end of century combined conciliation with arbitration. The renaissance of justice administration system in the new millennium can briefly be described from two angles: the system and the methodology.

Mediation and Conciliation are going to be the order of justice administration system in this millennium. Recently I had an opportunity of visiting USA in connection with Indo-US Exchange Programme. There the Mediation and Conciliation are coming up in a big way. Mediation and Conciliation have an edge over the traditional justice delivery system. While the Courts and arbitration enable a dispute being decided; medication and conciliation enable the dispute being dissolved and both the parties feel happy. Nobody wins and nobody loses. I can foresee these ADR systems fastly gaining more and more grounds and spreading fast into India too.

The emergence of these new systems and methodologies would soon brand the existing system and methodology outdated though not irrelevant.

In a democratic society there are several institutions. Without naming anyone of them I would just categorise them and define their symptoms and leave it to you to identify which institution you will like to place in which category. There are wheel barrows, no good unless pushed. There are trailers, no good unless pulled. Some are like footballs; you do not know which way they will bounce. Some are like kites; you have to put a string on them, else they would fly away. And then there are some like the hands of a golden watch, busy moving tick by tick, day and night, silently moving ahead, discharging their duty. Time flies by. They are available to be seen and tell the people what is the time but they do not mind whether they are seen or not and if seen then by whom.

The judiciary, whether of the past millennium or the new millennium, can best be described by an anecdote, inspiring and all time true, narrated by Swami Rama Tirtha, a Yogi. A traveler, riding on horseback, was on journey to a distant place. On way, the horse felt thirsty. The horseman came across a well where a farmer was operating a Persian wheel. The wheel would pump the water out of the well but make a lot of noise while pumping. This man led his horse to the well for a drink. But the animal, not used to the noise of the machine, shied away and refused to drink water. The horseman asked the farmer to stop the noise. The farmer stopped the wheel to stop the noise. But then the water also stopped. Hence there was nothing for the horse to drink. The horseman complained to the farmer, "I asked you to stop the noise and not the water". The farmer replied, "Sir, if you want your horse to have water, you will have to train him to drink water in spite of the noise, because the water comes along with the noise". The horseman understood co-relationship between the noise and the water and had to teach the horse to drink the water in spite of noise.

The moral of the story is that there may be noises and troubles but one must train oneself not to be bothered by adversity of environment and circumstances but to pursue the goal

and reach it. It is the law of nature: when an old order gives place to a new one, there is resistance and reluctance. There are teething troubles. But with a clear vision, and eyes set on goals, one must keep on moving like hands of golden watch striking minutes, hours and days full of achievements for judiciary. That is renaissance.

* 'Renaissance in Judiciary in the New Millennium', address delivered at Harvard Club of India, New Delhi on 15th November, 2002.