

JUDGES OF THE FUTURE*

(Role of Judicial Academy, in making, with Special Reference to IPR Jurisprudence)

I feel honoured and privileged for having been associated, this day,

with the inauguration of new building of the Tamil Nadu Judicial Academy, situated at the principal seat of the Madras High Court which has its own glory and magnificent past to be proud of. Today is the day – if I may say so – of revolution in Tamil Nadu judiciary. The Academy is going to have its permanent habitat. An effective and object-oriented functioning of Tamil Nadu Judicial Academy, under the guidance of the illustrious Chief Justice and judges of this High Court, is sure to set a trend upwards on the graph of judicial performance and achievements of the judicial officers in the State of Tamil Nadu.

It is said that India is free but Indians are yet to achieve freedom. We have got rid of the foreign rule but we are yet to free ourselves from the shackles of ignorance, injustice and inequalities. We, the people of India, referred to in the Preamble to the Constitution, cannot be said to have achieved freedom unless we have achieved the goal of justice – social, economic and political for every person in the country. The framers of the Constitution have assigned a place of distinction to the judiciary and entrusted it with a special role. Judiciary is the custodian of our Constitution and constitutional values. It is the trustee of people's confidence in democratic values. The protectors of democracy are the independent, bold, pro-active and well-equipped legal professionals, whether at the Bar or as members of the judiciary. The trends of globalisation and liberalisation call for the judiciary to shed its traditional style of living in ivory towers and acting only as an adjudicator between two warring litigants. A modern judge not only interprets the law but in that process he also creates the law. He has to play the role of a social reformer and contribute in shaping and strengthening social and economic policies of the nation. All this needs a professionally well-equipped judiciary. Such equipment can be provided by the process of continuing education, getting acquainted with modern concepts and methodologies of justice dispensation, research-based learning, orientation programmes and refreshers courses. This is possible only by interacting with academicians, which the judges, in the very nature of their office which they hold, can afford to do only in the campus of judicial academy.

A call for updating and modernisation in judiciary is by no means a ruse for departing from the traditional concepts of ethics and morality. To be strong from within, the lessons in ethics and morality have to be learnt and revised again and again to guard against human weaknesses. A judge is entrusted with the divine task of justice dispensation, and therefore, must at all times observe high standards of integrity, objectivity and probity. The best place for learning these lessons is a judicial academy.

I am very confident that the good intentions, with which the Tamil Nadu Judicial Academy has been established, would translate into the activities which shall be carried out in this academy.

The training imparted at the judicial academy performs three main functions¹:—

- (1) to prepare newly appointed judges for their duties;
- (2) to guarantee greater uniformity and predictability of decisions by ensuring adequate command of laws and procedures in the judges to carry out their jobs; and
- (3) to up-date judges in new methods, laws and related areas of knowledge, required in their work.

These functions are of immense utility to the judges not only at the commencement of their judicial career but also at every next ladder of assumption of higher responsibilities in their career ahead. In connection with reform programmes, the judicial academy serves additional purposes. They are²:—

- (i) to build a reform coalition within the judiciary to overcome resistance to reform;
- (ii) To introduce new skills and practices – even without a separate training component;
- (iii) To introduce new values, attitudes, and perspectives;
- (iv) To identify problems to be resolved by other reform interventions (in classroom discussions, judges may reveal problems, common practices, or impediments which might not be uncovered in other ways);
- (v) To identify additional problems to be addressed by training and help develop their solutions;
- (vi) To build institutional solidarity and a sense of common purpose.

I would suggest the State Academy to maintain a close link and work in close co-ordination with the National Judicial Academy at Bhopal. The National Academy is gearing up to develop on international standards so as to achieve the level of such excellence as the best of judicial academies or training centers in the world can aspire to achieve. The National Academy would be of immense help and service to the State academies inasmuch as the National Academy would train the trainers and also make available standard curricula and study material to the State academies. The State academies can think of exchanging faculties with the National Academy and thereby contributing to mutual development.

I hope the Tamil Nadu Judicial Academy would be successful in creating, propagating and popularising judicialism in State judiciary. Judicialism is the practical instrument by which constitutional government is made active and is the best guarantee of the Rule of Law and, therefore, of liberty³. The principles which underlie rules of judicial conduct are four in number. These are: (i) the principle of independence of the judiciary (ii) the principle of impartiality of adjudication (iii) the principle of fairness of trial and (iv) the principle of the integrity of the adjudicator⁴. If the judicial academy has achieved the objective of creating judicialism, then I am confident that the academy has succeeded in fulfilling the expectations of the Constitution and the people, from the judiciary of Tamil Nadu.

I am very happy to learn that the inauguration of Tamil Nadu Judicial Academy building is being followed by a Workshop/Conference of members of subordinate judiciary and advocates on Intellectual Property Rights. IPR litigation would be a major part of the litigation before the Courts in future. The trend has already settled. We are spectators to a phenomenal change in how a sovereign exercises its legislative powers and reacts to international demands and obligations. The law-makers while introducing new laws and amending old ones are no more governed only by the need of our nation, especially in areas which have acquired an international colour. The law-makers today are influenced by the need to bring laws in tune with the international conventions and agreements to which India is a party. The opening up of the domestic economy to the world is followed by a profound impact on our domestic laws. The preceding five years have seen many new IPR enactments. With globalisation, liberalisation and privatisation, the ambit of IPR has grown multi-fold and its importance has amplified, having a profound impact on commercial interests.

We have to keep ourselves abreast of the laws and help the industry, leap into the 21st century with the confidence that their intellectual property is secured. The Judges are required to interpret the IPR laws and adjudicate upon the disputes between the parties on IPR issues. The more important and long-term issue is the one concerning interpretation of new statutes. It is desirable that the interpretation of IPR laws is uniform across the country. It is essential for the Courts, across the country, to have due regard to the interpretation given by any other High Court as regard the same IPR of the same person, be it trade mark or patent or copyright. Consistency in the growth of Judge-made law is too precious in the field of IPRs. An IPR Judge cannot afford to be oblivious of developments, elsewhere. While innovation is the privilege of any lawyer or a Judge, too much of innovation by an uninformed Judge may prove misadventure and a price, too heavy to be paid for the development of IPRs.

Members of the legal profession – judges and lawyers - need to gear up with the changing phenomenon of the IPR world. They are to keep themselves abreast with the developing international IPR law and keep a positive bent of mind while interpreting the provisions of the amended IPR laws in India so as to bring them in harmony with the international conventions and most importantly, be able to contribute to the international community by their positivist approach and succinct interpretation.

We cannot contend ourselves with the knowledge of the national IPR laws alone but must also learn about the international conventions and agreement, upon which the national laws are based and further, fairly acquaint ourselves with the interpretations given by different jurisdictions around the world with a view to reach a consensual and harmonious interpretation.

I expect this Academy to transform the subordinate judiciary of Tamil Nadu into 'the judges of the future'. In the Judge's Book published by the American National Judicial College, the emerging features of the judge of the future have been so described – "Although speculations about the judge of the future bring visions of robotic truth assessing machines, law dispensing computers, and chemical-test-determined dispositions, human beings, rather than mechanical marvels, will continue to exercise the fine art of judgment for any foreseeable future". A judge of the future shall have to have a national and an international perception⁵. Science and technology cannot substitute a machine-judge for a human-judge.

But a judge should be ready to transform himself into a judge of future, preparing for and looking forward to a foreseeable future.

* Inaugural Speech delivered at the inaugural function of the new building of the Tamil Nadu State Judicial Academy on 25th July, 2004, at Chennai.

1. Linen Hammergren, Judicial Training and Justice Reform (Aug. 1998) p. 8.
2. Linen Hammergren, Judicial Training and Justice Reform (Aug. 1998) pp. 8-9.
3. Cyprus Das and K. Chandra, Judges and Judicial Accountability, p. 2.
4. Cyprus Das and K. Chandra, Judges and Judicial Accountability, pp. 3-4.
5. Cyprus Das and K. Chandra, Judges and Judicial Accountability, p. 33.