

ROLE OF ACADEMIES TO ENABLE JUDICIARY TO PERFORM BETTER*

The National Consultation Meet has been convened by NJA to

initiate a plan of action for gearing up the Indian judiciary for a revolution. The Constitution of India has cast an obligation upon the Indian judiciary and entrusted it with the task of upholding and implementing the Constitution of India. The magnitude of the uphill task, borne on the shoulders of a judge, is reflected well in the form of oath or affirmation to be made by a judge. The Third Schedule of the Constitution provides for the form of oath or affirmation being taken or made by the judge while entering upon the office. He has to swear in the name of God or solemnly affirm that he will bear true faith and allegiance to the Constitution of India as by law established; that he will uphold the sovereignty and integrity of India; that he will duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of his office; and that he shall do so without fear or favour, affection or ill-will; and that he will uphold the Constitution and the laws.

Significance of Judicial Oath

The mould in which oath or affirmation of a judge is cast by the Founding Fathers of the Constitution is not without significance. It is the code of conduct for a judge. It lays down the goals to be achieved by the judiciary. It projects the expectations of “we the people of India” – the expression, as employed in the Preamble to the Constitution, from the judiciary and its component judges. A judge who fails to read the message written in his oath or fails to come up to the expectations, expressed and implicit in the oath or affirmation of a judge, commits a breach of faith reposed in him by the Constitution and the people of India.

Mr. Justice Arthur T. Vanderbilt said, “It is in the Courts and not in the Legislature that our citizens primarily feel the keen, cutting edge of the law. If they have respect for the work of the Courts, their respect for Law will survive the shortcomings of every other branch of government; but if they lose their respect for the work of the Courts, their respect for law and order will vanish with it to the great detriment of Society”.

Not only the Constitution of India places the judiciary on very high pedestal and assigns it a place of distinction, the judiciary, by its historical background and the culture, which it has developed on its own, has risen the expectations of the people from it. During last few years I have had occasions of participating in International Conferences, such as the Seminar on Constitutional Globalism at Yale Law School, the Conference of Chief Justices and Lawyers of Asia Pacific Region held in Japan and very recently the Conference of Chief Justices and Law Professionals of SAARC region Nations at Karachi. I also had the opportunity of interacting with the judges of America and Australia very informally and on one to one basis. It has been uniformly accepted that the Indian judiciary as an institution has emerged as one of the most powerful and independent institutions of constitutional

democracies of the World. The glory, so achieved, demands its toll. More difficult than having achieved the glory is to retain it. Earning a success and bringing it home is easier than the price one has to pay is in instalments, that is, to continue to labour harder and harder so as not to lose what has been earned.

Vedantic Conception of Judicial Role

There is no other profession in the world than that of a judge which ensures spiritual attainments of the highest order by simply discharging the duties attached with the office of a judge with sincerity and devotion so as to achieve perfection to the extent the human capacity permits. To be a perfect judge, it is essential to put in the best of efforts to learn the knowledge and to lead an orderly and disciplined life. We are all human-beings made up of body, mind and intellect. These are the equipments which one needs to use for being a perfect dispenser of justice.

The philosophy of Vedanta speaks of *Jnana Yog*, *Bhakti Yog* and *Karma Yog*. *Jnana Yog* is training the intellect to think and contemplate upon the realities of life including understanding the purpose of human existence. *Bhakti Yog* is not to be misunderstood as a mechanical performance of rites and rituals. It has a much deeper import. *Bhakti* or devotion begins with an attitude of gratitude with an understanding of all the benefits that one has been showered with. A mysterious power bestows upon the judge faculties to sustain him as a judge and guide his path towards perfection. True *Bhakti* or devotion unfolds with gratitude for the miracles in the performance of duties. *Karma Yog* is action performed with a higher ideal. Purposeful action that transcends mere ritualistic performance of day to day duties called disposal, encompasses the interests of the community, the progressive action that renders the mind peaceful and provides the initiative in dynamic action. Performance of the three yogas by a judge slowly reduces the selfish desire and develops a sense of detachment. When most of the desires are removed, the mind becomes calm, cool and steady, fit for deeper contemplation and achievements. It is only such a trained and controlled mind that can be directed to achieve perfect dispensation of justice. That is meditation and that is liberation. Once the personality has been set rolling to shape on such a path, a judge ceases to be bound to his service and feels liberated. We have to learn a lesson that work is worship and that independent labour is the highest form of prayer.¹ Katyayana, the great jurist said – “A Judge should be austere and restrained, impartial in temperament, steadfast, God-fearing, assiduous in his duties, free from anger, leading a righteous life and of good family”.

It is well-settled that one who ceases to grow begins to perish. In order to efficiently perform and respond to the ever-increasing demands on judges the incessant desire to learn and to expand the dimensions of personality are indispensable exercises for any judge. We have to break some of our inhibitions and preconceived notions under which, unfortunately, we have been belabouring so far.

Challenges before Judicial Academies

There are 24(21+3) High Courts in the country. Out of these, as I understand, there are 14 High Courts having their own judicial academies operating at the State level. These academies aim at training of the members of subordinate judiciary, that is, subordinate to the High Courts or upto the level of the District Judges. It is believed – unfortunately a mistaken belief – that the members of the higher judiciary do not need to be trained. In the State level

judicial academies also the training programmes and curriculum have been devised, based on mere experience and I hold grave doubts if such programmes, and the study material available at the State academies, are preceded by any scientific research and innovation. Though the work that is being done at these academies is to be appreciated - and some of them are doing extremely well - yet there is scope for improvement. I wish to highlight two aspects.

First is from the point of view of the subordinate judiciary. They have all learnt the law. Each one of them has, by his performance, justified his selection as member of subordinate judiciary. But a mere knowledge of law does not make him a perfectly ideal judge. He ought to know the constitutional and legal history. He must instruct himself in sociology so as to be a practical judge. He has to learn minimal lessons in psychology so as to appreciate the working of human mind and, thereby, the art of marshalling the evidence and exercising discretion and equity jurisdiction. He must have knowledge of economics and accountancy to effectively sit in judgment over issues relating to black-marketing, money-laundering, stock exchange, insolvency and securitisation disputes. Without a few lessons in Information Communication Technology, he may not be able to correctly pronounce upon controversies arising for decision in cyber laws. Unless familiar with commerce and business and a little bit of science, he may not have confidence in dealing with disputes relating to intellectual property rights such as copyrights, trademarks, designs and patents. To decide a case of medical negligence a little bit knowledge of medical jurisprudence is a must. These are a few illustrations to highlight the demands on a judge. The demands increase with every next step on the stairs of hierarchy, leading him to assumption of higher jurisdictions. It is necessary to train the members of subordinate judiciary not only at the threshold of entry but also with the assumption of every next of higher responsibility and periodically by way of refresher and capsule courses.

What is true of the subordinate judiciary applies with equal, rather added vigour, to the members of higher judiciary, including the judges of the constitutional courts. A year before, I had an opportunity of visiting the Federal Judicial Centre in Washington which is run under the control of the Supreme Court of United States. It is invariably headed by a judge of the Supreme Court of the United States who acts as Director of the Centre on deputation for a period of two years and then reverts back to the Supreme Court for discharging judicial functions. The Federal Judicial Centre aims at training the members of superior judiciary and they take such training and learn through the scheme of continuing education without any hesitation or reluctance. The law declared by the High Courts binds the State and the law declared by the Supreme Court is the law of the land. Declaration of law without flaw needs equipping oneself with the latest advancements in the field not only of law but of other sciences as well. The more instructed and trained a judge, the more perfect would be his pronouncements. He will be nearer to the truth and to the realities if he knows the subject with which he is dealing.

The National Judicial Academy will cater to the needs of the entire judiciary of India from the lowest level to the highest rungs.

Once the National Judicial Academy has accomplished the task of devising courses and curriculum for judiciary, higher and subordinate, and commenced its regular courses, the Judicial Academy can aim at making its services available to all those who are associated

with the administration of justice such as executive magistrates, bureaucrats, police officers, lawyers, members of Tribunals and Commissions and so on.

I am happy to learn that during last two days, in-depth discussions have been held on standardising curriculum for training at different levels and even a draft curriculum has been adopted. I am confident that we would be returning from here with a positive mission for securing competence, efficiency and productivity, all of higher levels, in the judicial systems in our respective jurisdictions.

I would deem this five-days Consultation Meet a success if at the end of this meet and while returning to their respective High Courts and state level academies the senior judges and the directors of the academies, present here, have learnt the art of motivation and identified their goals. Motivation is the force that provides strength and willingness to a learner who is encouraged to pursue learning with effort and perseverance. A person is motivated to learn when he is impelled by the societal norms that demand from him a desire to learn. This is extrinsic motivation. A learner who wants to raise his self esteem and thereby improve his social esteem as well, is pulled by intrinsic urge to learn and be more educated. This is intrinsic motivation. A learner is driven to strive towards fulfilling an urge to get better equipped for solving problems, faced by him day-to-day and in achieving the goals. True motivation lies in the joy of performing the act of learning itself. The extrinsic and intrinsic motivation is achieved by creating the requisite learning environment in the academies. This is what the leaders in judicial academies shall have to learn- the art of motivation- for a better judicial tomorrow.

Limitless is the Universe in which we live. There still are discoveries to be made, beauty to be created, secrets to be probed. What part are we going to play in the effort of unfolding the cosmic plan is still unknown to us but we have to continue with our duties and responsibilities allocated to us by the supreme power. All those, who aspire to achieve, have to open themselves to the new forces and to the new orders. But for this, the transformation cannot be achieved. In establishment of NJA in Bhopal, I see as a new force, and we have to open ourselves to it.

Equally important is acquainting oneself with the lessons on ethics and morality, relating to judiciary. A healthy body is the abode for a healthy mind. The curriculum devised for learning at the Judicial Academies must have a just and equitable blend of lessons in ethics and morality as also of physical and yogic exercises, tailor-made to suit the requirements of judges, keeping in view the nature of duties performed by them.

The judicial academies ought to devise courses of study or training for the administrative and ministerial staff too. Our staff is an integral part of justice administration system. Presently such staff is being recruited only on the basis of educational qualifications. Courts get only “babus” but not an assisting staff. The sincere of them try to assimilate themselves in the court system by experiencing and learning through trial and error methodology. It is risky. Instead, we should aim at imparting them such education and training as is suitably moulded to equip them for assisting in court management and actively contributing therein, by sharing the burden of the judge.

Towards a Brighter Future

Indian judicial system is being accused of delays and also of fall in standards. We should not feel let down by such observations of critics. We have to give a positive response. I foresee a resolution in three things:

- (1) Full fledged functioning of state level judicial academies in collaboration and interaction with NJA, avoiding duplication, and acting together for innovation, systematising and updating training curricula and methodology.
- (2) Advent of alternate dispute resolution systems but at the same time not by blinking eyes at need for strengthening - qualitatively and quantitatively - the existing justice delivery system which has withstood the test of times.
- (3) Introduction of information communication technology in judiciary.

We have to come together and exert ourselves in achieving these resolutions.

* Speech delivered at National Judicial Academy on 29th February, 2004 on Role of Academies to Enable Judiciary to Perform Better.

1. Thoughts based on Practice Vedanta and Return to Godhead, Gautam Jain, The Speaking Tree, TOI.