

AUSTRALIA – INDIA LEGAL DIALOGUE*

It is an accepted concept in the constitutional democracies of the world

that business, industry and commerce prosper in a society which functions on Rule of Law. The first casualty of any breach of the Rule of Law is peace and order in society and that is subversive of any civilised movement. The existence of Rule of Law as contributing to peace and prosperity, in its turn, depends on the existence and availability of an independent and vigilant Bar and an independent and progressive judiciary.

A few powerful trends emerging in India during last few years – immediately preceding, I wish to highlight availing this opportunity. The enactments of Advocates Act in the year 1961 has brought into being a classless society of the legal professionals and facilitated the development of a national market in legal services. The legal profession has become highly competitive. The rule of ‘survival of the fittest’ has brought in introduction of efficiency and efficacy in the legal services available in the country. The legal profession in India stands much better organised and on federal basis. There are State-level Bar Councils as units and a centralized body – a Bar Council of India. While the autonomy of State Bar Councils is assured; they discharge their duties and exercise their privileges under the overall supervision of the apex body which is Bar Council of India. The disciplinary control over the profession is entirely within the domain of the profession itself. The legal profession is showing increasing awareness for training and continuing educational programmes. A Lawyers Training Programme sponsored and conducted by the British Council has been operating in Delhi for about one year by now. It has taken under its wings the States of Andhra Pradesh and Punjab. There is ample scope for inter-linking of legal training and continuing education programme for legal profession between Australia and India.

The Legal Services Authorities Act, 1987 which has successfully worked for over 15 years by now has taken care of the down-trodden and not-so-well-off sections of the society so that the benefit of legal services reaches far flung places and every nook and corner of the society. Thereunder, Lok-adalats (Peoples’ Courts) have become regular features of justice dispensation system. Legal literacy and legal awareness programmes have been undertaken thereunder, in a big way and at the grass-root level.

The provisions of the Constitution of India, as interpreted by the Supreme Court of India during the last two decades, have come to guarantee complete independence to Indian Judiciary, immune from any political or executive interference.

National Judicial Academy, with campus meeting international standards, situated in the heart of the county at Bhopal has become functional. The Director thereof is participating as one of the speakers in the plenary session tomorrow. The hopes of Indian Judicial system are pinned on National Judicial Academy which, I hope, would cause a revolution in the field of legal education and training programmes suited to the needs of Indian judiciary, not only the subordinate judiciary but the higher judiciary as well.

Alternative Dispute Resolution Systems including arbitration are not new to India. They have been here from times immemorial. And, therefore, the modernized versions of arbitration and conciliation, mediation and negotiation, and so on have been readily accepted here without any resistance and are gaining ground. The Arbitration and Conciliation Act of 1996 is based on

UNCITRAL model. Though the Act is working successfully in the field of international commercial arbitration but some difficulties in practical working are being felt so far as domestic arbitration is concerned. Law Commission of India is of the opinion that the Act needs to be revamped to suit the demands of Indian ethos.

The advent of system of education in law through National Law School Universities and five years course of study has revolutionized the legal education in the country. There are six national law school universities which have already come up giving an annual turn-over of five to six hundred young law professionals, well-equipped to face global challenges. Seventh national law school would be functional by the coming July in Ahmedabad and Gujarat. Shortly, every State in India is likely to have one national law school. Law as a branch of education and as a career is attracting the best of the students. The curriculum is so devised as to provide an ideal blend of academics and vocational requirements. These students of law, coming out from national law schools, combine information technology with commercial laws and are well versed in comparative study of domestic laws in their international dimensions so as to be compatible with international law. A vigorous international market and global trade needs a responsive legal system in foundation, with skilled and ethical law professionals – both lawyers and judges – as components. Undoubtedly, India has commenced gearing up its move in the needed direction. However, there is difficulty in finding out faculties and this can be taken care of by an understanding between the two countries. This, two days dialogue would do well if it considers devising programmes for exchange of law students and faculties between the two countries.

We will have the benefit of deliberations which are going to be held by the stalwarts and champions in the fields to which the topics of this two-day-dialogue are devoted. I welcome the dialogue and wish it a grand success.

Ladies and Gentlemen!! It is the thinking and persistence which bring success to any movement. While commerce and industry are quick enough to grab new opportunities and welcome any fruitful changes; according to Lord Woolf, the Lord Chancellor of Great Britain, the legal profession is temperamentally averse to any change. But none of the two can afford to leave the other to lag behind. Hence, the need for persistent effort through dialogue and motivation in the field of law as profession. I am reminded of the saying of a great thinker, a visionary and one who would tell the truth but with a sense of cynicism. He said –

“Nothing in the world can take the place of persistence.

Talent will not; nothing is more common than unsuccessful men with talent.

Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts.

Persistence and determination alone are omnipotent.

(Calvin Coolidge – TOI, 13-3-04)



* Inaugural speech delivered on Seminar on Australia-India Legal Dialogue on 15th March, 2004, at Delhi.