

# INDIAN JUDICIARY: ADMINISTRATION OF CO-ORDINATION\*

Today is a great day in this pilgrim city of Madurai, when the magnificent building of the High Court Bench, at Madurai, is being inaugurated. It is an auspicious day and this hour, an auspicious hour. I feel honoured and privileged to have been entrusted with the sacred duty of performing this inauguration.

It is a pleasure to be in Madurai which is the second largest city of Tamil Nadu after Chennai. It is known to be a city of temples and a place for pilgrimage. It has vast resources and enterprising people. It is also a center of educational excellence. It has a history of culture and beauty of architecture.

It is said in Shrimad Bhagwad Gita:—

*[Behind every good happening there are five essentials:*

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

The establishment of this Bench would enable the people of this region to have an easier and quicker access to justice. This is the purpose of having the Bench, which is a noble purpose. Those who raised the demand for establishing this Bench must have been dedicated persons, with resources and tireless efforts. However, the purpose, the dedication, the resources and their efforts would not have yielded any result if the Supreme Power and the gods seated in the temples here, would not have showered their kindness and given their support. We must gratefully acknowledge the same.

The High Court of Madras has a history of rich traditions and conventions, laid down by the great judges who have adorned the Bench and of great lawyers who have practised in this High Court. The contribution to development of jurisprudence made by the great jurists – judges and lawyers of this High Court, is unparalleled. I am confident that not only those traditions would continue to be nurtured and maintained at the Madurai Bench but it would also not lag behind in enriching the traditions, by making its contribution.

The establishment of this Bench is an event which persuades me to recall certain well-established conventions and thoughts, by way of a little look-back and a little look-forward.

## **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 speech<sup>1</sup> made by Shri Harilal J. Kania, the first Chief Justice of India, on January 28, 1950, at the inauguration of the Supreme Court of India, what he 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 and is alien to none. It has to play the 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 laws of land. Thus, under the constitutional scheme, the judiciary works always in co-ordination with the legislature and the executive, as three wings of constitutional democracy and at no time, the performance of duty by the courts can be construed 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.<sup>2</sup> 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. A 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 together<sup>3</sup>.

### **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 uprightness<sup>4</sup>.

### **Members of Subordinate Judiciary**

The subordinate judiciary is the most significant limb of the justice delivery system, inasmuch as it is the grass-root level judiciary. Members of the subordinate judiciary come in direct contact with ordinary members of the society including litigants. While they enjoy some privilege they also suffer from a disability. 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 susceptible to being infected by such weaknesses and ailments which are, otherwise prevalent and eating into the roots of the society. 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 block, as corrupt. Such generalized observations are highly exaggerated and unfortunate. But it cannot 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 the courts are temples of justice, the judges occupy the seat of deity. 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. Judges cannot be tolerated if they pollute the sacred water of Ganges, committing sins while seated in the temple of justice. The conduct of judges must be exemplary and an example to the society to which they belong.

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, it 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. 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*<sup>5</sup> 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, the 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 on the part of any member of 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*'<sup>6</sup> 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 State Judicial Academy, which is going to be inaugurated tomorrow, can be a centre for imparting such learning.

### **Members of Bar: Bench and 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 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 are both 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."<sup>7</sup> The difference between the quest of the man in the street and that of the Judge and of the 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 names, 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 ages<sup>8</sup>. The lawyer's duty is beautifully summed as being towards five C's: Country, Community, Client, Court and Colleagues which may aptly be called lawyers' *panch shila* i.e. the five principles underlying lawyers' fundamental duties.<sup>9</sup> I will close this topic by quoting the preamble to the chapter of 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.”<sup>10</sup>

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.

### **Madurai Bench's Jurisdiction – Agitation For?**

I was a little pained to learn of a few developments which took place just preceding the notification establishing this Bench. The issue related to distribution of work between the principal seat at Chennai and the Bench seat at Madurai. Two powerful organisations, both consisting of the respectable members of the Bar commenced almost fighting against each other and causing suspension of judicial work much to the chagrin of the litigants. We have to remember that the courts are meant neither for Judges nor for lawyers; they are primarily meant to serve the litigants who are the real consumers of justice. Of course, the difficulties of the members of the Bar are also to be kept in view because but for their assistance the Judges may not be able to discharge their task of dispensing justice.

The issue was agitated on the judicial side by filing a writ petition and that was the right way of doing the things. The Chief Justice of the High Court of Madras constituted a Committee of Judges to give a hearing to all the persons affected with a view to taking a reasonable decision which may be acceptable to all and accordingly reallocate work between the principal seat and the Bench seat. The work has to be allocated and shared between the two seats by primarily keeping in view the convenience of the litigating public. After all the dominant purpose behind establishing the Bench has been to provide easy access to justice. The historical background, the geographical distribution of districts, the availability of lawyers to handle the quantum of litigation and availability of Judges - are all relevant factors. The legal fraternity should have faith in the system. In my humble opinion, there was no occasion for agitation and certainly not for any boycott of Courts.

Ladies and gentlemen! The Bench has been established. It becomes functional from today. Adjustments and re-thinking in the matter of distribution of business between the two seats is always open for consideration. I have already said that the establishment of the Madurai Bench is a sacred event blessed with divinity. We should not have smeared the event in a negative manner. I am thankful to the members of the Bar who have suspended the agitation and have agreed to inauguration of the Bench being held in peace and harmony. Without dwelling any further on this aspect, I simply quote the beautiful words of Clay Harrison which are very symptomatic and suggestive for the occasion – “Don’t start the day with doubts and fears, for where they live, faith disappears. Love won’t grow in a gloomy heart where sorrows live and teardrops start. Don’t give up before you’ve begun; you still have time to get things done.... Don’t be a quitter; you’re not alone – we all must crawl before we’re grown. There are no rainbows without rain, there are no victories without pain.”<sup>11</sup>

I would have been a more happy person if the sacred inauguration of this Bench would not have been rubbed with any doubts and fears by anyone.

I am told of the legend which says that ‘*madhu*’ had fallen on the earth here from Lord Shiva’s matted hair. The ‘*madhu*’ was so sweet that the place where it fell came to be known as ‘Madhurapuri’ which in course of time became Madurai. On the earth irrigated by such sacred ‘*madhu*’, there should be no place for bickerings or for the tempers running high. We must coolly and calmly find a solution to our grievances.

## Epilogue

Ladies and Gentlemen! I thank you all for listening to me with patience. In words, I cannot acknowledge my gratitude to you all for giving me the privilege of inaugurating this Bench and visiting Madurai to seek the blessing of gods and goddesses here. I hope the Bench and the Bar at Madurai will enter into a healthy competition with the principal seat at Chennai for dispensing quick, cheaper and excellent justice to the litigants. It is my earnest hope that, within a short span, the Judges and lawyers at Madurai will lay down such rich traditions and set such examples as would be worth being emulated by other courts and lawyers of the country.

Before I take your leave, as a parting thought, let me tell you a small story which relates to a *sufi* saint Bayazid. As a young man, Bayazid was a revolutionary. He used to pray – O’ God, give me courage to change the entire world. When he grew up and was entering his old age he realised that he had lost half of his life without succeeding in changing anyone. He modified his prayer by saying – O’ God, bless me so much as would enable me in changing at least those who come in contact with me. Even if I succeed in effecting a change in my friends and family I will be satisfied.

Bayazid grew old and the last prayer which he made is notable. He said – O’ God, I have grown old and now there are only counted days left available in my life. God, bless me so that I can change myself. If only I would have said this prayer from the very beginning the world would have changed and my life would not have gone a waste.

Each one of us has to change oneself. Each one of us has to have one’s own vision, own determination and own action. And, there lies the solution of all problems.

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\* Speech delivered at the Inaugural Function of the Madurai Bench of the Madras High Court on 24th July, 2004, at Madurai.

1. 1950 SCR Journal p. 1.
2. T.C. Goel, *Deft Definitions*, p. 77.
3. G. Narayana, *The Responsible leader, A Journey through Geeta*, pp. 8, 10, 34.
4. T.O.I. *Speaking Tree – Climb Every mountain, Search High and Low* by Rakesh Saxena.
5. AIR 1991 SC 2176.
6. (2001) 3 SCC 54.
7. Quoted by Mr. Justice M.H. Beg, *Role of the Bench and the Bar*.
8. *Ibid.*
9. Subramanyam’s *Commentaries on the Advocates Act, 1961*.
10. Subramanyam’s *Commentaries on the Advocates Act, 1961*, p. 297.
11. TOI 13-7-2004, *Sacred Space*.