

SPEECH

For

The International Conference of Jurists on the Rule of Law

At Vigyan Bhawan, November 24, 2007

Her Excellency The President of India Smt. Pratibha
Devisingh Patil

I am happy that the legal fraternity is taking keen interest in the development of law by arranging seminars and conferences quite frequently at various places in this country. The maintenance of rule of law, access to justice, judicial independence all have become common words for the common man and the role played by the lawyers in spreading these basic messages is commendable.

India is a large country with a huge population. Our problems are complex and it is difficult to find any easy solution for all the problems that ail the society. We have got a fine Constitution and our democracy survived all threats and perils.

Many of the countries which were under the colonial rule became independent after the second world war. Though these countries initially started with the democracy but the system failed and the democratic form withered away and gradually crept into military rule or other forms of rule which is not purely democratic or representative in character.

Our Constitution guarantees fundamental rights to every citizen. The citizens are also given the rights to enforce these rights. The fundamental rights to Article 14, 15, 16 & 17 reflect the right to equality in its various aspects and aim to foster social equality by empowering the citizens to be free from any form of coercion or restriction by the state or private people. The Directive Principles aim at creating an egalitarian society whose citizens are free from the abject physical conditions that had hitherto prevented them from fulfilling their best selves. They are the creative part of the Constitution, and fundamental to the governance of the country.

The Directive Principles of State Policy adumbrated in our Constitution have been given prime importance and many of those rights are brought on par with the fundamental rights. The

Preamble of our Constitution also proclaimed that we should have justice, liberty and equality. In the Preamble, we also give emphasis to the fraternity assuring the dignity of the individual and the unity and integrity of the nation.

The basic question is how far these rights of the citizens are protected. From the principle of maintenance of rule of law, we mean that these valuable rights are protected under the help and guidance of our judicial system and the governance of this country. If we fail to fulfil the ambition and dream of the common man to achieve these basic rights, there is failure of the rule of law. It is not merely the protection of the person and private property of the citizens. The core of “rule of law” is an autonomous legal order. **Dicey** in his famous treatise, Introduction to the study of the Law of the Constitution [(10th Ed., 1959- first published in 1885), pp. 187] said that the rule of law is based on three principles:

- (1) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power;

- (2) equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and
- (3) the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts.

Therefore, indeed, the judiciary is endowed with the responsibility of safeguarding the rule of law but the judicial system as such is not confined to judges or courts. The enforcement of law is not solely within the influence of the courts. Our police system, present administration, the administration of law and order of the country, all play a vital role in protecting the rule of law. Apart from justice administered by the courts, there is the wider question of political justice. The essence political justice is that the Government of the country is democratic, that is to say, that the people – that the people – the common men and women – have an active voice in the governance of the country. Modern democracy must necessarily be a representative democracy. The only way in which, in modern conditions, the people as a whole can be associated with the work of government is by means of the representative system. The immense range and

complexity of modern government makes detailed control of its day to day activities by the people quite out of the question. The ultimate control of the Government can be ensured to the people only by means of representative system. By ensuring equality before law and securing both personal and property rights for a broad section of the community give individuals the incentive and the opportunity to take part in the economic and political life. We must not forget that the forces of fundamentalism, extremism, internal terrorism are prevalent at least in some parts of this country. The traditional approaches to reducing the crime and violence based on increasing mechanism and control and harsher sanctions have failed to reduce crime. By contrast, promoting protective strategies and minimizing the risk of crime have more success at lower cost.

It is true that in this country the judiciary has great role to play but the existence of good judicial system is not enough to protect citizens against abuses of state power. Adequate laws and institutional mechanisms are also needed. Only administration based on good governance can maintain the rule of law in the country. There may be occasional failure to protect the rule of law but there shall not be any deliberate

attempt to deny protection of law to the citizens and they shall not be at the mercy of Goondas or any elements who have no faith in the law or the legal systems. The moment we fail to protect the rights of the citizens, we fail as a State in the administrative set up.

It is said by **Viscount Bryce** :

“ If the law is dishonestly administered, the salt has not its flavour. It is be weakly or fitfully enforced, the guarantees of order fail, for it is more by the certainty than by the severity of punishment that offenders are repressed. If the lamp of justice goes out in darkness, how great is the darkness “

It is the duty of everyone to maintain the rule of law and resolve to ourselves that in our hearts, there would be a sense of justice, if we fail to have that sense of justice and dedication to rule of law, any step taken by the administrators would be of much success. It is appropriate to quote the prophetic words of Learned Hand, famous Judge of America as under:

“I often wonder whether we do not rest our hopes too much upon Constitution, upon laws and upon courts. These are false hopes, believe me, these are false hopes. Liberty lies in the hearts of men and women ; when it dies

there, no Constitution, no law, no court can save it, no Constitution, no law, no court can even do much to help it. While it lies there, it needs no Constitution, no law, no court to save it.”