



Info Capsule

NATIONAL LAW DAY¹

Remarks by Shri p. P. Chaudhary, Hon'ble Minister of State for Law & Justice

Following is the text of the speech made by Minister of State for Law & Justice and Corporate Affairs, Sh. P.P. Chaudhary on the occasion of National Law Day:

"We are celebrating 68 years of the adoption of our Constitution – Constitution Day is a fitting occasion to consider the role of the Judiciary in our democracy.

Courts do not have, what Alexander Hamilton called the “power of the sword or the purse”. They draw their strength not from any police power, but from the moral authority of their judgement. Even unpopular decisions are respected because the judiciary is seen as being the ultimate repository of moral authority.

Today’s sessions will aim to analyse the challenges facing judicial functioning, and what is important for the judiciary to continue to retain its moral authority and thereby remain a legitimate and relevant democratic institution”.

JUDICIAL REVIEW

The first session – on “Judicial Review and Parliamentary Democracy” – will address the relationship between the Judiciary and Parliament.

While each of the three branches of government plays its own role, it is important that the role be understood in a constitutional sense to be more of a balance than a check. This institutional balance is key to democracy. There must be a healthy tension between the three branches for democracy to survive, but for democracy to function and to thrive, each branch must also have faith and belief in the other.

When the Executive or Legislature cross constitutional boundaries, the Judiciary’s role is to bring them back within those boundaries. Therefore, by definition, the judiciary’s post is at the boundaries of power, not at its core.

Some people today ask whether the judiciary is in fact beginning to play a double role, substituting Parliamentary judgement with its own. I am not referring now to issues at the boundaries of Parliamentary power but I am referring to questions that fall into the core of Parliamentary power – in the zone of policy. The first session will consider this issue.

COLLEGIUM SYSTEM

The next session is on “Appointments to higher judiciary – constraints of collegium system and the reforms ahead”. In mandating an independent judiciary, our Constitution mandates a guarantee of justice. But this guarantee of justice can only be fulfilled when there is a

¹ Available at: <http://pib.gov.in/newsite/erelease.aspx>

guarantee of a certain quality of justice. Is our current system of judicial appointments helping fulfil this constitutional guarantee? This is what the session will focus on.

Not just sceptics, but even supporters of the collegium system admit its flaws. In the recent NJAC decision, even majority judges recognized that all is not well with the collegium system. I am only quoting a majority judge from that decision when I say that the “Collegium system lacks transparency, accountability and objectivity.”

These aspects of transparency and accountability, and whether the collegium system is best suited to provide them, is important to consider and ponder on.

DELAYS IN JUSTICE DELIVERY

The third session focuses on reforms for overcoming delays in justice delivery.

The judiciary has a role in protecting democracy and promoting constitutional government. But it has another role. It is a provider of an essential service to society: and as a supplier of an essential service, it is important to ask whether the consumers of that service are satisfied.

Society comes to its courts for remedies and resolution. If the courts are not perceived to be a true form of recourse, of remedy or resolution, society suffers. When society does not find remedies in its court, or when it begins to believe that a recourse to court is impractical or inaccessible, that is when vigilantism and corruption begin and the rule of law erodes. There is no sense of justice when common citizens are given judgements several years after the cause.

Nothing is more important today, and no single reform is desired more widely, than the reduction of judicial delays.

It is worth considering what creative solutions there can be to minimize judicial delays. One such solution may be that of “pre-litigation mediation”. Many jurisdictions around the world have successfully reduced litigation and court backlogs by offering dispute resolution through this process. In order to promote “pre-litigation mediation”, it may be necessary to institutionalise this process and create and enforce standards to help it achieve its objective. This can be done by establishing a professional body of mediators, whose qualification, standards, and regulation may be prescribed by a statute.

Another aspect worthy of consideration may be the reduction of the administrative work imposed on our judges today so that they may spend their valuable time on judicial work. One example of this is the administration of legal aid, which currently requires the involvement of the judiciary, whereas the provision of legal aid should best be left to the Executive as the Executive already has the means and the reach to administer legal aid.

JUDICIAL ACTIVISM

Finally, the eminent participants will also deliberate on the “Scope of Judicial Powers and judicial activism”. Judicial activism by itself is a necessary outcome of judicial independence, and may be lauded especially when it is undertaken to protect those who may not otherwise have ready access to justice. But quite apart from this, is another species of judicial activism where the judiciary is also stepping into areas which are strictly speaking in the realm of policy.

It is a fundamental principle of governance that decisions should, as far as possible, be predictable and not disruptive. When judicial activism and review wades into policymaking, sometimes its consequences can be disruptive. This needs to be avoided if possible.

CONCLUSION

In the theme of each of these sessions is a common thread _ that of accountability. If judicial independence is a pillar of our democracy, then judicial accountability is the base of that pillar. Without accountability there can be no legitimacy.

Those in government and those outside it are both fully aware of the fickle nature of power, and are fully aware that a strong and independent judiciary is necessary for everyone. We must do everything possible to preserve the moral authority and legitimacy of our judiciary.

I believe that deliberations and discussions during the celebrations would help us in strengthening our constitutional values. I look forward to the deliberations.

Team ICSI

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