

Bar Association of India - Golden Jubilee celebrations

(May 8, 2010 – New Delhi)

Address by Hon'ble Shri K.G. Balakrishnan, Chief Justice of India

Dr. Manmohan Singh, Hon'ble Prime Minister

Dr. M. Veerappa Moily, Union Minister for Law and Justice

Justice S.H. Kapadia, Chief Justice of India Designate

Mr. Fali S. Nariman / Mr. Anil Divan / Mr. Lalit Bhasin,

Esteemed colleagues from the Bench, Members of the Bar,

Ladies and Gentlemen,

I have great pleasure in participating at the Inaugural session of the Golden Jubilee Celebrations of the Bar Association of India (BAI) and am delighted to speak before this august gathering of legal luminaries and jurists. This body was formed fifty years ago on 2nd April, 1960 at the initiative of Mr. M.C. Setalvad, who happened to be the first Attorney General for India and the first President of Bar Association of India. President Rajendra Prasad inaugurated the Association in the presence of Pt. Jawaharlal Nehru and Chief Justice Sir Harilal Kania.

In the ancient ages it was considered that Man existed for the State, whereas in modern times we firmly believe that the State exists for human welfare. Aristotle could not conceive of

a good life but for the State; for according to the ancient Greeks, outside the framework of an organised polity, a man's moral obligations disappeared. The relation of man to humanity at large, to the universe of which humanity is a part, was not an integral factor of the prevalent morality of the ancient world, even though Socrates evolved an approach that stressed on a universal conception of morality.

In the present era when liberal constitutionalism is the dominant idea, there have been extensive deliberations at the local, national and international levels which ask the question – 'what is good governance?'. Good governance calls for a shared sense of destiny and direction for human beings. In a sense, we need to be alert to the shortcomings in different models of governance. Malgovernance and apathy in public administration does not only affect the day-to-day delivery of goods and services to the citizens of a country, it essentially alters the principles of politics to the detriment of all.

Good governance refers to the capacity and ability of the state apparatus to deliver basic entitlements to citizens. It contemplates the deepening and consolidation of democratic processes as well as respect for the rule of law, thereby ensuring better living standards for the citizens. Of special concern are strategies to make the various parts of the state apparatus work for the betterment of all sections of society, especially that of the historically disadvantaged groups. The

protection of liberty and human dignity is premised on aspects such as transparency and accountability in administration as well as ready access to the justice-delivery system.

Stated broadly, Good governance can be identified with eight major characteristics. It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and promotes adherence to the rule of law. The fundamental aspects of good governance were envisioned by the framers of the Constitution of India who incorporated these ideas in the fundamental rights and the directive principles of State Policy.

In his book *The Morality of Law*, American legal scholar Lon Fuller identified eight elements of law which have been recognized as necessary for a society aspiring to institute the rule of law. Fuller observed the following:

1. Laws must exist and those laws should be obeyed by all, including government officials.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct was passed.

4. Laws should be written with reasonable clarity to avoid unfair enforcement.
5. Law must avoid contradictions.
6. Law must not command the impossible.
7. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.
8. Official action should be consistent with the declared rule.

The Supreme Court of India, in order to firmly establish the roots of good governance has recognized a plethora of rights emanating from the 'golden triangle' of Articles 14, 19 and 21 of the Constitution. Some of the personal freedoms and socio-economic rights recognized by the Indian judiciary have received wide recognition all over the world. The executive has also been responsive towards directions and guidelines given in judicial decisions that have acted as precursors for progressive legislations. In recent years, the enactment of the Right to Information Act, 2005 and The Right of Children to Free and Compulsory Education Act, 2009 are some prominent examples of far-reaching legislations whose origins can be attributed to judicial interventions in some part. In this

regard, the National Food Security Bill is another important endeavor which is on the threshold of becoming an enforceable law.

The freedom to speak and disseminate views in a climate of tolerance and due deliberation is indispensable for creating the conditions identified with good governance. Prof. Amartya Sen has demonstrated that there is a lower likelihood of a famine in a democracy with a free press. Prof. Sen has shown with extensive research that famines occur only when the media is restrained or prevented from drawing attention to the underlying problems. Press freedom is also essential to generate awareness about the need for equity in development, about environmental concerns and most importantly about improving access to education and healthcare. In a democratic set-up like ours, the media has a vital role to play in formulating public opinion against unconstitutional and illegal practices which hamper the growth of liberal values. The activist role of media has been commendable in ensuring good governance but it should also take steps to make the institution more inclusive so that voices of all sections are presented in a fair manner.

The Bar Association of India has pioneered various reforms under the stewardship of several legends of the legal profession, thereby fulfilling its objective of creation. President Rajendra Prasad while inaugurating the Association had set

the goals of the Association and it would be apt to conclude with his observations:

“A body like this can help in resolving many of the difficulties which may arise and in guiding public opinion in the country and also, if I may so, members of Legislatures in whom power of legislation is vested.

The President also felt that there was:

“the need for a strong Bar, and the formation of a Bar Association like the one that you are going to have, is sure to help in the development of those qualities amongst the members of the Bar which will also be reflected in course of time in the members of the Bench when they come to be exclusively recruited from among the members of the Bar.”

With these words I would like to thank all of you for being a patient audience.