

SPEECH OF HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE, PUNJAB AND HARYANA HIGH
COURT, CHANDIGARH ON 28.03.2008 AT
KURUKSHETRA UNIVERSITY, KURUKSHETRA.

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Prof. R.P. Bajpai, Vice-Chancellor; Justice Pritam Pal, Justice Nirmal Yadav, Justice Nawab Singh, Administrative Judge, Kurukshetra Sessions Division; Shri R.C. Bansal, District & Sessions Judge, Kurukshetra, Prof. V.K. Aggarwal, Registrar; Deputy Commissioner; Senior Superintendent of Police and distinguished members of the audience and dear students.

I considers it a great honour and privilege to be here amongst you at Kurukshetra University - a University with great achievements and one of the important seats of learning in the State of Haryana. When Justice Nawab Singh requested me to visit the University, I asked him about the programme. However, he kept it a secret. When I reached the University, I asked the Vice-Chancellor as to what is the audience composed of? I came to know that there would be students and faculty members of law. I asked this question because I didn't know the subject on which I was to speak. However, Prof. Aggarwal went a step further. He said that I will have to address the gathering and thereafter there will be an

interactive session with the students in which I will have to answer the questions raised by them. I understand that I have two parameters - firstly, I have to speak and secondly I should not say anything which goes over the head of people present here.

I am grateful to Prof. Aggarwal and others who have spoken very kind words about me. I would talk about the law and rule of law. The subject is important not only for a Judge or a lawyer or a student but even for a person like Prof. Bajpai who happens to be a Scientist. Some say that law is meant for lawyers and for law professors. Is it so? Certainly not. It is a matter of fact that democracy, particularly Parliamentary democracy, rests on three pillars namely Legislature, Executive and Judiciary. It is an inbuilt scheme of our Constitution that Executive is dependent on Legislature and Legislature goes along with majority. It is only Judiciary which works as an edifice for maintaining rule of law. In a parliamentary democracy, when people in power are not in a position to take decisions which are not populist, it is the judiciary which has to perform the unpleasant task of intervening and deciding, and to say that the decision is not in consonance with the parameters laid down by the statute or the Constitution. Therefore, in a country which is governed

by democracy, if the institution of judiciary is weaker, the rule of law is weakened and the net result is chaos. It was by virtue of a historic judgement of the Supreme Court in early 60s that it was recognized that the 'freedom of expression' enshrined in Article 19 of the Constitution of India included the 'freedom of Press'. Free, independent and objective Press plays an important role in the Constitutional scheme of Republic of India. Another important aspect of rule of law is the power of judicial review. You may have heard in the news on the TV channels some times that there is a some sort of confrontation between the Judiciary and the legislature. It is a proposition which is not correct because the area of functioning of both the institutions are clearly delineated in the Constitution. No Court whether Supreme Court or High Court can legislate law. Law making is absolutely in the domain of the Legislature. However, when the law has been enacted by the Parliament or State Legislature then as per the Constitution, the Court is the sole interpretor of that law. Once these parameters of both the sovereign organs of the State are understood, there is no problem. Friends, law is a dynamic subject. Law has to grow to meet the challenges, find answers and solutions.

The concept of judicial review is to be understood in the context of what the Constitution permits. It is fashionable in this country to quote from foreign judgments. It is good. They are learned people who do it. But we must understand that the whole concept of judicial review is not based on English law. In England, they do not have the jurisdiction to issue high prerogative writs, like what has been given under Indian Constitution. Accordingly, English Judges carved out a system of judicially reviewing the administrative decisions. We cannot substitute our own opinion for administrative decisions. It was Wednesbury doctrine which laid down the ground and permissibility where decision making process if it suffers from irrationality, arbitrariness could be reviewed. However this jurisdiction is limited. Under the Indian Constitution, Articles 19, 20 & 21 make a golden triangle. The power which emanates from Articles 32 and 226 is the spirit and soul of the Constitution which is the supreme law of the country. Therefore, to interpret the law only on the basis of what British Judges have said may not be true while interpreting the Constitution of India. As in India we have a written Constitution and Britain do not have a written Constitution. I have raised this issue as you are learning the Constitution, therefore, do not limit your understanding in the

context of judgments by the court. Go beyond it to find more innovative meaning.

You as students of law, have to ponder over these issues. I wish all of you a very bright future.

Thank you

Jai Hind.
