



Inaugural Speech of  
**Hon'ble Justice Dipak Misra,**

Judge, Supreme Court of India  
at the IPR Summer School on

**CPC, Cr.PC and Intellectual Property Law**

organised by the  
**Delhi High Court Bar Association**  
in collaboration with  
**Adyopant Legal and Atmabodh.**

## **Inaugural Address**

**By**

**Hon'ble Mr. Justice Dipak Misra,**

**Judge, Supreme Court of India**

Prof. M.P. Singh, Chancellor, Central University of Haryana, Mr. Ashok Kumar— Chhabra, Advocate and President “Atmabodh”, Mr. Asutosh Lohia, Treasurer, Delhi High Court Bar Association, Dr. Maurya Vijay Chandra, Managing Partner, Adyopant Legal, dear participants, friends from the electronic and print media, ladies and gentlemen.

At the outset, I must say without any hesitation that the endeavour by the organizers to have a Summer School on the Code of Civil Procedure, the Code of Criminal Procedure and Intellectual Property Rights for a span of five days is worthy of appreciation. Frankly speaking, it has pleased me the most. I have been apprised that there were many applicants but due

to lack of space and other reasons, the organizers have been compelled to restrict the numbers. In this regard, I would like to say that it is not the numbers that matters. What eventually matters is the quality in imparting the training and the committed participation of the participants. A participant in such a workshop should not only be a learner but should also be enthusiastic, curious, excited; and definitely humble. I have no reservation in saying that no one can acquire knowledge unless he converts himself to a “humble listener”.

I have emphasized on humility because it is the first quality to achieve humanness, and its significance can never be marginalized in a civilized society. A lawyer who makes himself available for training should appreciate that he has accepted it as a noble obligation. In ***O.P. Sharma case***<sup>1</sup> the Supreme Court has observed:-

“As a rule, an advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and

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<sup>1</sup> (2011) 6 SCC 86

actions rather than being adamant on an unwarranted and uncalled for issue.”

These lines eloquently speak of humbleness.

While speaking about the responsibilities of a Government advocate in ***Surendra Mohnot case***<sup>2</sup> the Court was compelled to observe:-

“A lawyer is a responsible officer of the court. It is his duty as the officer of the court to assist the court in a properly prepared manner. That is the sacrosanct role assigned to an advocate. As far as the counsel for the State is concerned, it can be decidedly stated that he has a higher responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in

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<sup>2</sup> (2014) 14 SCC 77

rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say “things fall apart”. He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones.”

Though the above observations have been made in the context of government counsel, yet every aspect of it is applicable to all advocates. You might be wondering by now, my address is on the path of sermon. Be assured, it is not a speech from the pulpit. When the profession is called a noble one, all of you are required to understand and appreciate individually as well as collectively what is meant by nobility of profession. To be wedded to a single meaningful purpose is a sign of nobility. Singleness of purpose is the plinth of our learning. Nobility teaches one to accept one’s limitations and

to expand one's ability to serve the society. A lawyer is to develop an attitude of serviceability to the courts, his clients and ultimately to the society. That is why, a lawyer has a distinguished entity in society. I have mentioned about acceptance of one's own limitations. It is my duty to elaborate. It is often advised that a lawyer should feel absolutely confident. There is no dispute that confidence will instill in you the sense of ability and add force and strength to your speech. But that is not all. A lawyer should, on occasions, feel the sense of inadequacy because such feeling enhances his urge to achieve more capability. Therefore, a balance has to be struck between the sense of confidence and the feeling of inadequacy.

A lawyer must strive to be a good lawyer and a good advocate. There is a distinction between the two terms. One may be a good lawyer but he may not be a good advocate; and the converse is also true. The same idea has been quite candidly deliberated upon by Justice M.C. Chagla in his autobiography "Roses in December". I would commend you to

read the book. Reading autobiographies and biographies are like walking with the great men of history. My suggestion is to acquaint yourselves with them which will gradually make you realize the greatness of this profession. A mild contact with them may be a great inspiration for you.

Coming back to the distinction, an example may be given. One may know the law but may not be in a position to present his case properly before the court, and the other without knowing the real nuances of law, would try to impress with his eloquence. That does not work. Therefore, you have to have both the qualities within your abilities. And friends, you can cultivate and achieve the same by indefatigable perseverance and dedicated persuasion. That is why in lawyer's life emphasis is given on presentableness of his personality and appropriate presentation of argument.

The organizers have divided the training course to foundation workshops having certain special topics. I am happy to note that one session is devoted to drafting. Drafting a petition is an art without giving much indulgence to

creativity. You are taught, how to draft a plaint, a written statement, an application for injunction, a replication, etc. I am sure, the trainers or the educators will follow the text book model and also inculcate in you what is required in the drafting according to judge-made law. Both are extremely significant.

In this context, I may suggest you to sit in a time machine. Our ancients have laid down the principles for preparation of a plaint or an application. There is a *shloka* which deals with how an application should be drafted. It exquisitely states what it should contain and what it should not. It reads as follows:-

*“Arthavad dharmā sanjūtam paripurnam anakulam,*

*Sadhyavad vachakapadam prakritarthanubandhi cha  
prasadham,*

Avirudham cha nischitam sadhana khamam

Sankhīptam nikhīlarthancha tad bhasetya-bhidīyate.”

The free English translation of the aforesaid would be, a plaint should be meaningful, in accord with legal principles, complete in all respects, free from ambiguities, in consonance with procedure, devoid of self-contradiction, brief and definite, legally adjudicable, state all purposes with appropriate relief.

Such an application was required to be presented to the King or the ruler to facilitate the process of adjudication and to arrive at the real truth. I am sure, while teaching you drafting emphasis will be laid on its significance and how sometimes it can make a case or totally demolish it.

While discussing about the aspects of the Code of Civil Procedure, I would like to state a situation. It is sometimes seen that a plea of a bar under Order II Rule 2 CPC is taken by the defendant/s. Not much care is taken to establish such a plea. It is solely because of ignorance of the basic first principle. It may be elaborated by an example. 'X', as plaintiff, has succeeded in a suit pertaining to right, title and interest. At the institution of the first suit, he had not sought the relief for recovery of possession. He succeeds in all the courts.

Thereafter, he realizes that the defendant is in possession and files another suit for recovery of possession. A plea is advanced in the written statement that the suit is barred under the principle of Order II Rule 2 CPC as such a relief was required to have been sought in the earlier suit. The judgment in earlier suit is brought on record and arguments are canvassed. The exercise undertaken does not entitle the defendant to succeed in establishing the plea. Let us see what the Constitution Bench has said in **Gurbux Singh case**<sup>3</sup>:-

“... Just as in the case of a plea of res judicata which cannot be established in the absence on the record of the judgment and decree which is pleaded as estoppel, we consider that a plea under O. 2. R. 2, Civil Procedure Code cannot be made out except on proof of the plaint in the previous suit the filing of which is said to create the bar. As the plea is basically founded on the identity of the cause of action in the two suits the defence which raises the bar has necessarily to establish the ,cause of action in the previous suit. The cause of action would be the facts which the plaintiff had then alleged to support the right to the relief that he claimed. Without placing before the Court the plaint in which those facts were alleged, the defendant cannot invite the Court to speculate or infer by a process of deduction what those facts might be with reference to the reliefs

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<sup>3</sup> AIR 1964 SC 1810

which were then claimed. It is not impossible that reliefs were claimed without the necessary averments to justify their grant. ...”

In the said case, the Court has also laid down the principle that when a plea relates to a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential.

Another aspect which I want to highlight pertains to filing of a caveat. A counsel may feel that it is the easiest thing. A caveat is contemplated under Section 148-A CPC. It has to be filed in accordance with procedure. The court at the time of hearing of an application for injunction or stay is obliged to afford an opportunity to the caveator. The said exercise has to be done before passing any order of injunction. In this regard, there are interesting cases also. In one case, the learned Munsif granted *ex parte* injunction though a caveat was filed. The defendant entered contest and the principal ground was that the order of injunction was passed without notice to the caveator, and hence the order was *non est* in law. On consent

of the parties, the matter was adjourned on certain occasions and the day when the matter was taken up for hearing, the plaintiff advanced a plea that the caveat was not filed in accordance with law. The simple ground of objection was that requisite amount of court fee meant for an application for caveat had not been affixed. The trial court heard the matter on merits, vacated the order of injunction but opined that there was no error in not hearing the caveator before granting *ex parte* injunction. The matter ultimately travelled to the High Court and the High Court declined to interfere. Emphasis was on the “valid caveat”. It is interesting to note that the requisite court fee was Rs. 30 as there was an amendment to the Court Fees Act but the court fee of Rs. 15 was paid. The purpose of stressing on this facet is that a counsel has to be remain absolutely active to the procedural aspects of law.

I have seen the workshop schedule for the foundation workshop under the Code of Criminal Procedure. It covers fundamental aspects as well as intricate facets. An attempt has been made to establish a connection between the Code of

Criminal Procedure and the infringement of intellectual property rights. Emphasis has rightly been given on drafting of a criminal complaint. Similarly, the training on intellectual property rights is quite important. It is a complex and difficult branch of law. The controversies relating to intellectual property rights at times travel beyond the territory. One has to be acquainted with many laws and various authorities which include foreign authorities. The present time is witnessing a phenomenal change in how a sovereign exercises its legislative powers and reacts to international demands and obligations. The law-makers while introducing new laws and amending old ones are no more governed only by the need of our nation, especially in areas which have acquired an international colour. The law-makers today are influenced by the need to bring the laws in shape with the international conventions and agreements to which India is a party. The opening up of the domestic economy to the world is followed by a profound impact on our domestic laws.

At this juncture, it is not out of place to state that there is a thinking process by some that secrecy of information and monopoly are culturally a contradiction to our great heritage and the knowledge should be free to have a universal brotherhood. The aforesaid may be a philosophy in its own domain; but a counsel has to keep himself abreast with the laws and the treaties. He has also to keep himself alive to the authorities of the High Courts and the Supreme Court. The deliberation on multiple levels is perceptible from the judgment in **Novartis AG case**<sup>4</sup>. I think it apt to reproduce a passage therefrom:-

“However, before leaving *Hogan In re.*, 559 F 2d 595 (CCPA 1977) and proceeding further, we would like to say that in this country the law of patent, after the introduction of product patent for all kinds of substances in the patent regime, is in its infancy. We certainly do not wish the law of patent in this country to develop on lines where there may be a vast gap between the *coverage* and the *disclosure* under the patent; where the scope of the patent is determined not on the intrinsic worth of the invention but by the artful drafting of its *claims* by skilful lawyers, and where patents are traded as a commodity not for production and marketing of the patented

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<sup>4</sup> (2013) 6 SCC 1

products but to search for someone who may be sued for infringement of the patent.”

I am aware that the said authority has been discussed at various levels from many an angle, and am sure the workshop may make the participants aware about the principles stated therein and highlight the real view point.

As I see, you are young advocates. Therefore, I am emboldened to give you some advice. While preparing a case, a lawyer with keen intellect is expected to read the relevant provisions of law that are required to be read for the purpose of the case. One might have read the provisions on number of occasions but it is imperative to carefully read them again before you prepare a case.

Precedent-oriented argument is extremely important for young lawyers. It is sometimes seen that a counsel cites authorities without having gone through them in entirety. Sometimes, “Head Notes” are attempted to be read. It neither helps the Court nor the case. A diligent advocate should keep in mind that unless one reads a decision completely the

argument is likely to be misdirected, for one may not be certain whether the authority cited really supports the proposition one intends to build or not.

There may be situations when you may not get a precedent directly on the point in issue. In such circumstances, your research should be for getting an authority in approximation or a pronouncement in some proximity; and your argument should be based on logical parameters. A syllogistic pyramid can be built from logic of life, experience, observation and reading of books which may not be connected with law. That is why, it has been said that an advocate should not only have an original mind but also possess uncommon common sense.

A lawyer has his own independence. It is a cherished value. It is restricted by nobility of the profession and individual dignity. I am certain that a good, sincere and independent lawyer can proudly proclaim that he is in the esteemed company of Gurudev Rabindranath Tagore who had sung:-

“Where the mind is without fear and the head is held high  
Where knowledge is free  
Where the world has not been broken up into fragments  
By narrow domestic walls  
Where words come out from the depth of truth  
Where tireless striving stretches its arms towards perfection  
Where the clear stream of reason has not lost its way  
Into the dreary desert sand of dead habit  
Where the mind is led forward by thee  
Into ever-widening thought and action  
Into that heaven of freedom, my Father, let my country awake”

I wish the workshop all success.

Thank you for being patient.