

Speech of Hon'ble Mr. Justice Ranjan Gogoi, Chief Justice, Punjab and Haryana High Court on "Role of the Courts in the Development of Law" held on 21st December, 2011 in the Chandigarh Judicial Academy.

I am delighted to have this opportunity to share my thoughts on the "Role of the Courts in the Development of Law" in the midst of this distinguished gathering.

First of all I congratulate the State Unit of the Indian Law Institute for organizing this seminar. Indian Law Institute has played an extremely important role in the development of Indian jurisprudence and in enhancing the quality of legal education. I am sure, the State unit will also make significant contribution to legal education and research in the region.

The subject under deliberation involves the very basic question: What role Judges or Courts play in the development of law- Do Judges or Courts make the law or merely declare the law by applying already existing principles or provisions of law.

Today, there is hardly any doubt that Judges play a positive role in the Development of Law and make new law, be it in the form of development of the common law or in the interpretation of statutes, although their freedom is restricted by the rules of

precedent, the rules of statutory interpretation and supremacy of the legislature.

The doctrine of precedent and the Constitutional provisions (such as Articles 32, 141, 142, 144 and 226) provide the Constitutional basis and legal framework for the Supreme Court and High Courts to make, develop and mould the law to meet the ever changing needs of society and the interests of justice.

In a situation, where there is an enormous legislative vacuum, new mechanisms have been evolved to lay down the law beyond those traditionally available. The horizons of Article 12 stand expanded to make the enforcement of fundamental rights against individual and entities other than the State a reality; the violator need not necessarily be the State. Article 14 has been enshrined to lay emphasis on positive equality or affirmative action. Similarly, through several landmark judgments the meaning of life and personal liberty enshrined in Article 21 has been widened by declaring the right to life to include the right to live with basic human dignity and necessities of life such as nutrition, clothing, food and shelter etc. The net result is the ever increasing role of the Courts in matters concerning the daily life of the citizen. On the other hand, Article 21 has also been expanded to bring the

environment and the concomitant right to pollution free environment and potable water besides protection against hazardous industries within the jurisdiction of the Courts. The right to free education (upto 14 Years); right to health; timely treatment in Government Hospitals are all facets of the ever increasing dimensions of Article 21. The right to approach the Courts through the medium of public interest litigation is again a judicial innovation. Effectively dispensing with the traditional rule of locus standi a fair amount of innovative remedies have been provided through this procedural flexibility. In fact there is no area of human life where judges have not made or are not making significant contribution by development of the law – whether it be environment, human rights, gender justice, education, police reforms, elections or on the limits on constituent powers of Parliament (by coining the basic structure doctrine). Ladies and Gentlemen, it will be a futile exercise to recite even the core decisions of the Supreme Court in the Development of Law; there is severe constraint of time. Besides such judgments are well known to us all. I, therefore, refrain from entering into the said exercise.

Question also arises as to what role a Judge is required to play in the judicial process. The British concept that a

Judge is only a neutral and passive umpire, who merely hears and determines issues of facts and law and declares at the end of the combat who has won and who has lost, is no longer valid for the Indian Society where the contest is between those who are socially or economically unequal. In India the court has a creative function and cannot remain content to act merely as a neutral and passive umpire. The court has to adopt a positive and creative approach to become an active participant in the judicial process as an active explorer and seeker of truth and has to fashion new tools, forge new methods, innovate new strategies and evolve new jurisprudence to render a just decision and grant appropriate relief by using law as an instrument for achieving the constitutional objectives.

I earnestly hope that the deliberations in the seminar will help sensitize the legal fraternity to the need to make and develop the law ensuring dispensation of prompt and inexpensive quality justice. I wish the deliberations all success and I thank the organizers for giving me the opportunity to be with this august gathering”.

Thank You!