

“JUSTICE AND THE COMMON MAN!”

Law is any system of regulations to govern the conduct of the people of a community, society or nation, in response to the need for regularity, consistency and justice based upon collective human experience. Law and Justice have been existing from the very inception of human civilization. It is impossible to have a civilized society in the absence of law and justice. Of course change is constant; so is the law and justice. They change with the change of society. Contours of law in an evolving society must constantly keep changing as civilization and culture advances. The customs and mores must undergo change with march of time. Justice to the individual is one of the highest interests of the democratic State. Judiciary cannot protect the interests of the common man unless it would redefine the protections of the Constitution and the common law. If law is to adapt itself to the needs of the changing society, it must be flexible and adaptable.

As a student of Indian Jurisprudence I feel tempted to recall that more than a thousand years before *Magna Carta* was signed, an ancient Indian philosopher of jurisprudence had described the majesty of law in terms which may sound significant and meaningful even today, said the Indian jurist. “Law is the kind of Kings, far more rigid and powerful than they. There is nothing higher than law; and by its prowess as by that of the highest monarch in heaven, the weak shall prevail over the strong and justice will triumph”.

In ancient era there did exist law. But, those were only the principles of morality which imposed obligations upon mankind. Even the manusmriti, Arthashastra by Kautilya and the Holy Quran refer to law, judges, courts, advocates. Law has played an important and pivotal role in the story

of human being and morals of society. But, goal of justice remains unchanged. **Mr. Nehru** said on the **15th of August, 1947-**

“The future beckons to us. Whither do we go and what shall be our endeavor? To bring freedom and opportunity to the common man, to the peasants and workers of India; to fight and end poverty and ignorance and disease; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman.”

The Hon’ble Supreme Court observed “natural justice” is a great humanizing principle intended to invest law with fairness and secure justice (**Menaka Gandhi v. U.O.I;** AIR 1978 Sc 597, (Para 58)). But, natural justice is however “no unruly horse, no lurking mine, nor a judicial cure-all.” (**Board of Mining Exaction v. Ramjee,** AIR 1977 SC 965 (969). In a famous English decision in *Abbott v. Sullivan* (1952) 1 K.B. 189, 195, it is stated that *“the principles of natural justice are easy to proclaim, but their precise extent is far less easy to define.”* It has been stated that there is no single definition of natural justice and it is only possible to enumerate with some certainty the main principles. During the early days the term natural justice was used interchangeably with the expression “natural law.”

There are several decisions of the Supreme Court and English courts, and these judgments are sufficient to summarize and explain essential elements of justice, namely-

- a) No man shall be a judge in his own cause,
- b) Both sides shall be heard, or audi alterem partem.

Again every student has heard of compurgation and of ordeal, and it is hardly necessary to observe that (for e.g.) a system of ordeal by matter in which sinking was sign of innocence and

floating the sign of guilt, a system which lasted in this country for hundreds of years. Justice is based substantially on natural justice and natural justice is based substantially on natural ideals and human values.

Broadly speaking, the constituents of the judicial mechanism can be explained better in terms of its **Anatomical Atlas**. In this context, it is, therefore, said that **the Head of this anatomy is a judge, Heart of the anatomy is the litigant, the hands of the body are the lawyers, investigating and prosecuting agencies; and staff are the legs of this body.** No doubt, in that there should not be any attempt to underestimate or overestimate one or the other.

However, one thing is quite certain that the whole judicial anatomy, can mainly and successfully function because of the existence of the important constituent of the heart—“*Consumer of Justice.*” Unfortunately, the very vital and important constituent has a very weak and poor status in the body, in our existing systems. We cannot consider and imagine the constitution of the body which has a very meek and weak heart. The most neglected constituent of the body is the heart- the litigant. Ordinarily, a consumer of any product or for that purpose any service is highly regarded and respected by one and all concerned; whereas, in the judicial system the proposition and position of consumer of justice, a litigant, is other way round.

We, really forget the very existence, very foundation of our institution is due to the existence of the litigant who now feels to be a neglected segment and organ of the system. Really speaking, the litigant has a very strong role to play, but appears to be the weakest part of the anatomy. Ours is a *sovereign, socialist, secular, democratic, republic, welfare state* and has a unique constitution *inter alia* providing social, economic and political equality. However, one cannot be obvious that this is a country where majority of the people are illiterate, unsophisticated, rustic

and rural. Even the literate section of the society at times is also not full aware of its rights. Thus, many a time literate people are also seen ignorant about their rights and remedies. Again, in case of a very few literate people, who know about these rights, find it very difficult to get these rights translated into reality. He has to pass through long procedural and legal condign pipes. How many of them even after undergoing such exercise could successfully see the light at the end of the tunnel?

Paradoxically, the litigant has to wait in a long queue for a long time for his turn. He has to expend not only a lot of money but valuable time as well. In order to search right remedies we must think of maladies. Could there be a proper prescription without there being any proper diagnosis? The consumer of justice wants expeditious and inexpensive justice. In absence of it somebody has observed-“... *instead of taking remedy or recourse to law at times we would be tempted to take law into our own hand.*” One cannot remain indifferent to this sort of feeling while examining the ways and means for re- shaping and re- enforcing our system, howsoever, one may have a different view.

The nature of the judicial process is such that under coercive winds the flame of justice flickers, faints and fades. The still small, voice is smoothened by subjective tribulations and anxieties and, if coerced, trembles to objectify law and justice. *The true judge is one whose soul is beyond purchase by threat or temptation, popularity or prospects.* To float with the tide is easy; to counter the counterfeit current is uneasy. And yet the judge must be ready for it, if needed. By habit and training, by the open process of 'adversary' hearing and ordinary obligation for written reasoning, by the moral fiber of his peers and elevating tradition of his profession, the judge develops a stream of tendency to function 'without fear or favor, affection or ill will', taking care, of course, to outgrow his prejudices and weaknesses, to read the eternal verities and enduring

values and to project and promote the economic, political and social philosophy of the Constitution to uphold which his oath enjoins him. But it is sense to treat the person who wears the robes as human, with failings and faltering and affected by the 'total push and pressure of the cosmos'. And so, environmental protection of the judicial echelons from Executive influence, by transfer or other deterrent, is in public interest. But to promote the community's concern for impeccable litigative justice, policy-oriented transfer of judges after compliance with constitutionally spelt-out protocols may not be ruled out.

One can therefore hardly remain blind and indifferent to this grim reality of the situation. We are passing through a very crucial time. We have docket explosion. If no appropriate, no ideal ways and remedies are urgently traced out and also successfully implemented expeditiously, a feeling or apprehension that has August Institution only redeeming ray of hope, may collapse of its own weight; cannot easily be ruled out.

“The hands, which build, are the hands, which pull down”, if justice becomes inaccessible to common man for the reason that the skilful counseling of lawyers is not available or for any other reason the result will be anarchy, chaos and lawlessness. The biggest casualty of such a situation would be 'the rule of law and the highest beneficiary of such an unfortunate situation would be the lawbreaker. What the common man would then, *miss is justice and what the society, as a whole, would miss is peace.*

Highest law of the land is the Constitution of India in which role of each of the three chief organs of the state is defined and ear marked. Any one overstepping or making inroads into the ambit or jurisdiction of the others will be not only contributing emergence of more and more legal battle but it will be unreasonable, unjust and un- constitutional. In this defined, sphere and

field, each organ is obliged to perform its duties and functions. Role of judiciary is very important. In fact, it is much more significant for the reason that it is the guardian and custodian of the **“Rule of Law.”** We are wedded to the system of democracy and we have recognized and accepted concept of welfare state. It is in this context that rule of law and judiciary assumes wider significance and broader dimensions for effective democratic setup. For effective welfare state, rule of law is very essential and it cannot be treated as a relic of the past as it should be always the living force of today.

The eminent jurist **Mr. N.A. Palkhivala** has elucidated the concept of the Constitution in terms of a common in his book ***Our Constitution Defaced and Defiled***, in the following words:

“Our Constitution is primarily shaped and moulded for the common man. It takes no account of "the portly presence of the potentates, goodly in girth". It is a Constitution not meant for the ruler but the ranker, the tramp of the road, The slave with the sack on his shoulders pricked on with the goad, The man with too weighty a burden, too weary a load.”

One of the attributes of the quality in law and in practice as per the constitutional mandates all citizens are equal in law and law protects all persons. Rule of law cannot survive without opportunity in treatment, status, education and employment of government is nothing but an empty slogan. It is spelt out in greater details in **Chapter III and IV** of the constitution dealing with **Fundamental Rights of citizens and Directive Principle of State Policy.** To what extent such rule of law claimed in terms of equality has been achieved in such codifying is nothing but an issue with divergent views and varying opinions.

However, the role of judiciary and its constitution, maintenance and sustenance of rule of law has been significant and substantial so far. For variety of reasons the function of judiciary is

widening and expanding. In order to uphold the respect and upkeep of the rule of law judiciary has to play important, effective and efficient role which can be possible only when our system is responded and overhauled so as to keep pace with modern times.

Shall we not interrupt sincerely as to why faith in the judicial system has started shaking? Why confidence of the litigant who is the heart of the system is in trouble? Why does this judicial cardiogram show unhealthy signs and symptoms apart from other unhealthy trends and symptoms pursuant to the judicial cardiogram panorama? The litigant has started feeling that instead of the judge conducting a trial, justice itself is on trial today. This feeling, really, cannot be said to be totally misconceived. There are many contributing factors in the emergence of such feelings in the litigant's mind. The voice of the litigant is the heart of the system which is soft and weak. It is ignored by voice of desire, it is contradicted by voice of some strong. It is hissed away by hate and finally extinguished by anger.

Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contact with the legal system have always been on the wrong side of the line. They have always come across "*law for the poor*" rather than "*law of the poor*". The law is regarded by them as something mysterious and forbidding--always taking something away from them and not as a positive and constructive social device for changing the social economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.

We may remind the Government of the famous words of **Mr. Justice Brennan**:

Nothing rankles more in the human heart than a brooding sense of injustice, illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness; and also recall what was said by **Leeman Abbot** years ago in relation to affluent America:

"If ever a time shall come when in this city only the rich can enjoy law as a doubtful luxury, when the poor who need it most cannot have it, when only a golden key will unlock the door to the court room, the seeds of revolution will be sown, the fire-brand of revolution will be lighted and put into the hands of men and they will almost be justified in the revolution which will follow."

We would, strongly, recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in **Article 14** and **Right to life and personal liberty** conferred by **Article 21**, but also the compulsion of the constitutional directive embodied in **Article 39-A**.

Though various suggestions, ways and means are pointed out in number of reports. Some of the significant suggestions in, my opinion can be highlighted hereunder:

- i. Strong and sound full time legal education.
- ii. Dynamic, dedicated and totally independent bar and organized litigants.

- iii. Training Centers for law drafting and for judges.
- iv. Legal Care Centers for litigants.
- v. Refresher courses for members of legal fraternity and the judiciary.
- vi. Research and Development Centers at least two and three in each state and one or more at the national level.
- vii. Subject of law for elementary principles should be made compulsory at the university level.
- viii. Compulsory arbitration in money suits up to claim (not less than) of Rs 1.00,000.
- ix. Various Alternative Dispute Remedies as in the USA and Europe are very much useful.
- x. Pre- trial and post trial conciliation effective set-up.
- xi. Systematic, scientific and trained approach by investigating personnel.
- xii. Training for court's management; including staff.
- xiii. Separate Department of judicial administration headed by the Hon'ble Chief Justice of India and two puisne judges of the Supreme Court, Two senior Chief Justice of the State High Court, Chairman of Law Commission, Chairman of Bar Council, Secretary of Law and Justice Department and Director General of Judicial Administration.

The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under **Article 21**. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means.

It is high and right time, more so when we celebrate more than 60 years of India's Independence, to seriously consider the prevalent judicial cardiogram panorama and to search effective ways and means for efficient restructuring and reshaping schemes so that "**A LITIGANT, CONSUMER OF JUSTICE**, 'heart' of our system, could receive equal, effective, speedy, inexpensive trial and justice; which is a cry of our constitution." **LET IT NOT REMAIN IN WILDERNESS.** It is therefore, I am attracted to state making a **HEART (LITIGANT)** strong by an effective and efficient judicial mechanism for expeditious and inexpensive justice which shall be really a great tribute in the golden jubilee year of an Independence of India.



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