

## INDIAN CONSTITUTION – ITS VISION OF JUSTICE

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It is very elementary and fundamental that Constitution is the basic document of every country, more so in a democratic governance. The entire activities of the state, enacting of Laws and the establishment of various institutions of administration are creatures of the Constitution and can function only within its frame work. The main function of the Constitution is to provide the ground rules through which the Government operates. A jurist rightly described the Constitutional Law as “the law behind the law”.

There are various types of Constitutions, written or unwritten Constitutions – Federa and Unitary Constitutions. But for the purpose of this lecture, which is intended as a part of training programme for the Members of State Judicial Officers, we need not go into jurisprudential analysis of the Constitution. It is true that you are not invested with the powers to pronounce or to declare an Act of Parliament or State Legislature or even any statutory rule as invalid. Under Section 113 of C.P.C., if the case involves a question as to the validity of an Act. Ordinance or Regulation, which may be necessary for the disposal of the case, you can only refer the same for the opinion of the High Court. But in any case before you, you are not powerless to bear in mind the wisdom of the framers of the Constitution and as the topic of this lecture emphasizes – the Constitution and its Vision of Justice.

There is the general belief, rather a superficial one, that subordinate judiciary deals only with private laws and not public law, with the exception of the Law of Crimes and Tax. Apart from the fact that the development of law had now recognized that the distinction between public and private law is very narrow and also overlapping, there are various issues of public law which are enforceable by the State Judiciary. To cite few instances, Section 91 of CPC empower the civil court to issue a declaration and injunction in the case of public nuisance or other wrongful acts affecting the public. Under Section 92, the civil court is the guardian of all public trusts. The interpretation of Section 133 of Code of Criminal Procedure by the Supreme Court in the famous Retlam Municipality Case – 1988 (4) SCC 162, is an example of how even the subordinate judiciary is armed with powers to enforce the Constitutional rights of a citizen. Section 133 Cr.P.C. which empowers the Magistrate to compel the Municipality to maintain the health and convenience of the citizen, is rarely resorted to. Justice V.R. Krishna Iyer gave a dynamic expression to the right of the citizen under the Directive Principles of the State Policy – Art.38 of the Constitution, to have access to justice on a public issue. He confirmed the direction issued by the Magistrate and after quoting the order of the Magistrate in extensor, went further to hold that the public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance. He also quoted Benjamin Disreli – “All power is a trust – that we are accountable for its exercise – that from the people, and for the people, all springs and must exist”.

I would say that ever limb of the judiciary, be it higher judiciary or subordinate judiciary, have the powers and duty to enforce public law and the Constitutional right of the citizen bearing in mind the vision of justice embodied under the Constitution. The above are only few instances of the powers under CPC and Cr.PC to enforce public rights.

Though the instances which I mentioned above mainly deal with public rights, it is not as if, your powers are restricted only to such narrow and specific areas formulated under the CPC and Cr.P.C. The vision of justice as envisaged under the Constitution pervades every area of human activity and even the officers holding the last rank of judiciary, is duty bound to be guided by the basic principles of the Constitution. Whenever, you deal with any litigation/case, the final judgment or verdict which you deliver should reflect the said principles, stated not only in the Preamble but also Part III dealing with the Fundamental Rights and Part IV – Directive Principles of the State. The Preamble in incorporates the dream of the Constitution makers – of a Sovereign Social Secular Democratic Republic and to secure to all its people, justice, liberty, equality and fraternity. Part IV, Directive Principles of State Policy are also equally important. Due to constraints of time limit, it is not necessary to refer to each specific provision under Part III and Part IV which embody the aspirations and visions of justice of the framers of the constitution. (To deal, the constitutional protection given to minorities and reservation for socially down trodden)

The Supreme Court and High Courts while interpreting the provisions of the Constitution under Part III and Part IV, have very dynamically expanded the horizon of the rights of the citizen and the duties of the State to such an extent that even the framers of the Constitution would not have dreamt of. Art.14 and 21 are probably the shortest of all the Articles under the Constitution, but judiciary had read into them volumes and volumes of valuable rights of the citizen. Today we are hearing politicians crying hoarse of the limitation of the judicial powers and discretion without realizing that if today the fruits of democracy is being enjoyed, it is only by virtue of judicial interpretation of the provisions under the Constitution.

Judicial rulings rendered under Art.21 cover all areas of human rights and activities and the time given to me will not be sufficient even to mention only the issues

covered under the said rulings. The very same politicians when they are in the opposition will come to you citing D.K. Basu's case, Sheela Barse's case and Maneka Gandhi's case, to mention only a few of many such rulings. If you study the rulings under Art.21, you will see that there is no area of social activity or issue which is left untouched and to mention a few, employment, control of AIDS, granting of bail, arrest, handcuffing, maintaining ecology and environment, forests, fair trial, the rights of women and children etc. The list of endless. All of you should go through the decisions rendered under Art.14 and 21 and they reflect the element and essence of justice, envisioned under the Constitution.

When the Constitution was framed, the framers who were undoubtedly great visionaries and legal experts were probably overcome by the euphoria of freedom and independence and did not feel the need to incorporate the duties of the citizen. Mahatma Gandhi said that a right without a corresponding duty is not worth having. It is a sad fact that the freedom and rights given under the Constitution as liberally interpreted by the Courts are also now misused to the extent of giving rise to a feeling as to whether we really deserve all the liberty, rights and freedom. 27 years after the Constitution, Art.51(A) had to be inserted under Part IV (A) enumerating the fundamental duties of every citizen.

***51A. Fundamental Duties.-It shall be the duty of every citizens of India-***  
***(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;***

***(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;***

***(c) to uphold and protect the sovereignty, unity and integrity of India;***

***(d) to defend the country and render national service when called upon to do so;***

***(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;***

***(f) to value and preserve the rich heritage of our composite culture;***

***(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;***

***(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;***

***(i) to safeguard public property and to abjure violence;***

***(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.]***

The success of the Constitution and its vision of justice depends on its people. The Courts have to play a pro active role in interpreting any provision of law, while applying them to a fact situation in all cases. As you are all aware that while upholding welfare legislations or n directing the Government to act according to the provisions of Constitution, the Supreme Court and the High Courts have relied on Part IV of the Constitution extensively, even though Part IV is only directory in nature. Likewise, Part IV (A) is also directory, but the Supreme Court has held that the Fundamental duties as envisaged under Art.51(A) will be aids to interpret the statutes. In M.K. Singhania (Vs) Union of India – 1992 Sup 1(SCC) 594, in which the validity of a provisions under Civil Services Examination Rues, 1968 was questioned, the Court referred to Art. 51(A) to sustain the impugned provision.

Therefore unless the Court gives effect to the high principles, enumerated under the Constitution, the vision of justice will remain only on paper. I would cite an instance of while I was on a short spell before the Madurai Bench in the year 2005. It related to a temple festival and the dispute was between caste Hindus and Harijans for taking part in the festival. Caste Hindus pleaded that traditionally, it was their right to conduct the festival. We dismissed the Writ Petition, rejecting their pleas as well as a prayer to direct the police to at least allot different timing for the two groups to enter the temple and to conduct the festival. Strangely 2 days later another petition was moved on behalf of the

Harijans, alleging that they were deliberately prevented from taking part in the festival by the stand taken by the caste Hindus and that the compromise formula suggested by the police allocating separate time schedule for the two groups should be accepted. We firmly turned down their request also. I pointed out to the petition's advocate who is also a social rights activist, that if what they asked for is accepted, it would be perpetuating untouchability. If the compromise is to be accepted by the court, then the Government will be justified in passing a G.O. that henceforth in all temples entry time will be restricted and earmarked as between different communities. Police was duty bound to enforce law and order in accordance with the provisions of the Constitution and untouchability cannot be perpetuated in the guise of law and order or as a compromise. I told that when once matters are brought before the court, the court has to pronounce the law only according to the Constitution.

I have given this instance only as an example of how the court is bound to deal with such contingencies. We have to overcome the normal temptation to accept the compromise formula, resulting in putting a seal of approval on it which would violate the mandate of the Constitution.

In conclusion, I would say, we can go on enumerating the vision of justice in the Constitution for several hours. It is the duty of every citizen to conform to the high principles and it is important for the courts to strictly implement them. You need not be under the impression that such Constitutional issues will arise only before the High Courts and under Art.226 of the Constitution. I am a firm believer in the efficacy of Art.226 as well as Section 9 of CPC. Any kind of suit can be filed under Section 9, except those which are specifically barred. At least under Art. 226 of the Constitution, which is an extraordinary remedy, discretion is given to the court either to entertain or not to entertain any plea. But under Section 9 CPC, it is the duty of the court to pass a decree one way or the other, on the merits. In doing so, you should boldly give effect to the

provisions of the Constitution and its vision of justice, by interpreting the law in the light of the Preamble, Part III, Part IV and Part IV (A) of the Constitution.

Ultimately, the vision of justice is in the mind of the people and for the courts to enforce them. Constitution cannot be exhaustive. For instance, I do not think, subject to correction, that our Constitution anywhere states that corruption should be eradicated. Today corruption is the most vilest public disease. We all know that England does not have a written Constitution and I ask myself, where and how do the Judges in England look for vision of justice. Ideas and concepts of Justice have to spring from the minds of the people, the legislature and courts and the determination to implement them. I would close my lecture by quoting Justice Oliver Wendell Holmes:

“The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed”.

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