

Role of Judiciary in Promoting 'Culture of Peace' in the World through Social Justice

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Introductory

Having been called upon to speak on the subject, I am reminded of an Urdu Couplet which says:

हजारों जिन्स पैदा कर चुकी है नस्ल आदम की
ये सब तस्लीम, लेकिन आदमी अब तक भटकता है।

[Ever since Adam and Eve, thousands of human generations have been born; true it is, but the men is still roving in the dark searching for the peace – peace of mind, peace of body and peace of soul.]

Today is the 12th Annual Endowment lecture in the series named after two great Saints - Saint Dnyaneshwara and Saint Tukaram. The juncture at which the world stands today and the prime position which the judiciary has come to occupy in the field of governance with impact on day to day lives of the people, there could not have been chosen a subject better than what has been done. And, the place to deliberate upon the topic could not have been a place better than India and therein too the city of Pune. I am reminded of what the great son of India – Swami Vivekananda had said more than 110 years before (on Jan. 26, 1897 at Pamban):

“The eyes of the whole world are now turned towards this land of India for spiritual food; and India has to provide it for all the races. Here alone is the best ideal for mankind; and western scholars are now striving to understand this ideal which is enshrined in our Sanskrit literature and Philosophy and which has been the characteristic of India all through the ages.

We Hindus have now been placed under God’s providence, in a critical and responsible position. The nations of the West are coming to us for spiritual help. A great moral obligation rests on the sons of India to fully equip themselves for the work of enlightening the world on the problems of human existence.”

Having peace in life has been the ‘*never achieved*’ aspiration of all human beings. It may be said that when a person’s all needs and desires – whether physical, monetary or spiritual are satisfied, he attains peace. Generally, these needs and desires are the result of the environment or conditions prevalent at a particular time of a society. To meet them, some people take out themselves from such competition by limiting their needs and desires and leave the worldly chores and become Sadhu-Sanyasi, while some remain there and keep trying – whether legally or illegally to earn those things which may give them peace. As all fingers are not of same size in a hand and all the limbs have their unique utilities in a body so is every human being different in society having different interests and ways of working. Some assemble more than their desires while there are others who are not able to satisfy even their basic needs. This state, in a long time, causes social disorder – an outcome of stored frustration in several

persons of being failed for generations in meeting out their basic needs.

What is peace?

The traditional political definition of 'peace' and the very word itself originated among the ancient Romans who defined peace, i.e. *pax*, as *absentia belli*, i.e. the absence of war. This means if in a society people are not fighting then there must be peace. However, influential peace researcher Prof. Johan Galtung has described this conception of peace as "negative peace".¹ Galtung coined the term *structural violence* to refer to such situations, which although not violent on the surface, harbor systematic oppression and injustice.

Peace is more than the absence of war. It is a state of being in balance and harmony. Peace is about how we handle problems and how we get along with others. It means justice and equality for all as the basis for living together in harmony and free from violence, now, but even more so for our children and succeeding generations. Peace is about community-about encouraging and helping each other to live better, more fulfilling lives. Most of all, peace is about concern and consideration for ourselves, for each other, and for the planet we share².

In its most apocalyptic sense, peace denotes a state of complete and final harmony, an end to conflict not only within the human race, not only between humanity and the natural world but also within oneself.

¹ Galtung, Johan. *Peace by Peaceful Means: peace and conflict, development and civilization*. Oslo: International Peace Research Institute, 1996.

² <http://en.wikipedia.org/wiki/Peace>

According to Cicero, 'peace is liberty in tranquility'. However, to me peace as defined in Bible appeals the best. It reads "the wolf also shall dwell with the lamb, and leopard shall lie down with the kids; and the calf and the young lion and the fatling together; and a little child shall lead them".

Culture of peace

Culture and peace are inter-dependent. Nicholas Roerich, the world famous Russian painter and Spiritual teacher, nominated thrice for Nobel Prize had said – "Where there is Peace, there is Culture; where there is Culture, there is Peace."

The idea to use the term *culture of peace* was inspired by an educational initiative called *Cultura de paz* developed in Peru (1986), and by the Seville Statement on Violence (1986) adopted by scientists from around the world, which stated that war is not a fatality determined by genes, violent brains, human nature or instincts, but is rather a social invention. Therefore, 'the same species that invented war are capable of inventing peace'.³ It is for this reason that the Constitution of UNESCO says – "Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed".

The United Nations and UNESCO were founded to bring about a world at peace. As defined by the United Nations, the 'Culture of Peace' is a set of values, attitudes, modes of behaviour and ways of life that rejects violence and prevents conflicts by tackling their root causes to solve problems through dialogue and negotiation among individuals, groups and nations.

³ <http://unesdoc.unesco.org/images/0012/001263/126398e.pdf>

Sustainable economic and social development are promoted by social justice which in turn cause peace and non-violence to prevail. At its third meeting held at San Jose, Costa Rica February 22-26 1994, the World Commission on Culture and Development set itself three goals, the third of which was “to promote a new cultural dynamic: the culture of peace and culture of development”. The Commission undertook to “endeavour to recommend the concrete measures that could promote, on a national and international scale, a culture of peace” and went on to state that:

“a culture of peace, culture of democracy and culture of human rights are indivisible. Their effective implementation must result in a democratic management and...the prevention of inter-cultural conflicts.”

What is Social Justice

Social justice is not just administration of law; it is a concept which comprehends justice in every aspect of society. A just society is one which affords individuals and groups fair treatment and a just share of the benefits of society. The advantages and disadvantages within a society are distributed equally and without discrimination. Based on the concepts of human rights and equality, social justice can be defined as *"the way in which human rights are manifested in the everyday lives of people at every level of society"*.

Social justice is both a philosophical problem and an important issue in politics, religion and civil society. Most individuals wish to live in a just society, but different political ideologies have different conceptions of what a 'just society' actually is. The term

"social justice" is often employed by the political left to describe a society with a greater degree of economic egalitarianism, which may be achieved through progressive taxation, income redistribution, or property redistribution. The right wing also uses the term social justice, but generally believes that a just society is best achieved through the operation of a free market, which they believe provides equality of opportunity and promotes philanthropy and charity. Both right and left tend to agree on the importance of rule of law, human rights, and some form of a welfare safety net.⁴

Dean Roscoe Pound has defined the concept of social justice illustratively. In social justice he includes amongst others (i) general security, e.g., peace, public health, security of acquisition, etc.; (ii) security of social institutions e.g., marriage, religious institutions, etc.; (iii) preservation of general morals such as taboo on gambling, drinking, immoral traffic etc.; (iv) conservation of social resources; (v) social interests in general progress e.g., freedom of trade, encouragement of research, and social interest in individual rights e.g., wages, conditions of work, etc. According to the great jurist there are eight jural postulates to ensure social justice. They are:

- a.* no wanton aggression by others;
- b.* parties with whom transactions are entered will act in good faith;
- c.* there will be no hindrance in the enjoyment of his acquisitions and creations;

⁴ http://en.wikipedia.org/wiki/Social_justice

- d.* the person will not be exposed to undue risks and others will act with due care and caution;
- e.* dangerous things kept by others shall be cautiously and carefully kept within its bounds;
- f.* employee has a right to employment;
- g.* society will share the misfortunes which befall on individual; and
- h.* proper compensation for worker, for necessary human wear and tear in an industrialised society.

When we speak of justice and injustice, ordinarily we use these terms in reference to individual human beings or citizens. In the context of the society these terms are used in wider sense i.e. fair or unfair dealings between an individual and the society and sub-societies. It is desired that while the society in its obligations must show concern about the individual, the individual should also show its reciprocal awareness of his obligations to the society. But for this reciprocity the ideal of total social well being cannot be achieved.

The greatest enemies of social justice are poverty, illiteracy and corruption. Democracy has largest of the benefits available in any social order yet it cannot be denied that the very functioning of the democracy provides room for development of vested interests which believe either in maintaining *status quo* or twisting the availability of means and prosperity to their own advantage and usurping the same. Corruption is the most powerful weapon in their armory which enables the powerful in

winning their battle against the weak. Most ambitious and high sounding plans and projects for the advancement of the society as a whole and directed at removing inequalities prove to be hollow because the power in reality feels confident of its survival by continuing to retain in the societal texture poverty, illiteracy and ignorance.

Supreme Court on Concept of Social Justice

The word “socialism” was brought into the Preamble and its sweep elaborately was considered by the Supreme Court in several judgments. It was held that the meaning of the word “socialism” in the Preamble of the Constitution was expressly brought in the Constitution to establish an egalitarian social order through the rule of law as its basic structure. In *Minerva Mills Ltd. case*⁵, the Constitution Bench had considered the meaning of the word “socialism” to crystallise a socialistic State securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive Principles. In *D.S. Nakara v. Union of India*⁶, another Constitution Bench had held that the democratic socialism achieves socio-economic revolution to end poverty, ignorance, disease and inequality of opportunity. The basic framework of socialism was held to provide a decent standard of life to the working people and especially to provide security from the cradle to the grave. The less equipped person shall be assured a decent minimum standard of life to prevent exploitation in any form, equitable distribution of national cake and to push the disadvantaged to the upper ladder of life. It was further held that the Preamble directs the centres of power, the

⁵ (1980) 3 SCC 625

⁶ (1983) 1 SCC 305

Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march; but during the journey to the fulfilment of goal, every State action, whenever taken, must be directed and must be so interpreted as to take the society towards that goal.

In *Muir Mills Ltd. v. Suit Mills Mazdoor Union*⁷, the Supreme Court speaking through P N Bhagwati, J. expressed that it was difficult to define social justice and tie down the concept in any precise definition. The Court said:

“Social justice is a very vague and indeterminate expression and no clearcut definition can be laid down which will cover all situations”, but “concept of social justice does not emanate from the fanciful notions of any adjudicator.”

Gajendragadkar, J. felt that social justice was a “living concept of revolutionary import, it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state”⁸

I would close my reference to Supreme Court of India in the search for conceptualization of social justice by quoting Koka Subba Rao, C.J., who has almost equated social justice with rule of law and said⁹:

“The rule of law under the Constitution has a glorious content. It embodies the modern concept of law evolved over the centuries...It enjoins to bring about a social order

⁷ AIR 1955 SC 170

⁸ See: *State of Mysore*, AIR 1958 SC 926

⁹ Golaknath, AIR 1967 SC 1643, 1655-1656

in which justice, social, economic and political shall inform all the institutions of national life. It directs it to work for an egalitarian society where there is plenty, where there is equal opportunity for all, to education, to work, to livelihood, and where there is social justice...It, therefore, preserves the natural rights against the State encroachment, and constitutes the higher judiciary of the State as the sentinel of said rights and the balancing wheel of the rights subject to social control. In short, the Fundamental Rights, subject to social control, have been incorporated in the rule of law... By this process of scrutiny, the Court maintains the validity of only such laws as keep a just balance between freedom and social control... The standard is an elastic one; it varies with time, space and condition...(it)...serves the needs of the people without unduly infringing their rights. It recognises the social reality..."

Social justice as envisaged by the Constitution of India

Indian Judiciary is subordinate and sub-servient to none except the Constitution of India. The Judiciary accepts its commands from the Constitution and interprets and implements the letter and spirit of the Constitution. Any discussion on role of judiciary in the context of social justice cannot be complete without referring to a few provisions of Constitution.

Constitution of India, one of the great and well articulated legal documents in the world history, conceptualizes social justice in a manner of which a comparable is yet to be seen. One has to refer to the Preamble, Part - III incorporating Fundamental Rights,

Part - IV enlisting Directive Principles of the State Policy and Article 51A codifying the Fundamental Duties. According to the Preamble, social justice means securing to all the citizens justice (social, economic and political), liberty (of thoughts, expressions, belief, faith and worship), equality (of status and of opportunity), and to promote among them all fraternity (assuring the dignity of the individual and the unity and integrity of the Nation). The Fundamental Rights guarantee - very briefly stated - right to equality, right to freedom, right against exploitation, right to freedom of religion and cultural and educational rights. These are the rights which naturally belong to a human being, and, on the one hand, they enable free existence of a man as a social being, and, on the other hand, oblige the State to protect and guarantee such existence. The Directive Principles of State Policy are such principles which are fundamental in the governance of the country and the State must apply these principles in making the laws. Though not enforceable by judicial mandate yet they are fundamental to the governance and constitute the conscience of the Constitution. Fundamental Rights and Directive Principles, taken together, constitute a complete code of social justice. They have been fashioned and designed on the UN Declaration of Human Rights. According to Granville Austin, the noted Constitutional Jurist, "...the core of the commitment to social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution."

Though the Courts may not direct laws being framed for effectuating Directive Principles but while interpreting the laws the Courts shall keep in view what have been propounded as Directive Principles. Fundamental Duties, belatedly introduced in

the Constitution of India in 1976 through 42nd Amendment (w.e.f. 03-01-1977), consist of ten clauses equivalent to Ten Commandments which, may be by themselves and certainly if read along with the Preamble and the Chapters on Fundamental Rights and Directive Principles, leave no area untouched in the domain of social justice. I feel inclined to read this Article and urge every citizen of India and every man on this earth to learn by heart and also put in practice the message written in these clauses:

Article 51 A. It shall be the duty of every citizen 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.

In the famous case of *AIIMS Students' Union v. AIIMS*¹⁰, a bench of three judges has said:

“Fundamental Duties provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, people’s wish as manifested through Article 51-A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values”

The Challenges

Globalization has reduced the big globe into a big village. Thanks to spectacular advancements in the field of science, technology - in particular information technology and means of

¹⁰ (2002) 1 SCC 428

communication and transport which have almost done away with geographical barriers. Man is trying to tame the forces of nature. Though, there is no escape from the natural calamities and disasters but the man is developing methodologies for reducing the consequences thereof. But man made disasters and calamities are not only showing their ugly faces but day by day getting more monstrous. Smuggling of drugs and weapons, illegal trafficking of men, women and children, emergence of places like concentration camps, terrorism, influx of refugees, war crimes are a few illustrations. In the domestic field we find road rage and people taking law in their own hands for punishing the criminals and the suspects. Apart from poverty, illiteracy, ignorance and corruption, the latest addition to the list is violence. The root cause is people's increasingly eroding faith in the law enforcing agencies as also the delay in delivery of justice.

Role of Judiciary

Emphasizing the role of judiciary in world peace, no expression can be more powerful than that of Martin Luther King who said – "Peace is more important than all justice; and peace was not made for the sake of justice, but justice for the sake of peace".

Judiciary can play a prominent role in dispensing social justice also partly in fighting against the obstacles in the delivery of social justice. In the famous book '*The Judge*', Lord Patrick Devlin describes a few qualities of judges who administer justice. Firstly, they listen; and, listen with patience. Secondly, they are open and accessible. Thirdly, they perform their functions with openness and transparency. Fourthly, they assign reasons for the decisions which they take either way. And lastly, they are

open to correction by a superior forum. The greatest quality of judiciary over other wings of governance is that it does take decisions while others may procrastinate or avoid doing so. The judiciary acts with objectivity and independence. How beautifully Lord Devlin puts it: “the disinterested application of the law calls for many virtues, such as balance, patience, courtesy and detachment”. The judges do not throw their tools down when they meet with a defect in law. They activate themselves and innovate. Women’s sexual harassment at work places and several directions issued from time to time in the field of jail reforms, education, environment and prevention of pollution are a few examples. A modern judge is not just an adjudicator and sentencer; he is also a law maker and social reformist. The beauty of his such functions is that he effectively acts but without proclaiming to be so.

A few examples may not be out of place. While Supreme Court has jealously guarded against exploitation and victimization of labour and workers, it has not hesitated in pronouncing vocally against *bandhs* and *hartals* when the question of national interest and larger interest of peoples suffering in general by such activities was posed before the Court. Backward Classes, Schedule Castes and Tribes, women and children and several minorities owe much to the judiciary for their amelioration in such areas which are not yet covered by legislation. The Supreme Court’s own Rule requiring deposit or security before moving a writ petition u/Article 32 of the Constitution for enforcement of Fundamental Rights was struck down as creating an obstacle in the enforcement of Fundamental Rights and the remedy of a citizen in approaching the highest constitutional court of the country. Unlike the House of Lords, the Supreme Court has not

hesitated in overruling its own earlier decisions if it felt convinced that the earlier decision was not in line with adopting a progressive approach to the philosophy underlying the Constitution. The Supreme Court has emphasised the need for uniform civil code and for education as fundamental right time and again, even before the State acted. Introduction of the principles of natural justice into the domain of administrative law in the well known *A.K. Kraipak's case*¹¹ is an outcome of judicial innovation.

The judiciary wherein I would include the judges and the lawyers, for the lawyers are integral part of justice administration, have an edge over the legislators in the matter of reforms. In the words of Lord Devlin: "The law maker takes an idea or policy and turns it into law. For this he needs the ability to formulate, and a judge in common with any other trained lawyer should have that. Is the Judge any different in this respect from a professor or a parliamentary draftsman? Yes, because he has experience of the administration of the law. So has the barrister and the solicitor, ..."

Articles 14, 21 and 32 are the most potent articles which have been utilized by the constitutional courts of the country for removing every possible hindrance in the cause of social justice. In any standard book on Constitution, the smallest article around which the largest volume of judge-made-law has developed is Article 14 which simply says: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 21 says: "No person shall be deprived of his life or personal liberty

¹¹ (1969) 2 SCC 262

except according to procedure established by law”. Right to life in this Article has been interpreted by the Supreme Court to mean as right to live with human dignity and not as mere animal existence. Whole of environmental jurisprudence, protection of forests and rivers and preventive principles against air, water and noise pollution have been developed around this Article. Article 32 of the Constitution which confers the right to move the Supreme Court for enforcement of any fundamental right has been held to be such provision of the Constitution which even the Parliament cannot do away with by exercising its power to amend the Constitution. The whole jurisprudential thought of ‘sustainable development’ – the obligation of present generation towards future generation – is an outcome of judicial wisdom.

A few more illustrations:

➤ **Eradication of poverty and helplessness**

- Bonded labour- released and directed to be rehabilitated
- Child labour- rescued and directions issued for rehabilitation
- Prisoners suffering incarceration for want of bail due to poverty- directions for release, and discharge in petty cases, issued
- Prostitutes and their children, directions for rehabilitations issued
- Bhopal gas leak disaster- directions for compensation and treatment of patients issued
- Sexual abuse of children, noticed and taken care of by issuing directions for prevention

- Detention of mentally challenged in chains – remedial measures to prevent repetition
- **Removal of illiteracy and ignorance**
 - Declaring of children's education a fundamental right
 - Enforcement of common civil code
 - Mid-day meals scheme
 - Right to free legal aid
 - Right against handcuffing
 - Starvation deaths
- **Fighting against corruption**
 - Power of speaker to disqualify Members of Parliament for corrupt activity of 'cash for query'.
 - Declaration of assets and criminal antecedents by candidates contesting elections
 - Taj Corridor scam
 - Hawala case
 - Cancellation of petroleum and gas licences given by discretion and in violation of rule of law
- **Methodology**
 - PIL, Letter Petitions and Judicial Activism – as displaying that no technicality can come in the way of people having access to justice and the judiciary acting for common good

Summing up

Whether it is the world or the nation, the judiciary has emerged as the most powerful organ of the State governance specially in democracies.

The preservice and prevalence of peace in society has been the guiding star of judiciary in its quest on the path of imparting justice. Analytical research of judicial trends the world over brings to the fore judicial dynamism, zeal and innovative skills playing in full and engaged in fighting against forces such as oppression, discrimination, victimization and inequalities – the vices which are destructive of peace and order in society. The role of judges in the judiciary, in particular in democratic countries has kept on fast changing from traditional to modern and judges have by and large demonstrated their awareness in considering social impact of their decisions on the social life of peoples. They have refused to blindly adhere to the letter of outdated and anti-development laws by reading the spirit of the laws as an aid to interpretation. Judges bear in mind that welfare of society does not lie in amassing the wealth or in concentrating the power in a few hands. The judiciary has more than its existence as an essential to peace and prosperity of society as a whole.

According to Aharon Barak, the President of Supreme Court of Israel, the judicial law making bridges the gap between law and societal needs and this the judges do consistently not only with society's basic values but with society's perception of the role of judiciary. The role of a judge in a democracy is to highlight and protect constitutional values. They believe 'if we do not protect democracy, democracy will not protect us'. It is only natural that the people's hope is riveted on judiciary as the saviour of social justice. However, our own role, role as individuals or as members of society in creating the order of social justice, where 'every one gets his due', can neither be denied nor understated.

To create peace in the world each one of us has to assume the role of a peacemaker. If each one of us subscribes to the culture of peace and takes a vow 'to live and let live' peacefully and to care for others just as each one of us expects others to care for him, there would be peace and justice available to all.

The judicial philosophy is the saviour of social justice. This judicial philosophy which is adopted in administering justice, social or legal, has been well stated by Justice Oliver W Holmes in these golden words¹²:

“The law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become...

The felt necessities of time ... the convenience of the situation and the need for adjusting the rights of a larger number of people without deprivation of any accrued right of anybody would be justice according to law. Before we reject social justice as something alien to legal justice, we should remember that a meaningful definition of the rule of law must be based on the reality of the contemporary societies.....”

And these realities are known and ought to be known by the individuals so much as by the judges.

¹² The Common Law by Oliver Wendell Holmes, edited by Mark DeWolfe Howe, Lecture I, p. 1.

I would end by quoting from the address of Swami Vivekananda which he delivered on September 27, 1893 in the final session of World's Parliament of Religion in Chicago. He has said:

“If the Parliament of Religions has shown anything to the world it is this: It has proved to the world that holiness, purity, and charity are not the exclusive possessions of any church in the world, and that every system has produced men and women of the most exalted character. In the face of this evidence, if anybody dreams of the exclusive survival of his own religion and the destruction of others, I pity him from the bottom of my heart, and point out to him that upon the banner of every religion will soon be written, in spite of resistance: ‘Help and not Fight’, ‘Assimilation and not Destruction’, ‘Harmony and Peace and not Dissension’.

That is the secret of world peace. And, what he said of religion applies with equal force to social justice and the role of judiciary in imparting the same.
