

SPEECH ON

‘CONSTITUTIONAL JUSTICE: DOCTRINE & PRACTICE’

BY

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The issue 'Constitutional Justice: Doctrine & Practice' is a highly relevant and evocative one, because the desire to be treated in a just and fair manner has always been a very powerful urge in human affairs. To fulfill this quest, society has been evolving various systems, structures, concepts and processes from time to time. In ancient India, for instance, the concept of 'Dharma' was the synthesis of religion, law, and morality to impart justice. The word "Dharma" as justice may seem not so representative of all the people of India due to its modern restricted meaning as 'religion' only. The chaos of the medieval era joined to religion. Conquest, destruction, and domination led to new perceptions of suffering and justice within new systems of governance. The period before the Second World War showed the world how the political process in which internal party democracy was missing could subvert a democratic Constitution. Colonial justice was dividing and no more a uniting force. In post-independence era, as colonial countries attained independence, they inherited and borrowed the British-style courts for those in Presidency Towns. The Constitution was formulated in English and still the constitutional practice is in English legal language. However, in India, day-to-day interpretation of the Constitution by the High Courts and the Supreme Court, though in the English language, gets

communicated to all citizens through the vernacular, print and electronic media, which are broad-based.

Constitutional practice in India has evolved the doctrine of the basic structure in *Kesavananda Bharati*¹ encompassing certain fundamental features such as free and fair elections, secularism, democracy and independence of Judiciary, which are unamendable by Parliament. The Constitution of India has withstood the test of time, is a monumental document of national renewal by social engineering. It has resulted into a healthy and vibrant democracy. It aims to fulfill the needs of socio-economic aspirations of common man and ensures the betterment of individuals as an integral part of the society. It ensures “justice” – social, economic and political. As propounded by our founding fathers, political freedom shall carry no meaning without economic equality and social justice. The Constitution is our past, present, and future, and its tryst with destiny is to remove the disparity, ignorance, illiteracy, diseases, poverty and to ensure education for all. India is a socialist, secular, democratic Republic, which embraces religious diversity and multiculturalism. There is no room for discrimination on the basis of race, caste, creed, sex, and religion. It is a unique blend of concepts of *Marxisms* and *Gandhism*.

The constitutional scheme provides for independent wings of the Legislature, Executive and the Judiciary. Citizens have Fundamental Rights. The

¹ Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., (1973) 4 SCC 225

Directive Principles of State Policy that are equally important in the governance of the country contains directives to be achieved by the elected Government of the day. Thus, our Constitution is the reincarnation of our old concept of “*Dharma*”, which expresses our will and determination to uphold justice and dignity in every walk of life of our people.

The constitutional interpretation and various legislations framed thereunder carry forward the noble ideas from generation to generation. The Government is accountable to people. With the help of Right to Information Act, the concept of openness of governance has been developed. By interaction and harmonious interpretation of Fundamental Rights and Directive Principles, the Constitutional Courts in India have, over the years, greatly expanded the reach and ambit of fundamental rights. The Directive Principles contain policy of governance that is otherwise not enforceable by courts, but once they have found a statutory expression in the form of legislation, the court is empowered to enforce them. The constitutional scheme provides for protective discrimination in favour of the downtrodden and have-nots as a corrective measure and compensatory justice to those who have suffered injustice from generation to generation. There is a balance between the distribution of benefits and distributive justice. Reservation is within limits so that others are not discriminated and everybody has an equal opportunity.

The Constitution mandates to promote a legal system that ensures that nobody is deprived of justice due to economic or other disability. Economic justice requires non-discrimination of people on the basis of economic factors. To provide legal service to the needy is the bounden duty of the State, an efficient lawyer and cost of litigation are to be borne by State so that none is deprived of access to justice. The cry for justice of downtrodden cannot be ignored and overlooked. Justice delivery system has been made accountable to socially and economically disadvantaged class of people. The functional success of justice delivery system required mutation of certain customary practices. Access to justice has been made easy by entertaining letter petitions by the High Courts and the Supreme Court of India. By way of Public Interest Litigation (PIL), Court reaches out to the lower strata and masses for whom litigation is not affordable, so as to preserve their rights and to percolate down the benefits of social schemes. Legal literacy campaigns help to generate wide-ranging awareness in order to develop and nurture a just and equitable social order so that one is Lord of his fate and shaper of his destiny.

In the wake of globalization and new global architecture technology is the weapon of power. Our living Constitution can respond to these moments of history in an age of revolutionary global transformation. There is an interaction of Intellectual Property Rights (IPRs) with Human Rights; we face problems such as ever greening of patents. We see the trans-border movement of hazardous

wastes, e-waste, issues of degradation of the environment, global warming, climatic changes, and scarcity of water. All these require a vigilant watch in the interest of the human race. We have to balance IPRs with the right to life. We face problems in IPR regime of making life-saving drugs available at affordable prices to the have-nots. We see an unhappy marriage of IPRs with competition laws, and interests of the consumer have to be safeguarded. We have to think globally, act locally for the betterment of planet Earth and, in fact, for our very existence. Moreover, a growing concern is, of being left out and deprived of gains of globalization. The brooding sense of injustice may have international implications and ramifications.

The Constitution aims at dignity to all. It provides fundamental rights, including the right to life and liberty, right to equality, and right against discrimination. We see a constant expansion of human freedoms. The concept of due process of law has also been evolved to form part of the right to life. The press and media have the freedom but the same is not more than that of an individual and is subject to reasonable restrictions in the interest of the State so as to protect the sovereignty and integrity of India and security of the State, friendly relations with foreign States, public order, decency, morality etc. It intends for repudiation of extremes. The Constitution protects a child, youth against exploitation and all kinds of Begar. Further, the State has to make an endeavour to provide the right to work, education, and assistance in the case of

unemployment. The endeavor is to look after from cradle to grave as held in *D.S. Nakara*²

So as to ensure India's unwavering commitment to socio-economic justice, distributive justice is enshrined in Article 39(b)(c) of the Constitution is instrumental in achieving the bulk of agrarian reforms responsible for transcending it into socialist Republic. The state has to make an endeavor that all individuals have means of livelihood, material resources of the community are distributed equally and there is no concentration of wealth in a few hands. The state is duty bound for social and cultural upliftment and to provide a dignified atmosphere to children and youth against exploitation. Free education from 6 to 14 years and special protection to children up to six years of age is also envisaged. The sweep of directive principles further includes provisions for just and humane conditions of work, living wage, and equal pay for equal work, health, and nutrition and also to ensure participation of workers in the management of industries. In *Shree Ram Chemicals*³, it was held by the Court that workers have the first right over the brick of the industry. State and individual are enjoined to protect the environment, forests, wild-life and flora and fauna. De-centralisation of the power is achieved by self-governance at the village level in the form of 3-tier Panchayat system. The cooperative federalism is also ensured.

² D.S. Nakara & Ors. v. Union of India, 1983 (1) SCC 305.

³ M.C. Mehta v. Union of India, 1987 (1) SCC 395.

India is a responsible member of international community. It has international obligations to the world constitutionally envisaged. Under Article 51 State is obligated to make an endeavor for international peace and security, honorable relations with other countries, respect international law and international disputes to be resolved by way of arbitration. Duties of individuals have been constitutionally defined to strive towards excellence, have a scientific temper so that individually and by collective activism, the nation progresses by leaps and bounds. We have to act today in order to ensure better tomorrow for our posterity.

Elected Government reflects the power of people; Constitution is of the people, by the people, and for the people. The Constitution intends national unity and integrity. It provides various freedoms including that of professing a religion of one's choice. Unity in diversity of cultures and religions is our Dharma in the form of Constitution. The Constitution of India envisages equitable progressive society to be achieved through socio-economic revolution. The Court has jealously preserved human rights and liberties. In *M C Mehta v. Union of India*⁴, It held that the right to life includes living in a healthy and clean environment. In *Kharak Singh v. State of Uttar Pradesh*⁵. it was held that life is not an animal existence. In *Mohini Jain v. State of Karnataka*⁶ as well as in *Unnikrishnan v.*

⁴ M.C. Mehta v. Union of India, 1987 (1) SCC 395.

⁵ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295.

⁶ Miss Mohini Jain v. State of Karnataka & Ors., (1992) 3 SCC 666.

*State of Andhra Pradesh*⁷, it was observed that a man without education was no better than an animal. Law is not the respecter of persons even if highly placed, it aims at humane treatment equally to all. In *Hussainara Khatoon*⁸, under-trial prisoners languishing in jail were given legal aid. The wholesome policy is to improve them in jail by reformative methods so that they come out as good human beings and join the mainstream. In *Charles Sobraj*⁹ the Court removed the bar fetter from under-trial prisoners. In *Maneka Gandhi*¹⁰, the Supreme Court of India evolved the concept of due process of law as part of Article 21. The process must be fair and reasonable while it deals with life and liberty. Narco analysis and polygraph test cannot be done without consent. Nobody can be compelled to incriminate himself as held in *Selvi v. State of Karnataka*¹¹. In *D.K. Basu v. State of West Bengal*¹², custodial torture of prisoners was frowned upon. The concept of the fair and speedy trial has been evolved which is a necessary concomitant of a fair democracy. In *Bandhua Mukti Morcha*¹³, the Court freed the bonded labour. In *State of Himachal Pradesh v. Umed Ram Sharma*¹⁴, it was held that access to roads in the hilly area is part of the right to life. As such State is duty bound to provide roads in such areas. In *Municipal Council, Ratlam v. Vardichan*¹⁵, the Court directed to channelize budgetary provisions for providing

⁷ Unnikrishnan P.J. & Ors. v. State of A.P. & Ors., (1993) 4 SCC 111.

⁸ Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, Patna, (1980) 1 SCC 108.

⁹ Charles Sobraj v. Supdt., Central Jail, (1978) 4 SCC.

¹⁰ Maneka Gandhi v. Union of India & Anr., (1978) 1 SCC 248.

¹¹ Smt. Selvi & Ors. v. State of Karnataka, (2010) 7 SCC 263.

¹² D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

¹³ Bandhua Mukti Morcha v. Union of India & Ors., (1984) 3 SCC 161.

¹⁴ State of H.P. v. Umed Ram Sharma, (1986) 2 SCC 68.

^{15d} Municipal Council, Ratlam v. Vardichand & Ors., (1980) 4 SCC 162.

drains and other civic amenities statutorily enjoined under the Municipal laws. The futility of law is injurious to rule of law. In *Laxmi Kant Pandey*¹⁶, in order to prevent trafficking of children under the guise of adoption to other countries, the Court laid down various guidelines in the absence of statutory provisions. In *Vishakha v. State of Rajasthan*¹⁷, sexual harassment at work place of women sought to be prevented and guidelines were issued to protect the dignity of women. The court also protected the right to obtain medical treatment necessary for saving a life to the injured without waiting for formalities in medico-legal cases. Good Samaritans have been provided support while extending help, and are not to be troubled and questioned. New and daring India is caring one also.

In *Shantisar Builders vs. Narayan Khimalal Totame*¹⁸, the right to life has been held by the Court to include the right to a decent shelter for the have-nots, night shelters called “Rain Basera” have been built and its conditions have been improved by various pronouncements of the Court. Surplus stored foodstuff was distributed to the needy, is one such expanded remit of judicial review.

The power of Constitution, which is of the people, is to be channelized for world peace. Let secular ideal triumph on false concepts of religion. Let us fight not a world war but competition of “skill development” for human progress and peace. However, there is still a long road to traverse in bringing the systems and

¹⁶ Laxmikant Pandey v. The Union of India, (1991) 4 SCC 33.

¹⁷ Vishaka v. State of Rajasthan, (1997) 6 SCC 241; 1997 SCC (Cri) 932.

¹⁸ Shantisar Builders vs. Narayan Khimalal Totame (1990) 1 SCC 520.

processes closer to perfection for meeting human needs and aspirations the world over. We are on the threshold of ever better future. Therefore, regardless setbacks along the way of the monumental tasks before us, we have to pick ourselves up and begin again for ensuring a life of meaning and dignity for everyone and making our planet a peaceful, prosperous, beautiful and boundary-less United world.

I thank the organizers for having organized this magnificent conference on an issue of immense importance.

Bolshoye Spashiba, THANK YOU. JAI HIND.

XX