

Lessons the trial court judiciary shall take from the lecture delivered by honorable justice N V Ramana the Chief Justice of India in 17th justice P D Desai memorial lecture series

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If a question is posed as to what the trial court contributes to the society the answer will be trial courts deliver justice. If it is asked how they deliver justice, the answer will be by deciding the cases before them as per the statutory law by which the case before the Court is governed. These answers pose further question as to what is justice which is required to be delivered by the trial courts and in fact all the courts established in the country. I will confine myself to the trial courts. Statutory law itself provides that the duty of the trial court judge is beyond deciding cases as per statistical laws. For example, the Code of Civil Procedure provides that nothing in this code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court. In view of this provision the trial court in its civil jurisdiction have the powers to go beyond the provisions of the Code of Civil Procedure to achieve the ends of justice and to prevent abuse of the process of the court. S. 20 of the Specific Relief Act speaks that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles-----.

The Indian Penal Code leaves the discretion with the trial court judges, in case of most of the offences, to give maximum prescribed or least punishment without mentioning the circumstances when the maximum prescribed punishment should be given and when least punishment shall be given. Not only this the Code of Criminal Procedure adopting the Gandhian principles of reformation provide for release of the offender on the bond of probation to provide him a chance to be a part of inclusive society which the India is. Here is the true test of judges to deliver justice by adopting the principles not included in books of legislation but evolved by the Jurists, thinkers and Courts and propounded by the Constitution.

Article 32 and article 226 of the Constitution makes the Supreme Court and the High Courts guardians of fundamental rights of citizens. Percolation of this constitutional duty did not stop there but the constitutional provisions make the trial court judiciary responsible for safeguarding fundamental rights of the citizens. It is the trial court who has to provide due process of law before taking away life or liberty of a person as contemplated under article 21 of the Constitution. It is the trial court wishes to provide which has to provide every citizen equality before law and equal protection of law. The constitutional and judicial duties cast upon the trial court are enormous. The trial courts are guided by principle propagated and guidelines issued by the Supreme Court and the High Courts from time to time by the judicial verdicts. The recent words The words of hon'ble Justice Ramana, the chief justice of India, in his lecture delivered on the occasion of 17th lecture of justice P D Desai memorial lecture series provide a much needed guidance to judicial fraternity to face the present and future challenges and to serve the humanity by adhering to the principle of rule of law.

I am reproducing the speech as reported by "India Legal" on its web page on 3rd July 2021 which is as under,

"It is a great pleasure for me to be delivering the 17th Justice P. D. Desai Memorial Lecture. Justice Desai's distinguished judicial career spanned over two decades, during which he established himself to be a fiercely independent judge and an exceptional administrator. He always believed that law and justice are essential agents for initiating social change. His desire to build a better tomorrow can be witnessed from his humanitarian actions. The creation of "Praleen Trust" and its noble actions symbolize his belief that the law must have a human face.

'Rule of Law' is the topic that I am going to speak on today. Irrespective of what era we are living in, who the rulers are, what the mode of governance is, this is one topic that is never going to lose its sheen and relevance. Because the story of 'Rule of Law' is nothing but the story of the civilization of humans.

When talking about the 'Rule of Law', it is necessary to first understand what the law is. Law, in its most general sense, is a tool of social control which is backed by the sovereign. However, is this definition complete in itself? I would think not. Such a definition of law makes it a double-edged sword. It can be used not only to render justice but it can also be used to justify oppression.

Renowned scholars have therefore argued that a law cannot really be classified as a "law" unless it imbibes within itself the ideals of justice and equity. An "unjust law" might not have the same moral legitimacy as a "just law", but it might still command the obedience of some sections of the society to the detriment of others.

What is clear is that both these thoughts highlight certain facets of what is meant by the term "law". I think that any law backed by a sovereign must be tempered by certain ideals or tenets of justice. Only a State that is governed by such law, can be said to have the "Rule of Law".

The legal history of pre-Independence India gives us a clear picture of this. The British colonial power enacted various laws to further their economic and political interests, at the cost of the colonized. The British used the law as a tool of political repression, enforcing it unequally on the parties, with a different set of rules for the British and for the Indians. It was an enterprise famous for "Rule by Law", rather than "Rule of Law" as it aimed at controlling the Indian subjects. Judicial remedies lost their significance, as they were administered keeping in view the best interests of the colonial power, rather than what was just or legal.

The historical trial of Raja Nand Kumar in 1775, a case famously recounted as the "Judicial Murder of Raja Nand Kumar" amply demonstrates this. Raja Nand Kumar had accused the then Governor-General Warren Hastings of receiving bribe. Shortly after this incident, charges of forgery were preferred against Raja Nand Kumar. On 15th June 1775, Raja Nand Kumar was found guilty of the charges and was awarded capital punishment by Chief Justice Impey, a close aide of Warren Hastings. The trial had many peculiarities: instead of being tried before the local Court by local men he was tried by a British judge and jury, who arguably did not have jurisdiction. Historians have later stated that Raja Nanda Kumar paid the price for daring to accuse Governor-General Warren Hastings.

Around 150 years later, there was a growing consciousness about the values of liberty, equality, justice, and fraternity. As part of a persistent and organized campaign for freedom, the Indian masses were increasingly made aware of how unjust and oppressive the discriminatory laws of the colonizers are. In 1922, during his famous trial, Mahatma Gandhi captured the imagination of the nation with the following words:

"Little do they realize that the Government established by law in British India is carried on for this exploitation of the masses...In ninety-nine cases out of hundred, justice has been denied to Indians as against Europeans in the courts of India."

He thus concluded, *"In my opinion, the administration of the law is thus prostituted, consciously or unconsciously, for the benefit of the exploiter."*

Our struggle for independence thus marked our journey towards the establishment of a state defined by the "Rule of Law". The move from a colonial past to the present required a shift from the colonial idea of laws imposed by foreign rulers for their benefit, to laws given by our people to govern themselves, laws which are not merely commands but are also embodied by a sense of justice. There was a need to give a guarantee for the laws to be framed with a human face for the benefit of the masses. A framework was needed to ensure this. The framework that forms the binding link between law and justice in this country. That is what "We the people" gave to ourselves in the form of the Constitution.

When the framers set out to draft the Constitution, the existing social conditions played a crucial role. The newborn country was faced with enormous challenges such as illiteracy, poverty, immense religious, ethnic, linguistic, and social diversity. The framers envisaged a document which not only took care of the prevailing conditions but would also continue and be relevant for all times to come. It is, therefore, conceived as a living

document whose contents evolve over the years, as the Courts deal with new situations and question and interpret the Constitution in the light of the same.

The Constitution embodies within itself the concept of Rule of Law and the same can be witnessed from our Preamble, the Fundamental Rights, the Directive Principles of State Policy, the Separation of Powers, etc. By situating the concept of Rule of Law at the confluence of three important values—human dignity, democracy, and justice, our founding fathers showed the path for the rest of the world too.

In its 1955 “Act of Athens”, the International Commission of Jurists explicitly stated the “State” has to be subject to the law. Subsequently in the year 1959, under the support of the same Commission, the International Congress of Jurists – consisting of 185 judges, practicing lawyers, and teachers of the law from 53 countries – convened in New Delhi and issued the “Declaration of Delhi”, which is one of the seminal documents on rule of law. After reaffirming the “Act of Athens” and particularly the need for a completely independent judiciary, the International Congress of Jurists declared that the rule of law “is a dynamic concept which must be employed to safeguard and advance *civil and political rights of individual in a free society.*”

Now, more than 70 years down the line, the entire world is facing an unprecedented crisis in the form of Covid-19. At this juncture, we necessarily have to pause and ask ourselves as to what extent we have used the Rule of Law to ensure protection to, and, the welfare of all of our people. I do not intend to provide an evaluation of the same. Both my office and my temperament prevent me from doing so. But I began to feel that this pandemic might yet be a mere curtain-raiser to much larger crises in the decades to come. Surely, we must at least begin the process of analyzing what we did right and where we went wrong.

Coming back to the topic, from within the perspective of legal positivism, many conceptions of Rule of Law have emerged. From Dicey to Lord Bingham, different formulations of principles informing the concept of rule of law have been made. It would be impossible to adequately address the rich tapestry woven by human intellect in this area in the course of a speech. However, I thought it would be relevant to emphasize 4 principles, given the current events across the globe.

The first principle is that ‘laws must be clear and accessible’. This is the fundamental point that when laws are expected to be obeyed, the people at least ought to know what the laws are. There cannot, therefore, be secretive laws, as laws are for society. Another implication of this principle is that they should be worded in simple, unambiguous language. In furtherance of the above principle, in India, we are constantly striving to make legislations and judgments accessible to the general public by translating them in various Indian languages.

The second principle relates to the idea of “equality before the law”. Laws are to be applied on an equal basis in a non-arbitrary fashion. This is, of course, an important fundamental right promised under the Indian Constitution.

An important aspect of “equality before the law” is having equal “access to justice”. I must emphasize that, in a democratic country like ours, access to justice forms the bedrock of the “Rule of Law”. However, this guarantee of equal justice will be rendered meaningless if the vulnerable sections are unable to enjoy their rights because of their poverty or illiteracy, or any other kind of weakness. In India, the Legal Aid Authority is estimated to serve more than 70% of the population who are entitled to free legal aid, making the Indian Legal Aid system one of the largest in the world.

Another aspect I want to highlight over here, which might be a bit of a tangent but is certainly very important, is the issue of ‘gender equality. Traditional roles are changing within the family, as is the structure of the family itself. Most nations have recognized the equality and dignity of women, either constitutionally or statutorily.

The legal empowerment of women not only enables them to advocate for their rights and needs in society, but it also increases their visibility in the legal reform process and allows their participation in it.

Bias and prejudice necessarily lead to injustice, particularly when it relates to minorities. Consequently, the application of the principles of Rule of Law in respect of vulnerable sections to necessarily be more inclusive of their social conditions that hinder their progress.

This leads me to the third principle, which is that members of society have the “right to participate in the creation and refinement of laws” that regulate their behaviors. We live in a democracy. The very essence of a democracy is that its citizenry has a role to play, whether directly or indirectly, in the laws that govern them. In India, it is done through elections, where the people get to exercise their universal adult franchise to elect the people who form part of the Parliament which enacts laws. Incidentally, we, the Indian people gave ourselves the Universal Adult Franchise from day one of the coming into existence of our Republic, unlike some of the ‘advanced democracies.

In the seventeen national general elections held so far, the people have changed the ruling party or combination of parties eight times, which accounts for nearly 50 percent of the number of general elections. In spite of large-scale inequalities, illiteracy, backwardness, poverty, and alleged ignorance, the people of independent India have proved themselves to be intelligent and up to the task. The masses have performed their duties reasonably well. Now, it is the turn of those who are manning the key organs of the State to ponder if they are living up to the Constitutional mandate.

It has always been well recognized that the mere right to change the ruler, once every few years, by itself need not be a guarantee against tyranny. The idea that people are the ultimate sovereign is also to be found in notions of human dignity and autonomy. A public discourse, that is both reasoned and reasonable, is to be seen as an inherent aspect of human dignity and hence essential to a properly functioning democracy. As Professor Julius Stone observed in his book “The Province of Law”, elections, day-to-day political discourses, criticisms, and voicing of protests are integral to the democratic process.

The idea of the judiciary, as a “guardian of the Constitution, brings me to the fourth and final principle- the presence of a “strong independent judiciary”.

The judiciary is the primary organ that is tasked with ensuring that the laws which are enacted are in line with the Constitution. This is one of the main functions of the judiciary, that of judicial review of laws. The **Supreme Court** has held this function to be a part of the basic structure of the Constitution, which means that the Parliament cannot curtail the same.

But the importance of the judiciary should not blind us to the fact that the responsibility of safeguarding constitutionalism, lies not just on the Courts. All the three organs of the State, i.e., the executive, legislature, and the judiciary, are equal repositories of Constitutional trust. The role of the judiciary and scope of judicial action is limited, as it only pertains to facts placed before it. This limitation calls for other organs to assume responsibilities of upholding Constitutional values and ensuring justice in the first place, with the judiciary acting as an important check.

For the judiciary to apply checks on governmental power and action, it has to have complete freedom. The judiciary cannot be controlled, directly or indirectly, by the legislature or the executive, or else the Rule of Law would become illusory. At the same time, judges should not be swayed by the emotional pitch of public opinion either, which is getting amplified through social media platforms. Judges have to be mindful of the fact that the noise thus amplified is not necessarily reflective of what is right and what the majority believes in. The new media tools that have the enormous amplifying ability are incapable of distinguishing between right and wrong, good and bad, and the real and fake. Therefore, media trials cannot be a guiding factor in deciding cases. It is therefore extremely vital to function independently and withstand all external aids and pressures. While there is a lot of discussion about the pressure from the executive, it is also imperative to start a discourse as to how social media trends can affect the institutions.

The above, however, should not be understood as meaning that judges and the judiciary need to completely disassociate from what is going on. Judges cannot stay in “ivory castles” and decide questions that pertain to social issues.

The oath we took, to perform our duties ‘without fear or favor, affection or ill-will’, applies equally to governmental and non-governmental entities. The ultimate responsibility of a judge is, after all, to uphold the Constitution and the laws. Reason, reasonableness, and protection of human dignity are the values that will serve us well.

I would now like to speak on the role of lawyers in upholding the “Rule of Law”. It demands expertise, experience, and commitment. Lawyers have an obligation to perform their duties with integrity and diligence, with full respect for the Court, opposing counsel, clients, victims, witnesses, and persons involved in proceedings. We need social virtue rather than economically self-interested behavior.

Historically, lawyers have a rich tradition of social activism demonstrated by the number of lawyers who participated in the Indian freedom struggle. In part, this civic virtue stems from their having had a public-minded clientele. We need now to rebuild and recreate a tradition of civic professionalism. We need a professional ideology about social responsibility. Here, I would urge both young and senior counsels to extend a helping hand to those in need of justice. Extending ease of access to justice is no less a social justice. Let economy, gender, class, or caste never be a hindrance in the path to secure justice.

Undoubtedly, reverence for the “Rule of Law” is our best hope for survival as a free society. In order to advance the “Rule of Law,” we primarily need to create a society where “Rule of Law” is respected and cherished. Only when the citizens believe that they have fair and equal access to justice, can we have sustainable, just, inclusive, and peaceful societies. Citizens can strengthen the “Rule of Law” by being knowledgeable about it and by applying it to their daily conduct and pushing for justice when needed.

I am taking the liberty to quote in Telugu, Maha Kavi Gurajada Appa Rao, a great poet and reformist of the 19th / 20th Century. He said, and I quote : “*Desamamte Matti Kadoi, DesamamteManushulO*” (unquote). Gurajada gave a universal definition to the concept of nation. He said “a nation is not merely a territory. A nation is essentially its people. Only when its people progress, the Nation progresses”.

You are the stewards of this nation and custodians of a very rich tradition. I hope that you contribute by way of giving back something to this society, to this great nation that has bestowed you with so many privileges. I must lastly state that the work of ensuring complete justice as aspired to, under the Constitution can never be said to be completed. The mandate of our Constitution is to work tirelessly to surpass our own expectations, to make India a country wherein rights are cherished, and which sets an example for other countries to follow.

There is no better way to end this speech on “Rule of Law” than reciting a poem by Kaviguru Rabindranath Tagore,

*“Where the mind is without fear and the head is held high
Where knowledge is free
Where the world has not been broken up into fragments
By narrow domestic walls
Where words come out from the depth of truth
Where tireless striving stretches its arms towards perfection
Where the clear stream of reason has not lost its way
Into the dreary desert sand of dead habit
Where the mind is led forward by thee
Into ever-widening thought and action
Into that heaven of freedom, my Father, let my country awake.”*

Thank you.”

These words of honorable Chief Justice of India will certainly boost a new energy and enlighten the trial court judiciary to serve the nation and its citizens by giving a human face to justice delivery.
