

DEMOCRACY AND JUDICIARY¹

*Justice Brijesh Kumar
Judge,
Supreme Court*

Democracy is one of the “organized system of governance” of a country and its people. It is considered to be one of the most civilized and suitable system in the modern times. Democratic theory is based on notion of human dignity and adult autonomy. To achieve that end people take it upon themselves, the responsibility to manage their own affairs and governance but direct rule is not possible by the masses. The people therefore delegate authority to their freely chosen representatives. In one of the American decisions² it was observed:

“No right is more precious in a free country than that of having a voice in the election of those who make the laws, under which we.....must live.”

Two things are clear one sharing in the governance through the elected representatives and the laws which are made under which the people choose to live or to abide by. The Rule of Law thus assumes great importance in the democratic system of governance. Equally important principles and concepts of democracy are. Liberty and Freedom. People die for it. As a matter of fact Rule of Law is a tool to achieve those objects, namely Human Dignity, Freedom and Liberty. R. G. Ingersoll says, “what light is to the eyes..... what air is to the lungs what love is to the heart, liberty is to the soul of man.”

The people of this country have given unto themselves a Constitution which is supreme and provides for parliamentary system of Government. Sovereignty lies with the people. The elected representatives constitute the Legislature expressing the will of the people through laws setting course of conduct of people. Faithful execution of the laws is the responsibility of the Executive which is accountable to the Legislature. This is how the administration

¹Text of the address delivered by Hon'ble Mr. Justice Brijesh Kumar, Judge, Supreme Court of India, on May 4, 2002, in the seminar organized by High Court Bar Association, Law Institute and Sapru Law Institute, at Allahabad.

²*Westperry V. Sanders* 376 US (1) 17, 1964 By Justice Hugo L. Black.

and the matters of administrative policy come within the purview of the Executive.

So far the people are concerned, our Constitution guarantees certain rights e.g. right to life and liberty may right to live with dignity, right of equality before the law and protection against any kind of arbitrariness at the hands of the Executive and the State. It also ensures right to education, right to choose an avocation and profession of one's choice, right to achieve excellence in any sphere of human activity. Right of Freedom of expression and right to know and transparency are also guaranteed to the people. In everyday life, protection is needed to safeguard these rights or to seek their enforcement through the Court of Law. This is how judiciary comes in, to play its most important role to enforce the Rule of Law.

Under the Constitution, Judiciary is to act as a watch-god and to keep a vigil on the Legislature as well as on the Executive so as to check any transgression in exercise of their power if it is going beyond the limits prescribed by the Constitution. The democratic system loathes exercise of legislative power in excess of legislative competence or in derogation of constitutional provisions, simultaneously people do not approve of exercise of executive power in excess of their limit. Every legislative and Executive action is to pass through the test of constitutionality if challenged in Court of Law. Conferment of rights on the people alone will have no meaning if no effective machinery is provided to enforce them and to check their violation. Garner once said: 'a society without legislative organ is conceivable but a civilized state without judicial organ is hardly conceivable'. Functioning of a democracy in a country is well gauged by the kind of the judiciary and the judicial system it has. Lord Bryce had aptly remarked: "there is no better test of the excellence of a Government than the efficiency of its judicial system". He further goes on to say: "if the law be dishonestly administered, the salt has lost its flavour. The lamp of justice goes out in darkness, how great is its darkness". It indicates the need of an independent and impartial judiciary otherwise the Government may function in an arbitrary manner, there being no organ to check or resist the violation of Rule of Law. It has been remarked once that the laws may be sound and just but unless they are applied in right and impartial manner, it loses its significance and justice will be a far cry. It also implies that Judges should be completely immuned from any kind of influence in discharge of their

