

THE INDIAN JUSTICE SYSTEM/CURRENT PROBLEMS AND CREATIVE PANACEAS

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The quintessence of justice, in the contemplation of the Constitution, is the liberation from socio-economic subjection and consists in the actualization of the goal of "full and free development of every individual", to use the words of Karl Marx in *Das Capital*. For the Indian Constitution the holistic conception of freedom is of supreme relevance. Indeed, The International Human Rights Conference in Teheran (1968) called by the General Assembly of the United Nations, one of the most significant of its kind to date, declared in a final proclamation:

"Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without enjoyment of economic, social and cultural rights, is impossible."

This integrality has been stressed again and again.

In the same strain Justice Gajendragadkar in *Workers of Gold Mines case* (AIR 1958 S.C. 923) summed up the response of an aware Court :

"Social and economic justice have been given a place of pride in our Constitution and one of the directive principles of State policy enshrined in Article 38 requires that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice-social, economic and political- shall inform all the institutions of national life. x x x The concept of social and economic justice is 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."

The judges have a role in transforming people's frustrations into a revolution of expectations of a humane to-morrow.

The dialectic of the rule of law arises from the obvious contradiction of two forces :

The first, the colonial factor, drags the country back; the second, the swaraj urge, spells the need for a revolution forward. From the juxtaposition of these two paradoxical presences follows the third compulsion that if Justice is an inalienable right of the millions of Indian people, with their chronic social squalor, ubiquitous poverty and massive illiteracy, its meaningful fulfilment is a pledge to

our Future and necessitates many radical **Changes** in the system of law and justice, viewed as a larger undertaking. Lord Denning, looking at the Indian Court, has said in passing :

“Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the need of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole-building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends.”

[In the Foreword to the Book “The Supreme Court of India, by RAJEEV DHAVAN- Page vii]

Capelletti regards forensic access, in itself, as the foremost human right :

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement- the most basic ‘human right’-of a system which purports to guarantee legal rights.”

Wigs and gowns and the cult of the robes are not substitute for a revolutionary theory of constitutional justice. Granville Austin, in his great work on the Constitution of India, asserts that the judiciary was considered by the founding fathers to be an instrument for engineering the constitutional revolution; but, having regard to the court pyramid’s actual performance a pessimistic verdict that the judges have partially failed, is difficult to avoid.

The butcher, the baker, the candle-stick maker, the bonded labourer, the pavement dweller, the damsel in distress, the sweated worker, the starving child, the dalit, the tribal and the socio-economic pariah shall have a vested interest in the Republic, only if the Constitution has a vested interest in their survival, their human worth and personhood.

The unconscious assumptions, the inarticulate politics and the *status quo* thinking, learnt as young law students and hardened in the elite school of life, are not easy to overcome. Judges must, therefore, consent to a course on *Justice under the Constitution*, washing away many interpretive distortions imported by precedents laid down by the pride of great judicial lions who, at best, were liberal,

