CONSTITUTION OF INDIA

Is it really an instrument for securing
the well being of "We, the People of India...."
i.e. you, me and the ethnic common masses
and their ancient Indian culture and values?
OR
Is it an instrument to impose exploitative
Western culture and values on
Indian masses?

A Call to rediscover and resurrect
the muffled soul of our
CONSTITUTION

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Respected Judges and Legal Luminaries,

You are humbly requested to carefully go through the enclosed essay which deals with the subject of interpretation of the preamble of the Constitution of India as also the basic spirit of the Constitution which should be the guiding force for functioning of our judiciary.

The essay is inconclusive in the sense it requires summing up. However, the basic idea has already been conveyed.

With respectful regards,

Yours sincerely,

R.K. JOSHI

P.S. This essay was written some time in the year 1993. Thereafter in a series titled "India Explained i.e. India Empowered" published by Indian Express, the former Chief Justice of India Hon'ble Shri R.C. Lahoti wrote an article which also touched upon, inter alia, the Preamble of the Constitution. With utmost respect to him, this article is appended in this booklet.. Further, another article of mine, titled "Justice-Laws-State" is also appended for a serious thought by the legal fraternity.

July, 2007

After achieving independence on the midnight of August 14th/15th in the year 1947, our country set out on formulation and adoption of a Constitution to govern all the aspects of our life and accordingly on 26th November, 1949 we adopted the present Constitution of India.

The preamble of the Constitution reads as under:-

"We, the people of India having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure for all its citizens;

JUSTICE; social, economic and political;

LIBERTY; of thought, expression, 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;....."

This preamble is the basis or the object of our Constitution from which flow the laws of the land and which provides a framework within which each Indian, whether he is the first citizen of India i.e. the President or a commoner, has to conduct himself.

More than 43 years have passed since adoption of the Constitution and if we look back in retrospect to examine whether the Constitution of India has succeeded in securing for all its citizens what it wanted to secure, we find that it has failed in achieving the noble objects. It has neither secured justice nor provided liberty or equality, nor

promoted fraternity. It is high time that the reasons for this failure are investigated not with the intention of blaming anyone but to initiate a process of rethinking to find out ways and means to rectify the shortcomings.

The first line of preamble says:

"We the people of India.....", which means that the Constitution appears to have originated out of collective will of the Indians. Though the Constitution says so, whether really it is so? Indian culture is thousands of years old and is one of the oldest civilisation of the earth. The period of a few centuries, prior to achieving independence in 1947, was a period of foreign invasion starting from the invasion by the Moghuls and culminating into the colonisation of India by the British. During this period of over three centuries, attempts were made to destroy the Indian culture, blunt the conscience of the Indians and to impose on them the Western culture.

As a result of this eclipse of the Indian culture and the national conscience, while adopting the Constitution of India, like a hypnotised person we looked to the West for formulation of our Constitution and the subsequent governance. In the process, either willingly or unwillingly, the Indian context was discarded not by the masses but by the rulers who were thrown up as a result of the faulty process of governance adopted by us under our Constitution and under various laws flowing from it.

Before proceeding further let us briefly examine the formation stage of our Constitution. It is claimed that our country is one of the largest democracy of the world. However, democracy was absent in the very formation of

the Constituent Assembly, which gave us the Constitution i.e. the mother of all our laws. The members of the Constituent Assembly were not elected persons but nominated persons, nominated by the British. This fact is acknowledged and is on record of the Constituent Assembly debates.

On Friday the 13th December, 1946, in the Constituent Assembly under the chairmanship of Dr. Rajendra Prasad, none else than Pandit Jawaharlal Nehru said this,

> "You all know that this Constituent Assembly is not what many of us wished it to be. It has come into being under particular conditions and the British Govt. has a hand in its birth. They have attached to it certain conditions. We accepted the State Paper, which may be called the foundation of this assembly, after serious deliberations and we shall endeavour to work within its limits."

Prior to the above observations of Pandit Nehru, the temporary Chairman of the Constituent Assembly, Dr. Sachchidanand Sinha, in his inaugural address on Monday 9th December, 1946 made the following observation;

> "We are meeting however in this Assembly today, under the scheme propounded by the British Cabinet Mission, which, though differing from the suggestions made on the subject by the Congress, the League, and other political organisations, had devised a scheme which, though not by all, had been accepted by many political parties, and also by large sections of the politically minded classes

> in the country, but also by those not belonging to any political party, as one well worth giving a trial, with a view to end the political deadlock, which had obtained for now many years past, and frustrated our aims and aspirations. I have no desire to go further into the merits of the British Cabinet Mission's Scheme as that might lead me to trespass on controversial ground, which I have no desire to traverse on the present occasion. I am aware that some parts of the scheme, propounded by the British Cabinet Mission have been the subject of acute controversies between some of the political parties amongst us, and I do not want, therefore, to rush in where even political angels might well fear to tread".

The above observations point to the fact that the present Indian Constitution was not formed by a representative body, nor with absolute freedom on the part of Members of the Constituent Assembly. As such it can not be claimed to be representative of collective will of the Indians.

Any way, history cannot be undone and we are now saddled with the present Constitution with all its drawbacks.

However, there is another moot point. Was the ***Swaraj*** demanded by the people of India to adopt a system to be imposed by the British and the UNO and its branches, or was it demanded to attain liberty of living our lives as per our own ancient Constitution, framed by our wise, sagacious, selfless and visionary sages, saints and scholars like Manu, Chanakya, Bhrigu, Ved Vyas etc.? Did we not

have laws governing all the spheres of our lives before the invasion by the aliens starting from Moghuls to the British? We did have a very well laid legal system based not on codified laws but on justice and Dharma. The need was only to revert to that system instead of borrowing a whole new legal system, unsuited to our way of life.

As though ours was a newly born nation, without any past belongings, the Constituent Assembly was called upon by the temporary Chairman Shri Sachchidanand Sinha to look to some of the Western Constitutions. He said this in his inaugural address;

> "As such, we have to look to countries other than Britain, to be able to form a correct estimate of the position of a Constituent Assembly. In Europe, the oldest Republic, that of Switzerland, has not had a Constituent Law, in the ordinary sense of that term, for it came into existence, on a much smaller scale than it now exists, due to historic causes and accidents, several centuries back. Nevertheless, the present constitutional system of Switzerland has several notable and instructive features, which have strongly been recommended by qualified authorities to Indian Constitution-makers, and I have no doubt that this great assembly will study carefully the Swiss constitution....."
>
> "The only other state in Europe, to the Constitution of which we could turn with some advantage, is that of France....."
>
> ".....and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of American Constitution than to those of any other".

The observations go to prove that we have heavily depended on Constitutions of other countries while framing our own.

The feeling of oneness amongst one and all Indians, which has prompted the first line of our preamble, namely, "We, the people of India..." is nowhere visible and though our country is a single sovereign entity, it has been divided into various groups, classes etc., and though we have been reciting the slogan "Unity in Diversity" like a parrot, there is only diversity/division and no unity.

Our ancient culture had a very well laid structure and policies to deal with all the aspects of human life such as the institution of family, the system of social justice, education, agriculture, industries, law and order, morality, division of various activities and duties amongst various constituents of the society etc. These policies were laid down very carefully and were the result of the wisdom of our ancient selfless and visionary sages and saints. The centre of these policies was the common man and the test of justification for any policy was whether it was for the good of the common man.

The British Government, during their rule in India, imposed a system of education which trained the people who underwent such an education, to discard the Indian culture as sign of backwardness and projected the Western philosophy and way of thinking as progressive, modern and scientific. At the time of handing over independence to India, these very people who were educated as per the Western thinking were at the helm and naturally they have tried to impose on India a Constitution

and thereby a way of life which was totally alien to our culture and our way of life. Naturally the consequences were like putting a fish out of water.

The present essay deals with some of the basic vital issues to bring out how, despite the best of intention, they have led to the ruination of the common man rather than achieving for him all that the Constitution desired to achieve.

The Constitution of India is supposed to have been adopted **by the people of India, for the people of India and is of the people of India.** This means that the Constitution and the Indian Laws emanating from the Constitution or within the frame-work of the Constitution have the basic and underlying intention of achieving the well being of the Indians and thereby of the entire nation. Like people of other countries, India has its own geographical, historical, cultural, ethnic, social and economic characteristics. These characteristics are quite distinct and unique and hence they need a treatment which is best suited to them. Applying the doctrines that prevail in other systems or countries can not suit our conditions and hence the framing of laws, interpretation of laws, formulating policies under the laws and judicial evaluation of the laws - all these have to be in the Indian context.

Under the Indian system of governance, the whole system is divided in three parts; namely the legislators, the executives and the judiciary. Each wing has to function within the frame-work of the Constitution. The legislators have to frame laws which are in conformity with the Constitution. Each member of the legislatures is the citizen of India first and a member of the legislature thereafter and

hence he is bound by article 51(A) of the Constitution which casts fundamental duties on all the citizens of India. Thus in his individual capacity also each legislator is bound by the fundamental duties which are aimed at achieving the well being of each and every Indian citizen and one such duty cast upon the citizens is the duty to protect the composite culture of India. The Indian culture and civilisation is one of the oldest in the world, one of the richest and the most respected culture. It has various aspects or pillars on which the Indian Society rests and it is a duty on each Indian to protect this culture.

In view of this, each legislator is bound to be a party to framing a law which has the well being of each single Indian as its basis. Any piece of legislation which violates this basic objective should not receive the consent of even a single legislator irrespective of which political party he belongs to. At the same time any legislation aimed at achieving the common good of Indian Citizens must receive the whole hearted support of the legislatures. Incidentally our present laws governing the election of people's representatives who form themselves into various legislatures suffers from various lacunas and the system of elections leaves much to be desired. How 'representative' are these representatives of the people is a big question mark. However let us leave aside this aspect for the present.

Once the laws are enacted by the legislatures and their implementation starts taking place, various problems or questions of law arise during the process of implementation, when judiciary is called upon to decide the issues. At this stage a very important question concerning interpretation of the law arises.

The most accepted principle for interpretation of law is that both the letter as well as the spirit has to be looked into while interpreting any provision. While looking at the letter i.e. the meaning of any particular phrase or word, more often than not, the Courts have been relying heavily on the English dictionary meaning. While interpreting a technical word or a phrase or provision relating to a particular science, the meaning which is attached to such words or phrase in the Western countries is taken into account. We find various judgements of the Courts with extensive quotations from judgements of courts abroad or dealing with meanings of words/phrases as understood in other countries.

Here the most pertinent question is why should we depend on the meaning assigned to words by the Western countries? Our Constitution is for the people of India, the laws enacted under the Constitution are for the people of India and these laws are to be applied to the people of India. Why then a reference to Western laws or dictionaries or sciences or the opinions while interpreting the laws for application in India? India is a very vast country and it is said that even the language changes every 12 miles in India and a particular word having a particular meaning or connotation in one part of our country has different meaning or connotation in some other part of the country. When the meanings in two different parts of our own country for the same word can be different or the intensity of the meaning can be different and such meaning is respected by the local population, how is it fair to impart meanings to words or phrases as those which prevail in countries thousands of

miles away having different culture, different social structure, different values and morals and different political system. The principle of ***swadeshi*** must apply to interpretation also, meaning thereby that we must adopt our local meaning or the meanings assigned to words in our own scriptures or ancient epics like *Manusmruti, Kautilya's Arth Shastra, Bhrigu-Samhita, Charak-Samhita* etc. In various functions we pay glowing tributes to the rich treasure of Indian culture, but it stops at that only. The great works of the ancient Indian culture were not written only for contemporary use. They had and they have relevance for all times, because these works were the creations of the ancient sages, saints and statesmen, economists, social reformers etc., who had vision capable of looking beyond thousands of years.

And hence, while giving interpretation of laws or even while giving reasonings behind arriving at a particular decision, the guiding force must be the Indian meanings, the Indian context, and the pillars of Indian culture.

We had a very good system of education framed by very wise, selfless and dedicated teachers who imparted the education in the *Gurukuls* and the sole aim of education was transforming a person into a person of un-impeachable character and morals and to train him in his own vocation, profession or field of activity. The inculcation of character and morals ensure a clean life for each individual, where the humblest of the man could live with honour. Materialistic advancement was never the primary goal of education in India. They could follow from the development of skill of an individual after education in his own field.

After the eclipse of more than three centuries' foreign rule during which the Indian conscience was brutally blunted, the Western system of education was thrust upon us which moulded our views and thinking in such a way that today's educated class (which has been educated under the Western system of education) tends to believe that the Western way of living is the best way, the Western thinking is the best way of thinking and thus this class tends to imitate the West blindly. The ancient culture of our country is termed as backward, orthodox, anti-development and mere idealism. Materialism has replaced character and moral and thus the definition of 'well-being' is dictated or is changed to 'materialistic well-being' and thus the same criteria or thinking is applied for interpretation of laws.

Once materialism replaces the nobler aspects like character, morals etc., selfishness creeps in and those who are in power in any of the three wings i.e. legislature, executive or judiciary are tempted to make laws or interpret them in a way which will benefit them or their circle. Thus, though the Constitution continues to have the noble objectives of justice, equality and fraternity still retained in writing, the practical application of these noble objectives has been thrown to winds. To restore these objectives, it is precisely now the duty of the judiciary to enforce or impart meanings to the words, phrases, or to give reasoning etc. which are best suited to the Indian conditions and which are drawn from Indian culture. Laws should not serve as escape roots, they should be an instrument to carry out the noble objectives of our Constitution. Legislators are more often than not prone to formulate defective laws with various loopholes left intentionally under the influence of various

pressure groups, or at the instance of corrupt bureaucracy serving the cause of vested interests. Taking advantage of such defects and loopholes, when the judiciary is confronted with any issues, the judiciary cannot take a plea that it has to act as per the letter of the law as appearing in the print. It has to look beyond and even between the written lines and interpret the law in the Indian context, never forgetting for a minute also that its performance has to result in the well-being of the common man.

There have been thousands of cases in various High Courts of the country and the Supreme Court involving the fundamental rights of citizens. These fundamental rights have been enshrined in the Constitution and as such they are part of the Constitution. Each judge, each legislator and the President as well as governors take an oath to protect the Constitution of India. The same Constitution has imposed fundamental duties also under Article 51(A) and hence by virtue of the same oath, the judiciary is bound to protect the Constitution dealing with this part of fundamental duties also. Many a times the judiciary takes a view that the legislature has the power to enact the law and the judiciary has to merely ensure its implementation as it stands. They have no power to alter the law or to go beyond the letter of the law.

However, a member of judiciary is an Indian citizen first and by virtue of his being an Indian citizen he is bound by the Fundamental Duties; one of which is to protect the rich heritage and culture of India, and thus even while performing his duties as a member of judiciary, he is duty bound to ensure whether the matter before him in which he is pronouncing a judgement conforms to his duty first as an Indian Citizen.

There have been many litigations involving violation of Fundamental Rights and the judiciary has stood by in all its strength for protecting these Fundamental Rights. It must be realised that the fundamental rights are just one part of the Constitution and the oath of a judicial officer is to protect the entire Constitution. The oath applies equally to all the provisions of the Constitution and hence equal importance or equal commitment is required to protect the other parts also, such as the Directive Principles of State Policy and the provisions relating to the Fundamental Duties. The intensity of commitment to uphold the Constitution should not be confined to protecting only the Fundamental Rights. The same intensity has to exist in protecting the ideals of the Constitution and all the provisions which deal with these ideals.

Under the chapter of 'Directive Principle of State Policy', the Constitution has given various directions to the State and for implementation of these Directive Principles, the States have enacted various laws. More often than not, the judiciary has taken a stand that they have no say as regards the law enacted under the Directive Principles. But this is a wrong stand. If the laws enacted under the Directive Principles violate the basic spirit of well-being of citizens, such laws must fall within the ambit of judicial review on which the judiciary must apply its mind and the test should be whether these laws achieve the basic objects of the Constitution. The Courts do not hesitate to declare any law or provision ultravires the Constitution if it infringes the Fundamental Rights. Similarly the Courts should not hesitate in striking down a law and declare it as ultravires if it runs contrary to the spirit and objectives of the Constitution.

For example, Article 48 directs the State to organize agriculture and animal husbandry . . ... and preserve and protect . . . . animals. Any law which is made by any State in furtherance of this Article, or the policies adopted with the aim of implementation of this Article must stand the test of the welfare of the people. Any law or policy which results in violation of the basic spirit and the objects of the Constitution, even if it is falling under or emanating from the Directive Principles of State Policy, must be subject to judicial review and open to challenge in the Courts of Law and while dealing with such a challenge the judiciary has the power to review and strike it down if a case is made out before it or even when *suo moto* it feels that any policy or piece of legislation is violative of the spirit of the Constitution.

Let us now consider some aspects or issues or some words which appear ordinary on the face of it, but which have a very significant bearing on the life of the entire nation, which affect the interest of all the citizens and the casual treatment of which has played havoc with our entire system as well as culture.

One of the fundamental rights guaranteed by our Constitution is the right to carry on one's own trade, business or profession (Article 19(1)(g). 'Trade', 'business' or 'profession' are common words and there has been hardly any deep understanding or debate as to what can constitute a trade, profession or business. An ordinary dictionary meaning will indicate that an activity which results in production of some article or service or which yields some commercial gain is business, trade or profession.

Does it mean that any activity which results in some sort of commercial gain can be termed as business and hence eligible for protection as fundamental right? Naturally this cannot be so, and that is why we say that smuggling is not a business, though it has got all the ingredients of a business. Similarly we say that drug trafficking or trafficking in women is not a business. Similarly we say that dealing in intoxicants is not a business. Our culture, our understanding of the meaning of well being, the social stigmas, our upbringing in a way which creates notion of morals and immorals in our mind, lead us to believe what is proper and what is improper and thus our notion of trade, business or profession is not merely guided by dictionary meanings of these words.

Similarly, 'killing' cannot be considered as a business, because our culture preaches us the ideals of Ahimsa and compassion to all living beings. These feelings are not restricted just to our fellow beings but to the entire living world including animals, birds, all sorts of creatures and even vegetation. The importance of all living beings to the ecological balance of nature apart, the economic significance of animals - particularly cattle in the Indian context apart; merely on the grounds of compassion, which is an integral part of our culture and by virtue of our being duty bound under the Constitution to protect and preserve our rich heritage and culture, we cannot recognise 'killing' as business or profession.

Under the Directive Principles of State Policy of our Constitution, a duty has been cast on the State to take steps to preserve and protect animals and prevent their slaughter.

Many States have made legislations dealing with the subject and there have been many litigations, wherein the litigants have claimed killing of animals as their fundamental right and Courts have upheld this fundamental right.

When killing cannot be acknowledged as a business or profession, the authorisation given by the State in the form of licences to carry on this activity should itself be considered as ultravires the Constitution.

The point to be made here is about the definition of 'business' and whether it can include 'killing'. As killing cannot be included in the definition of business because it violates the very basis of our culture, there cannot be a legal recognition of this activity and if this activity is considered as illegal, no authorisation of the State in the form of licence can be forthcoming and if it is recognised that it is an illegal activity, it cannot enjoy the protection as fundamental right and on the contrary, it should be unequivocally declared to be in violation of the Constitution.

India is an agricultural country and the activity of agriculture is the back-bone of its economy. In the Indian context, animals or cattle play a very important role in achieving the prosperity of agriculture and hence they deserve their rightful place and total protection from the economic angle. Though people can be made to understand importance of cattle, they also need legal support for their protection so that a few vested interest lobbies or a few politicians who have made politics as their business and who have power over the law making process, are not able to defeat the object and turn the Constitution to their advantage as it is being done today.

Later on in this essay the economic importance of preserving our cattle wealth is dealt with in detail. However, at this juncture the purpose is to analyse the meaning of the activity of 'killing' from the legal point of view, keeping in mind the Indian context and the Indian culture. The object is to analyse the process of interpretation, because the basic theme of this interpretation applies to various other words or phrases or concepts which have a very important bearing for our nation. It need not be said that correct definition of various words and phrases can affect our entire national life and cure us from so many ills and remove impediments from the path of progress.

Another common word or a simple word is 'farming'. As per the Indian agricultural science, 'farming' means tilling of soil and growing food grains, vegetables, fruits etc., for sustenance of all the living beings including humans. The basis of farming is creation and not destruction. However, through mischievous design, we have tampered with the definition of farming and included in it various other activities, at the basis of which there is killing and destruction. For example we have renamed 'fishing' as 'fish farming' to give it an appearance of an allied activity of agriculture. We have included hatcheries by giving them the name of 'poultry farming', again the basis of which is killing. We have included the activity of 'rabbit rearing' by describing it as 'rabbit farming' and also the rearing of pigs as 'pig farming'. Who gave this liberty to the legislatures and the Policy makers of our country to associate or equate this pernicious activity of killing with the noble activity of farming? With all those allied activities the act of killing is attached. You have to

kill the fish to eat it, you have to kill the broiler to eat it, you have to kill the rabbit to eat it and you have to kill the pig to eat it. When killing is contrary to our culture, when killing is contrary to the fundamental duties which want us to show compassion to all living beings, when killing involves destruction of ecological balance, when killing involves destruction of environment, when killing involves pollution of air and water, when killing involves large consumption of scarce water resources (in abattoirs) and when killing in general performs the task of destruction of our entire economy and thereby affecting our economic independence and sovereignty of the nation, how can killing enjoy the protection under the umbrella of legal recognition as also protection as fundamental right?

While on the subject of agriculture and farming, let us make a reference to Article 48 of the Directive Principles of State Policy, which says that the State shall endeavour to organise agriculture on scientific lines. Now the crux of the matter is, what is science? Should we look to the English dictionaries for the meaning of these words? Should we borrow the Western notion about what science is? Or should we refer to our age old definition of science, which has stood the test of time and which has the good of each and every living being at its basis, or do we accept the definition of science as it is understood in the Western countries, even if such an understanding leads to destruction of our culture?

The Western concept of science is one;

which teaches us or leads us to the destruction of natural resources, living world and which teaches exploitation of mankind;

which invents things that result in a very fast depletion of natural wealth;

which invents and develops means of comforts which only the rich can afford;

which invents ways and means that result in development of vices in human beings instead of promoting virtues;

which invents things that inculcate the spirit of violence in human beings;

which invents things that lead to the destruction of nutritious quality of food that can protect the health of people;

which creates means of mass destruction and gives control of such means to a few individuals.

Certainly this is not the Indian concept or meaning of science and hence when a duty is cast upon State to organise agriculture on scientific lines, the State has to understand the real meaning of science in Indian context, the purpose of which is common good of all, the prosperity of all and promotion of virtues and promotion of fraternity.

When a child is born, his body is joined with the body of his mother with an umbilical cord. This bond between a mother and a child always governs their relationship and binds them together. Similarly the preamble of the Constitution (which is like a mother for all the laws) must serve as the umbilical cord for various laws enacted by the State, which can be described as the children of the Constitution, because they emanate from the Constitution.

Thus, while enacting any law whether at the Central level or at the State level, the basic thing must be the faithfulness to the preamble of the Constitution and the overall test to examine the justifiability of any enactment must be whether it runs concurrent with the spirit of the Constitution and more so its preamble.

If for any reason, such an enactment fails to secure justice or fails to provide opportunity or equality or fails to promote fraternity, it should be considered as violating the Constitution. Once a law is enacted and it comes before the judiciary as a subject matter of litigation, the judiciary also has to keep the preamble of the Constitution uppermost in its mind and accordingly apply its mind whether the law conforms to the basic spirit of Constitution and accordingly pronounce its judgement.

Today, we find that the expanded or contorted meaning of the word `farming' includes various activities which result in killing of living beings such as fish, rabbit, pigs, birds etc. As per our ancient Aryan culture, killing was always considered a pernicious activity and looked upon with contempt. A person indulging in killing was always an object of hatred in the Society. Only the kings or people belonging to the Kshatriya Class of the Society used to indulge in hunting and that was also restricted to only wild animals who were a source of danger to the cattle population of the kingdom or the human beings. Sometimes the kings set out on hunting which was more like an exercise to keep alive the spirit of bravery and keep their qualities as warriors tuned up. The purpose was never to kill animals or other living beings for food or for commercial exploitation.

Today, we find that killing has been accorded recognition as a permissible commercial activity and is accorded protection as well as encouragement by the State. This is clearly in violation of the Constitutional mandate, which has cast a duty on us to preserve and protect our rich heritage and culture.

Even the word 'culture' has been downgraded in its meaning and its meaning has been restricted only to fine arts, such as dance, music, painting etc. or to hold festivals of India in foreign countries at the cost of crores of rupees of the common man. Today hardly anyone is able to realise what the word 'culture' encompasses in its meaning.

There are umpteen examples where the gravity of the meanings of words as we understood them ages ago has been diluted and now only the superficial meaning of the words as appearing in dictionaries has remained. This has provided ample opportunity for mischief to the legislators and the leaders of our country to play with these words in a way which will commercially benefit a selected few and cause miseries to the masses.

Thus, by blunting the meaning of some words and by expanding the meaning of some others, the State has become a party to encouragement of activities which are harmful for the masses, which are against our ancient culture and which are aimed at commercial benefit of a few vested interests including Government itself. By giving or acknowledging the pernicious activities the form of trade or business, they have been brought within the protective umbrella of fundamental rights. However, it must be clearly

understood that the part dealing with fundamental rights is one of the branches of our Constitution and the Constitution itself is like a tree with several other branches like fundamental duties under article 51A as well as Directive Principles of State Policy. The root of this tree is the preamble and hence it is the most important part. The progress in genetic science may have enabled our modern day scientists to change the character of the trees and fruits of the trees, but not its root. Similar position exists as regards treatment of our Constitution. Various branches of our Constitution are being subjected to a sort of cross-breeding between the Indian thought and the Western concept of various issues. This is evident from our efforts to look at the meaning of the words, phrases, issues and concepts as they are understood in the Western countries or Western science. For sustenance, the branches of a tree must draw from its root and not from the external source. Today we are doing precisely the reverse. Instead of taking steps which will strengthen the root and thereby make the entire tree of our national life healthy, we have willingly ignored the root and have concentrated on branches, making all out efforts to convert them into lucrative areas for commercial exploitation by a few vested interests.

There are three basic necessities for sustenance of life. These are food, clothing and shelter.

What is food? This is a very important question, as the meaning which we assign to the word 'food' governs the entire spectrum of our existence. As per our ancient culture, food is a substance which provides healthy nutrition both to the body AND the soul of a person. And for this

reason, food which has *satwik* characteristics was only recognised as food. There was a distinction between 'eatable' and 'non eatable' or what was termed as *Bhakshya* and *Abhakshya*. Though both the things could be eaten, our culture permitted only eating of *Bhakshya* food and forbade eating of *Abhakshya* food. We had a very elaborate food science dealing with the characteristics of all items of food and prescribing what should be eaten by whom and when, and what should not be eaten. As per our ancient culture, salvation of our soul i.e. *Moksha* was the ultimate object of life and the entire structure of our life was defined to attain this object and for attaining salvation the purity of body as well as mind was necessary and accordingly eating of *Satwik* food was prescribed.

In contrast with this, today we find that food includes anything and everything on which we can lay our hands and which is acceptable to the digestive system of our body. The *satwik* characteristic has been replaced by the notions of calorie content, protein content, cholesterol content and taste. Thus if a food item is tasty and satisfies the greed of our tongue, even though it might be injurious to our health otherwise, we accept and consume that food item. When we have our own science of food and science of health, namely *Ayurved*, which has laid down sound principles connecting food with health and which have stood the test of time, where is the need to look to the West to find out or decide what food we should eat? Our food science was in conformity with nature, our climatic conditions, our body structure, our religions and way of living and our culture. Today, we are going against all these, in our madness to imitate the West. A hue and cry

is being raised all over the world against the modern culture of 'fast-food', which has proved to be seriously injurious to health. However, possibly we will listen to this warning only after the damage has been done.

Reverting to the definition of food as we understand it today; meat, fish, eggs, poultry meat, pork etc. are now described as food items and thus the activities connected with their production have been elevated to a honourable level to equate them with other activities of producing food such as agriculture or growing of vegetables and fruits. Thus by playing with the definition of food, the pernicious activity of killing involved in production of these other items has been described as 'industry' or 'farming' and have been included in the definition of 'food processing industry'. Can there be a greater fraud than this by playing with the meaning of words contrary to our culture? This fraud is further aggravated by indulging in aggressive publicity and propaganda to make the people go for these items as food.

A list of such mischiefs or playing with the words can be endless and if we ponder over the damage done by this cult of back door demolition of the basic ideals of our Constitution, we will be horrified.

Let us now come to the specific examples of legislative mischiefs.

Article 48 of the Constitution reads as under:

Organisation of agriculture and animal husbandry

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and

shall, in particular, take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle." The Article has made no exception and thus the duty cast upon the State is mandatory as regards preserving and improving the breeds and prohibiting slaughter of the animals mentioned in the article. The article nowhere permits slaughter or making laws to regulate slaughter. However, almost all the States have enacted animal preservation Acts under this article of the Constitution and if we read through these enactments we find that they deal only with regulation of slaughter, whereas there are absolutely no provisions regarding preservation or improving the breeds of cattle.

It appears that after the 1958 Judgement of Supreme Court in Mohd. Hanif Qureshi V/s. State of Bihar (AIR 1958, S.C. 731) which took the view that useless animals can be slaughtered, the activity of slaughter has increased on a very large scale. Though the Supreme Court may be right in its opinion that 'useless' cattle can be slaughtered, the pertinent question is when and how an animal can be termed 'useless'. Usefulness is a subjective term and the perception of usefulness may differ from person to person. In tune with our modern way of thinking which is totally influenced by Western thinking, we evaluate the utility of everything in economic terms and thus, though there are no specific guidelines about determining the utility of an animal, the broad parameters consist of (1) milk yielding capacity, (2) the breeding capacity and (3) capacity to work as draught animal.

Even the above three criterias are subjective and they may differ depending on the climatic conditions, the geographical conditions, the area to which the animals belong, the breed of the animal etc. Those who have some knowledge of the Indian Science of rearing cattle, would know that India had three types of cows; namely, (1) those primarily yielding milk, (2) those primarily yielding good bulls and bullocks and (3) dual purpose breed which yielded both milk as well as bulls and bullocks.

Thus, if the criteria of producing bulls and bullocks is applied to the breed which primarily specialised in yielding milk or *vice versa,* both the categories will fail on the economic utility criteria as understood today. Further, the authority which has the power to decide about the utility of an animal is not fully equipped with the knowledge of the science of animal rearing, types of cattle etc. Mostly such authority are the veterinary doctors, educated with the Western medical science applicable to animals and they are hardly aware of the relevance of animals in the Indian context.

Many a times the utility of an animal is viewed with the context of cost-benefit ratio. The cost of maintaining an animal is compared with the yield of its milk or its capacity to work as draught animal. However, the milk yielding capacity of an animal depends on its feeding as well as its breed. The price and availability of fodder, cattle feed etc. which are subject to commercial exploitation by the trading community and the vested interests, may be influenced in such a way that the poor farmer may not be able to afford proper upkeep of the animal and thus when the milk yielding is adversely affected, the animal becomes liable to be termed as uneconomical and hence 'fit for slaughter'.

Besides, the three recognised utilities of an animal, the most important service of yielding dung is totally ignored and this aspect or utility of an animal will be discussed in detail while dealing with the agricultural policies and the policy regarding fertiliser.

For the present let us concentrate on another aspect of this issue. Indian culture has taught us the quality of gratefulness to those who do good to us and more so to those who do selfless good to others. Animals give their entire life in the service of mankind. Throughout the life they toil for mankind by yielding milk which is so essential to our health, they toil as draught animals in agricultural farms and in the transport sector. In return they never demand anything from us and survive on whatever food we offer to them. They never resist in any form like the human beings resisting or agitating in their respective fields. They yield dung and urine to us like a bonus on a continuous basis till their last breath. Animals are the supreme symbol of selfless service to the mankind and our culture had taught us to be grateful to these animals and the expression of this gratefulness was in the form of taking the best possible care of these animals, preserve them and the idea of killing them had never occurred in our minds. With the advent of commercialisation, with the change in our thinking process based on pure economic consideration, we have thrown to winds the ideals of gratefulness and do not feel any hesitation in killing the animals, who according to our misplaced notion become economically unviable.

The same notion of economic viability has spread the rot so much in our minds that we have started applying the same considerations to human relationship also. The parents who give their entire life in bringing up their children and sacrifice so much for the children, become redundant and useless when they grow old and particularly when they stop earning. It will not be a wonder if after 40 or 50 years we think in terms of killing the parents once they become economically unviable. In the Western countries people have already started sending their old or crippled parents to the dormitories for the aged.

The cause behind this social evil is our abandoning the Aryan culture, though the Constitution has imposed a duty on us to protect and preserve our culture. The point to be emphasized is that taking a small liberty or allowing the commercial interest to have its way, can snowball in such a horrible proportion which may threaten the civilised existence of the Society. If the 1958 Judgement of the Supreme Court is viewed from this context, the mistaken understanding will be evident *.

Our Constitution has laid down detailed provisions regarding the procedure for appointment of Judges for various Courts. We have had many scholar and eminent Judges in our Judiciary who have left behind their stamp on the judicial process. Our Law colleges train the Judges regarding the laws of our land. However, they must learn one basic thing from our culture. In our culture, ***Dharmaraj*** is described as the Lord of Justice, who administers justice as per *dharma*.

* This judgement is virtually overturned by a seven judges Constitution Bench Judgement in State of Gujarat V/s. Mirzapur Moti Kureshi Kassab Jamat & Ors. (2005 (8) SCC 534).

Our Judges occupy the seat meant for ***Dharmaraj*** and they are bound by our culture to be faithful to their seat and perform their duties in such a way that they not only uphold the law of the land, but also and more importantly, the *Dharma. Dharma* here does not mean religion, it means justice, properly defined and having meaning as per our culture and its various aspects. They have to uphold the noble virtues like selflessness and gratefulness.

An animal which has toiled throughout its life to grow food grains for the mankind, an animal which has enriched the soil through its dung and urine throughout its life, an animal which has yielded pure and wholesome milk to sustain the health of the mankind, an animal which has toiled throughout its life to carry the burden of others; is worthy of worship, is worthy of our utmost gratitude prompting us to preserve it till its natural death. To kill it according to our misplaced notion of economic viability is the worst kind of ungratefulness, a blot on our civilisation and contrary to our culture. An animal is immensely useful even after its death. It yields its hides and skins which are so useful to the mankind and thus the service of an animal are worthy of being placed on a much higher pedestal, even when compared with the services of a human being which stop at his death.

The duty of the judiciary is to re-establish this ethos of our culture and to take up a proper review of various provisions of the Constitution itself as well as various other laws and policies. The authority for such a review is not wanting. It is inherent in our Constitution and it is inherent in our culture which is sought to be protected by the Constitution.

Reverting to the laws relating to animal preservation, we find that some of the definitions in the Animal Preservation Acts also suffer from lacunas. In particular, the definition of cow has been a subject matter of much controversy. At various places cow has been mentioned only in singular and thus the other animals belonging to the cow family are slaughtered without any hindrance. The term 'cow' is used in plural as 'cows' in Article 48 and thus properly it should mean the entire cow family i.e. cow itself, its calves whether male or female, bulls and bullocks. Cow has been a very important and pious animal as per our Aryan culture, and if at all the meaning of 'cow' is to be defined we must look to the meaning as understood in our culture and our *Shastras* and literature.

The reference to cow in our scriptures, literature or even in the common usage all over the country has always meant that cows include the entire cow family or a *Govansh* as it is called in many Indian languages. One of the basic characteristics or the description of *Kshatriyas* in our country was *Go Brahmin Pratipal* which means that the *Kshatriyas* were supposed to be the protectors of cows and Brahmins. Does *Go* mean only the female cow in this phrase? No, it means the entire cow family. The entire Hindu race acknowledges cow as mother and even masses of illiterate persons living in the remotest corner of the country have no doubt in referring to a cow as *Gomata* in reverence. In such a background, how can we today think of restricting the meaning of cow only to just cow and exclude its progeny?

Since the Constitution of India is adopted for the people of India, by the people of India and it is for the welfare of the people of India, how can we ignore the meaning of words as understood by the large masses of India and impart to them restricted meaning just to suit the vested interest of a few persons or politicians, or blind ourselves and our wisdom under the influence of Western way of thinking? How can the citizens of India perform their fundamental duty of preserving and protecting the composite culture of India, if the laws as enacted by the legislatures leave such loopholes and which knowingly or unknowingly are supported by the judiciary in the form of mistaken or limited interpretation?

Let us now consider in brief the damage done by the mistaken definition of the meaning of cow so as to exclude the cow family. By such exclusion, bulls and bullocks have been included in the 'Scheduled list' of animals which can be slaughtered subject to obtaining a 'fit-for-slaughter' certificate from the Competent Authority. In the absence of any criteria about age or about the clear definition of the utility/capability of an animal, bulls and bullocks of any age are being slaughtered.

The Tractor lobby has vested interest behind such slaughter. With depletion of bullocks, the farmers are compelled to use tractors in the farms. The heavy cost of tractor, the cost of its maintenance and the cost of its operation, i.e. diesel, add up to substantial costs in the farm sector, pushing up prices of foodgrains and make them beyond the reach of common man. The slaughter of bulls creates scarcity of bulls, thereby affecting the reproduction of

cows. As per recent statistics, our bull population is enough only for ensuring natural breeding for 30% of our cows. For the remaining cows, we have to depend on artificial insemination with imported semen doses which results in cross-breeding. Cross-breeding has host of disadvantages which need not be discussed here, except saying that they are not for common good. The Western Powers have been promoting this policy so that they can capture the largest market in the world for their dairy industry.

Thus a small mistake or a very small looking mischief contains in it the roots of enormous disaster for our future. This and such other effects must dominate the vision of legislators as well as the judiciary and that will be the real upholding of the Constitution or preserving and protecting our rich and composite culture.

As the Constitution is a source for our entire legal and judicial system, similarly it is the source of policy framing for the conduct of our Nation. The chapter of Directive Principles of State Policy gives guidelines for framing of various policies to achieve the objects of the Constitution i.e. justice, liberty, equality, fraternity etc. In view of this, the policies that the executive wing frames, have to be in consonance with the Indian culture and heritage, because preservation of Indian culture is the upper most object and one of the fundamental duties cast upon each and every citizen of this country. Here again while framing policies the planners or the framers of the policies have to look to our own science in each and every field, whether it is agriculture, industry, food science, health, education or any other sphere of life.

Let us take for example the agricultural policy adopted by our country.

We find that ever since the inception of the five year planning, we have leaned totally towards the Western Science of agriculture. The Indian geographical conditions, climatic conditions, type of soil, food habits of people and their philosophy behind the concept of agriculture is totally different from the Western concept. As per our ancient culture, the activity of agriculture is a *yagna* performed by the farmer for providing food to the entire mankind and also to other living creatures, like a father who makes all efforts selflessly, to maintain his children. The Indian agricultural science never considered agriculture as a commercial activity or as an industry with the narrow aim of increasing food production at any cost for the benefit of farmer only. In our Five Year Plans, while formulating the policies for the agriculture on 'modern and scientific' lines, we have considered the Western science only to be modern and scientific. The mistaken understanding of these words i.e. 'modern' and 'scientific' have created a havoc on the agricultural front because by virtue of our Westernised education, we consider 'Western' as synonym for modern and scientific. A prosperous agriculture means production of abundant, nutritious, tasty and yet sufficiently low priced foodgrains affordable by the masses. We have thrown to the winds this understanding of prosperous agriculture and now our concept of prosperous agriculture means maximum mechanisation of farm sector, use of costly yet unnecessary inputs such as chemical fertilisers, pesticides etc., a very expensive centrally dominated

marketing set up wherein a long row of middle men and vested interests push up the prices of essential foodgrains and ultimately burden the poor common man with all these costs so that he is deprived of even a single square meal a day. This is a factual position today and needs no proof.

Though each and every aspect of our present agricultural policy is open to severe criticism and can be established to be a total failure; for the time being let us only consider the policy of using chemical fertilisers.

Until 1951 India had not heard of chemical fertilisers. India had a very vast reservoir of cattle wealth which was nourished over the centuries according to the age old science of cattle rearing and with the help of this cattle wealth India had a very prosperous agriculture. With the policy of slaughter of cattle, and in particular the slaughter of cow family during the British regime, the cattle wealth of our country started dwindling, and with this the availability of dung as well as availability of the labour of bullocks in farms started diminishing. This policy of animal slaughter was a very well thought out plan by the British to destroy the back-bone of our country i.e. agriculture. On attaining independence we should have reversed the situation. However, the Indian *avtars* of the British rulers continued this policy with greater vengeance and indulged in slaughter of cattle on a much larger scale. Dictated by international agencies like FAO etc. which are controlled by the Western countries and which have the objective of safeguarding the interest of Western Countries, we started policy formation based on Western models and resorted to the use of chemical fertilisers in a big way.

How disastrous has been the impact of use of chemical fertiliser on the Indian agriculture is a very vast subject. However, it may be mentioned here that in 1960-61 we used only 2 kg. of chemical fertilisers per acre which is now increased to over 60 kg. per acre. At the same time the yield from agriculture has not increased in the same proportion and as observed by our Prime Minister Shri P.V. Narasimha Rao at the Indian Science Congress recently, the chemical fertilisers have started giving diminishing returns. Not only this, over a period of last three decades of the use of chemical fertiliser, our soil has lost its fertility. The use of pesticides has become compulsory because of use of chemical fertilisers, which has polluted our soil, our foodgrains, our sub-soil water reservoirs and all the farm products, affecting the health of the common man. The use of chemical fertiliser has hardened our soil, necessitating the use of tractors and thus imposed a very heavy burden on the agricultural sector.

Further, as the tractors dig deep into the soil, the moisture from the upper layer of our soil has dried up and thus we need more water now for irrigation compared to the earlier days when the ploughing was done with the help of wooden plough and bullocks.

Can a poor country like India, which sustains mainly on the activity of agriculture afford all these dis-advantages just to pamper an illusion that our agriculture is being organised on modern and scientific methods?

It is here that the judiciary has to give the correct meaning to the words 'modern' and 'scientific'. The meanings have to be in consonance with Indian culture and

Indian science and not with the Western culture and Western Science.

Thus the wrong notion about what is modern and what is scientific has severely damaged our agriculture on one hand, and more seriously than this, it has damaged our social structure. Under the Indian dispensation a farmer used to enjoy the revered status of a father feeding his entire family. Now under the present dispensation, he has been thrown away from this high pedestal. With the entry of chemical fertilisers, mechanisation, pesticides, modern marketing etc. the aim of agriculture itself has changed which has made the farmer dependent on government machinery for obtaining chemical fertilisers, on banks for obtaining finance for tractors, fertilisers, pesticide, seeds etc., on transportation sector for obtaining fertilisers and for despatching his produce, on the Electricity Boards for obtaining power for his pumps and on oil companies for obtaining diesel to run his tractors. The dependence on these extraneous agencies has demolished the moral of the farmers because of the harassment involved at each and every step, and as a result, over a period of time, the activity of agriculture has become absolutely unremunerative for the small farmer. Taking advantage of this, the large farmers have purchased the small farms of one or two acres belonging to small farmers and thus the rich have become richer. The small farmers after selling their farms have flocked to the cities looking for jobs in giant industries where they are exploited mercilessly. Like human junk or scrap they are dumped in ever growing slums around large cities living a life worse than even animals.

Is this situation in conformity with the preamble of our Constitution, which aims at providing social and economic justice to all?

Is this situation in conformity with the preamble of our Constitutions which aims at providing equality of opportunity for all?

Is this situation in conformity with the preamble of our Constitution which seeks to achieve fraternity amongst all the citizens of India?

A concerned look at the present situation around us will amply prove that we have totally failed in upholding our Constitution. There is nothing wrong with the basic instrument i.e. our Constitution, the malady is in its interpretation and understanding by the people who are most responsible for upholding the Constitution and who in fact take an oath to protect and uphold the Constitution. The judiciary is one of such wing of our system which takes an oath to uphold and protect the Constitution. The whole situation needs a corrective action. As a result of the moral decay in our public life, it will be too much to expect that the corrective action will start with our leaders or our legislators. The beginning has to be done by the judiciary. Whenever a legal question or a policy matter comes up for judicial interpretation or review, the judiciary must come forward with courage to go beyond the letter of the law and reach out for the spirit of the Constitution.

Another area where a grave mischief and damage has been done by framing wrong policies under the Western influence is the area of public health.

Article 47 of the Directive Principles of State Policy has imposed a duty on the State to raise the level of nutrition and the standard of living and to improve public health. For the meaning of the words 'nutrition', 'standard of living', 'public health' we have turned to the West. The concepts of calories, protein, cholesterol have become the basis of our idea of nutrition. The economic prosperity of a person has become our idea of standard of living, and construction of large, exorbitantly costly hospitals and setting up of multi crore pharmaceutical companies producing medicines which are beyond the reach of the common man, have become our idea of public health. The misconception in all these three areas have lead to failure.

As regards the correct meaning of nutrition, we should have looked to our own science of food which is very well developed and which is capable of giving a disease free healthy vibrant life to each individual. Our food science is not based on the calorie content or the protein content or the cholesterol content of items of food. Depending on the characteristic of each item of food or spices or fruit or vegetable, our food science had divided these into three categories i.e. *Satwik, Rajas* and *Tamasi* and then prescribed which type of food should be eaten by which type of individual so that the nature of food and the nature of such individual become complimentary and not contradictory. A food which is contradictory to the nature of a specific individual can do nothing but harm and cause disease to such individual. The same food item might have different effect on different individuals and so it might be permitted for some while prohibited for the others.

The emphasis was on *Satvik* food which nourishes not only the body but the mind and the soul of an individual. It is not that the Indian food science is not aware of the nutritional elements such as calcium content, carbohydrate, potassium, minerals etc. In fact it had a very systematic and scientific knowledge of all these aspects. The basic thing was that it was not dictated by the content of these elements in the food items while selecting the food item for consumption.

The culture of fast food is catching up like wild fire especially with our younger generation. Taste has been the sole criteria of such fast food and the hazards which it would cause to the health are totally ignored. The West is now awakening to these hazards and there is growing resistance to this fast food culture in West also. This proves the folly of their food science and should be an eye opener for us also.

Dictated by the concepts of protein, calories and the like, our government is promoting in a big way production and consumption of eggs, meat, fish, pork and beef. Not from the religious angle, but from the pure scientific angle of health, the consumption of all these things are injurious to health and thus in promotion of all these items, the State is violating the Constitution which has imposed on it a duty to safeguard public health and raise the level of nutrition. Under the influence or pressure of vested interest groups, the government is highlighting the protein and calorie contents of these items and deliberately suppressing the knowledge about the protein and calorie contents of our own foodgrains, vegetables, spices, milk, pure *ghee* etc. Under the same pressure the government has converted

cows and buffaloes into dairy animals, shortened their life span, indulged in cross-breeding of animals and such other destructive policies which will eventually destroy our entire cattle wealth and throw open the entire Indian market to the foreign dairies.

Coming to the issue of public health, we observe that instead of pursuing policies of preventing diseases, which was the basic principle of the Indian medical science, the Government seems to be concentrating on the cure aspect and here also it has miserably failed. The 'behind-the-scene' guiding agency for our health programme also is a world body namely World Health Organization. This is yet another wing of the United Nations interested in safeguarding the commercial interest of the Western countries in the third world countries. Our idea of public health system at present is construction of large hospitals, equip them with very costly equipments and production of costly drugs. This involves not only a very large investment which necessitates heavy taxation, it also involves very large maintenance expenses also on an ongoing basis. With growing menace of inflation, this system of public health always faces shortage of resources and as a result, the initial huge investment becomes useless and dead due to lack of maintenance. Many costly equipments remain un-utilised for years together because the hospital managements do not have a small sum of money needed for repair or replacement of some small part of the huge equipment. The shortage of funds results in scarcity of even basic drugs in the public hospitals and the poor patient has to buy the medicine from open market. The corruption bred and flourishing in the public health system is a common knowledge now.

In this background we have to ask only one question whether the policy and programmes framed by the Government to carry out its duties under Article 47 have succeeded? The answer is obvious and goes to prove that our understanding of the concepts and the action taken for implementation were both wrong and hence if we have to succeed, we must revert to what we understand by health, what we understand by food, what we understand by standard of living and for this we have to revert to our own culture, our own medical science and our food science.

Another area which affects the life of the masses is education. Article 41 of the Constitution under the Directive Principles of State Policy directs the State that within the limit of its economic capacity and development, the State shall make effective provision for securing the right to work, education and to assistance in case of unemployment, old age, sickness and disablement.

As regards the right to education, the duty of the State is not only to establish educational Institutions but also to effectively secure the right to education by admitting students to the seats available at such institutions by admitting candidates eligible according to some rational principles.

Even though education is not a fundamental right and is not judicially enforceable as such, once the State by legislative or administrative action provides facilities for education, its action must conform to the principle of the equality and rationality underlined in Article 14 i.e. equality of opportunity.

As against the above Constitutional position, if we review the scene in the field of education, we will find that the situation is just the reverse. Education has become an exclusive domain of the rich and even after 45 years of independence almost 50% of our population is illiterate. Various faulty policies of the State have created such economic compulsion for the common man that instead of paying his attention to education, the attention is diverted towards efforts for survival even at the tender age of childhood and this has taken priority over education.

Further, though the Constitution as well as various other laws have guaranteed fundamental rights to each and every individual, as well as provided for other welfare measures; due to lack of education the vast majority is not aware of these rights and hence these rights are violated by those who are economically, socially and politically strong.

This situation in the field of education has arisen because we have borrowed the concept of education policy from the West. The Western model of education which we received as a legacy of the British Rule, has only one aim and that aim is either to produce mediocre literates for working in Government and other administrative offices or to produce a class of people who could man the bureaucratic set up to exercise control on all these spheres of the common man's life. The purpose of education as understood under the Indian culture, which was to attain full blossoming of the character, intelligence and noble qualities of an individual was thrown to winds. India had a very noble and pious institution of *Gurukuls* where anyone who sought knowledge and education was welcomed and was taught

according to his own calibre and capacity of understanding. The vocation of teaching was in the hands of Brahmins who were not greedy for money and whose sole aim of life was to impart education selflessly . The ancient teachers thus presented an ideal before their pupils and pupils emulated them in absorbing the noble qualities of human beings. The British demolished this system of education and imposed their own system which had the sole aim of producing money spinners out of human beings. An entirely new class of educational institution was created where only the rich and the mighty have access. Today education has assumed all the characteristics of a business and the people involved in this field are guided solely by economic profits of conducting the activity of education.

Under the new system of education, the definition of education has been made as synonym for literacy. A person who can read and write is called educated and a person who cannot read and write is called uneducated. Under our ancient meaning of education, it encompassed literacy as well as knowledge acquired by a person or experience acquired by a person from his surroundings, from his family, from his ancestral vocation, by religious preaching etc. For example a child born in carpenter's family had the tools as his toys from his early childhood. He used to pick up the knowledge about the craft of carpentry as easily as playing and by the time he grew up to the age of 18 to 20 he himself was a master craftsman.

Under the new system of education, just to impart literacy to this child of a carpenter, precious 15 years of his life are wasted and he starts learning about the tools of carpentry at the age of 20 years when he joins a

polytechnic. Even the doors of this Polytechnic are opened to him only if he was performing well in his primary education, which except for literacy, has no other utility for him. Not only this, he should be able to dole out a hefty donation for securing admission to such Polytechnic. By adopting the new system of education, we have destroyed the centres of education which existed in each and every household, and then tried to establish a few schools and colleges which naturally cannot cater to the needs of all the aspirants of education. Commercial orientation of our thinking like supply and demand has invaded in the field of education policy and as a natural consequence, education now commands a very hefty price which is beyond the means of a common man.

In this background the pertinent question is, has the State performed the duty imposed on it to make effective provision for education for all? The answer is obvious.

It is thus clear that the education policy of the Government is clearly violative of the Constitutional mandate and hence needs reversal.

Under the same Article the State is duty bound to make effective provisions for securing the right to work. This is related to the right to education. By destroying the system of education, even the right to work has been breached. As stated earlier, each household was a centre of education and the artisans used to receive automatic training in their field of vocation in their house itself. By destroying the household centres of education we have killed the age old profession and vocation of the artisans and created a situation of unemployment which is totally

in violation of the duty imposed on the State to secure the right to work for all the citizens. Thus by destroying our age-old system of training in vocations under the influence of the Western ideas or definition of education, we have created so many ills for the Indian Society. In view of this now it is the duty of the judiciary to declare as unconstitutional any educational policy which suffers from such defects and which fails to achieve the noble objects of the Constitution.

When judiciary is strengthened quantitatively and qualitatively

JUSTICE R.C. LAHOTI
Former Chief Justice of India
Posted online: Monday, December 05, 2005

India **EXPLAINED**

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India Empowered envisages empowerment of the people of India in consonance with the goals of such empowerment set out in our Constitution which is the grundnorm, the founding document and the source of democracy in India. We the people of India solemnly resolved on 26th November, 1949, to secure to all its citizens **Justice** (social, economic and political); **Liberty** (of thought, expression, belief, faith and worship); **Equality** (of status and of opportunity); and to promote among them **Fraternity** (sharing the dignity of the individual and unity and integrity of the nation).

The trinity of the Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles of State Policy) constitute the conscience of our Constitution. They together envision the establishment of an egalitarian social order guaranteeing fundamental freedoms and to secure justice; social, economic and political, to every citizen through rule of law.

Equality has to be accorded to all people irrespective of caste, creed, sex, religion or region. Our Founding Fathers while crafting the Preamble gave justice precedence over liberty, equality and fraternity by placing these philosophical terms in that particular order. Unless there is justice, liberty is meaningless. Justice and liberty together secure equality. There can be no fraternity unless there is justice, liberty and equality. In the chain of philosophical thoughts underlining the Constitution, the most significant is the concept of Justice. Duly honouring justice lays the foundation for the welfare and progress of society. It holds civilized beings and civilized nations together.

India is free but freedom as per the Preambular goals is still elusive. Have any of these goals been achieved in its entirety? Has India awakened? Having recently demitted the highest judicial office of our country and having served as a Judge for about 17 years, I propose to examine whether India has been empowered by reference to the concept of justice.

It can be legitimately said that independent India has earned prosperity, power and landmark achievements especially in the field of Science and Technology. She is no longer an under-developed country. She has crossed into the circle of developing countries and is waiting to enter the magical fold of developed countries. However, we are not free from the evil clutches of poverty, hunger, violence, discrimination, casteism, communalism and unemployment which continue to plague us. This is compounded by the problem of inequities and inequalities. Only 27.8% of the Indian population resides in the cities, but 3/4th of the unemployed are in the rural areas. If the growth rate of our

economy is a commendable 9% then why is 26% of our population still below the poverty line? The real challenge before us is to overcome the imbalance in the distribution of our resources and outputs such that our including national income and national growth no longer remain skewed and are ‘‘democratized’’.

A nation’s development can be seen as a function of its investment in the social sectors to empower all sections of society and a strong Judiciary is a key ingredient in the development of the social sectors. The Judiciary today contributes towards the creation of a just social order in which all citizens enjoy civil, political and socio-economic rights. A judge does not merely interpret the law but he formulates new norms of law and moulds the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality.

The formulation of a democratic republic does not involve only the vesting of political rights in the citizenry. Social and economic democracy is the foundation on which political democracy can be effectively established. The Judiciary fully utilizes the most important tool of social engineering that it wields; the law. And it is so used to create a just social order, without inequalities and disabilities and to provide opportunities for growth to all. Our Constitution aims at securing not only legal justice, but also socio-economic justice. Our Founding Fathers realized that a political democracy cannot last unless there lies as the basis of it a social democracy. The fundamental duty of the Judiciary is the establishment of a social democracy and to secure social and economic empowerment to all.

The system is rightly derided by saying that there is too much of law and too little justice. It is pointless to talk of an effective rights regime if the people lack the basic ability to access the justice dispensation system, both in terms of awareness and resources. The political and civil liberties conferred by Part III of the Constitution of India are meaningless if the citizen is not, in the first instance aware of the existence of such rights or does not have the capacity to pursue them, and secondly does not have the economic means of exercising these rights and liberties. As an English judge cynically remarked **''The law, like the Ritz Hotel, is open to rich and poor alike''**. But can the poor have realistic access to it? Rights and liberties exist in the letter of the law but it is the process of actualizing these rights and making them meaningful that is the real task confronting us. These rights are required to be effectively implemented and they should not be allowed to remain mere pious declarations. For the common man, justice as a principle is of relevance only if it solves problems, furnishes concrete solutions and affords relief in practical terms.

There is a need to ''democratize remedies'' for enforcement of these rights so that they become available to every citizen irrespective of caste, creed, religion or gender. More significantly, the legitimacy of the system depends on its ability to make an actual difference to the quality of life of the poor.

In its efforts to realize the preambular goals, the Judiciary developed various innovative techniques in order to ensure that no section of society was ''priced out'' of the justice administration system. Public Interest Litigations (PILs) and letter petitions have been developed in order to

take justice to the people. The initial characterization of socio-economic rights as non-justiciable posed a major challenge to proving effective access to justice to the marginalized sections. The basic needs of these sections of shelter, food, health, means of livelihood, etc do not find avenues for redress within the formal legal system since these rights were caught in the constructed limitations of justiciability, the law and policy divide and the constitutionally drawn lines between enforceable fundamental rights and non-enforceable principles of state policy. This hurdle has been sufficiently overcome due to the enlargement of the scope of the right to life by judicial pronouncements.

Of the three organs of the State, it is the Judiciary which is centrally placed to protect the democratic rights of citizens and marginalized groups. The executive and legislature are primarily concerned with national development at the macro-scale and construct broad-based policies. It is the Judiciary which ascertains the actual impact of such policies on the lives of individual citizens and social groups in particular situations. But it is not only about the effective implementation of positive law, as it exists. There is a need to move on to the normative approach. Every legal system is based on some form of legal philosophy. Different social considerations and changing spirit of the times necessitate a rethinking of the existing jurisprudence. In discharge of its fiduciary duty towards the society, the Judiciary has embarked on this journey and has already made great strides. Keenly alive to its social responsibility and public accountability, it has liberated itself from the shackles of its traditional role, made innovative use of the power of judicial

review, forged new tools, devised new methods and fashioned new strategies in order for the purpose of bringing justice to all and empowering India.

The greatest challenge before the Indian Judiciary is the tremendous docket explosion. The courts are flooded with cases and this has, consequently led to immense pendency. The enormity of the crisis can be ascertained by a quick look at some statistics. The Supreme Court of India has 26 judges; there are 21 High Courts with a total sanctioned strength of 719 judges; and there are a total of 12,360 subordinate courts functioning in India. On an average in every year the Supreme Court of India decides about 40,500 cases out of 42,000 cases filed, the High Courts decide 11,23,500 cases out of 12,41,000 cases, and the Subordinate Courts decide 1,32,22,000 case out of 1,42,29,000 cases filed. In spite of such high disposal numbers the pendency figures have been rising due to increasing influx of cases. The influx of cases cannot and should not be prevented but there has to be enhancement in the speed of outflow or new outlets have to be found. It is imperative that the Judiciary is strengthened both quantitatively and qualitatively.

In terms of numbers, there is an immense gap between demand and supply. The Law Commission in its 120th report (1987) had stated that in India there are only 10.5 judges per million population (which is now said to have gone up to 12-13) whereas countries such as USA and UK have between 100-150 judges per million population. This is the primary cause for the staggering number of arrears burdening the courts. Recently the Supreme Court has desired that the number of judges should be increased in a phased manner in five years so as to raise the judge-

population ratio to 50 per million. Any substantial progress in this direction would go a long way in reducing the burden of arrears on the courts.

Qualitatively the Judiciary can be improved in three ways; development and use of Judicial Academies, information and communication technology (ICT) enablement and alternate methods of dispute resolution (ADR). During my term of 17 months as the Chief Justice of India, I had declared the Year 2005 to be ‘‘The Year of Excellence in Judiciary’’ and had declared the above three imperatives to be my priority. The National Judicial Academy along with 14 state academies have been set up in order to impart continuing learning, training and education to all judicial officers. An emphasis has been placed on ethics and morality within professional education and training as the quality of justice dispensed by courts is a reflection of the quality of judges who sit in the courts.

In the wake of the boon of modern science, the Indian Judiciary has to urgently re-equip itself and re-engineer its processes in order to harness the potential of the available ICT to enable enhancement of judicial productivity. The 124th Law Commission Report in 1998 had emphasized that the use of ICT in the Judiciary is imperative for enhancing the quality of justice, reducing congestion in courts and securing timely disposal of cases. In October 2005 the National Plan and Policy for ICT enablement of the Judiciary developed by the E-Committee has released.

An absolute imperative to search for alternatives and supplements to litigation which is the traditional mode of dispute resolution has led to the advocacy of ADRs. The

National Legal Aid Services Authority is working in the direction of creating awareness of ADR systems and providing training to all its functionaries. Although the statutory framework is already available, yet a national plan for effective introduction of ADRs both within the mainstream traditional mode of dispute resolution and also as a parallel system, needs to be launched.

Let me conclude with a caveat that we must be ever mindful of. ‘‘Yesterday is not ours to recover, but tomorrow is ours to win or lose’’ and therefore let us get together, stand united and make

creative, cohesive and collective endeavours in order to realize our full potential. We must rise beyond the limitations of the past trends and immediate pre-occupations so as to perceive the emerging opportunities and concealed potentials, such that India is awakened and empowered. Our future depends not on what will happen to us, but on what we decide to become, and on the will to create it.

JUSTICE – LAWS – STATE

It is high time that the *inter se* relationship, the order of priority and the effect on people’s lives of three different concepts – Justice, Laws and State is seriously considered.

Under the structures gifted to the world by the ancient saints and sages of this country, justice was considered synonym of religion and was placed on top of the structure. Today, Justice and Law are considered the alternates of each other, which is a misconception. Both are different. Justice can exist even without laws, but laws cannot exist without justice.

How the concept of laws came into being? According to historians who believe in the theory of evolution of mankind, the history of laws can be stated thus – In the initial days, man was alone in this universe. He used to stay anywhere, eat anything and wander from place to place. With passage of time, man learnt to live in groups. Several such small small groups came into being and formed a Community. Hence certain rules governing the behaviour and interaction with each other came into being. Morality was the basis of these rules and hence they can be termed as moral laws. With further passage of time, the population grew to such an extent and their interaction became so widespread that it was felt that some authority is needed for implementing the laws (moral laws/values). Hence mankind established a centre of power. This centre of power which evolved into a structure called State was entrusted both implementation of existing laws and making of new laws. Thus laws and the State became interdependent. However, the origin of the powers to make laws is still untraceable.

The modern day State has created a jungle of laws. The democratic systems of governance has created a weird structure of law making. Majority - and that too a manipulatable majority - entrusted to itself the power to make laws; and to uphold these laws is made the highest duty of the judicial system. In this transformation justice lost its top position and is thrown to the bottom.

If a person functioning as a Judge is a gentleman, is impartial, has the sense of right and wrong, submits to the sovereignty of religion (not in the narrow sense of the term), has the vision to balance the cause and effect; he can dispense justice even without the modern day codified laws. On the other hand, even if there are thousands of codified laws (as is the situation now), but if they lack the element of Justice, then justice cannot be done. Justice and laws are two different things.

If we visualize Justice, Law and State as a triangle, three situations are possible;

a) At the top angle of the triangle is Justice and at the two base angles of the triangle are Law and State.

b) At the top angle of the triangle is Law and at the two base angles of the triangle are Justice and State.

c) At the top angle of the triangle is State and at the two base angles of the triangle are Law and Justice.

The correct situation should be as per the first alternate. Justice should be sovereign and at top and Law and State should be its subordinate helpers. However, presently, in the judicial system laws are at top and laws mean codified laws only (made either by the present State or the predecessor British State). The State bows to the laws and Justice of course is at the

bottom. However, Law which is at the top position in this second situation, is made by the State. Thus, in reality, it is the State which is supreme and both Law and Justice are subservient to the power of State. The situation which prevails today is the third situation.

In our country the Supreme Court is at the apex position in the judiciary. However, there are innumerable instances where the judgements of the Supreme Court are reversed by the State by subsequently enacting laws to the contrary in the Parliament. Thus there is no doubt that in the present day structures the State alone is sovereign.

From where did the State get the right to make laws? The State makes laws in Parliament and State legislatures and the Constitution is cited as the source of power to make laws. Who made the Constitution and wherefrom the power for it came? Constitution was made by the Constituent Assembly and Constituent Assembly was constituted under a law enacted by the British Parliament. Wherefrom the British Parliament got the power to make such laws? It may perhaps be answered that India was under the British domination and hence Britain could enact laws for India. But how did India become a British dominion?. And this question can be raised in the context of all the nations which were under British dominion at one time or the other, and even today the Commonwealth countries are British dominions and latently still slaves of Britain. The source of Britain's power lies in the Papal Bull of 1493. That is a long history and going into it will be a deviation from the present subject.

We revert back to the triangle of Justice, Law and State. The powers of State to make laws are limited or unlimited? The Constitution has three lists of subjects on which exclusively the

Centre, exclusively the States, and both Centre and States can make laws. However, by 'residual powers', subjects which are not specifically mentioned in the lists are also covered. It means the State has retained unlimited powers for itself to make laws on any subject under the Sun. The State can make laws to control each and every sphere of the lives of its citizens. It can consider the natural resources as its own property and make laws for them. The State can make laws on all issues – religious, social, economic and political and impose any regulations that it deems fit.

There is no system to put these laws to the test of Justice. What is a just rate of income tax – 10%, 20%, 50%, 70%, 90%? Whatever the State feels like ! If a criminal absconds after committing a crime, can the State arrest his/her innocent family members – his/her son, father, brother, husband, wife? Yes it can ! It is the State's will ! Can there be different sets of rules for prosecuting a common citizen and a politician/ bureaucrat? Yes, there can be ! Which transactions and who can be taxed – Withdrawal by a person of his own money from his own Bank account? Facilities extended by a generous employer to his employees? Vegetarian citizens for allotting funds for production of meat? Making laws/entering into agreements for raising mountainous debts – external or internal, without the concurrence of the citizens? Can laws be made to hold to ransom the religious sector? Can the State acquire at its own free will, whenever it wants, by extending whatever reasons, *Teerthas* and religious places? Can the label of 'Public Interest' justify any step of the State?

Innumerable arms/institutions of the State, the Government departments issue notifications in hundreds and thousands every year, enact scores of new laws, promulgate

ordinances, which are not known to the people at large. Still each citizen is bound by them. Ignorance of Law is no excuse ! Not only this, he carries on his shoulders the huge burden of sustaining the administration created for all these. Even after shouldering this burden, does the common man ever get justice? All these are illusions then? For what purpose? To what end?

The power of State considers the whole nation as its fiefdom. It can ransack the entire country and its people like a mad bull. The only factor – that of Justice – which can exercise control on the power of State has become non-existent. From where this demon like power of State came into being? What it means? Who gave power to whom? Or who appropriated power from whom? Who is entitled to this power? Whether it is Law which determines the ambit of State? Or it is the power of State which uses Law as extension of its authority? All these questions demand answers today, more than ever. Justice which was an element to find answers for differences of opinions and disputes, is surrounded itself in differences of opinions and disputes !

A Constitution enacted unconstitutionally has bestowed constitutionality on the laws! What a contradiction ! The people are bound to follow these laws ! What a helplessness ! The only element which can save the people from this situation is that of pure Justice. Where to find it?

12th May, 2005 **— R.K. Joshi**

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