
Justice Konda Madhava Reddy

Second Memorial Lecture

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“Law and Development”

By

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&

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“Law and Development”

I met our friend Justice Madhav Reddy for the first time when he came to Bombay as the Chief Justice of the Bombay High Court. It was a case of friendship at first sight. We later found that we were on the same wave length on many matters. The friendship which began on the first day therefore grew more and more intimate with the passage of time till it was snapped all of a sudden by the cruel hand of his untimely death. It was one of the sad events in my life. The sadness was made more poignant by the fact that it was only after some months that I learnt of his passing away. I have yet to recover from the shock.

His career as a lawyer and a judge of this Court is known to you all. As a Chief Justice of the Bombay High Court and as a Chairman of the Central Administrative Tribunal, he discharged his duties with distinction and to the satisfaction of all. He carried all the offices he held lightly on his shoulder. I have yet to come across a more unassuming and modest occupier of a public office. Suave, sweet and soft in his dealings with others – be they lawyers, litigants or his colleagues on the Bench, he earned a large number of friends in all the institutions he served.

When he returned to practice as a lawyer in the Supreme Court, as a judge of that Court I had several opportunities to hear him argue his cases. He carried the same composure and the same urbanity. His incisive arguments disclosed the pains he took in preparing his cases, and the thinking he bestowed on them. It was not surprising therefore that he commanded a good deal of practice and was in demand most of the time. It is not that every retired judge secures briefs in that court. It therefore showed the regard in which he was held for his legal acumen, sincerity and devotion to work.

Above all, he was a gentleman to the core and an affectionate friend. Many of his friends like me mourn and will continue to mourn his departure from amidst us as an irreparable loss of a dear and near one.

I am happy that his family members decided to perpetuate his memory by instituting a fund to undertake activities in which he had interest. They deserve congratulations for this befitting and rewarding action. I accepted the invitation to deliver this lecture at a short notice purely out of my affection for him and his affection for me, and have selected a topic which was nearer his heart. I have tried to put my imperfect thoughts on the subject hurriedly together to seize this earliest occasion to pay my public homage to his memory. I do not know how far they will enlighten the audience, but they may lighten, at least to some extent, the burden of sorrow which I carry with me for losing him as a friend and a well-wisher.

Justice Konda Madhava Reddy Foundation Memorial Lecture

II

The scope of the subject is vast. Each aspect of it may require a separate lecture. I have however tried to compress it in this brief address.

Before I discuss the relationship between law and development, it is necessary to understand the exact import of the expressions law, society and development. By law is meant all laws, which are enforceable by the State as well as by the civil society. The law therefore includes statutory enactments and the rules and orders made thereunder, adjudicatory law or judicial decisions; the customary law, the contractual law and also the international law, conventions and treaties when incorporated in the domestic law or accepted by the national government. Many times, the customary law is more faithfully obeyed by the individuals than the enacted law. The latter is either clandestinely or openly defied. The practice of child marriages, female infanticide and untouchability in this country, inspite of the prohibitory statutory laws are some of the instances of the latter. The customary law on the other hand is observed for fear of social boycott, religious sanction and apprehended wrath of God. If obedience is the test of law, the two do not differ in their efficacy- rather the customary law is more effective in practice. The repetitive patterns of human behaviour between the members of the society and between the members and the authority constitute the law. This behaviour is according to the norms accepted by the society, and they differ from society to society. Some of these norms are incorporated in the enacted law. The contractual law has to be considered separately from the other laws since the conduct of and the transactions between the parties and their relations with each other are also mostly governed by the terms of agreement between them. The statutory law on contract may enforce, regulate or prohibit certain types of contract, but cannot make contracts or prohibit contractual relationships altogether. Development is a form of social change. It is a change in the relationships, and in the pattern of the repetitive behaviour of the members of the society and therefore in the law. It may also be induced by the law.

Society No modern society is homogeneous. There are disparate social groups based on class, caste, religion, ethnicity, language and region. There are also groups within these groups, in turn. While there are problems and interests which are common to all the groups, they have also separate concerns of their own, sometimes inconsistent with and contrary to those of the others, and they vie with each other for recognition and precedence. Laws are enacted sometimes exclusively for some groups, while some common laws may exclude some groups from their operation, to accommodate and protect their special identities and interests. When we speak of society we have therefore to have in mind the entire society, all its sections and strata, and all the social groups. The expression "We the People" with which the Preamble of our constitution begins has to be understood and construed accordingly.

Development

Development does not mean mere economic development. It also means social, political, educational and cultural development although it is true that economic development acts as a catalyst of the development in the other fields as well. We have therefore to consider the expression "development" separately, in relation to development in each of these spheres.

Justice Konda Madhava Reddy Foundation Memorial Lecture

Economic development is an often misunderstood and misrepresented expression. When some experts speak of development, they usually speak in terms of GNP, GDP and per capita income and consumption. The GNP and GDP tell us only about gross domestic and national product respectively, while the per capita income and consumption indicate no more than the national average of the two. They do not tell us about how much of the total production of goods and services and of the total income is shared by whom and to what extent, and how many are deprived of them. It is a notorious fact that the resources of the country are consumed disproportionately by a small minority in an ever increasing proportion, while a vast majority is deprived of its share equally increasingly and in an ever rising number. While the rich are becoming richer with an insignificant increase in their number, the poor are becoming poorer on an ever expanding scale. The income gap between the two is also widening every day. It is said that there has been an accretion to the middle class in our country which, according to these very calculations now stands roughly at 250 million i.e. 1/4th of the total population. Our society is broadly divided into five economic classes - the rich, the high middle class, the middle middle class, the lower middle class and the poor. The 250 million cover the first four classes which differ from each other in their income, consumption, expenditure and saving pattern. The rich have a huge economic surplus and roll in luxuries and conspicuous, sometimes vulgarly conspicuous, consumption.

The high middle class commands enough comforts and some luxuries and has enough surplus to save and invest. The middle middle class has sufficient income to live in comfort and to save and to invest for the future, though marginally. The lower middle class just manages to satisfy its basic economic needs and to make both ends meet, but has no surplus to save or to invest. The poor are unable to satisfy even the minimum human needs. The accretion to the middle class is of course from the poor, but it is an accretion to the lower middle class and marginally to the higher middle classes from the lower classes.

There is a similar casual approach, while describing poverty and literacy. According to the authorities, those who consume 2400 and 2200 calories in the rural and the urban areas respectively, are above the poverty line. This definition of poverty line treats human beings as no more than lower animals, and it is on this basis that it was estimated that about 44% of our population was below the poverty line in 1992-93. A rational definition consistent with the dignity of human being and with the Universal Declaration of Human Rights and other international conventions and declarations, is that those who are assured of all basic economic rights such as the right to adequate source of livelihood, to enough nutritional food and pure drinking water, to adequate clothing, decent shelter and working conditions, to sufficient education and health care and to old age and disablement security, may alone be considered as being above the poverty line. Article 21 of our Constitution guarantees protection of life along with liberty of the individual, and our Supreme Court has construed the expression "life" in that Article to mean the right to live with dignity and therefore the right to all the basic human rights. If we estimate our present population living below the poverty line on the basis of the above criterion, no less than 70% of our population falls below it.

The figures of adult literacy in the country are similarly misleading. They are based on the reports given by those in charge of the adult literacy programmes in different regions who in turn depend upon the reports of the local adult literacy class teachers. These reports at best indicate only the number of adults who attended the literacy classes. There is hardly any worthwhile test held to find out whether the individual has been acquainted even with the three Rs, at the end

Justice Konda Madhava Reddy Foundation Memorial Lecture

of the day. Even assuming that the figures of attendance given in the reports are correct, these reports therefore hardly indicate a true picture of the literacy in the country. This is apart from the fact that literacy to be useful as a tool for acquiring skills and developing talent has to be continuous and functional. Even the three Rs learnt in such classes are soon forgotten for want of facilities and opportunities to practise them. It is a notorious fact further, that at many places the school certificates are given without even attendance much less after tests.

The economic development has to be measured in terms of human development, and the minimum criterion of human development is the physical, mental and intellectual equipment of the individual sufficient to enable him/her to realize his/her innate potentialities and to grow to his/her full personality. That is why there is a need to assure the individual his basic economic rights. Judged by this criterion, our country ranks even lower than many other developing or third world countries like Sri Lanka according to the UN Human Development Reports published from time to time.

Social development, particularly in unequal societies which are feudal and caste ridden as in our country, has to be considered separately for obvious reasons. The economic advancement of an individual does not necessarily enable him to advance socially and to develop his personality fully when he is at the lower rung of the social ladder. A deliberate effort has therefore to be made to create positive conditions and to afford facilities and to remove obstructions, to uplift him by some affirmative action. The reservations in educational institutions and courses, in employment, in land and house allotment, in grant of loans and other necessary wherewithal, and in legislature and in local self-government are measures not only for economic but also for social advancement, and have to be appreciated as such. It is estimated that in our country at least 85% of the population is socially and educationally backward. The women even in the advanced sections of the society suffer from the same social handicaps, as do the backward and the weaker sections of the society. It is for this reason that Articles 15 (3) and (4); 16 (4) and (4A); 243D and 330 to 342 of the Constitution make special provisions for women, schedules castes and scheduled tribes.

Political development of a nation is gauged by the capability of its citizens and the opportunity they have, to participate effectively in the day to day affairs of the State. It implies the presence of facilities and the absence of restrictions for the purpose. More such facilities and less such restrictions, more politically developed is the nation. Democracy is by far the most developed form of political system, which is suited at least formally to ensure the said positive and negative conditions. But it is best to remember that by itself, a democratic form of government cannot secure either of the conditions. A citizen's effective participation in the affairs of the State posits minimum two pre-requisites, namely, the empowerment of the citizen sufficient to enable him exercise his rights, and the absence of social and economic inequalities at least to the extent where some cannot dominate and frustrate the will of others. In the absence of either, democracy is reduced to an oligarchy of a few powerful individuals or sections of the society. What we have in this country in the name of democracy illustrates this truth. With a majority of the unempowered citizens and a small section of the society controlling the levers of power, democracy is reduced to a farce. Elections are no democracy. It is so far the best method evolved of selecting the representatives of the people to rule on their behalf, when there is no consensus on the selection. Democracy implies participatory governance. But in an unequal society, with vast social and

Justice Konda Madhava Reddy Foundation Memorial Lecture

economic disparities, it is the dominant section which is able to control and manipulate even the electoral process, not to speak of the governance of the State. In fact, this section also succeeds in devising ways and means to frustrate the democratic rights of the people at all stages beginning from the polling process. A country can not be considered politically developed unless every citizen of it has an effective share in directing and managing its polity. This requires, as stated earlier, empowerment of every citizen and an absence of paralyzing social and economic inequalities.

Educational and Cultural Development : Development of a nation and its people can not be viewed in a narrow sense of economic, political and social upliftment only. Development is a composite concept and a continuous process, and not a one dimensional and one time exercise. Even when a social change is brought about by a violent revolution, unless the ethos of the revolution is sustained, many times the spirit and the objective of the revolution soon evaporate. The people, including their leaders, go back to their old ways and operate the same old institutions in the same old manner. In the circumstances, all that takes place is a change of masters. In an evolutionary change, even the managers of the system and the class from which they come remain unchanged. The institutions, their structures, their characteristics and functioning; the vision, the mind-sets, the attitudes and approaches of the personnel manning them, and their relationship with each other and with the people, do not alter to meet the needs of the new goals. On the other hand, the experience shows that the new class of managers drunk with the new - found power become more exploitative. It was to counteract this phenomenon that Mao Tse Tung of China, within seventeen years of the Communist revolution started the Cultural revolution which lasted for about 10 years. Whatever its defects, shortcomings and untoward consequences, the intention was to change the attitudes of the new managers of the people and of the people themselves, and to attune them to the new goals.

This country has to learn many lessons from history in this behalf. The political independence was only a means to bring about the change which was all along desired and later came to be enshrined in our Constitution as goals of the new society. The accepted instrumentality of the change was law and the pace of change depended upon the earnestness and the efficiency with which the instrument was used and the programme of change implemented. However, although the political masters changed, the institutional machinery and the personnel manning it remained the same and continued to come from the same elite class. The goals were mass-oriented while the machinery to implement them was elite-oriented. This invariably created and continues to create dichotomy and conflict in administration, resulting in lop sided development only for the benefit of the elite. What is further necessary to remember is that for want of the requisite cultural equipment, some of the new political masters became more arbitrary, corrupt, lawless and exploitative. They used and continue to use the power to enrich themselves. The deprived sections of the society who became newly politically aware, also threw up leadership which, with a few exceptions, sailed in the same boat, the capture of power by hook or crook and its use for self-aggrandizement being their sole goal. Those of them, honestly interested in the welfare of their constituents could not and cannot deliver goods because they are administratively ignorant. Democracy puts them in the seats of power overnight. Therefore they do not have even a peep in the corridors of power. The administrative executive has therefore its way in all matters. Sometimes the political executive belonging to this class is even fooled and misguided,

and becomes a party to the illegalities and the irregularities unknowingly. It is a notorious fact that some of the bureaucrats have taken advantage of this situation and reaped benefits for themselves. In the absence of the necessary cultural development of the people and their leaders, this is inevitable.

It is not therefore enough that we have social, political and economic change. Unless it is accompanied by the requisite education and a change in the cultural make-up of the people and of their political and administrative managers at all levels, the desired development will not be attained. Unfortunately, in this country there has neither been any such cultural change nor has there been a conscious effort to bring it about. On the contrary, there is an assimilation on an increasing scale of a culture alien to the desired development. In this race to acquire the contra - culture, the leaders of the section for whom mainly the development is needed, do not lag behind as stated earlier. The consequence is there for everybody to see. Corruption and criminalization of public life and enrichment of the few and impoverisation of the many have become the order of the day.

Education of the individual whether formal or informal, is a key to his development in all fields. It not only enables him to grow to his full height but also empowers him to exercise his rights as a member of the society and as a political constituent of the State, knowledgeably. Ignorance is the cardinal social disease and the root cause of all other social diseases, including poverty. It is knowledge which uplifts not only the individual but also the society along with him. The levers of power are always in the hands of the knowledgeable. Some societies as in this country therefore always tried to restrict the spread of knowledge to a small section of it and to

use it for its benefit only. Eventually, these societies as a whole suffered, but the selfish section, always equating its own interests with the interests of the entire society, never cared the debilitating consequences to the nation of its shortsighted policies. Consequently, the progress made by these societies in all fields was limited as the contributors to it came from a small section while the size of the ignorant multitude kept growing with their problems becoming more and more intractable. Instead of realizing the folly of the past and taking corrective action, attempts were and are even now being made to see that the masses remain ignorant and poor, and are not empowered to exercise their rights. Today, there is an additional and a more imperative reason for the haves to practise the restrictive policy. The democratic polity that we have adopted makes everybody politically equal by giving one vote to every adult - literate or illiterate, rich or poor. The fear is that by the use of this electoral power, the masses will come to rule and dethrone the classes. There is now therefore an additional vested interest in keeping as many of the masses ignorant and away from the political power as long as can be and by whatever means and devices possible. The attempt is also on to see that if inspite of all the efforts made, the masses do come to power, they should be prevented them from using it and should be ousted from it as early as possible.

The programme for mass education in this country faces uncommon difficulties which are not readily appreciated. It has first to clear a backlog of ages. The centuries of ignorance of the vast multitude have made it impervious to the very need and benefits of education. There is no will to learn. Most of them look upon learning as an alien culture.

The process of learning further prevents earning which is necessary to augment the income of the

Justice Konda Madhava Reddy Foundation Memorial Lecture

family. There is therefore a natural antipathy towards learning. The biggest obstacle for mass-education is of course an unsympathetic and a hostile implementing machinery. The education needed for the masses is further functional. It must impart the know-how of how to live, to survive and grow, to develop and improve skills and talent, to tackle problems by the available means and resources, and to augment resources to better the living conditions. This knowledge is not imparted today even in formal education. There is a paucity of teachers to educate the masses on these lines.

One wonders what position this country would have occupied in the comity of the nations of the world, if all its men and women were thus educated and empowered, and had contributed to its progress, instead of a small section which alone is empowered today. The progress would have benefited all and even the present empowered section would have lived in an appreciably better condition. But of course they would not have been able to retain their exclusive hold on power. And there lies the rub.

The education has also to be value-based, if the individual is to contribute to the welfare of the society and not only to his own upliftment. Knowledge can be used both for constructive as well as destructive purposes as also for serving or exploiting the society. It is not therefore enough that an individual is educated. He has also to be cultured. A cultured individual is a socially useful member of the society. The cultural development must imbibe in the individual both personal virtues and social morality. The people and those who exercise power on their behalf have to be both knowledgeable, and cultured in this sense. The managers of the society have to govern with utmost social responsibility and the people have to be alert to hold them accountable for their faults and failures at the earliest opportunity.

Defence Development: A nation in the exercise of its sovereign powers is entitled to decide its defence strategy and organize its security against external threats. The defence preparedness of a nation ultimately depends upon its economic strength. The development of the economic capacity to cope up with the problems of defence therefore lies at the core of the national defence. For the past some years now, with the emergence of a few nuclear powers and a sole Super Power, the other countries are no longer free even to develop their own defences according to their needs. Economically weak and dependent nations are forced to sign treaties and obligations at the point of the threats of economic sanctions. Together with the dictates of the international monetary, financial and trade organizations which control and regulate the economic systems, policies and programmes of the weaker nations, the mandates on defence policies coming from abroad have shifted the centre of power in these countries outside their territories. They are increasingly being governed by the powerful foreign powers and agencies, by a sort of a remote control. The only way for these countries, which of course include our country, to prevent the surrender of their sovereignty, is to make their economic base strong, strive for peace and amity particularly with the neighbouring countries, develop a strong alliance with similarly situated countries and seek a change in the UN charter and the international law to resist the bullying tactics of the dominant powers.

Having examined briefly the concepts of law, society and development, we may now examine the relationship between law and development.

Justice Konda Madhava Reddy Foundation Memorial Lecture

III

Relationship of law and development

Law may lay down the goals of development as has been done by our Constitution or the goals may evolve over a period of years by a consensus. In the former case, they are immutable except by amendment of the Constitution while they are subject to change by the government of the day in the latter case. Where however they are held as unalterable even by the amendment of Constitution, being part of its basic structure as done by our Supreme Court, only a new Constitution can modify or replace them. They are equally unchangeable if their pursuit becomes a way of life, even if they are not ordained by a statutory pronouncement. The resistance to the change of goals by law or otherwise may be stronger in the latter case while notwithstanding the incorporation of the goals in a formal statute, they may be slurred over, by-passed or ignored in practice. The importance and the realization of the goals do not depend upon their legal status but upon the commitment of the people to them and their jealous pursuit. Every development, as stated earlier, is a social change and social change entails change in the relationship between the individuals, and between individuals and the State and affects the existing pattern of the relative status and interests. Where the stated goals seek to affect the vested interests, as they must if they purport to bring about a social change worth its name, the vested interests are bound to rally their forces and do all that they can to thwart, sabotage or delay it. Their success in the attempt to maintain the status quo and to counter the change, depends upon their relative strength in the society. Where as in our country, the economic and the social ruling classes are powerful and dominating and control the institutions which manage the affairs of the society, the envisaged change remains a dream, even if it is ordained by the fundamental law of the land. The history of this country of the last fifty years proves this truth.

The developmental goals of a society of course depend upon its social and political history, its socio-economic conditions, its religion-cultural traditions, the contemporary world scenario, the prevailing ideologies and philosophies and the dominating leadership of the time. The fundamental law of our land viz., the Constitution states the goals of our nation in its very Preamble. The People have solemnly resolved to constitute the country into a Sovereign, Socialist, Secular Democratic Republic and 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 all
- Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

The Constitution has not stopped there. It has also laid before the nation the programme through which these goals are to be attained. The Directive Principles contained in Chapter IV of

Justice Konda Madhava Reddy Foundation Memorial Lecture

the Constitution detail this programme which is fundamental in the governance of the country. Although the citizens cannot enforce them though the Court of law, the State is obliged to keep them in view while enacting legislation, passing orders, planning policies, adopting measures and taking decisions. The goals are to be attained and the programme to secure them has to be implemented by means, which are consistent with the Fundamental Rights enumerated in Chapter III of the Constitution and which are enforceable through the Court of Law. While emphasizing the importance of the fundamental rights, the Constitution keeps in mind the social and economic inequalities in the country which are bound to give benefit of the said rights only to those who have the means to exercise them and thus perpetuate the existing inequalities. It is not enough that there are facilities and opportunities to advance. There must also be capacities to avail of them. Otherwise, the rights in question only help those who are already capable and perpetuate the inequalities. It therefore makes some special provisions to enable the State to take measures to proffer assistance to those who are weak and unequal so that they take benefit of those rights. The special provisions are however discretionary. They don't oblige the State to adopt measures to implement them.

Article 51A of the Constitution also casts upon the citizens certain fundamental duties including the duty (i) to abide by the Constitution and respect its ideals and institutions; (ii) to uphold and protect the sovereignty, unity and integrity of the country; (iii) to promote harmony and the spirit of common brotherhood amongst all the people transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; and (iv) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. The duties mentioned in this Article should enable the State to take measures to enforce them.

It has further to be remembered that the goals, the directive principles, the fundamental rights and the duties are binding on all individuals and institutions and they have to discharge their duties and functions in accordance with them.

The goal of the establishment, among others, of a Socialist Republic has been completely forgotten, and along with it the programme for making it a reality which is laid down in the Directive Principles. At present, it has become a heresy even to remind the government of it. On the other hand, there is not only a race for disowning the said goal and for dismantling whatever half-hearted and symbolic steps that were taken for ushering a socialist management of our economic affairs, but also for asserting loyalty to the free market economy. There is a clamour for repealing and modifying the laws to facilitate the economic LPG – i.e. liberalization, privatization and globalization. The failure of communist regimes and the pressures of the international agencies like the IMF, World Bank and the WTO have given an impetus to this demand and to the process to satisfy it, and the said mandatory goal

of the Constitution is unabashedly being defied and trampled upon. There is not even a whimper from any quarter at the unceremonious burial of the goal. Everybody appears to be on the same bandwagon.

It is true that there may be different ways of socialist management of economy. But it cannot be disputed that socialism implies that all the resources of the country should belong to the society as a whole and they should be utilized first and foremost to satisfy at least the bare economic needs of every member of the society; and that none should be allowed to amass so much economic power that he is in a position to exploit and dominate others with its help. This is also a pre-requisite for equal and effective participation of every citizen in the democratic process. Socialism is not governmentalization of the economy. It is because the so-called socialist management of economic affairs degenerated into bureaucratization with all the ills attendant upon it, that the communist economies and along with them the communist regimes failed. That was inevitable in the absence of free democracy in these countries, which ensures accountability of the managers of the society. Socialism and democracy are thus complementary to each other and one cannot exist without the other.

The goals of socialism and democracy set before us by our Constitution are thus inter-linked. It has further to be remembered that whether it is private sector or public sector, both use public money. The private sector raises money by way of issuing shares to the public accepting deposits from them, taking loans from banks and other financial institutions and also avails of subsidies, concessions and exemptions offered government – all at the cost of the public. The only difference between the private and public sector is that the former is managed by private individuals and the latter by public servants. What is needed is a proper structure of management in both the sectors which is accountable to the people.

The function of law vis a vis the developmental goals should be to facilitate their realization and in any case not to obstruct it. Law acts positively when it initiates development or creates conditions which enable development, and removes restrictions and obstructions which inhibit it. The legal system of a country with reference to development has to be assessed from this perspective. Examined thus, our Constitution by and large is not only conducive to development but has been deliberately designed to induce, encourage and promote it. What is needed is the political will to adopt measures to secure the desired development, including of course their faithful implementation.

It is unnecessary to emphasise that both the legal and the judicial system have to be geared up and attuned to the desired development. New laws have to be made and the old, which are either inconsistent with, contrary to or obstruct and delay the developmental objectives, have to be amended or repealed. In a country like ours where the old legal system was built mainly to serve the needs of

Justice Konda Madhava Reddy Foundation Memorial Lecture

the maintenance of the law and order and to preserve the social status-quo, the economic relationships and existing privileges and not to disturb the existing class structure, there is a need to overhaul the entire legal apparatus with changes both in the substantive as well as the procedural laws, if the development of the kind described earlier is to be achieved. The legal system of the status quo society is always designed to protect and promote the prevailing vested interests, for any disturbance of them tends to change the pattern of social and economic behaviour thereby disturbing the "smooth" functioning of the society. Some minor changes by way deletions and additions in laws are undoubtedly made, but they are made within the same legal framework to better preserve and promote the existing relationships. The development as envisaged above needs a revolution in the very basic assumptions, principles, doctrines, concepts and axioms underlying the old system. In our country, whether it is the civil or criminal law, whether it is the substantive or procedural law, the law has undergone no appreciable change to accommodate the new goals. Some changes made in the procedural law were aimed only at expediting the disposal of the cases and our legal elite was and is concerned only with the arrears of the cases pending in the Courts. It does not show any concern for attaining the goals set out in our Constitution or for those who are the victims of the present legal order and who have more valid claims to justice but are outside the present system.

The judicial system entrusted with the task of administering the law tells us no different story. The innovation of the institutions of Public Interest Litigation (PIL), and Lok Adalats, and the establishment of tribunals to deal with specific matters have failed to make any significant dent in our problems either because they are confined to higher levels of the administration of justice as in the case of PIL or are not only not supported but discouraged by the legal establishment as is the case with Lok Adalats or are being operated by the same procedures and on the same basis from which the rest of the judicial system is suffering as in the case of the special tribunals and forums. What is needed is not only a change in the practices and procedures of the Courts but also in the jurisprudence which is applied in our system. The need is for a jurisprudence of development.

Implicit in the goals set before us by our Constitution in and the programme for realizing them as detailed in the Directive Principles is, the concept of development with justice. They ordain not only justice between man and man but also protection and improvement of environment. One of the Fundamental Duties enumerated in Article 51A also casts this obligation on the citizens. The legislation on rehabilitation of the persons displaced by projects, for the preservation of forests and wild life and against pollution of air and water are no doubt measures intended to implement this objective. But they are fraught with inequities, inadequacies and impracticalities and need modifications to realize the spirit of the objectives

faithfully. The present provisions work more to the disadvantage of the weaker sections who are mostly affected by these measures thus defeating the goal of development itself.

Limits of Law

Every society, whatever its social, political and economic system, runs through its institutions. Those who man the institutions may change periodically but the institutional framework, their nature, character and the method of their functioning hardly ever change. An occasional innovation in their functioning at the instance of some individual or individuals creates some ripples in their otherwise placid waters. But after some time, even the ripples disappear and they resume their erstwhile normal flow. That is why those who desire to bring about a social change have to aim at changing the structure, nature, character and functioning of the existing institutions and even at replacing them by new ones to meet the challenges of the change. It is not further enough that the direction, structure and method of the functioning of the institutions are altered. The personnel selected for manning them must also be such as have an empathy with the desired change. Both the ancient and the modern history show that many an attempt at social change in various societies have foundered on the formidable rock of the static institutions and their unchanged method and manner of functioning. Where the personnel manning the institutions remains the same and they are not sympathetic to the cause of change much less active in promoting it, the efforts to change the society fail. Many times the personnel is not only hostile to the change but also sabotages it from within. The instances from the recent history of this country are galore in this respect, and should serve to illustrate this point.

Law is the fundamental institution of the society. All regimes have to run their affairs through the instrumentality of law, be it the decree of a dictatorial regime or an enactment of a popular legislature. The law so made has to subserve the goals of the society. The law-maker and its enforcer may be the same person or a group of persons as in monarchy or dictatorial regime, or the said functions may be entrusted to different institutions like the legislature, the judiciary and the executive as in a modern democratic State. All these institutions have to be so structured and their functioning so channelised as to ensure the maximum result in the minimum time. For the same reason, they have to be manned by the personnel with the right vision, the right approach and the right zeal. It is not enough that we have the necessary laws and the requisite institution to operate them. The personnel manning them must also be appropriately attuned to the desired goals.

Unless the implementing machinery is cooperative, however progressive and good the laws, they will remain on paper and no worth while development will ever take place. The law can facilitate the change. It cannot effect it by itself. The experience of this country particularly over the last fifty years illustrates this in abundance. Whether it is the agrarian or social reforms; the poverty alleviation,

adult literacy or family planning programmes or the anti-pollution, anti drug and anti-smuggling measures, except in negligible cases, the law has remained on paper. Those States where some of these measures have gained appreciable success are the ones where the political leadership showed the will and the bureaucracy was geared to the cause. The recent example in this regard is from U.P. About twelve lakh hectares of land were allotted to the landless in about the year 1974. But no pattas or certificates of rights were issued till 1997 when a political party favourable to the cause of the landless came in power for six months and issued the pattas for the first time. It is not further enough that the political and administrative executive from top to bottom bend their energies for the development. The judiciary which interprets and administers the law has to be equally concerned with the development. The same provisions of law may many times be interpreted either to uphold or to strike down the law depending upon the social philosophy of the judge. The experience of this country with the judiciary in the early days of the land reforms speaks volumes in this regard. The tardy rate of the disposal of the cases arising out of the land reform legislation at all levels of the judiciary is yet another reason to plead for the need to gear up the judicial administration for the developmental programmes and to imbue its personnel with the spirit underlying them. If the development – such as is undertaken is to materialize, the three wings of the State have to pull together and march in the same direction.

International Law, Conventions and Obligations

The treaties, agreements and conventions to which a country is a party operate as a binding law in that country. The development of the country which suffers from the non-implementation of the domestic law made for the purpose, is sometimes further obstructed by the overarching international law and obligations. The international agencies like the IMF, World Bank and the WTO have today come to acquire power to dictate the course of development in individual countries, particularly of the third world. These countries can ill-afford to ignore the directives of these bodies since they are threatened with economic sanctions. The laws of these countries have to be tailored and new laws made to comply with their directives. The economic policies and programmes have also to be adjusted to accommodate the fatwas of these bodies. It is a notorious fact that these bodies are controlled by the dominating countries and the policy directives of these bodies are nothing but measures to ensure market for the goods and services of the dominant powers. These directives not only dictate the goals and the course of development but also the type of technology to be used for development. The dominated countries are not free to develop themselves according to their needs, techniques and resources. For even the technology has a market and it is being marketed. The new patent law, hurriedly enacted by this country and the pressures on us to use the terminable or the Monsanato seeds are instances in point. The world and particularly, the third world is experiencing new economic colonialism.

IV

Law and Participatory Development

The only way to get over the legislative inaction on, and administrative antipathy to the development is to involve people – particularly those for whom the development is needed, in the developmental process right from the stage of making policy decisions to the last detail of its implementation. The process performance must begin at the grass-root level and the present top-down model of planning and development must be given a good-bye. This has since been realized, and the Constitution was amended to make the grass-root units of local-self government viz, the panchayats and the municipalities, the agents of change. The legislatures of the States have been authorised under our Constitution by Articles 243G and 243H read with the Eleventh Schedule in the case of panchayats and by Articles 243W and 243X read with the Twelfth Schedule in the case of municipalities, to make laws to endow these bodies with such powers and authority as may be necessary to enable them (a) to prepare plans of economic development and social justice and (b) to implement the schemes for economic development and social justice as may be entrusted to them including those in relation to the matters mentioned in the respective Schedules.

However, the discretion to entrust the said tasks to these bodies as well as to provide them with the necessary finance or to authorise them to raise it, is left to the State legislatures. The above provisions were made in the Constitution by the 73rd and 74th Amendment which came into force in April 1993. But so far hardly any State has taken steps to authorise the local bodies accordingly. There is an obvious reluctance on the part of the State Governments and State legislatures to part with their powers. It is necessary to note in this connections that the matters over which the local bodies are given power encompass a substantial field of development as has been explained above and if the concerned bodies are involved in bringing about the development as provided by the Constitution, the process of participatory development should take root in this land.

However there are obvious difficulties in growing the plant of participatory development in this land. Apart from the antipathy of the ruling elite at the State level, the feudal and the caste-ridden social structure retains the dominance of the higher strata of the society on the panchayats in particular. This is inspite of the reservations in these bodies for women and Scheduled castes and Scheduled Tribes. In some places, they cannot even enter the panchayat offices. An institution called “panchayat patees” (husbands of the lady members of the panchayat) has developed and these “patees” exercise powers of their wives while the voices of the SC and ST members of the panchayat get drowned. The little development which is taking place in the villages continues to be appropriated by the dominant castes and classes to themselves. Secondly, the actual developmental work is being handed over to the contractors and the collusion between the political and the economic ruling class which we witness at the national and state level is replicated at the village and town level. Some bureaucrats attached to these bodies make a common cause with the exploiters in their own

way. In the absence of educational development as explained earlier, the people are unable to ensure accountability of those who are exercising power and utilizing funds on their behalf.

This is not to criticise the right step taken by the Parliament in amending the Constitution for facilitating the devolution of powers to the local bodies, but to emphasize once again that development is a comprehensive concept and has to be brought about in all spheres simultaneously if it is to attain its goal. Secondly, it is noticed that most of the funds allocated to development at all levels are appropriated to the salaries of the administrative staff and disappear in corruption. It is said that hence only 15% of the funds allocated are actually spent on the targeted object of the development. If the administrative expenses and the monies that evaporate in commissions and corruption are to be diverted to the developmental projects proper, it is necessary that the peoples' participation is not confined only to decision making and supervision over the implementation of the projects. They should be involved, as far as is possible, in the actual work of implementing the projects. Such involvement will achieve various objects. The people will learn to rely on their own collective strength to meet their needs and not to depend upon others, including the governmental machinery. This will create in the people self-confidence and enable them to shed their dependence – mentality. Today, they look to the government and the bureaucrats to remedy all their ills. This psychology of dependence on others has been one of the big handicaps in the progress of this country.

Further, after the struggle for independence, the masses have forgotten the lessons and benefits of collective action. There ought to have been a collective endeavour to uplift the society. Instead, the bureaucratic machinery which was looked upon as the only tool of development expanded many-fold, and is likely to expand similarly at the local level, now in the name of panchayat raj, which in effect will be the raj of the political, business and bureaucratic interests. What is further, the involvement of the masses in the actual work will bring them together for works of common interest and that will help forge the much needed unity at the grass root level transcending caste and communal barriers, family feuds and social and political rivalries. That unity may help

eventually the process of national integration – an intangible but invaluable gain for the nation. This will help to undertake many other collective and co-operative endeavours and make the nation strong even to resist the economic and military pressures of the foreign powers. New laws and rulers may have to be made and the old may have to be amended, and the present practices and procedures may have to undergo radical changes to facilitate and promote such mass participation. But such participation alone may ensure the economic, social, political, educational and cultural development on account of the experience gained through the actual action. Doing is both learning and growing simultaneously.

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