NEW HORIZONS OF LAW AND JUSTICE

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I. Introduction

Time, like a fluid, is in continuous motion from (negative) infinity to (positive) infinity, taking everything in its sway. To keep pace with the continuously moving (or, say, changing) time, dynamism (and not the inertia) is but essential. The peoples or the systems which do not stand this test of time get gradually, but definitely, outmoded; and become irrelevant. The only thing that remains constant is nothing but the change itself. Adaptation to time is, then, adaptation to change; and incapacity to change is doomed to abeyance.

Law is an agency to govern human conduct. Therefore, law has to keep pace with changing times so that it serves its objective the best. A legal system, like other systems, is therefore faced with two options viz. either to get attuned to the demands of the changing times or slowly recede in to history. To a certain extent, every system is experiencing a compelling need to adjust and improve itself in view of latest developments in science and technology, trade and commerce, medical science, industries, social mores etc. Human rights laws, cyber laws, intellectual property laws and environmental laws are but a few examples.

Justice is done by applying the law in its true spirit. Even good laws, if badly implemented, may frustrate the ends of justice. In order to ensure that justice is done to a case, the judiciary always has to have the law interpreted suitably. In so doing there evolve newer tools of interpretation and, sometimes, judicial precedents are also set. The journey from *Cooper's Case*[2] to *Ridge v. Baldwin*[3], or the declaration of House of Lords that it is no longer bound by its previous decisions in the United Kingdom[4]; or the historic decision in *Marbury v. Madison* in the United States of America[5]; or the development of judicial insight from *A K Gopalan*[6] *to Maneka Gandhi*[7], and the metamorphosis of 'strict liability principle' into the 'absolute liability principle'[8]. In India are all different pointers to the one reality-the things have

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2 *Cooper v. Wands worth Board of Works* : (1863) 14 CB (NS) 180.
3 See (1964) AC 40; (1953) 1 QB 539.
4 See: Note (Judicial Precedent) [1966] 3 All E R 77. The first case where the House departed from its previous decision was *Conway v. Rimmer* [1968] AC 910.
5 5 US (1 Cranch) 137 (1803).
6 *A K Gopalan v. State of Madras* : AIR 1950 SC 27.
7 *Maneka Gandhi v. Union of India* : AIR 1978 SC 597.
8 *M C Mehta v. Union of India* : AIR 1987 SC 1086. It is popularly known as Oleum gas leak case.

to change with changing times if dignity of mankind is to remain intact.

The post-world war II globe was suddenly a more sensitive world looking for the welfare of all, and, thinking globally. The sixty five years following the inception of the United Nations Organisation have had enough of globalization. No doubt. This increasing tendency to think in global terms immensely affected the law. As a result, law- making was no more a mere domestic exercise for a nation; because threads of global demands needed to be embedded in the fabric of national legal system in order to keep abreast of changing times. Often, the national laws were seen desperately trying to change colours according to global dictates. The World Trade Organization (WTO)[9] and Trade Related Aspects of Intellectual Property Rights (TRIPs)[10] are glaring examples.

II. Changing Times and Law

Long after trying to replace the natural law theory with other theories[11] the thinkers and politicians alike were convinced that rights of an individual as a human being, irrespective of his religion, nationality etc should be protected. This global consciousness symbolized in the Universal Declaration of Human Rights (1948) soon got acceptance at the regional[12] and national levels[13]. The human rights jurisprudence so developed has become a part of modern jurisprudence.

The industrialization brought with it the industrial property rights which ultimately were absorbed in a more general concept of intellectual property rights. The intellectual property laws, which are designed to protect the ideas with commercial value[14], quickly became the catch-word of modern legal system.

The industrialization needed newer technologies for its survival. Thus the world tried for and was soon blessed with scientific and technological inventions and innovations which had immense power to revolutionize the

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9 It came in to existence in 1994 as a result of GATT (General Agreement on Tariff and Trade) talks (1986-1993).

10 An agreement signed by all WTO members for protection of intellectual property rights, effective from 01.01.1995.

11 See f. n. s 11-15, supra.

12 The European Convention on Human Rights 1950 was signed by UK etc in 1951 and effective from 1953.

13 Human Rights Act, 1993 of India, and Human Rights Act, 1998 of UK are examples. On Dec 13, 2007 the members of European Union have singed in Lisbon the European Charter of Fundamental Rights; seven years after the draft of the Charter was finalized.

14 W R Cornish: Intellectual Property Rights Published by Universal, New Delhi.

world of machines. This revolution converted the world in to a global village. The world of machines-the cyber space- is where most of us today want to live in; and the cyber law the law we want to be governed by, no matter which field we belong to; so much so that everybody is impatient to have an exclusive site on the world wide web- popularly called internet- and to conduct his business electronically. If machines are fast replacing man in every quarter it is solely due to the increased popularity and high efficiency of the electronic version of things. Electronic laws, as cyber laws are often referred to, have made their presence felt in various walks of life, for example, e-governance, e-banking, e-commerce etc. The cyber law has forced the law-makers to induce a number of changes in other branches of law also.[15] However, the cyber world has also opened up new ways and means to commit offences known as cyber crimes.[16]

The application of science and technology to the biological world has brought about changes which are more alarming than pleasant. Man is trying to play God with his efforts to clone humans, plants and animals. While some of the biotechnological inventions do seem to augur well with the increasing pressure of population and incidental needs of food, shelter etc; others are trying to do things which are next to impossible. Efforts for cloning man to create a cloned race altogether are worrying. Soon after the concept materialized in the form of Dolly sheep about a decade ago, the scientists of the world appeared to have joined a blind race to produce genetically engineered species of plants, animals and, if possible, man. The world was a helpless spectator of the claims and counter-claims by the scientists about their cloning charisma and the law on the point remained in a state of flux until TRIPs tried to evolve certain parameters for patenting etc of biotechnological inventions[17]. Several nations of the world have banned the cloning of human beings as such but have allowed the biotechnological inventions which are not essentially biological[18].

The onslaught of industries has had a telling effect on our environs. It appeared almost paradoxical that the industries which aimed at betterment of our life were polluting the environment so essential for our life. Indeed no nation could have tolerated this idea of improving the quality of human life at the cost of human life (read environment) itself. It, in a way, was the turning

15 The jargon of words computers have provided us with has necessitated changes in, say, law of evidence, civil procedure, criminal procedure and other branches of law as well. Consequently, either the legal meanings of words (like 'evidence', 'signature' etc) have been enlarged, or, the legal provisions modified to welcome the changes. For further details, see the Information Technology Act, 2000 of India.

16 See, Part IV, infra.

17 See, the section on Patents under TRIPs.

18 For Example, see the UK law on the point.

point for evolution and growth of environmental law. Hence the awakening to protect our mother Earth as well as other elements like air, water, space which, according to Indian philosophy, go in to making of our life[19].

Stockholm Conference saw the issue blossom in to international environmental law which obliged more than one hundred countries including India to strengthen their domestic laws. The twin needs of environment and development were sought to be fulfilled by the concept of sustainable development which became driving force for the Earth Summit.[20] The green house effect, global warming, ozone layer depletion and climate change-the offshoots of pollution-have dominated the international debates ever since the United Nations Conference on Climate Change in Bali (2007) and Copenhagen, irrespective of their not so pleasant outcome, do stand as testimony to the earnestness with which the world is trying to prepare a roadmap for reduction of emission of green house gases, thus attempting to update Kyoto Protocol that expires in 2012.

The law in the United Kingdom has also experienced tremendous changes. The tradition started with the Magna Carta (1215) and strengthened by the Bill of Rights (1689) finally culminated in to the Human Rights Act, 1998 which marks a great change; because it has made the human rights an essential part of the British legal system. A British citizen now has a right to get his human rights enforced through the medium of British courts, and he will have to go to the European Court of Human Rights in Strasburg only as a last resort. Earlier, the ECHR was the only court to take care of such rights.

The Constitutional Reform Act, 2005 has introduced far-reaching changes in the UK law. To cite but one of these, the Supreme Court of the United Kingdom set up under it has replaced the House of Lords as the highest court of the land.[21] The signing by Britain of the European Charter of Fundamental Rights on December 13, 2007 has further enriched the legal fabric there. It may be added that the most of the intellectual property laws in Britain are monitored by the respective agencies evolved for the entire European Union, for example, the European Patents Office looks after patent cases and so on.

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19 Air Act, 1981; Water Act, 1972; Environment Protection Act, 1986; Forest Act, 1927; Wildlife Protection Act, 1972; Biological Diversity Act, 2000; and Forest Conservation Act, 1980 besides other enactments covering various components of nature.

20 It was held in Rio de Janeiro in June 1992.

21 The House of Lords functioned as the highest court on July 30, 2009; and the Supreme Court started functioning from October 1, 2009.The Supreme court sits in the Middlesex Guildhall in the Westminster, London, which it shares with the Judicial Committee of the Privy Council. The first President of this Court is Lord Philips.

The House of Lords Act, 1999 had abolished all but 92 hereditary peerages which is sure to reflect on the law-making in future. The House of Commons had in March 2007 voted for reforms to the Lords making it a partly nominated and largely elected body. Even as the proposal oscillates between Commons and Lords, it is certain that the composition of the Lords is going to be drastically changed sooner than later. This too will influence the nature of law in UK. Terrorism Acts of 2005 and 2006; Equality Act, 2006 and some other Acts evidence the sensibility of law towards changing times.

The American Constitution is rigid but law is not so. Originally having only seven Articles, it has been amended 27 times so far. It is interesting to note that the Constitution which was made in 1787 and ratified finally in 1789 had no fundamental rights and several states raised this demand while ratifying it. Thus in the year 1791 a Bill of Rights containing seven fundamental rights were added in the form of the first seven amendments. It further took several decades before the thirteenth (1865, abolition of slavery), fourteenth (1868, due process clause guaranteeing equal protection of laws to all) and fifteenth (1870, providing right to vote to Negros) amendments gave a sense to equality as a right of every American irrespective of his colour etc. The Equality Rights Amendment guaranteeing gender equality to women is yet to become a part of the Constitution despite almost a century-long effort (since 1923 to be precise).[22] Apart from such issues that require an amendment to the Constitution, however, the American law is constantly being updated and upgraded so much so that the developing nations like India have to suffer before they become legally smart. The Basmati controversy, for example, forced India to make laws on Geographical Indications as well as Plant Variety protection. The Traditional Knowledge Digital Library (TKDL) is the latest attempt by India to protect her traditional knowledge from being patented and exploited by 'fake and self styled inventors' in foreign countries.

The Constitution of India is flexible enough to absorb the emerging demands of the changing times and as such it is likely to make a century of amendments very soon.[23] However, on a few occasions, the amendments

22 The first Equal Right Amendment was introduced by suffragist Alice Paul in 1923, was passed by House of Representatives in 1971 and the Senate in 1972, and was ratified by 35 states but fell short of three ratifications. The latest effort has been made on December 12, 2007 again to rewrite women's equality in the Constitution by Carolyn Maloney and Edward Kennedy who introduced Women's Equality Amendments. For further details, see the website of NOW (National Organization for Women): http/www.now.org/issues/constitution/070612amendment.html. The last amendment related to limiting congressional pay revision of the legislators took place in 1992.

23 It has been amended 94 times (till June 12, 2006) so far with several Bills awaiting their passage in one or the other House.

have been of far-reaching consequences. Amendments relating to right to right to property, fundamental duties, the anti-defection provisions, the reservation in jobs, admissions etc for the other backward classes and the legislation related to right to education are but a few examples.

In order to keep her global promises India also included Articles 48-A and 51-A (g) etc in the Constitution making it respectively a Directive Principle of the State Policy to protect the environment, forest and wildlife; and a Fundamental Duty of every citizen of India to protect the nature and to have compassion towards the living beings. Realizing the importance of education in the development of one's personality, the right to compulsory basic education has been transferred from the Part IV (Directive Principles of State Policy) to Part III (Fundamental Rights) and elevated to the status of a fundamental right[24]; thus ensuring a constitutional remedy under Article 32 for breach of this fundamental right. Also, it is now a Fundamental Duty[25] of every parent and guardian to see that his ward gets the basic education and Right to Education 2009 is the latest measure in this regard.

III. Justice vis-à-vis Changing Times

Interpretation of law is a sine qua non for the administration of justice, especially because adherence to the letter of law will not be of much help in realizing the goals of justice. And, the spirit of law in true sense can be followed only through the medium of interpretation. Interpretation of existing law also checks the flow of legislations because the latter has to prove its efficacy to override the former.[26] Presently, a number of techniques of construction of statutes are in vogue.[27]

Like law, justice too has adapted to changing times; and has tried to embrace global challenges with a brave heart. Growing body of aw has been complemented with a commensurate increase in number of fora to impart justice: on domestic as well as global levels.[28] Marching with the times the judiciary has always tried to ensure that the law remains within its defined goals, and that it is properly enforced; and in so doing it has acquired the role of a watch-dog for the legislature and that of a school teacher for the executive.

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24 See Article 21-A.

25 See Article 51-A (k).

26 See, Heydon's case (1584).

27 Some of the well-known theories of interpretation are: the mischief rule, the doctrine of eclipse, the rule of prospective overruling, the golden rule etc.

28 For example, the emergence of International Court of Justice, the European Court of Human Rights, WTO Dispute Settlement System and the like, besides developments on the domestic front such as Human Rights Commission, Alternate Dispute Resolution System etc.

In the celebrated case of *Marbury v. Madison*[29] Justice Marshall interpreted the provisions of American Constitution in such a way that it established the efficacy of judicial review for all times to come; even though it had, literally speaking, not been provided in the Constitution. If the Judiciary can not come forward to uphold the provisions of the Constitution, the administration of oath to the judges to 'act according to Constitution and uphold it' would be, felt he, nothing but a mockery of the Constitution.[30] Whenever a state-made law or any law made by the US Congress seemed to violate the constitutional provisions, it became, according to him, the bounden duty of the Judiciary to step in.[31] American judiciary also evolved the concept of Social Action Litigation (SAL) to ensure that procedural technicalities of law might not come in the way of administering justice to people who really deserved it. The judicial activism also played a vital role in protection of Blacks' rights in America. *Brown v. Board of Education*[32], for example, proved a trend setter in ending legal segregation in public schools.

In the United Kingdom, the House of Lords took two bold initiatives to adapt it to new situations and to correct the course of justice. In 1964, it established through its decision in *Ridge v. Baldwin*[33] that whenever a body of persons had a power to make decision affecting the rights of individuals, fair hearing was a must. In so doing the House brought back the justice to its right path since it had got derailed exactly a century ago following the *Cooper's Case*[34]. Going further, the House of Lords itself declared in1966 that it would not thenceforth be bound by its previous decisions (as was the practice thitherto fore) if it was warranted to meet the ends of justice[35].

The course of justice in Britain has recently undergone tremendous changes following the enactment of Human Rights Act, 1998 because the human rights, as mentioned above, are now enforceable in British Courts themselves. Unlike in the past the Court will not remain content with interpreting the law as passed by Parliament but it will declare that the said law violates any or more of the human rights given to the British citizens. The Parliament will then try to amend the impugned law failing which the matter shall go to the ECHR. In case of a piece of secondary or delegated legislation the British Courts have a right to quash such legislation.

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29 5 US (1 Cranch) 137 (1803).

30 See, Marshall's Lectures Vol. IV.

31 Ibid.

32 347 US 483 (1954).

33 See (1964) AC 40; (1953) 1 QB 539.

34 *Cooper v. Wands worth Board of Works* : (1863) 14 CB (NS) 180.

35 See: Note (Judicial Precedent) [1966] 3 All E R 77. The first case where the House departed from its previous decision was *Conway v. Rimmer* [1968] AC 910.

The Constitutional Reform Act, 2005 is the latest big attempt to give a new face to the system of justice in UK. To introduce the doctrine of separation of powers, it has trifurcated the functions of the Lord Chancellor of the House of Lords. The upper house has now been reduced to the status of a purely legislative wing, even as its erstwhile executive and judicial functions are being taken care of by other bodies.

Sometimes the quest for justice on the part of the common man does not find a match in the procedural niceties as a result of which the judiciary comes forward to uphold the spirit of justice by removing the barriers of procedure. To this end the judiciary is sometimes found doing the jobs which, strictly speaking, belong to either Executive or Legislature. This eagerness and enthusiasm of the Court to allow it, for the sake of justice, to tread in to territories, not traditionally its own; or to waive a few procedural requirements is often referred to as judicial activism.

The judicial innovation of American courts galvanized the Indian courts and thus proved to be a precursor to judicial activism in India. As a result of it, the public interest litigations developed as an important tool to ensure that justice might not remain only a distant dream but also become a reality in our life. Similarly, the policy of protective discrimination promoted by American judiciary in case of Blacks somehow helped the Indian judiciary uphold the policy of reservation to the other backward classes in order to achieve social justice.

Not only this, the impact of Justice Marshall's path-breaking judgment in *Marbury v. Madison* echoed in the judgment of Indian apex court when it ruled in *Indira Nehru Gandhi v. Rajnarain* [36] that the Legislature can not take away the power of judicial review by inserting in to a piece of legislation phrases like "this shall not be called in to question in any court of law". The power of judicial review got its widest-ever canvas on Indian scene when the apex court ruled that no legislation was immune from the Court's power of judicial review and that, to this end, placing a legislation in the IX Schedule of the Constitution would be of no avail.[37]

Likewise, the justice in India got a fillip when the Supreme Court followed the *Ridge v.Baldwin*[38] to invite the rules of fair hearing in to *Maneka Gandhi v. Union of India*[39] interpreting the Article 21 (the right to life and personal liberty) which on the one hand marked a shift in the approach adopted

36 See AIR 1975 SC 2299.
37 See IR Coelho (Dead) by LRs v. State of Tamil Nadu (2007).
38 See (1964) AC 40; (1953) 1 QB 539.
39 See AIR 1978 SC 597.

by the Court in the previous cases[40] and on the other metamorphosed the "procedure established by law" in to the "due process of law".

The decision of the Court in *Ratlam Municipal Council v. Virdhichand*[41] induced what was called as environmental jurisprudence when it ruled in unequivocal terms that a civic body had no option but to perform its duty towards the people it represented. It set the pace for judicial activism and innovation in matters related to environmental pollution. After some time, the Court ventured to modify the rule of strict liability (laid down in *Rylands v. Fletcher*[42] in 1868) in to one of absolute liability[43] holding that the owner of the premises where handling of hazardous substances was being done owed an absolute and non-delegable duty towards anybody who got adversely affected due to such handling. It is this attitude of the Court which has encouraged several PILs on environmental issues leading to important judgments.[44]

One case without which any discussion of the Indian Judiciary will remain incomplete is the historic decision of the Court in *Keshavanand Bharati v. State of Kerala*[45] which propounded the 'basic structure theory' which proved to be a great restraint on the legislative competence of the Parliament, and spared the people laws which could have resulted in to injustice.

IV. Causes of Concern

Although ours is credited as one of the lengthiest written constitutions of the world and has, to a certain extent, stood the test of times; yet it is helpless in certain respects. It has not effectively controlled the developments which are grave violations of the spirit of law and justice both. The criminalization, the caste-factor, the regional chauvinism and the corruption are fast turning into norms rather than the exceptions to the political life. The Constitution, sometimes, is being used by power-hungry politicians in the filthiest possible manner, shattering the lofty ideals that lie at the root of it. A few examples suffice.

Democracy has it all

It is an open secret that a sizeable number of our law-makers are

40 For example, AK Gopalan v. State of Madras: AIR 1950 SC 27; and ADM Jabalpur v. Shiv Kant Shukla: AIR 1976 SC 1207, to name only a few.

41 See AIR 1980 SC 1622.

42 (1868): LR 3 HL 330.

43 *M C Mehta v. Union of India* : AIR 1987 SC 1086. It is popularly known as Oleum gas leak case.

44 Examples are: Ganga pollution Case, Taj trapezium case, and a series of M C Mehta cases, besides others.

45 See AIR 1973 SC 1461.

alleged law-breakers as is suggested by the description of charges they face-ranging from loot and arson to kidnapping, rape, murder, corruption and the like. The oft-repeated 'it is all politically motivated' has become rhetoric rather than a defence. The reality is known to all. With such legislators around, the quality of law suffers and so does that of justice.

It is no wonder, then, that most of the practices adopted by the political leaders during the festivals of democracy (as the elections are often referred to) are far from being fair and healthy. It is precisely at this juncture that the services of criminals are sought and received in lieu of a promise of future help. The insincere as the most of them are towards the people they represent, the contestants do not see any reason to bank upon the true response of the common man and, thus try to exact from him a response that is not really his. This desperation cuts across party lines and we see that patronage to criminals has today become a regular feature of the practice of every political party irrespective of the political philosophy it preaches. This syndrome is uniform as far as its presence in political environment is concerned though its degree may differ. Soon after an offender is apprehended the telephone of the police station rings pressurizing the official concerned to undo what he has just done. We all know who precisely could have been on the other side. And, it is they who may be found shedding crocodile tears for the safety of the common man.

With such leaders vying with each other, it may sometimes become a choice between two evils, if not more, for the common man; and the chances are he would like to reject all of them. However, the people have been given a right to vote for one or the other contestant but not to reject any; howsoever they may abhor them. It is the pity with the present system of elections that a political contender (or, for that matter a political party) may win the race even when the majority of the electorate has not voted for him (it). Except on rare occasions, the poll percentage remains below fifty, of which the winning candidate often gets less than the half. The message is loud and clear that the majority of the voters has either rejected or has not cared a damn for these so called winners.

It is thus a foregone conclusion that the ruling party does not have the people's mandate with it even if it has more than half of the elected representatives supporting it. In case of what is termed as a fractured mandate the situation is worse. The parties enter in to a sort of contract to 'rule by turn'. This experimentation has been done in UP, J&K, and Karnataka where political parties forgot their animosities and rivalries to grab power and to govern the electorate in tandem thus making a mockery of the pious democratic exercise we call elections.

All those who swore by the name of democracy as the government of the people by the people and for the people might be turning in their graves having heard of the tact and trick that we play to distort its formulae so as to serve our motives. A politician facing charges of corruption, almost overnight, launched his spouse as the leader of his party in the state legislature so that the seat of the power remain within the family; to the dismay and surprise of every body who had a faith in our democracy. On another occasion, the power-thirsty politicians made a record of sorts by electing as Chief Minister a person who was an independent candidate![46] Having been reduced to a game of numbers that requires managerial skills to ensure the loyalty of more than half the elected heads, democracy is now the government of, by, and for the politician.

There is yet another example to show how we can exploit the pious provisions of the Constitution for our own selfish ends and, in the process, how the shield of privilege is used to impress even the courts that what otherwise would have been a grave offence is transformed in to a privileged act just because it had something to do with the proceedings of the House. Mr. Shibu Soren, a Member of Lok Sabha, openly admitted having received money from late P V Narasimha Rao in lieu of the support of the former's party to the latter's. He even produced the bank passbooks that showed the money had actually been deposited. However, the Court[47] treated his act as one that was covered by the phrase 'anything said or vote given by him in Parliament' used under Article 105(2) of the Constitution. While interpreting the Articles of the Constitution, the intention of the Legislature happens to be one of the tools. It will be a curious inquiry whether the framers of the supreme law of the land would have really intended to let a member go scot-free once he had done what Mr. Soren had.

Judicially speaking

It has been acknowledged that Judiciary is not free from corruption either[48] but there have been no effective measures to curb it. When it appeared that Judges (Inquiry) Act, 1968 had not been of much help, a full court of the Supreme Court adopted 'The Restatement of Values of Judicial Life' on May 7, 1997. Recently, the Judges (Inquiry) Bill, 2005 is under way which entitles an individual to lodge a complaint against the behaviour of a judge of Supreme Court (except the Chief Justice whose name may, however, be added later if he has been referred to in the matter) and the judges and CJ of a High Court.

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46 It may not be out of place to mention here that Madhu Kora, the person who became the Chief Minister in the process, is now facing corruption charges.

47 See Jharkhand Mukti Morcha Bribery Case.

48 See, cases against Justice Ramaswamy of the apex court, and Justice Bhattacharjee of Bombay High Court, for example.

The Law Commission of India, in its 195th report on the proposed Bill has reacted positively but the enactment of the Bill is still a distant dream.

Sometimes, it so happens that the measures suggested by the legislature or the executive are seen as a digression of its dignity by the judiciary. This is why the attempts to introduce all India Judicial Services (as the sole medium for appointing Judges to the higher judiciary), or to bring the income of judges under the scrutiny etc have not met with success. In all likelihood, the latest measure of the Planning Commission to fix the fee slabs for one's counsel is going to earn the ire of advocates all over the country[49]. The corruption in the lower echelons of judiciary has often met with admonition of the apex court but, it seems, the situation is far from improved. Or, else, how can one justify the orders of a Magistrate for the arrest of the then first citizen of the country[50]. The Ghaziabad PF Scam case is more than a mere pointer to the corruption rotting the Judiciary.

The judicial activism that travelled a long distance from America to our land has not been an all too well satisfying phenomenon. It would be very unjust to say that the common man has not gained anything from the judicial activism, but it creates an impression that may be found bordering on aggression when the courts appear to go too far; sometimes to assert their supremacy and at others to play the role of a preacher. This needless to say induces an element of bitterness to its otherwise cordial, healthy and dignified relations with Executive and Judiciary. The remarks of the then CJI on the working of the Gujarat Government, or the order of SC to arrest and produce the then Speaker of Manipur Assembly, or its recent notice to the Speaker of the Lok Sabha in Cash for Query Case (wherein the accused MPs had been suspended) are some of the instances where it was commonly believed that the Judiciary could easily afford to show a little more mercy to the concerned parties without compromising the least with the cause of justice. The latest in the series is the apex court's 'farman' directing the Central Government to distribute the foodgrains free of cost to the poor, to which the Prime Minister has reacted by saying that the Judiciary should better keep itself away from the policy matters.

It looks strange that piling up of rather more important cases goes on while the 'high-profile' cases get all the attention of the Court (Sanjai Dutt's case, for example).Quite often courts steal the limelight not as much for their activism as for the fact that the case at hand involves, say, a powerful politician, actor, or the like. Sometimes, the courts start *suo motu* proceedings to handle cases they feel are important; while the same energy is not utilized in deciding

49 See, Amar Ujala, Allahabad Edition dated 11.12.2007.
50 Dr APJ Abdul Kalam.

long pending cases which are equally, if not more, important. In a case, for example, a Judge of Allahabad High Court preferred to sit on Railway Platform as a Court of Law issuing notices to the authorities of the Department because the Air Conditioned Car he had been travelling in had some of the facilities lacking. Similarly, there have been contempt proceedings when a judge had to wait a few seconds at the gate of an institution, or at the doctor's chamber.

The PIL which had provided momentum to the drive of judicial activism to a great extent had emerged as the most powerful weapon to get a judicial verdict against an erring authority or the like; and even at present the impression goes that the courts are more attentive on issues brought by way of PILs. However, very soon the court felt that enough was enough and it started imposing fines on those who in its opinion attempted to use PIL as personal interest litigation (for example, such was the fate of the man who had challenged the citizenship of Mrs. Sonia Gandhi). Now it was certainly time for the apex court itself to introspect on the court's treatment of PIL and the judicial activism shown thereby.

Recently the Supreme Court itself has warned the judiciary not to overstep their limits lest the Legislature try to clip its wings[51]. This created confusion as to the exact description of situation that might qualify a case to be treated as a PIL, and on the following day two different benches of the apex court declined to hear what otherwise would have been two public interest litigations. To clear the mist on the controversy so arisen, the apex court said that the observations of the said Bench were not to be taken as binding directions for the Court[52]. However, the subsequent declaration by the Court that it is planning to come up with a guideline[53] on the issue of PIL suggests that there is probably more to it than meets the eye. The Planning Commission has suggested measures to fix a counsel's fee which for the time being runs in to lakhs with no relation to the outcome[54]. The directives of the Court regarding the foodgrains, it may be noted, are a result of a PIL filed by PUCL.

And, finally, here we are

When the Constitution provided for the reservation for Scheduled Castes and Scheduled Tribes, the demand to extend this facility to other backward classes started gaining ground. The Kalelkar Commission of 1950s remained inconclusive but, after some time, the Mandal Commission suggested and, later, the Government of the day accepted, that 27 percent reservations in jobs be given to the other backward classes. On being challenged the

51 See, Amar Ujala, Allahabad Edition dated 11.12.2007.
52 See, The Hindustan Times Lucknow Edition dated 14.12.2007.
53 See, The Hindustan Times Lucknow Edition dated 15.12.2007.
54 See, Amar Ujala, Allahabad Edition, dated 11.12.2007.

Supreme Court upheld its validity with a rider that more affluent among the OBCs-the creamy layer- should not be given this benefit[55]. Reservation in jobs, admissions, civic body elections etc proved a powerful weapon in the hands of politicians who had fallen short of any other equally powerful issue. As a result, no body seems interested in any other issue. Different sections of society are demanding and, in turn, being given reservation; because, political dividends still remain the sole criterion for acceding to the new and new demands from one or the other caste. The Gurjar Movement in Rajasthan is the latest in the series. To top it all, now the politicians have manufactured a new lollypop: that of providing 5% reservations to the Muslim minority, and, 10 % reservations to the poor among the so called forward classes.

We claim to have among us some of the richest persons in the world. But the question is whether the great many laws around us are helping the rich become richer and the poor more so. If this is the case, as it certainly looks to be, we just can't shut our eyes off this scenario:

> "Forbes billionaires' list featured the names of thirty six Indian businessmen, with an accumulated worth of a staggering USD 191bn i.e. almost 20% of what the entire Indian population earned in the same year. In fact, of these 36, three of the names also appeared in the top 20 of the global rich!…..That unfortunately is the story of India…….which houses the most number of poverty-stricken people and will soon house the maximum number of billionaires too."[56] The General Elections 2009 witnessed the syndrome of 'paid news' which reflected the fact that corruption had started eating in to vitals of the Press. The report on the paid news, released by the Press Council of India on July 30, 2010 details the various ways in which the print and electronic media are trying to make the most of the politician's eagerness to win the elections.[57] this has catalysed the nationwide discussion on imposing codes of ethics on the print and electronic media, giving teeth to the Council, enlarging its jurisdiction, and sundry other measures.

V. Conclusion / Suggestion

It is clear from the above discussion that most of the problems we

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55 Indra Sawhney v. Union of India, otherwise known as Mandal Commission Case: AIR 1992 SC 477.

56 See, Arindam Chaudhury, in the current issue of Sunday Indian, as it appeared in Amar Ujala, Allahabad Edition, dated 16.12.2007.

57 See, on the official website of the Council, the report on the paid news.

face today is due to the system of law and justice that we follow and which lacks some basic values and, hence a sound philosophical foundation. These values like a sense of duty, equality, universality, morality etc correspond to some of the very basic principles of dharma. The more we distanced ourselves from the clutches of divine law, the more we resorted to man-made law. This not only deprived the justice of its divine halo but also attached to it a worldly element, that of individuality, with all its paraphernalia of bias and the whims and what not.

The ancient Indian system had dharma at the centre while the western system-which India and several other nations follow today- has a sort of vacuum or, at best, a hollow[58] at the centre rather than any ideological and philosophical content. It is an undeniable fact, however, that we need the present system (as for as its ability to provide material comfort is concerned) but we need the ancient system even more (because it has got the values that help us develop ourselves individually as also collectively in a way that leads to peace of all).

Now the time has come to give the present system a go-by for the better, not by discarding it through and through but making it imbibe the values it lacks. For this, we have to think of an approach that presents a beautiful blend of both- the merits of the modern system as well as the values of the ancient system. The new set of paradigms that we are advocating is one that will enable us to have the best of both worlds.

Thus, it is suggested that…

The paradigm shift has to be from a world view devoid of dharma to the one based, nourished and protected by dharma, due regard being had to those aspects of present system that ensure material well-being of one and all.

58 There is an example given in Chapter 1 (page 9) entitled 'Basics' in the book 'Understanding the WTO' (Third Edition 2003) published by the organization itself. "Participants in a recent radio discussion on the WTO were full of ideas. The WTO should do this, the WTO should do that, they said. One of them finally interjected: "Wait a minute, the WTO is a table. People sit around the table and negotiate. What do you expect the table to do?"