

Functioning of courts during the pandemic

Like all other institutions and departments where physical public dealings were an integral part of their functioning, courts too falling in the same category had to reschedule and reshape the process of their routine functioning in congruence with the precautionary protocol of the corona virus pandemic and while following the SOPs and other related guidelines ensured that performance did not, in any way, get impaired or be at a disadvantage to the general public. It is to be seen to be believed that under the trying period when many judicial personnel got infected with the virus, the working of the Common High Court of Union Territory of Jammu and Kashmir and Union Territory of Ladakh as also District and Subordinate Courts was not only maintained but as per the data available and made fairly known, the performance was beyond expectations. This data is in respect of the achievement registered in cases clearance rate (CSR) the information about which, as per the insistence of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice of the Rajya Sabha, was to be furnished by Registrar General of the High Court to the Union Ministry of Law and Justice and other concerned.

Since the virus and its impact, direct and indirect, resulted in a sea change in every aspect of human activities and way of personal and social life, the functioning of every institution, departments, schools, colleges and universities, facets of all administrative apparatus, judiciary, Parliament and the like had to undergo a change and remodelling in their respective working. However, utility and the benefits of the information technology made it largely possible as virtual mode resorted to, showed very satisfactory results. In the same way, physical hearings in the Common High Court of both the Union Territories was stopped to follow the necessary guidelines of the Government of India and Government of J&K Union Territory. Starting and giving a push to the virtual mode by the High Court and other subordinate courts paid handsome dividends when seen and analysed in respect of the percentage of case clearance rate. The expectations, no doubt, could touch any zeniths but it is to be not only observed but appreciated too that a new system where physical contact was no more but the process other than that duly followed in case hearings and that too, for the first time and that bringing about good results in performance, can only be commended and admired. The virus could not succeed in crippling the system as otherwise it was all possessed and loaded with, only due to our fortitude and devising ways other than conventional, especially when modern technology has blessed the present era with that.

The data made public in respect of how many cases were disposed of in the worst hit year of 2020 by the corona virus pandemic as compared to cases handled in the corresponding period of the last (normal) three years, it would be seen that a blend of hard work and a total commitment of courts resulted in superb performance say of 231% in respect of the High Court only while in respect of other subordinate courts, the CCR, however, was lower as compared to the years 2018 and 2019 respectively. Since the unprecedented surge in COVID-19 virus infections is again witnessed for the last two to three weeks across the country and even in Jammu and Kashmir, there could be the possibility of giving more preference to virtual mode than physical appearance and hearing in courts and with the given results of performance in delivering of justice to the litigants, still better results could be expected. We are undoubtedly quite hopeful in that. It would not be out of context to say that in the area of long pendency of court cases and in the light of the fresh guidelines issued by the High Court and to file performance cum progress reports on clearance thereof periodically, much remains still to be done even under the present challenging circumstances.

Prospects of banning election rallies

If political leaders, star campaigners and others organising and addressing election rallies without observing the necessary guidelines issued by the Election Commission last year think that they could get away without facing the due action, it would be all a wishful thinking as made very clear by the EC that it would not hesitate in altogether banning such rallies. Moving in an exposed way without masks and encouraging the crowds to gather without the same was tantamount to extending invitation to the invincible and dreaded virus to visit the violators at a "huge and unaffordable cost".

Elections are to be held, fought, contested, won and lost and campaigning for candidates all done by the political parties in the country but not by breaching the COVID safety guidelines which has been made clear by the EC in a letter addressed to all political parties in the context of "widely known that in the recent weeks, COVID cases are being reported in larger numbers." It is, therefore, left to the discretion of the suspected violators to choose between safety guidelines and a total ban on rallies and gatherings likely to be imposed by the EC.

Ambedkar and Social Justice

Prof K L Bhatia

*"The Love of Justice is, in most men, merely the fear of suffering injustice."
"Those who denounce injustice do so not because they are afraid of doing it but of suffering it". (C. K. Allen, Aspects of Justice)*

The day 14th April is important in the modern history of post-independence India in memoriam of Dr. B. R. Ambedkar, an architect and Founder Author of the Textual Constitution of India. We pay Pushpanjali Shradhanjali to him. Social justice has been embedded in the Constitution of India as an entrenched immutable foundational fundamental being the indestructible basic structure. It applies equally to haves and have-nots (underserved) segments of the society, which is inherent in the rich majestic constitutional language of Preamble, Fundamental Rights and Directive Principles of State Policy. To know the views of Dr. B. R. Ambedkar concerning social justice, it may be worth recalling to knowing what social justice means; what is its genesis; what is its grammar; and what does it aspire for? The expression social justice needs correct conception as well as perception even much beyond the views concerned with 'public welfare', or the modern 'welfare state' or 'welfare as the by-product of economic action'. However, social justice is not only difficult but hard to define, because ever since men have begun to reflect upon their relations with each other and upon the vicissitudes of the human lot, they have been pre-occupied with the meaning of justice. Vocabulary is infinite to the miscellany of the term justice. A miscellany of adjectives seem to have been chosen attached to different kinds of justice, viz., distributive justice, synallagmatic justice, natural justice, positive justice, written justice, unwritten justice, political justice, social justice, economic justice, commutative justice, recognitive justice, juridical justice, sub-judicial justice, constitutional justice, administrative justice, providential justice, educative justice, corporative justice, national justice, international justice, and parental justice.

Irrespective of this wealth of phraseology, it is the fact that man alone is the true subject and

object of justice. The literature on social justice is utmost vast that anything new can be said of its qualities, characteristics, conception and operation. Justice as pure virtue is universally deemed to be in the domain of morality. Justice is a social virtue. The virtue of justice expresses an obligation towards others. Justice as social virtue is to maintain equilibrium or harmony in human affairs. Thus, social justice is an art which implies just, fair and reasonable guidance to all the dispensers of justice-according-to-law is necessary in society to establish some accepted standards of the common good.

The Apex Court of India has unequivocally expounded that social justice as an objective of the Constitution is an inarticulate major premise which is personal and individual to every court and every judge, depending on the judges' outlook on life and society, and laws cannot be interpreted without reference to social justice to the achievement of which our country India that is Bharat is pledged since its inception.

Social justice or distributive justice or compensatory justice is a quest for justice within the domain of LAW: It is a quest for Liberal (L), Affiant/Affiance (A), and Workable (W). Social justice, opines Justice V. R. Krishna Iyer in 'Social Justice: Sunset or Dawn', in a comprehensive sense includes both economic justice and social justice. The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities.

Part IV of our Constitution entitled as Directive Principles of State Policy is the soul of the instrument of instructions in the nature of Social Policy with the direction to the State to strive to achieve the goals social justice through

the instrumentalities of law, schemes and other mechanisms. Granville Austin in 'The Indian Constitution: Cornerstone of a Nation' beautifully espouse this soul of our Constitution thus: "In the Directive Principles, however, one finds an even clearer statement of the social revolution. They aim at making the Indian masses free in the positive sense, free from the abject physical conditions that had prevented them from fulfilling their best selves. ... The essence of the Directive Principles lies in Article 38. ... The Constitution was to foster the achievement of many goals, transcendent among them was that of social revolution. Through this revolution would be fulfilled the basic needs of the common man".

Be that as it may, the concept of social justice has varied with age and clime. Thus, our Constitution envisages tripartite picturesque of social justice, namely, Justice --- social, economic and political is directed in the Preamble; socio-economic justice is procured by the Directive Principles; justice --- social and political is secured by Fundamental Rights. The quintessence of Justice is the liberation from socio-economic subjection and economic actualization of the goal of full and free development of every Indian individual. Thus, in broader perspective social justice is the end.

Succinctly, Ambedkar's social justice vision may be "That true Self-love and Social Justice are the same", which he presents in three words: liberty, equality and fraternity. From the backdrop of this, the contours of Ambedkar's social justice vision are directed towards the awakening of the underserved segments of the society, and securing the political, social and educational safeguards to such classes. His philosophy was occu-

ried with social amelioration, political enlightenment and spiritual awakening. Besides, he had deep faith in fundamental human rights, in the equal rights of man and woman, in the dignity of the individual, in social and economic justice, in the promotion of social progress and better standards of life with peace and security in all spheres of human life. In an ocean within a tear, he touched nothing that he did not adorn.

Social justice per se aims at removing all inequalities and affording equal opportunity to all citizens in social affairs as well as economic activities. The Constitution of India brings a renaissance in the concept of social justice when it weaves a trinity of it in the preamble, the Directive Principles and the Fundamental Rights. This trinity is the core of the commitment to the social revolution; this is the conscience of the Constitution; it is born from the womb of the Freedom Struggle. The trinity of social justice is woven in the Preamble fabric to constitute India into a Sovereign Socialist Secular Democratic Republic and to Secure to all its citizens: Justice --- social, economic and political; Liberty --- thought, expression, belief, faith and worship; Equality --- status and opportunity; and to Promote among them all Fraternity Assuring the Dignity of the individual and the Unity and Integrity of the Nation.

This indeed is social justice guaranteed by the Constitution of India because it strives to create a balancing wheel between freedom, political and economic, and indeed, makes the survival of democracy. The Preamble language vouches for social justice for all the Indians irrespective of their religion, caste, sex, place of birth, descent, residence, and such a type of social justice aspires to cleanse the unity in diversity heading progressively to egalitarian State. In the backdrop of this, Justice V. R. Krishna Iyer has expounded: "Social Justice is the end; judicial justice is the means; the legislative and executive operations are human engineering, and together the three branches of Government have to work in comity so that the Constitution may fulfill what the founding fathers designed".

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Harsha Kakar

The recent two-day visit of the Russian Foreign Minister, Sergey Lavrov, to India was followed by a similar duration visit to Pakistan. While in India he held discussions with his counterpart, S Jaishankar, however there was no interaction with the PM. In his press conference, post the visit, he stated, 'We discussed prospective and additional manufacturing of Russian military equipment in India within the concept 'Made in India'. So here, I didn't see any changes from our Indian partners and friends.' He implied that currently there was no impact on Indian procurements despite threats of sanctions from the US under CAATSA.

The visit also aimed to set in place the summit between the Indian PM and Russian President, Vladimir Putin, which had to be rescheduled from Dec 2020 due to COVID. There were also discussions on Afghanistan, its way forward as also South Asia. He denied any military alliance with China while commenting on the QUAD, which he termed as the Asian NATO.

Russia has been vehemently opposing the QUAD, which

India-Russia divergences

India justifies being a member off. On the QUAD Jaishankar stated, 'Such cooperation also reflects the multi-polar and rebalanced character of global politics. India is strongly committed to ASEAN centrality and this is underlined by the Indo-Pacific Oceans Initiative that it has been advocating at the East-Asia summit.'

Indo-Russian relations are largely centred around defence and nuclear collaborations. Economic trade amounted to just USD 10.11 billion in FY 2019-2020. Jaishankar also stated in his opening remarks at the joint press conference, 'We talked about longstanding partnership in nuclear, space and defence sectors. We assessed positively our economic cooperation, noting the new opportunities in Russian Far East.' India has to maintain cordial ties with Russia as a large part of its forces use Russian equipment.

From India, Lavrov proceeded to Islamabad for a two-day visit. He interacted with his counterpart, SM Qureshi, PM Imran Khan and the army chief, General Bajwa. This is his first

visit to Pakistan since 2012. Moscow and Islamabad have been moving closer since 2014. The current visit resulted in Lavrov promising supply of military equipment to Pakistan. He stated, 'We stand ready to strengthen the anti-terrorist potential of Pakistan, including by supplying Pakistan with special military equipment.' India has always opposed Russian military supplies to Pak.

There have been reports that India is concerned about deepening ties between Moscow and Islamabad. The fact we tend to miss is that the current area of global focus is Afghanistan, where US and NATO forces are bound to withdraw in some time. Both Russia and China seek to be influential players in Afghanistan, mainly to exploit the country's geo-strategic location and resources by collaborating with the Taliban, which is bound to emerge as the main player, if not form the government. The US has long accused Russia of providing equipment and funds to the Taliban, including bounties for targeting US forces. Hence, ties with

Pakistan would benefit Russia.

Further, India is evidently in the US camp and has accepted upgradation of QUAD, against the desires of Russia. Russia believes the QUAD is directed against China, which India denies. With a bipolar world, dominated by US and China, nations have to choose. India, based on growing security challenges from China, has sided with the US, while Russia, based on US economic sanctions and other pressures, is a junior partner of China.

India has always claimed that its relations with the US are not at the cost of Russia. In a similar tone, Russia claims that its relations with Pakistan are not at the cost of India. The Russian Ambassador to India, Nikolay Kudashev, stated, 'Russia's ties with Pakistan are independent in nature similar to our ties with India. It is based on the same values based on which we have ties with India.' However, both India and Russia continue to support each other on the global stage. India has never criticized Russia for any of its actions, whether Crimea or Syria. Neither has Russia

commented on Indian decisions on Kashmir. India is also a member of the BRICS, SCO and RIC groupings with Russia.

Simultaneously, Russia provided the opening for India and China to hold discussions to resolve the Ladakh crisis in Moscow. It is rumoured that Russia laid down the groundwork for initial discussions. Both nations are also cooperating in vaccine production. The Russian vaccine, Sputnik V, is being manufactured in India. Lavrov had stated in Islamabad, 'We have a number of foreign partners to produce the vaccines. Vaccine production is up and running in India, Korea, Belarus, and other countries. These vaccines can be supplied to Pakistan.' Lavrov had also stated in Delhi that Indian vaccines would also be manufactured in Russia.

Global equations are changing and so are global alignments. Russia and China are both under US pressure, albeit for different reasons. It is, but natural, for them to come closer. Pakistan is a Chinese lackey state and would need support from every quarter. Its only

trump card currently is Afghanistan, where it has maintained close ties with the Taliban. It would seek to exploit this to remain relevant on the global stage. With the Taliban likely to get control of the country, nations like Russia and China would seek to be relevant in the region. Hence, ties with Pakistan bear relevance.

India, on the other hand, has moved closer to the west. Indo-US proximity is well established. Its active membership of the QUAD is viewed negatively by Moscow and Beijing. India may sign multiple agreements with Russia as also seek its presence in the Indo-Pacific, however, Russia would never intend to irk China. The message during this visit was clear when Lavrov termed the QUAD as an Asian NATO.

The fact remains that both nations are acting as per their national interests. With both chartering courses which suit their interests, there is bound to be a divergence. This divergence must be controlled and not permitted to grow. This will depend largely on Indian foreign policies and acceptance of the fact that both countries will charter their own paths.

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Jammu: City of Wine Shops ?

Rajan Gandhi

Our Jammu and Kashmir, once the biggest state of British ruled India with distinct honor of 21 gun salute, just couldn't enjoy the fruits of independence like other parts of India. Blunders by then ruling class of India led to one catastrophic decision to another and cycle goes on and on till date. First it was land to tiller policy implemented by Sheikh Abdullah, with a ceiling of 186 kanals for owners and the rest was redistributed among landless labourers, with no compensation to the landlords. Separate PM, Sadar-e-Riyasat, what not and constituent assembly elections set the dark future of Jammu and ever since the wheel of misfortune is just grinding Jammu one way or another. Jammu has been fighting for even basic facilities like railway station, roads, hospitals, airport, road, electricity, water and struggle is still on. But one thing which Jammu has been gifted by Kashmir centric rulers are liquor vends so much so that once known as 'City of Temples' now has turned into 'City of Wine Shops'. Just like government employees and budget which is unjustifiable as compared to population and size of other bigger states, Jammu has unique distinction of 200 plus wine shops and much more bars in numbers. It is beyond one's imagination how a school and wine shop can have common wall at Kachi Chawni just besides BJP old office or Bhairon mandir with a wine shop just opposite to it with a gurudwara besides it or less than 100 meters distance between a wine shop, a Hanumanji mandir, a gurudwara and a masjid at Lakhhatta bazaar. Matter of fact is every mandir road in Jammu has a wine shop, how and why no one wants to answer?

Jammu and Kashmir Excise Act was drafted in 1901, by 1968 only 2 Liquor Licenses were issued but after that it was like a monsoon of liquor licenses year after year. In 1969-70 licenses granted 10, 1970-71 granted 13, 1972-73 granted 19, 1974-75 granted 14, 1975-76 granted 4, 1976-77 granted 21, 1977-78 granted 5, 1979-80 granted 4, 1981-82 granted 15, 1983-85 granted 2, 1998-99 granted 18, 1999-2000 granted 32, 2000-01 granted 1. In addition to this 2 sub vends were regularized in 2005 and one liquor vend was allotted in January 2011. All these licenses were issued by Finance Ministers of respective times without any process or policy and allottee contin-

ued their business for decades without any further changes in license fee and auction. Bumper year was 2005 when 60 more vends were allotted on temporary basis in August 2005 for a period of four months by lottery system and are continuing till date in view of various interim orders passed by court in different cases. So at present there are 223 functional liquor vends in Jammu and Kashmir, except 2-3 in Kashmir, rest all in Jammu Division. The whole cozy nexus turned turtle when a complaint was made by some private person stating that the entire process of 2005 draw of lots had been manipulated. The matter was referred to SVO, which referred the matter to CBI, report was sent to the Government on which it was decided to cancel the temporary licenses granted as such show-cause notices were issued to the appellants and subsequently matter went to High Court.

Normally Judiciary simply do not interfere in utilities, tax and economic regulation cases as the legislature after all has the affirmative responsibility but this loot was too much to be ignored. The opening remarks of HC speak about the state of affairs of Jammu and Kashmir, "This Court has once again being called upon to clear the skeletons from the cup-board in Union Territory of Jammu and Kashmir. The case in hand is not in isolation where rule of law has been kept aside and there is total arbitrary exercise of power. Earlier many glaring issues came before the court. The same were, challenge to the Jammu and Kashmir State Land (Vesting of Ownership to Occupants) Act, 2001, popularly known as Roshni Act, grant of licenses for extraction of minor minerals, rampant encroachment of public/forest land, adhocism in government service, keeping investigation of criminal cases against senior officers and politicians under the Prevention of Corruption Act pending for decades and occupation of government accommodation by private persons, ex-politicians, retired employees, political workers, whereas the government employees are waiting for allotment. This time it is in liquor trade, which had always remained lucrative."

2003 Excise Policy was the basis for draw of lots pertaining to the new vends. Even Country Made Liquor Vends were converted into Indian Made Foreign Liquor vends. Moreover, same licensee was operating two vends in the area. The

program by which draw was done itself was tutored to pick up more numbers of specific categories in the draw of lots, practically 42.6% applicants, who were successful, were out of 10.4% applicants in the category of 1, 2 and 3 digit number applications as the program was heavily skewed in its favour. There were number of proxy applicants on behalf of serving or retired government employees including of Excise Department and some allottees were relatives of the employees of the department including brother in law of the programmer as well. Another serious observation was that out of 160 liquor licenses granted up to the year 2000-01 without following any procedure, 34 are in the name of women whereas in 25, they are partners with other males. Out of 60 licenses which are subject matter of dispute having been allotted in the draw of lots, 21 are in the name of women which clearly establishes that there are other persons behind the scene as women folk are not sitting on the vends to take care of the business. But ironically old vends were never re-auctioned. The Jammu and Kashmir Excise Act was enacted in the year 1901 AD, but first procedure was framed in the year 1984. In the absence of any rules it was simply a pick and choose policy. In the 13 years practically there was no increase in the license fee for JKEL-2 licenses, continued with allotted vends merely by approaching the court and with interim orders passed in their favour and the object of the government to generate revenue got totally defeated. In the Excise Policy for the year 2017-18, on the one hand, Clause 3.2.1 of the aforesaid policy provides that grant of licenses for operating liquor vends shall be strictly in terms of the provisions of the Act and the Rules and according to judgment of Hon'ble Supreme Court and High Court, however, going beyond that Clause 3.2.7 was added which provides that grant of new licenses shall be for a period of five years, contrary to the provisions of the rules. According to 2017 excise policy new licenses for underserved areas shall be determined and the licenses shall be granted through e-auction mode. All vends were made regular in 2019, as such issuance of Excise Policies were merely an eye-wash and apparently only for renewal of the earlier licenses granted. HC in its order observed that no transparent procedure was adopted for allotment of sub-vends so excise policies were just made to follow the prin-

ciple, 'you show me face I show you rule'.

More serious are the observation of Court Order about bureaucrats, "The conduct of the officers at the helm of affairs who had issued the aforesaid Excise Policy for the year 2017-18 till 2019-20 and acted totally contrary to the provisions of the Act and the Rules and interim order dated 23.03.2017 passed in these appeals needs to be examined by the competent authority, as to whether in future they can be entrusted with any responsible position. Their mindset of violating the law and court orders is another factor which is required to be taken care of as they are capable of tinkering with provisions of law and violate the mandate contained therein or rewrite the same." What action has been taken on these erring officers including Financial Commissioners, Excise Commissioners, nothing and fact is they have been promoted or awarded with much better career postings even after abrogation of Article 370 and are still enjoying fruits of power. Such is the sad state of affairs in Jammu and Kashmir where number of government employees per lakh of population is about 3,600, whereas one of the good governed State of Gujarat has about 830 government employees per lakh of population. The connivance of the Excise and Taxation Department is apparent on the face of it where they have maintained conspicuous silence with connected matters. Court also recommended complete overhaul in the working of the Advocate General's office as it has also failed to protect the interest of the Government by showing delinquent with connected matters."

Even the new Excise Policy has many loop holes and apprehensions are there that these will be fully exploited by liquor mafia. No income tax return is required for applicants as such any dummy can participate in auction as was done in Roshni land scam earlier. Despite all government focus on Kashmir Tourism why only 4 vends proposed for whole Kashmir. In the past also government was unable to establish one even at International Srinagar airport, there seems no course correction in new Excise Policy towards Jammu. Why government is interested in turning Jammu Division as liquor hub despite it being land of Devi/Devatas? Is government really serious or all this is just an eyewash to counter stringent High Court verdict?

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