

THE SECOND
DR. JUSTICE KATIKITHALA RAMASWAMY
MEMORIAL LECTURE
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Lecture Delivered by
Hon' ble Justice M. N. Venkatachaliah
former Chief Justice of India and
Chairperson to review the working of the Constitution

“Tribal Development of India in the Context of Samata Judgement”

I have had the pleasure of watching the career of Justice Ramaswamy with great admiration for the grit and determination of a man who never compromised with the principles. I know the tyranny of superlatives. But at a stage in life, when one comes across face to face with duties of honor, dignity and friendship, one does not pause to measure his words. Ramaswamy was a gem of a man.

Justice Ramaswamy was sensitively aware of the debate about the dilemmas of development. He gave expression to his views in many of his judicial and extra judicial pronouncements. I admire and share his views. The debate of 'development versus environment' and 'development versus social – justice' etc. raises certain prickly issues. But Justice Ramaswamy shares the view, - and often expressed them in a forthright manner – that public goods such as education, health, human dignity and security are not the rewards of development. He shared the view that economic prosperity does not trickle down. It needs informed and focused intervention of the state to build up a healthy and vibrant social infrastructure.

Justice Ramaswamy spoke and wrote passionately about the tales of deprivation of the Dalits and the Tribals. It is estimated that globally over 100 million people or so have been displaced over the past ten years alone. In India, millions of people – Dalits and Tribals – have been uprooted from their homes and hearths joining the amorphous, faceless mass of human anonymity. It is estimated that between 1951 – 1990, alone some 21.3 million people have been uprooted owing to development of mines, dams, industries, wildlife sanctuaries, roads, railways etc.

It is rare to find such a great combination of earnestness, enthusiasm, dedication, integrity and hard work. Justice Ramaswamy was a model of personification of true family values. He is blessed by children who shares his ideals, values and virtues. He was proud of his children. His wife Shyamala Devi was the very personification of the true Indian wifely goodness and an ideal wife.

THE SAMATHA CASE

In *Samatha v. State of A.P.* (1997) 8 SCC 191, the question was whether mining lease of government land in the scheduled areas could be granted to non – tribals. Justice Ramaswamy, wrote the leading judgement with Saghir Ahmed, J. concurring that a transfer of land in the scheduled land even by the government is impermissible and null and void. There was a dissenting note by the third judge.

The substance of the verdict is this: Schedules V and VI of the Constitution constitute an integral scheme for protecting the tribals from exploitation and to preserve land for their economic empowerment. The predominant object of para 5(2) of Schedule Vis to impose a total prohibition on transfer of immovable property to any person other than a tribal. Transfer of immovable property to a non-tribal in the Agency trcks is null and void. The transferee acquires no right, title or interest. The expression 'person' includes State and all such juristic persons.

The minority view was that 'person' means only natural persons and that there is no constitutional prohibition for transfer of lands in the scheduled areas to non tribals.

A later 3-judge bench in BALCO Employees Union v. Union of India, (2002) 2 SCC 333 speaking unanimously though Kirpal, J. expressed reservations about the majority view in Samata and observed that the interpretation of Sch. V should have been by a Constitution bench; and that in any event Samata did not apply to BALCO case as the language of the regulations there was different.

In this tribute to his memory I shall refer to some areas in which engaged his creative mind and troubled his conscience.

CLEAN AIR AND ENVIRONMENT

Another deep concern of the judge was environmental pollution which as member of the National Human Rights Commission he bestowed special attention.

Among the great civilizational concerns of our times, is the issue of global warming. Some of the hottest years in the last 150 years have occupied since 2000. Atmosphere and Ocean temperatures have been drastically increased with disastrous consequences to human survival. Snow peaks are melting; oceans levels are increasingly inundating low-coast-lines. Fossil fuel power plants, automobile emissions and excessive consumerism are the main contributors. They are our civilizational-ills and deceptions.

Global warming is a consequence of pollutants like carbon dioxide, Methane, Nitrous oxide, called the greenhouse gases, trapping heat waves and storms with disastrous consequences to human lives and habitations. Some of the causes and effects are enduring and almost irreversible. The Naysayers contend that all these fears are exaggerated.

The direct connection between concentration of atmospheric carbon-dioxide and heat levels was scientifically established in 1894 by the work by the work of Arrhenius who was awarded the Nobel prize in the year 1903. Michel Carson's Book 'Silent Spring' expressed great concern about the safety of the world of nature in consequences of activities of humans, particularly in the indiscriminate use of chemical insecticides and pesticides, polluting aquifers, water streams etc. Mother earth is highly sensitive. No one can exhaustively define what a cubic inch of earth is. It is not just a mixture of Sand, red-mud and clay. It is a highly sensitive home of biotic communities and living organisms. Nature and all its living forms, man, animals, birds, trees, insects are mutually inter-dependent. If you kill all the bees today humanity will come to an end within a few years. It is these insects that pollinate plant life.

In terms of money the value of pollination of bees in the growth of crops is said to amount to 500 billion US dollars.

In view of the sad experience of man and his extravagant living, the issues and compulsions of 'sustainable development' acquired a sharp focus in 1983. United Nations appointed the 'World Commission on Environment and Development' headed by former Norwegian Prime Minister, Gr Harlem Brundtland to examine these issues. Enormous poverty of the Southern Nations and extravagant consumption patterns of Northern Nations were found to be contributing causes. The Brundtland Commission in its report "Our Common Future" called for a philosophy of development that "meets the needs of the present without compromising the ability of future generations to meet their own needs": That is the idea that "we have only borrowed the earth from our children and we do not own it".

But then there are reasons to be sadly pessimistic about the future of the Human race for it does not seem to know what is its own good. Humans with their ecological liberation approach nature with the spirit of conquest with the armory of a conqueror. After all is said and done what is the great achievement of man's scientific quest? The sum total of all human knowledge in science can be compared to a small ball floating in the vast expanses of the unknown. The bigger the ball becomes; it only enhances the areas of its contact with the unknown. It is therefore wise to approach Mother Nature and her benevolent manifestations in humility and respect and not in the spirit of a conqueror. The Greeks, therefore, called the Earth "Alma-mater", the Bounteous mother.

TRIBES IN INDIAN DEMOGRAPHY

Our Tribal population is said to be over 110 million distributed in various states of the country. The problem is particularly acute in the Central region of India which is otherwise rich in mineral deposits and forest wealth. Exploitation of the Adivasis is ruthless through indebtedness, ejection from their lands and displacement owing to 'development' activities. Poor quality of Governance is another factor. The most disturbing point is that despite all development activities, the decline in poverty levels of the tribals is slower when compared with other social groups. Poverty, illiteracy, lack of potable water, poor nutrition is galling. The value of the funds employed by Central and State governments for tribal welfare and development – a ratio of 2:1. There is a substantial net flow of resources from the underdeveloped tribal periphery to the more developed non-tribal urban and low land agriculture and industrial centers. The net imbalance would have been felt most in the mineral and forestry – rich tribal economies of Jharkhand, Chhattisgarh and Orissa.

Administrators do not fully understand the factors contributing to this vulnerability. Naresh Chandra Saxena view are worth recalling:

“What has been the impact of government policies on tribal livelihoods?”

Where should be the focus of central and state government to improve the situation?”

To answer these questions, we quote in detail from a Planning Commission document:

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, the small clutch of bureaucratic programs have done little to assist the precious pauperization, exploitation and disintegration of tribal communities. Tribal people respond occasionally with anger and assertion, but often also in anomie and despair, because the following persistent problems have by and large remained unattended to:

Land alienation

Indebtedness

Relations with forests, and government monopoly over MFPs, and non-implementation of the Forest Rights Act, 2006

Ineffective implementation of Panchayats (Extension to the Scheduled Areas) Act of 1996 for Schedule V areas

Involuntary displacement due to development projects and lack of proper rehabilitation

Shifting cultivation, such as podu

Poor utilization of government funds, and

Poor delivery of government programs

A word about tribal life and culture: Does the history of the tribals represent a sedentary, primitive, cloistered world frozen in time or do the tribals represent a more humanitarian, less individualist social philosophy of community living. Enlightened insights disclose a tribal philosophy of life which is of non-individualist, broad liberal philosophy of community life and common good. It is now coming out though slowly the non-sedentary world view rich in values of truth, beauty and goodness and as a rich heritage of art, music, tribal medicine and medicinal plants.

Nehru's vision was that very rapid modernization might conflict with the foundations of tribal culture. Verrier Elwin considered that the culture of the so called modern man was not civilized enough to deserve the great values of tribal-life and culture.

Verrier Elwin's was the first serious attempt to speak to the out-side world, showing a great treasure house of culture and values of the tribal life style which earlier was considered 'dispensable primitive fetish'.

Sir George Grierson's "Linguistic Survey of India" also did not do justice to the vast range of tribal linguistic variety and diversity. In recent years' scholars like Ganesh Devy and others have shown how this rich heritage has suffered gross cultural neglect. Devy's 'Painted-Word' is a sensitive tribute to Adivasi literary genius.

In recent times there is flood of tribal literary expression drawn from tribal archives. Unfortunately, tribal resistance to exploitation of resources lead to serious estrangement and protests like Pathalgadi movement, Kissan long morcha, Niyamgiri protest and other movements. Justice Ramaswamy's was a sensitive recognition of the seeds of the turmoil that tribal values were basically inconsistent with the values of the modern transactional society.

NEW WORLD OF TECHNOLOGY

This is the sub-title of an interesting book "Homo Deus" by Yuval Noah Harare describing the great exploits of science and technologies and their disruptive effect.

The book "Fantastic Voyage" by Raymond Kurzweil and Terry Grossman speaks of the speed of technological advancements and says that the exponential growth the 21st century will equal 20,000 years of progress at today's rate of progress – 1000 times greater than what we witnessed in the 20th century.

Humanity will witness an explosion of technologies in science, medicine and genetic sciences. As a result, a new set of economic values emerge with new conceptions and tokens of wealth, privilege and economic power. Crypto currency, Block chain technology are just beginning of a whole host new forms of economic power. Society will flounder in its ability to administer this new forms of wealth. Enormous and uncontrollable economic disparities emerge. The present systems of governance will be unequal to these new challenges. Government responses will be unable to keep pace with the speed of change.

Though men have been amazingly creative in science and technology, they are equally non-creative in finding solutions for some of the deepest morally sensitive issues of human survival. The extraordinary exploits of science and technology will create unequal societies with concentration of wealth and power in the hands of a few. The new technologies may even compel political, social economic systems and behavior to change, adopt and become compliant. Voter choice and voter-preferences will become predictable.

In every age, even after everything contentious and debatable is taken out of the way, there yet remains a remarkably wide firm unanimity as to what is fair and just and good and beautiful. If wielders of power ignore this, divergence becomes marked and they fall out of respect.

WHAT WE OWE EACH OTHER: RETHINKING SOCIAL CONTRACT

I have borrowed this from the title of two eminently readable and educative books of the same title – one by Minouche Shafik (Director, London School of Economics) and the another book by T.M. Scanlon.

These writings point to the imminent need for a great new ‘social contract’ compelled by the great changes unleashed by the new technologies and their consequences on social equilibrium. Here, I want to use an example that Minoushe Shafiq uses in her book ‘What we owe each other’: A new social contract. She invokes the inter-temporal role of the State in spreading income and managing risks across our own lives. For example, at the outset, the State builds universities and colleges and provide subsidized education to people. This is done with the expectation that this person who availed the subsidy then goes on to the work, earns money, pay taxes and contributes to the treasury of capital that is used to fund the education of the next generation. So, more than a linear flow, the tax system relies on cyclic flow to ensure sustainability. So, in other words of Minoushe Shafik, what the common man expects to be a Robinhood Function, is in practice, Inter-temporal.

Plato asks, ‘what do men organize themselves into society for?’ and answers ‘To give the members of society, all the members, the best chance of realizing their best selves’. He thus made the duties of wielder of power of an elevated one.

Many philosophers have discussed and debated. The Social Contract John Locke, Thomas Hobbes and Jean Jacques Rousseau, to name a few. Conceptually put, it essentially cites the act of giving up some amount of freedom and coming together as a community bound by rules in return for security and guaranteed fundamental rights. Once again, this coming together also necessitates a feeling of community and brotherhood. Minoushe, in her book says that “the Social Contract is Broken”

It is difficult to disagree.

Man, is incomplete by himself. He needs the companionship of his fellow-men to complete himself for the ordainment of his own fulfilment. Democracy provides the best opportunities for this social-interaction. With the dramatic changes that will characterize this century, particularly in the concentration of wealth and its consequences, humanity has to search for systems that provide security – new social contract. It is necessary to build a frame – work for it. Every society has to put a floor on individual income ‘below which no one can fall’, share – risks, enhance opportunities. It is broadly similar to concept of ‘minimum guaranteed income’. The great and wide disparities in income and standards of living should be tempered and civilized with the corresponding obligation to ensure a minimum standard of income for all so that abject poverty and destitution. Quoting Macaulay, he says

“After the doubtful splendor of Hastings and Clive there was the spotless glory of Elphinstone and Munro”. They were men, he says, who after ruling millions of subjects, after commanding victories armies, after dictating terms of peace at the gates of hostile capitals, after administering the revenues of great provinces, after judging the cause of wealthy Zemindars, after residing at the Courts of tributary Kings, return to their native land with no more than a decent competence”.

“Secondly”, he says:

“It was the age of young men. It seems almost ridiculous to read of Metcalfe, a junior in the Political Services, though admittedly an old Etonian, sent at the age of nineteen to negotiate the withdrawal of the armies of Holakr, the formidable Mahratta chief. They got on splendidly. He was only twenty-three when he led a mission to Lahore to treat with Ranjit Singh, the “Lion of Punjab”. He had to wait, but got his treaty of friendship, an act of great importance for the consolidation of British power in India. After that, Elphinstone, at thirty, seems almost a veteran when he goes as our envoy to treat with Shah Sujah at Cabul. Still, the close of his address to the Afghan King is probably a fair sample of the spirit in which these young men advanced upon their extraordinary tasks: I concluded by saying that we had often been at war with the entire world and had never suffered in the contest”

Lord Radcliffe continues:

“India in those days roused in our men the sense of wonder that a strange country rouses in an explorer. They were inquisitive, fascinated, if sometimes repelled. The chaos and misery that they found provoked their sense of order, their latent capacity for government; but the spectacle did not make them contemptuous or hostile. Instead they became painstaking historians, they composed Persian grammars, they wrote great double-decker volumes of travel. The most active seem to have found time to write most: Malcom, with his “Central India and the History of Persia”, Elphinstone with his massive “History of India”, Outram, “The conquest of Scinde”. Tod’s “History of the Rajputs” remains a classic. Herbert Edwards’ “A year on the Punjab Frontier” is remarkable on several counts, the personality of the author, the people he had to deal with and his extraordinary gift of writing”.

Munro’s message to the British administration was:

“Your rule is alien, and it can never be popular. You have much to bring to your subjects, but you cannot look for more than passive gratitude. You are not here to turn India into England or Scotland. Work through, not in spite of, native systems and native ways with a prejudice in their favor rather than against them; and when in the fullness of time your subjects can frame and maintain a worthy Government for themselves, get out and take the glory of the achievement and the sense of having done your duty as the chief reward for your exertions”.

One factor that is not emphasized enough is the need for acquaintance with the basic principles of public-law. The constitutional philosophy pervades every area of our lives. Ten judicial pronouncements of the Supreme Court have changed the way we look at the relationship between the state and the citizen. If the legislators enact a piece of legislation, many pages of subordinate legislation are drafted by the bureaucracy. In the developing countries there is the usual legislative hyperactivity. Drafting subordinate legislation needs familiarity with fundamental legal

conceptions. In the year 2006 alone UK passed 5000 pages of primary legislation, but the supporting body of subordinate legislation ran into 11500 pages.

As custodians of the executive power of the state you have the finest opportunities to integrate with knowledge, professional expertise and wisdom, the blessings of modern technology and ideals of a welfare state. The foundation is the ideal of Rule of Law. Every act of the state must have a legal pedigree. Indeed, the concept of Rule of Law is a 'short hand' description of the positive aspects of any political system and the foundation of any civilized society.

EPILOGUE

It is our duty to give meaning to this world and not to worship doubt. Worship of human-kind is the new-religion and the new human-agenda. We should not exchange this great opportunity and excitement for a mere mess of pottage.

At the end I may quote to you what Malcom's father wrote to

“A good head will gain you the esteem and applause of the world but a good heart alone gives happiness to the owner of it.”

Thank you for patience.

Credit: - Lal Bahadur Shastri National Academy of Administration, Mussoorie (Uttarakhand)