

St. Xavier's University, Kolkata



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LEGAL REFORMS IN THE AGE OF GLOBALISATION AND ITS SOCIAL IMPACT

In its most rudimentary form, the purpose of law may be seen to be to organise society and bring about order therein. There are many forms of law and several manners of its implementation. In modern times and with increasing interaction between different peoples, the traditional demarcations are now somewhat blurred. Best practices elsewhere are aped to tackle phenomena that could once have been deemed local aberrations but were later discovered more widespread and even pan-global. Globalisation has ushered worldwide changes and with its bounty of benefits, it also carries a bagful of woes, particularly for the underprivileged and those on the fringes and ignored suburbs of society.

Let me begin by narrating how and when globalisation first hit me: the year was 1991, and I was a fledgling lawyer, still trying to find my feet. My only job then was to put in the hard hours. My wife was returning to the US in August that year to write her dissertation and complete her PhD, and she suggested that I accompany her for the next six months. To my surprise, I agreed. I was

too newly married to realise it could be suicidal in my chosen career. Anyway, the world really changed over the next five months. The Soviet Union imploded, the Berlin Wall came tumbling down and when we returned in January, my brother informed me that we could watch more than 30 television channels against the lonely Doordarshan that we were previously acquainted with. It was then that the impact of the ICT revolution dawned on me.

I must confess that the topic assigned to me is too vast for a limited presentation or discussion. I will neither attempt to deal with legal reforms globally nor endeavour to encompass the entire gamut of the social impact of globalisation. I may be excused for confining my discussion to this country and the many countrymen who may have mobile phones in their hands but do not know how to read and who, by virtue of their social status, do not have access to places where you and I walk in and out of without a bother.

Legal reforms are necessary to provide greater access to all forms of benefits and bring about transparency and accountability, particularly in governance. They must first reduce and then eradicate inequality, at least to the extent of providing equal opportunity to all. What new law is made or what reforms are introduced should not depend on who I vote for or who is in power. Rather, these actions should be dictated by the needs of the times. Sadly, when the general sense of well-being is viewed through a particular prism of morality, the resultant law or reform caters to more treacherous prejudices than the ills it professes to remove. In many ways the idea of law is to do justice; and the surest form of doing justice is by trying to remove injustice.

There is a lot to cheer for the Republic, now that it is in its 75th year. Never before Independence was India, that is Bharat as Article 1 of our Constitution announces, with all the territories specified in the First Schedule to the Constitution part of a single country or under any common rule. The development that this great country has experienced seems like a fairytale if you consider the despairing poverty in which the British colonisers left us. Unlike several other colonies that attained independence in the 20th century, we suffered no coups d'état or the odd military juntas; instead, our imperfect democracy chugged along to make its mark in the league of successful nations and our diaspora fanned out and made a mark across the world.

I am ever an optimist. Thus, I will try to address imperfections rather than wallow in the gloom of prejudices, deprivations, and divisiveness that could overwhelm some others. I preface my suggestions with an observation that the rich diversity of which we boast *must not* and *cannot* be sacrificed for homogeneity at the needlessly exalted altar of unification. India is a federation of divers and diversified states and *must remain so*. When I say this, the faces of the tribal boy in Meghalaya, the innocent schoolgirl in interior Tamil Nadu, and the carefree mountain goat of a child in Himachal Pradesh flash before my mind's eye. They will never look the same, be the same, think the same, or eat the same; and this we must respect, admire, and preserve.

What you eat or how you go about your daily chores are often dictated by your surroundings, the geography of your location and the climate of the place. If we cannot change the geography or fundamentally alter the climate – other than heating it up all over – or vary the topography of a place, we should

scarcely attempt to change its ethos or subvert its culture in favour of a non-descript homogeneousness.

Globalisation can also, ironically, homogenise as the flow of goods, services, people, and information becomes easier, as boundaries between the West and the East and the North and the South begin to blur, as the populations of nations become more diverse, as business processes travel seamlessly between nations. The more diversity we embrace and imbibe, the more homogenised we tend to become. This is a cautionary tale. We must fiercely guard our individual cultural, national, and regional identities against the homogenisation of globalisation, which will lead to an entire world of sameness that privileges one way over all others and allow the rot of group-think to set in—the very condition some of us are trying so hard to avoid in our diverse and vibrant nation.

Therefore, a degree of education and awareness is imperative so one can grasp how much the printed word or the flashing image impacts the uninitiated and how much opportunity burgeoning social media platforms can offer every trader, politician, and scoundrel to jump on the bandwagon to sell goods or ideas. Individual families must develop etiquettes in such regard so that Sunday lunches are not meals had in silence with individual family members poring over mobile phones instead of conversing with each other.

But first, access to opportunities and access to justice must be eased. To the ordinary Indian – which you and I are not – the very edifice of a government building is a herculean deterrent that any average citizen would hesitate to even enter. The courts are worse, teeming with many men and fewer women

dressed in all black. Our ordinary citizens would rather not claim their dues than find themselves lost in the myriad pitfalls that such buildings hide within them. These edifices are physically obtrusive but figuratively opaque and the functioning within them is completely foreign to normal people. Their physical appearances nurture mental barriers that must be dismantled to make access meaningful and they must be operationally simplified and worth the while of our entire citizenry. The laws – and the attendant rules and regulations – must be in such shape and form that they permit all members of our republic to comprehend them and make informed choices. This tropicalisation of the laws, so to say, cannot be in one common form, but suited to individual locations. I do not plead for a common language; rather, I advocate for the use of local languages in officialdom without sacrificing the head start that we already have with English as an accepted common norm. The systems should be rid of their patriarchal and feudal overtures and tune into more classless attire and conduct.

Such systems will result in greater participation and acceptance which would deliver advantageous byproducts such as transparency and accountability. The hallmark of a system vests in its inclusiveness, honesty of purpose and delivery efficiency. Transparency and accountability inevitably result in honesty and efficiency, which in turn drive more people to embrace the institution. Unfortunately, we have built in our country, particularly more recently, several impressive buildings of brick and stone and cement, but have not infused life in the form of inclusiveness and impartiality that an institution demands.

In many ways, law can be seen to be virtuous, of carrying a sense of morality that would appeal to most. But even as we fell down jungles in the name of development, we appear to be gradually returning to the most undeveloped rule of the same jungles from which we humans once emerged: not the Darwinian principle of survival of the fittest, but the baser instruction that might is right. The might permeates through most of the laws and rules we now make that are suited to the already mighty and fitted to deceive the meek and the have-nots even as we utter without meaning it, that they shall inherit the earth.

The irresistible materialism that globalisation brings, with its malady of keeping up with the Joneses, must be tackled with education and education alone. While man's insatiable demand may be the first assumption and foundation of economics, there is far more to life in its more intelligent form than living by the figurative bread alone. Business organisations have run over us and we are impelled to acquire more things and then more varieties of the same things even as we destroy and desecrate the environment to enrich ourselves for the moment and impoverish us in the long run to the extent that we undermine our existence and imperil the only home we have. Yes, we have discovered other habitable exoplanets in the Goldilocks zones several lightyears away where we could migrate to before our sun cools down in the next five billion years, but there may be no place to hide when the next meteor with our name on it strikes us tomorrow or we self-destruct by killing all the fields that have put food on our plates over several tens of thousands of years. We are but trustees on this planet for our future generations and the

colossal lack of concern for the environment and disrespect for other forms of life may haunt us into extinction. The dinosaur story instructs us that it is those at the top of the food chain who perish when a global natural calamity strikes.

The invisible, non-living virus that brought about the recent pandemic by disrupting life as known to us before such time should have taught us a lesson to live in harmony with our surroundings and the many other forms of life that abound on this blue planet. Decisions that have an environmental impact must be taken in consultation with the locals as their history and culture would have taught them how to co-exist with the flora and fauna, their practices reveal how to regenerate what we take away. It is an existential issue that I underline and it is for the young here to caution the older since it may be only the degradation that the young of today inherit when they come of age.

Next, I come to a somewhat touchy issue. In size we may be the biggest democracy in the world and, barring the odd aberration, we have now settled down to having largely peaceful elections and gracious transitions of power; but we still have not instilled freedom into the choice. The freedom that I talk of is not of being able to press the button of my choice or punch any of the available keys; I allude to the choice being meaningful and informed. The voting beyond our cities may be based on a promised meal or at the dictates of a satrap or even at the instance of a local Robin Hood. For most of the masses, it matters little as to who is in power or who comes to power next.

They attend election rallies and hear false promises of their bright future only for the meal that they are assured of at the end of the ordeal for a few hours.

There is no excuse for the India of 2024 to not have free primary and secondary education for all, especially incentivising education for the girlchild. Equally, there can be no good reason for not creating basic homes and providing rudimentary healthcare. Our population is our strength in numbers. This mammoth human resource needs to be harnessed with appropriate technology, policies and schemes designed for such purpose. Just like the rural employment guarantee programme has paved better village roads and raised rural infrastructure, some similar, out-of-the-box package must be devised that would generate employment and eradicate a malaise at the same time. If we cannot have as many doctors as we need, we can have nurses and paramedics and use the virtual platform to take medicine and advanced medical treatment to our remotest corners.

It is just as important that every citizen should feel secure. The police force needs to be made more robust and the biggest reform yet could be to rid the ordinary person of his fear of the rich, the influential, the feudal bias and, in the large tracts where they prevail, the caste prejudice and communal tension. We have some wonderful laws in this country, but inadequate means for their implementation. If we empower our police to stand up to the high and mighty and deal with everyone with dispassion and without fear, the feudal culture would have been largely addressed. For a start, the investigation branch in the police must be divorced from the wing enforcing law and order. As a former judge, let me tell you that even in the best of criminal cases, the investigation

is shoddy, more often inadvertently and for lack of skill and training, but disturbingly often enough for other disagreeable causes. That results in our criminal justice system punishing only the poor as the rich and the influential “manage” the investigation or engage expensive lawyers to throw wool over half-baked judges’ eyes to get away with murder and worse.

As a first step, the politicians’ stranglehold over the police and the bureaucracy must be ended. When the Constitution was drafted, the members of the Constituent Assembly initially suggested basic educational qualifications for legislators. In course of the many hours of debate and discussion on the subject, it came to be accepted that education in the day was the prerogative of the urban and the elite and educated legislators may neither be representative of the electorate nor be able to perceive its pains or feel its pulse. But even as the qualifications clause was deleted from the proposed draft, the members of the august body trusted Parliament to address the matter at an appropriate time in future.

More than seven decades later, we have parliamentarians and state legislators who flaunt their illiteracy and lack of awareness in appealing to the masses that he is one of them, his money and muscle power having earned him a ticket by brushing wisdom and reason aside: the very qualities most essential in the business of legislating. And then there are those in the wings who finance the campaign of a winnable candidate, waiting for the legislator to repay them by using his office. It is not as if there are no pressure groups or caucuses in other democracies that promote candidates of their choice, but they are more ideology driven and less money driven than the brazen practice

now in vogue in India. There must be electoral reforms, laws enacted by Parliament which has been singularly remiss in such regard for more than half a century and, possibly, state-funded elections to purge the legislator being beholden to his election financier.

Politics today is a lucrative profession without any prerequisite or training. A hanger-on that we tried to always avoid in our college days is today a counsellor with a flat each in more than 15 of the most expensive multi-storied residential complexes in his ward. Another journalist acquaintance who survived on scraps is today a bigwig in a political party with interests as diverse as sports administration and aviation. Neither of the two was bright or showed any mettle, except that they always had infinite patience to “adjust” and would invariably “manage” themselves out of the most tricky and sticky situations. It is little surprise then that policies are not discussed in Parliament or state legislatures and walkouts rather than reasoned debates are the order of the day. Again, since it is the same pool of parliamentarians and legislators who make up the political executive, decorum and order are the first casualties in the mad scramble for promoting the personal agenda for you never know these days how long you are in executive office or how long the dispensation lasts or how long your sycophancy amuses your mercurial leader. The word that goes around these days is that you should vote your candidate for two consecutive terms for him to do something for his constituents; since in the first term he will do everything for himself and it is only after returning to the position for the second term that he may have time to think for those who placed him in office.

There is no doubt that what the elected representatives of the people say should be regarded as the people speaking themselves, except that few people may agree to be robbed or deign to surrender all their benefits to their elected representative. Thus, when it comes to matters of policy, the legislature by whatever name called must enjoy primacy, subject to commonplace canons of prudence and propriety. But the implementation of the policies must be left to the bureaucrats who are better equipped therefor. India has a sturdy bureaucracy with some of our finest minds invested therein. The Indian bureaucrat comes through a gruelling selection process and demanding training. Except for the odd men in some states who work hard to get through only for a greatly enhanced dowry package, these are men and women of grit, determination and high IQ; they quickly pick up a strange language and their experience from service at the grassroots level arm them with techniques of implementation and enforcement coupled with the ability to adapt and innovate. The smartest of them know how to tackle their political bosses. Yet, since the political rulers control the strings for transfers and postings, many an able bureaucrat hangs like a puppet and toes his master's line.

Since this arrangement suits the politician, neither the politician in the legislator nor the politician in the plush executive office nor even the politician on the other side of the political divide is minded to reform the system; for, it may be your day in power today, I hope it will be my day in office tomorrow. There is a crying need to place the police administration under a neutral watchdog and the bureaucracy under an independent authority with transfers and postings taken out of the political executive's domain of governance,

subject to the overall policy framework being charted out by the legislature and its complement in the executive. Likewise, hallowed institutions like the armed forces, the Central police forces, the Reserve Bank of India, the regulatory authorities and the tribunals set up under Articles 323A and 323B of the Constitution must be insulated against political interference and sanitised against ideologues walking into their decision-making centres masquerading as experts. There may be an odd mistake or even a faulty selection, but the routine plant would destroy the legitimacy of the exalted institutions and rob the adjudicatory bodies of their essential impartiality.

Finally, we need a judiciary with a backbone. Several High Courts in the country – including my parent High Court at Calcutta – stood up to the authoritarianism of the Emergency in 1975. The Supreme Court failed the citizens in their darkest hour. Many social scientists of repute see the present Supreme Court in the same light, what with its initial indifference to the plight of migrant labourers during the pandemic and its deferring some more recent matters of the moment till they became irrelevant. But I have a temporary personal disability to be more forthright or the sour grapes parable may be thrown at me. My only concern is that though we have celebrated 50 years of the basic structure doctrine proclaimed in *Keshavananda Bharati* and it has served our republic well, a misadventure may be afoot to call the doctrine into question on some specious pretext which could result in a judicial disaster and a national calamity. But we must never lose faith in our courts.

Now that I navigate to the end of my speech, you may legitimately ask me what my discussion had to do with globalisation since the reforms that I speak

of may have been logically suggested whether there was globalisation or not. You may have a point. But just as globalisation has opened the world to us and we are now more familiar, if we choose to be, with foreign systems and their functioning, the deficiencies in our systems and our governance have also been exposed. If India gets to have a say in the new global order – which we must with a sixth of the world's population – the legitimacy of what we say will be reinforced by the adequacy of our systems at home. We need jobs for our workforce which foreign investors would provide only when they feel secure in doing business here. The reforms should ensure such security; or else, we must remain satisfied with the back-breaking back-office jobs that are relatively unremunerative as global rates go.

A few years ago, an international survey conducted by a reputed institution flagged India around the 170th position out of 190 countries surveyed, in the matter of enforcement of contracts. Even today, Indian business entities involved in transactions wholly in India carry their disputes to foreign arbitrations as the backlog of matters in Indian courts is well advertised. It is said that India imports laws and exports litigation. Well, one of the primary reasons why matters abound in the Indian courts is that it is the government which is by far the single largest litigant. If the slew of reforms were to be brought about, it would have a cascading effect and many a pending matter in court would have been resolved in its wake and many likely future matters thwarted. Litigation involving employees in public sector undertakings, nationalised banks and the Central police forces stifle High courts across the country with many more coming up from the service tribunals. Insensitivity

and arbitrariness are writ large in most cases. With transparency and accountability being ushered in government functioning, service disputes would lessen greatly. With proper and timely investigation in criminal cases, the culprits can be brought to book regardless of their status or standing. Apart from this acting as a great deterrent, it will infuse a sense of positivity in the common citizen, who will become enthused that merit rather than connections will be rewarded and that wrong will be punished. You may call me a dreamer, but you can never gauge in arithmetical terms how much faith and confidence in a system or the certainty of outcome impacts society. Just as you can merrily go to sleep with just a glass of water if you feel good otherwise, a just and equitable system or process has an exhilarating feel-good effect.

One effect of globalisation has been in hard copy making way for soft. And so, some of us old-timers lament the closure of the *National Geographic* magazine in print. Ironically, in one of its last editions it has described globalisation as “the increase in the flow of goods, services, capital, people, and ideas across international boundaries.” Globalisation has resulted in lower production costs and, consequently, access to goods and at a cheaper price. But it has also led to loss of local businesses, job displacement and even exploitation of cheap labour. There are laws in this country covering minimum prices of divers agricultural products and minimum wages for skilled and unskilled labour. These laws provide stiff penalties for their breach. But as in the case of many similar beneficial legislation, the implementation is lax and tardy. With increased accountability plugging the holes in the safety-net and letting

fewer persons slip through the cracks combined with a more effective grievance redressal mechanism, exploitation may be tackled.

But no number of reforms can resist change which is the primary constant in the human saga. Society itself and individuals must evolve with the perennial transition that is inevitable and irresistible. If citizens are conscious of what to demand of those who govern them, governance itself will be modelled on the happy trinity of justice, equity and good conscience: utopian, but possible; if only it is bottom-driven as it may never be imposed from the top.

God bless all of you. God bless the St Xavier's University. God bless our great nation.

Jai Hind.