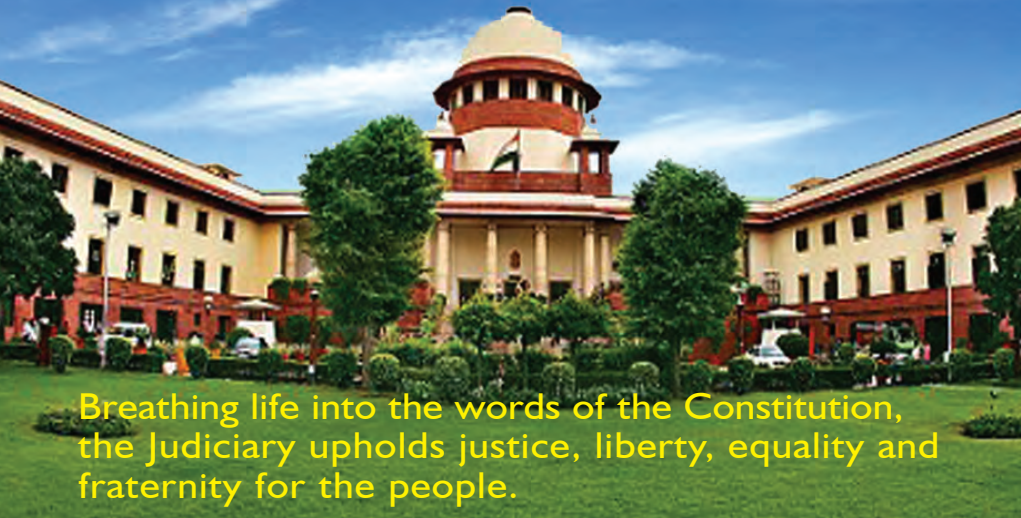


Dharma for the Judiciary



Breathing life into the words of the Constitution, the Judiciary upholds justice, liberty, equality and fraternity for the people.

PRABHA SRIDEVAN

The Judiciary always abides by the Constitution. That is its *dharma*. Judgments breathe life into the Constitution, which would otherwise be a mere parchment.

The Preamble to our Constitution ensures the primacy of justice, liberty, equality and fraternity. Truly it is said, "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution."

Bharata Savitri, a supplement to the *Mahabharata*, contains a verse, which says,

ऊर्ध्वं बाहुर्विरोम्येषः न च कश्चित्
श्रुणोति माम् ।
धर्मादर्थस्व कामश्च स धर्म किं
न सेव्यते ॥

"Lifting my arms I shout aloud, but no one listens.

"*Artha* and *Kama* follow *Dharma*. Why is not *dharma* adhered to?"

Analogically, we may say that

if the Constitution is adhered to, fraternity, liberty, equality and justice will automatically follow. Fraternity is the spirit which ensures that human dignity is not insulted. Liberty ensures unfettered human dignity. Equality is the spirit which ensures that human dignity is not devalued. And justice ensures that no person's dignity is denied.

If we abide by the Constitution, these four principles will remain strong. India is a multilingual and multi-religious state; its unity, integrity and pride can be assured only if we firmly believe that a spirit of brotherhood resides in the hearts of all citizens, whatever the gender, faith, caste or ability or lack of it. It can be assured only if a spirit of inclusiveness pervades us.

Essence of Oneness

The universal guru, Sankara, brings out the essence of this oneness in his *Manisha Panchakam*. On his way to the temple in a narrow street in Banaras, he confronts a man

with four dogs and asks him to step aside. Whereupon, the intruder queries Sankara whether he wants his *Atma* or body to move. If the *Atma* has to move, he further asks whether there is any difference of reflection in the water in a golden pot and water in a clay pot.

This fraternity is the spirit of the Constitution; it is also

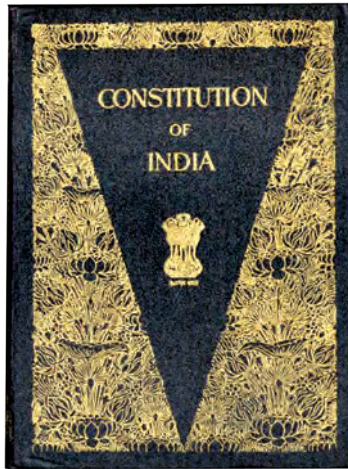
the essence of spirituality.

"The water" is the value that inheres in all human beings. It is the value of dignity. This precious right is protected by our Constitution. Article 17 speaks of the abolition of untouchability. The Judiciary's

dharma is to breathe life into these words of the *Manisha Panchakam*.

Judge's Qualities

What distinguishes a judge; what are a judge's special qualities? The answer to this is found in the description in the *Bhagavad Gita* of a *sthitaprajna*, or a wiseman with firm conviction: वीत राग भयक्रोधः स्थितधीर्मुनिरुच्यते



A judge is a person with a steady mind free from attachment, fear and wrath. Compare this with the oath a judge takes on assumption when he promises to perform the duties of this office "without fear or favour, affection or ill will and that he would uphold the Constitution and the laws."

In effect, the judge should be the *sthitaprajna* described by Sri Krishna. This steadfastness under any circumstance is the hallmark of a judge. The judge must be an embodiment of these qualities.

Rule of Law

Lord Krishna says in the Gita again that he descends on earth again and again to protect the good and to destroy the evil. This is just an aspect of the Rule of Law. In a society governed by the Rule of Law, fundamental rights are protected; there is transparency, personal security and an effective mechanism to establish civil and criminal justice and punish felons and wrong doers.

The judiciary ensures that all are governed by the Rule of Law. We know the story of Sri Rama and the frog, where the frog asks Rama, "If others hurt me I can complain to you, but when you hurt me where do I go?" The frog

symbolises the weaker sections of our country--the minorities, the disabled, and the marginalised groups. When they are harmed by the State itself, or when they are denied justice in the courts, where will they go?

Let us recall another story, that of Manu Neeti Cholan, who had hung up a bell at the palace gate for people to ring when they sought justice. One day, the king heard the bell and saw that a cow was ringing the bell. He learnt that his son's chariot had fatally run over its calf. He then rushed out to render justice to the cow. It was justice at the doorstep.

Substantive Equality

This is a lesson for the judiciary which owes a duty



to establish substantive equality.

What is substantive equality? We are not equal, we are positioned differently. Let us take a case of a woman employee complaining of harassment against her superior. She has so many hurdles. She may lose her job. She may be asked by her family to resign to avoid recurrence of such events. She may feel inhibited to speak of her problems. She may be worried about how the case will proceed.

The court cannot treat the two parties equally. It must understand the difference and only then there will be substantive equality. Otherwise, it is only a formal, lifeless equality. That is not *dharma*.

Respect Women

Draupadi can never be equated with Duschassana. Article 15 of the Constitution is about gender justice and gender equality. We have the oft-quoted Manu dictum which says where women are worshipped, there the gods are happy.

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः



We cannot pride ourselves that because Manu wrote this, such a condition prevails in our country. We know it does not. It is the *dharma* of the judiciary to make it real.

Once at a workshop on gender justice, a woman who had suffered domestic violence spoke in the court about her experience and said that the court was her only resort and if she could not get justice there, where else could she go?

The Supreme Court of India said in its ruling in a case, "It is in realisation of this constitutional

obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning."

Judiciary Impartial

In our country, as elsewhere, the judiciary is impartial, and has been equated to the height of divinity. *Tirukkural*, the immortal Tamil classic, has a couplet which says that if the king protects his subjects and ensures the rule of law, he will be worshipped as God by the people.

योगः कर्मसु कौशलम्

The spirit of excellence in work pervades all work, but the work of the judge is more appropriately so. In fact, many of the verses in the sermon on the battlefield in the *Gita* seem to be addressed to judges. Take this verse in the 16th Chapter:

तस्माच्छास्त्रं प्रमाणं ते
कार्याकार्यव्यवस्थितौ ।
ज्ञात्वा शास्त्रविधानोक्तं कर्म
कर्तुमर्हसि ॥

"Let the *Sastra* be your authority, your guiding principle,

in deciding what should be done and what should not be done. You are bound to act as ordained in the *Sastra*. If we substitute the word, 'Constitution,' for '*Sastra*,' there can be no better exposition of what the judiciary's *dharma* is.

The Fundamental Rights enshrined in our Constitution are the right to equality, equality before law, prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth, abolition of untouchability, right to education, freedom of speech, life and liberty, freedom of religion and protection of the interests of minorities. The Judiciary's *dharma* is to protect them.

The Directive Principles of State Policy are principles fundamental to the governance of the country, such as securing a social order for the promotion of welfare of the people, minimising inequalities in income and status and ensuring that children are given opportunities to develop in a healthy manner. Indeed, the judiciary is the eternal watchdog which ensures that the Fundamental Rights are protected and the Directive principles are sustained.

The author is a former Judge of the Madras High Court.