

SPEECH OF HON'BLE MR. JUSTICE VIJENDER JAIN,  
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The constitution of India is not merely a legal document but it is also a social document, whose goals are achieved through the fundamental rights and directive principles.

The Indian democracy has been built on a strong foundation of a comprehensive and powerful constitution and well-developed democratic institutions. Its sanctity has further been protected by an independent judiciary, active non-governmental organizations and an alert and free media. The fiercely independent and competitive media includes over 5,000 dailies, 16,000 weeklies, 6,000

fortnightlies and 250 television channels.

India's multi-party political system is the embodiment of its democratic process. India held freely contested elections at regular intervals over the last 60 years. The scale of its electoral process is immense-620 million voters and 4.5 million election officials. Be it ballot boxes carried on elephant back or Electronic Voting Machines, the elections reach out to all sections of the population.

Age-old traditions have dovetailed with the modern concept of democracy. A melting pot of cultures, India is home to people of all major faiths of the world. In this land of magnificent mountains and spectacular deserts washed by the waters of three oceans, over a billion people live together, people who speak 18 major languages,

worship different Gods and celebrate different festivals. They also celebrate unity and their unique Indianness.

Across decades, governments and socio-economic change, India has clung fiercely to its idea of democracy.

In India, the courts interpreted the right to life to include environmental quality as well. By judicial interpretation, some Directive Principles have been transformed into Fundamental Rights, which is a significant contribution to social development by the judiciary. How did the Indian courts bring about this transformation? By expanding the meaning of “Right to Life” in Article 21 of the Constitution to include the right to live with human dignity and the right to good environment. Though the courts have enforced these, what

is essential is public participation. An independent judiciary and a free press as these exist in India are a sine qua non of democracy. The effectiveness of democracy rests not on knowledge and judgment alone but on character as well. Democracy is the political aspect of the assertion of the supreme importance of the individual. All said and done, the ultimate aim of development is to increase the capacity of all human beings to achieve things that they most value and to fully realize their human personalities.

Democracy has not changed the lives of millions of ordinary people in the country, who are still unable to read and write, drink clean water, or earn a decent living. In democracies, elections are necessary to legitimate the state; but there is a life beyond the elections, which must be

ensured.

The moral foundations of the Indian state have been eroded by electoral fraud, money politics, steady criminalization of the political system, and increasing corruption in public life. This has to stop if democracy has to succeed and fruits of liberty have to transedent to the people of this country. The political process no longer commands the confidence of the people. Marginalised groups, desperate for representation and bypassed by the mainstream, take up arms against the state. Human lives, lost in these conflicts, represent the brutal costs of poor governance.

State resources are the most valued prize for politicians and their constituencies. Ultimate authority over resources has passed into the hands of individuals, not

formal institutions. The rise of businessmen and industrialists has led to money-politics.

The role of the judiciary lies in protecting individuals and minorities against the misuse of power by public authorities. Despite judicial review and public interest litigation there is an erosion of public confidence in the system itself due to lack of effective access to justice, huge backlog of cases, long delays.

Governments are getting larger in India without getting better. Despite increase in per capita government expenditure, the total number of poor and illiterates has increased, since these funds do not touch the lives of ordinary people.

Clearly, the institutions of governance in India have failed to provide social, economic and political

opportunities to its teeming millions, who happen to be born poor and are thus marginalized. Increasing levels of crime, violence and conflicts also reflect this reality. Progress towards better governance will be impossible without the protection of the basic rights of the people and their participation in development activities.

The social and economic progress achieved by the deepening of democracy in many societies has been shaped by their efforts to successfully protect the rule of law. In this regard, a number of challenges to the rule of law continue to undermine Indian democracy and pose grave threats to governance.

While six decades of governance may not be long enough to assess the situation, huge social expectations have been generated by institutions that are responsible for

checking abuse of power. But given that the capacity for dealing with abuse of power is disproportionate to the demands imposed upon them by the sheer size and magnitude of the country, there have been numerous unfulfilled promises.

The judiciary is well regarded domestically and internationally for its progressive role in interpreting various provisions of the Constitution with a view to promoting social justice. Expanding the interpretation of the fundamental rights enshrined in the Constitution, overcoming restrictions based on rules relating to locus standi, creating new avenues for seeking remedies for human rights violations through public interest litigation pleas and promoting genuine judicial interventions in the areas of child labour, bonded labour, clean and healthy

environment and women's rights are a few examples of successful judicial intervention to uphold the rule of law and ensure justice.

But to exaggerate these achievements in the Indian context, given the scale of inequalities and injustices, would be completely missing the point. The Indian legal system is faced with numerous crises starting with the fundamental challenge of enforcing the rule of law. While the system of governance in Indian is based on law, this does not necessarily translate into the behaviour of those who govern and the governed to have respect for the law. This lack of respect translates into serious threats to democracy as the legal system may not be able to respond to the growing sense of lack of trust and faith in the institutions.

Enforcement of the rule of law and efforts to protect the rule of law ought to be shaped by a number of factors that will improve the capacity of the legal system to respond to injustices. Passing more laws and the establishment of more institutions credited with responding to injustices may not be the right approach. There needs to be a fundamental re-examination of the approaches that we have adopted to enforce the rule of law. There is need to critically examine the effectiveness of Indian democracy, given the fact that corruption is institutionalised in all spheres of governance.