

SPEECH of the Hon'ble Law Minister

For LAW DAY Celebrations (November 26, 2012)

- I. Hon'ble the Chief Justice of India, Hon'ble Judges of the Supreme Court, Ld. Attorney General, Solicitor General, Additional Solicitors General, President of the Supreme Court Bar Association, members of the Executive Committee of the Bar Association, distinguished senior counsel, members of the Bar, friends, Ladies & Gentlemen .

This is indeed, a special day in the life of our nation. This day, 63 years ago the people of India gave unto themselves their national charter to establish a sovereign, socialist, secular and democratic republic and a promise to ensure for all Indian citizens justice, liberty, equality and fraternity.

- II. This is an occasion to offer tribute and pay our humble obeisance to the framers of the Constitution who took nearly three years to give us this magnificent document, hailed as amongst the finest constitutions in the world. It draws on the models provided by the constitutions of the US, Canada, Australia, the Irish Free State, the British constitution and the Government of India Act 1935, and draws its legal authority from the Indian Independence Act of 1947. The Indian Independence Act was itself a result of the protracted struggle for India's freedom. During the Indian Freedom movement, the Indian National Congress had pledged to provide guarantees for fundamental rights which remain the sheet anchor of our national charter.
- III. Our Constitution has stood the test of time. It has ensured peaceful reconstruction and national renewal, cooperative federalism and inclusive development. It has served as an

“auxiliary precaution” against transient impulses, and has moderated the political discourse consistent with the non negotiable constitutional imperatives.

It has subserved the twin objectives of a government limited by laws and committed to constitutionalisation. As a nation, we can be justly proud of our abiding commitment to the rule of law, free elections, fundamental rights of the people, directive principles of state policy, federalism, and decentralization of power as the bedrock of constitutional governance.

- IV. The task of ensuring that our republican charter remains a “living Constitution” stands entrusted to superior judiciary, more particularly to the Supreme Court. The great judges of this Court have not shirked from shifting their attention from word play to the facts of life. Through a balancing of pretending constitutional absolutes, the court has preserved the fine constitutional balance within which the three organs of the state are required to work. Our constitutional jurisprudence built on the edifice of path breaking judgments of this Court have enriched the functioning of our democracy.

The Landmark judgments of the apex Court have indeed clothed the skeleton of the basic Law. I can recall path breaking judgments of the Court in - D.S. Nakara , Royappa, Dayanand Shetty, Indra Sawhney, S.R. Bommai , Kesavananda Bharati , Minerva Mills, Waman Rao , Bachchan Singh , Maneka Gandhi , I.R. Coelho , Chameli Singh, Khatri , Mohini Jain, Hussainara Khatun, Bandhua Mukti Morcha and many others all of which have vindicated the conscience of the Constitution.

- V. The promise of the constitution would have remained a dead letter but for the higher judiciary which, as the final arbiter has given content to the spirit of the Constitution and by giving it meaning in “new settings as society changes.” We know that there is no such thing as a constitutional provision with a static meaning. Only when given life by the court can the law “rule”. Indeed, as Judge Cardozo reminded us , and I quote “the

outstanding truths of life, the great and unquestioned phenomena of society are not to be argued away as myths and vagaries when they do not fit within our little moulds. If necessary, we must remake the moulds. We must seek a conception of law which realism can accept as true” .

While arbitrating upon the often competing constitutional imperatives and leaning in favor of the justice of the cause before them, courts have refrained from becoming the third or a revising legislative chamber and the “ Laxman Rekha” in this regard has been drawn by the judges themselves.

- VI. The UPA government remains committed to and pledges itself to secure the foundations of the rule of law and judicial independence - integral components of the non-negotiable basic structure of the constitution. The promise of the Constitution in this regard cannot be fulfilled unless we can ensure affordable and speedy justice to all our citizens in larger freedom. A series of initiatives have been taken by the Government towards this in recent times. These include :
- a. Establishing a National Mission for Justice Delivery and Legal Reforms
 - b. Notification of a National Court Management System by the Supreme Court for addressing the issues of case management, court management, setting measureable standards for performance of the courts and the National System of Judicial Statistics in the country
 - c. A Sub Group on improving the court procedure and court processes for better criminal justice system has been constituted under the Chairman, Law Commission to suggest necessary changes in this regard.
 - d. An amount of Rs.595 crore was released as central assistance to States / UTs for infrastructure development of subordinate judiciary during 2011-12.
 - e. The 13th Finance Commission has allocated a grant of Rs.5000 crore for the States over a period of 5 years between 2010-2015 for various initiatives such as increasing the number of court working hours using the existing infrastructure by

holding morning / evening / shift courts; enhancing support to LokAdalats to reduce the pressure on regular courts; providing additional funds to State Legal Services Authorities to enable them to provide legal aid to the marginalized and empower them to access justice; and promoting the Alternative Dispute Resolution (ADR) mechanism to resolve some of the disputes outside the court system etc.

In conclusion, let us celebrate our venerated Constitution today and hereafter for not only does its spirit reflect our past, it defines our present and will determine our future as a nation committed to democracy and constitutionalism. We will need to summon our will and intellect to translate into action the promise of the Constitution for the vast multitude of our people to whose welfare our founding fathers were so passionately committed.

The defining moments of history often come without a warning. It is for us to ensure that our "living Constitution" can respond to these moments of history in an age of revolutionary global transformation. Indeed, all national histories, as Gurudev Tagore reminded us are only chapters of a bigger one. At a time when we aspire to play our rightful role on the world stage, India's ascendancy must represent to the world the vindication of its high Constitutional ideals – the constant expansion of human freedoms, an embrace of diversity and multiculturalism, a repudiation of extremes and an irrevocable commitment to the ideals of a secular and liberal democracy.

(Ashwani Kumar)

Land Mark Judgments

1. Preamble – Socialist- “ Meaning and scope of D.S. Nakara Vs Union of India (1983) 1 SCC 305 , 325-326
2. Equality – Is a basic feature of the constitution. Indra Sawhney II Vs Union of India , (2000) 1 SCC 168 .
3. Secularism – Is part of the basic structure of the constitution. S.R. Bommai Vs Union of India , (1994) 3 SSC 1 ; 1994 Supp (1) SCC 324 (1996) 3 SSC 545
4. Preamble – Social Justice – Nature and scope of M. Nagaraj Vs Union of India , (2006) 8 SCC 212.
5. Preamble – Federal and not unitary Kesavananda Bharati Vs State of Kerala , (1973) 4 SCC 225
6. Article 14 , 19 , 21 – Protect against arbitrary and unreasonable actions of the executive as well as of the judiciary and required observance of the rule of law. Bachchan Singh Vs State of Punjab, (1982) 3 SCC 24
7. The gravamen of Article 14 is equality of treatment. M Nagaraj Vs Union of India (2006) 8 SCC 212.
8. The more recently evolved test of arbitrariness being repugnant to equality is explained in E.Royappa Vs State of TN , (1974) 4 SCC 3
9. Article 21 – Nature and scope of – Relation with Articles 14 & 19. Maneka Gandhi Vs Union of India (1978) 1 SCC 248 : AIR 1978 SC 597 : (1978) 2 SCR 621. See also (1978) 3 SCC 494; (1978) 3 SCC 544.
10. Article 21 is the heart of the constitution. It changes the right to life as well as right of choice. I.R. Coelho Vs State of TN. , (2007) 2 SCC 1
11. Articles 21, 39(e), (f), 41-42 – Meant to ensure a life with human dignity. Bandhua Mukti Morcha Vs Union of India (1991) 4 SCC 177
12. Ecology – Public trust doctrine- Is part of the Indian law. M.C.Mehta V Kamal Nath (1977) 1 SCC 388.
13. Life – Components of right to live – Right to food, water , decent environment, education , medical care and shelter- Right to shelter does not mean a mere right to a roof over one’s head. Chameli Singh V. State of UP., (1996) 2 SCC 549