



Vidyavardhaka Sangha (R), Mysuru

Vidyavardhaka Law College

Sheshadri Iyer Road, Mysuru - 570001

SRI K. PUTTASWAMY
MEMORIAL ENDOWMENT LECTURE SERIES-1





Vidyavardhaka Sangha (R), Mysuru



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Sheshadri Iyer Road, Mysuru - 570001

Sri K. Puttaswamy Memorial Endowment Lecture

on

“What is left of Democracy in India?”

By

Hon'ble Justice Santhosh Hegde

Former Judge Supreme Court of India & Former Lokayuktha
State of Karnataka

Delivered on 18th May 2018



Introduction about Sri K. Puttaswamy



Early life of K. Puttaswamy:

Sri K. Puttaswamy was born in 1917 at Arakere, Srirangapatna taluk, Mandya district to an agriculturist family as the son of Kalastawadi Sri Lingegowda and Smt. Lingamma. His father had primary education, but was a good Gamaka (Kavya vachana). He grew up admiring the nature and had influence of many historical places. As a young boy he was not shy and mingled with all kinds of people. He inherited good talent from his parents.

Education:

Sri K. Puttaswamy was a clever boy and voracious reader. He did his schooling at Arakere, Srirangapatna Taluk. His father noticed his talent and sent him to Mysore for further education. He always excelled in his studies and was more innovative in his thinking. He obtained B.A (honors) from the University of Mysore and law degree from Poona. Besides, being a good student he involved himself in curricular activities too.

Legal Profession:

Sri K. Puttaswamy a child born in Gandhian era was honest person in legal profession. At the outset he worked as an assistant under the renowned lawyer Sri Yathiraj Naydu and Sri Lakshmi Narayan. He also practiced as a lawyer under H.C. Dasappa who was a famous politician and freedom fighter. He had shown great interest in freedom movement. He and other great leaders were arrested and were put behind bars for some years. After coming out from jail, he went to Dasappa's office but in vain, his place was occupied. He then began to practice independently. He practiced law profession till 1962 and throughout his profession he had good acquaintance with well-known writers and great leaders.

Political Career:

Besides a great lawyer, he emerged as a great politician in the province of Mysuru and of Karnataka. He was president of Mysuru City Municipality and during his tenure as president, he took up many development activities and for the first time in Mysore city cement roads were laid. He was also President of District Co-Operative Society. He was also a member of Mysore University Senate and Syndicate.

He was elected as a member of Karnataka Legislative Assembly from 1952 to 1978. He was very active on the floor of assembly and had lot of knowledge regarding legislative assembly. As a member of legislative assembly he roared like a tiger in the assembly and raked up many issues. He had deep concern for the down trodden people. When he stood up to speak in the assembly, his eloquent voice and his vast knowledge put the whole assembly in great silence. He had brought many initiatives in the fields of agriculture, irrigation and land reforms.

His exemplary behavior, promptness, his care towards serving the people made him to rise to the level of a minister under the guidance of the then Chief Minister Sri S. Nijalingappa. He served as a cabinet minister of Municipal administration, health, co-operative, Housing, law, labour and parliamentary affairs very efficiently. Thus he emerged as an eminent leader in the province of Mysore.

Educational Visionary:

Vidyavardhaka Sangha in Mysuru is a dream of Sri. K. Puttaswamy, which made its humble beginning in the year 1949 with an intention of propagating education to the poor sections of the society at a small choultry in Mysuru. He was a true Gandhian, social worker, political leader and disciplined person, who dedicated his whole life for the betterment of the down trodden people.

Vidyavardhaka Educational Institutions has since grown by leaps and bounds. It imparts education not only at Primary and High School Level but also provides Degree, Law, ITI, Engineering and Diploma Courses. All these have materialized because of the services and contributions by great philanthropist whose main motto was 'Service before self' and 'Education for all'.

Now Vidyavardhaka Sangha stands as one of the prestigious educational institution in the heritage city of Mysuru. This had been possible because of the dedication and pragmatic approach towards education by late Sri K. Puttaswamy.

Vidyavardhaka Law College was established in 1974. Sri K. Puttaswamy was not only founder secretary but also was a founder principal of Law College. This great soul disappeared from the world abode in the year 1978 but, still his contributions are remembered as an indelible print in the history of Indian politics.



WHAT IS LEFT OF DEMOCRACY IN INDIA?

by

JUSTICE N. SANTOSH HEGDE

(Former Judge, Supreme Court of India) and
Former Lokayukta, State of Karnataka

1. Even before India became independent, in anticipation of the great event of independence, a Constituent Assembly was constituted consisting of members from different parts and sections of Indian Diaspora to draft a Constitution which was to be a sacred political document of the country. This Assembly met for the first time on 9th December 1946 and continued its sitting till 24th January 1950. Factually the draft Constitution was ready before the last sitting of the Assembly and the same was adopted by the Assembly on 26th November 1949 itself. The day of adoption of Constitution is now being observed as "Law Day" throughout India.
2. There was elaborate discussion in regard to the contents of the Constitution of India and the end product came out to be a great political document ever produced. It can be compared to any holy scripture. It is in this document we adopted the Democratic Republic as the political form of Governance.
3. In simple terminology democratic republic is a political system in which country is governed by the supreme power of the people collectively through their representatives. This type of governance is also referred to as the Government of the people, by the people and for the people. The bedrock of this system of governance are three organs namely, Legislature, the executive and the Judiciary. Though the Constitution did not specifically provide for the separation of power within these three organs, it is clear from the various articles of the Constitution followed by judicial pronouncements that except to the extent specifically specified in the Constitution, these organs function separately and within their specified area in the Constitution.





4. Our Constitution framers spent considerable time while creating these three organs and making provisions for their functions. They placed considerable hope on these three organs in the discharge of their duties for the benefit of the people of this country. Now 68 years have gone by, after the Country accepted the Constitution of India. This document has withstood many an onslaught and attempts to distort its original intention. But in reality, many justly feel that the benefit that ought to have devolved upon the people of India in the last 68 years has slowly and steadily diminished. It is in the above situation, I chose the subject "What is left of Democracy in India" to highlight the degeneration in values in the functioning of our Constitutional organs.
5. In the above endeavour of mine, I think it is more appropriate for me to point out what was in the mind of members of the Constituent Assembly, when they proposed to create these three organs within the framework of the Constitution.
6. While discussing the formation of the Legislature both at the Centre and at the States, very many views came for consideration. Dr. B.R. Ambedkar wanted certain additional qualification to be fixed for candidates, so that they could discharge their duties efficiently in the House. Hence he moved the draft Article 68A, which is presently Article 83 in the Constitution. In support of that Article, Dr. Ambedkar spoke:

"Sir, the object of the article is to prescribe qualification for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount





of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than mere ordinary voter might do.”

But taking into consideration that, at that point of time, almost 80 percent of Indians were illiterates and by fixing any educational qualification, the Constitution will be keeping a large section of the population of India out of political governance, hence the proposal for fixing minimum qualification in the Constitution was dropped.

7. Similarly, apprehending the likely fall in the probity in public life, Prof. K.T. Shah moved an amendment to Article 68A. In the proposed amendment subject (2E) read:

“it was proposed, no one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption

The debate on this amendment indicates even at the time of discussion in the Constituent Assembly, there was an apprehension that members of the legislature might be guilty of corruption. In this context, Prof. K.T. Shah moved a further amendment which read:

“Every Minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandizement of his family in any act he may do or appointment he may have to make.”

After Prof. K.T. Shah spoke as above, Sri H.V. Kamath, brought to the notice of the House a news item that appeared in the Free Press Journal of Bombay dated 8th September 1948, which reported that



“The Cabinet includes one person who is a convicted black marketer and although it is said that his disabilities resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja”.

The above discussion shows that the Constituent Assembly was concerned about the character and probity of the prospective occupants of the Parliament/Assembly.

8. The Members of the Constituent Assembly were also very much concerned about the protection of the members of the executive. Therefore, they provided for protection starting from their recruitment, their service conditions to removal under Part XIV of the Constitution. Article 309 provides for recruitment and conditions of service of persons serving in the Union or State. Article 310 provides for tenure of office of the persons serving in the Union or State. Article 311 provides for dismissal, removal or reduction in rank of persons employed in civil capacities and other Union of the State. A perusal of these Articles shows the concern of the Constitution makers to create a sense of security amongst executives.
9. So far as superior judiciary is concerned, the Constitution provided for insulating that Institution in many ways thinking that the same should be independent and fearless. The assembly took it for granted that probity of the members of the judiciary, was inbuilt in the system.
10. In the above background, I would like to now discuss how the above three organs have maintained the confidence reposed in them by the Constitution framers, in the present day context.
11. From the above, it is clear that the Constituent Assembly wanted the Institution of Legislature, the Executive and the Judiciary should be such institutions that would provide a people friendly and honest institutions. My experience shows that for about two decades after the declaration of democracy, the above institutions almost fulfilled the desires of the Constituent Assembly. Alas, this attitude of 'if I cannot serve, let me not damage' did not continue for a long time. The degeneration in the elected office became prominent from the decade





of 1970 and the same decay continues. As the time passed, the elected offices ceased to be the office to serve the people, but they became the office to peddle power. So much so, at present, when we read about the election expenditure, one doubts whether election expenditure is an investment. If it is an investment, certainly the investor must be expecting a return. In this process the democratic purpose of service seems to have become a business. Though perks of office have increased over the years about which none can grudge, the constructive work of the elected body has proportionately decreased. It is reported that it costs Rs. 10 crores to run a day's Session in the Parliament, which if calculated in minutes it runs to lakhs of rupees per minute of the Parliament Session. In return what work the Members of the Parliament do is reflected in the statement of the then Hon'ble Speaker Mr. Somnath Chatterjee made on 19th February 2009 when some members of the Parliament stormed the well of Lok Sabha, shouting the choicest expletives. The Hon'ble Speaker then said;

“You do not deserve one paisa of public money.... I think Parliament should be adjourned sine die. Public money should not be spent on useless allowances for you..... I express my greatest annoyance and condemnation.”

If the Speaker of the highest Legislature in the Country is driven to comment on the Members of the Parliament as above, it really reflects the state of affairs in the Parliament. Situation has since then further deteriorated. In the Winter Session of Lok Sabha in 2016, the same was slated for 14 days session, but not a single day, the proceedings of the house was held, because of uproar and walk out from the House. This malice has continued as could be seen from the reports in the newspapers. For example, it is reported in Times of India as follows:

“No business in the Parliament for the 19th day”.. Budget passed with the least debate since 2000” “ Six minutes that was it in R.S. as stand off enters third week:.. “Parliament productivity less than 10 per cent of average”. “Opening Week of budget session was a total washout”. “MPs set to get higher allowance”.

At this stage, it is relevant to point out that in the last session of





Karnataka Legislature held at Belgaum, a newspaper has quoted thus:

“With less than 20 members, Government passes five bills without debate”.

It is also interesting to note that from the newspaper reports that nearly 50% of the Budget layout of the State of Karnataka remains unspent. It is also interesting to note that another news headline, which shows “CM aims to spend Rs.80,000crores in 73 days. This shows the seriousness of the Houses of the Legislatures and as also of the Governments.

12. The Constituent Assembly expected the elected leaders of different legislatures to be men of high character, morality and people who uphold the dignity of the House. In this context, the said Hon'ble Speaker was reported to have commented;

“All of us in Parliament need to be concerned about it (disorderly behavior in the House) and endeavour to restore true democratic culture into the functioning of these institutions..... Once people lose faith in the system, no force, no army can help save the system”

“You are not serving the people by shouting. Look at your behavior..... You are threatening. I am not going to accept this. You should know how to behave in the House.”

Continuing further in Hindi which is if translated he stated:

“They don't read anything nor do they listen”

He even compared the Zero hour of the Parliament to be the most unruly hour.

13. Statistics show in 2007 Rajyasabha passed 32 percent of the Bills (not including financial Bills) with little or no discussion. The percentage of Bills passed with almost no discussion in the Rajyasabha increased from 26 percent in 2005 to 32 percent in 2007. During the same period, the number of Bills on which substantial debate took place reduced from 29 percent in 2005 to 24 percent in 2007. Out of 485 Loksabha MPs, which does not include Ministers, only 107 spoke on some legislative issues in 2007. Of these, 89 MPs spoke three times or





less, 12 MPs spoke about four to seven times, and six MPs spoke eight times or more in 2007. This malice has continued even after 2007, as pointed out by me in para 12 of this paper.

14. While addressing the 14th All India Whips' Conference in February 2008, the Vice President of India stated:

“The single most important issue of concern today is the decreasing credibility of our legislatures as effective institutions capable of delivering public good and contributing to effective formulation of laws and public policies.... The Instrumentalities at the disposal of the legislatures had either been blunted or become dysfunctional.”

(The above statistics and quotes are extracted from an Article written by Sri Joginder Singh, former Director of the Central Bureau of Investigation).

15. While this is what the elected representatives contribute to the Legislative process, it cannot be, but noticed the background of the elected representatives. A recent statistics from “Election Watch” indicates 150 MPs in the current parliament have criminal records, an increase of 17.2 percent over the previous Loksabha. There are 412 Criminal cases against all MPs put together. There are 12 MPs with serious criminal charges against them, which is one in every 13 MPs. While this is the criminal background, an Article published in Deccan Herald dated 19th November 2009 under the title 'Business of Politics: Why Madhu Koda is not an exception’ states :

“An analysis of re-contesting candidates for the last Loksabha elections revealed that the average asset value increase of all these MPs was 287 per cent, equal to 2.75 crore for each MP. The maximum asset increase was 9.137 per cent. Surely, this is the business to be in, if ever there was one.”

It is reported in the newspaper that out of the present candidates contesting elections for Karnataka Assembly, 83 candidates of the BJP which is 37% of its representation, 59 candidates of the Congress which is 26% of the contesting candidates and 41 of JDS which is 20% of its contesting candidates have criminal records.





16. In another article published in Times of India, Bangalore dated 20th November 2009 under the title “Netas double their fortunes” it is specifically mentions the phenomenal financial growth of certain elected representatives. It notes that Former Chief Minister Madhu Koda, was investigated for allegedly building a 4,000 crore business empire stretching from Liberia to Thailand. He began his career as a daily wager: one of his cabinet colleagues once lived in Indira Avaz Yojana has now two bungalows worth Rs.18 Lakh. He was once land less, now he boasts of more than 19 acres of land. He owns two Ford SUVs, a tractor and a motor cycle. Another colleague of that Chief Minister in the cabinet did not even own motor cycle now has a Scorpio and a house worth Rs.55.54 lakhs and a dairy farm. Another MLA of the same State was once a rickshaw puller in 2005 he showed his worth as 45.00 Lakhs, which grew to over Rs. 1 crore in 2009. Nobody can grudge their financial success. But the question still remains where from these money came and at whose cost. The answer for this question is not far to seek. That apart, if India is a land of fortunes it should be across the population and not confined to the elected people only.

17. The factum of corruption in politics is known to almost all in India. Many people in high position have expressed their views in this regard. As noted earlier, the then Hon'ble Prime Minister in his speech made on 15th April 2007, while addressing the 2006 batch of IAS probationers stated :

“The barriers of administrative and political corruption should be tackled by the upcoming bureaucrats and quality of governance be improved at all levels to build an India 'worthy of our dreams'

His Excellency, the then Vice President of India has quoted in 'The Hindu' on 23rd November 2009 under the title “Corruption a serious challenge, says Ansari” which reads thus:

“Corruption is an ailment that is pervasive, cancerous and multi-dimensional. In moral terms it corrodes the social and political fabric of society and increases injustice; in its legal implications, it results in disregard for the rule of law; in its developmental aspect, it tends to





distort the decision-making processes, shakes the legitimacy of the “State and its capacity to exercise sovereign functions including ensuring law and order for the citizens. It has emerged as a significant threat to national security.”

These statements speak volumes about probity in public life, which was the hope of the Constitution framers. The seriousness with which the elected representatives function in the House and what transpired in the Lok Sabha during the Question Hour on 30th November 2009, is reported in Times of India, as follows:-

“Its often described as the essence of parliamentary democracy the mandatory one-hour in the morning when MPs can question a minister on any issue and follow it up with supplementary questions. So its treasured by MPs. You can also tell from a ministers Question Hour performance how thoroughly he understands the working of his ministry.

Yet, on Monday, the Question Hour fell through as MP after MP, cutting across party lines, who had listed their names for questions, were found to be absent. No one can quite recall if this has ever happened in the past. While old-timers say this is a very rare occurrence , to most it seemed another shameful pointer to the lack of seriousness with which our MPs take their job.

There were as many as 34 MPs who had submitted questions but were found absent when Lok Sabha Speaker Meira Kumar called out their names. Among them, Varun Gandhi (BJP), Madhu Goud Yakshi, Shruti Choudhury (both Congress), Shivaji Adhalrao Patil (Shiv Sena), Rajiv Ranjan Singh (JD-U) and Prabodh Panda (CPI). Barely 30 minutes into Question Hour, the Speaker adjourned the House in frustration. She later regretted the absence of such a large number of members.

As usual, 20 questions were listed for oral replies during the hour-long exercise. But just three were taken up with supplementaries when the House stumbled upon the long list of truants. The very first question, listed against Congress MP Harsh Vardhan, was to defence minister A K Antony. But the member was absent. This set the trend for the day.





The third question, listed by Pulin Bihari Baske and Jaya Prada, also fell through as both members were absent. The next one was asked by Adhir Chowdhury along with supplementaries from Sanjay Nirupam and Maneka Gandhi . And then there was a void. Meira Kumar went on reading out name after name from the list but there was not a single member present.”

The situation has further deteriorated as noticed by me hereinabove.

I hope the defaulting members are at least not paid that day's sitting fees.

18. In the above background, the former Speaker of the Lok-sabha Sri SomnathChatterjee pleaded for the right of the voters to recall their representatives. He has quoted in an article recently published in Deccan Herald under the heading “Legislator Haazir Ho” that the Voters must have power to recall. In that article the Hon'ble former Speaker has stated:

“Legislators seem to forget that there is more to winning elections than just enjoying the perquisites. They have a duty towards the constitution, the nation and the people. The least they can do is to behave properly inside the House. But they are aware that once elected practically nothing can shake them from their position. This is one of the reasons why they begin behaving in a manner highly unbecoming of them.”

It is in the above background, I am constrained to question what is left of democracy in Legislature.

19. Let me now consider the State of affairs amongst the Executive i.e. bureaucracy, which is also a Constitutional organ. As noticed by me in the earlier part of this lecture, the Constitutional framers wanted to elevate the status of bureaucracy from statutory to that of constitutional. It is in this view in Part XIV of the Constitution, it is provided for recruitment and service conditions of members of the executive. The Constitution has given a guarantee to the members of the Executive in regard to their tenure in office. Even their removal for misconduct has been protected by certain procedural guarantees.





Unlike the Legislature, the members of the executive are required to have minimum educational qualification and to get the best of talent, the aspirants of this institution have to undergo the process of selection and are subject to various trainings at the entry stage and also during their course of service. Special institutions of administration were established to impart training in administration, so that the country could have the benefit of trained administrators.

20. While the Legislature was empowered to make Laws and policies for governance of the State, the burden of administering those laws and policies is with the bureaucracy. Right from the British days, the bureaucracy in India had very high reputation integrity wise. Exceptions to this rule were far and few. It was the desire of the Constitutional framers that the standard of bureaucracy should be such that the Country can expect an impartial, apolitical and people friendly bureaucracy. In the first two decades of our democratic set up, at every hierarchy of bureaucracy, may be with a small exception, the probity and efficiency was forthcoming. The members of the executive maintained dignity of office and worked within the framework of Law. It respected the other two organs of the Constitution. There was zeal amongst the members of the bureaucracy to work even in remote areas with concern for the downtrodden and deprived. The bureaucrats have always been paid well. Their remuneration is fixed in consonance with the rise in price index by creating independent Pay Commissions.

21. The Constituent Assembly, while discussing the draft article 282B, which is presently Article 309 showed great concerns about the security of tenure of the members of the Executive, as also what should be the relationship between political bureaucracy and executive bureaucracy. To deal briefly with this aspect, I would like to quote from the address of Mr. Brijeshwar Prasad and he said;

“..... The power of dismissal, removal or reduction in rank of persons employed in several capacities under the Union or State should be in the hands of the Public Service Commission. I want that disciplinary matters should not rest in the hands of the Ministers, either Central or Provincial. Sir, I am not in any way suggesting a course of action which



has got no precedent in any part of the world. In Great Britain, in Canada, in Australia and in South Africa in all these countries the public servants are not under the Ministers, and there has been no conflict or no confusion of authority. In the circumstances in which we are placed today, I am quite clear in my own mind that if the foundations of our civil service are to be laid on sound and scientific basis they must be removed from the control of the Ministers. The independence of the bureaucracy from the control of the Ministers is as important, if not more, than the independence of the judiciary from executive interference. 'The role of the public servants, according to my humble judgment, is more important than that of Ministers. "Men may come and men may go, but I go on for ever". The public servants remain, though Ministers may come in and go out of the cabinet and bewildering rapidity. The foundations of our national life can be secured if the public servants are assured of their security, if they get the conviction that there will be no ministerial interference. For no fault of theirs, if they do not find favour with the Ministers, they are transferred to some unknown regions in some God forsaken districts. This creates a sense of insecurity. I am quite clear in my mind that there is need for administrative unification of the country. Sir, I am of the opinion that all the civil servants should be brought under the control of the Union Public Service Commission. As a matter of concession I am prepared to agree that some control should also be vested in the hands of the State Public Service Commissions. I stand for the proposition that the civil servants of India, whether Central or Provincial, should be under the Central Public Service Commission. We are passing through a very difficult period. Sir, The whole of our society is passing through a period of decadence and decay and if we want that the birth pangs of the new social order should be prolonged, we should lay the foundations of our civil services on safe and secure basis."

22. Many of the sentences in the above said address of Sri Brijeshwar Prasad sound prophetic today. The request of Mr. Brijeshwar Prasad was not fully accepted by the Constituent Assembly. Though it did provide for some sort of separation of power, the relationship between the political bureaucracy and the executive bureaucracy





became some what similar to the relationship between the Master and Servant over the period of time. When I say the political bureaucracy, I mean the Cabinet of that time. This cabinet misutilising the power conferred in the conduct of Government business rules, practically usurped very many powers that were vested solely with the executive and started controlling the executive, which in turn succumbed to this pressure, consequently the decisions taken by the Government got tainted with political colour. Many of the bureaucrats, fearing uncomfortable transfers become subservient to the Cabinet, which was what Mr. Brijeshwar Prasad in his speech dated 8th Sept. 1949 had apprehended. This change in the system of functioning literally took away the accountability in administration.

23. With the passage of time and political instability becoming a common thing, the Cabinet itself started becoming subservient to the other elected representatives, which gave a dominant role to all elected representatives to control the executive. This change caused very serious damage to the bureaucratic administration. The elected representatives started demanding officers of their choice in their constituencies in the guise of bringing about development in their constituency. Knowing the advantage of being in the good books of the elected representatives, many of the officers started cultivating the elected representatives. Consequently, today politics in administration has percolated from top to bottom of bureaucracy. This drastic change in the administration of the State has serious repercussions on good administration. Worst still is the corrupt nexus between the politician and bureaucrat has become deep rooted. As I once said in a lecture of mine, the Legislators and bureaucrats have become conjoint twins. Of course there may be exceptions to this rule. They are conjoint twins because one cannot live without the other. There cannot be mal administration and corruption if one of them opposes the other's illegal acts. The factum of such unholy alliance is well-known. The quote from Hon'ble Prime Minister and Hon'ble Vice President proves this point. Even within the bureaucracy, we find an admission of large scale corruption in its institution. A few years back it was reported that IAS officers of Uttar Pradesh identified and ranked the most corrupt amongst them in a list prepared by the Association of





IAS officers of that State. The expectation of the Constitution framers of an honest people friendly executive has become an exception and not a rule. If that is so, what is left of democracy within the executive.

24. I would now consider the situation in the Indian Judiciary, which is also an organ of the Indian Constitution. Earlier I had commented that the Indian Judiciary is one of the bedrock of the Indian Constitution and to maintain its independence, the Constitution has insulated this Institution from external interference . The question now is whether the judiciary has really lived up to the confidence reposed on it by the Constitutional framers. The concern of the members of the Constituent Assembly is well reflected by the words of Shri M. Ananthasayanam Ayyangar, who participated in the debate, on the establishment and constitution of Supreme court on 24th December 1949, said:

“Sir, we have now reached in the discussion of this constitution, a stage which according to me is one of the most important stages if not the most important stage in the discussion of this constitution. The Supreme Court is the watchdog of democracy. In an earlier part we enacted the Fundamental Rights and we are very anxious to provide the means by which these Fundamental Rights could be guaranteed to the citizens of the Union. This is the institution which will preserve those rights and secure to every citizen the rights that have been given to him under the Constitution. Therefore, naturally this must be above all interference by the Executive. The Supreme Court is the watchdog of democracy. It is the eye and the guardian of the citizens' rights. Therefore at every stage, from the stage of appointment of the judges, their salaries and tenure of office, all these have to be regulated now, so that the executive may have little or nothing to do with their functioning. The provisions, that have been made, have been made with an eye towards that. If amendments are moved now, each amendment must be judged by the test whether it secures the independence of the judiciary which this Chapter attempts to provide for.”

25. While discussing the draft Article 15, which is present Article 21 of the Constitution of India, very many speakers had reposed confidence in





the judiciary to protect the nation in the event of failure of the Legislature at the time of crisis. Some of the speakers who had foreseen the possibilities of single party gaining total majority in the democratic system and destroying the very Constitution under which the Legislature itself is constituted, argued that it is the judiciary that will come to the aid of the nation when the Legislature fails to maintain democracy.

26. What was apprehended during the framing of the constitution, did happen in the year 1975, when an attempt was made to sabotage the democratic system. Though the superior judiciary i.e., the High Courts did their best to protect the democratic system, sadly the Apex Court failed to do this. But fortunately wisdom dawned and the political leaders sensed the simmering public opinion and democracy was put back on rails.
27. Apart from the above single sad incidence, by and large Indian judiciary played its role as expected in the Constitution for a longer time than the other two organs of the Constitution. For a long time after India became republic, judiciary was the most respected institution. When the probity declined in the other two organs of the Constitution, people felt that the judiciary is there to protect them. Till about the decade ending with 1980s, judiciary was the most respected institution in India to solve the problems of the people. Even the politicians and members of the bureaucracy approached the judiciary for redressal of their grievances. Judges at all levels, especially at the higher courts level were revered and respected. Even though at that point of time, there were some black sheep in the institution of judiciary, their presence were ignored as some abrasion. The institution as a whole held its head high with pride.
28. The decline in judicial probity came to be noticed starting from the decade of 1990. The first case which made news was impeachment proceedings of a judge of the Supreme Court in the early 1990s. But the Supreme Court in that case took timely action. The move for impeachment failed because of the failure of Legislature (Parliament), thus the Judge concerned escaped punishment. I call it an opportunity missed. For this fault of Parliament, judiciary can not be held



responsible. May be, this failure on the part of the legislature encouraged some more in the judiciary to indulge in activities which started sabotaging the reputation of the judiciary. In this process judiciary also committed mistake by concealing lack of individual probity which was noticed in some cases with a hope that it will not be repeated, instead of taking action against the erring judge. There are serious allegation of corruption against the Judiciary, as could be seen from the newspaper wherein it is stated the Hon'ble Chief Justice of Allahabad High Court had investigated the conduct of a District Judge who granted bail to a former Minister of the U.P. Government, wherein it was found the said former Minister had paid Rs. Ten crores for obtaining a bail in a molestation case. It is further found in the said report that that money was shared by the said Judge with some Advocates who were involved in that case. It is also reported in the newspapers that apart from the case of Justice V. Ramaswamy, a Judge of the Calcutta High Court and a former Chief Justice of Karnataka High Court were also sought to be impeached, but they avoided the said consequence by resigning.

29. In the recent days, another controversy has erupted because of the fact that four sitting judges of the in the Supreme Court gave a Press Statement alleging certain misconduct of the Chief Justice of India which was unprecedented. There is an unwritten law that Judges should be seen to be talking inside the Court only. This precedent was violated by the said Judges, and their action was taken advantage of by certain political parties which moved an impeachment motion against the present Chief Justice of India which fortunately and rightly too was not admitted by the Chairman of the Rajya Sabha.
30. If in early 90s, suitable actions were to be initiated about the happenings in the judiciary, same I am sure would have halted the fatal fall in standard of judicial probity. Unfortunately, that did not happen. Thus judiciary lost an opportunity to redeem its status in the constitutional hierarchy. At that time, information and suspicion were dismissed as mere roomers. In this context what Mr. Sabyasachi Mukharji, who was Chief Justice of India in early 1990 stated in the case of Justice V. Ramaswami is very relevant and I quote the facts leading





to the same and the reaction of the then the Chief Justice of India. In 1990 when Justice V. Ramaswami was a sitting Judge, reports started circulating about various questionable acts of Justice Ramaswami when he was the Chief Justice of the Punjab and Haryana High Court. There were reports submitted by the Internal Audit Cell of the High Court, and a report by the District and Sessions Judge (Vigilance), and audit queries from the Accountant General's office. In this background, it is stated that the then Attorney General of India, Soli J. Sorabjee and the president of the Supreme Court Bar Association, Sri K.K. Venugopal and other leaders of the Bar represented to the Chief Justice of India Sabyasachi Mukarji in open Court and drew his attention to these reports, on 20th July 1990. The CJI Mukarji, got up a few minutes earlier from the Court after announcing that he would come back to make a statement. He did so after 4 p.m. His statement was widely published and is part of the Supreme Court record. When he came back to the Court, the Chief Justice after referring to the Reports circulating about Justice V. Ramaswami, in his statement to the Bar, in the open court, stated:

“This was an unprecedented and an embarrassing situation. It called for caution and establishment of a salutary convention..... The Supreme Court must uphold the rule of law. It is therefore, necessary that those who uphold the rule of law must live by law and judges must therefore, be obliged to live according to Law. We must, therefore ensure that there is no conduct of the judges which affects the faith of the people that judges live according to law.

I was constrained, in those circumstances to advise Brother Ramaswami to desist from discharging judicial functions so long as the investigations continued and his name was cleared on this aspect. Since I had assured the learned Attorney General, the Law Minister, the President of the Bar Association and others that I will look into it, I thought I must convey to you the result of my looking into it.

Consequent to the advise, Justice Ramaswami went on leave. (Extract from Article Judicial Integrity: Lessons from the Past, by Anil Divan, Senior Advocate, Supreme Court of India, published in 'the Hindu 21st October 2009).





31. When there was even a roomer as to the probity of a judge, if due care was taken by the Chief Justice concerned like the steps taken by the former Chief Justice Sabyasachi Mukarji, I think today the situation would have been different and would have sent appropriate message to other serving judges. As the then Chief Justice of India Sabyasachi Mukarji said, those who uphold the Rule of Law must live by law. Therefore, the institution of judiciary itself must ensure that there is no conduct of judges which affects the faith of the people, that judges live according to law. Every one in the judiciary must understand that the existence of judiciary rests on the confidence of the people in the institution. There are very many instances which have come to light which indicates that because the people are not confident of getting timely and fair justice, extra constitutional bodies have come into existence for settlement of their disputes.
32. It is true, judge and population ratio in India is pathetic. The working condition of the subordinate judges till recently was also pathetic. In spite of that it is no excuse for the judiciary even to defend itself by saying either they are short handed and they do not have necessary infrastructure to dispose of the cases timely because it is the duty of the judiciary to render justice in accordance with law strictly and timely. The enormous delay in disposal of the cases has delivered a body-blow on the institution of judiciary. As Justice Krishna Iyer said, the problem of delay cannot be solved only by increase in numbers, but it should be by appointment of quality judges also. The system of regional and communal representation should be totally abandoned in the selection of judges. Merit and integrity alone should be the criteria. I know, nobody can disagree with the statement that merit and integrity should be the criteria for appointment of judges in the judiciary. But I have to repeat this because that is not what is happening today. The consequences contrary to the above principle are disastrous. Let us note some of the instances in the Judiciary that have come to light. Sometime back it is reported from Chandigarh that the huge sum of money was to be delivered to a Judge of Punjab & Haryana High Court, was wrongly delivered to a Judge who had similar first name as that of the Judge to whom it was to be delivered. The enquiry body constituted consisting of none other than the Chief





Justice of that High Court found one judge guilty of the misconduct. But on an opinion obtained from the then the Attorney General of India, the judge was exonerated. But the said judge was transferred to another High Court. Why, is the question? If the judge is not guilty of the act of misconduct, this order of transfer should not have been made. If the judge is guilty, transfer will not be the appropriate punishment for such grave misconduct.

33. I have referred to the above incidences not with any malice against the judicial institution of which I was a part for over 40 years. But with a feeling of anguish and desire to bring about the change in the system.
34. In conclusion I must refer to one other institution which even though is not created by the Constitution, it attained the status of Fourth estate by its own performance and on its own right, has become a organ or the Constitution that is the Media. In a democracy, Media is the real voice of the people. It has played an important role over the years in creating public opinion. But recently, there have been some articles appearing in the section of the media itself, which indicates the fall in professional standards, even amounting to corruption in media. The news item shows, for consideration, a section of the Media has been indirectly canvassing for certain candidates during the election not based on supportable evidence. Since this type of allegation is in the preliminary stage, I appeal to the concerned people of the media to immediately take steps to put an end to such unacceptable practices, lest there should be degradation of probity in media which in turn will have a disastrous effect on the functioning of the Democracy.
35. As I mentioned earlier, Democracy is the best form of governance, but the Democracy can survive only if the Institutions created by it functions within the parameters laid down in the Constitution. In my opinion, though the democracy has come to stay in this country, there is a question still lingering because of degradation in values in the Institutions responsible to uphold democracy.
36. The optimism in me, in spite of the above all shows some light at the end of the tunnel. I hope it is not an illusion.





NOTE





Sri K. Puttaswamy Memorial Endowment Lecture inaugurated by Hon'ble Justice Santhosh Hegde



Offering flower



Speech by Hon'ble Justice Santhosh Hegde



Speech by Dr. M K Ramesh
Professor, NLSIU, Bengaluru



Hon'ble Justice Santosh Hegde
addressing the gathering



Presidential address by
Sri Gundappagowda, President, VVS



Interaction with audience



Dignitaries on the dias

