

EDITORIAL

सत्यमेव जयते@15.AUGUST.2017

15th August is an extraordinary day for India as a culture and as a civilization. We became a nation with a constitution. 15th August is also the day we collectively took a pledge to unite, to rediscover ourselves and take a '**pledge to the service of India**'¹. We will complete seventy years this month. **Shall we take a minute and look at how far we have come in meeting that commitment to ourselves?**

FREEDOM

Life derives meaning from freedom. Freedom is coveted by every human. All that we do, all that we seek is for freedom, to feel and enhance the sense of freedom. We seek joy to feel free from pain, we work to get free from emptiness and find meaning, we acquire wealth to free ourselves from a sense of lack and insecurity; we serve and give to free ourselves from petty self centeredness. **At the core of all human values is Freedom, whatever be its shade.**

Political freedom finally brought our people that opportunity to actualise these freedoms at their individual level. Today we are blessed to live in a country that is not under a feudal ruler, that is not run by war lords or bigots, that is not steered by outsiders with vested interests. As we complete 70 years, there is nothing more important than recognising the value of freedom by recommitting to its preservation and proliferation in every dimension of our lives.

SUBSTRATUM OF FREEDOM

Our freedom struggle was steered by Truth in the form of non violence, and like our timeless culture was made the substratum of modern Indian State. "Satyameva Jayate" is our national motto and adorns our national emblem.

सत्यमेव जयते नानृतं सत्येन पन्था विततो देवयानः।

येनाक्रमन्त्यृषयो हयाप्तकामा यत्र तत् सत्यस्य परमं निधानम् ॥²

¹ From the speech of the First Prime Minister on the eve of India's Independence

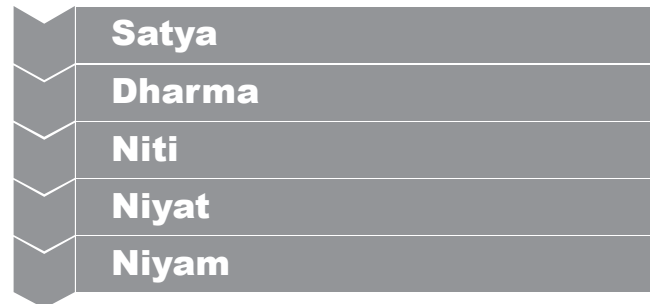
² Mundak Upanishad (3.1.6)

Truth alone triumphs; not falsehood;

*Through truth the divine path is spread out;
the wise, whose desires have been completely fulfilled,
reach where that supreme treasure of Truth resides.*

MANIFESTATION OF SATYA

Rule of Law and Freedom are intertwined bedrocks of our constitution. Legislations are meant to enhance individual and collective freedoms and guarantee rule of law for all people. In the context of our culture, *Satya* shapes laws:



While *Satya* sounds abstract, it is the substratum of all virtues and lasting peace, be it collective or individual. It takes shape as *Dharma*, which stands for principles of goodness, virtue, and ethics and allows people to connect and live in harmony. *Niti* (Policy) should stem from *Dharma* and it stands for a stance or approach on how people will live together to achieve their respective individual and collective goals. However, *Niti* is influenced by *Niyat* (political will) of those governing and finally results in formulation and administration of *Niyam* (laws).

THE HIGH AND LOW OF LAW MAKING

Supremacy of Rule of Law is what we got along with independence. Plato wrote: "If law is the master of the government and the government is its slave, then the situation is full of promise". However, over the seventy years, the divergence from the essential spirit of law making has drifted in so many cases, that it 'seems' like a new normal.

The 13th President had this gentle yet alarming comment in his farewell speech to the parliament: *"It is unfortunate that the parliamentary time devoted to legislation has been declining. With the heightened complexity of administration, legislation must be preceded by scrutiny and adequate discussion. Scrutiny in committees is no substitute to open discussion on the floor of the House. When the Parliament fails to discharge its law-making role or enacts laws without discussion, I feel it breaches the trust reposed in it by the people of this great country."*³

Laws are meant to serve people by being fair, clear, stable, and enabling. People must get confidence that legislation is for them and not only to be used against them by an administrator. Functionally, laws should be necessary, clear, coherent, effective, and accessible.

However, over the seventy years we know that laws are often twisted, coloured by outrageous complexity that they are out of reach of the common man, rolled back and amended way too often, arbitrarily applied in disregard to people's rights, crafted for ease of use by the administrator, and often have conflict of interest/ vested interest in their very design. While there are severe legal barriers when there is conflict of interest for business transactions, I wonder about a much stronger application against 'conflict of interest' in law making. If the law makers turn a blind eye, look the other way or wink selectively, then rule of law gets diminished. Trust in administering of laws whether it will be fair, fast enough, and effective remains doubtful.

DO NIYAM AFFECT NIYAT OF CITIZENS?

India was recently labelled as a 'largely tax non compliant society.' Even if one were to accept that, we cannot change that situation till we find out why did it become so? During the freedom struggle, millions made extraordinary sacrifices. Each of us knows someone who made sacrifices in achieving *azadi*. Has the texture of that society drifted so far from that pledge to 'serve the nation' to serving themselves in disregard to the nation? If so, then why?

Could it be that many of those entrusted with lawmaking and administering, who took that same oath to serve the nation and guarantee liberty, equality and justice did not pay sufficient heed to that promise? Could it be that the framework of law is not comprehensive to address the current reality? Can there be an effect without a cause? Where does this circle start and where will it end?

³Shri Pranab Mukherjee's speech on 23rd July 2017 to the Parliament.

⁴India ranks 66 / 113 on Rule of Law Index 2016 of World Justice Project.

⁵India got 40 out of possible 100 on Transparency International's Corruption Perception Index, 2016


Niti and Niyam affect the Niyat (intention) of the people. In other words, Niyat of people is only a reflection - यथा राजा तथा प्रजा (as the rulers, so are the people). The formulation and administration of *Niyam* does shape the *Niyat* of people. At the same time, laws get formed to deal with breaches. And the circle goes on.

Till the spirit of rule of law is active and not selective, enabling and not disproportionately bothersome, till laws exists for people and not to dissipate their spirit in coping with them, and till laws make people feel optimistic and not hopeless; the rule of law is yet to ripen⁴. Till we reach a point when rule of law is working in spirit and in its splendour for the vast majority, the Triumph of Truth remains in abeyance.

Many professionals feel helpless to deal with something that is beyond control. However, we are trained to think, ask questions and are capable to understand laws. As professionals we can look through the fine line between form and substance. Can we undertake to refine our law making and administration within our circle of influence? Can we be proponents of adherence to laws in 'spirit'? As we build our nation, we can once again question and clear our own *Niyat*, and steer the *Niyat* of taxpayer and the administrator towards the essential spirit of law⁵. In our professional endeavours, can we ask ourselves - Will this action/advice be coherent with the essential spirit of the law? Will my action/advice be right for India that I wish to see? Because, India does not belong only to the few who speak from high pedestals, but to YOU! **Freedom is not only a personal right, but also our individual obligation!**

BCA JOURNAL

A galaxy of contributors, editors, members and wise men and women have shaped the BCA Journal in the last fifty years. I grew up reading the fine features and well researched, thought provoking and useful articles of this Journal. BCAJ has and will continue to present its content in an objective, bold, and circumspect manner. I feel humbled to write to you as its editor from this month onwards. I will strive to keep the balance between continuity and change, and present the content that reflects those virtues in light of our current reality. I request your observations and counsel freely and frequently.



Raman Jokhakar
Editor