intellectual commerce- legal paradigms for global initiatives

Human intellect is the genesis of the proud civilizations, where it carried out its collective march towards a 'better tomorrow'. The creative manifestations of the great intellects brought all of us from dark and dingy grottos to the luminous urbanity of the present day. For every small step forward, we are bound to acknowledge a debt to a scientist, a physician, a pharmacist, an architect, a jurist and many others. Every time any one of us smiles, such felicity of a moment stands out, even in ostensibly oblivious state, as a true and profound acknowledgement of selflessness and altruism, as each smile in life of a fellow being on this planet, is an honest tribute to eons of intense intellectual strife of our forefathers. The mutuality of mankind was the foundation of life, in all the cosmic aspects, on planet. The 'mutuality' of human race has always stood as thought that etymologically illuminates the celebrated and substantive term 'fraternity'. In the realm of law, the term fraternity is proudly enshrined in the Constitutions of various countries and has always inspired the judges and jurists alike to employ the most luminous phraseology to express the vibrant positivism wrapped therein. The constitution of India proudly speaks of promoting fraternity. Thus the mutuality and its semantic derivative 'fraternity' evokes an image of a spiritual fusion of mankind. Socio-cultural roots, in Indian subcontinent stand on the inspired thought 'Vasundhaiva Kitumbakam' (The whole earth is a family). What an epiphany stemming from contemplation of mutuality! our humble repayment of the greatest debt, each one of us owe to our posterity and to remain bounden in solemn duty today towards our fellow beings, to carry forward our functional streams, to bring 'smile' on the face of others, the term 'others' being nuanced in the existentialist mould. The selflessness or self extinction are essentially the important elements of mutuality and fraternity. Progression of mankind through vagaries of time over this planet, if viewed in a wholesome, cohesive and non-fragmented perspective, is a fable of ruthless assertion of the mighty over the less privileged, where

the supportive and just intervention by the angels and divine messengers is always hailed by humanity, as divine.

Centuries rolled by and man continued to progress and ultimately arrived at what we are taught to recognize as Modern era. The principles of social justice and protection of the under privileged persons came to be accepted by mankind, as a pillar of civilized co-existence. Thus almost all the countries, in the length and breadth of the world adopted their Constitutions to uphold the glorious tenets of just and fair co-existence of their citizens who stood assured of a fair and equitable treatment in life and were also assured to be kept, under benevolence of the state, immunized from any form of exploitation.

It is a matter of common knowledge that words are fragile and mercurial in content as they essentially suffer a weight of their own meanings.....meanings that change with time..... meanings that seldom remain the same ... meanings that are mutable in colours, shades and even contents....meanings that are susceptible to socio-economic pressures ... meanings that remain sensitized to the cultural contours. Let there be a pause in such contemplation, to browse the celebrated lines of T.S.Eliot;

*Shape without form, shade without colour,
Paralysed force, gesture without motion;
Those who have crossed
With direct eyes, to death's other Kingdom
Remember us 'if at all' not as lost
Violent souls, but only
As the hollow men
The stuffed men.*

Ruthless might of the privileged few, in the whirlwind of materialism, with passage of time, turned less and less tolerant towards their under privileged brethren. Such impertinence amongst the present day compatriots of twenty first century, became, more and more conspicuous in the world of commerce. A posterity that lived to an ideal of burning themselves selflessly like a candle, to give light to others, left out in the dark wilderness of

time, the ones who shirk at the thought of selfless endeavours— questioning the *raison d'être* of primordial mission of humanity, to accomplish a silent and humble self extinction as their *dharma*, with 'why' and 'for whom' perpetually whirling within their stuffed and hollow faculties. Thus, while avoiding such self extinction for a common cause, the "enlightened" of the present day lobby for commercialization of even such benefits of 'light' that may inevitably escape from the burning wicks of these candles, to dispel some darkness from the path of their own kin. The perceived benefits of such light to the extent measured by them in their own manner and by free and unquestionable use of their own standards, according to this class, are required to be codified in the shape of law to compensate them for their intellectual strength, to bring smile on the face of one. The debate went from forum to forum and the apex body called UNO (United Nations Organization) voted it with statistically more 'Ayes'. This is how the ground of morality shakes and caves in, without any available technique like Richter scale to measure the disaster, and what ensues, in the normal course, is a triumph of the demons. Let us pause and brood over an observation of a court on the point, which reads as under;

"If Twelfth Night were copyrighted, it is quite possible that a second comer might so closely imitate Sir Toby Belch or Malvolio as to infringeThese would be no more than Shakespeare's 'ideas' in the play, as little capable of monopoly as Einstein's Doctrine of Relativity, or Darwin's Origin of Species. It follows that the less developed the characters, the less they can be copyrighted; that is the penalty an author must bear from marking them too distinctly." (Excerpt from Judgment of Justice Hand in Nichols Vs. Universal Pictures Corporation)

It is indeed not a distant future when the state regulated global business scenario, in the light of all the prohibitions, penalties and financial consequences as contemplated in existing intellectual property laws, is bound to encourage social Dinosaurs in the markets who will inevitably

devour the humble produce of the entire toiling peasantry across the globe.

Jurisprudence lays down a dictum of equality, which a jurist meaningfully explained as under:-

"Equality means that a king and a beggar will be punished alike for stealing bread". The deep punch-line in the pithy expression cannot remain unnoticed.

We have enacted laws to regulate reified intellectual manifestations that reward the mighty and punish the weak for their default of not becoming mighty in a chronological preferential order. Expressed thoughts, in contradistinction with unexpressed thoughts, are perceived as tangible commercial properties and as in the markets of the day, only resourceful and mighty are capable of fairly documented

self expression, the others stand *ipso facto* marginalized in the race.

In a book titled 'MAN UNFOLDING' of Jonas Salk (Allied Publishers Pvt. Ltd.), a prefatory article *World Perspectives*, authored by Ruth Nanda Anshen, the following passage is relevant;

"There is in mankind today a counterforce to the sterility and danger of a quantitative, anonymous mass culture; a new, if sometime imperceptible, spiritual sense of convergence toward human and world unity on the basis of the sacredness of each human person and respect for the plurality of cultures. There is a growing awareness that equality may not be evaluated in mere numerical terms but is proportionate and analogical in its reality. For when equality is equated with interchangeability, individuality is negated

and the human person transmuted into a faceless mask."

We, the aforesaid faceless masks, are engaged in enacting laws to regulate the intellectual commerce that may wrest the hallowed glow of wholeness, unity and spiritual kinship from the semantics of life and leave life of humanity scattered in crude shreds of matter engaged in an interplay with golden energy. The laws relating to intellectual property grossly tilt the scales of justice against the underprivileged segment of mankind on the commercial map of the globe.

doi : 10.5214/ans.0972.7531.1017403

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