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**THE JUDICIARY AS A GUARDIAN AGAINST POPULISM:
COMPARATIVE PERSPECTIVES ON PROTECTION OF
CONSTITUTIONAL VALUES**

BY

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AT

**THE INTERNATIONAL JUDICIAL CONFERENCE, SUPREME
COURT OF INDIA:
NEW DELHI, INDIA**

**THEME: JUDICIARY AND THE CHANGING WORLD
(21-23 FEBRUARY 2020)**



INTRODUCTION

Constitutions take various forms in different jurisdictions, but they essentially determine how fundamental policy issues are to be decided and implemented¹. The framework of constitutional values has generally been established through consensus in most nations. Whatever the framework, the pivot of these constitutions has been anchored on substantive value for human rights, respect for the rule of law and the institutional value of democracy.

¹ Friedman, N., (2019) 'The Impact of Populism on Courts: Institutional Legitimacy and the Popular Will' : Foundation for Law, Justice and Society Policy Brief: The Foundation for Law, Justice and Society: available at <https://www.fljs.org/content/impact-populism-courts> (accessed February 2020)

Democracies have considered it legitimate to lay down in a Constitution certain guarantees for the security of the people. Constitutional laws have been used as a tool for protecting and guaranteeing those constitutional values. Democracies have therefore gone a step further by laying down in the same Constitutions all the requisite institutional measures to ensure that these guarantees are effective and are realised by the intended beneficiaries. The realisation seems to have been that it would be unfair and hollow to want a goal, while ignoring the proper means of achieving it.

Constitutionalism exists to protect people from Government abuse of rights and even neglect. Since

these rights are realised through the law, the Judiciary is bound to be involved. The role of the Judiciary becomes key - that role is to safeguard and protect the Constitution and its values; and to ensure the consolidation of democracy.

The independence of the Courts makes them suitable for performing a guardianship and supervisory role in respect of constitutional democracy. However, there are threats to judicial independence in many countries due to various competing reasons. Some of the threats are as a result of the rise of populism. Nevertheless, as this discussion will show, the rise of populism simply

creates an opportunity for Judiciaries to strategise on ways to confront it.

WHAT IS POPULISM?

Isaiah Berlin, a British political theorist and historian, once stated that “a single formula to cover all populism everywhere will not be very helpful”². Different meanings have been ascribed to populism. In modern times, an increasing number of scholars are defining populism as an ideology or discourse. While the common thread in the definitions has been that they are too broad and vague³, they at least share two components.

² Halmai, G (2019), *Populism, authoritarianism and constitutionalism*. German Law Journal 20 (pp296-313 @ p296) <https://doi.org.10.1017/glj2019.23>

³ Mudde, C. (2013) 'Are Populists Friends or Foes of Constitutionalism?' : The Social and Political Foundations of Constitutions Policy Brief: The Foundation for Law, Justice and Society; available at <https://www.fljs.org/content/are-populists-friends-or-foes-constitutionalism> (accessed February 2020) (p2)

They are that there is a fundamental opposition between "the people" and "the elite" and that populism is on the side of "the people".

Populism is commonly known as a political approach that strives to appeal to ordinary people who feel that their concerns are disregarded by established elite groups.

One scholar, Cas Mudde⁴, proposes the following definition:

"populism is a thin centred ideology that considers society to be ultimately separated into two homogenous and antagonistic groups, 'the pure people' versus 'the corrupt elite', and which argues

⁴ Ibid, at p3

that politics should be an expression of the volonté générale (general will) of the people” .

Overall, the scholarly view is that populism “stands for the majority of men who have somehow been damaged ... by an elite, either economic, political or racial, some kind of secret or open enemy”⁵. To buttress this notion, populists claim they are guided by the “will of the people”. They assert a belief that they, and they alone, represent the people⁶. Their view of “the people” is based on a claim of intrinsic and non-institutionalised

⁵ Halmai, G. *supra* note 2, at p 297

⁶ There is right-wing populism - which is also referred to as national populism and normally supports strong controls on immigration especially from the Islamic world. President of the United States, Donald Trump has been accused of being a right-wing populist through his mantra - Make America Great Again - and controls on immigrants. On the other hand, left-wing populism objects to the power of large corporations, anti-capitalism and anti-globalisation. Both right-wing and left-wing populism objects to the perceived control of liberal democracies by elites.

"popular will". Populists do not believe in the pluralist character of the public sphere and even democratic contestation⁷. Populist movements generally criticise establishments for their "disinterest" in taking into account the problems of the ordinary man on the street. Scholars like Dr Möller are, however, quick to point out that *"the claim by populists to represent the people against the elite falls prey to a 'categorical mistake': namely a flawed conception of what constitutes the 'people' in the first place ..."*⁸. Indeed, the populist definition of "we the people" is seriously flawed in that

⁷ Ginsburg, T. and Huq, A.Z. (2018) *How to save a Constitutional Democracy* (p104), University of Chicago Press, Chicago and London. <https://doi.org/10.7208/Chicago/9780226564418.001.0001>

⁸ Möller, K. (2018) *Popular Sovereignty, Populism and Deliberative Democracy* (pp14-36 @p18) *International Philosophical Inquiry*, Vol. 42, No 1-2, Winter-Spring

aspect - it brings to the fore the argument of whether we can all be bogged down by a one-sided definition of who the "pure" or "real" people are.

Doctor Möller goes on to argue that the basic claim of populists that they, and only they, represent the true people is a fallacy. While striving towards the embodiment of a people in a particular group, movement or context, the claim operates through a false reconstruction of popular sovereignty. In accordance with this construct, the respective excluded social groups, also known as the minority or the "others", must always fear being deprived of their participatory

equality. If anything, the argument goes⁹, populism “evokes a scenario that threatens the exchange of arguments in a public discourse” by “fixing the popular will beforehand”. The view is that populism is “prone to undermine the liberal achievements of modern constitutionalism”. It is further attacked for shattering constitutional democracy, centralising power and weakening checks and balances. This argument brings us to the question - What is the relationship between populism and constitutionalism?

POPULISM AND CONSTITUTIONALISM

⁹ *Ibid*, pp18-19

The wider understanding is that constitutionalism and populism are strongly contrasting phenomena¹⁰. The relationship between the two has been compared to a process of parasitism - where constitutionalism is the host and populism the parasite. Populism and constitutionalism consequently have a problematic relationship.

This apparent friction has an explanation. Constitutionalism finds a basis in the idea that Government can and should be legally limited in its powers, and that a Government's authority or legitimacy

¹⁰ Blokker, P.(2018) *Populist Constitutionalism and Meaningful Popular Engagement*: The Social and Political Foundations of Constitutions Policy Brief: The Foundation for Law, Justice and Society: available at <https://www.fljs.org/content/populist-constitutionalism-and-meaningful-popular-engagement> (accessed February 2020)

depends on the observation of the limitations. Populism posits that nothing supersedes the will of the people. It opposes any institutions or procedures that are seen as impeding the direct and full expression of the so-called people's voice.

Constitutionalism holds that Constitutions are the ultimate formal source of Government power. Populism is anchored on the belief that people can decide on everything by "majority" rule. Populism is a form of extreme majoritarianism, which takes the concept of democracy to the extreme and accepts no limitations to popular sovereignty and majority rule.

It may perhaps be argued that populism and constitutionalism converge, although at the barest minimum, on the point of popular sovereignty. Both populism and constitutionalism are embedded in the belief that the public is the source or fountain of all governmental authority. Government acquires its mandate from the people. However, that convergence goes only that far. Constitutionalism finds its spine from a set of legal norms, the purpose of which is to regulate the establishment and exercise of public power as well as constitutional supremacy. Populism is inherently hostile to mechanisms, and ultimately values commonly

associated with constitutionalism¹¹. It is deeply steeped in the somewhat skewed belief of “democracy” translating to not respecting legal boundaries. There comes the clash with the Judiciary. Against this belief, the power of the Courts has been seen by populists as a thorn in their side.

The basis seems to be that populism, on its own interpretation of popular sovereignty, is driven by the need to resist any relevant forms of power limitation. Any agency, including the Courts, seeking to enforce those limitations is inevitably caught in the crossfire. Populists purport to identify the “genuine people’s will”

¹¹ Müller, J.W. (2016) *What is populism?* University of Pennsylvania Press, Philadelphia <https://www.upenn.edu/pennpress/book/15615.html> (accessed February 2020)

with their own. They see the intervention by Courts as linked to the secret work of an oligarchical enemy or some other external power. To them, even the attempt to defend individual rights by Courts becomes superfluous. The belief is that the members of the authentic people need no rights against themselves, and their enemies must not be given rights to oppose the sovereign will.

This brings me to the question - Against such a background, is populism a threat to the Judiciary?

IS POPULISM A THREAT TO THE JUDICIARY?

The real significance of the democratic process in modern societies rests on its capacity to express the will of the people through the mechanism of political representation. This, however, should not blind people to the fact that any deviation which calls for an unlimited and unregulated recourse to the will of the people may be self-destructive. Constitutional legitimacy should remain the tether that controls the expression of that will.

It has, however, been observed that one of the most pressing challenges presented by the emergence of populism is its "threat to the independence and proper

functioning of the Judiciary"¹². This has been particularly prominent where the populist movement is in power. The interference, which has been done under the guise of "the popular will", has manifested itself in a range of forms. These include adverse public remarks alleging Court packing, all designed to tamper with the independence of the Judiciary as a constraint on Government power.¹³

It will be seen that the antagonism between populism and the Courts is a matter of historical record. Academics argue that it can be traced as far back as 1947 when Juan Domingo Perón, then President of

¹² Friedman, N. *supra*, note 1 p2

¹³ *Ibid*, p287

Argentina, initiated the impeachment and trial of four out of five Supreme Court Justices. One of them resigned before the impeachment process went through¹⁴. Other jurisdictions have used removal/packing of Judges¹⁵, manipulation of rules of appointment to the Bench¹⁶, reduction or ouster of jurisdiction,¹⁷ and changing of voting rules by which a

¹⁴ Helmke, G. (2012) *Courts under constraints. Judges, Generals and Presidents in Argentina* (pp 63-65) Cambridge: Cambridge University Press.

¹⁵ Peru in 1992-3 - the first stage of the 'judicial reform' was initiated after the *coup d'état* of 1992. The reform started with decrees removing the Supreme Court Justices and the Judges of the Superior Courts and Judges of the Tribunal of Constitutional Guarantees (which was also shut down) from office. Legislation was put in place to specifically forbid the initiation of judicial review proceedings to review the situation of Judges. The *de facto* government then proceeded to appoint new Supreme Court Justices and Superior Courts Judges in accordance with the political objectives of national reconstruction and on the grounds of the need to reform the national administration of justice. See Landa, C (2001) *The Scales of Justice in Peru: Judicial Reform and Fundamental Rights* (pp 2-3) University of London: Institute of Latin American Studies: Occasional Papers No. 24. ISSN 0953-6825

¹⁶ Venezuela 2000 - The process began with the appointment, in 1999, of new Magistrates of the Supreme Tribunal of Justice without complying with the constitutional conditions made by the Constituent Assembly itself, by means of a constitutional transitory regime sanctioned after the Constitution was approved by referendum. See Brewer-Carias, A. (2010) THE CATASTROPHIC DEPENDENCE AND POLITICAL SUBJECTION OF THE SUPREME TRIBUNAL OF JUSTICE. In *Dismantling Democracy in Venezuela: The Chavez Authoritarian Experiment* (pp 226-244). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511762062.012

¹⁷ For example, Hungary between 2010 and 2013 – The argument was that since its election victory in 2010, the ruling Fidesz party used its supermajority in Parliament to make major changes to the country's legal framework which included the adoption of a new Constitution which was then amended several times to limit the powers of the Constitutional Court to review laws and complaints; curb the independence of the Judiciary and forced nearly 300 into early retirement. See *Wrong Direction on Rights: Assessing the Impact of Hungary's New Constitution and Laws* available at <https://www.hrw.org/report/2013/05/16/wrong-direction-rights/assessing-impact-hungarys-new-constitution-and-laws> (accessed February 2020)

Court can invalidate or force the reconsideration of a statute or decree¹⁸ as a means of bringing Courts under Government control.

I will not make any further comment on this issue, besides highlighting that interference or overt attempts to interfere with judicial independence has not been confined to populists in power only. Whether in power or not, the common denominator which spurs populist attacks on the Judiciary seems to have its

¹⁸ Poland 2015-2016. See generally Pietrzak, M. (2017) "The Constitutional Court of Poland: The battle for Judicial Independence" : Foundation for Law, Justice and Society Policy Brief: The Foundation for Law, Justice and Society: available at <https://www.fljs.org/content/constitutional-court-poland-battle-judicial-independence> (accessed February 2020)

foundations on what Alexander Bickel famously called the "counter-majoritarian dilemma".¹⁹

The reasoning is that the Judiciary is not elected and so suffers from a democratic deficit. The contention is that the unelected Judiciary has the power to invalidate the statutes of a democratically elected Legislature. It is further argued that Courts give certain groups an unequal opportunity to influence the political process. These factors make the Courts a target for populists. Populists have a mentality that the Judiciary must listen to them because it is not elected. This is an argument

¹⁹ Bickel, A. (1962), *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*: Indianapolis: Bobbs-Merrill

used by those who are anti-Judiciary and feel that the Judiciary has become too powerful. However, even in those jurisdictions where Judges are elected, the bottom line remains that Judges are still expected to act in accordance with the law.

If one were to look closely, it will be observed that populism feeds on falsehoods made against the Judiciary. With the advent of digitalisation and information technology, populists have access to the larger audience and use this to whip up the reaction of the people through the media, especially the social media. Populists have means to undermine the Judiciary.

They tend to influence people by casting aspersions on the integrity of the Judiciary.

There is a battle between the popular understanding of the Constitution and what is defined by the Constitution and pronounced by the Judiciary. The unfortunate scenario is that people often do not take time to go deeply into the foundations of the Judiciary as an institution and constitutionalism. Populists take advantage of the knowledge gap to sell their agenda, which has nothing to do with the principles of democracy or the rule of law. It is not a foreign concept that the rule of law has nothing to do with serving personal interests.

THE JUDICIARY AS A GUARDIAN AGAINST POPULISM - OPPORTUNITIES AND CHALLENGES

There seems to be a misunderstanding among populists of the principle that the Judiciary derives its power from the people, hence that power is restricted. An example is our own **section 162 of the Constitution of Zimbabwe**. It stipulates that judicial authority is derived from the people of Zimbabwe and is vested in the Courts. Courts have an obligation to serve the people and, in doing so, there is restriction on judicial power. To do this, Judges must understand their system and embrace it.

In a democratic State which is subject to the rule of law and respects equality before the law, the Judiciary is guided by the constitutional principles. People need to understand the nature of the protection guaranteed by the Constitution and the limitations thereto. The Judiciary does not act in its own interests but in the interests of the people as a whole, acting on the basis of and within the limitations laid down by the law.

In order to avoid the rise of charismatic leaders who rule without regard for the Constitution and the rule of law, the Courts must keep the morality of the constitutional culture alive within society through recourse to the rule of law. Earlier on in my paper, I

stated that the rise of populism is an opportunity for the Judiciary to strategise on the ways to confront the phenomenon. This brings me to a discussion on the opportunities and challenges presented by the role of the Judiciary as the guardian against populism.

Let me hasten to point out from the onset that if the Judiciary allows the perception of democracy in the various societies it serves to lose its connection with the rule of law, there shall be a breakdown of constitutional democracy as the necessary shape of legal institutions. Respect for human rights, regardless of colour or creed, or that one is in the majority or the minority, rich or poor, should remain the beacon for the Judiciary.

1. Integrity of the Judiciary

Populists are chameleonic in nature. They approach Constitutions opportunistically. When the Constitution supports their point of view or interest, they will revere it. If the Constitution opposes what they want, they will deny its importance. Similarly, their approach towards Judges is purely opportunistic. Depending on the usefulness of his or her ruling, a Judge is branded as one of the people, or corrupt, or a member of the elite, or captured.

Even if there is no proof of allegations of judicial capture, populists use this to undermine the

Judiciary. They will say the Judiciary is captured by the system when in fact that is not true. It is a falsehood. Conversely, populists accuse the Judiciary of being corrupt where the decision does not support their viewpoint or position. Those who want to gain power will use people to doubt judicial integrity by making false allegations, such as corruption.

It can even be people in Government who will be of the opinion that the Judiciary is there to deliberately frustrate them. They do not use laid down procedures, but instead whip up anti-Judiciary feelings and attitudes. They use statements such as

"the Judiciary does not have certain powers yet they are telling us that we are not acting properly".
As a result, they create the impression that the Judiciary is anti-Government.

There may be cases of corruption in the Judiciary which create a basis for people to attack it. There should be zero-tolerance to corruption, especially in the Judiciary. Cases of corruption will further the populists' agendas. Corruption tends to promote populism, as it promotes the very interests that populists are appealing to. If populists suspect that the Judiciary is corrupt, they will run with the

argument that the Judiciary is now the problem, yet this should not be the case.

Judicial integrity should never be in question. This is because Judges have an indispensable and honourable role to play. Judges need to conduct themselves in a manner which is in line with their oaths of office, their duties, and the law. The public needs to have confidence in the Judiciary. The Judiciary, as a means of solving people's problems, relies so much on public confidence. When the integrity of the Courts is under attack, it may become necessary for the Judiciary to tackle it, but there should be a basis founded on integrity to

tackle such attacks. The Judiciary's hands should be clean.

South African Judges were accused of being an obstacle to justice. These allegations were spread via mainstream and social media platforms. The Chief Justice sought to tackle the problem to protect the integrity of the Judiciary. The Chief Justice decided to react because "*perceptions need to be countered, particularly when they are serious and have serious consequences*".²⁰ The Chief Justice also took the opportunity to advise the public that

²⁰Business Day Editorial: *Attacks on Judiciary a red herring*: published 17 September 2019 available at <https://www.businesslive.co.za/bd/opinion/editorials/2019-09-17-editorial-attacks-on-judiciary-a-red-herring> (accessed February 2020)

it deserves a credible, independent and truly transparent Judiciary to be able to root out the "injurious practices" of corruption and capture.

In the United States, Chief Justice John G. Roberts Jr had to defend the independence and integrity of the Federal Judiciary after President Donald Trump called a Judge who had ruled against his administration's asylum policy "an Obama Judge". Reacting to the jibe, the Chief Justice commented that the comment was a profound misunderstanding of the judicial role²¹. There were no Obama or

²¹ Liptak. A. :*"Chief Justice Defends Judicial Independence After Trump Attacks 'Obama Judge'"*: The New York Times; published 21 November 2018 available at <https://www.nytimes.com/2018/11/21/us/politics/trump-chief-justice-roberts-rebuke.html> (accessed February 2020)

Trump or Bush or Clinton Judges, but “an extraordinary group of dedicated Judges doing their level best to do equal right to those appearing before them”.

These reactions are based on the understanding that it only takes a few minutes to discredit judicial integrity but restoring public confidence in the Judiciary is a tall order.

2. Transparency and accountability

Closely tied to judicial integrity is the aspect of transparency and accountability.

From my observations, I have reached a conclusion that the purposes and objectives of the rule of law as a foundational value and principle in guarding against populism cannot be achieved by the guarantee and application of the fundamental principles of judicial independence and judicial integrity only.

Justice must not only be done but must be seen to be done. The Court, as a guardian of justice and a cornerstone of a democratic system based on the rule of law, needs to act in a transparent and accountable manner in the exercise of judicial functions.

To achieve this, the Judiciary must be accountable firstly to the law and then to the people. Judges are required to explain their decisions based on the application of legal rules, through legal reasoning and findings that are based on evidence and proper, well-thought out analysis.

Judicial independence is guaranteed as the essence of the rule of law on condition that the principles of transparency and accountability are observed in the performance of judicial functions.

Sight should never be lost of the fact that the Judiciary is there to serve citizens. The main responsibility of the Judiciary is to apply laws and

settle disputes. The Judiciary is a means to providing justice to the people. By taking up office, Judges have implicitly accepted that they are accountable to the people and that they must provide a wholesome explanation of their work to the public.

Confronting populism ultimately requires a combination of well-reasoned judgments and an iron-clad will to resist the sometimes violent force of public opinion. Judicial review should never be seen as an opportunity for the Judiciary to play to the gallery. The exercise should be done in a manner that determines whether or not the subject-matter

under review is in compliance with the letter and spirit of the Constitution and the law.

Whatever decisions are made, they should be made with reasonable promptness. Justice delayed is justice denied and populists will swoop on delayed justice to justify an attack on the Judiciary.

Decisions must also be made public, subject to any restrictions laid down in the law. Judiciaries the world over have resorted to websites to publish their decisions. This enables the Judiciary to speak to a larger audience through their judgments.

In addition, judicial decisions are open to public scrutiny. Systems should be in place to review those decisions and, if necessary, corrected by the judicial hierarchy through a system of appeals.

May I reiterate that accountability in the context of the Judiciary must be understood as being required to give an account, that is, to give reasons and to explain a decision. It should not be confused with making the Judiciary subordinate to another arm of the State. That would betray its constitutional role of being an impartial and independent arbiter.

The importance of Judges' accountability lies in the fact that they possess the power to develop the law, to declare a law passed by Parliament as unconstitutional, and to deprive a convict of his or her freedom. They are equipped with the power to determine the status of persons. Hence it is only reasonable and fair for Judges to be accountable for every decision that they make, the time taken to deliver that decision, and to also account for every judgment which is reserved. The lack of scrutiny on the Judiciary will negatively affect public perception by leading to loss of public trust and confidence and consequently fuel populism. It is

therefore essential to ensure that the Judiciary is held accountable, both at institutional and individual levels.

Transparency means being open to criticism and allowing members of the public the right to air their views on particular cases openly and without any fear. Judicial decisions have a far-reaching effect of setting precedents and shaping jurisprudence. Judges carry enormous power, hence they have to be open to checks and balances. On that note, however, there is a need to restrain improper, non-objective and solely politically motivated public criticism of individual Judges and their judgments.

Be that as it may, it is important to note the dilemma that is always confronting the Judiciary. The Judiciary is not always in control of what is said in the media. It usually does not have the means to respond as an independent and impartial entity. Judges rarely participate in interviews with the media. When they do, the participation must be tempered. The reason is that once the Judiciary dips itself too early into the media debates and a matter eventually comes before the Courts the impression created is that the Judiciary is biased. Populists would resultantly have a field day.

3. Demystifying the Judiciary

To promote transparency and accountability, the Judiciary must be visible. People should understand the work of the Courts and what the Constitution says.

Judiciaries can engage the public more prominently than they typically do in an attempt to educate them about what Judges do and thereby shore up public support for an anti-populist agenda. Jurisdictions like the United States and Poland host public events where citizens can interact with them and learn about their work²². The Judiciary of Zimbabwe has

²² *Supra*, note 1 @ p6

resorted to utilising the Secretariat of the Judicial Service Commission to do this.

This can also be done by creating an internet database which is open to the public. The database's role would be to provide public access to summaries of all cases decided by the Courts. Another effective way would be to introduce the open court principle, whereby court proceedings will be open and accessible to the public and the media. This would also include a live broadcast of all cases of public interest so as to provide the general populace with access to court proceedings. Furthermore, the Judiciary can liaise with law professors and law

students as key stakeholders in the legal profession to work on possible ways to integrate their views and work in the system.

In Zimbabwe, live broadcast of proceedings has been adopted for matters of public interest, such as the Zimbabwe Presidential Election Petition between *Nelson Chamisa and Emmerson Dambudzo Mnangagwa and 24 Others* in 2018. The Constitutional Court hearing was live streamed on national television.

The recently decided Malawi Presidential Election Petition in *Dr. Saulos Klaus Chilima and Anor vs*

Professor Arthur Peter Mutharika and Anor was also aired on radio.

The population in both cases followed the proceedings and improved their legal literacy. They also appreciated how the Courts operate. They were able to judge for themselves the loopholes noted by the Courts without populists alleging that the Judiciary was either captured or corrupt. There was no secrecy. The proceedings were there for all to see, follow and formulate their own evidence based conclusions.

Demystifying the Judiciary is aimed at making the operations of the judicial system easier to

understand. Once people know about what goes on in the Courts, public support for the Judiciary increases. It becomes difficult for populists to vilify the Courts without a basis.

4. Developing the constitutionalism culture

Adhering to the Constitution instils public confidence in the Judiciary. However, the public can only appreciate the Judiciary's efforts towards entrenching the culture of constitutionalism when they have adequate knowledge of what the Constitution provides for. The populist challenge exposes the absence of a widely supported and embedded constitutional culture in many societies.

Citizens need to find meaningful ways of engaging constitutional politics and institutions in order to cultivate such a culture.

There is thus need to carry out more awareness campaigns and educate the masses on the law, particularly the Constitution. It would also assist, for instance, if a module on the law and the Constitution is introduced at basic education level.

In the United States, for example, people understand the Constitution and the role of their institutions and how these institutions operate. This diffuses the populism agenda.

CONCLUSION

From the above discussion, my conclusion is that one of the most effective ways of alleviating populism would be to first identify the groups which support populism. It would be necessary to investigate what attracts people to them, and then develop a counter strategy.

Having determined what attracts populists, the Judiciary can map the way forward to mitigate the harmful effects of populism. The public must be adequately educated on the Constitution and the law in general. The public must be given an insight into how the Judiciary operates, how decisions are made, and the considerations which the Courts take into account in

making decisions. Transparency and accountability are key in tackling populism. If people are given an opportunity to scrutinise the work of the Courts in general and Court judgments in particular, attempts to scandalise the Judiciary by populists will be thwarted. The media should be allowed to monitor and comment on legal proceedings and judgments, but this should be done within the confines of the law. In that way, no-one will be left with any doubt in his or her mind which may make him or her allege corruption on the part of the Judiciary. As a third arm of the State, the Judiciary cannot bar itself from public scrutiny. It can do, however, a lot to insulate itself against unwarranted attacks which only

serve to further the populist agenda. The Judiciary must be visible. Populism will take over once the Judiciary is not visible. Populists will run with populism because they are a force to reckon. The Judiciary must always be alert to these machinations and put in place measures to protect the institution.

I THANK YOU!