



New Jurisprudence and Judicial Process- Blending of New Constitutional Values

KEYWORDS

A 21 and Indian Constitution, Judicial process, Custodial Dignity, Human Rights of Prisoners

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ABSTRACT *The thrust of this work is to explore the orientation of Indian Jurisprudence which truly reflects the ethos and spirit of the Indian legal heritage and contemporary goals, values and needs enshrined in the Indian Constitution. It is submitted that the words of the Blackstone, Bentham, Austin, Salmond etc must not be the last word of their juristic scholarship while interpreting Indian Constitution. If we want to understand the Indian Constitutional values in its true spirit, we must come out of domination western legal thought and their morals, be it law, language or culture. This work is a small effort in this direction. It aims to discover the basic features and perceptions of the Indian Constitution in light with the development of 20th century. The article aims to study the evolutionary and functional role played by Indian Supreme Court that reflects the sensitivity of new awareness while answering the complex contemporary social and moral issues.*

Prior to 1973, Indian Courts with great difficulty had to conform with the prevailing view which existed since the adoption of the Constitution, that Parliament is 'Sovereign', which even can replace the Constitution or Supremacy of the Executive vis-à-vis the Judiciary in the context of a so-called 'committed judiciary' during the days of GolakNath case controversy. Pre GolakNath era laid a milestone for the adoption of higher and ideal morals of Judicial Process. However it was in Maneka Gandhi's case together with Kesavananda Bharti's case, that the Supreme Court expounded a new jurisprudence – some fundamental and higher principles of law which may endure and adapted to varying social and political situations in India².

It was through the judicial review that the Indian Judiciary could create both, a philosophy of law and theory of politics inextricably based on values like reason, nature, morality, liberty, justice and restraint in consistent with the spirit of the Constitution and tradition of the people. In Kesavananda Bharti's case³ the Court rejected the positivistic instance that sovereign power lay with Parliament⁴. This indeed is a far reaching development in the chronicles of the Indian Jurisprudence for meeting the challenges of troubling times and issues⁵ confronting our democratic and secular Republic. Maneka Gandhi⁶ was landmark decision wherein people could realize what State is, if it is devoid of justice or denies liberty, human dignity, equality etc. to ordinary citizens under the garb of populist democracy⁷.

Judicial Process – Combination of New Values by Indian Judiciary

In the post-emergency era under the dynamic leadership of judges like V R Krishna Iyer, Y V Chandrachud, and P N Bhavagati, like their counterparts justice Holmes, Cardozo, and Brandeis, in USA, made their mark upon great issues of human liberty, social justice, human rights as enshrined in the Constitution even by pushing away the Parliament and Government of the day. These judges through their landmark judgments made a bold departure from the traditional judicial role and sharply focused the debilitating effects of executive and legislative domination on individual freedom and were evident in Gopalan's case and Shivakant Shulka's case.⁸ They found a shelter in the Preamble, Parts III and IV of the Indian Constitution for destroying barriers on individual liberty and assumed the role of philosopher, law-maker and defender of basic rights and needs of the little Indians.

Accordingly the apex court has time and again adopted organic, functional and sociological method of interpretation over the traditional mechanical method in the enforcement of the provisions of the Constitution. By providing flesh and blood to political, social and economic rights instead of liv-

ing in ivory tower the Court has become activist by compelling the executive and the political leadership not to turned volte-face in redeeming then pledges towards the hopeless Indians in true Gandhian spirit⁹. Under the spell of new economic liberalization and privatization it is the judges who have been standing for the poor's in their quest for justice and dignity.¹⁰ Article 21 in conjunction with A. 14, 19, 39 etc. have proved a gold mine for the court in achieving the two objectives, namely, providing a shield on moral, humanitarian and constitutional grounds to the poor's as a guarantee against executive action and of making new law for governing the life of citizens and regulating the functioning of the State in accordance with law of the land¹¹.

A small journey of judicial decisions in the realm of individual liberty, freedom, social justice and other human rights under Article 21 are discussed in the later half of this article to reveal the extent of judicial creativity in modern Indian Jurisprudence with combination of new values.

Article 21: Law and Life- Variable Content

As early as in, 1963 the court held¹² that 'life' as used in Article 21 is more than mere animal existence. But it was in Maneka Gandhi's case that the Court widened the concept of 'right to life' to right to livelihood. It linked law, life and personal liberty with a mixed flavour – new blending of natural justice and social justice envisaging that there cannot be a dichotomy between law, life and liberty. A brief jurisprudential study of the interpretation of the term 'life' and 'personal liberty' in A. 21 would give an idea of new emerging human rights philosophy in Indian Judicial process during the last decades of twentieth century. The term 'life', 'liberty' and 'law' have been liberally interpreted by the Court by widening their respective meaning, content and scope in the context of changing social mores, political environment and humane aspirations and with a clear concern for values and rights of the poor and the disadvantaged¹³.

In Olga Tellis v. Bombay Municipal Corporation¹⁴, popularly known as the pavement dwellers case, the Supreme Court has finally ruled out that the word 'life' in Article 21 includes the 'right to livelihood'. The court said that an equally important facet of right to life is the right to livelihood because no person can live without the means of livelihood¹⁵. In Parmananda Katara v. Union of India¹⁶, it has been held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Article 21 of the Constitution cast the obligation on the state to preserve life. It is the obligation of those who are incharge of the health of the community to preserve life so that the innocent may

be protected and the guilty may be punished. In *Subhash Kumar v. Bihar*¹⁷, the Apex Court has held that enjoyment of pollution free environment is included under right to life under Article 21 of the Constitution. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*¹⁸ the Supreme Court stated that, the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

Right to speedy trial is a fundamental right of a prisoner implicit in A. 21 of the Constitution. It ensures just, fair and reasonable procedure.¹⁹ In the case of *Hussainara Khatoon v. State of Bihar*²⁰, the Hon'ble Supreme Court²¹ The Court while dealing with the cases of under trials who had suffered long incarceration held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of Article 21²². In *Mathew Areeparmtil and other v. State of Bihar and other*²³, a large number of people were languishing in jails without trial for petty offences.²⁴ Directions were issued to release those persons. Further the court ordered that the cases which involve tribal accused concerning imprisonment of more than 7 yrs. should be released on execution of a personal bond. In the case where trial has started accused should be released on bail on execution of a personal bond. In case where no proceedings at all have taken place in regard to the accused within three yrs., from the date of the lodging of FIR, the accused should be released forthwith under S.169 Cr. P.C. if there are cases in which neither charge-sheet have been submitted nor investigation has been completed during the last three years.²⁵

In *Gauri Shanker Sharma V State of U.P.*²⁶ the court observed, that death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj.²⁷ In *M.H. Hoskot v State of Maharashtra*²⁸ the Supreme Court laid down that right to free legal aid at the cost to the state to an accused who could not afford legal services for the reason of poverty forms part of wider interpretation of right to life under A 21.²⁹ In *Anil Rai v. State of Bihar*³⁰ Supreme Court took a serious note of delay in delivery of judgments. The court observed that any inordinate, unexplained and negligent delay in pronouncing the judgment by the high court infringed the right under Article 21 of the Constitution.³¹

Respect for human dignity is thus not a matter for any deep study but a matter of acknowledging a simple truth already recognized by our national document that assures the dignity of the individual.³² This is why no person accused of any offence shall be compelled to be a witness against himself. Handcuffing of under-trial prisoners by escorts has been disapproved by the Supreme Court in *Prem Shanker Shukla's Case*³³. The minimal freedom of movement, which a detainee is entitled to under Art. 19 cannot be cut down by applica-

tion of handcuffs.³⁴ The cases that come to light reflect the cruelty with which the human beings brought in custody or control are treated by their fellow human beings. Time and again Indian Supreme Court has come up as bastion of liberty for the needy by broadening the interpretation of A.21.

The Higher Judiciary, in India consists of Supreme Court and High Courts in States. Complexity in the process and structure of our judicial system is one of the major barriers in strengthening the access to justice. To curb this situation, time and again Indian Judicial system has promoted the special class of litigations, namely Public Interest Litigations.³⁵ The involvement of higher judiciary in ensuring access to justice is a matter that requires appreciation. It is worth to highlight some of such instances. In *Common Cause v. Union of India*³⁶, the Supreme Court of India, issued necessary directions to the Government to appoint expert committee and take urgent actions to curb the situations of serious deficiencies and shortcomings in the matter of collections, storage and supply of blood through blood centres. In *Bhopal Gas Peedit Mahila Udyog Sangathan v. Union of India*,³⁷ the Court framed an interim relief scheme for the welfare of victims of Bhopal Gas Leakage Tragedy and directed the government to implement the scheme. In *Indian Council for Enviro- Legal Action v. Union of India*,³⁸ the Court burdened the industrial units, which are responsible for causing extensive damages to the environment and local residents held that the principles of strict liability and polluter pays will applicable in such cases.³⁹

When the instances of child exploitation, including prostitution, were brought to the notice of the Court, in *Vishal Jeet v. Union of India*⁴⁰, the Supreme Court India directed the government to take urgent steps in providing rehabilitative homes manned by trained personnel. The Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India*⁴¹ directed the authorities to evolve a scheme for compensation and rehabilitation of rape victims and laid down board parameters in assisting the rape victims. The court's timely actions in *Pradeep Krishen v. Union of India*,⁴² to ensure allotment of land for tribal people, regularising their possession of forest lands were widely accepted by the people in this Country.⁴³ The judiciary in India has always taken a pragmatic approach in dispensation of justice to the people of this Country. In some instances, the judiciary expanded its authority of administration of justice to enact law, as seen in the case of *Vishaka v. State of Rajasthan*⁴⁴, laid down laws to prevent sexual harassment in work places.⁴⁵

Justice, accordingly is the end of law and the goal of society which judges have been pouring into law with new variants of justice in the form of contemporary values and need based rights like freedom, liberty, dignity, equality and social justice as ordained by the Basic Charter into the lives of 'We the People of India'. In postulating such philosophy as the end of law the judges in India have been making law to satisfy the moral sense of justice of the people and at the same time expounding new jurisprudence based on human rights as the fundamental source of ideal modern law in India.

REFERENCES

1. AIR 1978 SC. 598 | 2. Dhyanis S N , Jurisprudence and Legal Theory, Allahabad Law Agency, 2008 | 3. 'Kesavananda Bharit's case is not merely a reported case...but it is the Indian Constitution of the Future' Baxi U, (1976) 9 JILI, 323 | 4. Denying such claims the Court suggested in this case what it described 'the basic features, doctrine as an impassable wall against every assumption of despotic or unconstitutional exercise of power by the legislature and executive. | 5. S R Bommai v. UOI AIR 1994 SC 1981; M. Ismail v. UOI AIR 1995 SC 605 | 6. Maneka Gandhi v UOI AIR 1978 SC 597 | 7. Ibid 2 | 8. ADM Jabalpur v. Shivakant Shukla AIR 1976 SC 1207 | 9. Mahajan V D, Jurisprudence and Legal Theory, Central India Law Publishing, 2011 | 10. In this context Justice V R Krishna Iyer has said: 'Where doubts arise the Gandhian talisman becomes a tool of interpretation- whenever you are in doubt.... apply the following test. Recall the face of the poorest and the weakest whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him'. | 11. Ibid 2 | 12. Kharak Singh v. State of UP AIR 1963 SC 1295 | 13. Ibid 2 | 14. AIR 1986 SC 180 | 15. In the instance the court retreated that if the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. | 16. AIR 1988 SC 38 | 17. AIR 1989 SC 2039 | 18. AIR 1981 SC 746 | 19. Taking Prisoners Right Seriously, by Saurabh Kothari, available at <http://www.legalserviceindia.com/articles/po.htm>, accessed on 8/9/12 | 20. 1979 AIR 1369 1979 SCR (3) 532 | 21. Further the court expressed its concern and said that: What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind the bars not because they are guilty; but because they are too poor to afford bail and the courts have no time to try them. | 22. Ibid 11 | 23. 1984 AIR 1854 1985 SCR (1) | 24. Ibid 11 | 25. Ibid 13 | 26. AIR 1990 S.C. 709 | 27. Human Rights of Prisoners Under Indian Constitution, by Dr Kalpana Bharadwaj, available at <http://www.ssmrae.com/admin/images/4e2b6d3b31c9c080b28959e10ff84f83.pdf>, accessed on 7/9/12 | 28. Ibid 17 | 29. AIR 1978 S.C. 1548 | 30. AIR 2001 S.C. 3173 | 31. Ibid 17 | 32. Custodial Dignity, by Justice R K Abhichandani, available at <http://gujarathighcourt.nic.in/Articles/custodialdignity.htm>, accessed on 7/8/12 | 33. 1980 3 SCC 526 | 34. Ibid 23 | 35. Access to Justice- New Challenges, available at <http://www.lawyersclubindia.com/articles/Access-to-Justice-New-Challenges-3353.asp>, accessed on 7/8/12 | 36. AIR 1996 SC 929 | 37. AIR 1989 SC 1069 | 38. AIR 1996 SC 1446 | 39. Ibid 26 | 40. AIR 1990 SC 1412 | 41. (1995) 1 SCC 14 | 42. AIR 1996 SC 2040 | 43. Ibid 26 | 44. (1997) 6 SCC 241 | 45. Also see, D.K. Basu v. State of West Bengal, AIR 1997 SC 610 (laid down laws and procedure for arrest), University of Kerala v. Council of Principal of Collages in Kerala, (2009) 2 SCC 915 & (2009) 7 SCC 726 (laid down the law prohibiting ragging in educational institutions) and In Re Destruction of Public & Private Properties v. State of Andhra Pradesh, (2009) 5 SCC 212 (laid down the principles for awarding compensation for the victims of political violence and recovery of damages in cases of causing damages to public properties).