CHAPTER VI

CONCLUSION AND SUGGESTIONS
**CHATER VI**

**RESEARCH QUESTIONS & FINDINGS**

1. Whether Indian Judiciary has played creative role in the interpretation of Art. 21?
   
   Ans: After Maneka Gandhi’s case the SC has interpreted Art. 21 in the creative way and has widened the ambit of Art. 21.
   
   In Chapter 2 of the Thesis this aspect is discussed in detail.

2. Whether Indian Judiciary has expanded the ambit of Art. 12 and whether there is any valid criticism?
   
   Ans: The SC has enlarged the ambit of Art. 12 as Fundamental Rights are against the mighty power of the State.
   
   There is a valid criticism by Arun Shouri in his book named – *The Courts and their Judgements*. The author has shown how the SC has brought many institutions and authorities under Art.12 without fully comprehending the consequences of it.
   
   This aspect is discussed in Thesis in detail while discussing the Concept of State in Chapter No. 5.

3. Whether through PIL there is evolution of Art. 21?
   
   Ans: There is an evolution of Art. 21 through PIL e.g. Bandhu Mukti Morcha, Ganga Water Pollution, Taj Mahal Case etc.
   
   This aspect is discussed in detail in Chapter No. 2 of the Thesis.

4. Whether there is any critical evaluation regarding the implementation of the judgements of the SC?
   
   Ans:- Arun Shouri in his book – *The Courts and their Judgements*’ has shown that the directions given by the Supreme Court are not followed in reality in - Bandhu Mukti Morcha case, Case on Child Labour etc.
   
   Fali S. Nariman in his book – *Before Memory Fades*’ AN AUTOBIOGRAPHY – has shown how the directions given by the Supreme Court in the Bhopal Case are not properly implemented.
   
   This aspect is discussed in Chapter No. 5 of the Thesis with the help of 12 cases.
5. Whether there is valid criticism on judicial governance?
Ans: There is criticism on judicial governance by Arun Shourie and Fali S. Nariman in their above referred books and it is discussed in detail in Chapter No 5 of the Thesis.

6. Whether there is valid criticism on legal profession?
Ans: Arun Shourie has criticised that – “Serving the interest of client” has become a slogan of the legal profession and it undermines the concepts of justice.

The principle of Adversarial Justice does not undermine justice and this must be considered by the legal profession.

Arun Shourie comments that – Principles of Gandhiji about legal profession must be incorporated by the professionals.
This aspect is discussed in Chapter No. 5 of the Thesis.

7. Whether any solution is suggested on inter-state water dispute by any expert?
Ans: Nariman S. Fali has given a solution on short term and long term basis for the same in his above referred book.
This aspect is discussed in Chapter No. 5 of the Thesis.

8. Whether the Supreme Court has created any obstacles through interim orders?
Ans: Arun Shouri has given the example of various departments in his book (referred in the thesis) and has shown that how interim orders have created many obstacles for smooth functioning of Government Departments.
This aspect is discussed in Chapter No. 5 of the Thesis.

9. Whether there is ‘interpolation’ instead of ‘interpretation’ in some judgements of the SC?
Ans: Arun Shouri has shown in his books (referred in the thesis) that there is ‘interpolation’ instead of ‘interpretation’ in some judgements of the SC.
WHETHER HYPOTHESIS IS ACCEPTED OR REJECTED:

1. Indian Judiciary has played creative role in the interpretation of the Art. 21 and has expanded the ambit of Art. 12.
   Ans – Judiciary has played creative role in the interpretation of Art. 21.

2. Whether Indian judiciary has expanded the ambit of Art. 12?
   Ans – There is an enlargement of the ambit of Art. 12.

3. Through PIL there is evolution of Art. 21.
   Ans – There is an evolution of Art. 21 but there is abuse of PIL in some cases.

4. There is a problem of implementation in some cases due to bureaucracy.
   Ans – Indian bureaucracy is dominated by delay and lethargy and has created obstacles in the implementation of the judgement of the Supreme Court.

   World Justice Forum has declared the list of nations having rule of law and India ranks 78th among 97 nations. It is further declared that the corruption is one of the biggest problems in India and due to this India is on 83rd rank. Lastly in the report it is commented that incidence of crime, civil conflict, political violence are major concern in India and India ranks second from the bottom list.¹

5. Some eminent writers have criticised on Judicial Activism.
   Ans – Fali S. Nariman, Arun Shourie has criticised on judicial activism in their books which are referred in the thesis.

6. Legal Profession is criticised by some authors and there is a need to improve professional and educational standard of Legal Profession.
   Ans – Fali S. Nariman, Arun Shourie has criticised on Legal Profession and they have suggested some solutions to improve the professional Standard.

7. Inter-state water dispute can be handled in a different way.
   Ans – Fali S. Nariman, has shown the different way to solve the inter-state water dispute in his book which is referred in the thesis.

8. Through interim orders the Supreme Court has created some obstacles in the smooth functioning of bureaucracy and Government.

¹ Daily News Paper - Lokmat dated-29th Nov., 2012
Ans – Arun Shourie has shown that how the interim orders of the Supreme Court have created obstacles in the smooth functioning of bureaucracy and Government in his book which is referred in the thesis.

9. There is ‘interpolation’ instead of ‘interpretation’ in some judgements of the SC.

Ans : Arun Shourie has shown in his books (referred in the thesis) that there is ‘interpolation’ instead of ‘interpretation’ in some judgements of the SC.

CONCLUSION :
- Judiciary has played creative role in the interpretation of Art. 21.
- There is an enlargement of the ambit of Art. 12.
- There is an evolution of Art. 21 but there is abuse of PIL in some cases.
- Indian bureaucracy is dominated by delay and lethargy and has created obstacles in the implementation of the judgement of the SC.
- Fali S. Nariman, Arun Shourie has criticised on judicial activism in their books which are referred in the thesis.
- Fali S. Nariman, Arun Shourie has criticised on Legal Profession and legal education and they have suggested some solutions to improve the professional Standard.
- Fali S. Nariman, has shown the different way to solve the inter-state water dispute in his book which is referred in the thesis.
- Arun Shourie has shown that how the interim orders of the Supreme Court have created obstacles in the smooth functioning of bureaucracy and Government in his book which is referred in the thesis.
- Arun Shourie has shown in his books (referred in the thesis) that there is ‘interpolation’ instead of ‘interpretation’ in some judgements of the SC.
SUGGESTIONS:

1. Indian Judiciary should not take the role of legislature because ultimately the parliament is sovereign.

2. Indian Judiciary should not encroach upon the powers of the legislature. (Recently C.J. of the SC Kapadia S.H. has commented in a lecture that – the SC should not run the Govt. and should not make the policies. This comment was made on the judgement of the SC in which it was declared that right to sleep is a fundamental right.²)

3. Precedents are overruled by the judiciary in number of times and for the rule of law it is not good.

4. PIL has become private interest litigation and abuse of PIL must be checked.

5. I have six basic suggestions. They are as under:
   a. Regarding health problems
   b. Implementation of PNDT Act
   c. Implementation of Domestic Violence Prohibition Act
   d. Female Education
   e. Regarding free legal aid
   f. Regarding primary education which has become a fundamental right now.

A. REGARDING HEALTH PROBLEMS:-

There is a need to bring ISM&H (Indian System & Homeopathic System of Medicine) doctors in the main stream of National Health Policy by suitable legislation.

Indian health problems are very serious. e.g., 1/3 of the world’s Tuberculosis cases are in India, 1/3 of the world’s Leprosy patients are in India. Diseases like malaria, STD, oral cancer, high Blood pressure, diabetes, heart disease etc are on increase.

The number of people living with AIDS is estimated to be between 2 to 3 million and the recent figure is 5.2 million to 5.7 million.

Water borne diseases and Air born diseases are affecting major population due to environmental pollution.

Infant mortality rate, Child mortality rate, Delivery mortality rate is very high as compared to develop nations.

There are over 250 medical colleges in the modern system of Medicine (MBBS) and over 400 medical colleges in the Indian system of medicine (Ayurveda, Siddha and Unani) and Homeopathy.

India produces over 25000 doctors annually. In the modern system of medicine and similar number of ISM & H doctors.

India faces a huge gap in terms of availability of number of Hospital beds per 1000 population.

With a world average of the 3.96 hospital beds per 1000 population India stand just 0.7 hospital beds per 1000 population.

India faces a shortage of doctors, nurses and Para medicals.

India has approximately 6,00,000 allopathic doctors including doctors emigrated to other countries as well as doctors who have died.

ISM&H doctors are more than 10,00,000.

The Indian health care industries are growing at a rapid pace and are expected to become a US $280 billion industry by 2020.

Only 1.2 % of GDP are spent on health care.

The national health policy was endorsed by the Parliament in year of 1983 and updated in 2002.

Primary health care is provided by city and district hospitals and rural primary health Centres (PHCs). Primary care is focused on immunization, prevention of malnutrition, pregnancy, child birth, postnatal care and treatment of common illnesses.

Nearly, 1 million Indians die every year due to inadequate health care, 7 hundred million people have no access to specialist care and 80% of specialists are concentrated in urban areas.

Number of medical practitioners per 10,000 individuals had fallen to 3 per ten thousand.

In the mid-1990s health spending amounted to 6 percent of GDP, which is one of the highest levels among developing nations.
The established per capita spending is around Rs. 320 per year with the major input from private households (75%). State Govt. contribute 15.2%, the central Govt. 5.2%, third party insurance and employers 3.3% and municipal government and foreign donors about 1.3, according to a 1995 World Bank study.

Against this background I want to focus on following three landmark judgements of the SC -

1. Parmanand Katara v. Union of India
2. Poonam Varma v. Doctor Ashween Patel and
3. Doctor Mukhtyarchand and others v. State of Punjab

In the case of Parmanand Katara the SC held that it is the professional obligation of all doctors (Govt. and Private) to extend medical aid to the injured immediately to preserve life without waiting for legal formalities. Art. 21 cast the obligation on the state to preserve life.

In the case of Dr. Ashwin Patel the SC held that Homeopathic doctor using Allopathic medicine is ‘negligence per se’ and Court awarded compensation to the petitioner. This case clearly laid down the law that Homeopathic doctors cannot use allopathic medicine legally. ‘Negligence per se’ means there is no need on the part of petitioner to prove the negligence of the doctor. If it is proved that Homeopathic doctor has used allopathic medicine that is enough to prove the guilt of the doctor.

In Mukhatyar Chand Case the SC held that the practitioners of Ayurved, Siddha and Unani can practice allopathic medicine if the State Govt. declares them as registered medical practitioners under 2 (ee) (iii) of The Drug and Cosmetic Act – 1940. This means that if the State Govt. refuses to declare the doctors of ISM under 2 (ee) (iii) of The Drug and Cosmetic Act – 1940 then they cannot use Allopathic medicine legally.

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3 Healthcare in India, From Wikipedia, the free encyclopedia
4 AIR 1989 SC 2039
5 AIR 1996 SC 2111
6 AIR 1998 (5) SCALE 501
Due to the decision given by the SC in Dr. Ashwin Patel's case and Mukhatyar Chand’s Case lakhs of doctors are legally prohibited from getting involved in National Health Programme and Family Welfare Programme.

Looking towards the serious Indian health problems there is a need to bring ISM&H doctors in to the mainstream of National Health policy by suitable legislation. Such legislation is urgently required because it is the need of the hour and National Health policy should not follow the age old policy of British Govt.

B. IMPLEMENTATION OF PNDT ACT:-

Due to ineffective implementation of the Act nearly 1Croe 20 Lakhs female foeticide has taken place. The male-female ratio is dropping in some states to a serious extent. The Rajasthan High Court has held in S. K. Gupta vs. State of Rajasthan foetus has right to live and there is a need to implement active tracker in every Sonography Machine.

There is a urgent need to take serious steps to prevent such crime.

C. IMPLEMENTATION OF DOMESTIC VIOLENCE PROHIBITION ACT -

There is a need to implement Domestic Violence Prohibition Act very strictly because domestic violence violates Art. 21 and domestic violence is on increase.

D. FEMALE EDUCATION

Education has been defined as the technique of transmitting civilization. It is shocking that the country with the oldest and greatest civilization should be so lackadaisical about the technique of transmitting it. It is now acknowledged all over the world that value based education is the only instrument for transmitting national talent into national progress.

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7 PIL No 3270/12
8 Palkhivala N.A., We The Nation – The Lost Decades, UBS Publishers Distributers Ltd., Delhi
It is only through female education at all levels and the private initiative of well-educated women, that this country will ever be transformed into what our Constitution intended it to be.

**E. REGARDING FREE LEGAL AID:-**

There is a need to frame the new rules for paper setters, moderators and examiners for LL. B. and LL. M. Examinations.

In *M. H. Hoscot v. State of Maharashtra*⁹ the SC declared that free legal aid is a fundamental right under Art. 21.

In *M. P. Vashi v. State of Maharashtra*¹⁰ the SC held that in order to provide free legal aid it is necessary to have well trained lawyers in the country and for the same the Govt. must provide grants – in – aid to private law colleges.

The law laid down in above cases is a welcome decision but if we look in to the legal education in the State of Maharashtra the things are not very good.

1. There are nearly 108 Law Colleges out of which 29 law colleges are grantable.
2. The fee structure is different in aided and non-aided law colleges. The fee ranges from Rs. 3000 to 75000 per year.
3. The rules drafted for the appointment of paper setters and examiners are age old.
4. According to BCI there must be one fulltime principal and four fulltime lecturers in every law colleges and in reality very few law colleges fulfil these criteria.

**F. REGARDING PRIMARY EDUCATION WHICH HAS BECOME A FUNDAMENTAL RIGHT NOW:-**

1. There is a need to control drop-out rate.
2. There is a need to increase teaching days by reducing non-teaching workload and by reducing holidays. (In India every holy-day is holiday.)
3. There is a need to control bogus admissions shown on musters.

⁹ AIR 1978 (3)SCC 544; AIR 1978 SC 1548

¹⁰ AIR 1995 5 SCC 730
4. Memory based education must include the teachings of Rabindranath Tagore, J. Krishnamurti, Yogi Aurobindo etc. They emphasised - learning in awareness, learning in consciousness.

In the Noble Prize acceptance speech which was delivered on 26th May, 1921 at Stockhome: Rabindranath Tagore said,

“And the one thing, the one work which came to my mind was to teach children. It was not because I was specially fitted for this work of teaching, for I have not had myself the full benefit of a regular education. For some time I hesitated to take upon myself this task, but I felt that as I had a deep love for nature I had naturally love for children also. My object in starting this institution was to give the children of men full freedom of joy, of life and of communion with nature.” 11

J. Krishnamurthy in his book ‘Life Ahead’12 says that:

“So, is it not the function of education to free you from fear, and not merely to prepare you to pass certain examination, however necessary this may be?”

J. Krishnamurthy in his book ‘Education and Significance of Life’13–

“Education is not merely acquiring knowledge, gathering and correlating facts; it is to see the significance of life as a whole.”

The function of education is to create human beings who are integrated and therefore intelligent.

Education should help us to discover lasting values so that we do not merely cling to formulas or repeat slogans.”

11 Complete works of Rabindranath Tagore, Black Rose Publications.

12 J. Krishnamurthy, Life Ahead, Krishnamurthy Foundation of India, II Edition 2000, reprinted in 2007 page 25

In ‘Education of the Future’\textsuperscript{14} – Shri Aurobindo comments -

“But the question is: what is the fundamental need or aim of future education? Is it merely to create a smarter and a more well-informed, efficient, skilful, rationalised and adaptable social being revolving in a larger circle in the merry-go-round of this limited and stumbling mental consciousness or to create a new Man who goes beyond mind and reason to a higher immersion of consciousness which is free from the limitations of the mental consciousness and who can lead humanity and earth towards its evolutionary fulfilment?”

National Education of Aurobindo\textsuperscript{15} –

The core of his political philosophy is that the State exists for the individual and not the individual for the State. His philosophy regarding education may be summed up as under –

1. It is essential that Society should not give importance to success, career and money, and that it should insist on the paramount need of the full and real development of the student by contact with the Spirit and the growth and the manifestation of the truth of the being in the body, life and mind.

2. The country must give top priority to the needs of the education.

3. The country must use all the modern techniques of communication for education.

4. Permanent exhibition and museums should be planned all over the country which could be the centers of stimulating knowledge, including the inner significance and goal of evolution.

5. Teachers must grow into real examples of the perfection that is aimed at.

6. The country should engage itself in the activity of the discovery and realization of its true mission.

The basic question is – Can we ignore these ancient teachings and go astray under the impact of western education?

\textsuperscript{14} Aurobindo, \textit{Education of The Future} Shri Aurobindo Institute of Research in Social Sciences II Edition 2006

\textsuperscript{15} Palkhival N.A., \textit{We, the People} -UBS Publishers’ Distributers Ltd., New Delhi,2010, Page No. 264-265.