CHAPTER - IX
CONCLUSION
9. CONCLUSION

Aristotle once has said that the Law is a pledge and the citizens of a State will do justice to one another\(^1\). Indian Constitution, the sacred legal document goes beyond that and it takes a pledge that justice shall inform all institutions of the national life and reach every citizen to enhance the quality of life so as to build a \textit{welfare state}. The logic implication thus would be that the law and its execution should be fair, just, reasonable and accessible to all.

The Indian Constitution\(^2\) is totally a different kind of enactment than an ordinary statute. It is an organic instrument defining and regulating the power structure and power relationship: it embodies the hopes and aspirations of the people: it must be interpreted creatively and imaginatively with a view to advancing the constitutional values and spelling out and strengthening the basic Human Rights of the large masses of people in the country keeping in mind all the time that ‘it is the constitution the basic law of the land’.

---

\(^1\) 56 years of Indian constitutionalism: Student Bar Journal of Law, Hidayatulla National Law University, Raipur; vol.1: Apr. 2007. p.108.

The Constitution itself cannot do any thing or every thing unless there is an independent and strong judiciary which can interpret and enforce the constitutional rights of the citizen and constitutional limitations on the executive and the legislature without fear or favour.

It is true that the Judge has to be in tune with the Constitutional values. Essentially he must be in fine-tune with the social needs and requirements, and must be above all, a judicial statesman. The social philosophy of the constitution must inspire his decision making process and he must adopt a broad activist goal oriented approach directed towards advancing the constitutional objectives when he is interpreting the constitution.

It is clear from the earlier discussed cases in the preceding Chapters that, the Supreme Court has adopted a very liberal approach through Justice Bhagwati and some other activist judges in interpreting the expression “other authorities”.

The foundation laid down by Justice Bhagwati in International Airport Authority case broadened the definition of State. In this area, the important question, he considered is not how the juristic person is born, but why has it been brought into existence. The keynote decision by Justice Bhagwati on the area of ‘state’ helped the public against flouting of their valuable rights by government agencies.

On Equality, Justice Bhagwati propounded a new doctrine and stated that ‘equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined with in the traditional and doctrinaire limits. Equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic while the other to the

---

whim and caprice of absolute monarch. This has been reiterated in Maneka Gandhi’s case and said that Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. Article 14 pervades like a brooding omnipresence. The doctrine of classification is not paraphrase of Art.14 nor is the objective and end of that article. Further in Ajay Hasia Vs. Khalid Mujib and Ashok Kumar Yadav Vs. State of Haryana he applied this dynamic concept of equality principle.

However, in the Barer Bonds’ case Justice Bhagwati followed the old doctrine of classification. He obliterated the concept of new doctrine on the old and held that the Barer Bonds (Immunities and Exemption) Act, 1981 valid as the classification was made with an object to unearth the black money. The classification was made between persons having black money and those not having such money with a purpose to bring it in to the mainstream of the country’s economy, keeping in view the national interest.

While dealing with the cases concerned to the issues of Reservations, he pronounced that ‘the admissions of students to the educational institutions should be made primarily on the basis of merit but not on the domicile requirement or institutional preference stating that any one any where, humble or rich, rural or urban, man or women whatever be his language or religion, place of birth or residence is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, specialty or employment, by providing equal opportunity to all citizens in the country and without serious detriment to the unity and integrity of the nation be regarded as outsider in our constitutional setup’.

1. R.K. Garg V. Union of India- AIR 1981, SC 2138 (also known as Barer Bonds’ case)
2. Pradeep Jain V. Union of India; AIR 1984 SC 1420.
Further, Region wise classification of students for admission into Medical colleges is clearly a denial of equal opportunity and violative of Art.14. However, in conclusion of the decision he favoured for reservation of few open seats for the students of other regions.

Equality and Liberty are the words of passion and power. They were the watch words of French Revolution. Taking inspiration by this the framers of the Indian Constitution incorporated in the preamble as one of its guiding principle. The Indian constitution under Article 21 provides that no one shall be deprived of his life or personal liberty except in accordance with the procedure established by law.

When the constitution was being framed the constitutional advisor gone to United States of America and consulted Justice Frank Furter, the Chief Justice of Federal Court of U.S. and the advice he gave was not to include the due process clause of the American constitution, in India. Therefore, in the constitution of India deliberately omitted the words “except by due process of law” and instead used the words except in accordance with the procedure established by law in Art. 21.

“Now for a long time, the Supreme Court of India interpreted this article 21 as embodying the Diceyian concept of the rule of law that no one can be deprived of life or liberty by executive action unsupported by law”.

But in 1977, in Maneka Gandhi’s case the Supreme Court held that not only there must be a law, but such a law must prescribe a procedure and such procedure must be reasonable.

In the instant case the judgment delivered by Justice P.N. Bhagwati created ripples in the nation and marked a watershed in the history of Constitutional Law of India. He emphasized that Natural justice is a great humanizing principle, fairness in action demands that an opportunity to be heard should be given to the person affected.

Thus, the swift shifts over from the earlier established position for over 27 years prior to this decision starting from the case of A.K. Gopalan\(^1\), contain with in itself the germ for the future development of law, and made all the difference to the arbitrary and high handed acts of a few power ridden bureaucrats and opened up the rusted gates of procedural justice for the litigants in India.

The renaissance, in the post Maneka Gandhi era has been, indeed, amazing. The Fundamental Rights embodied in the provisions of Art.21 thus expanded its wings and utilized for the benefit of the citizens for whom the constitution was enacted.

The expanded form of personal liberty by the Supreme Court now includes:

- Right to education up to 14 years of age\(^2\).
- Right to privacy\(^3\)
- Right to go abroad\(^4\)
- Right to shelter\(^5\)

1. A.K.Gopalan V. State of Madras ; AIR 1950 SC 27
2. Article 21-A of the Constitution of India inserted by the Amendment Act, 2005
3. Satwant Singh Sahwny V. Assistant Pass Port Officer- AIR 1967 SC 1836
4. Govind V. State of MP; AIR 1975 SC 1379
5. Shanty Star Builders V. N.K.Totame, -Air 1990 SC 467
- Right to legal service
- Right to speedy trial
- Right to be treated by Doctor
- Right against custodial violence
- Right against public hanging
- Right against delayed execution
- Right to livelihood
- Right to live with human dignity
- Right to be released and rehabilitated
- Right to clean and fresh environment

Besides, right to bail, natural justice, public interest litigation, capital punishment in the rarest of the rare cases, protection from torture inside...

3. Parmananda Katara v. Union Of India, AIR 1989 SC 2039
5. Attorney General of India v. Lachma Devi, AIR 1986 SC 467
10. M.C. Mehta v. Union of India, AIR 1987 SC 1086
the prison\(^5\) are inalienable elements of reasonable, fair and just procedure, for without it a person suffering from economic or other disabilities would be deprived of his right of securing justice.

Speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in post Maneka era under article 21 of the constitution. The entire human rights jurisprudence has been the result of a most starting and reasonable judgment in Maneka Gandhi’s case.

Now the state is under an obligation to ensure speedy justice. Juveniles as ‘the nation’s children are supremely important asset, their nurture and solicitude are our responsibility. Hence they have to put into separate remand homes and not to contact with hard criminals as the children may lose whatever sensitivity they may have to finer and nobler sentiments. It is the duty of the government in a social welfare state to protect women and children. It must setup rescue and welfare homes for the purpose of taking care of women and children who have no where else to go and who are otherwise uncared by the society.

The genesis of the fundamental right to a clean environment and citizen’s duty to protect environment to safeguard and preserve ecological balance for future generations may be traced from the case of Lime Stone Quarries at Dehradun. The Supreme Court\(^6\) although not referred to Article 21 in these judgments on environment, those judgments can be understood on the basis that the court entertained those environmental

---

1. G. Narasimhulu V. Public Prosecutor(A.P), AIR 1978 SC 429
3. Bar council of maharashtra V. M.V.Dabholkar ,AIR 1976 (1) SCR 306
4. Rajendra Prasad v State of U.P. AIR 1979 SC 916
6. www.envia.org - Dr. Suresh Mane
complaints under Article 32 of the constitution as involving violation of Article 21.

In Hussainara’s case Justice Bhagwati pronounced, as the provision of Bail has a property oriented approach if the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may as far as possible, be released on his personal bond, in the case of granting bail to the poor and indigent accused who is unable to provide surety.

Therefore, it is true that even prior to the CrPC Amendment Act, 2005 as far as petty offences are concerned the law has been settled that the accused must be released on his personal bond and sureties need not be insisted upon.

The trend thus initiated by the Apex Court was to have far reaching consequences and now this humanizing law has been transformed into a statutory provision through an amendment to section 436 of the CrPC by the Parliament, which provided that ‘in cases where a person is unable to give bail within a week of the date of the arrest, it shall be the sufficient ground to presume that he is an indigent person and he shall be entitled to get the bail without surety’.

In early eighties free legal aid, though, not a fundamental right in India and which was mentioned only under directive principles, the Supreme court, particularly Justice P.N. Bhagwati, who made it as a fundamental right by bringing it under the purview of personal liberty while dealing with the case of Hussainara Khatoon, by making it the

1. Hussainara Khatoon v. Home Secretary, State of Bihar; AIR 1979 SC 1369
2. Inserted by the Cr PC Amendment Act, 2005
The committee for implementing legal aid schemes has evolved to streamline delivery of legal services to the poor and the holding of legal aid camps and Lok Adalats (People’s Courts) and the conduct of socio legal surveys on legal entitlements of the poor.

On the basis and recommendations made by various committees headed various Judges especially by Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, the Government of India has enacted the Legal Services Authority of India Act, 1995 which provides free legal services to the poor people, women and children.

Now the position is that a legal service to an indigent accused person not only arises when the trial commences but also attaches when the accused is for the first time produces before the Magistrate. At that time the Magistrate or Judge before whom the arrested person is produced has an obligation to inform the accused person that in case he is unable to secure legal services due to indigence, he is entitled to seek free legal aid at the state cost.

The failure of Magistrate to discharge the above constitutional duty, it is viewed as violative of Article 21. Moreover the state is under an obligation to maintain and assist the various voluntary organizations and social action groups which are involved in legal aid work.

The attitude he follows in dealing with the cases, reveals his humanistic persona. While dealing with Francis Coralies case, where in an inhuman provision in the COFEPOSA Act restrained the five year old infant to meet her accused mother he stated that, a mother’s desire to see
her daughter vice versa is the very basic concept in human requirement and the fabric of Indian family school which makes the nation great and right to life guaranteed under Article 21 mean not merely physical or animal existence. It means the every use of limb and faculty through which life lived.

The focus of his humanistic judicial mind turned next on the right to livelihood. Justice held that though the magnitude and content of the components of the right to livelihood depend upon the extent of the economic development of the country, but in any view of the matter include the right to basic necessities of life which include bare necessities such as adequate nutrition, clothing and facilities for reading. Hence, he directed the State to provide clean and healthy drinking water, and payment of minimum and living wages for workers.

Public Interest Litigation ushers in a doctrine of access which regards a wrong doing to any man as a wrong done to every man. The contribution of Justice Bhagwati in access jurisprudence lies in giving a status and credibility to public interest litigation unprecedented in the judicial history of the so-called developed countries of the world. His major thrusts with the support of other activist judges in the Supreme Court and High Courts gave to PIL during his tenure as a Judge of the Supreme Court and as its Chief have left a remarkable sign in the activists judicial history. His liberalisation of the doctrine of locus standi principle, evolution of the concept of epistles jurisdiction in India, involvement of experts and voluntary organizations in judicial fact finding process and democratisation of remedies of the victims, all have a propensity,

1. Article 39(a) of the Constitution requires the State to direct its policy towards Equal right of men and women to adequate means of livelihood.

susceptibility to advance the social justice system and the scope of access
jurisprudence. However, in search for alternatives to achieve the goal of
social justice Bhagwati revolutionised the concept of creative activist
criminal administration leaving some of his Brother Judges in the Apex
Court surprised, confused and alienated. In many of his public speeches
and writings, the learned judge tried to develop a theory on interpretation
and judicial role in making of policies and programmes to serve, to help
the people; through which he attracted a great criticism.¹

His efforts have been to demolish some of inherited notions of
judicial restraint which came in the way of his concept of judicial
activism. He used his judicial authority to attempt reorganisation of socio-
economic relations by going beyond the strict limits set by conventional
approaches to law and in the process invited both admiration and
criticism.

Public Interest Litigation in our Country can prove to be the glory
of our legal and judicial system if it is used cautiously. For the last 30 years
PIL is serving as more than a Social Action Litigation involving matters of
social causes as well as national interests. The increasing number of PILs’
indicate it. It will always strive to demonstrate that law is not necessarily a
class weapon used by the rich to oppress the poor through the simple device
of making justice too expensive. But taking note of frivolous Public Interest
Litigations the Judiciary is trying to issue guidelines is a welcome stand.
However the Judiciary should not distort the aim of Public Interest
Litigation.

¹ Justice P N Bhagwati; what judges should do?, Times of India, September,
21,22, 23 of 1986.
The Indian Constitution is not a neutral charter. It is a document with a socio-economic ideology geared to a goal of social justice. The directives lay down the lines on which the state should work under this Constitution. They are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

The framers of the Indian Constitution made clear that the object in forming the Constitution is two fold: (1) to lay down form of political democracy, and (2) to lay down that our ideal is economic democracy and also to prescribe that every government whatever is in power, shall strive to bring about economic democracy.¹

Thus, the object of directive principles is to embody the concept of a welfare state and the ideal of a welfare state is political, social and economic democracy. As far as political democracy is concerned, it has been established but the social and economic democracy are yet to be achieved fully.

Descriptive permeation of the entire constitution by the aim of national renaissance, the core of the commitment to the social revolution lie in part III and IV of the constitution. They are the conscience of the constitution.²

To give absolute primacy to one over the other has began with the case of State of Madras V. Champakam Dorairajan³ in which the Apex Court invalidated the Madras Government order on reservations and later the Apex court through case by case development has changed its initial

¹ Ambedkar, Dr., in the Constituent Assembly, CAD, Vol.III, p.495.
³ AIR, 1951, SC 226
opinion and held that1 ‘though the directive principles cannot override the fundamental rights... the court may not entirely ignore the directive principles’. Later the court held that it did not see any conflict on the whole between part III & IV of the constitution and they are complementary and supplementary to each other2.

Finally in Minerva Mills V. Union of India, it was held by the apex court that harmony and balance between fundamental rights and directive principles is basic structure of the constitution. The ratio applied by Justice Bhagwati in these decisions protecting other directive principles, except articles 39 (b) and 39(c) is being followed by the apex court. Further more and more directive principles like, right to education, Article 21-A3, free legal aid Art. 39-A equal pay for equal work Art 39(d) are now became fundamental rights.

In order to maintain the supremacy of the constitution there must be an independent and impartial authority to decide disputes between centre and the states or the states inter se. Justice Bhagwati suggested for the appointment of a judicial committee for judicial appointments as it is unwise to entrust power in any significant or sensitive area to a single individual however high or important may be the office, which he is occupying.

Speaking through Justice Bhagwati the Supreme Court held that the termination of service of a civil servant on the ground of negligence

3 Constitution 83rd Amendment Act, 2002.
without complying with the requirement of Article 311(2) i.e., a civil servant cannot be dismissed or reduced in rank until he has been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him, was to be unconstitutional and void.

Justice Bhagwati as a judge of Supreme Court adjudicated about 821 cases and his total number of judgments are 1140. To evaluate all these cases is no doubt a Herculean task. There may be some dissenting judgments, hence the researcher had analysed his major and landmark cases in this research. However these are inevitable in a developing society like India.

The horizon of natural justice is constantly expanding. The administrative order which involve evil consequences must be made in accordance with the rules of natural justice. There is no bar to judicial review of the validity of a proclamation of Emergency issued by the president under Article 352(1) where the satisfaction of the President is not his personal satisfaction for impose emergency but the satisfaction of the cabinet. And such satisfaction is abused or perverse or malafide or based by wholly extraneous and irrelevant ground, it would be no satisfaction at all and it would be liable to be challenged before a court of law.

The Supreme Court made it clear that the Constitution not the Parliament is Supreme in India, this is in accordance with the framers who adopted a written constitution for the country. So, no amendment passed by the parliament is beyond the power of judicial review.

1. Kanhailal V. District Judge; AIR 1983 SC 351
Constitution has been prepared after ransacking all the known constitutions of the world to suit the Indian culture. How best may be this organic document created, its life depends on how best one could get use of it by interpretation. This way it's being made a living document by eminent personalities of Indian judiciary like justice Bhagwati.

Thus Justice Bhagwati's creative and humanistic interpretations on the areas of fundamental rights, directive principles of state policy and other provisions in the Indian Constitution, his relentless strive to provide social Justice to the millions of people who were deprived of justice because of their illiteracy and social backwardness, his tireless efforts to bring the state more accountable to the people through his pen has created an eternal place in the firmament of the Indian Judiciary and made the judiciary to take the path "justice must reach all".
Dear Sunita,

I am sorry I have not been able to reply to your letters dated 3rd and 5th January as I was extremely busy with various engagements. I had also the pleasure of speaking to Prof. V. Hemalatha Devi on the phone.

I was glad to learn that you are doing your Ph.D in Post Graduate Department of Law of Sri Venkateswara University, Tirupati under the guidance of Prof. Hemalatha Devi and the subject on which you are preparing your Thesis on "Contribution of Justice P.N. Bhagwati to the Constitutional Development in India - A Study".

It is now almost 20 years since I wrote my famous judgements in human rights cases and I am delighted to learn that they are forming the subject matter of study by students in various universities.

If there is any guidance which I can offer you in preparing your thesis, do kindly let me know. You need not come all the way to Delhi since it is a long distance and it would cost quite a bit of money to come to Delhi from Tirupathi. But you can write to me and I will definitely try to answer your queries. When I come next to Hyderabad I will let you know so that you can come down and meet me in Hyderabad. Of course if you like to come to Delhi for the purpose of discussing any particular aspects of human rights with me you are welcome to do so. But I will be out of Delhi from 21st February onwards right up to the first week of April.

With kind regards and wishing you all the best.

Yours sincerely,

P.N. Bhagwati.