
JUDICIAL APPLICATION OF THE RULE OF LAW

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Introduction

In our project we will observe the growth of our law within the time and we will also see the importance of our constitution. We will see how our fundamental rights are derived and how it struck the unfair laws which were prevailing in our society for a long time. As we know in earlier times whatever our elders used to say we used to do and if the youngsters of the family did something which might be obnoxious according to the society but not according to the law, our elders used to have our back or sometimes not. But now law gives us the protection, the power to live with dignity. Suppose if someone wants to live by recognizing themselves as a 3rd gender personality, our society might not protect us but surely our law will. We can observe that how law is changing to give rise to our social problem and solve them. We learned that law does not evolve according to the world or the trend; it gets evolved according to the society. Earlier our country was not that much educated about our law about our rights but now as our society is growing, the knowledge of rights or its awareness is also growing.

Our Judiciary plays a very important role in order to give power to our rights. Suppose if someone's right is violated then judiciary comes into the picture where a person can go and file a complaint. There are many cases where sometimes the state agrees to some brutal decisions but with the help of Judiciary those decisions are being overruled. Some of the rules like making Article 377 partially unconstitutional, or striking off Article 497 and giving justice to the communities of our society. We also understand how our important fundamental rights are and how they can be used in real life. Now let's have some brief knowledge about the Supreme Court.

The Supreme Court of India is the supreme judicial body of India and the highest court of India under the constitution. It is the most senior constitutional court, and has the power of judicial review. The Chief Justice of India is the head and chief judge of the Supreme Court and the court consists of a maximum of 34 judges and it has extensive powers in the form of original,

appellate and advisory jurisdictions. It is regarded as the most powerful public institution in India.

The Supreme Court of India came into being on 28 January 1950. It replaced both the Federal Court of India and the Judicial Committee of the Privy Council which were then at the apex of the Indian court system. The first proceedings and inauguration, however, took place on 28 January 1950 at 9:45 am, when the judges took their seats. Which is thus regarded as the official date of establishment.

As law is changing and making some landmark decisions people have started feeling the importance of law and how is useful in our daily life .

So, we are going to tell you about some of the famous judgement of Supreme Court and its reason and our point of view that how do we like it .

KESAVANANDA BHARATI CASE

Kesavananda Bharati case is one of the most important cases of India. This case seeds were sown before actually this came to the court . In 1967 the background and structure of Kesavananda Bharti case was already prepared. In 1967 Supreme Court of India gave a verdict that State can't amend the Fundamental Rights. This verdict led to the conflicts between judiciary and the State. After 1967 case judgement we saw major differences between the two. Judiciary, legislature and Executives had different roles but their motive is same to work for the interest of people. This year broaden the area of judiciary and executive. Government thought amendment of constitution as their role because they are the people's representative and therefore main power should lie in the hands of Government. On the other hand, judiciary thinks that certain rights should not be touched or change because it is made for the welfare of people. If we see the scenario of 1967, judiciary was on developing stage and was flexible enough to changes but government as powerful should be supervised by an authority and therefore the decision made by supreme court to restrict the State to amend fundamental right was correct.

When Indira Gandhi formed the Government, She amended the Constitution and brought 24th amendment which stated that the Government can amend any part of the constitution and fundamental rights. After this amendment no. 25 was introduced where government can

acquire any property of citizens. The main question which was raised in my mind after these amendments was that what was the motive behind these amendments? Did the government was planning to reduce the powers of judiciary or certain articles and sections were restricting government from doing welfare. The thing I notice was that Government wanted to work for the interest of people like constructing roads, hospitals, schools, etc. But these infrastructures needed land and government did not owned any land. Therefore, to make these infrastructures government needed property and therefore wanted land from people but the constitution restricted the government.

I think that government was right in amending the constitution because development was required in the country and if certain provisions which were made in mid-20th century restricts the govt then amending is only a sole method.

In 1973 Kesavananda came in the picture. Kerala government tried to control religiously owned property under two state land reforms acts. Kerala government tried to restrict the article 26 which gave power to Indian citizens to manage religious property. It was clearly seen that state was trying to control the religious matters. This we can clearly relate to the intervention of state in the matters of Church. At the time of Renaissance state started to rule and controlled church and at the medieval time Aquinas focused on the development of community where Church established authority over State. If we compare medieval period with that 1970, we can say that the time gap is very different where situations are different, laws interpretations are different but one thing remain the same is that people of the medieval too don't liked the intervention of state over their Church as people of 1970.

Nanabhoy palkhiwala was the main hero of this case and he is a hero for all of us who convinced Kesavananda Bharati to file a petition under article 26. A public interest litigation was filed and the biggest bench was constituted for this hearing. 13 judges bench gave the judgement by 7:6 majority. 7 judges gave a judgement that parliament could amend any part of the constitution; this judgement was shocking because it raised the question that how can Supreme court change his own decision that was given at the time of Golaknath case. But the biggest twist came when Court said that amendment cannot alter the basic structure of the Constitution which clearly means that parliament cannot amend the basic structure of the constitution.

The Basic structure is something which acts as backbone for Indian democracy like:

Independent judiciary- When India was drafting its Constitution, the main motive was to make 3 Arms of Government that are Executive, Judiciary and Legislature. And each arm will have independent powers so that they can supervise each other. Independent judiciary makes the democracy alive and without this arm we cannot decide which law is broken. Independent judiciary means an independent mediator between the executive and legislature and provide justice to people by giving rights. Therefore, independent judiciary being regarded as part of basic structure is correct.

Free and fair election- Election is the biggest event which decides the government by the people through votes. Election right is given to the people of certain age and their vote decides whose government is to form. People have right to vote their right representative and if this right is not free and fair then it is useless to conduct elections. Recently we heard a news that a EVM machine was caught in a BJP worker's car during the elections in West Bengal. This is something unfair and not right and therefore questions democracy. In West Bengal rallies are conducted based on religion, caste and place. This is not we want as citizens of India. Election should be played fair. Judiciary plays an important role in ensuring and safeguarding rights like right to vote.

Kesavananda Bharati judgement helped the Indian citizens because of this ,now government cannot take away our fundamental rights like right to express and right to constitutional remedies. But this also created some wrong decisions. Indira Gandhi brought 39th and 41st amendment where she said that no one can file a civil or criminal suit against existing prime minister or ex-prime ministers and no case will be entertained in the court. Presidents' appointment should be not more than 1 year.

What I interpret from these amendments was that Government was trying to control the Judiciary. I found this amendment totally wrong because being a prime minister we understand that yes, they are having powers and they are elected by the people but they are also citizens of India and are equally liable as ordinary person would. Here the logic what I liked was that Law is same for everyone and law does not make someone superior and therefore removing themselves from charges and suits does not make sense. But thanks to Kesavananda Bharati because of whom these provisions were considered invalid and prime minister did not got any power to remain aloof from charges. The case will still run in the court if the PM had done something wrong.

In 1975 we also saw some wrong use powers from the Executives and Legislatures. After this judgement there were some decisions made. Justice Ray was appointed as new CJI of India. He was at the minority side in the Kesavananda Bharati judgment. And because of this Indira Gandhi promoted him to the post of CJI ignoring the seniority. On one side considering Judiciary as independent and on the other side we see that Executives and Legislatures are given powers to decide the CJI of India. President is having the power to choose CJI with the help of retired judges but if parliament is influencing the decisions of Presidents, then our democracy was really at questioned that time.

Then the logic which I observed from this above line is that: People elect representative, that representative forms Government, that Government by majority nominates President and then the Presidents under the guidance of elected government appoints CJI of India. Which means what interpretations Government will make after seeing Law will automatically be assumed to be the interpretations of Judiciary. IF GOVERNMENT SAY “A IS B” then JUDICIARY WILL SAY “A IS B” without observing or looking into it. And this is wrong and we saw this at the time of INDIRA government, but later the evolution which Judiciary made was really commendable.

After the appointment of Justice Ray this case was again tried to open in the court but Nanabhoy Palkhiwala did not led this happen. Kesavananda Bharati and Nanabhoy had made a big contribution for Indians. They got the success in restricting government that government can amend the constitution but cannot change the structure of the constitution. After this no government tried to restrict these rights.

LIFE AND LIBERTY – ADM Jabalpur V. Shivkant Shukla

Introduction- this case which is also known as Habeas Corpus case is one of the most important cases of India. 28TH APRIL 1976 was one of the most important dates in the Indian history because on this date Hon’ble Supreme Court of India gave a judgement on this case which is remembered as infamous judgement rather than famous . The judgement was given at the time when judicial independence was in danger. The judgement of this case was given by 5 judges with 4:1 majority. Justice Khanna was only the sole judge who was against this judgement. As per me justice Khanna had showed bravery in giving correct verdict at the time when everyone was against him.

This case emerged due to what happened on 25th June 1975. Although we never experienced live but its air and presence are still there.

On 25th June president Fakhruddin Ali and Prime Minister Indira Gandhi imposed emergency under the article 352 of the Indian Constitution because of internal disturbance. This was the date which our generation could never have imagined because on this date citizens right were taken away. The rights which were given to citizens like right to life were taken away by the President and opposition leaders were arrested. This led people to evoke habeas corpus writ as a defense.

Supreme court of India passed a judgement with 4:1 majority. The court held that a person cannot approach to the High court to enforce any Fundamental Right because as per president's order right to life and personal liberty under Article 21 was banded under MISA.

This case has been most argued case because of its thin and positivist interpretations. The judgement which was passed by 4 judges states that laws are made as per the interest of state and liberty is a part of law and therefore it can be taken by the state. On this I want to say that Law is made for the people and for their interest and social well-being. State is mere body who takes care of the people's interest and cannot deny people their basic rights. MORALITY is something which is above logic and nature grants us some rights based on morals like right to life and liberty which cannot be taken by the State.

Justice Khanna said that Right to life is not something new when constitution was made and this right existed before the constitution in the history and therefore habeas corpus cannot be deprived of. Natural school of law taught us that these morals were simply based on what is wrong and right and this is integral part of our insight.

Judiciaries power were questioned and this showed gaps of how system and executives worked and how the decisions were made under the influence of state. Under Schools of law, it was seen that how state played a role in making decisions and with time these powers changed. Judiciary being a part of India had some roles and powers which it realized after this case.

Things were changing, laws were now changing and Article 14, 19 and 21 are not limited of each other and article 21 was now expanded to more aspects like livelihood, environment which will never be suspended.

Being a social engineer, we have to understand that the issues are multidimensional. But to neglect basic rights is against the public interests. Right to life is a right which is a part of human and cannot be separated. I appreciate Justice Khanna who argued his opinion and guided the judiciary its path and us

Constitution. As per me article 21 is something which is a gift of Natural school of law but different interpretations lead to confusion and conflicts but this case gave us the true and wider meaning of Article 21.

JOSEPH SHINE VS UNION OF INDIA

We have heard that marriage is a pure relationship which exist for 7 births. I am saying this because I have seen this in many serials and movies. But we do not have any contract in contract or provisions for 7 births. In 2018 three judges bench gave a landmark judgement which changed the whole concept of society. Society changed with the changing time. In 17th and 18th century society was static where family's status was decided by their birth. At the time of Mughal rule there was a person who used to decide or had the power to decide. That person was the elder of the family who acts as a leader. Women's freedom, decisions, matters were decided by that man.

This case mainly focused on article 497 of the IPC where adultery was an offence which stated that a person or man can be punished with imprisonment if he is involved in sexual intercourse with the wife (after taking consent) of another man where that another husband's consent is not taken.

This article 497 is mentioned under IPC and therefore it was pre constitutional. After the Constitution was drafted IPC was taken as it is from past. After the formation of this article this was challenged.

Before joseph shine case there were three more cases which challenged Adultery. Yusuf Abdul Aziz case against Bombay in 1954, Sowmithri Vishnu against union of India in 1985 and V. Revathi versus UOI, 1988. But the judgement of these three cases supported the adultery and its violation was considered as a criminal offence.

But in 2018 judgement Supreme Court gave their judgement against article 497 and therefore concluded that 497 is not valid.

Article that was 150 years old cannot be used in the modern society. There are various fundamental rights which made this article invalid.

Right to privacy: right to privacy became a fundamental right which state that a person has freedom to enjoy his/her personal life with autonomy. Right to privacy supports the facts of the case that adultery is something based on violation of privacy because both the people are giving their consent and punishing them based on these facts violates people's fundamental rights. Because when something becomes a right then there is no offence. Privacy was present in the past too. We have some architecture designs which stated that buildings and houses were not having windows at the ground floor and the main door does not directly show the view of inside. Privacy was regarded as an ethical value that if someone is having talk in private then we should have manners to first ask. But In today's modern world ethical values have become rights which cannot be violated.

Civil remedy- If there is an adultery and the husband and wife want a remedy then they can divorce. Divorce is the only option in civil matters because after such incidents our society does not consider such marriage as pure. And if in the law there is a civil remedy then what is the use of criminal remedy.

In this article there were many flaws that didn't allow this article to survive in modern world.

Article 497 discrimination- this article represented various discrimination points which are against the fundamental rights. It was mentioned in this case that a suit can only be filed by the husband of that wife who was involved in adultery. The wife of the person who was involved in adultery does not have a right to file a case and therefore it was a discrimination based on gender.

There were another gender discrimination points which were regarding the punishment of wife under adultery. Female involved in adultery were not given punishment and only male were held liable. As per me living in a modern society we have certain rights which says that male and female are equal as well as gender-based discrimination based on filing suits seems senseless. Judiciary should have removed this article after the constitution was made. Supreme Court supported this article based on morality and would have considered marriage as trusted relationship. Supreme Court's judgement on three past cases were not appropriate because they assumed this article as constitutional at the starting of hearing but since this article is mentioned

in IPC which was made before constitution and therefore assuming article 497 as constitutionally valid was not right at all.

In this case we saw how right to privacy changed the perception of seeing article 497. Today societies have moved to progressive societies from static where equity, rights and legislations are present to safeguard people from gender discriminations. Today judiciary ensures freedom to its people. for example, if a boy who is 21 years old and a girl of 20 with mutual consent wants to marry each other then they can marry and the Judiciary will protect their rights to marry.

The main questions that were raised after this judgement were:

What rights does that affected person have if his/her husband or wife does adultery?

The court was silent on this matter. According to me if two persons are involved in adultery then overall four people are affected. Husband and wife's marital life comes on end not through divorce but through negative behavior and because of losing trust they are unable to come on their normal track. The only solution which I think would be correct is to take divorce and compensation should be given to the affected in terms of money or property. For example, if husband who was involved in adultery takes a divorce from her wife, then the wife should be given life support by providing him monthly essentials and money. The wife should have right to be compensated and given respect in the society.

What effect will be there on Marriage social institutions after such act.

It is not a big matter of concern but can have effect because as per different religion marriage is regarded as pure and divine's decision. Marriage was given importance in history at the time of kings and today too it does not lose its essence. These institutions have their own ideology but today religion or culture do not have that much role in the making of law as compared to past and if these institutions are affected then Law cannot sacrifice the overall interest of the people based on these ideologies of marriage as pure relation and the pair is decided by god.

If due to such adultery if a child is born then who will take responsibility of that child?

On this Supreme Court was again silent. Supreme court should have decided on this matter. Responsibility of a child is important for his/her future and therefore as per me the court should

give responsibility to the person between the two who is in good condition in terms of money, status and have the capability to take care of the child. If both the people are not ready to take the responsibility then they should provide him education support until he is capable enough to earn.

In solving and approaching these questions moral knowledge is more important than logic. Supreme Court was late in removing this article and there were various judgements in the past because of which many marital lives were ruined because of punishments and imprisonments. Finally, article 497 was removed with article 198(2) of CRPC.

Conclusion

In these judgements we saw different interpretations of the law by the supreme court of India. Judiciary has been evolved and play an important role in making the law. Every individual has different interpretations of the same law and as a fact it is not wrong. Supreme court India also has its unique interpretation of law and we always care and give importance to what judiciary is saying. In realist school of law, we saw how judiciary came into the picture and how based on facts and rules they come to the judgement. India is now developing as well as the needs and demands of people from society are now broader and therefore laws are to be made suitable for today's generation. Supreme court of India had done this job very efficiently and I think that interest of present beings is more important rather than past interest of the people. Giving adultery a place in law was based on the past ideology and how court changes the law as per the needs of today's ideologies was commendable. Making the law and placing in the country's working is not the only work of these institutions but they also have to balance between the interest and conflicts that arise after the law comes into force. As per sociological school law making is like child birth because in making the law there are huge struggles and these struggles are taken by the judiciary of our country. Today supreme court has become the reason for India's democracy alive and to promote welfare in the country.