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Analysis of landmark judgment of constitutional law from 1950 to 1951

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Abstract

The judiciary has played an important role to achieve constitutionalism. Constitutionalism is a very important asset of any country because it governs the country. The country having a constitution does not mean that having constitutionalism. The researcher has taken five landmark judgments from the year 1951 to 1955 for the sake of analysis the main objective of the study is to analyze the judicial tread of the Supreme Court from 1951 to 1955 and another aim of this paper is to critically examine the need of judicial review in India. There should be a balance between all the organs of the government and there is a check and balance point on the legislature by the judiciary through the judicial review. The legislature cannot enact law by its fashion and desire because the legislature is also bound by the constitution. In India, check and balance points may disturb it completely depending upon the political power. Through this paper, various judgment has been analyzed and doctrinal method of research has been taken into the consideration.

Keywords: constitutionalism, absolute majority, fractured mandate and doctrine of eclipsed

Introduction

India's constitution is also known as the organic document. In India's territory, it is the top or highest land law. All laws must comply with the provisions of India's constitution to be considered lawful and just. The constituent assembly of India adopted the Indian constitution on November 26th, 1949, and it went into effect on January 26th, 1950. On this day, all of the constitution's provisions were made applicable throughout India's territory. India was not as developed as it is now shortly after its independence. There are numerous issues in the country, such as poverty, unfair wealth distribution, and linguistic recognition, to name a few. Our first Prime Minister, Jawhar Lal Nehru, took numerous attempts to address these issues. The Prime Minister attempts to attain the goals outlined in the preamble of the constitution, as a result of which the Congress government has approved numerous amendments for the benefit of the Indian people.

This research focuses on the significant changes that occurred between 1950 and 1955. The first amendment changed various articles of the constitution in 1951, including 15^[1], 19^[2], 85^[3], 87^[4], 174^[5], 176^[6], 341^[7], 342^[8], and 376^[9], and included 31A^[10] and 31B^[11] and the 9th schedule^[12]. The constituent assembly added a unique provision for the advancement of any socially and educationally backward sections, as well as the Scheduled Castes and Scheduled Tribes, through the first amendment (SCs and STs). To ensure that zamindari abolition laws are constitutionally valid and that reasonable restrictions on freedom of speech are imposed, a new constitutional provision known as Schedule 9 was developed to defend against regulations that violate constitutionally given fundamental rights. These laws infringe on property rights, freedom of speech, and legal equality. Some fundamental rights were reduced as a result of the first amendment, prompting a flood of petitions to the Supreme Court. The constituent assembly passed the Preventive Detention Act of 1950 in 1950. In *A.K Gopalan Case v. State of Madras*^[13], this Act was challenged. In Year 1953, the Second Amendment was introduced by the parliament, and Article 81 (1) (b) was amended to remove the upper population limit for a parliamentary constituency. On February 22nd, 1955, the parliament passed the third amendment "*Re-enacted entry 33*^[14] *of the Concurrent List in the Seventh Schedule with relation to include trade and commerce in, and the production, supply and distribution of four classes of essential commodities, viz., foodstuffs, including edible oil, seeds, and oils; cattle fodder, including oilcake and other concentrates; raw cotton whether ginned or unginned, and cotton seeds; and raw jute. Article 31 was also amended by the 4th amendment.*"

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The parliament passed a measure restricting property rights and including related bills in Schedule 91^[15] of the constitution on April 27th, 1955. Many people who were harmed as a result of these amendments filed a lawsuit in the Supreme and High Courts to have them overturned. Supreme Court had pronounced a landmark judgment through various cases like. "*Romesh Thappar v. State of Madras*^[16], *State of Madras v. Champakam Dorairajan and Ors*^[17], *State of Orissa v. Madan Gopal Rungta*^[18], *Ujagar Singh and Ors. v. State of The Punjab*^[19], *State of West Bengal v. Bela Banerjee and Ors*^[20], *The Vice-chancellor, Utkal University, and Ors. v. S.K. Ghosh and Ors*^[21] and *Bhikaji Narain Dhakras and Ors. state of Madhya Pradesh and Ors*^[22]."

In the case of "Romesh Thappar v. The State of Madras"
[23] **Hon'ble Judges.**

"H.J. Kania, C.J., Saiyid Fazl Ali, M. Patanjali Sastri, M.C. Mahajan, B.K. Mukherjea and S.K. Das, JJ."

The petitioner, in this case, was the printer, publisher, and editor of Cross Roads, a Bombay-based English-language daily. The entry and dissemination of the newspaper were prohibited in the erstwhile State of Madras under Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949. The petitioner filed a writ petition before the Supreme Court in reaction to the prohibition, claiming that the Act's powers were an unreasonable restriction on freedom of expression under Article 19 of the Indian Constitution^[24].

Ratio Decidendi

The judgment had been pronounced by 5:1.

"H.J. Kania, C.J., M. Patanjali Sastri, M.C. Mahajan, B.K. Mukherjea and S.K. Das, JJ." (Majority opinions)

The majority of the opinions "observed that there can be, no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation, Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation, the publication would be of little value. Restriction on freedom of speech and expression can only be imposed on grounds mentioned in Article 19 (2) of the Constitution. A law which authorizes imposition of restrictions on the grounds of 'public safety or the 'maintenance of public order' fall outside the scope of authorized restriction under clause (2) and is void and unconstitutional^[25]."

"J. Saiyid Fazl Ali (Dissenting opinion)"

He observed that "the maintenance of peace and tranquillity was a part of maintaining the security of the State. Therefore, he disagreed with the majority opinion and asserted that the Act imposed reasonable restrictions on freedom of expression and must be upheld as valid. In This case, the doctrine of severability was recognized. After pronouncement of this judgment, Article 19 (2) was amended by the first and sixth amendment."

In the Case of "State of Madras v. Champakam Dorairajan and Ors."^[26] **Hon'ble Judges.**

"H.J. Kania, C.J., Saiyid Fazl Ali, M. Patanjali Sastri, M.C. Mahajan, B.K. Mukherjea, Sudhi Ranjan Das and Vivian Bose, JJ."

In this case, the Madras government had set reserved a fixed number of seats in state medical and engineering institutes for certain communities based on religion, race, and caste. The government supported the law, claiming that it was intended

to promote social fairness for all individuals, as required by Article 46 of the Directive Principles of State Policy. The Supreme Court observed that the rule is void and unconstitutional because it categorizes students based on caste and religion rather than merit. Fundamental rights cannot be overridden by the DPSP. In another case, an order requisitioning land for the establishment of a *harijan* colony was found to be void under Article 15 (1)^[27], and Article 15 was amended by the Constitution (First Amendment) Act, 1951 to modify the implications of these two decisions. "The state has the authority to create special provisions for the advancement of any socially and educationally backward classes of individuals, as well as Scheduled castes and Scheduled Tribes, under this article." Following the amendment, the state would be able to establish a *harijan* colony to further the interests of the lower classes.

Ratio Decidendi

It was held "that the communal G.O. constituted a violation of the fundamental right guaranteed to the citizens of India by Article 29(2) of the Constitution of India and was therefore void^[28] under Article 13- The directive principles of State Policy laid down in Part IV of the Constitution cannot in any way override or abridge the fundamental rights guaranteed by Part III. On the other hand, they have to conform to and run as subsidiary to the fundamental rights laid down in Part III."

The main crux of this judgment are:

The governor of Madras had issued an order (known as the communal G.O) on the admission of students to the state's engineering and medical colleges, stating that seats should be filled exclusively based on the following criteria:

- Out of every 14 seats.
- 6 were to be allotted to Non-Brahmin (Hindus).
- 2 to Backward Hindus.
- 2 to Brahmins.
- 2 to *Harijans*.
- 1 to Anglo-Indian and Indian Christian and 1 to Muslim.

In the case of "The State of West Bengal v. Bela Banerjee and ors"^[29] **Hon'ble Judges:**

"M. Patanjali Sastri, C.J., B. Jagannadhadas, Ghulam Hasan, M.C. Mahajan and Sudhi Ranjan Das, JJ."

This case arose from a ruling by the High Court of Calcutta declaring important portions of the West Bengal Development and Planning Act, 1948, to be unconstitutional and void. On October 1, 1948, the West Bengal Development and Planning Act was passed, primarily to settle immigrants who had migrated to West Bengal as a result of communal unrest in East Bengal, and it provides for the acquisition and development of land for public purposes, including the aforementioned purpose. The Act's constitutional legitimacy was questioned in the High Court of Calcutta. The impugned Act is not unconstitutional or void in its whole, according to the divisional bench of the High Court, save for two clauses in section 8, which are unlawful insofar as they are relevant here.

The provision that made the Government's statement conclusive as to the public character of the acquisition's purpose and limited the amount of compensation to the market value of the land on December 31, 1946, was ruled ultra vires to the Constitution and void by the High Court of Calcutta. "The verdict of the High Court was challenged in court, and an appeal was filed with the Supreme Court. The

Attorney-General, appearing for the appellant, was rightly concerned that, because article 31(2) made the existence of a public purpose a necessary condition of the acquisition, the existence of such a purpose as a fact must be established objectively, and the provision in section 8 relating to the conclusiveness of the Government's declaration as to the nature of the acquisition's purpose must be held unconstitutional, but he argued that the provision was saved by Article 31 (5)" ^[30].

Article 31 (6) of the Constitution of India reads as -
"Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and, thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935."

The impugned Act, it was argued, was a law to which the provisions of clause (6) did not apply because it was passed within 18 months of the Constitution's commencement and not submitted to the President for his certification, and thus, as existing law, the impugned Act was not affected by clause (2) of that article. The reasoning was found to be flawed.

Article 31(6) is designed to "save a State legislation enacted within 18 months of the Constitution's commencement if it was certified by the President, but article 31(5) saves all existing laws established more than 18 months before the Constitution's commencement." When the two sections are read together, it is evident that legislation approved within 18 months of January 26, 1950, is not to be saved unless it was submitted to the President for his certification within three months of that day and was certified by him. If the argument is accepted, article 31(6) will become a meaningless redundancy. It was also pointed out that while the "legislature has the authority to lay down the principles that should govern the determination of the amount to be paid to the owner for the property appropriated, such principles must ensure that what is determined as payable is compensation or a just equivalent of what the owner has been deprived of."

Ratio Decidendi

"The Court held that the latter part of proviso (b) to section 8 of the impugned Act which fixes the market value on December 31, 1946, as the maximum compensation for lands acquired under it offends against the provisions of Article 31(2) and is unconstitutional and void. The appeal was dismissed with cost"

In the case of *The Vice-Chancellor, Utkal University and ors. v. S.K Ghosh and ors* ^[31]. Hon'ble Judges:

"B.K. Mukherjea, Ghulam Hasan, M.C. Mahajan, Sudhi Ranjan Das and Vivian Bose, JJ."

The question paper for the subject of Anatomy, a second-year MBBS course subject, was allegedly leaked in this case. On the same topic, the examination board of the Utkal University convened a meeting to address the issue. The board decided after its meeting that the fact that the paper of the subject of Anatomy was leaked was proven, and thus the examination was canceled. The syndicate refused to publish the result of the Anatomy examination because of the question leakage, and the board set a new date for the examination.

Students in the second year of the MBBS programme went to

the High Court to have the examination results published. The High Court of Orissa ruled that an examinee who achieved success in his examination using fair and unlawful means has the right to see that his achievement matures into the status of degree-holder or fellowship. The High Court's verdict was appealed to the Supreme Court of India. The key question before the court was whether the High Court may act as the court of appeal in the mandamus suit regarding the University Syndicate resolution's legitimacy.

Ratio Decidendi

"The court held that the High Court could not constitute itself into a court of appeal from the authority against which the appeal was sought. The Supreme Court overruled the decision of the High Court and allowed the petition without costs."

In the case of "*Bhikaji Narain Dhakras and Ors. v. State of Madhya Pradesh and Ors*" ^[32]. Hon'ble Judges:

"Sudhi Ranjan Das, Acting C.J., N.H. Bhagwati, T.L. Venkatarama Ayyar, Syed Jaffer Imam and N. Chandrasekhara Aiyar, JJ"

In this case, the Constitution - "state monopoly - Articles 13, 19 (6), 31 (2) and 32 of Constitution of India, Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, Central Provinces and Berar Motor Vehicles (Amendment) Act, 1947 and Section 299 of Government of India Act, 1935 - wide powers given to State Government by amendment of Motor Vehicles Act for nationalization of the transport system - transporters contended violation of right under Article 19 (1) (g) and law invalid under Article 13 - impugned law ineffectual under Article 13 till Amendment Act, 1951 - law made not inconsistent with Article 19 (1) (g) as State created monopoly permitted by law - also contended deprivation of the right to property - after the amendment of Article 31 (2) defect removed - retrospective operation of Act challenged ^[33]."

Ratio Decidendi

The Supreme Court held *"that 'the effect of the amendment was to remove the shadow and to make the impugned Act free from all blemish of infirmity'. It became enforceable against citizens as well as non-citizens after the constitutional impediment was removed. This law was merely eclipsed for the time being by the fundamental rights. As soon as the eclipse is removed the law begins to operate from the date of such removal."*

The doctrine of Eclipsed was recognized in this case.

Conclusion

After going through the above discussion, it can be concluded that the journey of India during the period of the year 1950 to 1955 was quite conflicting between the interest of individual and state. After the enforcement of the constitution in India, the citizen was happy because they had fundamental rights and living in the welfare state at the same time there were reasonable restrictions on the fundamental rights. From the year 1950 to 1955 there were five constitutional amendments were passed by the parliament for the welfare of the citizens like an equal distribution of wealth, achieving the objectives of the preamble, and providing the reservation policy for achieving equality in India and many other policies by the government. Due to the reaction of these constitutional amendments, many individuals filed petitions before the Supreme Court. This study is limited to landmark judgment

during the period year 1950 to 1955. In “*A.K Goplan case*” “The Supreme Court validates the Preventive Detention Act, 1950” and the doctrine of severability was also recognized. In “*Romesh Thappar case.*” The Supreme Court validates the Madras Maintenance of Public order Act 1949. “*The Vice-chancellor, Utkal University case*”. The Supreme Court held that in a mandamus petition the High Court could not constitute itself into a Court of appeal from the authority against which the appeal was sought.

I believe that by analysing the landmark judgments which have been discussed in the above study, most of the constitutional amendments were declared as constitutional by the Supreme Court. Hence, I can say that during the period year 1950 to 1955, out of three organs of the state, the legislature was most powerful. The reason was quite obvious. During this, period Nehru had an absolute majority in Parliament. Hence, I can say that “*when a government is formed with the absolute majority then the judiciary will be at the back foot, when the government is formed with the fractured mandate, the judiciary will become a most powerful organ of the state.*”

As far as constitutional morality is concerned, I believe that during the period year 1950 to 1955, the object of constitutional morality was not achieved in the true sense. Because I think that the judgment of “*A.K Goplan case*” was bad in law. Later on, the judiciary rectifies its mistakes in “*Maneka Gandhi case*” and gave a wider interpretation of Article 21 and the dissenting opinion of Sir Saiyid Fazl Ali, JJ in the case of *A.K Goplan* became majority opinion in the *Maneka Gandhi case*.

Reference

1. First Amendment Act, 1951, S2.
2. First Amendment Act, 1951, S3 for cl. (2) (with retrospective effect).
3. First Amendment Act, 1951, S6.
4. First Amendment Act, 1951, S7.
5. First Amendment Act, 1951, S8.
6. First Amendment Act, 1951, S9.
7. First Amendment Act, 1951, S10.
8. First Amendment Act, 1951, S11.
9. First Amendment Act, 1951, S13.
10. First Amendment Act, 1951, S4 (with retrospective effect).
11. First Amendment Act, 1951, S5.
12. First Amendment Act, 1951, S14.
13. AIR 1950 SC 27.
14. Third Amendment Act, 1954, S2.
15. Fourth Amendment Act, 1955, S14.
16. AIR 1950 SC 124.
17. AIR 1951 SC 226.
18. AIR 1952 SC 12.
19. AIR 1952 SC 350.
20. AIR 1954 SC 170.
21. AIR 1954 SC 217.
22. AIR 1955 SC 781.
23. AIR 1950 SC 12.
24. AIR 1950 SC 12, at para 1.
25. AIR 1950 SC 12, at para 1.
26. AIR 1951 SC 226.
27. *Jagwant Kaur v. State of Bombay*, AIR 1952 Bom 461.
28. AIR 1951 SC 226, at para 15.
29. AIR 1954 SC 170.
30. Section 31(5) of the Constitution of Indian - Nothing in

clause (2) shall affect - (a) the provisions of any existing law other than a law to which the provisions of clause (6).

31. AIR 1954 SC 217.
32. AIR 1955 SC 781.
33. AIR 1955 SC 781, at para 2.