Indian Judicial Approach : The Literal and Liberal Approach of Laws and Factors Affecting a Judgement

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The three organs of the government which we know as the executive, the judiciary and legislature represent the people and their will in our country and are responsible for the smooth running of a democratic government in our society. The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government. The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch. The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it. Powers are separated into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.[2] But in India since a long time it has been witnessed that the Judiciary system has just not limited itself to the direct interpretation of laws and statutes laid down by the legislation but has shifted its role to more of a liberal interpretation which means what the author of the law would have reasonably intended while making that particular law giving a more broader coverage or more inclusive application of statutory concepts. Though the basic idea of delivering Justice does not deviate only the procedures of coming up to the conclusion depends on the facts and situations of any case. A better understanding of both the approaches and situations/factors affecting any judgement can be understood from two very important and landmark cases in the history of India, *P V Narasimha Rao vs. State*[3] and *Maneka Gandhi vs. Union of India*[4].

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[2] The Separation of Power- An Overview, National Conference of State Legislatures.

[3] P V Narasimha Rao vs. State [(1998) 4 SCC 626] (India).

[4] Maneka Gandhi vs. Union of India [(1978) AIR 597], [(1978) SCR (2) 621] (India).

P V Narasimha Rao, popularly called "modern day's Chanakya" for being a visionary and steering in tough economic and political reforms at a time when India was going through one of the severest economic crises, ascended into Prime Ministerial office as the 9th Prime Minister of India at a time when India was stuck at its worst phase of economic turmoil. His keen foresight had initiated India to a path of liberalization, the ripples of which are felt by the country till date.[5]Apart from the huge economic liberalisation, Narasimha Rao was also known for the huge corruption case, P V Narasimha Rao vs. State; where the court took more of a literal approach of the laws and statutes laid down to prevent corruption rather than the purposive approach.

It was in the year 1991, the then Member of Parliament and Prime Minister of India, P.V. Narasimha Rao formed a minority government which remained fourteen members short to form a majority in the Lok Sabha. Two years later, in the year 1993, as it was alleged that Harshad Mehta paid an amount of Rs. 1 crore to Prime Minister Narasimha Rao as bribe in the name of election fund for the 1991 Lok Sabha elections[6] and this allegations led the government to face a no-confidence motion which it somehow managed to defeat by a support of 265 members against 251 members. It was after three years in 1996 when one of the leaders of Jharkhand Mukti Morcha (JMM), Shailendra Mahato, who voted against the no-confidence motion, confessed that he along with other four leaders of JMM had accepted bribes of 30 lakhs each by Prime minister NarasimhaRao to vote against the no-confidence motion[7] and a FIR (First information Report) was filed with CBI alleging a criminal conspiracy to which certain M.Ps of JMM and Janata Dal(A) who agreed to and did receive bribe from Prime Minister Narasimha Rao to vote against the no-confidence motion. Subsequently a criminal prosecution was launched against them under the Prevention of Corruption Act, 1988 and under section 120-B of the Indian Penal Code. The charged also filed a petition in the Delhi High Court seeking to quash the

[5] Adrija Roychowdhury, P.V. Narasimha Rao: 10 things you did not know about "modern day's Chanakya, The Indian Express.

[6] The Indian Express: June 17, 1993

[7] India Today: February 15, 1996.

charges but the petition was dismissed. Hence the appeal was heard by a bench of three learned judges and then referred to the Constitution Bench.

Now the two issues that arise in the case are (a) Does Article 105 of the Indian Constitution provide any impunity to a M.P. from being prosecuted for an offence of offering or accepting a bribe? (b) Can a M.P. be considered as a "public servant" falling under the range of the Prevention of Corruption Act, 1988?

The constitutional bench gave the decision that the accused M.Ps were entitled impunity from being prosecuted for the offence involving bribery and criminal conspiracy under Article 105(2) of the Indian Constitution. The judgement was given by a majority of three to two on the basis that the case did not have support of precedents which can prove that the M.Ps, who agreed to take bribes, acted in discharge of their official duty as such offences have no association between the offence and the duties of a public servant. Thus taking an example of the judgement from *Satwant Singh vs. State of Punjab*[8]where the constitution bench said that some offences by their very nature cannot be regarded of being committed by a public servant while acting in discharge of their official duty as a public servant only acts in discharge of his official duty if his act lie within the scope of his official duty[9]. What can be understood from the above judgement that the majority judges vaguely took the literal interpretation of the provisions defined under Article 105(2) of the Indian Constitution as it exempts any proceeding against a M.P. for anything said or an vote given to any committee in the Parliament and it does not talk about or make accepting bribe legal. And an M.P. in all senses and criteria comes under the term public servant taking in consideration the defined powers, privileges and immunities and Section 2(c) of the Prevention of Corruption Act, 1988 thus any indulgence in such practice should be considered as illegal and the charge should undergo criminal prosecution[10].

[8][(1960) 2 SCR 89]

[9] H.H.B. Gill vs. The King [AIR 1948 PC 128]

[10] L.K. Advani vs. CBI [1997 RLR 292]

Now in a similar case in *U.S. vs. Brewster*[11]where a former United States Senator and a Member of the Congress was charged with accepting bribery. The district court first dismissed the charges on the basis that the Speech Clause of the Constitution exempted a legislator from any prosecution. Now the United States filed an appeal in the Supreme Court of United States. Chief Justice Burger in this case said that the Speech and Debate Clause serves the purpose of protecting the independence of legislative branch and to preserve the legislative integrity but it should not be extended in a way that we start considering legislative members as "super-citizens" and exempt them from any criminal prosecution or criminal liability and it was held that taking of bribe even though for a purpose of influencing one's official conduct, will still amount for criminal prosecution . Also as stated in Halsbury's Law of England that a Member of the House of Lords or the House of Commons except in relation to anything said in a debate in the Parliament, they are subjected to ordinary course of criminal justice and the Parliamentary privileges won't apply to criminal matters[12]. Now these are few dimensions which are missing in the judgement of the P V Narasimha Rao vs. State case as in the U.S. vs. Brewster, Senator Brewster took bribe to influence his performance a bit whereas in the P V Narasimha Rao case bribe was exchange between a large group of M.Ps which I believe is a more severe act of corruption as compared to Senator Brewster case.

Although the trial courts did punish the bribe givers liable under Section 7 of the Prevention of Corruption Act, 1998 amounting to a imprisonment which shall be no less than six months which may be extended to five years and not the bribe takers taking in account that there was no authority competent enough to remove an M.P. and grant sanction to prosecute him as also provision under 19(1) of Prevention of Corruption Act, 1988 which states that "No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with previous sanctions", and to prosecute them a provision had to be made by the Parliament amending few laws.

[11] [(1972) 408 US 501]

[12] Vol. II (1) Para 37, page 40.

However I believe that though the Indian constitution and various provision were misled, misused, misinterpreted but considering the very fact that holding the bribe takers liable to would have resulted in opening a can of worms for M.P. as we know that the Indian Constitution does not give the power even to the President of India to remove an M.P. and only a resolution passed by the Parliament or either of the houses against the M.P. for the breach of the parliamentary privileges provided to him/her and taking in account the current political scenario of our country, India , every parliamentary meeting would have been subjected to passing resolutions against M.Ps with false charges just because they didn't support the greater community or did not vote for the comparatively stronger group quashing down the very legislative integrity of our country. Also punishing the bribe takers to just on the basis of a confession I believe was unjust as on March 15, 2002, The Delhi High Court set aside the trial courts judgement sentencing former Prime Minister P V Narasimha Rao and other bribe givers and acquitted them as the Delhi High Court found material contradiction and improvements in Shailendra Mahato's statement on which the CBI had built up their case[13].

Now having a look at the Maneka Gandhi vs. Union of India case we know that the landmark judgement of this case has played a very significant and vital role in the transformation of the judicial review and approach on Article 21(Right to life and personal liberty) of the Constitution of India.

The basic facts of the case are that the petitioner, Maneka Gandhi was issued a passport on June 1, 1976 under the passports Act, 1967. Few months later of July 4, 1977 the petitioner received a letter from the Regional Passport office, New Delhi intimating to her that it was decided by the Government of India to impound her passport under section 10(3) (c) of the Passport Act "in public interest" and she was required to surrender her passport within 7 days from the receipt of that letter. The most widely accepted theorem to this is that it was after the National Emergency when Janta Party came in power. Maneka Gandhi, founder- editor of 'Surya' magazine started using the magazine as a platform to improve the image of the Congress Party and discredit the leaders of Janta Party. The most notable instance

[13] The Hindu: March 16,2002

was when few photographs were published in 'Surya' showing the then defence minister Jagjivan Ram's son engaging in sexual intercourse with a Delhi University student. And it was the government only which impounded her passport for the defamatory publication[14]. When asked for reasons, the Ministry of External Affairs decided not to furnish her a copy of reasons for making of the order.

It was held that the section 10(3) (c) through which the passport was impounded conferred unguided and unconstrained powers on the Passport Authority and also in the Central government as the order was passed by it only without providing a proper reason on appeal was violative of the equality clause under Article 14 of the Constitution of India. Adding to this Justice Bhagawati said that Article14 is the founding faith of the constitution and also the pillar on which rests our democratic republic and should not be subjected to any narrow interpretation. The court further observed that fundamental rights should be interpreted in a manner to expand its ambit and reach rather than concentrating on its literal meaning and construction. It was also held that though Article 21 provides that no person shall be deprived of his life or personal liberty except in accordance with procedure established by law but the procedure established by law has to be just, fair and reasonable. Thus any law having a prescribed procedure depriving the "personal liberty" of an individual should fulfil the requirements of Article 14 (equality clause) and Article 19 (freedom clause) also. The court finally held that the right to travel and go outside the country also comes under "personal liberty" guaranteed by Article 21of the Constitution of India and Section 10(3) (c) of the Passport Act is also volatile of Article 21 since it does not prescribe 'procedure' within the meaning of that Article and the practised 'procedure' was absurd.

The Maneka Gandhi case was not the first time that the more ambit and wide approach of 'personal liberty' was taken. The *A.K. Gopalan vs. State of Madras*[15] was the first time when the court meaningfully examined and interpreted the fundamental rights especially Article 19 and Article 21 of the Constitution of India. The conclusion of this case help two major points that Article 19, 21 and 22

[14] Zia Mody, 10 Judgements That Changed India, Page no.25.

[15] [(1950) AIR 27], [(1950) SCR 88].

(detention clause) are mutually exclusive and unless the state arrested a person for entering a territory, making a speech or holding an assembly, the arrest had to be examined under Article 21. Second was that a 'Law' affecting life and liberty cannot be declared unconstitutional just on the grounds that it lacked natural justice or due process .This case is also significant as the due process clause from Article 21 was replaced with 'procedure established by law' borrowed from the Japanese Constitution[16].

A more expansive approach of law was seen in the Francis Mullin[17] case, the Court, whilst acknowledging that economic considerations would play a role in determining the full content of the right to life, held that the right included the protection of human dignity and all that is attached to that: 'namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms'.[18] This was the phase when the Courts would no more enquire further into the soundness of law and its effects on individuals were taken into consideration.

Like the judgement given in the P.V. Narasimha Rao case, which is criticized by everyone till date as both the bribe giver and the bribe takers were not convicted, the judges took a very narrow and purely literal approach of the laws and provisions which is the general criticism but what we don't see or fail to understand that convicting both the Prime Minister of India and a Member of Parliament, both very important constitutional posts, just on the basis of a confession and a hypothesis is not just, fair and reasonable. Also the Judges saved the very sense of legislative immunity of our country and saved both the legislative powers and power of the Parliament from getting misused and abused. And also if we consider the role of Judiciary according to the Separation of Power theorem, which is to interpret the law the way it is, the judgement and the way the Judges interpreted the provisions was justified. Similarly what can be seen in the Maneka Gandhi case is that the era, just after the emergency, when Janata Party came into power, India was nothing but like

[16] O.HOO PHILIPS and PAUL JACKSON, CONST OF ADM. LAW 28-29,Page no. 386-387(1987).

[17] Francis Coralie Mullin vs. The Administrator, Union Territory of India and others, [(1981) SCR (2) 516].

[18]Liora Lazarus and Nigel Bowles, Reasoning Rights: Comparative Judicial Engagement, Page no.344.

a stage screening a typical hindi film's matinee show which was full of drama and entertainment as the new government rather than regaining what was lost during the emergency was more concerned about taking revenge from the former Prime Minister, Mrs. Indira Gandhi. It was quite evident as first Indira Gandhi was arrested by CBI, as directed by the then Home Minister Chaudhary Charan Singh, on the grounds of corruption. According to former CBI joint director NK Singh, Mrs. Gandhi was arrested in 1977 in connection with the "jeep scam" case but the next morning when she was produced before the court, she was unconditionally released immediately as there was no substance in the charge against her. Second instance was when the Janata government under Morarji Desai had to invoke Parliament's privilege to accomplish their objective of putting Mrs. Gandhi behind the bars and in December 1978, she was again arrested for the same alleged scam. Her son Sanjay Gandhi was also sent to jail along her. Again after a week both of them were released.[19]It was quite foreseeable now that after targeting both Indira Gandhi and Sanjay Gandhi the Janata government's next target was the daughter-in-law of Indira Gandhi and wife of Sanjay Gandhi, Maneka Gandhi as she too was trying to improve the image of Indira Gandhi in the eyes of public through her magazine 'Surya'. And I am pretty sure that the judges, while redefining the fundamental rights especially Article 21 in the Maneka Gandhi case, kept the above mentioned factors in mind so that individuals who said or published anything against the ruling government for public good were not penalized, exploited or any of their fundamental / basic rights or freedom was infringed, like Right to Travel Abroad and Freedom of Speech and Expression in this particular case, as it would kill the very idea of democracy. Also according to the Separation of Power theorem, when one organ exceeds its power and limits the other organs the supposed to keep a check on it and try to keep the situation balanced. So the Judiciary in the Maneka Gandhi case prevented the concentration of power in the government and kept individual rights protected by giving a judgement in favour of the petitioner,

[19] D P Satish, how jailing Indira Gandhi gave her a new lease of life and sank the Morarji Desai Government: News18.com, December 19, 2015.

Maneka Gandhi which was a liberal and expansive interpretation of laws and statutes and , keeping in mind the above mentioned factor, was justified.

What can be concluded is that the primary focus of the Judiciary, consisting of Courts and Judges, is still the same i.e. to serve justice but only the approach has changed depending on and keeping in mind the facts of the case and the situation that arose or may arise thereafter. Judges most of the times have to keep in mind several important factors, like legislative immunity and public's faith on legislation in the P.V. Narasimha Rao case and protection of individual rights and freedoms and restricting the government in gaining total and absolute control which is against the very idea of democracy, which *prima facia* may not be visible or reasonably foreseeable at that very moment but a firm decision is required on it too to prevent opening a can of worms for future sinners and wrongdoers.