

- Rethinking Communal Violence Bill - Ashutosh Varshney.
- Sarveksh
- seminars magazine

5/12/14

Objective of Communal Violence Bill.

- To strengthen secular credential of Indian state.
- To stop communal riots in the country

The guiding philosophy behind the bill.

- If administration is proactive such incidents can be prevented and in case such outbreak takes place, should be stopped within 4-5 hrs.

Paul Brass

In his work titled relations between Hindus 'Production of Hindu & Muslim Violence in Contemporary India', he has suggested that these incidents are not sporadic events, but "institutionalised riot machinery" exists in the country. He has given 3 stages of communal riots in the country.

1. Preparatory Stage / Rehearsals.

He mentions "fire tenders". Their task is to keep the tensions alive. Normally they become proactive during critical periods, e.g. as elections come near.

2. Activation Stage

In As. there are conversion specialist. They will go for active mobilisation & will convert potential rioters into active rioters. Most of the persons are from the poor & uneducated class. Such persons

are even socially / publically rewarded.

3. Interpretation Stage.

At this stage, media, genJournalists, party spokesmans, intellectuals give the interpretations of the causes behind the incidents & most of the times tend to undermine the real causes, because everyone loves a riot.

Analysis of Paul Brass's work.

Paul Brass's analysis shows that if govt wants, they can prevent such incidents to happen because there are enough indications.

Features of Communal Violence Bill

- To equate communal violence event as an internal disturbance. Art 355.
- To hold bureaucracy accountable
- To take proactive actions
- To address the vulnerability of women.
- To create a mechanism for relief & rehabilitation.

Controversies attached to the people. bill

- Bill was 1st presented in 2005 & since then there have been many amendments in the Bill.
- Earlier it was based for the prevention &

protection of minorities, SCs, & STs.

According to Ashutosh Varshney, it is based on the assumption that majority in India is communal & minority can do no wrong.

Now the bill has become community neutral.

- It puts entire responsibility on the bureaucracy. In case communal violence erupts, it will be considered that the officer has not performed his duty.

It is good to ensure accountability of the officials but above approach may impact the morale of bureaucracy which are already under the political pressure. Govt. has to look for other reforms also. One urgent reform is Police reform, reform of Criminal Justice system, minimizing political interference in the tasks of bureaucracy.

- According to the critics, bill may not pass the test of Basic Structure on 2 grounds

1. Equality before Law

2. On federal principles

1. In its original form, bill makes a difference between the rape victim of minority community & majority community.

2. Public order is a state subject. State thinks that it is an encroachment in their domain.

Earlier bill had provision for suo motu deployment of Central forces in the state.

Now this has also been changed.

- Bill prescribes a minimum national level

double jeopardy.
Atrocities
against
SC
ST
Communal
Riots
BNI

compensation & relief. States object to this aspect of the Bill. It even goes to the extent that in case a state is not able to provide the amount fixed by national govt., it will be released directly by the national govt. which will be later on adjusted from the amount given to the states on the recommendations of the Finance Commission.

- Earlier it proposed to create a National Commission for Justice & reparation. Now it has been accepted that National Human Rights Commission can look after the task.
- Earlier the Bill had a provision by which a person who has been accused has to prove his innocence.

On above grounds there has been an opposition to the Bill. The Bill aims at stopping the Communal riot which is just a manifestation of wider dynamics of Communalism. Communal riots have to be prevented but remedy cannot be worse than the disease. We don't have to tackle only the riots but factors which sustain such ideologies. There should be a strict ban on religious parties, use of religious symbols & complete coseparation betⁿ religion & electoral politics.

Role of religion in politics in India

Religion is not always the negative force. There has been a close association betn religion & politics since beginning.

In ancient India, there was no strict separation betn 'dharma' & 'danda'.

Even persons like Gandhi donot support the idea of separation of religion & politics. However in India we have seen the negative consequences of mixing of religion & politics.

Gandhian approach is too idealistic.

In practice the mixing of religion & politics take the shape of Communalism.

- The British historians have tried to establish that Indian society has been communal from the very beginning. According to Romilla Thapar, there may have been few incidents of sectarian conflicts but it was not the determining feature of Indian society.
- There are 4 theories / schools of cause of communalism in India.

1. Essentialism (Louis Dumont)

Hindus & Muslims are two antagonistic communities & will always be at odd with each other.

supported by

Syed A. Khan

Iqbal

Jinnah

hans j 2
not on thom

- 1907 Act

2. Instrumentalists (Bipan Chandra)

He holds elites responsible for using religious sentiments for political ends.

3. Institutionalism (Asghar Ali Engineer)

According to him, it is a competition for

political & economic power that is responsible for communal riots.

4. Constructivists

They believe that there is no real conflict but communities have nurtured certain beliefs about each other.

Origin & development of Communalism in India

According to Romilla Thapar, Communalism was solidified by Britishers & they raised local conflicts into a national phenomenon.

S.A. Khan
considered as
father of
2 nation
theory
by Jinnah

Key developments

- Revolt of 1857, where Britishers held Muslim responsible & started promoting Hindus.
- Sir Syed Ahmad Khan asked Muslims not to join INC after Hindu - Urdu controversy.
- Partition of Bengal to stem the tide of nationalism.
- Anti-partition movement and the rise of Muslim League (founded in 1906 at Dhaka) which opposed the unification of Bengal.
- Swadeshi Movement

Extremist leaders like Tilak started using Hindu religious festivals like Shivaji & festival & Ganapati festival.

- In 1905 by Morley-Minto reforms, British state gave formal recognition to the Muslims as a separate community.
- In 1915, Savarkar founded All India Hindu Mahasabha

against the actions of Muslim League

- Savarkar gave his theory of nationalism, the so called Hindutva. According to Savarkar, person's fatherland & spiritual land has to be one. He further held that Hinduism is a way of life & all those who live in India are Hindus.

- Iqbal responded to Savarkar's Hindutva theory by the concept of Muslim Ummah. He held that territorial nation is un-Islamic.

Islam believes in the commonwealth of followers of Islam. He also held that it is essential for Muslims to follow Shariat Laws.

- In 1919, Britishers have extended separate Communal electorates to other minorities also.

- In 1932, in Communal Award they even tried to divide the Hindu Community on caste lines.

All such developments finally culminated into the creation of Pakistan, one of the worst tragedy in human history.

Religion & politics after independence.

- 1st Phase upto 60s

Though there were no incidents of communal riots, yet the bitterness of the partition continued. In 1951, RSS formed its political representative 'Bhartiya Jansangh'. Since then there has been a debate on Indian Secularism.

Bhartiya Jansangh had strongly assertive agenda & its concept of nationalism was based on European concept of nation state. They did not support Nehruvian, multicultural model. Their slogan was 'Hindi, Hindu, Hindustan'. The 1st major riot during Nehru's time was at Jabalpur. After Jabalpur riot, Nehru laid the foundation of National Integration Council to defeat communal, regional & casteist agenda. In 60's itself India witnessed many riots in Ranchi, Nagpur, Ahmedabad, Aligarh.

Since then there has been an increase in no. of communal riots in the country & the no. of deaths. Initially communal riots were taking place in urban areas but now it has reached even to the rural areas.

- Beginning of new phase of Communalism in 80's

Book: *Saffron Wave* by Thomas Hansen

T.H. has traced the beginning of the new phase of communalism since 80's & has explained the rise of BJP. From a party with 2 seats in 1984 to 25 seats in 1989 when BJP's support from outside was essential for the National Front Government.

In 1996, BJP could form the govt for 13 days

Kham Coalition Gujarat
Kshatriya
Harnjan
adivasi
muslim.

- BJP led NDA again came to power for 13 months (98 - Oct 99) & then finally NDA got 303 seat & was able to run the country for full term (Oct 99-2004).
- Presently BJP has 282 seats & NDA has 336 seat out of 543 elected seats.

According to C.P. Bhambri, the politics of caste promoted by Congress has led to the politics of religion. From his point of view caste has been a bigger threat because casteism strengthened communalism.

According to the critics, Nehruvian approach to communalism has not been balanced.

He hated both type of communalism, but for Nehru minority communalism was a lesser evil & majority communalism a bigger evil, which he equated to fascism.

According to Christophe Jaffrelot, the politics of caste & religion go hand in hand.

Congress vote bank calculation focused on the lower castes & minorities. Gujarat is a classical example how a secular society has been converted into a polarized society. The so called KHAM Coalition (Kshatriya, Harnjan, Adivasi, Muslim) led to the use of religion by other party to consolidate its vote bank.

Some key events of 80's & 90's.

- 1984 Anti Sikh riots in Delhi & Congress coming to power with absolute majority.
- Govt. gave consent to the opening of Ramjanmabhumi gate. This has alienated Muslims from Congress.
- In order to regain the support of Muslims, govt passed the law that nullifies SC's direction in Shah Bano Case.
- The double appeasement policy proved counterproductive.
- It has also raised the insecurities of BJP & it strengthened its commitment to consolidate Hindu votes.
- BJP passed a resolution for the establishment of Rammandir.
- V.P. Singh started facing challenges in various fronts, primarily in economic sphere. Crisis in Kashmir. He thought to use caste card & announced the implementation of Mandal Commission's recommendations.
- This has further strengthened BJP's will to have more assertive agenda to consolidate Hindu votes. BJP started Rath Yatra.
- All these things culminated into demolition of Babri Mosque which later on led to the Mumbai riots. Thus there has been the heightened ^{antagonism} ~~antagonism~~ between 2 communities & since then we have seen chain of riots.

Present scenario in the country

According to Christophe Jefferlot, Nehruvian consensus is breaking down, Hindu nationalism is on rise, minorities & secularism is on defensive side, rule of law is on trial, politics & society is less cohesive & politics is more active.

Views of T. Hansen

The reason for rise of Hindutva is the neglect of the middle class. The It reflects the anxiety of large & amorphous middle class. He also associates economic globalisation. Indians are looking for the symbols on which they can build their pride.

Fundamental Rights

Art. 12 ~~4-13~~ - Defⁿ of state

Art 13 - makes Judiciary guarantor of FRs.
Judicial Review.

Art 14-18 : Right to Equality

Art 19-22 : Right to Freedom

Art 23-24 : Right against exploitation

Art 25-28 : Freedom of religion

Art. 29-30 : Cultural & educational rights of minorities.

31A, 31B, 31C : grants protection to certain laws.

31B : creates IX schedule

31C : establishes balance betⁿ DRs & FRs.

Art. 32 : Right to Constitutional Remedies
soul of Chapter of FRs.

Art 33 : Certain services w.r.t. which
Parliament can modify the rights

Art. 34 : Impact of Marshall Law on FRs.

Art. 35 : Power of Parliament to make law
to determine the punishments for
acts treated as offences under part III.

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Art. 13

- Doctrines of interpretation employed by Judiciary for the purpose of Art. 13.
- Doctrine of Basic Structure.
- J Vs E over FRs.

Scope of Art. 13

It gives power of Judicial review to the Judiciary which makes Judiciary the guardian of FRs.

What is Judicial Review?

It is a power of Judiciary by which it can declare the Act of Legislature or Executive null & void if it is inconsistent with the Constitution.

Why Judicial Review? (JR)

It is essential to maintain the Rule of Law & to check the arbitrary actions of govt. So essential feature of all Democratic countries.

Scope of JR under Indian Constitution

Since India is a Democracy, it has unwritten Constitution with Chapter on FR & Federalism, Judiciary has very comprehensive power of Judicial Review, though the term is not used explicitly.

Art 13 specifically deals with the power of JR in context of FRs.

Doctrines of interpretation applied by Judiciary

U/A 13, Judiciary has power to review both Pre-Constitutional laws as well as the laws made since commencement of the Constitution.

1. Doctrine of Eclipse

Initially was limited to pre Constitutional laws but since *Ambika Mills Case* have been applied for even post constitutional laws. As per doctrine, laws do not get killed but they come under the shadow of FRs. In a situation where Constitution is amended & the said law is no more inconsistent it comes out of the shadow & becomes valid.

2. Doctrine of Severability

The entire law is not declared invalid. Only that part of the law which is inconsistent is declared invalid.

However if in case of removal of invalid part, the remaining law has no relevance, the entire law will be declared invalid.

3. Doctrine of Waiver

It is not applied in Indian situation.

It is applied in U.S.A. but not recognized in India. In U.S.A. because FRs are absolute & state cannot limit these rights, it is only the person on his own

can waive off his rights in wider interest.
In case of India, there is a possibility of misuse of Doctrine of Waiver.

4. Procedure established by law.

It is mentioned in Art 21. Judiciary can challenge a particular law on the ground of procedural ^{infirmary} ~~infirmary~~, not the content of the law.

5. Doctrine of Due process of Law

In A.K. Gopalan case, Supreme Court did not recognize the doctrine but in Maneka Gandhi case it has adopted the doctrine.

6. Doctrine of Prospective overruling

Borrowed from U.S.A. prospectively.
1st time applied in Golaknath case.

7. Doctrine of harmonious construction.

This is applied in case of conflict between the laws related to Directive Principles challenging FRs.

8. Doctrine of Basic Structure

It, determines the extent of amending power of Parliament.

Judiciary adopts following principles.

1. Presumption in favour of Constitutionality of the law.

FRs. DP.
Liberalism Socialism.

2. No Suo motu application of Judicial Review.
3. Judiciary may go for liberal or literal interpretation of law.
4. In Maneka Gandhi case, Judiciary has accepted that FRs are integrated scheme & should not be seen in a compartmentalised manner.
5. In Maneka Gandhi case, SC has held that Art. 14, 19 & 21 form the 'Golden Triangle' & any amendment or law has to pass this test also.

Doctrine of Basic Structure

Scope of the Doctrine

- It is applied to examine the validity of constitutional amendment.

Origin of the Doctrine of Basic Structure.

- In context of the dispute betⁿ Legislature and Executive w.r.t. the amendment of FRs.

Evolution of the Doctrine

- Champakam Durlairajan case

The 1st case that deals with the dispute betⁿ FRs and Directive Principles.

The law made to implement the objectives of Art. 46 came in contravention to Art. 14, 15.

View of Judiciary

By passing an amendment, FR can be made limited & not by ordinary law.

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View of Judiciary

By passing an amendment, FR can be made limited & not by ordinary law.

This resulted into 1st Amendment Act.

- Shankari Prasad vs Union of India case

Here the constitutional validity of the 1st Amendment Act was challenged & the court was to determine the scope of amending power of Parliament.

Judiciary was to settle the question of the term law used in Art. 13(2). Judiciary clarified that the term law used does not apply to amendment. Thus upheld the validity of 1st Amendment Act.

- Golaknath case 1967

7 states
non-congress govt.

Golaknath case is treated as 1st case of Judicial Activism. With prospective overruling SC held that FRs cannot be made limited even by bringing amendment. SC was criticised for negative activism, activism in favour of elite section of the society.

- 24th Amendment Act, 1971

Example of Executive's assertiveness.

It has added clause 4 in Art. 13.

Art 13(4): Nothing in Art 13 applies in case of amendment.

Art 368(3): Nothing in Art. 13 applies to amendment.

It changed the title of Art. 368.

~~It earlier~~ it was only Procedure of Amendment.

Now it is Power & Procedure.

It made mandatory for President to give assent to the Amendment Bill.

- 25th Amendment Act 1971

It added article ~~31~~ 31C, by which any law giving effect to the objectives given in 39(b) & 39(c) shall not be challenged on the ground that it takes away or abridges Art 14, 19 & 31.

- Keshavanda Bharti case. 1973

The Constitutional validity of 24th & 25th C.A. Act were challenged. Judiciary has upheld the validity. Judiciary has given The Doctrine of Harmonious Construction.

In context of 25th C.A. Act, SC clarified that attempt should be made to establish an equilibrium betⁿ FRs and DPs. All parts of Constitution are valid.

W.r.t. 24th C.A. Act, SC gave the doctrine of Basic Structure. SC held that there are no limitations on the amending power of Parliament except that it cannot violate the 'Basic Structure'.

Logic of the Basic Structure

It made a difference between Amendment & rewriting. Constituent Assembly reflects "original will" whereas

Parliament represents political sovereignty. Even with unanimity Parliament cannot claim an absolute right to change the Constitution.

Analysis of the judgement

- Judgement has been controversial from the very beginning. Out of the 13 Judges bench 7 favoured the doctrine & 6 did not favour.
- Judgement is called as teleological because Judiciary already decided that autocratic actions of the govt. have to be stopped. To fulfil this objective, they have created the doctrine of Basic Structure. The Doctrine of Basic Structure makes Indian Supreme Court most powerful Court in the world. Even U.S. Supreme Court does not have power to challenge the amendment.

Criticism of Doctrine of Basic Structure

- It has been criticised by academicians as well as political class.
- Govt. took it as an instance of Judicial Activism where Judiciary is trying to establish itself as the Supreme institution. Govt. has taken extreme steps.
- It has not followed the convention of appointing the senior most judge as the CJI. It appointed Justice A.N. Ray who has given verdict against the judgement.

Govt. passed 42nd C.A. Act 1976 diluting the powers of Judiciary. It has added Art. 368(4) & 368(5)

Art. 368(4)

> No amendment of the Constitution shall be called into question in any court on any ground.

Art 368(5)

> For removal of doubts it is to be clarified that there shall be no limitations on the amending power of Parliament.

Responses of academicians.

- Most of the constitutional experts found that judiciary is trying to assert ultimate powers in itself.
- It is treated as counter-majoritarian attempt. Judiciary, the most elitist of all institutions and least accountable cannot undermine the power of Parliament explicitly mentioned in the Constitution.
- Judiciary should give cognisance to the letter of the Constitution rather than the spirit of the Constitution.
- Judiciary has not given a full inventory of what constitutes Basic Structure. Thus it has created uncertainty w.r.t. the fate of particular law/amendment.

Balance of Power

Arguments in favour.

Leaving aside the academic debate, the

democracy > policy paralysis.
it cannot be excuse.

Doctrine of Basic Structure has positive implications for Indian democracy. It checked the authoritarian tendencies. It is one of the reason for survival of Indian Democracy & democracy not meeting same fate as in other third world countries. It could establish the rule of law in the country. Though judiciary is criticised for not giving the complete list of Basic Structures but retaining the flexibility is a pragmatic approach.

Application of Doctrine of Basic Structure.

- 1st application in Minerva Mills case where SC has asserted that Judicial Review itself is a Basic Structure & Art 368(4) & (5) are null and void.
- Application
- Application of Doctrine of Basic Structure w.r.t. 9th Schedule

In I.R. Coelho case, SC clarified that 9th schedule is not a 'black hole' of the Constitution. The Doctrine of Basic Structure will be applied. However it will be applied for laws put into 9th schedule after 24th April 1973.

◦ Whether the Doctrine has outlived its relevance?

Coalition politics, strengthening of democracy & active civil society act as a check on

the possibility of rise of autocratic governance. Hence it is suggested that the Doctrine has lost its relevance.

However it cannot be supported & the Doctrine should continue as a safety wall.

Right to Equality

- Discuss the idea of equality given in Part III of Indian Constitution.
- Critically examine the affirmative action policies of Govt. of India.
- Critically examine the reservation policy followed by Govt. of India.

Idea of Equality

- It establishes formal equality, i.e., equality before law.
- It also establishes differentiated equality. Thus permits state to go for positive discrimination in favour of those who are the disadvantaged section.

Right to Equality on 1 hand prohibits discrimination among the citizens but at the same time enables the state to go for positive discrimination in favour of

- women & children
- Social & educationally backward classes of citizens
- SCs, STs & OBCs.

An Reservation Policy / Quota System

Reservation Policy has been adopted as one of the strongest measures of affirmative action in India. Presently reservation is applied in

- Parliament & Assemblies for members of SC & ST communities on the basis of population
- A bill is pending that introduces Reservation for women in Parliament & Assemblies.
- Reservation policy is also existing for the members of SCs, STs & OBCs w.r.t.
 - Public employment
 - Admission in Higher educational institutions both govt. & private, aided & unaided ^{except minority institutions}
- Under Right to Education Act, 25% of the seats have been reserved for economically weaker sections.

- Reservation for members of SC & ST
- History of Reservation for communities & women at all level in local bodies. Reservation for OBCs in local bodies is a optional measure.

History of Reservations in India

Reservation policy has its origin in colonial India. It was followed in both British India & many Princely states. It was the product of social movements among the backward sections of the society.

Initially it was limited to education & employment, but by Ramsey MacDonald since Poona Act also introduced in political representation.

- After independence

There was a debate in the Constituent Assembly w.r.t. the continuation of reservation policy on the basis of caste. Constitution of India has a vision for a secular, & caste free India. Nehru was critic of Casteism & Communalism. Ambedkar supported the continuation of reservation for the weaker sections.

Approach of Constituent Assembly

Casteism is an evil with which we have to get rid off but it cannot be done simply by pushing caste under the carpet. Caste based deprivations need to be recognized & special measures have to be taken.

Debatable issues in reservation policy.

- Should caste alone be the criteria for social backwardness & eligibility for special measures/reservation.
- Why not economic backwardness or class based criteria to be adopted
- The debate is on the extent of reservation.
 - Is it to be given in proportion of population or is it not necessary.

- Should reservation be also extended to super speciality jobs.
- Reservation in promotions. with consequential seniority
- Reservation & efficiency in administration
- Is reservation the most relevant policy option or priority has to be given to land reforms, poverty alleviation, employment.
- Reservation in private sectors
- Should creamy level criteria be introduced for SC & ST communities also.
- Should it continue indefinitely or there has to be some time limit.

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- Govt. of India has introduced caste-based reservations since beginning & there has been challenge to this. SC in Balaji case held that caste can be one of the criteria but cannot be the sole criteria. However in Indira Sawhney case SC held that caste alone is the criteria. In e Indira, caste & class is same. There are problems in implementation of economic status based criteria. The reason is people do not disclose all facts related to their economic status. When Narsimha Rao govt. planned to introduce reservation on economic criteria, SC held it invalid. The reason is affirmative action policies like quota are meant for "historically disadvantaged" section or group, Individual cannot be the basis. e.g. A person belonging to Brahmin community has not suffered any historical disadvantage.

Extent of the reservation

- In Indira Sawhney case, SC held that reservation cannot go beyond 50% of the total posts except in very exceptional situations as exists in Jati Tamil Nadu. Reservation more than 50% is reverse discrimination.
- It is not necessary that reservation to be given in proportion of the population

equality
of opportunity
won't hold.

Reservation in super speciality jobs

- In Indira Sawhney case, no reservation in super speciality jobs. However in PGI Chandigarh case SC held that reservation in super speciality jobs are permissible and will not be detrimental. A
- Again in All India case on 18th July 2013, SC held that merit alone will be the criteria. In this context, govt. has submitted a review petition & SC has accepted the review petition to reconsider the judgement.

Reservation in promotions

- In Indira Sawhney case, reservation is only at entry level not in promotion.
- To nullify SC's judgement 77th C.A. Act introduced Art. 16(4A), B. by which reservation in promotion for SC & ST communities have been introduced.

- Ajit Singh vs St Punjab case.

SC upheld the validity of 77th C.A. Act, but held that 'catch up' rule will apply

Person job
back
lost
seniority.

- 85th C.A. Act. 2001

In order to nullify catch up rule, govt introduced promotion with consequential seniority. Person

- Nagrai case

Challenged the validity of 85th C.A. Act, S.C. upheld the validity but issued new guidelines. It has given 2 guidelines

1. Govt. has to provide verifiable data

efficiency - priv. sector
social justice - pub. sector.

that the caste is not adequately represented.

Reason: - Art. 16(4) mentions this

- It should not affect the efficiency of administration as required by Art. 335

Rajesh Kumar vs UP Power Corp. Ltd

Govt. of U.P. had gone for promotion overlooking guidelines in Nagraj case. SC has struck down that order. Govt. proposed 117th C.A. Bill.

- It is not necessary to collect the verifiable data.
- Limitations of Art. 335 shall not apply.

Is reservation the most relevant option.

- Andreae Beteille & Pratap Bhanu Mehta oppose the approach that reservation alone is the best policy. In the long term casteism and communalism is a threat to national unity. According to Pratap Bhanu Mehta, caste is the reality of Indian society but it is not the only reality. From the very beginning reservation in employment has been introduced in the Constitution, though it is not a FR & just an enabling provision. Yet all govt. have gone for introducing reservations & continuing with it. Before making going for reservation govt. had to go for land reforms, tackling of rural property, granting of right to education as a fundamental right.

It has resulted into a situation where benefits have been limited to the small section of the community primarily living in urban areas. Those living in rural areas remained disadvantaged. There have been backlogs as because of non availability of qualified persons.

Reservation in private sector

Why reservation in prt. sector ?

- Since the adoption of new eco. policy there has been a rolling back of state & many jobs have been created in prt. sector.
- Pvt. sector in India also gets many direct & indirect benefits of govt. services.
- Merit alone is hardly a criteria in prt. sector in India.
- Pvt. sector recruitments have been biased against the members of disadvantaged communities.

Arguments against

- It may impact the competitiveness of Indian economy.
- Pvt. sector cannot work on the same principles like public sector. They cannot have a system of permanent appointment & promotions in total disregard of performance. Pvt sector is not expected to carry the burden of non performing asset.

What should be done?

It is true pvt. sector gets many benefits from the govt. But introduction of quota may not be the right approach.

- Instead of quota Corporate Social Responsibility is a better approach.
- Govt. should impose some criteria or transparency in pvt. sector recruitment also in the interest for all.
- Like U.S.A., companies should be instructed to introduce diversity in workforce.
- Govt. should institute equal opportunity commission.

Creamy layer criteria

It has been introduced w.r.t. to OBCs.

It should also be introduced for the members of SC & ST communities. In the absence of creamy layer, class within a caste has emerged. The benefits are appropriated by the advanced section rather than those who need it the most.

Continuation of reservation on a permanent basis.

In principle reservation cannot be on a permanent basis. Such an approach is selfdefeating.

According to SC, it is an enabling policy.

The aim is to uplift the disadvantaged, & bring them at par with the advanced communities. If reservation is needed to continue as a permanent policy, it means it is a failure in uplifting the status of persons.

What should be the approach?

According to Yogendra Yadav & Satish Deshpande, any policy has to fulfil 4 criteria.

| article

1. Morally justified
2. Intellectually sound
3. Politically defensible
4. Administratively & financially viable.

Cultural emergenc
Salman Rushdie.
Views not news.

Art. 17. Abolition of untouchability.

Art. 18 Abolition of titles.

not by birth
federalism.

Right to Freedom.

Art. 19. Freedom of Speech & Expression

reasonable restriction.
Legis, not Exec.
J.R

Significance of Freedom of Speech & Expression

- In Romesh Thapar case, SC held that freedom of speech & expression is a bedrock of democracy, without free political discussions public education is not possible which is essential for proper functioning of govt in democracies.

Constitutional provisions

Constitution provides for freedom of speech & expression as a FR of citizens. It is not an absolute right. Constitution does provide reasonable restrictions. There are 8 bases of reasonable restrictions.

1. Security of state
2. Friendly relation with foreign state
3. Sovereignty & Integrity of India (16th C.A. Act. 1963)
4. Decency or morality
5. Contempt of court
6. Defamation
7. Incitement to an offense
8. Public order (1st C.A. Act 1951)

Actual state of the affairs

In recent times, it is believed that this is

one such right that has been increasingly diluted. The situation in India w.r.t. freedom of speech & expression is compared as 'cultural emergency' by Salman Rushdie.

- Some of the recent incidents of violation of freedom of speech & expression
 - The removal of Wendy & Dongiers' book 'The Hindus : An alternative history'.
 - Banning of Layne's book on Shivaji.
 - Banning the screening of Kamal Hasan's 'Viswaroopam'.
 - Destruction of Maghool Fida Hussain's paintings.
 - Penalization of 2 girls of Mumbai under sec. 66(A) of IT Act. for their remarks on closing of Mumbai on Bal Thakrey's death.
 - Sec 66(A) has also been used against many other persons including journalists, cartoonists.

Challenges to freedom of speech & expression

- New threats like terrorism
- Self appointed custodians of social morality
- Digital revolution

Reason for dissatisfaction

- Neither govt. nor judiciary in no. of occasions took actions to protect the freedom of speech & expression, gave primary to order & thus strengthened the hands of those who create such vandalism.

Problems related to sec 66 A of IT Act

- It has become very controversial & recently SC has ordered govt. to give clarity on the status of section 66A, whether govt. intends to amend it or continue with it.

What is Section 66A.?

It provides for punishment that can range from 1-3 yrs along with fine for sending offensive messages through computers, mobiles or any such gadgets.

Provisions are vaguely worded. It says that if any person sends any message which is grossly offensive or has a menacing character or sends an information which person knows is false, but for the purpose of causing annoyance, inconvenience, insult, enmity, etc.

Present status of Section 66A

- After Mumbai incident, govt. has issued a notification by which action can be initiated against the person only with the permission of senior rank Police officer.
- PIL has been filed in SC challenging the constitutional validity of the Act. section.

Not only above section but Section 153(A) of IPC 153B of IPC that deals with creating enmity among different groups or disturbing communal harmony. Sec. 295 & 295(A)

dealing with religious harmony have been under criticism. Police has abused these sections.

In recent times govt's central monitoring system & NETRA (Network Traffic Analysis) has also been criticised for violating freedom of speech & expression as well as right to privacy.

- Regarding freedom of speech & expression,

Naom Chomsky writes that, freedom of speech & expression means having respect for the views with which we may totally disagree.

- According to Benjamin Franklyn, those who sacrifice liberty for the sake of security will have none.

Freedom of Press

- Freedom of Press is recognized as implicit in Fundamental Right to freedom of speech & expression. SC has explained Freedom of Press & its components in various cases like Brijbhushan case, Indian Express case.

Freedom of Press means, there is no pre censorship on the Press, there is no govt. controlled media.

- Freedom of Press includes Right to access information, print, publish & circulate the information.

- This right is also not absolute & is subjected to reasonable restrictions.

Status of media in India

- Media reflects various types of crisis scenario, some of the dysfunctional aspects of media in India are
 - It is being monopolised by corporate houses.
 - There has been a loss of editorial freedom.
 - Increasing violence on journalists.
- As per the survey of 'Journalists Beyond Borders' India's rank is 140 out of 178 countries in the report. Freedom of Press index, even below Afghanistan and Qatar.
- There is excessive commercialization.
- Media distorts facts for the sake of sensationalism.
- Views are presented as news.
- For long media has left the common man and has become the echochamber of elites.
- Paid news, media trials and lobbying for commercial purposes are some of the other problems.
- Recently TRAI has presented certain recommendations to deal with the problems of Indian media and to introduce some regulations.
- At present the system of self regulation operates but it is proving insufficient. TRAI has suggested to create a new body with teeth as Press Council of India (PCI).

Freedom taken ^{away} more than govt. by corporate class

does not have real powers, and it does not cover telecast media.

- Regarding paid news, electoral laws provide for punishment of the politicians only.

It should also punish media houses.

- It suggested for limiting cross media ownership.

What should be done?

- Self regulation would have been best, but it has not worked. So some type of regulation is needed. Regulation is not control of media.

Even the Levenson Report of British House of Lords have suggested regulation of media.

- It is to be noted that media should understand its social responsibility. Freedom of Press is not an end in itself. It is a means to an end.

Media should serve the common man.

Media is recognized as the "fourth estate" because of the historic role media has played.

Views of Nehru

- I will support free Press with all dangers involved with the wrong use of freedom rather than suppressed and regulated Press.

Thomas Jefferson

I would prefer free press without govt rather than govt but no free press.

Rajiv Gandhi

Freedom of media is an article of faith sanctified by the Constitution and indispensable for the future of nation.

Supreme Court of India

Freedom of Press is not an end in itself & it cannot be a commercial enterprise like any other enterprise.

J. Putkitzer on Ethics in Media.

Without high ethical standards, media not only stripped of its social responsibility but it becomes a dangerous entity.

Right to Information

Right to Information is implicit in freedom of speech & expression. Right to Information Act aims to ensure that people to are able to exercise it practically. Right to information Act was ^{hailed} ~~held~~ as beginning of 2nd democratic revolution in the country. 2nd ARC called it the 'masterkey' of good governance.

Views of Supreme Court on Right to Information.

- In S.P. Gupta vs. Union of India case

SC held that Right to Information is

7/12/14

Part II

F. Pa implicit in Art. 19 and secrecy in governance can be justified only in exceptional situations.

- Rajnarain vs Sot U.P.

SC mentioned that people of this country have right to know what is done by a public functionary in public sphere. In democracy, there can be but few secrets.

- The 1st country to introduce Right to information is Sweden in 1766.

- Right to Info. in India is a result of Civil society activism. Many voluntary associations & primarily MKSS (Mahila Kisan Shakti Sangathan) which started demanding social auditing Devdungri village in Rajasthan.

- In 2002 Free, Freedom of Information Act came into existence. It was replaced by RTI Act in 2005.

Salient features of RTI Act

- It is a right of the citizens to demand information from public authority. Within the definition of pub. authority, any organization receiving substantial financial aid from the govt. is, also covered.
- Official secrets Act also continues but it is mentioned that if public interest in disclosure outweighs the

harm to protected interest, information will be made available.

- It is the right of info seeker to verify the correctness of info by physical investigation.
- Information is ~~not~~ expressed in widest possible sense.
- There are no procedural requirements though departments have gone for some standard application format.
- Minimum fees has to be paid & no fees for persons below poverty line.
- It is right to get information within a given timeframe, ~~max~~ 30 days in normal situations & 48 hrs if it is related to life and liberty. If information is not given in time, responsible officer will be penalized. He will be charged ₹250/day to a maximum of ₹25,000.
- Every dept. has to appoint Public Information Officer.
- 1st appeal lies to the superior officer at PIO. 2nd appeal to Information Commission.

all India
except
J&K.

Challenges in RTI Act

- Though it cannot be denied that RTI has proved to be an effective tool and has played role in bringing transparency, yet there are certain challenges.
- The environment in departments is not friendly.
- Lack of proper record management.

- Public records Act of 1993 needs to be implemented properly.
- Digitalization of records is required for fast access to info.
- More proactive disclosure by govt. is needed
- There is lack of motivation among PIOs. They consider it as an additional burden.
- No attempt by govt. to raise awareness of the right.
- Lack of adequate protection to RTI activists.
- There is a huge backlog of applications.
- Actual cost becomes very high because of repeated visits.
- In no. of situations, quality of information supplied is not satisfactory.
- There should be some body to monitor the implementation of the Act.
- In the past, govt tried to dilute RTI. Former PM mentioned that Right to Information is not Right to Indemnify Intimidation.
- There are some gray areas which need to be clarified.
 - whether office of CJI, Chief Justices etc, Governors come within the defn of public authority under the act.

As per Delhi HC, office of CJI is not a privilege but responsibility & it should be within the scope. Recently Madras HC has even brought kept the office of Chief Justice of HC out of scope of RTI.

Principle of Natural Justice
violation: Legislature makes
laws for itself.

already given
note

Regarding CII, appeal is pending in SC
w.r.t. the political parties

Aps per CIC, 6 political parties which had
the status of National parties in 15th LS should
come under RTI.

Reason: They get subsidised land & offices, free
airtime on DD, AIR, etc.

Govt has introduced amendment in the act
keeping political parties out of the scope of RTI.

Amendment was under consideration of
Standing Committee & the bill has been lapsed.

- Private sector executing govt. projects under PPP.
- lack of clarity w.r.t. file notings.

Earlier govt. has clarified that file notings
will not come under RTI but later on issued
circular by which file notings also come

under RTI. But the recent decision of Madras HC
in Registrar General vs K. Elango case,
file notings, administrative letters, internal
discussions will not come under RTI.

Recent Judgement of Madras HC has also
created ambiguity w.r.t. locus standi
principle.

Art. 20 Protection in respect for conviction of offences.
Art. 21 & Right to Life & Personal Liberty.

Issues related to R.

The interpretation of this right by SC has seen changes from A.K. Gopalan case to the present times. The interpretation of the right has a special significance in the transformation of SC from Supreme Court of India to Supreme Court of Indians.

A.K. Gopalan case

This reflects conservative approach of SC towards FRs and court has gone for literal interpretation and reading down.

Habeas Corpus case / ADM Jabalpur vs Shrikant Shukla case

Called as the "direct hour" of Indian judiciary Allahabad HC did not grant the writ of Habeas Corpus to the petitioner. According to the critics, this was the time when judiciary had to play a role as the guardian of FRs to check authoritarianism of the govt. atleast w.r.t. life & liberty.

Maneka Gandhi case

Since then, judiciary has gone for liberal interpretation.

Euthanasia.

Debates related to Right to Life & liberty.

- Does Right to life includes right to die?

Origin of controversy

2 conflicting interpretations of 2 different High Courts & Section 309 of IPC.

SC also took sympathetic view that person attempting suicide doesn't need to be punished but sympathised.

Gyan Kaur Case

SC came back to the original position that committing suicide is a crime.

- 1 reason to consider it a crime is to stop political blackmailing also.
- It should not be an excuse to claim that ~~abatement~~ ^{abatement} to suicide should also not be a crime.

However SC acknowledged that Right to ~~life~~ ^{life} ~~means~~ ^{involves} Right to die with dignity.

Since then SC started receiving petitions for mercy killing & some persons even demanded to permit to right to 'end their life as they have already achieved everything in their life. & some wanted to go for organ donation.

Arun Shanbaug case

SC permitted passive Euthanasia under

guarded situation.

However debate did not end here & petitions have been filed to legalize active euthanasia.

Some of the questions raised include

- Whether active euthanasia is more painful or passive euthanasia.
- The issue of organ donation to the needy.
- SC permits mercy killing only in case of physical pain, does not recognize mental or psychological pain.

Some other issues are

- whose opinion should be prime patient's or caretakers.

Present status

SC expects Parliament to legislate & has sent letters to govt.s for their & sent their opinions.

- 1 Argument against mercy killing
Possibility of miracles.

Death Penalty / Capital Punishment ^{max. punishment}

Should death penalty be abolished in the country?

Global scenario

Recently 114 countries of U.N. favoured a moratorium on death penalty. 36 voted against and 34 abstained. 140 countries in the world have abolished death penalty in practice.

Universal Declaration of Human Rights.

- India is a signatory to UDHR which expects nations to abolish the most torturous & inhuman punishment.
- Rome statute that created ICC does not prescribe death penalty even for crimes like genocide. Max punishment is life imprisonment.

Situation in India

India retains death penalty. However in Bachan Singh case, SC gave the principle of "rarest of rare".

Arguments by Govt. of India in retaining death penalty.

- India is a sovereign country. It will have its own law.
- It is necessary as a deterrence. However studies conducted in U.S.A. show no relation betn continuation of death penalty & deterrence. The ground situation is there have been less no. of crimes in the states which have abolished rather than states which have continued.
- In Indian situation because rarest of rare principle is adopted, it is hardly a deterrence. SC in Sangeetha case in 2013 has acknowledged that rarest of rare doctrine cannot be applied properly. It is judge specific.

Purpose of Punishment should be reformatory rather than retributive or based on deterrence.

As acknowledged by the court itself in Ravji case, 2 prisoners have been wrongly penalized.

Right to Life once taken cannot be given back.

The better solution is life imprisonment.

Even death penalty cannot be supported even in case of the terrorists and atleast govt. has to follow reasonable procedure. Justice Verma Committee has rightly not supported death penalty even in the incidents of rape.

Shatrughan Chauhan case

In case of extraordinary delay in disposing the mercy petition, death penalty will be converted into life imprisonment. SC held

that even after rejection of mercy petition, person has right to life & he should be given legal aid to protect his right to life.

It means rejection pardoning power of President/governor. ~~is~~ are also subject to Judicial review.

- Recently SC has introduced a new procedure by which the review petition, seeking the review of capital punishment would be held in open court. Uptil now they were considered in Chamber by the Judges without taking assistance from petitioner's lawyer.

- All cases/petitions challenging death penalty given by High Court to be heard by 3 Judges bench. Earlier it was heard by 2 Judges bench.

- Judiciary has held that oral hearing in review petition is an integral part of reasonable procedure.

1/
9/12/14

disease
vaccine

casteism.
reservation.

mandated by Art. 21.

- Judiciary has also given indication for standardisation of 'rarest of rare' circumstances.

Art. 22: Protection in case of detention

Issue in case of preventive detention.

Criticism

- India is the only democratic country where preventive detention is mentioned in the Constitution and that too in the Part dealing with FRs.
- It is a serious Human Rights concern in the country. One of the issues in freedom movement was opposition to such 'black laws'.
- Pandit Nehru even promised that there will be no black law in the country. He was the founder of Civil Rights movement in the country. Nehru became 1st PM & 1st person to introduce preventive detention laws. According to the critics, Nehruvian govt. used it for political purposes, ~~so~~ against communist challenge.
- Protections mentioned are actually no protections.
- In case of preventive detention, Constitution mentions that person shall be informed about the ground of his detention/arrest as early as possible.

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- A person cannot be detained beyond 3 months without approval of advisory board.

Advisory Board will consist of Judges of High Court. Here the flaw is that detained person is not allowed representation. Thus advisory board takes into consideration the perspective of the police.

- Constitution itself mentions the exception that advisory board procedure is not needed if any law related to preventive detention made by Parliament already prescribes preventive detention for a period longer than 3 months. | TADA 5 yrs.
- In other countries preventive detention laws are only during emergencies and not in normal situations.

Art. 21A: Right to Education

It was introduced by 86th C.A. Act, 2002.

History of RTE

- For the 1st time Gokhale presented a private member bill to the legislative council for introduction of universalization of elementary education in 1911.
- It took around 100 yrs to introduce universalization of elementary education in the country.

The present amendment & RTE Act is the result of civil society activism & judicial activism.

• Mohini Jain case

SC held that Right to Education is the FR of fundamental right of all citizens.

• Unnikrishnan vs. State of A.P. Case

SC held that all children upto 14 yrs of age should have compulsory education.

• RTE Act came into existence in 2009

7 yrs after the passage of 86th C.A. Act.

It has been enforced since 2010.

Content of Art. 21A

- It is not an absolute right, it is dependent on the capacity of the state. State is to determine the manner in which the right to be implemented.
- Scope of Art. 21A is much narrower than the direction of SC & much narrower considering the global trend.
- It neglects right to pre-schooling as a fundamental right
- As per U.N. Convention on Child Rights, a person upto 18 yrs of age is considered as child.

Salient features of the Act

- It gives entitlement to all children for free and compulsory full time elementary education in formal school system. It also promises quality education.

Problem: It covers children from 6-14 yrs &

there is no responsibility of state after 14 yrs.

- Right to Education provides 25% reservation for children belonging to economically weaker section. On

On above basis the constitutionality of the Act was challenged. The reason is, constitution permits group basis of reservation & not income basis of reservation. SC upheld the constitutional validity of the law.

SC held that it is a child centric law. It was also challenged on the ground that it contradicts right to freedom of occupation, profession, biz, enterprise. SC held that education cannot be treated as a purely commercial enterprise.

Challenges w.r.t. RTE

- There is a lack of proper/sufficient infrastructure in the country to ensure that all children of the said age group can be enrolled.
- The Act even provides that school should be in the neighbourhood within 3 Km. But it is not practical upto now.
- Act focuses on quality of education, specific teacher & child ratio, trained teachers but ^{real} scenario is far from this.
- Because of admission of children from economically weaker section in high profile school, teachers also face challenge because students come from contrasting background.
- Act promises child centric education

Right of schooling & not right to education.

Child should be free from anxiety & trauma.

However children from contrasting backgrounds & specially from those coming from weaker sections, the system itself creates a situation of anxiety.

- Uptil 2012, there was no specific provision w.r.t. the children suffering from disabilities.

Amendment in 2012 thus provide for addressing their concerns. However the flaw is it does not provide home-based teaching.

- Though enrollment rate has increased but dropout rate has also increased.
- The biggest challenge in RTE is poverty. Govt. has to address the poverty. Despite RTE child labour is still continuing in the country, which itself is a failure of the Act.
- Until & unless govt. schools are not improved & infrastructure deficit is not addressed, we won't be able to accomplish the aims.

Right against exploitation.

Art. 23: Prohibition of traffic in human beings & forced labour.

Issue of human trafficking.

- Constitution prohibits all forms of human trafficking, bonded / forced labour & law makes it crime.

Actual scenario in the Country: Human trafficking

& forced labour in various forms are in practice.

Human trafficking is not only an India specific problem but a global concern. Despite the fact that proper reporting and data is not available it can be said that it is the third biggest organised crime after arms & drugs.

- South Asia is one of the worst affected region. There are different forms of human trafficking, the most prevalent is trafficking of women for prostitution.

- Trafficking of children

- trafficking for human organs.

- Human trafficking is one of the worst form of human rights violation. It not only creates physical trauma but also psychological trauma.

- It is also the wastage of human resource.

Govt. of India is party to U.N. convention related to trafficking as well as child trafficking. It is also party to SAARC convention on prevention of human trafficking.

- Recently National Commission for Women has proposed that prostitution should be legalised. It has also proposed amendment in India's Immoral Trafficking (Prevention) Act 1956. The main reason for proposed amendment is the act provides for the harassment of the victim.

- In India there are demand as well as supply factor for prevalence of human trafficking

everything is demand driven.

in different forms & prostitution in particular.

Factors responsible

- Poverty
- Ignorance
- Social attitude

Because of patriarchal nature of society as well as feudal nature of society, above problems are taken very casually not only by the members of civil society but also by police & administration.

- Globalisation is also treated as 1 factor, as the phenomenon of feminisation of poverty is associated with globalisation. Globalisation resulted in forced migration to unfriendly environment.
- Social conflicts & social violence

Debate: Legalisation of Prostitution

Why proposals for legalisation?

- The proposals for giving it legal status is to ensure that those who are involved in the industry, they should also have right to life & live with dignity.
- Since we have failed to eradicate the evils, it is better to regulate it. The policy of govt. to consider it as a criminal activity has not helped the victims in any way. It has either benefited the police or middlemen. As per present laws prostitution

as such is not crime but prostitution as a business or running brothels is a crime.

- If legalised they have to get licenses. For that there will be inspections. It will be possible to rescue those who have been forced into the profession & specially the children.
- Prostitutes will be able to get the benefit of govt, social security programmes and health services.
- They will be able to get payment without harassment.

- For running the business one has to get clearance from health department. So it can also check spread of HIV, AIDS.

- There are practical issues even when it is legalised

- The stigma attached to the profession.
- new bureaucracy, so new set of harassment.
- many may lose their work

Child Labour

Children are the future of the country. Should be taken as a biggest challenge. But w.r.t. abolition of child labour also, a casual attitude prevails.

Not only Constitution of India treats it as an offense, but India is signatory to U.N. Conventions

- Govt has taken certain steps

- In 1979, Gurupadswamy Committee was setup to examine the problem in detail & to suggest the strategy.
- > According to the Committee, Child labour is a social & economic issue. It
- > Poverty is a main reason for child labour.
- > Lack of awareness about rights.
- > Committee proposed statutory measures.
- on the recommendation of the Committee child labour (prohibition & regulation) Act 1986 came into existence.
- In 1987, govt. adopted National Policy on Child Labour.
- Features of policy include.
- > Rehabilitation of the children who ^{were} employed in hazardous employment
- > Under the policy, National Child Labour Project started.
- The latest step is introduction of RTE
- There are some successes in reducing the evil. As per 2001 census, 1.26 cr children out of 25.2 cr children of 5-14 yrs age group were involved in hazardous occupation child labour.
- As per 2011 census, the no. has come down to 43.53 lakhs. out of which 12 lakh children are ^{still} in hazardous occupation.

Rig

Art. 32 Right to Constitutional remedies.

- Ambedkar considered it as the soul of Part III & it makes SC the guardian of FRs. Even High Court U/A 226 has power to issue writs for enforcement of FRs as well as for other purposes.
- Doctrine of Res Judicata

Since SC as well as High Court have power to issue writs for enforcement of FRs, in a situation where person 1st approached to High Court, then he loses his right to reach to SC on the same ground. Now he can approach SC only with certificate of High Court. This is done to give respect to the jurisdiction of the competent court in this situation, the High Court.

If some new issue emerges in same case, person can approach SC.

However in case of writ of Habeas Corpus, Doctrine of Res Judicata does not apply.

- Doctrine of Laches

It means court can deny the issue of writs if there has been a delay on the part of the petitioner in approaching to the court. The idea is this right is only for those who are vigilant about their rights.

- Public Interest Litigation (PIL)

It is innovation of U.S.A. where it is known as Social Interest Litigation. It is liberalisation of the concept of

Locus standi.

Traditional Approach:

Aggrieved person has to reach to the Court.

Social Interest litigation:

Any member of public or social group acting bonafide can approach to the court on behalf of aggrieved person.

Basis of PIL in Indian situations. Art 32(1)
Person^{SE} has a right to move to the SC by appropriate proceedings for enforcement of FRs.

Appropriate Proceedings.

Constitution does not mention specific proceedings, rather goes for open ended approach of appropriate proceedings. It means Constituent Assembly has visualised this possibility.

Introduction of PIL in India.

- 1st Case S.P. Gupta vs. Union of India 1982.

In this case SC declared that any member of Public or social group can approach to the court on behalf of poor as well as those who are socially disadvantaged who cannot reach court on their own.

- In 1984, in Bandhua Mukti Morcha Case, SC has utilised the PIL.

- PIL has been responsible for strengthening of human right movement in the country.

PIL has also made SC of India the Supreme Court of Indians.

- In the past there has been misuse of PIL for private & political ends.

Devegauda govt. brought a bill to regulate PIL.

However it could not be passed. Since then,

SC from time to time has issued directions w.r.t. PIL.

- PIL is not a FR, it is court's discretion to admit PIL.

• In Duttali Thaware case, SC has clarified that PIL is neither private interest litigation nor political interest litigation. Party should not waste the valuable time of the court, party needs to reach to the court with clean hands, clear heart, clean mind & clear objectives.

• PIL has been an important institution in the interest of the weaker sections. Hence nothing should be done that forces court to reverse the system of PIL & go back to the traditional approach.

- Epistolary Jurisdiction

Court has started taking the cognizance of violation of FR ~~suo~~ suo motu as well as by letter or postcard.

E.J. : on basis of Postcard.

- Inquisitorial Jurisdiction.

• Traditional approach : Adversarial.

Judiciary acts as an umpire & listens to the 2 parties.

• In inquisitorial system, judiciary becomes active participant & may itself go for enquiring & collecting facts, etc. SIT