

THE INDIAN LAW INSTITUTE, NEW DELHI

Seminar

on

CONSTITUTIONAL DEVELOPMENTS SINCE INDEPENDENCE

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Fundamental Rights and Directive Principles.

By

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Introductory

The legal sovereignty vests in the Constitution.

Hegde J in Privy Purses case
The political sovereignty vests in the people. The Constitution of United States is preceded by a preamble which recites "We the People". It was a thoughtful idea, put in boldly by Gouverneur Morris. We have copied that idea. The Constitution of United States "was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meanings." It appears, we have also done the same.

Black J. in Green v. United States,
2 L.ed.2nd 672 at 703.

"The meaning of an ordinary word of the English language is not a question of law....When considering the meaning of a word one often goes to a dictionary. There one finds other words set out. And if one wants to pursue the matter and find the meaning of those other words the dictionary will give the meaning of those other words in still further words which often includes the word for whose meaning one is searching..... But we have been warned time and again not to substitute other words for the words of the statute. And there is very good reason for that. Few words have exact synonyms. The overtones are almost always different".

Lord Reid in Brutus V. Cozens, (1972) 3 W.L.R.521 at 525.

Bose J.in Anwar Ali's case, 1952

SCR 284 at 359. "The true content of a word is not to be gathered by simply taking the words in one hand and a dictionary in the other".

339 U.S. 382, 393.

Series -----

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Personal liberty:

Gopalan(s
case, 1950
SCR 88.

This is the most cherished fundamental right granted to us in Article 21 of the Constitution: No person shall be deprived of his life or personal liberty except according to procedure established by law. In the very first year of its career, in the very first important constitutional case, the

S.R.Das J.
Gopal's -
case

Supreme Court held that it meant "procedure enacted by Legislature". In other words the Parliament could, by bare majority of one, deprive a person of his life or personal liberty. By a judicial fiat the Supreme Court had taken out Article 21 from Part III of the Constitution and put it in Sch.VII. "A procedure laid down by the Legislature may offend against the Court's sense of justice and fair play and sentence provided by the Legislature may outrage the Court's notion of penology, but that is a wholly irrelevant consideration....If Parliament may take away life by providing for hanging by neck, logically there can be no objection if it provides a sentence of death by shooting by a firing squad or by guillotine or in the electric chair or even by boiling in oil".

This is an illustration of the Supreme Court re-writing the Constitution!

Property:

The Constitution was amended by Constitution (First Amendment) Act, 1951 by the Constituent Assembly, under Article 368, in respect of Article 19 and Articles 31A and 31B were added in Part III. No member of the Constituent Assembly, still living, objected on the ground that Fundamental Rights granted under Part III could not be amended under Art.368. If Golak Nath's case is rightly decided, the Constitution ceased to be virgin almost as soon as it started functioning. When the Supreme Court interpreted the word 'compensation' in Art.31, as meaning 'just equivalent' in Bela Banerjee's case, Prime Minister Nehru immediately got the Constitution amended by Constitution (Fourth Amendment) Act, 1955, whereby no law could be called in question in any court on the ground that the amount fixed or determined under Art.31 was not adequate. This necessarily meant that the word 'compensation' did not mean 'just equivalent'. The Directive principles of the Constitution could be put into effect by ameliorating the condition of the poor masses at the expense of a few affluent ones. The Supreme Court, speaking through Subba Rao J. persisted in

Vajravelu's
case, (1965)
1 SCR 614

(1969) 3 S.
C.R.341.

(1970) 2 S.C.R.
530.

The error was corrected by the
Constitution Bench, speaking for
however, within 13 months thereof, put Shantilal's
case in cold storage and wrote the majority
judgment in Bank Nationalisation case. Now
according to the Supreme Court

"the principle specified by the law for
determination of compensation is beyond the
pale of challenge if it is relevant to the
determination of compensation and is
a recognized principle applicable in the
determination of compensation for property
compulsorily acquired and the principle
is appropriate in determining the value of
the class of property sought to be acquired."

Lord Esher, Master of the Rolls in an early case
(affirmed by Lord Macmillan in a very recent House of
Lords case) said:

"The Legislature has the power to make you
read English in a way on which you would not
read it, except by command and we are
commanded to read the language in that way".

The Constitution (Fourth Amendment) Act, 1955 by
necessary implication commanded that the word
'compensation' shall not mean 'just equivalent',
hence the principles for determining 'compensation'
need not be relevant to the ordinary meaning of
of compensation and may not be a recognized principle
applicable in the determination of such compensation
for property compulsorily acquired and the principle
need not be appropriate in determining the value
of the class of property sought to be acquired. This
rider annexed by the Supreme Court is another
illustration of the Constitution being re-written
by it. The law relating to property which was put on
its proper pedestal in Shantilal's case, has again
been put in jeopardy in the Bank Nationalisation
case.

(1967)
2 SCR
762

Amendment of Fundamental Rights vis-a-vis
Directive Principles; Golak Nath's case has put a
stop to amendment of Part III of the Constitution,
principally on the ground that the law made under
Article 368, amending the Constitution contravenes
Article 13(2) of the Constitution.

Rhode
Islam's
case
64 L.ed.
946, 977

In the United States, power to amend the Constitution is reserved by art. 5. When the Constitution is amended under the procedure prescribed therein, the amendment forms part of the Constitution and the validity of amendment cannot be questioned in the Supreme Court. It is a political question. How can the Supreme Court impugn the validity of 'a part of the Constitution', when the proper procedure herefor is adopted? The majority in Golak Nath's case were oblivious of the fact that art. 13(2) is attracted only when the Parliament shall 'make any law'. Under art. 368 the Parliament as such does not make any law. No sooner the procedure prescribed therein adopted, eo, instanti the Constitution stands amended. The amendment thereupon forms part of the Constitution. How can any court impugn the validity of the Constitution or any part of it? The Supreme Court has put a stop to the further amendment of Part III of the Constitution. This is another illustration of the Constitution being re-written by the Supreme Court, which it is not entitled to do.

Chief Justice Marshall of the United States Supreme Court found the Constitution paper: a skeleton. He clothed it with flesh and blood. Our Supreme Court received the Constitution full of flesh and blood and is reducing it gradually into skeleton.

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