## DALIT JURISPRUDENCE : LEGAL BASIS

UPLIFTMENT OF the downtrodden is no doubt a noble cause. Provision of proper educational facility for the *dalit* people is a desirable method of serving this cause. The state, constitutionally committed to the task of doing social justice, has to provide them with this facility. What is its duty when a private individual takes the initiative in this regard? Granting of permission to establish an educational institution is regulated by law and the conditions for providing financial assistance and recognition are also prescribed. Will insistence on observance of those norms be illegal when the educational institution is one meant for the *dalits* and run by them?

We have entered a revolutionary era in the field of judicial process for upholding the rights of the poor, the exploited and the downtrodden. Cases like *Asiad*,[1] *Bandhua Mukti Morcha*[2] and *Neeraja Chaudhary*[3] are illustrations wherein the Supreme Court relaxed the rigour of *locus standi* and gave constitutional dimensions to various statutory rights. The court did not falter in setting appropriate legal bases when it recognised and enforced the rights of the depressed and evolved an anti-poverty jurisprudence.

*D. Murli Krishna Public School* v. *Regional Joint Director of School Education*[4] is a case where judicial enthusiasm for *dalit* upliftment has resulted in a decision which, although just and fair, lacks in sound reasoning and adequate legal foundation. In this case, a registered society started by an advocate belonging to the scheduled caste established an English medium school for imparting education to the *dalit* children. When recognition for the school was sought for, the state government proceeded, by issuing a show cause notice, to withdraw even the temporary recognition. The petitioner moved the High Court of Andhra Pradesh to quash the notice and for an order for recognition. The court allowed the petition and granted the relief.

The new judicial activism may have inspired Justice Ramaswamy in the instant case,[5] which revealed a story of educational facilities being denied to the *dalits* to grant the relief. Perhaps his judicial conscience being shocked, he was confused as to the proper legal issues involved.

It is no wonder that a judge is often moved by the social atrocities brought to his notice. Being an instrument of social justice, law should

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1. *People's Union for Democratic Rights* v. *Union of India*, A.I.R. 1982 S.C. 1473.
2. *Bandhua Mukti Morcha* v. *Union of India*, A.I.R. 1984 S.C. 802.
3. *Neeraja Chaudhary* v. *State of M.P.*, A.I.R. 1984 S.C. 1099.
4. A.I.R. 1986 A.P. 204 (hereinafter referred to as *Dalit School*).
5. *Ibid*

be used to counteract social injustice. The judge should so formulate and interpret the contents of law that this noble purpose is achieved. He should certainly respond and come to the rescue of the exploited when the matter is placed squarely before him. In this process he should act not only as a mere judicial functionary but also as a social reformer. Otherwise the distinction between the two will become obliterated. Judicial craftsmanship lies in so formulating suitable legal foundations for social demands. For instance, in *Asiad*[6] when the Supreme Court attempted to counteract the evils of non-payment of minimum wages, child labour and violation of labour welfare laws, it gave solid legal bases for its decision. Non-payment of minimum wages was equated with forced labour and brought within the ambit of article 23 of the Constitution. Child labour was brought within article 24, and violation of labour welfare legislation within article 21. The Supreme Court thus categorised each violation as one of some specific fundamental right.

Looking at the *Dalit School* case[7] one immediately notes the difference. The judge quashed the show cause notice and ordered recognition of the school. The purpose is laudable. Though no doubt the *dalit* cause is served, the judge failed to evolve a sound *dalit* jurisprudence based on cogent constitutional criteria.

Reference to various provisions in the Constitution like articles 14, 15(4), 17, 19, 29(2), 45 and 46, is made by Justice Ramaswamy. Placing emphasis on article 45, which only refers to compulsory primary education for children in general, he concludes that the right to education to the *dalit* is a fundamental right. From this premise he proceeds that in the absence of common schools in the *dalit* area, it is the mandate of the Constitution to accord permission for a *dalit* school.[8] In the same vein he holds that it is impossible for such school to fulfil the conditions prescribed in the government order for recognition. Hence no *dalit* school could be established. Two types of recognition were evolved in the case, namely, (*i*) permission for financial assistance from the state; and (*ii*) recognition of the school with all the financial assistance and other facilities being provided by the state. Not only did the judge quash the show cause notice to withdraw the recognition to the school but he enthusiastically went a step ahead and directed the state to recognise and grant it financial assistance despite allegations levelled against it of haphazard running. It may well be said that the court acted only after eliciting the views of a commission appointed to look into, and ascertain, the facts. From the judgment it is not clear whether the grounds on which the show cause notice was issued and found unsustainable were examined. But, on the other hand, it was discovered that the conditions prescribed for recognition

6. *Supra* note 1.
7. *Supra* note 4.
8. *Id.* at 209.

of the school as well as for financial assistance from the state were not capable of being fulfilled by schools established by *dalits*.

It is common knowledge that schools established by the government and other agencies in *dalit* areas are not run in a proper manner. There may be more reasons than one—psychological and socio-economic factors, absence of awareness among *dalits* on the values of education and bankruptcy of the officialdom shouldering the responsibility for *dalit* welfare and upliftment. In view of these obvious hurdles it is a travesty of justice if *dalit* schools, as the one involved in the case under comment, are treated at par with sophisticated schools run in other areas by the elite. As the judge has rightly indicated, indirectly the standards can never be common. Insistence on common standards will amount to insistence on inequality as equal treatment of unequals is nothing but inequality. It would have been well if Justice Ramaswamy could have evolved a sound *dalit* jurisprudence by articulating this legal premise as the foundation for his decision instead of merely referring to the various articles in the Constitution.

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