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SELF SUFFICIENCY-GOOD OR BAD

Nityanand Jha, Assistant Professor, UWSL.

Becoming self-sufficient was a dream for independent India and we embarked on that path until 1990 crisis. With the increase in globalization, revolution in communication and transport technologies, nations moved their focus on becoming part of global supply chains and in the process hoping to gain through economic prosperity of its people.

Covid 19 has disrupted the economies of all nations. Several nations have expressed anger towards China for being a source of the problem and the way of dealing with the pandemic. In addition, China has also embarked on initiating troubles with its neighbours especially India.

Modi Government has embarked on a mission for self-sufficiency through Atmanirbharta to come out of the economic crisis due to Covid Pandemic. In addition to counter china because of border conflicts, there have been calls of boycotting Chinese products and services.

But is it a good idea for India?

In order to understand, let us recollect some of the past actions taken by our earlier prime minister's for self-sufficiency.

“Jai Jawan, Jai Kisan” was a famous slogan given by our second Prime Minister Lal Bahadur Shastri to help us come

out of difficult phase of Indo Pakistan war and lay a concrete foundation for food self-sufficiency.

“Jai Jawan, Jai Kisan, Jai Vigyan” was a famous slogan given by the former prime minister Atal Bihari Vajpayee to help us come out of a difficult phase of Pokhran Nuclear Test.

“Jai Jawan, Jai Kisan, Jai Vigyan, Jai Anusandhan” is a slogan given in 2019 by our current prime Minister Narendra Modi to give a major push for science and research so as to enable us to become among top three economic superpower.

Lal Bahadur Shastri had famously quoted in his maiden Independence Day speech, “We can win respect of the world only if we are strong internally and can banish poverty and unemployment from our country”. This statement is valid today as well, we might have reduced poverty significantly, but unemployment is a major challenge.

The Covid pandemic has drastically increased unemployment (including partial employment). Looking to attain self-sufficiency leading to drastic improvement in employment levels is a great idea but needs to be attained without being cutout from the Global supply chains in the current economic environment.



APPEALS FROM APPELLATE DECREES – SEC 100-103, ORDER 42 SECOND APPEALS (CPC)

Dr. Ram Niwas Sharma, Associate Professor, UWSL.

Sec 100 – Deals with appellate decrees (second appeals). It lays down that, unless expressly provided elsewhere, a second appeals lies to the HC from a decree passed in appeal by a court subordinate to a HC if the HC is satisfied that the case involves a substantial question of law. There is a plethora of case law on the point as to what are the questions of fact not open to interference in a second appeal. Thus a finding of benami or bonafides or negligence are all questions of fact. On the other hand, if the question is a true construction of a document or a legal inference to be deduced from a document, the question is one of law. Under Sec 100, a second appeal also lies from an appellate decree which is passed ex-parte.

A first appeal is not limited to any particular ground in Section 100. The principle underlying the restrictions to the grounds taken in second appeal is that there should be an end to litigation. A second appeal will lie to the High Court from an appellate subordinate Court, unless precluded by some express provisions of law. Thus, where any section of the Code has declared that any decisions shall be final, no second appeal will lie from such a decision. The following are examples of such provisions- sections 102, 104, and O XLVII, R. 7. Section 100 only applies to appeals from Courts subordinate to the High Court. Appeals within the High Court are not appeals to the High Court from a subordinate Court. Hence, this section does not apply to such appeals.

An error of fact is not one of the grounds for second appeal. Sec 100 and Sec 101 prohibit a second appeal on this ground. But, where in the process of arriving at the finding of fact, the lower court has committed an error of law or has adopted an erroneous or defective procedure, the finding of fact will be open to attack on the ground of such error or defect. Thus, a finding of fact will be set aside in second appeal where such finding is not based on any evidence or on legal evidence or where it is arbitrary or vitiated by prejudice, or is based upon distorted view of evidence, or where no reasons have been given for the finding.

Sec 100A (2002 Amendment) provides that when any appeal from an original or appellate decree or order is heard and decided by a single judge of a HC, NO FURTHER appeal lies from the judgment and decree of a single judge. Sec 102 provides that no appeal lies from any decree where the

amount of the subject matter or the original suit does not exceed Rs 25000.

Sec 103 – Lays down that in any second appeal, the HC may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal -

- a) which has NOT been determined by the lower AC or both, the court of the first instance and the lower AC OR
- b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as referred to in Sec 100

Order 42 then lays down that all the rules in Order 41 apply to second appeals.

C. APPEALS FROM ORDERS – SEC 104-106 ORDER 43

Sec 104 – An appeal lies against the following 5 orders only, and no other orders:

- a) an order for payment of compensatory costs under Sec 35A
- b) an order under sec 91 (public nuisance) or sec 92 (public charities)
- c) an order under sec 95 (which deals with compensation for arrest or attachment or injunction obtained on insufficient grounds)
- d) an order under any provisions of the court, imposing a fine or directing the arrest or detention in a civil prison of any person
- e) any order made under the rules from which an appeal is expressly allowed by the rules

No further appeals lies from any order passed in appeal under Sec 104. This, of course, does not take away the right of appeal under the Letters Patent or to the SC, nor does it interfere within a right of revision or review.

It must also be remembered that a litigant has no inherent right of appeal. The right of appeal is a creature of statute. It is not to be assumed that there is a right of appeal in every matter which comes under the consideration of a Court; such a right must be given by a statute or by some authority equivalent to a statute. Unless a right of appeal is given by statute, it does not exist. Rights of appeal are substantive rights. They are not mere matters of procedure. Hence, an act which takes away an existing right of appeal must not be applied retrospectively in the absence of express enactment

or necessary indentment. So also, a statute creating a new right of appeal is prospective, in the absence of a provision to the contrary.

Section 96 of the Code gives a right of appeal from every decree passed by a Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Courts. Where, by a special statute, matters are referred to the ordinary Courts of the country, the implication is that such a Court will determine those matters in the ordinary course. Its jurisdiction is only enlarged and all the incidents of that jurisdiction, including the right to appeal from its decision, remain; but this rule would not apply where a special jurisdiction is conferred on the Civil Court by the statute.

Under Sec 105, save as otherwise provided, no appeal lies from the any order made by a court in the exercise of its

original or appellate jurisdiction, but where, a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the appeal. Under Sec 96, every decree is appealable, save where otherwise expressly provided in the code or elsewhere. No order is, however, appealable, except those specified in Sec 104.

Sec 105 enacts that an order, whether applicable or not, except an order of remand, can be attacked, in an appeal from the final decree, on the ground –

- a) that there is an error, defect or irregularity in the order
AND
- b) that such error, defect or irregularity affects the decision of the case.

'TORTIOUS LIABILITY OF GOVERNMENT'

Dr. Sanjay Kumar Pandey, Associate Professor, UWSL.

An important question which occurs frequently concerns governmental liability for civil wrongs of its servants. As per Article 300 of The Constitution of India the pre-Constitution status quo is maintained in this regard. It means that the liability of the present government is equal with the liability of the East India Company. This means that the law regarding the tortious liability of the Government was frozen at the 1858 stage in India. The position was reminiscent of the days when the East India Company ruled India. The Company had a dual capacity—commercial and sovereign. The Company was exempt from any liability in its sovereign capacity. In the case of *P&O Steam Navigation Co. v. Secretary of State*, the Bombay High Court ruled that where an act was done in the exercise of sovereign powers, which could not be lawfully exercised except by a sovereign or private individual delegated by a sovereign to exercise them, no action would lie. On the other hand, the Secretary of State would be liable for damages occasioned by the negligence of servants of the Government if the negligence was such as would render an ordinary employer liable. The first rule has been accepted without dissent since it was laid down, but there has been a conflict of judicial opinion as regards the second rule. In some cases, this rule has been followed literally while in others it has been treated as obiter dicta and has been departed from. In many cases the above mentioned rules have been followed, for example, in *Secretary of State v. Cockraft*, *Secretary of State v. Moment*, *Gurucharan v. State of Madras* etc. In these cases court held

that the act done by state/Government was sovereign act and so not liable for wrongs. In another line of cases, a broader view of governmental liability was adopted by various High Courts. These cases held that the government was liable for all acts other than an 'act of state', and that the distinction based on 'sovereign' and 'non-sovereign' functions was not well founded. The view was taken that the acts of the government fell either outside, or within the municipal law and that it was only the former of which the courts could not take cognizance. In 1962, the Supreme Court, in the case of *State of Rajasthan v. Vidyawati*, derived the proposition that the government would be liable for damages occasioned by negligence of its servants if the negligence was such as would render an ordinary employer liable. In the modern context it is extremely difficult to distinguish between sovereign and non-sovereign functions. In all democratic countries, a wider view of state liability has now come to be accepted than was the case in India. In Britain also the position changed by the Crown Proceedings Act 1947, which made the Crown, within certain exception, liable in torts like a private person of full age and capacity. The exceptions are defense of the realm, maintenance of armed forces and postal service. The Law Commission of India recommended that the old distinction between sovereign and non-sovereign functions or governmental and non-governmental functions should no longer be invoked to determine the liability of the state.



JUSTICE CHANDRACHUD'S LECTURE AT GUJRAT HIGH COURT ON DEMOCRACY AS PLURALISM

Dr. Ayaz Ahmad, Associate Professor, UWSL.

Hon'ble Justice Dr. D. Y. Chandrachud delivered an impassioned lecture titled "The hues that make India: From Plurality to Pluralism" at the auditorium hall of Gujrat High Court. Justice Chandrachud began by describing Russian Matryoshka dolls that he played with in his childhood as the metaphor for the plurality of our country. Quoting Uday Mehta, he emphasized that the Constitution was premised by the founders on both a deep trust in the tolerant nature of its citizens and an unshakable belief that our diversity would be a source of strength. Justice Chandrachud asserted that, "the diversity within the strands of the Constitution is a reflection of the diversity of her people. One cannot exist without the other."

Justice Chandrachud highlighted that Part III of the Indian Constitution, which contains fundamental rights, seeks to balance the guarantee of individual liberty with the protection of a plural polity. He pointed that the right to equality, the right to the freedom of speech and expression, the right to move freely throughout the territory of India, and the right to life and personal liberty articulate a

fundamental commitment to individual liberalism. Simultaneously, certain group rights like the right of religious denominations to establish and maintain institutions for religious and charitable purposes, or the right of a section of the citizens' to conserve a distinct language, script or culture play a unique role in crafting and determining individual identity. However, Constitution makers were equally alive to the possibility that the membership of certain social groups prevents the exercise of certain rights which the Constitution sought to guarantee. It is precisely for this purpose, according to Justice Chandrachud, the State was empowered to provide for social welfare and reform of religious and social practices which impede the free exercise of fundamental rights. This way, Justice Chandrachud beautifully brought out that, "in the framing of the Indian Constitution, individual identity was constructed to maintain a delicate balance between the commitment to liberal notions of individualism as well as a pluralist conception which formed and shaped individual identity." According to him, the fact that the individual right to freedom of religion is not intended to prevail over but is



subject to the overriding constitutional postulates of equality, liberty and personal freedoms recognized in the other provisions of Part III best exemplifies the ameliorative dimension of our Constitution. In this sense, our Constitution goes beyond the classical liberal commitment of disempowering people in power, by enabling those who have traditionally been deprived of power.

Moving to the significance accorded to pluralism in the Constitution Justice Chandrachud, with reference to historical linguistic diversity of India, asserted that the “plurality of language is the plurality of thought itself.” Taking cue from George Orwell's classic novel “1984” he warned that control of language could amount to control of thought, personal identity, self-expression and free will. In the dystopian future constructed by George Orwell, liberty and equality were reduced to a single word – ‘crimethink’ by simply controlling the language that people use to communicate with each other. It is to obviate such possibilities in independent India that the 8th Schedule of our Constitution houses 22 languages which ensures plurality of thought in democratic India. Building on this strand, Justice Chandrachud argues that “celebrating and protecting diversity is linked with justice, equal concern and respect for every individual.”

Justice Chandrachud devoted the last part of his lecture in identifying the conditions necessary for the creation and sustenance of spaces conducive for realizing the ideals of pluralism. For this purpose he highlighted three things; (1) protection of free speech for due deliberation on the (2) continuous process of defining India leading to (3) a sense of fraternity in every Indian. Justice Chandrachud goes on to assert that “the destruction of spaces for questions and dissent destroys the basis of all growth political, economic, cultural and social.” He perceptively said that the, “suppression of intellect is the suppression of the conscience of the nation.” He believes that due deliberation and consideration within and beyond institutional spaces would produce a shared consensus on most issues of law, policy and governance. This he hopes would develop a sense of fraternity among all Indians. Although one is not very sure about the plausibility of the deliberative premise of his beliefs and hopes after the agonistic turn in political philosophy, Justice Chandrachud personifies the quintessential liberal democrat on the bench often occupying the dissenting space. Keeping pace with the spirit of his lecture, Justice Chandrachud concluded by underlying that fraternity can only be realized when there exists a nation where different groups share a common thread of love, respect and affection towards each other moving away from mere tolerance of their differences to celebration of their pluralism.

WEBINAR TO COMMEMORATE THE INTERNATIONAL HUMAN RIGHTS DAY

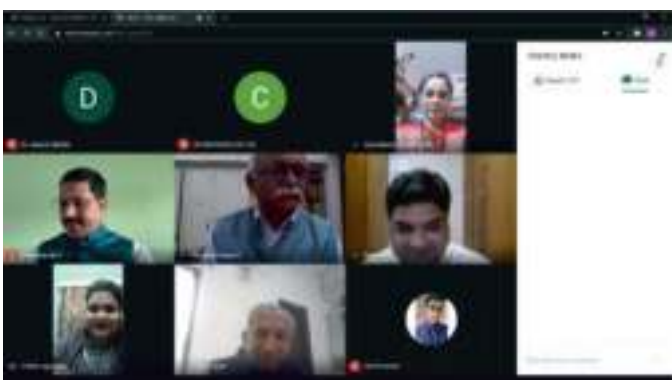
UWSL

Unitedworld School of Law in association with Citizen's Forum for Justice, an NGO based in Bangalore organised a webinar to commemorate the International Human Rights Day on Saturday, 12th December, 2020. Prof. Nishtha Agrawal from UWSL welcomed the esteemed guests, faculty members and participants followed by the introductory note from Mr. Vivekanand on behalf of Citizen's Forum for Justice.

Justice Adarsh Kumar Goel heartily complemented the organizers for the initiative and talked about the idea of Human Rights and culled out the distinction between Welfare and Development. He concluded his speech by quoting Dr. Abdul Kalam and advised students to contribute to the society without any expectation of rewards.

Prof. Benarji Chakka focused on the paradigm shift of National and International Human Rights Law and also emphasised on sensitising citizens for proper implementation of laws, and highlighted the role of education in empowering the fellow countrymen in the nation building process.

Shri. Nargund, in his address reiterated that human rights are in our DNA and the Indian culture has always advocated rights, not only of Humans but also of all living creatures around us. The session concluded with a vote of thanks delivered by Prof. Umamahesh Sathyanarayan Advisor, UWSL.







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