

PARADIGM SHIFTS IN JURISPRUDENTIAL THOUGHTS IN INDIAN LEGAL SYSTEM: A STUDY OF A. K. GOPALAN TO MANEKA GANDHI'S CASE AND BEYOND

ABSTRACT

Constitutionalism signifies principles that a Constitution of a Country seeks to enshrine within it. The journey of Indian legal system from 1950 i.e. from adoption of the Constitution of India till date has witnessed several transformations which are bound to impact the principles of Constitutionalism India follows. The journey of Indian legal system from 1950 till date can be divided in following phases-

- a. First phase is from 1950 to 1978,
- b. The second phase is from 1978-1991, and
- c. The third phase is from 1991 to 2020.

These phases in Indian legal system have been categorized on the basis of different jurisprudential schools it manifested leading to paradigm shifts in legal system in India. These paradigm shifts in the Indian legal system are due to various factors like growing concern for the protection of fundamental rights in India, feminist movements worldwide and also within India, the concern for accessibility of justice etc. The study of these paradigm shifts in India shows that these shifts have been introduced by the Indian judiciary at different point of times. India attained independence from 200 years long British Rule and had to structure its political institution, economic policies etc. from the very scratch. Therefore, Indians witnessed a lot of trial and errors due to the policies of the Executive and Legislature. One of such areas of trial and error was the economic policy of India where the policy structure for India has been changed time and again to find out the best suited economic policy for the country. The changing economic policies have also been impacted some of the rights of Indians which eventually calls for the intervention of the Indian judiciary. In this backdrop the present Thesis seeks to find paradigm shifts in Indian legal system and the role of the Indian judiciary in it. Comparative study of

paradigm shifts in English legal system has also been a part of this work as Indian legal system has been developed in accordance with the model of English legal system. Therefore, the paradigm shifts in both these legal systems may have coincide and follow the same path of development. Pakistan and Bangladesh, being carved out of India, are also expected to exhibit some shifts in its legal systems due to the constant shifts in Indian legal system. Nepal and Bhutan are neighboring country to India and are also contiguous to China. Therefore, any change in the Indian legal system is likely to have an impact upon the legal systems of Nepal and Bhutan. Moreover, Nepal and Bhutan have cultural and religious similarity with China. Therefore, a comparative study of paradigm shifts in the legal system of Nepal and Bhutan has also been done. The title of this Thesis is ‘PARADIGM SHIFTS IN JURISPRUDENTIAL THOUGHTS IN INDIAN LEGAL SYSTEM: A STUDY OF A.K. GOPALAN TO MANEKA GANDHI’S CASE AND BEYOND’.

The title of chapter I is ‘Theoretical and Conceptual Framework of Constitutionalism’. This chapter explains the principles of Constitutionalism. Detailed study of whether the Constitution of India is law has been made in this chapter.

Chapter II is entitled ‘Evolution of the Indian Legal System and Making of the Constitution’. This chapter has recorded the journey of attaining the right of self-determination by the Indians and eventually the adoption of the Constitution of India.

Chapter III is ‘Preamble of the Constitution of India: Reflection of Legal Philosophies Therein’. The main issue of discussion in this chapter is whether the Preamble is a part of the Constitution. This chapter also focuses on the legal philosophies reflected in the Preamble during Constituent Assembly Debate and also during the amendment to the Preamble through 42nd Amendment in 1976.

Chapter IV is entitled ‘The Journey from A.K. Gopalan to Maneka Gandhi: A Study from 1950-1978’. This chapter focuses on significant paradigm shifts during 1950-1978. Twenty Supreme Court cases have been studied in this chapter.

Chapter V entitled ‘Legal Philosophy in Post Maneka Gandhi Era: A Study from 1978-1991’ highlights the paradigm shifts during 1978-1991. The paradigm shift in

this chapter is located through a study of thirty six cases delivered by the Supreme Court of India.

Chapter VI is ‘Legal Philosophy in Globalization Era: A Study from 1978-1991’ and focuses on the paradigm shifts in 1978-1991. Forty seven cases delivered by the Supreme Court of India have been studied in this chapter to locate the paradigm shift.

Chapter VII is entitled ‘From Industrialization to Economic Liberalization: Impact of this Shift on the Legal Philosophy Followed by India’. In This chapter the economic policies of India at different stages have been studied to find out whether these economic policies have impacted the judgment delivered by the Apex Court of India.

Chapter VIII focuses on ‘An Empirical Study Relating To The Extent Of Awareness Of Practicing Advocates Of Calcutta High Court And Siliguri Subdidvisional Court Regarding Use Of Jurisprudential Schools Of Thought In Their Arguments’. For the empirical study practicing lawyers of the High Court of Calcutta and the Sub-Divisional Court of Siliguri have been interviewed. The questioner is annexed in the annexure

Chapter IX focuses on ‘Paradigm Shifts in Dispute Resolution in India: A Journey from Adversarial System to Alternative Dispute Resolution’. In this chapter the researcher tries to find out whether there is any paradigm shift from court annexed dispute resolution to A.D.R. in India.

Title of chapter X is ‘Constitutional Transformation in English Legal System’. In this chapter the researcher tries to find out whether the paradigm shifts in India coincide with the paradigm shifts in English legal system.

Chapter XI records ‘Constitutional Transformation in SAARC Countries’ with special reference to Pakistan, Bangladesh, Nepal and Bhutan.

In Chapter XII the researcher has summed up the conclusion of the research work and also provided suggestion.

Therefore, this research work is carried out with an objective to study the paradigm shifts in the jurisprudential thoughts in judicial pronouncements in India. The study of this nature was felt essential to map the silent jurisprudential shifts that occurred in unbeknown to the judiciary, subtly and silently. This also marks the shift of thought in the society. After independence the Indian judiciary continued the British legacy of largely analytical jurisprudence. With the eventual socio political changes in the Indian polity, the judicial thinking also changed. The researcher in this work has examined and located these shifts in the judicial thinking of Indian legal system.