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

INTRODUCTION

EVOLUTION OF THE PROBLEM- Evolution of law is so ingrained in a legal system that the legal fraternity is not conscious of this transition. Law changes its role according to the nature of the society, technological environment of its time and often is not expressed in many words. Therefore, a legal system is not consciously aware of the jurisprudential paradigm shift that occurs over a period of time. The evolution of any primary society including Indian society is from customary practices to formal legal and judicial institutions. In India the western model of formal legal and judicial system was introduced by British. However, this transformation did not take place in one day and took several years to be what it is now. At the time of setting up of formal legal system in India British rulers were deeply influenced by jurists like Francis Bacon, William Blackstone and Edward Coke and several other leading thinkers. This was the time when the process of moving away from the church and divine law started, and the role of the monarchy was questioned. On similar policy the British thought it prudent not to interfere with the customary, religious laws in India. As a result they allowed the Indian to be ruled by Indian law and British subjects in East India to be ruled by the English law and distinguished between personal laws and public law. Therefore, in India they literally introduced diarchy under the Government of India Act, 1919, applicable for the provinces of British India. It marked the introduction of the democratic principle into executive branch of the British Administration of India. This was the forerunner of India's full provincial autonomy under Government of India Act, 1935 and thereafter Indian Independence Act, 1947. This was the process through which the British successfully imbued the Indian Legal System with strict positive philosophy of law.

The reflection of strict positive approach to law was observed in one of the first constitutional issue to be decided by the Supreme Court of India. It arose out of the detention of A.K. Gopalan under the Preventive Detention Act, 1950. In *A.K. Gopalan* v. *The State of Madras*[1] the petitioner filed a writ of habeas corpus under Article 32 of the Constitution of India challenging his arbitrary detention under the Act of 1950. During the proceeding of the case several Fundamental Rights guaranteed under the Indian Constitution were discussed at length. One of the important issues before the Court was that the Preventive Detention Act, 1950 imposed unnecessary and arbitrary restrictions upon the personal liberty guaranteed under Article 19 of Constitution of India. Besides personal liberty, issues related to 'natural justice' and 'procedure established by law' were also discussed. However, the Apex Court applied literal interpretation of Indian Constitution and upheld the detention of A.K. Gopalan as *intra vires* thereby upholding the validity of the impugned Act. The trend of narrow/ literal interpretation of chapter III of the Constitution of India by the judiciary was followed more or less consistently till *Kharak Singh* v. *State of U.P*.[2]

A method of understanding the legal philosophy followed by a given legal system is the Constitution of that nation and the manner in which it is interpreted. The strict interpretation of the Constitution as an imperative command is a unique feature of the positivist school of thought. Positivist school of thought features the source of law as an imperative command of the sovereign. This was the age when the judiciary interpreted the law 'as it is posited' by the sovereign rather than 'as it should be' in spirit. Bentham in his book 'Of Laws in General' asserted that law is an assemblage of the volition of the sovereign of a state. John Austin in his book 'The Province of Jurisprudence Determined' has laid down that law is given by the political superior to political inferior. According to Austin, the sovereign is not in the habit of obeying any human inferior to it nor to any like superior. According to the positive school of thought, law is the command of a sovereign. Thus, a norm in order to be a law does not need to have moral consideration in it. When internal emergency was declared in 1975, the right to life under Article 21 of the Constitution of India, along with other fundamental rights enshrined under part III of the Constitution was also suspended. In

[1] *A.K. Gopalan* v. *The State of Madras* AIR 1950 SC 27
[2] *Kharak Singh* v. *State of U.P* AIR 1963 SC 1295

the resultant oppression and violation of fundamental and human rights during that period certain questions regarding the strict nature of the imperative command of the sovereign were raised.

The consequence of following the strict positive philosophy was evinced during the emergency period when arbitrary decisions of the government could not be challenged. More importantly the Right to Life (Article 21) guaranteed in the Constitution of India was also suspended.

The judiciary also came to be questioned upon its inability to protect the fundamental and human rights of the people in the oppressive regime during the emergency period and common people were on the verge of losing faith in the judiciary.

In 1978 in *Maneka Gandhi* v. *Union of India*[3] the interpretation of Article 19 and 21 of the fundamental rights by the judiciary was in question. For the first time the court looked afresh at the foundational need of following the principles of natural justice in 'procedure established by law' in order to restrain the arbitrary and oppressive use of power by the sovereign. Therefore, it limits the power of sovereign through the use of principle of law enshrined natural law school of thought.

In a pluralistic society like India it became necessary to address and reconcile the conflicting interests amongst different communities and religions. The socio political situation of India during Post Kharak Singh's case[4] questioned the assertion of positive school that 'law does not need to have morality attached to it'. People were no longer ready to accept the law just because it had been originated from a political superior. Thus, the seed of transition was sowed during this period wherein the principles of natural law become a *sine qua non* of the legal system and law was infused with moral considerations.

The rethinking regarding the relationship of mortality in law had the effect of containing the unbridled and arbitrary power of the sovereign to a very large extent and resulted in a paradigm shift in the legal philosophy in India. Though the source of law continued to be the sovereign, its powers were limited by the doctrine of natural justice.

[3] *Maneka Gandhi* v. *Union of India* AIR 1978 SC 597
[4] *Kharak Singh* v. *State of U.P* AIR 1963 SC 1295

The general tendency immediately after Indian independence while interpreting the provisions of the Indian Constitution reflects the ideology of analytical school in the form of a post colonial legacy. This was not only reflected in the judicial process but also by eminent jurists like H.M. Seervai. Until 1967 Seervai in the first edition of his book 'Constitutional Law of India' stuck to the positivist ideology of Constitutional interpretation.[5] H.M. Seervai went further defending the majority view in *A.K. Gopalan* v. *State of Madras*[6] that Article 19 should be read separately from Article 21. Therefore, the phrase 'personal liberty' in Article 21 does not include rights guaranteed in clause 1 (a) to (g) of the Article 19. Till Maneka Gandhi's case the view that was endorsed both the judiciary and lawyers alike was that the court is bound by the law as commanded by the Sovereign and there is no scope for further interpretation of any constitutional provision in order to find out the spirit of the Constitution. However, the Maneka Gandhi case ushered in the era where the procedure established by law mandatorily had to adhere to the basic principles of natural justice and universal human rights principles of liberty, equality and justice received a fresh look and acceptance. Yet the focal concern remained only about the legality of law and not the morality of it. Therefore, whenever the court tried to incorporate the abstract theories of natural law and morality into any adjudication relating to the validity of laws, they faced strong challenges. The dissenting views in cases till Maneka Gandhi are proofs that there have been an implicit and alternative thinking opposing the strict positivist approach. The dissenting view of Fazl Ali J. in A.K. Gopalan case[7] reflects this very fact that law can not be assumed to exist to the exclusion of morality.

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[5]Vekat Iyer, Constitutional Perspective: Essays in Honour and Memory of H.M. Seervai, 40, (Universal Law Publishing Co. Pvt. Ltd., 2001).

[6] *A.K. Gopalan* v. *State of Madras* AIR 1950 SC 27

[7] 'It seems obvious to me that preventive detention amounts to a complete deprivation of the right guaranteed by article (19) (d). The meaning of the word "restriction" is to be considered with reference to the second question and I think that it will be highly technical to argue that deprivation of a right cannot be said to involve restriction on the exercise of the right. In my opinion, having regard to the context in which the word "restriction" has been used, there is no antithesis between that word and the word "deprivation." As I have already stated, restraint on the right to move can assume a variety of forms and restriction would be the most appropriate expression to be' used in clause (5) so as to cover all those forms ranging from total to various kinds of partial deprivation freedom of movement. I will however have to advert to this subject later and will try to show that the construction I have suggested is supported by good authority;- observation of Fazl Ali J. in *A.K. Gopalan* v. *State of Madras* AIR 1950 SC 37.

A further shift occurred when 42nd Amendment to the Constitution of India, India was expressly declared India to be 'Socialist State'. This shifted the focus from source of law to the function of law. A further emphasis to this approach was added by the doctrine of public interest litigation developed by Justice P.N. Bhagwati and the tool of judicial activism used by judges like Justice V.R. Krishna Iyer and others. These two developments also altered the doctrine of strict *locus standi*. Epistelary jurisprudence was recognized as a part of judicial process. The journey from strict positivism to socialism does not conclude here but is marked by another major paradigm shift in the globalised and the digitized world. This globalised and digitized world is marked by the growth of multinational corporations. During this period India has shifted from Socialist Welfare State towards privatization. Capitalism in various forms and dimensions become evident. Therefore, the space for sovereign activity is shrinking further.

STATEMENT OF PROBLEM- Research is not always for finding a solution to a problem. Research in jurisprudence does not seek a solution to a problem rather explains the nature, characteristics and/or function of law. Research in jurisprudence may be undertaken to discover and highlight a pattern in the unplanned or order in confusion and chaos. In the present research work there is no specific problem to which a solution is to be found. The present research work seeks to discover the jurisprudential pattern the judiciary is etching for the last seventy years that has influenced the legislature and the executive. The researcher also seeks to verify the general belief that India still follows the school of classical positivism.

The paradigm shifts occurred from 1950 till date has not been the result of conscious planning or any policy decision. So the legal fraternity is not conscious regarding the shifts. Yet these shifts are legally valid and validated by common acceptance. This unique phenomenon is the focal point of the present study.

RESEARCH QUESTION- In order to persue the present research work the following research questions are framed-

1. What was the legal philosophy that was followed between 1950-1978?
2. What changes have occurred between 1978 to 1991?
3. What shifts in legal philosophy evidenced post 1991?
4. What was the stand taken by the Indian judiciary on issues of law and moral?

5. Are these paradigm shifts cause or consequences of judicial over reach?

HYPOTHESIS- Different schools of thoughts/ legal philosophies are being followed by the Indian Judiciary. There has been constant shift in the legal theories followed by Indian legal system as is reflected in the various judgments by the judiciary since 1950. These shifts are triggered at the judicial level that have influenced the legislative or executive promulgations and actions and to that extent these shifts are transcendental and metaphysical in nature. There is a flexibility and liberty of thought and judicial actions that enabled the Indian legal system to keep pace with the demands of the changing society.

METHODOLOGY- The methodology followed in the present research work is primarily doctrinal in nature with a small segment of empirical study.

The research being primarily of doctrinal nature, the researcher has used books and articles accessed from various libraries, like library of the Department of Law, University of North Bengal, Central Library of the University of North Bengal, library of National University of Juridical Sciences, Kolkata, National Library, Kolkata, British Council Library, Kolkata, library of Calcutta University and the library of Indian Law Institute, New Delhi.

Case laws were chosen purposively and chronologically taking care to keep the jurisprudential aspect in mind. The empirical study was proposed to be done with the judges but permission for the same was not available. So an empirical study with practicing advocates of Calcutta High Court and the Sub-Divisional Court at Siliguri was undertaken. The method was snowball sampling of those advocates who were willing to be interviewed and referred the researcher to those like minded advocates who were willing to be interviewed.

Therefore, the methodology followed in the present work is both doctrinal and empirical in nature.

FOOTNOTE- ILI format of footnoting has been followed while citing sources.

OBJECTIVE OF THE STUDY- Jurisprudence is the foundation upon which a legal system is built, laws are framed, and judgments are delivered. The legal fraternity in India especially the litigators and the judges are not conscious of the jurisprudential

principles they are using nor are they aware of the jurisprudential impact. The researcher seeks to discover a pattern in this unplanned jurisprudential activity, an order in the chaos of unaware jurisprudential and judicial activity.

SCOPE OF THIS STUDY- This researcher has done case studies in order to show how unconsciously transition takes place in Indian Legal system. In this research work three phases of transition have been pointed out & these are

(a) Journey from the drafting of the Indian Constitution (1947) to A.K. Gopalan Case (1950) era,

(b) Journey from A. K. Gopalan (1950) to ManekaGandi (1978) case, &

(c) Post Maneka Gandhi case (1978) to privatization era and beyond.

LITERATURE REVIEW- The researcher has referred following literatures during this research work-

BOOKS REFERRED

1. Abhinav Chandrachud, *Supreme Whispers: Conversations with Judges of the Supreme Court of India*, (Viking by Penguin Random House, India, 2018).

In 1980, a brilliant American scholar, George H. gadboi Jr. met five judges of the Supreme Court of Indi. The judges gave him astonishing details about what they thought of their colleagues, about the inner working and the politics of the court, their interactions with the government and the judicial appointments process. Gadboi visited India again and completed almost 116 interviews of several judges. Gadboi took down handwritten notes and later on preserved it through typing it. Relying on these typewritten interviews the author, Abhinav Chandrachud, sheds light on a decade of politics, decision making and legal culture of the Supreme Court of India.

The present research has studied the legal culture of the Supreme Court of India to understand how far that has impacted a judicial pronouncement. The another reason of referring the abovementioned work is that to find out whether this inter-personal rivalry of Supreme Court judges had any impact upon any judicial pronouncement for example whether there was any unnecessary concurrent judgment or any dissenting opinion because of it.

2. Amy Street, *Judicial Review and the Rule of Law: Who is in Control?*, (The Constitution Society, 2013)

This book has highlighted the role of English judiciary pre and post enactment of Human Rights Act, 1998. While discussing the role of the judiciary the book has also done a detailed analysis of the role of the government proposals undermining the rule of law in United Kingdom.

The researcher has studied English case laws pre and post 1998 to show how the power of the Judiciary in United Kingdom has been evolved. The power of judicial review by the English court has been expanded post 1998.

3. Ashok Anand, *One vs All: Beware Mr. Prime Minister, It's India Impossible* (Notion Press, Chennai, 2016).

This book has highlighted the economic policies adopted by the government of India at different point of time. Indian government adopted restricted industrialization as economic policy immediately after independence. However, the policy did not work for India and resulted into various scams. The author of this book has pointed out those scams which took place by the government officials, sometimes by political leaders, while allowing (i.e. issuing license) industries to enter Indian market. The author did not confine his work till controlled industrialization but also considered nationalization period and the era when India was waiting to welcome privatization.

The present research has referred this abovementioned work to understand the shift and the reason of shift of one economic policy to another. The researcher also studied significant case laws to understand how the Indian judiciary has responded to these shifts in the Indian economic policy.

4. A.V. Dicey, *An Introduction to the Study of the Law of the Constitution*, (Macmillan Press Ltd, London, 1979).

This book is an introduction to the law of the constitution; it does not pretend to be even a summary, much less a complete account of constitutional law. It deals only with two or three guiding principles which pervade the modem constitution of England. This book emphasizes the doctrines (such, for example, as the sovereignty

of Parliament) which are not only the foundation of the existing constitution, but have also constantly illustrated English constitutionalism by comparisons between it and the constitutionalism on the one hand of the United States, and on the other of the French Republic.

5. B. Shiva Rao, *The Framing of India's Constitution: A Study*, (N.M. Tripathi Private Ltd., Bombay)

This book is an exhaustive book on the commentary on the Constitution of India. In this book a study of each Article including the Preamble has been made by the Project committee consisting of B. Shiva Rao the Chairman, V.K.N. menon, J.N. Khosla, K.V. padmanabhan, C. Ganeshan and P.N. Krishna Mani as members. There were two research officers i.e. Subhash C. Kashyap and N.K.N. Iyengar in the Project Committee.

The researcher has referred this work to understand the drafting of the Constitution of India. The present research focuses on the study of principles as followed during drafting the Constitution of India and whether there is any shift in those principles later on.

6. Chintan Chandrachud, *Balanced Constitutionalism*, (Oxford University Press published in India, New Delhi, 2017).

The Human Rights Act, 1998 enacted by the United Kingdom legislature has widened the power of judicial review of the English judiciary. Unlike systems of Parliamentary sovereignty and Judicial Supremacy it promised a new 'balanced' model for the protection of rights which conferred Courts with the limited power of judicial review of United Kingdom legislations. This book examines the promise of the new model against its performance in practice by comparing judicial review under the HRA to an exemplar of the old model of judicial review, the Indian Constitution. Balanced Constitutionalism could not be achieved through the legislative rejection of judicial decision making about rights. Instead the nature of remedy provided under HRA enables British courts to assert their genuine interpretations of rights in situations in which Indian courts find it difficult to do so.

In the present research work the researcher has done a comparative study of Indian legal system and English legal system. However, the focus of that comparative study is to find out whether the shifts in both these legal systems took place almost at a same time. The researcher also studies whether the nature of these shifts in both these legal systems are of similar nature.

7. Chintan Chandrachud, *The Cases That India Forgot*, (Juggernaut, New Delhi, 2019).

In this book Chintan Chandrachud has taken us behind the scenes and told us stories of ten extraordinary and dramatic legal cases from 1950s to the present that have been faded away from public memory. This book has shown an unexpected picture of the judiciary. The Courts are not always on the right side of history or justice and they always do not have the last word on the matters before them. The author has also highlighted the interference by the other organs of the government while the court is dispensing with a case. The author has mentioned ten case laws that are worth mentioning, either for its political significance or for the change it brought along with it in the Indian legal system.

The present, besides referring these ten significant case laws, referred other cases as well who have shaped the Indian legal system and facilitated the various shifts. The researcher did not only analyze the judgment s but also made an extensive study of the voting behaviour of judges in respective case laws.

8. Constituent Assembly Debates, Book Number 2, Volume No VII, 6th December to 13th December, 1948.

Article 21 of the Indian Constitution was initially Article 15 of the Draft Constitution. There was a debate as to which phrase between 'according to the procedure established by law' and 'due process of law' would prevail in Article 15 of the Draft Constitution of India. Kazi Syed Karimuddin, one of the members of the Draft Committee of the Indian Constitution, was of the view that substitution of the phrase 'due process of law' with 'according to procedure established by law' would lead to great injustice. According to him this substitution meant end of the duties of court.

However, it was voted in the Constituent Assembly that the phrase 'except according to the procedure established by law' would prevail and Article 15 was voted to be added to the Indian Constitution.

9. Dr. Andrew Blick, *Entrenchment In The United Kingdom: A Written Constitution By Default*, (The Constitution Society, Great Britain, 2017).

In this book the author has discussed the legal system of the United Kingdom. The focus of this book is the *legal entrenchment* in the United Kingdom. Legal entrenchment is a process by which statutory law is protected against any amendment or repeal by the bare majority of members of the legislature. Legal entrenchment is basically a limitation upon the amending power of the Parliament of United Kingdom. The author has pointed out the significance of legal entrenchment in the legal system of the United Kingdom. Thus, in the absence of any written Constitution, legal entrenchment provides a stronger protection to UK laws.

The present work has taken reference of this legal entrenchment in the United Kingdom. However, the focus of the research work is paradigm shifts in the legal system of the United Kingdom.

10. Dr. L.M. Singhvi, *Evolution of Indian Judiciary*, (Bhanu Printers, Delhi, 2012)

Judicial institutions evolved in India in the context of India's Social, economic and political conditions and because of the reception of the legal concepts and institutions known to English and Scottish judges, lawyers and administrators. The Constitution of India is a glorious achievement of national consensus and national commitment. The Supreme Court of India is said to have fulfilled its constitutional ethos. However, there have been notable aberrations during Emergency and in some other cases by enlarging the scope of Judicial Review. In this book the author has highlighted the role of the Indian judiciary, the Supreme Court of India in specific, in providing full access to the rights guaranteed under the Constitution of India.

In the present research the researcher has also studied the Indian case laws but the purpose of that is to locate any transformation in the legal thoughts of India. The abovementioned book has pointed out that there were aberrations in the judicial pronouncements during some period in India. The researcher tries to find out the

factors leading to such aberrations. The researcher, while studying the reasons for different (sometimes contradictory) judgments pronounced by the Supreme Court of India, has studied the pattern of voting of judges in each case laws.

11. Edgar Bodenheimer, Jurisprudence: The Philosophy and Method of the Law, (Universal Law Publishing Co. Ltd., Delhi, 2009).

When Edgar Bodenheimer's book, *Jurisprudence: The Philosophy and Method of the Law*, was published in 1962, it received extraordinary reviews. It was called by one commentator "a profoundly scholarly, clearly written and thoroughly unpretentious contribution to the literature of jurisprudence." Because there have been significant developments in analytical jurisprudence and in the legal philosophy of values, Bodenheimer has brought his book up to date.

Part I now includes a discussion of important recent contributions to jurisprudence. Part II has been largely rewritten to give more extensive consideration to the psychological roots of the need for order and quest for justice, the conceptual scope and substantive components of the notion of justice, and the criteria for validity of the law. Part III of Bodenheimer's study is concerned with the problems of legal method and the modes of legal reasoning.

12. George H. Gadboi Jr., *Judges of the Supreme Court of India (1950-1989)*, (Oxford University Press published in India, New Delhi, 2011).

George H. Gadboi Jr. (1963-2017) was a Political Scientist at the University of Kentucky, U.S.A. He has been close observer of judges of Supreme Court of India for more than a half century. In this book the author has presented biographical essays for each of the first ninety three Supreme Court judges who served in the period between 1950-1989. This book is based on the interviews conducted by Gadboi with sixty four of sixty eight judges who were alive in 1980. The author met relatives, friends and associates to gather information about deceased judges. This book has made an attempt to study the background character of each judge and to find out whether their judgments were influenced by it.

In the present research the researcher has studied the voting behaviour of judges to locate any shift in the Indian legal system. The researcher has not considered the

background characteristics of a judge to understand his/her voting behaviour. The pattern of voting behaviour has been studied as manifested in several case laws for a period of 1950-2020.

13. George Sharswood, Commentaries on the Laws of England by William Blackstone, (J.B. Lippincott Company, Philadelphia, 1983).

This book is an influential 18th Century treaties on the common law of England by Sir William Blackstone. The *Commentaries* were long regarded as the leading work on the development of English law and played a role in the development of the American legal system. They were in fact the first methodical treatise on the common law suitable for a lay readership since at least the Middle Ages. The common law of England has relied on precedent more than statute and codifications and has been far less amenable than the civil law, developed from the Roman law, to the needs of a treatise. The *Commentaries* were influential largely because they were in fact readable, and because they met a need.

14. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, (Oxford University Press published in India, New Delhi, 2020)

In this book Granville Austin, one of the experts on Indian Constitution, examines ideals, motivations and vision of the members of the Constituent Assembly. The author analyses the extent to which the members of Drafting Committee were successful in articulating India's goals and designing the government structure for newly independent nation. The significance of principles embedded in the Constitution of India has been highlighted in this book.

The present research is different from the abovementioned work as the researcher in this work has highlighted the transformation in legal philosophies in India. The focal point of this research is Indian case laws that have been catalyst in bringing these shifts in the legal system of India. The researcher has also made a comparative study of English Legal system and four SAARC countries i.e. Pakistan, Bangladesh, Nepal and Bhutan.

15. Jim McConalogue, Rebalancing the British Constitution: The Future for Human Rights Law, (Civitas, London, 2020)

This book emphasizes upon the development of human rights law regime post enactment of the Human Rights Act, 1998 in United Kingdom. As a result of many years campaigning by lawyers, judges, international right activists and pressure groups the 1998 Act was enacted by enabling the English judiciary review U.K. legislation on the ground of human rights violation. Post Brexit the demand faced by the United Kingdom government is that of a demand of written Constitution along with the text of Human Rights Act, 1998. Moreover, post Brexit the HRA, 1998 requires significant updates.

The researcher has referred the abovementioned work to show how these changes have facilitated various shifts in the English legal system. In this research these shifts in the English legal system have been explained in terms of jurisprudential schools. The changing demand of the people of United Kingdom has also been highlighted to show the driving force behind any change in the system.

16. Justice Markandey katju, *Whither Indian Judiciary*, (Bllomsbury India, New Delhi, 2018).

The book presents comprehensive and analytical inside view of the Indian Judiciary. Justice Katju has traced the evaluation of law and proceeded to analyze the same. Justice Katju in this book has analyzed matters of critical importance like judicial appointments, delays in justice, challenges faced by the Indian Judiciary. This book also addresses matters like judicial corruption and also propagates some novel propositions. In other words the author, Justice Katju, has shared his experience of judgeship in this work.

The present research work has referred the analytical point of view of the author in explaining the case laws which shaped the Indian legal system. However, the focus of the present research work differs from the abovementioned work to the extent that the researcher focuses on the shifts caused due to these judicial pronouncements in India.

17. Justice R. Banumathi, Judiciary, *Judges and The Administration of Justice*, (Thomson Reuters, printed at Greater Noida, India, 2020).

This book is authored by Justice R. Banumathi. Justice Banumathi has elaborated upon values of Indian judiciary and these are judicial review, judicial accountability, honesty and integrity, judicial ethics, impartiality and conscious objectivity, and probity of conduct required by judges. This book has highlighted that the judges and lawyers must dedicate themselves to the cause of justice and must always adhere to the values embedded in the Constitution of India. This book has also emphasized upon the necessity of adopting technology for better Case Management and Court Administration to take the judiciary to higher level of efficiency.

The present research work has taken reference from this book. However, the focus of this research is shifts in Indian legal system and to find out what caused those shifts. The researcher studies the role of the judiciary in facilitating those shifts in the legal system of India.

18. Lord Denning, *The Due Process of Law*, (Aditya Books Private Limited, New Delhi, 1993).

Two central themes running through this book are-

a. working of various measures authorized by the law so as to keep the streams of justice pure, i.e. contempt of court, judicial enquiries, and the power of arrest and search,
b. the second one is the recent development in family law, focusing particularly on Lord Denning's contribution to the law of husband and wife. These broad themes are elaborated through a discussion of Lord Denning's own judgments and opinions on a wide range of topic.

The present research refers these judicial pronouncements by Lord Denning to explain the causes and the timeline of shifts in English legal system. Besides referring Lord Denning's judgments the present research also considered various other landmark English case laws which facilitated the change in English legal system.

19. Lord Denning, *What Next In The Law*, (Aditya Books Private Limited, New Delhi, 1993).

This book opens with stories of great reformers of the Past for example, Henry Bracton, Sir Edward Coke, Sir William Blackstone, William Murray and Lord Brougham. Subsequently this book focuses on details as to proposal regarding reform in various areas of English law for example, trial by jury, legal aid, personal injuries, libel, privacy and confidence. Lord Denning has also shared his idea of Bill of Rights. Finally the author treated the key issues of the misuse of power by the organs of the government.

The present research work has referred the abovementioned work while doing comparative study of English legal system. The researcher emphasizes upon the time period of shifts in English legal system and the causes of those shifts. This research also seeks to find out whether the shifts in English legal system are concurrent with the shifts in Indian legal system or preceding it.

20. Lord Hailsham, Halsbury's Laws of England, Vol 8 (2), (Butterworths, London, 1996).

Halsbury's Laws of England is a uniquely comprehensive encyclopedia of law, and provides the only complete narrative statement of law in England and Wales. It has an alphabetised title scheme covering all areas of law, drawing on authorities including Acts of the United Kingdom, Measures of the Welsh Assembly, UK case law and European law. It is written by or in consultation with experts in the relevant field. Volume 8 of the Halsbury's Laws of England has been referred in this research work.

21. M.D.A. Freeman, 'Lloyd's Introduction to Jurisprudence', (Sweet & Maxwell, London, 2001).

This book is one of the leading textbooks on Jurisprudence covering the whole-field of jurisprudence. It combines an authoritative text with extracts from a huge variety of authors, extracting the works of more than a hundred jurists. It also gives critical insight into the texts with detailed and well-documented introductory sections.

22. M. P. Jain, *Indian Constitutional Law*, (LexisNexis, Butterworth Wadhwa, Nagpur, 2010).

The author in this book has stated in detail the journey of Article 21 of Indian Constitution from A. K. Gopalan case to Maneka Gandhi case. Author in this book has discussed the phrase 'due process of law'. According to the author the word 'due' in this phrase has been judicially interpreted as just, proper, reasonable. It was also mention3ed in this book that the phrase 'due process of law' had a mention in the Draft Constitution. However, it was dropped later on and the new phraseology 'procedure established by the law' was introduced.

23. Prashant Bhushan, *The Case that Shook India: The Verdict that Led to the Emergency*, (Penguin Books, Gurgaon, 2018)

This book is on the landmark case that disqualified the election of Mrs. Indira Gandhi as Prime Minister. The landmark case Indira Gandhi v. Raj Narain led to the setting aside of Prime Minister's election for the first time in independent India followed by emergency. The Author Advocate Prashant Bhushan, in this book, has provided blow-by-blow account of the goings-on inside the courtroom as well as maneuverings outside it.

The researcher has taken this detailed analysis of Indira Gandhi v. Raj Narain case in consideration to examine the sudden shift in Indian legal system after Keshavananda Bharti decision followed by an emergency.

24. Rajeev Dhavan, *Amendment: Conspiracy or Revolution*, (wheeler Publication, Allahabad, 1978).

This book focused on the Constitution (Forty Second Amendment) Act, 1976 which took place during the emergency and brought several changes to the Constitution of India. This amendment is criticized because it endeavoured to increase the power of the centre than the states, oust the jurisdiction of the court in large number of matters, increase the emergency powers of the centre and restrict some of the fundamental rights. The author in this book has stated that this amendment was introduced to replace the parliamentary form of government to presidential form of government.

The present research has referred this work to understand whether there was any shift in the legal philosophy of India due to this amendment. How far the Forty Second amendment has impacted and/or facilitated the legal developments in India.

25. Roscoe Pound, '*Jurisprudence'*, Vol III, (St. Paul, Minn. West Publishing Co., 1959)

In this book the concept of 'Interest' has been divided into 2 broad heads. i.e. Individual and Social. According to the author there are conflicting interests in the society. The function of law is to resolve those conflicts.

This book has been referred by the researcher while dealing with the sociological school of law. The present research work emphasizes upon the paradigm shifts in Indian legal system and found the prevalence of sociological school of thought.

26. R. W. M. Dias, *Dias Jurisprudence*, (Butterworth, New Delhi, 1994)

This book has covered both the legal theories and the legal concepts. The researcher has referred the legal theories from this book.

27. Samaraditya Pal, *India's Constitution: Origins and Evolution*, (Lexis Nexis, Haryana, 2015).

This book has studied the Constitution of India and has considered the Constituent Assembly Debates, Lok Sabha Debates on Constituional Amendments and Supreme Court judgments. This book comes in separate volumes discussing several topics in each volume. The author has made a detailed and analytical study of the Constitution of India as it is not only about the CAD or Lok Sabha Debates but also includes the Supreme Court judgments.

The researcher has referred the abovementioned work to find out whether there the intention of the drafting committee of the Constituent Assembly has been acknowledged by the Supreme Court of India while interpreting the Constitution. However, The research also focuses on the shift that took place in Indian legal system.

28. Surendra Bhandari, *Self-Determination & Constitution Making in Nepal: Constituent Assembly, Inclusion & Ethnic Federalism*, (Springer, Singapore, 2014).

This book is focused on the journey of constitution-drafting in Nepal. The author has shown how the political changes ushered in Nepal calling for a change in the Constitution. The book is exhaustive on topics like setting up of constituent assembly for drafting the constitution, abolition of monarchy eventually in Nepal, nation building and inclusion of various ethnicities in the Constitution of Nepal. One of the most important topics discussed by the author in this book is the issue of self-determination of Nepali people. Therefore, from that point of view the book is quite exhaustive and gives a bird's eye view of the political developments in Nepal from 1950 to 2010.

The researcher in the research has focused not only on the political developments, but also the legal developments in Nepal. Thus, the present research has considered the role of the judiciary in the constitutional developments in Nepal. The focus of this research is to find out whether there was any shift in the Nepali legal system and if there was then what was the contribution of the judiciary of Nepal in it.

29. A Constitutional Crossroads: Way Forward for the United Kingdom by the Bingham Centre for The Rule of Law (British Institute of International and Comparative Law, London, 2015)

The United Kingdom has reached a constitutional crossroads. Scotland's vote in 2014 to remain a part of the Union was made in the light of an offer by political leaders of an unprecedented degree of home rule. Transfer of power to the Scottish Parliament has transformed the relationship between four parts or nations of the Union. Thus, the United Kingdom is called for making a new arrangement for devolution of power amongst the Parliaments of four nations of the Union.

The researcher has referred this book to show the extent of devolution of power amongst nations of the Union. The history and the development of English legal system have been discussed in detail. One of the unique features of United Kingdom is that it consists of four nations i.e. England, Wales, Scotland and Northern Ireland. The researcher has confided the comparative study to the legal system of England and

Wales. The significance of the abovementioned book is that it helps in understanding the arrangement of devolution of power amongst four nations of the United Kingdom. This arrangement of devolution of power amongst different nations of Union can not be found in India. Therefore, the same requires a special mention and needs to be discussed separately.

30. V. N. Shukla, *Constitution of India*, (Eastern Book Company, Lucknow, 2013)

In this book the author has provided interpretation of the Article 21 of the Indian Constitution. The author has also discussed in detail the expanding horizons of Article 21 of Indian Constitution.

The present research work has referred various case laws from this book. However, this book does not discuss anything about the shifts in Indian legal system which is the focus of the present research work.

31. Zia Mody. *10 Judgments that Changed India*, (Penguin Group, New Delhi, 2013)

The book is a compilation of ten judgments that have impacted the course of development of India legal system. The judiciary, at times, is considered and projected as the weakest branch of the State because it possessed neither power of the purse nor power of the sword. This book has demolished this myth where the author has discussed Supreme Court cases where these judicial pronouncements are path-breaking and have profound impact on our nation.

ARTICLES REFERRED

1. Abul Fazl Haq, 'Constitution- Making in Bangladesh', 46 (1), Pacific Affairs, 59-75, (1973)

This article has highlighted the journey of a newly formed Country from 1971 and its struggle to give itself a Constitution. The military regime in Bangladesh has been highlighted which has restricted the democratic process in the Country. Military coup and assassination of a political leader along with his family members showed that Bangladesh was still far from democratization.

2. Apoorv Kurup, 'Privatization and the Indian Judiciary', 48(3), *JILI*, 425-434, (2006).

Post independence the government of India formulated its economic policy in the line of controlled industrialization. Later on following the failure of controlled industrialization policy the Indian government introduced nationalization which also did not yield desired result. Thus, the Indian government introduced privatization and allowed private entity in the market. In this backdrop the abovementioned paper analyzes the reaction of the Indian judiciary to privatization in India.

3. Armin Rosencranz & Sharachandra Lele, Supreme Court and India's Forest, 43 (5), *Economic & Political Weekly*, 11-14 (2008).

This paper has discussed judicial overreach as manifested in T.N. Godavarman case. T.N. Godavarman case has been instituted in 1993 following uncontrolled cutting of trees in Nilgiri hills. The Supreme Court judgment in this case is criticized as it was found to be transgressing the limit of judicial review and interfered with the functioning of the executive. The rule for forest management laid down by the Supreme Court of India was found to be overstepping by the judiciary and was termed as judicial overreach.

4. Atmdev Josh, 'Separation of Powers and Check and Balance in Nepalese Context', *The Nepalese Journal of Public Administration*, 133-138.

Separation of power is indispensible in constitutional allocation of the power and responsibilities to the organs of the government. The issue of separation of power in Nepal is of utmost importance because in Nepal till 2008 monarchy was followed and till a considerable period the Constitution of Nepal kept the Monarch out of the purview of judicial review. The author in this article has critically analyzes the separation of power as existed and is existing in Nepal. The author has also highlighted that complete separation of power could not be possible because there is also a need for checks and balance amongst the organs of the government.

5. Bernard Chavance, 'The Historical Conflict of Socialism and Capitalism, And the Post-Socialist Transformation', X, *UNCTAD* (2000).

This article focused on the eternal conflict between Socialism and capitalism. According to the advocates of socialism ideology capitalism has born out of anarchy in the society which leads to social waste and sufferings. This article has done comparative study of socialism and capitalism. This paper could give a pretty clear idea as to when the shift from one ideology to another occurred. However, this paper has dealt with the transition period in Europe and Asian country. Transition in India and the importance of judicial pronouncement in such transition has not been dealt with in particular.

6. Bireshwar Prasad Singh, 'The Constitution of Nepal X-Rayed', 21(2), *Indian Journal of Political Science*, 154-158, (1960).

This article was published in 1960. The year of publication is significant because Nepal has got several documents as its Constitution but none of them lasted. It was in 2015 when Nepal adopted its final Constitution. When this article was written Nepal was still going through a rough patch and was following monarchy which is now changed to democracy. Nevertheless, this article has explained in detail the constitutional developments in Nepal post 1947.

7. B. P. Pandya, 'Fundamental Rights and the Role of Judiciary', 31 *Journal of Constitutional and Parliamentary Studies* 15-43, (1997).

This article has particularly deals with the role of judiciary in protecting rights in democratic country like India. The author has observed that in India the problem that the judiciary faces often emanates from the power politics without public morality. The paper has studied Indian case laws to explain the role of the Indian judiciary in expanding the scope of fundamental rights in India.

8. Catherine M. Shea, 'The Case of Young, James and Webster: British Labour law and the European Convention on Human Right', 15 (2), *Cornell International Law Journal* 489-523 (1982).

This paper has disclosed that there was a huge gap in the European Law on human rights and the domestic law of United Kingdom. This gap often left the English court

without any way to address the human right violation issues within United Kingdom. The case of Young, James and Webster received two different judgments. One judgment was from the domestic court of the United Kingdom and the other one was delivered by the European Court of Human Rights. The ECHR delivered the judgment recognizing the human rights violation in this case. The domestic court of the United Kingdom was bound by the judgment of ECHR by default (for being the member of European Union). Therefore, this paper explained that until the passage of the Human Rights Act, 1998 the scope of interpretation by the English judiciary was limited because of which often the judiciary could not address the issue of human rights violation.

9. Conor McCormick, 'Judicial Review of Administrative Action in the United Kingdom', 10 (1), *Italian Journal of Public Law* 49-96 (2018).

This paper analyses judicially developed standards for reviewing administrative actions in the United Kingdom between 1890-1910. This paper has studied English case laws where arbitrary administrative actions were challenged before the court of law. The author has also made a comparative study of the judicial review of administrative action in the abovementioned period with the twenty first century standards.

10. Costas Douzinas, 'Law and Justice in Post-modernity', in Steven Connor, The Cambridge Companion to Postmodernism 196-223, (Cambridge University Press, 2005).

The author of this paper has discussed about post modern period. According to the author the starting point of post modern jurisprudence is the recognition that post modernistic legality defies both positivist and moralistic image of law.

11. David Lloyd Jones, 'Brexit and the Future of English Law', 39 *VUWLR* 1-24 (2018).

The EU law has been a part of the domestic law of the United Kingdom till Brexit. The EU law becomes the part of the UK domestic law by virtue of the membership of United Kingdom of the European Union. The membership of EU has enforced some obligation upon the United Kingdom to the extent that UK legislature had to legislate in compliance with EU law and the UK judiciary has to interpret laws in line with the

interpretation of European Court of Human Rights (ECHR). This paper gives a detail historical background of evolution of European Union and United Kingdom's membership of the Union. This paper analyses transformation in UK legal system took place post Brexit. This paper has studied English case laws pre and post Brexit to show how the interpretation of English court has been evolved in pre and post Brexit.

12. David Jenkins, 'From Unwritten to Written: Transformation in the British Common Law Constitution', 36(863) *Vanderbilt Journal of Transitional Law*, 863-960 (2003).

This Article has explained that despite being unwritten the British Constitution has incorporated written principles that restrain Parliament through judicial review. The author has asserted that this model has its basis in the common law and in the theories of Blackstone and Dicey. In addition the *ultra vires* doctrine supports this model and provides a basis for judicial review of Parliament. The author has maintained that a Constitution is defined by its underlying legal norms. This article has marked a shift in the rule of recognition endorsing judicial review and the changing nature of the Constitution manifesting positivist expression of popular will that binds the parliament. Therefore, the Court may constitutionalize statutes or treaties coming over time to represent shifting norms through common law adjudication.

13. Deva Prasad, 'Law and Social Transformation in India through the lens of Sociological Jurisprudence', *The Practical Lawyer*.

This article deals with the transformation of law and society that took place in India during the mid-twentieth century. The author has pointed out that codification of Hindu law was one step towards such transformation. Codification of religious law shows that social transformation has shown the way to legal transformation in India. The author has discussed sociological school of jurisprudence and has attributed such transformation as the dominance of sociological school of thought. According to the author Public Interest Litigation is another contribution of the sociological school of thought. However, the author has not discussed whether there was any development or transformation after sociological school of thought.

14. Erin F. Delaney, 'Judiciary Rising: Constitutional Change In The United Kingdom', 108(2), *Northwestern University Law Review*, 543-606, (2014).

This article has pointed out that Britain has experienced a period of dramatic change that challenges centuries-old understandings of British constitutionalism. The British Parliament's enactment of quasi-constitutional bill devolving legislative power to Scotland, Wales and Northern Ireland and also creation of the Supreme Court brought a change in the English legal system. This article assesses the cumulative force of the many recent constitutional changes, shedding new light on the changing nature of the British Constitution.

15. George H. Gadboi Jr., 'Indian Judicial Behaviour', 5(3/5), *Economic & Political Weekly*, 149-176, (1970).

In this paper the author has made an extensive study of sociological, educational and economical background of judges of the Supreme Court of India. The author has also studied how the sociological, educational and economic experience of a judge has impacted the judgment delivered by him/her.

16. Giorgio Pino, 'The Place of Legal Positivism in Contemporary Constitutional States', 18 *Law and Philosophy* 513-536 (1999).

This paper has pointed out that law according to positivistic approach is devoid of morality. However, the author thinks that positivism does not always mean anti-natural law. Relation between law and morality is the character attributable to natural law tradition. The author has also pointed out that there has been development to the positivistic approach. Eminent jurist H.L.A. Hart has maintained that the very existence of legal system depends upon how well the law is accepted by the citizens. Therefore, according to the modern approach of positivism the validity of law is dependent upon the fact that it is emanating from a formally elected sovereign and at the same time has moral norms attached to it.

17. G.W. Choudhury, The Constitution of Pakistan', 29(3), *Pacific Affairs*, 243-252, (1956).

The year of publication of this article is 1956 which is within ten years of establishment of Pakistan as a new nation. In this article the author has studied the

developments in drafting of the Constitution of Pakistan. This article is also significant from another point of view i.e. this article has been written when the democratic government was about to taken over by the military regime. Thus, this article gives a clear picture of the developments in constitution drafting in Pakistan till 1956.

18. Habibul H. Khondkar, Ulrike Schuerkens, 'Social Transformation, Development and Globalization', *Sociopedia. Isa* 1-14 (2014)

This paper has focused on the culture that is being followed in societies in different parts of the same nation. According to this paper culture plays an important role to ascertain the emergence of modernization or globalization in society. This paper has also observed that countries with more transnational movements of several factors were more likely to transform. However, this paper deals with the concept of socialism, modernism and globalization in general and not from legal perspective.

19. Justice Sonam Tobgye, 'The Enduring Values of the Constitution', 6, *Journal of Indian Law and Society*, 25-41 (2016)

This article is the lecture delivered by the former Chief Justice of the Supreme Court of Bhutan in the M.K. Nambiar Lecture, National University of Juridical Science, Kolkata on 6th February, 2016. In the article it has been highlighted that the transformation from monarchy to democracy in Bhutan was spontaneous and was introduced by the Monarch itself. Therefore, there was stability in the concept of constitutionalism in the Constitution of Bhutan. The articles of the Constitution of Bhutan have been elaborately discussed here.

20. Kapilamani Dahal, The Constitution of Nepal: On the Touchstone of Constitutionalism and Good Governance', XVII, *Journal of Political Science*, 36-51, (2017).

The author in this article has discussed about the constitutionalism manifested in the Constitutional documents in Nepal. In Nepal several Kings have adopted Constitutions in accordance with the principles they followed at several period of time. Thus, in Nepal the concept of constitutionalism varied from one regime to another.

21. Manoj Mate, 'The Origins of Due Process in India: The Role of Borrowing in Personal Liberty and Preventive detention Cases', 28 *Berkley Journal of International Law* 216-260 (2010).

In this paper the author has dealt with the origin of the phrase 'due process' in India. The author has confirmed that it was the intention of the framers of the Indian Constitution to infuse the concept of legal positivism to Indian Constitution. This intention of the framers of the Draft Committee of the Indian Constitution was re-iterated through A.K. Gopalan case in 1950. This paper has shown that different principles in Indian Constitution have been borrowed from Constitution of other Countries. However, this paper did not reflect anything about post Maneka Gandhi's case or post 1991 era.

22. Mark Bevir, 'Sidney Web: Utilitarianism, Positivism and Social Democracy', 74 *The Journal of Modern History* 217-252 (2002).

This article dealt with the contribution of Sidney Webb, a renowned Social reformer, in transition from radicalism of nineteenth century to social democracy of twentieth century. This article has focused on the introduction of social democracy in Britain after Sidney Webb became cabinet minister. Though social democracy was introduced during the period of Sidney Webb, but his political thought showed that he was an ethical positivist. Later on Webb became socialist due to the moral reasons. The era of Sidney Webb is an era of shifting of attention from god to human being which in turn showed the emergence of positivist humanitarianism. This article shows that the law in a society has never been static. The nature of law has changed as much as the law itself. Therefore, this article pointed out shifts from positivism to utilitarianism to social democracy.

23. Maru Bazezew, 'Constitutionalism', 3(2), *Mizan Law Review* 358-370, (2009).

The author in this paper has explained various principles of Constitutionalism. The paper does not discuss any particular and/ or specific Constitution. The discussion of principles of Constitutionalism is in general. This Article does not explain whether the principles of Constitutionalism can vary from one nation to another. The paper does not also shed any light whether principles of Constitutionalism change with the growing demand of the nation.

24. Michael Hutt, 'Drafting the Nepal Constitution', 1990, 31(11), *Asian Survey*, 1020-1039, (1991).

On 9th November, 1990, King Birendra Bir Bikram Shah promulgated a new Constitution for the kingdom of Nepal. The Constitution of 1962 banned all the political parties and vested the sovereign power in the King. Thus, because of the impact due to the Constitution of 1962 there was a demand of a new Constitution and the Constitution of 1990 was much desired for. This article has explained the legal and political developments which paved the way for adoption of the Constitution of 1990 in Nepal. The author has stated that the Constitution of 1990 represented a dramatic advance in the evolution of a dramatic, constitutional order in Nepal.

25. Mohammad Moin Uddin & Rakiba Nabi, 'Judicial Review of Constitutional Amendments in Light of the 'Political Question' Doctrine: A Comparative Study of the Jurisprudence of Supreme courts of Bangladesh, India and the United States', 58(3), *JILI*, 313-336, (2016).

This article has made a comparative study of judicial review in U.S.A., India and Bangladesh. Compared to other two countries, Bangladesh has undergone a struggling period for a longer time. It was in 1971 when Bangladesh emerged as a new nation. The new nation was created with the hope of establishing democracy. But, this hope of democracy was crushed through military coup which extended till 1991. Nevertheless, during the military regime in Bangladesh the Judiciary of the nation has delivered some significant judgments upholding rule of law. This article has pointed out such outstanding judgments by the Bangladesh judiciary. The judicial contribution in developing legal system of Bangladesh has also been highlighted.

26. O. Chinnappa Reddy, 'Judicial Process and Social Change', 25 *JILI* 149-157 (1983).

In this paper the author has discussed the failure of the juristic community to propound and develop a legal ideology explaining the connection between law and social change. According to the author during the post feudal legal ideology bourgeoisie legal ideology was on the rise. Later the bourgeoisie legal ideology started exploiting the weaker section of the society. A.D.M. Jabalpur vs. Shivakant

Shukla[8] was a case of exploitation by bourgeoisie. This was the case where the Apex Court has upheld that the essential feature of Natural justice is not only to have a fair law but also to have a fair procedure to implement the law. According to the author the juristic community must desire to expose weaknesses and contradictions of the present system and must ensure that Directive Principles of State Policy is properly followed.

27. Paramanand Singh, 'Constitutional Right to Access to Basic Amenities: Perspective on Limits of Law in Social Empowerment', 3 *Jindal Global Law Review* 39-60, (2011).

In this article the author seeks to determine the extent to which law can address social ills in India. The author has also critically analysed the judgments delivered by Indian Courts while interpreting the Right to life and Personal liberty guaranteed under Article 21 of the Indian Constitution. This article specifically deals with the various interpretations of Article 21 by the Indian Judiciary while upholding basic rights under the Indian Constitution.

28. Philippe Aghion, Robin Burgess, 'The Unequal Effects of Liberalization: Evidence from Dismantling the License Raj in India', 45, *DEDPS* (2005).

This paper investigates whether the effects on registered manufacturing out-put, employment, entry and investment, of dismantling the 'license raj'- a system of that regulates the entry and production activity in the sector vary across the Indian States with different labor market regulation. The authors of this paper maintained that the effects of liberalization were found to be unequal depending on the institutional environment in which industries were set up. In particular, following de-licensing, industries located in states pro-employer labor market institutions grew more quickly than those pro-worker environments.

29. Ramesh D. Garg, 'Phantom of Basic Structure of the Constitution: A critical appraisal of the Kesavananda case', 16 *JILI* 243-269 (1974).

In this article the author seeks to identify the function of law when there is conflict of interest in the society. According to the author the theory of Roscoe Pound has answer

[8]A.D.M. Jabalpur vs. Shivakant Shukla AIR 1976 S.C. 1207

as it has attempted to bring correspondence between the demands made by men in a given society at a given time and its law at that time.

30. Rajeev Dhavan, 'Amending the Amendment: The Constitution (Forty-Fifth Amendment) Bill, 1978', 20(2), *JILI*, 249-272 (1978).

This paper has discussed about the Constitution (Forty-Fifth Amendment) Bill, 1978 introduced after much criticized Forty-Second Amendment to the Constitution of India. The author in this paper has stated that post Forty-Second amendment the Parliament tried to correct its error and attempt was made for reassessment of constitutional powers and duties. But the real question was how these changes ought to be taken place. The author has found these amendments as correcting the previous amendments thus creating a chain of amendments.

31. Rodney Brazier, 'The Constitution of the United Kingdom', 58 (1) *The Cambridge Law Journal* 96-128 (2008).

The author in this paper has made a detailed study of the unwritten Constitution of United Kingdom. The Constitution of the United Kingdom requires a special mention because of its history of integration of Scotland and Northern Ireland with the England and Wales to form the United Kingdom. The author has discussed various principles of a Constitution which have also been manifested in the unwritten Constitution of the United Kingdom. Devolution of power is a unique feature of the Constitution of United Kingdom and has also been discussed elaborately in this paper.

32. Roy Stone de Montpensier, 'The British Doctrine of Parliamentary Sovereignty: A Critical Inquiry', 26(4), *Louisiana Law Review*, 753-787 (1966).

Parliamentary sovereignty is a principle of the unwritten Constitution of the United Kingdom. It makes the Parliament supreme to enact and/ or repeal any law. This article has critically analysed the parliamentary supremacy principle propounded by Blackstone, Dicey, Bentham and Austin.

33. Shamima Binte Habib, 'Understanding Constitutionalism: Bangladesh Perspective', 8(1), *ASA University Review*, 225-240 (2014).

This article has made an analytical study of constitutionalism in the Constitution of Bangladesh. The author has maintained that the legal developments in Bangladesh have indicated that the constitutionalism varies from one regime of political leader to the other regime. Bangladesh witnessed that constitutional principles followed during the regime of Ziaur Rahman varied from the constitutional principles followed during military regime. Thus, this article has pointed out that constitutionalism is never static. It keeps on changing depending on either the need of the citizen or at the whim of the leader and Bangladesh is one of the examples of changing constitutionalism.

34. Simrit Kaur, 'Privatization and Public Enterprise Reform: A Suggestive Action Plan', *ASARC Working Paper* (2004-2008)

In this paper the author has discussed about the growth of privatized sector in India. The author has also pointed out that during the post independent era India was following socialistic ideology. It was in 1991 when privatization started to enter India. The author has done a comparative study of private and State owned enterprises in India. However, from the legal perspective the paper does not explain anything.

35. S. S. Nigam, 'A Plea for a Uniform Law of Divorce', 5 *JILI* 47-80, (1963)

In this paper the author has discussed Article 44 of the Indian Constitution in detail. According to the author religious activities have been infiltrated in the ceremonies of marriage even though religion has very less to do with the legal part of solemnization of marriage. This paper has discussed the possibility of having Uniform Civil Code in a country with diverse religions.

36. Stella Nangonova, 'British History and Culture' (2008)

This paper discusses the British history in detail. The author has started from 15th Century to give an overview of how the present day United Kingdom has been formed. The paper discloses that the history of United Kingdom is the history of foreign invasions and war. United Kingdom has undergone different regimes of rulers, thus, seen various systems of administration. However, the present day United

Kingdom is formed by unifying four nations i.e. England, Wales, Scotland and Northern Ireland.

37. Susheela Kaushik, 'Constitution of Pakistan at Work', 3(8), *Asian Survey*, 384-389, (1963).

Pakistan was carved out of India following violent protest against British Raaj and the demand of a separate nation for Muslims. This article has discussed in detail the process of drafting the Constitution of Pakistan. Pakistan has received various Constitutional documents before finally settling with the Constitution of 1973. The Constitution of 1973 has been amended as many as twenty five times till 2019. These twenty five times amendments have brought changes to the Pakistan Constitution to a great extent that it does not retain its original form. Thus, this article is a detailed study of the journey of the developments in the Constitution of Pakistan.

38. Venkat Iyer, 'Constitution-making in Bhutan: A Complex and Sui Generis Experience', 7(2), *The Chinese Journal of Comparative Law*, 359-385, (2019).

Bhutan has remained isolated from rest of the world until the 1970s. It embarked on a series of transformational reforms in the new millennium that included the replacement of country's century-old absolute monarchy with the parliamentary democracy. The reform also intended to have a written Constitution for Bhutan based on principles like separation of power and rule of law. The article explained that the process of democratization in Bhutan was unique as the impetus for it came from the monarch itself. It was the monarch who argued that popular democracy was the only viable solution for Bhutan in the coming period. The author in this article has mentioned that the process of constitution-making in Bhutan involved the striking of a delicate balance between tradition and modernity and ensuring that monarchy continued to play a meaningful role in the country's affairs. This article argues that, although the process itself ran smoothly, it is too early to judge the durability and long-term success of Bhutan's new constitutional arrangements.

39. Victor Ferreres Comella, 'The European Model of Constitutional Review of Legislation: Toward Decentralization', 2(3), *I∗CON*, 461-491 (2004).

The author in this paper has done an analytical study of review of legislation by the Court. Most European countries have established special constitutional courts that are

uniquely empowered to set aside legislations that run counter to their Constitutions. This system of constitutional court is different from the American model where there is no separate court to adjudicate constitutional issues. This paper also explains advantage and disadvantage of European model of Constitutional courts.

40. Zeev Segal & Ariel L. Bendor, 'Constitutionalism and Trust in Britain: An Ancient Constitutional Culture, a New Judicial Review Model', 17(4), *American University International law Review*, 683-722 (2002).

It is well established that 'trust is a salient preoccupation of many theories of political legitimacy. Trust also plays an important role in democracy. In this paper by 'trust' referred the well-established maxim in Britain i.e. Parliament can do no wrong. Therefore, there can be no question of reviewing any legislation passed by the UK legislature. Till 1998 the scope of judicial review in the United Kingdom was very limited. The scope of judicial review was widened post enactment of the Human Rights Act, 1998.

41. Z.I. Choudhury, 'The Role of Judiciary in the Constitutional Development of Pakistan (1947-1971)', 1(1), *The Dhaka University Studies*, 1-24, (1989).

This article has studied the role of judiciary in constitutional developments for the period of 1947 to 1971. 1971 is significant as Pakistan which was born out of partition was further divided in 1971 into two nations i.e. Pakistan and Bangladesh. Pakistan was partitioned following violent protest against the leaders of the West Pakistan (now Pakistan) and its arbitrary policies. This article has highlighted this political instability in the West and East Pakistan. Pakistan before being partitioned underwent military rule.

CHAPTERIZATION- This work contains the following chapters

Chapter I- The title of this Chapter is **Theoritical 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- This Chapter 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- This Chapter is entitled '**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- It 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- The Title of this Chapter is '**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- This Chapter is entitled '**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- '**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- 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. This Chapter focuses on the empirical study. 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- This Chapter is entitled '**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.

Chapter X- Title of this Chapter 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- **'Constitutional Transformation in SAARC countries'** where the shifts in four SAARC countries i.e. Pakistan, Bangladesh, Nepal and Bhutan have been studied..

Chapter XII- Conclusion and Suggestion.