

# ANDHRA LEGAL DECISIONS

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**Presidential Address Delivered by Hon'ble Sri Justice S.R. NAYAK  
at the inauguration of the seminar on "*Rule of Law and Goals of Social Justice*"  
organised under the Joint Auspices of the Andhra Pradesh Judicial Academy  
and the Indian Institute of Public Administration, A.P. Regional Branch, Hyderabad  
on 7-3-1999 at Andhra Pradesh Judicial Academy, Hyderabad**

The Andhra Pradesh Judicial Academy, ever since its inception in the year 1991, has been very active and in the forefront in organising various seminars, symposiums, workshops etc., on matters of contemporary relevance, significance and utility. The present seminar on "Rule of Law and Goals of Social Justice", organised under the joint auspices of the Andhra Pradesh Judicial Academy and the Indian Institute of Public Administration, A.P. Regional Branch, Hyderabad is in line of the activities carried on by the Academy, and intended to take stock of successes and failures in operating the Indian Constitution of which "Rule of Law" and "Social Justice" are the integral values, and to focus on their application to the apparatus of the State to bring about social good and justice, and to suggest remedial measures.

Rule of law and social justice are intended to establish and maintain public quiet. Law is in its essence primarily a restraint on power. Therefore, the rule of law must provide ways and means whereby the demands of the subjects of the law can be compromised and adjusted for the realisation of their common objectives and for the minimization of their resort to self-help which would result in breach of the peace. The restraint of private power by the legal method is a fundamental purpose of the rule of law, but in addition there must also be limits on the exercise of public power. Public quiet exists where those rights and duties of the subjects of the law are protected and enforced legally and equally by the judicial and executive

machinery and where effective checks and guarantees exist to prevent public power from overstepping legal limits.

The concept of Rule of law, originally, was only to maintain law and order, but during the 17th and 18th centuries, concept of 'liberty' was added to it. Law was intended to preserve and promote liberty. The concept of 'equality' was added to the concept of Rule of law during the 19th century to enrich its efficacy and utility. It was the equality in satisfaction of the material wants and desires involved in life in a civilized society. During the 20th century, the Rule of law was further strengthened by the inclusion of the idea of 'security'. It was the security from want, fear and frustration. Thus, in the process of evolution over the centuries, the rule of law has taken in its scope concepts of 'law and order', 'liberty', 'equality' and 'security'. These ideas and ideals constitute the bedrock of our Constitution. Part III of our Constitution guarantees certain basic rights termed as fundamental rights. The purpose of the fundamental rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and make liberty available for all.

Equality and security are also integral parts of social justice. Social justice is the equality of being just and fair to all the individuals in an organised group, and it seeks to give everyone what is due to him, but what is due to him cannot be ascertained by absolute standards; the standards change depending upon time, place and

circumstance. Social justice is the objective of socialism; it is also the objective of democracy, and it is certainly the objective of the Indian Constitution. The concept of social justice, taken in its most comprehensive sense pervades all the actions of the State - the legislative, the administrative and the judicial. The words of preamble of our Constitution,

*"We, the People of India, having solemnly resolved to Constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens :*

JUSTICE, Social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;"

and Article 38 of the Directive Principles in Part IV of the Constitution which provides that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life" mandate that the entire functioning of the three organs of the State must be permeated with and monitored by social justice. Our constitution, as first and foremost, is a social document, and the majority of its provisions are directed at promoting the goals of social revolution and establishing the conditions necessary for its achievement. Articles 38, 39, 39A, 41, 43, 43A and 46 sum up the socio economic facets while Articles 15, 16 and 17 deal with other facets of social justice. Articles 15, 16, 17, 41 and 43 underwrite equality, dignity and the minimum human needs to every citizen of

India. Dignity here connotes not pride or manner, but the intrinsic worthiness of every human being, without regard to his intelligence, skills, talents, rank, property or beliefs. He who affirms the principles of human equality normally asserts the universal possession of dignity in this sense. *Kant's* celebrated injunction to treat each man as an end, and never a means, implies that respect is owed to each man as a rational moral agent and, since men are equally such agents, respect is owed equally to all unlike admiration and similar attitudes, which are commended unequally by men in proportion to their unequal possession of different kinds of natural excellence. Part IV of the Constitution is designed for bringing about the social and economic revolution that remained to be fulfilled after independence by non-violent means. India's survival depends on the achievement of its social and economic revolution. Prime Minister *Jawaharlal Nehru* warned, "if one cannot solve its problem soon, all our paper Constitution will become useless and purposeless". Political freedom will have no meaning without social and economic justice. The aim of the Constitution is not to guarantee certain liberties to only a few of the citizens, but for all. The Constitution visualizes that society as a whole and every member of the society should participate in these freedoms. Justice *K.S.Hegde* said, "In a state of society so incongruous as ours, if a man has no money, he is free in law, but not in fact. What use is equality before law, if there is no equality in fact ? Freedoms guaranteed by Article 19 will become empty slogans for a person who has no food to eat, no roof under which he can take shelter and no clothes to wear; and what is the use of vote to a person who is hungry and kept illiterate and denied the knowledge required to participate in the affairs of the State?"

But what has happened during the last 48 years and more since the Constitution

was promulgated and Republic of India established under its auspices ? One should moan that inspite of the undertaking of social justice and a commitment therefor in the Constitution, the gap between the rich and poor has widened; the rich have become richer and the poor the poorer, and resultantly the frustration has engulfed the majority of people in the Country. It is not to suggest that the Indian State through its three organs has not taken steps to redeem its Constitutional promises. A conceivable amount of legislation - both Central and State, has been enacted as a step-in-aid to the establishment of an egalitarian society, to deliver social justice to the people, but in my view, this is not enough, and secondly, such legislation has remained lost in the statute books, without its being properly implemented. Why it happened and happens like this ? Here I would like the Jurists, Judges and experts who are going to participate in the seminar to ponder over the causes for the failures and to suggest remedies to the malady. I do not profess to be scholar, learned enough to placate the ills that ails the India of today on the social justice front. I would, however, wish to place one or two aspects for deliberation in the Seminar. We often hear certain criticisms, emanating particularly from the depressed classes of citizens, against the mode of application of the Rule of law in the administration of the State, and rendition of social justice. We cannot dismiss these criticisms as baseless or mischievous. They are required to be examined seriously. Therefore, I intend to sum up few of these criticisms so that the participants in the Seminar can deliberate on them.

Firstly, I would like them to examine whether pernicious caste system prevailing in India has become an arresting factor on the path of rendering social justice. Every caste is an institution in itself, and it has a mind and a body. All efforts hitherto made was to hammer only the body of the caste,

without touching the mind or soul of the caste. It is axiomatic that caste has become the most trustworthy insurance company in India which offers wide-range, comprehensive, all-risks coverage to its members both during peace-time and war-time. By and large, many do not prefer to come out of the web of the caste, sacrificing the very attractive incentives offered by the institution of caste. Quite often, caste emotion is actuated to fumigate and then discharged in the form of violent revolt whenever there is a threat to its interests or existence so as to see that none touches the body of the caste. 'Your first loyalty is to your caste and next loyalty to your Constitution and the Country' seems to be the prevailing dogma among the castemen. If this is the ground reality, and if the constitutional goals such as 'Law and Order', 'liberty', 'equality', 'security' and 'social justice' have to be attempted through men drawn from the society inflicted with caste virus, to man the positions and offices in the three organs of the State, is it possible for the State to execute these Constitutional pledges? If not, what can be the remedial measures to destroy both the body and mind of the caste? If annihilation of the caste system in India is not possible, what can be the next best course of action to at least level the society thereby meaning making all castes equal in terms of empowerment and social status?

Secondly, I would like the participants to examine whether the Indian bureaucracy is effective and trained enough to implement and execute the socio-economic laws. In certain quarters, it is opined that our bureaucracy which at one time served well in a Government within the limited task of revenue collection and maintenance of order is no longer adequate to fulfill the new requirements generated by the State undertaking new functions and responsibilities of a Welfare State and the new task of managing the transformation

which the Country is undergoing now. Justice *Krishna Iyer* says, “the prospect of realising social justice is remote unless Articles 38 and 39(b) and (c) go into militant action and unless there is a committed cadre of civil servants. The neutral civil service, apathetic to people’s demands, contradicts social justice”. As regards judiciary, it is true that its personnel is human. Though impartiality and objectivity are assumed in them, as *Benjamin Nathan Cordozo* once remarked, “deep below consciousness there are forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man whether he be the litigant or the judge”. Therefore the seminar may also examine objectively how far these human forces lying deep below consciousness of human judges stalled or arrested the programs of socio-economic justice.

Thirdly, there are people who tend to think that rule of laws is being used as a tool to suppress the depressed classes from getting their legitimate dues and social justice. While putting forth this allegation, they do not spare even the judiciary. This allegation is met by the Judges, sitting and retired, and they have squarely denied the allegation. Be that as it may, I hope, this seminar will also focus on this allegation and find out whether there is any truth in the allegation. History is replete with many instances where legal concepts and precepts were tailored to subserve the capitalist and neo-colonial needs. A Nigerian jurist *M.A. Ntuny* of the University of Benin, debunks neo-naturalist legal concepts as tailoring legal philosophy to fit capitalist and neo-colonial needs, disguising the real interests they advance, in the following words :

“The ideas of justice, liberty, equality, human rights etc. expressed in neo-naturalism are not only determined, conditioned, and moulded by capitalist

social relations, but are meant to serve the capitalist system. This explains, for instance, why the cruel acts of colonialism are not described as criminal. For the juristic facts that entail the definition of what constitutes a crime are determined by what is considered inimical to the capitalist system. It follows from this that when natural lawyers and neo-naturalists talk of justice, rule of law, fundamental human rights, and the establishment of a legal regime of equality, liberty, etc., it is pertinent, indeed imperative, for us to enquire about whose justice, equality, rights, etc., they are taking”.

The rule of law in the hands of the operators of the Constitution becomes power. The Constitution inscribes justice as the first promise of the Republic, which means that State power will execute the pledge of justice in favour of the millions who are the Republic Justice *Krishna Iyer* says,

“Social Justice is People’s justice where the tyranny of power is transformed into the democracy of social good”.

The observations of *Blaise Pascal* dealing with interrelationship between the State power and rendition of justice are apposite:

“Justice without power is inefficient; power without justice is tyranny. Justice without power is opposed, because there are always wicked men. Power without justice is soon questioned. Justice and power must therefore be brought together, so that whatever is just may be powerful, and whatever is powerful may be just”.

Before concluding, I should congratulate the Organizers of the seminar for having secured the presence of many distinguished Judges, eminent jurists, scholars and experts as participants in the seminar. I am particularly happy that the learned Judge, Justice *P.A. Chowdary* is participating in

the seminar. Justice *Chowdary* needs no introduction. Justice *Chowdary* is the most distinguished Judge-cum-Jurist. His contribution to the development of law is immense and innovative; he is a path-finder in the pathless horizon of law. I trust that his participation in the seminar would lead to fruitful discussion and results. My learned brothers Justice *Bilal Nazki* and Justice *B.S.A. Swamy* are ardent votaries of social justice. They have had rich experience as Judges as well as political activists before their elevation to the Bench. Their presence, I believe, will lead to fruitful discussion on the components of social justice. Then, we have many other distinguished participants drawn from varied fields. I am grateful to all of them for having kindly consented to be the participants in the seminar. I wish the seminar all the success.

I am thankful to the organisers of the

seminar for having given me an opportunity to be in your midst today and preside over the inaugural function.

Now it is time to hear the Chief Guest of the today's function, Hon'ble Mr. Justice *A. Lakshmana Rao*. I had the privilege to associate myself with Justice *Lakshmana Rao*, as a colleague on the Bench of Andhra Pradesh High Court. It is said that democracy is grounded on the equality of moderation. The quality of moderation is in abundance in the personality of Justice *Lakshmana Rao*. Justice *Lakshmana Rao* is well known for his quality of moderation, sobriety and well balanced and dispassionate views on men and matters. Therefore, we are eagerly waiting to hear his balanced and dispassionate views on the subject chosen for the seminar. Now I request Mr. Justice *Lakshmana Rao* to kindly address us.

*Thank You All.*

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## THE CONCEPT OF PUBLIC INTEREST UNDER SECTIONS 397 AND 398 OF THE COMPANIES ACT, 1956

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In the year 1963, in Companies Act, 1956 under Sections 397 and 398, a new concept was introduced entitled as **Public Interest**. The Statement of Objects and Reasons appended to the Companies (Amendment) Bill, 1963 (Bill No. 46 of 1963) explained thus :

The scope of Sections 397 and 398 and other related sections is being enlarged to provide for the entertainment of application on the

grounds of public interest as well.

Under Section 397, the reliefs can be sought, if the affairs of the company **are being conducted in a manner prejudicial to public interest** or in a manner oppressive to any member or members.

This concept was introduced in sub-section (1) and also (2)(a) to Section 397.