

That secret of law is in the bosom of God.

The concept of law connotes pure righteousness or Dharma, the gem of a word in the Hindu Jurisprudence. Taitriya Samhita has gone to the extent of remarking that Dharma sustains the universe, thereby highlights the importance of Dharma.

Pragmate Kautilya in Artha Sastra says—

“Therefore the King should not allow his subjects to swerve from or frail in their Dharma, for whoever holds fast by Dharma, will be happy in this World and the next”.

Ancient Hindu Juris-theologians thought that righteousness or Dharma should be the basis of the validity of all laws for all times to come. Right of life is guaranteed under Article 21 which includes within the ambit the right to live with basic human rights. Sarve Janah Sukino Bhavantu.

As *Pandit Nehru* said — “Law must run closely to the rule of life.” Thread of Rule of Law must be woven in the fabric of any law to a given instance to public or private. The twin aim of the Rule of Law is peace and security. Law must play a dynamic role. It must act as an instrument in social engineering. Socio-Economic justice is a composite concept through Rule of Law. *Gajendragadker*, C.J., then opined that law

is a dynamic instrument of bringing about the new social order enlivened by equality flowering into freedom. Judicial redress must be the rule of the day. Public interest litigation thus is essentially a co-operative or collaborative effort. “To reach Justice to the door-step, to the needy and poor and weaker sections” is the slogan of the day. Law envelopes mankind and enjoins righteous conduct. Attainment of justice ‘the great standing policy of Civil Society’ is a motto of law. Though *Cicero* says that we are slaves of the law that we may be free, viewing law and philosophy, one can say whoever realises his ideal thereby surpasses it. Not the strength but the permanence of superior sensibilities is the mark of the superior man.

Kharma stricken - mankind (root of Karma is ego) should emancipate to attain the Truth, realisation of life.

So we may conclude that there is dawn of reason raising upon man, on the subject of law that has not appeared before. The sentiments of justice and humanity must be moulded to realise the just appreciation of the ends law and life.

Law and life thus are moulded together to gain their ends *i.e.*, justice and realisation of life.

OM TAT SAT

GOADING THE STATE TO CONFORM TO INTERNATIONAL LAW

By

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India is a founder member of UNO and a signatory to Human Rights Instruments. International covenants and instruments are beacon lights showing the path of justice and humanity to the Nations. International covenant on civil and political rights 1966 entered into force from 23rd March, 1976. On 27th March, 1978 the then President of India Sri *Neelam Sanjiva Reddy* signed

and acceded to the aforesaid covenant. Thus the Republic of India ratified this covenant and thereby accepted the values propounded in that covenant. Hence India is duty bound to bring its national policies and procedures in line with this covenant as required under International Law and Treaty. It may be borne in mind that the actual realisation of human rights by the people

would depend upon the commitment of the 'member - State' to the cause of Human Rights. the role of UNO is moral in nature. Article 11 of the International covenant on civil and political rights 1966 reads as follows:

"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."

Article 51(c) of the Constitution of India lays down that the State shall endeavour to foster respect for International Law and Treaty obligation in the dealings of organised people with one another. India is a 'Union of States' (Article 1 of the Constitution of India) and therefore all the States within India as well as the Union Parliament are governed by Article 51(c) of the Indian Constitution. The principle laid therein is fundamental in the governance of the country and it shall be their duty to apply these principles in making laws (*vide* Article 37 of the Indian Constitution).

2. Alive to the above legal reality, it was held by the Apex Court in *Jolly George Varghese v. The Bank of Cochin*, AIR 1980 SC 470 at 473 that the international law frowns on holding the debtor's person in civil prison as hostage by the Court. Article 11 of the covenant 1966 grants immunity from imprisonment to indigent but honest debtors. It was further held that the march of civilization has been a story of progressive subordination of property rights to personal freedom and this finds noble expression in the covenant.

3. When viewed from the above legal firmament, Section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 does not appear to satisfy the universal consciousness as laid down in Article 11 of the Covenant 1966. This A.P. State Act came into force from 1-11-1999 in order to prevent unscrupulous 'financial establishments' from cheating innocent, gullible depositors. As per Section 2(c) of the Act an individual as well as an incorporated body is called 'Financial Establishment'. Section 5 of the Act

provides penalty for default. It provides that where any financial establishment defaults in the return of the deposit or in the payment of interest on the deposit as agreed upon, the same is punishable with imprisonment for a term which may extend to 10 years and with fine upto Rs. one lakh. Thus every person responsible for the management of the affairs of the financial establishment can be sentenced to imprisonment for the mere failure to comply with the contractual obligation of returning the deposited amount and even for failure to pay the agreed interest component. The provision does not require proof of any malice on part of the defaulter. Default simpliciter is enough to put the individuals behind the bars. There has been no parallel to this provision in the entire law of contractual obligations in this country. A sort of 'strict liability' is conceived in Section 5. Thus it is obviously a deviation from the letter and spirit of Article 11 of the Covenant 1966 and also the pronouncement of the Honourable Supreme Court of India that the simple default to discharge the debt is not enough but there must be some element of bad faith in it and only then one can be imprisoned (*Jolly George* case referred supra).

4. The high value of human dignity and the worth of the human person enshrined in Article 21 read with Articles 14 and 19 of the Indian Constitution obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence (*Menaka Gandhi v. Union of India*, AIR 1978 SC 597).

5. The anxiety of the State Legislature in punishing the unscrupulous financial establishments is not in conformity with the international legal perspective.

6. Section 5 of the Act, 1999 may not pass the judicial test which was anvil on the constitution sauced with justice as found in Article 11 of the Covenant 1966. It would be in the fitness of things for the State legislature to make amends to Section 5 of the Act, 1999 before it is guillotined by the constitutional Courts.