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02

A Critical study of sovereignty of Indian Constitution

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We shall now consider what by the meaning of the expression "sovereign within its sphere," and whether our Parliament can be said to be "sovereign within its sphere." In the two cases[1] that went from India to the Privy Council, the Indian legislature is not described as "sovereign within its sphere" either in the arguments or in the decision,[2] The expression is generally used in the textbooks on constitutional law. Speaking about it, Jennings and Young say: "To a political scientist this phrase is nonsense, for the essence of sovereignty is that the powers are unlimited."[3] According to them, it suggests (1) that courts cannot question the reasonableness or desirability of law, and (2) that the legislature can delegate law-making to subordinate agencies.[4]

Let us see if Parliament can be said to be sovereign within its sphere in this narrow sense. The reasonableness of a parliamentary law affecting fundamental rights can undoubtedly be examined by courts. A law may be declared void by courts if it unreasonably restricts any fundamental right.[5] It may be held to be unreasonable both as to substance and as to procedure.[6] In other words, the law's ends and means should both receive judicial approval. In Chintaman Rao v. Madhya Pradesh, Mr. Justice Mahajan said:

The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reason ableness and unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g) and the social control permitted by clause (6) of article 19, it must be held to be wanting in that quality,[7]

Whether a law strikes a proper balance or not is for the courts to determine. If it appears to them that the law fails to strike a "proper balance," they can declare the law to be wanting in reasonableness and so void and inoperative.[8]

Courts may also examine, though in a limited way, the expediency of a law. In Jia Lal v. Delhi Administrations the Supreme Court struck down section 29 of the Indian Arms Act, 1878, as being violative of article 14 of the Constitution. The Court held that although the act was expedient at the time of its enactment, it had now become inexpedient. The Court observed:

The short question for decision therefore is whether the differentiation between the territories, north of the Jumna and the Ganga, on one hand and the other territories, on the other, has any relevance to the object of the legislation. As already pointed out this differentiation came to be made as a result of the political situation during 1857, and has reference to the fact, that the largest opposition to the British Government came from the Taluqdars to the north of the Jumna and Ganga. But more than a century has since elapsed and the conditions have so radically changed that it is impossible now to sustain any distinction between the territories north of the Jumna and Ganga and the other territories on any ground pertinent to the object of the law....[9]

Judicial censorship of the policy and expediency of law is seen at its peak perhaps in two recent decisions: Bhau Ram v. Baijnath Singh's[10] and Sant Ram v. Labh Singh.[11] In the