

BHAGWATI: THE SAVIOUR

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ABSTRACT

Justice Prafullachandra Natwarlal Bhagwati a man of wisdom and sapience, was the former Chief Justice of India and continued his tenure till the year 1986 when he retired. He was inspired by his father and Mahatama Gandhi to pursue law as his career and was motivated to ameliorate the state of justice delivered. During his young age he participated in the Freedom movement and was arrested in 1942 and was in trial for about four months. But all these hurdles made him strong and goal oriented. He became a judge of the Gujarat High Court in 1960 and the Chief Justice of Gujarat High Court in 1967. He was dignified to Supreme Court in 1973 and became the Chief Justice of India on July 12, 1985. When he came to power he revolutionised the laws and passed many landmark decisions. The idea of Public Interest Litigation was first introduced by him which not only transformed law but also changed the landscape of the country. Justice Bhagwati is universally deemed as the prime mover of India's legal aid programme and for his works he is awarded with Padma Vibushan award. In our research paper we would be doing a detailed life and career analysis of Justice Prafullachandra Natwarlal Bhagwati including all his works and landmark judgements. We would be covering his journey form a law student to the best CJI India has ever had.

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RESEARCH PAPER

INTRODUCTION

Prafullachandra Natwarlal Bhagwati, the seventeenth Chief Justice of India has been a part of pioneer judgements bringing revolutionary changes in the Indian legal system. His role as the C.J.I.³ lasted for one and a half year, starting from 12th July 1985 to 20th December 1986. He was the youngest Chief Justice of India ever. He started his career as a lawyer at Bombay High Court after his education from Government Law College, Bombay. He then ceased the opportunity as the Judge at the Gujarat High Court in July,1960 and thereafter he was positioned as the Chief Justice of the Gujarat High Court. He also operated provisionally as the Governor of Gujarat, his birth place. In July 1973, he started his tenure as the Supreme Court judge.

He has been honoured with Padma Vibhushan in public affairs which is India's second highest civilian award. He was the part of the United Nations Human Rights Committee till 2009 and has also guided Sri Sathya Institute of Higher Learning as the Chancellor. His contribution to human rights, legal aid and law for the poor have also been recognised through his election as the President of the world congress of human rights.⁴ He unfortunately took his last breath on 15th June 2017.

The legacy of P.N. Bhagwati started with the judgement given by the five-judge bench in the case of ADM Jabalpur⁵ wherein during emergency to protect the people, all the fundamental rights were taken from them. The man had worked day and night to serve the best for the people of this country. His vision was foresighted which has provided us with an excellent legal system. He was one of the first judges to take responsibility for the judgement given by him in ADM Jabalpur. He had the courage to stand by the people and passion for his work.

³ Chief Justice of India

⁴ Chapter -II, Bibliography of Justice P.N.Bhagwati, Sodhganga,
http://shodhganga.inflibnet.ac.in/bitstream/10603/74384/8/08_chapter%202.pdf

⁵ 1976 AIR 1207, 1976 SCR 172

STORIES CREATED BY BHAGWATI

The man of the hour has been a part of many important judgements in the history of law. Story of the legends are always to be remembered and he made sure that he left a part of his with us, i.e. his books. His journey though began way much before 1976, but this year was the turning point in his life.

ADM Jabalpur v. Shivkant Shukla Etc. Etc.⁶, prevalently acknowledged as the habeas corpus case in India⁷. It is a case of Article 359⁸ which is regarding the stay of enactment of any rights bestowed by Part III during emergencies. It is this article which was held to be violative of Article 14⁹ by the plaintiff but denied by the judges. National emergency is when the President of India deduces serious scare to life of the people in the country from internal and external sources or from economic conditions of crisis in which the period of governance under a reformed constitutional arrangement can be declared, i.e. the president can act either on a report of the governor of the state or otherwise too.

Justice P.N. Bhagwati upheld the preliminary objection of the government, and apprehended that in sight of the Presidential Order given in June 1975, in which no individual had the right to go for a writ petition under Indian Constitution before the High Court for habeas corpus or any other writ petition, to question the legitimacy of the imprisonment order on the ground that the order is not under or in accord with the act, or is illegal, or is built upon any unnecessary consideration.¹⁰ The underlying goal of this bench was to protect the people from any danger or loss of lives.

This minority verdict also flagged the system for the coming growth in future. The doctrine in Maneka Gandhi v. Union of India and Ors.¹¹ that came up, lies on the notion that everything arbitrary is in contract of the assurance of equality in the Indian Constitution under Article 14¹². The doctrine of reasonableness and non-arbitrariness arose with full power in this case. Reasonableness differs from one case to the other as it depends on the circumstances. It was observed that each step has to undergo a test of reasonability, fairness and non-arbitrariness. Also, both intent and content were given importance for reasonableness. Non arbitrariness is

⁶ 1976 AIR 1207

⁷ Mahendra Pal Singh, V.N. Shukla's Constitution of India (ed 12, 2015)

⁸ Universal's, The Constitution Of India (2017)

⁹ Dr. J.N. Pandey, Constitutional Law of India (ed 33, Pg. no. 69, 2002)

¹⁰ Justice Asok K. Ganguly, Landmark Judgements that changed India (Pg. no. 36, 2015)

¹¹ 1978 AIR 597

¹² *Supra* 6

not subject to any individual and also includes will and judgement of a person with restrictions which means it is not contingent on one's discretion. It includes the power controlled and limited by the law and reasonableness always backs non arbitrariness.

Delivering a concurrent opinion with Chief Justice Ray, Justice Bhagwati relied on the concept of reasonableness, hitherto unknown in the arena of Article 14¹³. His judgment in the said case transformed the manner in which the Indian courts proceeded in matters of fundamental rights, escalating the extent more than ever before. It was Justice Bhagwati who made the keen observation of the expression 'personal liberty' in the Constitution¹⁴. He detected it to be extensive, encircling different rights so as to institute personal liberty of a man & some of those rights have been upstretched to the status of separate fundamental rights. They are further given protection in Article 19.

The judgement of this case expanded the horizon of the basic rights available to the people in the country. The man not only penned a verdict which forced the Government to reverse its decision but bring out the intricate details on the single sentence of Article 21. He pronounced that a person's life and liberty cannot be taken away by "any law", it is now regarded as one of the most minutely honed pieces of judicial argument. He safeguarded the fact that by this judgement, full of turning stages, the future authority in courts review all such executive decisions.

Engaging a seven-judge bench, an observation was made that Article 14,19 and Article 21 are not mutually exclusive. It is now seen that a golden triangle is pragmatic between A.K.Gopalan¹⁵, ADM Jabalpur¹⁶ and Maneka Gandhi¹⁷, out of which Justice P.N. Bhagwati was part of two of the shifting judgements which blossomed the core of fundamental right and gave it a new meaning all together.

Again, in *Minerva Mills v Union of India and Ors.*¹⁸, landmark judgement which bolster the Doctrine of Basic Structure of the Indian Constitution, Justice Bhagwati was the only one to vindicate the Emergency Era of Indira Gandhi regime's amendment which gave the immunity to statutes to implement directive principle above fundamental rights which may be violative

¹³ *Supra* 7

¹⁴ Article 21 of the Indian Constitution 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

¹⁵ 1950 AIR 27

¹⁶ *Supra* 4

¹⁷ *Supra* 9

¹⁸ 1980 AIR 1789

Article 14 and 19¹⁹. This different logic of Justice Bhagwati is used by the judiciary in the recent years for pronouncing some decisions including a ban on cow slaughter and introduction of uniform civil code. Thus, it is derived that even though he was in the minority of the decision, but his ideas are respected in the present time. He was a person of future vision.

In *Bachan Singh v State of Punjab* Justice Bhagwati²⁰ one more time stood differentiated with the majority's decision. He gained the title of critic of Death Penalty. In 1980 Supreme Court up held Death Penalty but conditioned it by saying that it should be applied only in 'rarest of the rare cases'²¹. He being the only judge who did not considered death penalty deterrent to murder quoted George Bernard Shaw and said "Murder and capital punishment are not opposites that cancel one another but similar that breed their kind." From the date of this judgement total twenty-six guilty have been executed to death sentence by the means of hanging as this is the only process legal in India. According to the view point of Justice Bhagwati Capital Punishment hamper the fundamental Right to Life under Article 21 of the Constitution. He further adds that taking life of a person is not justifiable as Right to Life is based on 'Mortal Principle' stating that no person can be killed by another person.

Justice Bhagwati believed that the role of a judge is not only to interpret any law but they are also responsible for making law. Perhaps this thought encouraged him to pave the concept of P.I.L. i.e., Public Interest Litigation in India. In fact earlier P.I.L. were sent to him directly instead of being sent to court. *Bandhu Mukti Morcha v Union of India*²² was the revolutionary case in which the concept of Public Interest Litigation was first introduced. Public Interest Litigation is a litigation in which a person can move directly to any court not having jurisdiction, if the fundamental rights of the person are violated. It is armour to the public interest. This initiative has opened up many horizons to the poor and backward section as it is an inexpensive medium to approach the court in case of infringement of any right. The PIL became an important ally of social activists across the country in their battles against systemic oppression and structural violence and Justice Bhagwati by the introduction of the PIL through post cards saved the life of many bonded labourers.

¹⁹ *Supra* 6

²⁰ AIR 1980 SC 898

²¹ The Quint, 5 Landmark Rulings by Former CJI & PIL Pioneer Justice PN Bhagwati, 16.6.17, <https://www.thequint.com/news/india/5-landmark-rulings-of-justice-pn-bhagwati>

²² 1984 AIR 802

Apart from these contributions Justice P.N. Bhagwati delivered many other judgements including *SP Gupta v Union of India*²³ in which he initiated the campaign of justice for all, *Harman v. State of U.P.*²⁴, *Om Prakash and Ors. v. State of Madhya Pradesh*²⁵ and many more. He is the torchbearer of the justice and his pronouncements and judgements lay guidelines for the present day law holders to pronounce judgements.

Selected Speeches and Writings of Justice Bhagwati was written in the year of 2012 and *My Tryst with Justice* was formulated in 2013. These two inspirational books consist of the experiences and views of P.N. Bhagwati. His pursuit to make this country a better place continues even now and inspiring others to help.

In the first book, one can read about P.N. Bhagwati's in-depth knowledge of fundamental rights and human rights. This work is reflective of Justice Bhagwati's multifaceted personality as well as his knowledge of the cultural heritage of our country. His views on human rights were not only limited to India, but covered the Asia-Pacific region and also penned his point of view about the International Law in his book.

His dedication and endeavour were to ensure its availability to the downtrodden and underprivileged classes of the society. This book will help the Judges, lawyers and common man to understand the multifaceted personality of Justice Bhagwati.

In his second book, *My Tryst with Justice*, P.N. Bhagwati begins with unfolding his story. He tells how his parents were instrumental in refining his respect towards all religions and his father developed his understanding of Hindi religion and philosophy. He somewhat discourses his discretion in Sanskrit language, English Literature and Mathematics. He also discusses the important role of his wife, Prabhavati, in his life. In this book, one can know more about his personal life.

In adjoining Justice Bhagwati provides the gripping details of his affaire in India's independence agitate, he starts with a description of the 1942 posing of the All India congress Committee (AICC) which had pronounced a lasting impact on his life. He explains the influential role that Mahatma Gandhi had on him in following voice communication. He describes his involvement in the freedom struggle in the years to follow and how he was

²³ AIR 1982 SC 149

²⁴ 1993 AIR 1367

²⁵ 2002(5)MPHT445

arrested and was taken to the Colaba Police berth wherein he was kept in a washed-out dark aristocratic cell. He talks about his past initiation to the chastisement of law.

Bhagwati is considered to be the most renowned jurist post-independence. Under his power the Supreme Court developed its most refined human rights jurisprudence. During his regime many innovations were made in the process of justice delivery and justice was even availed to disadvantaged sections. He expanded the doctrine of locus standi before the Hon'ble Supreme Court and the High courts for vindicating the individual and collective rights of those denied access to justice on account of poverty or social or economic disability. He is also regarded as the originator of the legal aid in justice.

CONCLUSION

Not everyone in their lives are able to work for what they believe in, but Justice P.N. Bhagwati did. He always had the eternal fire to bring justice into the world and provide the people the basic fundamental rights in the best way possible. He fought for human rights and legal aid. He disagreed with the orthodox rule of law which barred the opportunity of some to appear in front of the court because of their financial status. He created a new rule of law by giving a concept of Public Interest Litigation which brought the poor and disadvantaged to same level and status. He is also known by many as the pioneer of Public Interest Litigation. The new picture and meaning of right to life and liberty was created by this honourable man, different aspects like right to dignity which includes any basic necessities such as nutrition, clean environment, shelter and more. Article 14, 19 and 21 have an important role to play in the Indian Constitution, proper interpretation is essential as they form the core of the Constitution.

It was under Bhagwati's supervision that in a case in 1980 wherein it was declared that death penalty could be imposed only in "rarest of rare cases in which the alternative sentence of life is unquestionably foreclosed". However, this drastic curtailment of power raised the question of what is the rarest of the rare situation.

He was inspired by the Father of the Nation, Mohandas Karamchand Gandhi. He had his eye on justice for people since first day of his career and said that it is only the people themselves who must utilise law for bringing justice. He is one of the men who believe in the Preamble and try to follow it with dedication. The man not only brought about changes but brought significant milestones in the field of law.

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