Uttarakhand Civil Judge (Mains) 2009

Language · compulsory paper

Time allowed: Three Hours · Maximum Marks: 100

1

Translate into the ordinary language spoken in the courts using Devanagri Script:

The move towards inclusive social order is considered beneficial for the society as a whole. It makes the society fraternal. 'Fraternity' is one of the most cherished objectives enshrined in the Preamble of the Constitution. Fraternity promotes a sense of common brotherhood of all Indians and of India being one. To bring about and inculcate this feeling of commonness is all the more imperative in the Indian society, because the social order here is typically characterized by "stratification" and "caste differentiations", based upon "ascribed", "pollution-purity", principle. The stratified social situation is compounded further by extreme socio-economic disparities and community differences. All such differentiating and dividing factors are "deeply engrained into everyday social relations".

Although encouraging developmental changes have taken place after India's Independence, and any discrimination only on grounds of caste is constitutionally prohibited, nevertheless "considerations along the ascriptive lines still remain important markers, both at the public and private domains". Not that the people belonging to lowly castes are not aware that they are being suppressed and subjected to all sorts of undue disadvantages, yet they have suffered silently, "for generations for fear of offending the privileged strata".

For orderly, peaceful and progressive living, the participation of all the segments of society, including the backward classes of citizens, is highly desiderated. This is in the interest of all. There are at least two principal advantages of the "inclusive social order". One it would instantly augment the pool of 'human resource development', thereby adding to 'pool of social assets for general good' and the other advantage is that it results in increasing "set of resemblances" which in turn promotes, what is tersely termed as, 'inter-subjectivity' amongst the members of the community in their "everyday lives". In this process, fraternal values of citizenship gain materiality and fulfillment.

In this respect, the reservation is not to be construed as a measure of 'charity' or giving 'doles'. "Reservations are only meant to create a measure of confidence and dignity among those who did not dare dream of an alternative life." Of course for realizing this objective, the State is duty-bound to make massive investments for providing quality education that would equip the beneficiary of reservation with "socially valuable skills", which would enable them to produce the same results as are produced by the privileged ones.

2

Translate the following Hindi passage into ordinary English language:

बाल्यावस्था में जिस प्रकार मस्तिष्क दोषपूर्ण कार्य को अतिशीघ्र ग्रहण करने की प्रवृत्ति रखता है उसी प्रकार बाल्यावस्था में सीखने एवं सुधरने की संभावनाएँ भी अधिक होती हैं। बाल्यावस्था उस कच्ची मिट्टी के समान होती है जिसे मूर्तिकार जो चाहे वो स्वरूप प्रदान कर सकता है। इसलिये पारिवारिक, सामाजिक, आर्थिक परिस्थितियों के कारण यदि कोई बालक विधि-विरोधी कार्यों में संलग्न हो जाता है तो उसके सुधरने की संभावनाएँ अधिक रहती हैं। बालकों की आयु को ध्यान में रखकर उचित एवं अनुकूल वातावरण, उचित शिक्षा एवं मनोरंजन की सुविधा तथा मानवीय व्यवहार के माध्यम से उनकी आपराधिक प्रवृत्ति पर अंकुश लगाया जा सकता है। हमें यह ध्यान रखना चाहिए कि एक विधि-विरोधी बालक भी देश का अच्छा नागरिक बन सकता है। अतः संयुक्त राष्ट्र संघ ने ऐसे विधि-विरोधी बालकों के साथ मानवतापूर्ण संव्यवहार करने, विधिक एवं समुचित सहायता तथा उसको अपने परिवार के साथ सम्पर्क बनाए रखने का अधिकार भी दिया है। किसी भी

बालक के साथ अमानवीय क्रूरतापूर्ण व्यवहार नहीं किया जाएगा तथा इन विधि-विरोधी बालकों को मृत्युदण्ड अथवा आजीवन कारावास के दण्ड से भी संरक्षण प्रदान किया गया है। यद्यपि भारतीय संविधान के अन्तर्गत विधि-विरोधी बालकों को इस प्रकार का संरक्षण प्रदान नहीं किया गया है, परन्तु समय-समय पर भारतीय विधायिका द्वारा इस सम्बन्ध में पारित विधियों के माध्यम से इन बालकों के अधिकारों के अभिसमय के उद्देश्यों के अनुकूल संरक्षण प्रदत्त करने की व्यवस्था की है।

बालकों की कोमल आयु को ध्यान में रखते हुये बालकों के मामले का विचारण सामान्य न्यायालयों से भिन्न किशोर न्यायालयों में करवाने के लिये तथा उचित संरक्षण प्रदान करने के लिये विधायिका ने सर्वप्रथम बालक अधिनियम, 1960, तत्पश्चात् किशोर न्याय अधिनियम, 1986 तथा वर्तमान में किशोर न्याय (बालकों की देख-रेख एवं संरक्षण) अधिनियम, 2000 पारित किया है। यह अधिनियम उपबन्धित करता है कि बालकों के मामलों का विचारण किशोर न्याय बोर्ड के समक्ष किया जायेगा। इसके सदस्यों को बाल मनोविज्ञान या बाल कल्याण का विशेष ज्ञान एवं प्रशिक्षण प्राप्त होगा। बालकों को निरुद्ध करने के लिये संप्रेषण गृह एवं विशेष गृह की स्थापना की जाएगी। विधि-विरोधी किशोर की गिरफ्तारी करने के लिये विशेष किशोर पुलिस यूनिट का गठन किया जाएगा। इस अधिनियम के अन्तर्गत माता-पिता का संरक्षण अथवा परिबीक्षा अधिकारी को सूचना देना तथा मृत्युदण्ड अथवा आजीवन कारावास के दण्ड से संरक्षण प्रदान किया गया है।

यद्यपि किशोर न्याय अधिनियम, 2000 में संयुक्त राष्ट्र द्वारा अंगीकृत बालकों के अधिकारों का अभिसमय 1989 एवं बीजिंग नियमावली 1985 के लगभग सभी उपबन्धों को समेकित किया गया है, परन्तु व्यवहार में उनका क्रियान्वयन नहीं हो पा रहा है। आज भी प्रत्येक राज्य के प्रत्येक जिले में संप्रेषण गृहों एवं विशेष गृहों का अभाव है अथवा यदि वे हैं तो उनकी स्थिति बालकों को मानवीय वातावरण उपलब्ध कराने के लिये अनुपयुक्त हैं। अतः इन विधि-विरोधी बालकों के संतुलित विकास एवं योग्य नागरिक के रूप में विकसित करने के लिये सुधार आवश्यक हैं। जिससे वे राष्ट्र के निर्माण में सहभागीदारी निभा सकें।

3

Write a précis in English of the following passage:

Judiciary is what judiciary does which in turn depends on the matters brought before it by the litigant public. In a country in which one-third of the people are illiterate and live below the poverty line, it is natural that the court system is being used mostly by well-to-do sections to agitate their claims. The system expects people to know their rights and assert their claims according to the legally prescribed procedures, which indeed is beyond the capacity of one-third population being poor and illiterate. The language and procedure of law is alien to their culture and they do not have the resources to fight long drawn procedures in courts. Legal aid can also help only if it is sought and people do not know from where they can get it and how. Indeed, adversarial adjudication is heavily loaded in favour of the urban middle and upper classes. It is in this context the Indian judiciary invoked “activism”, relaxed the locus standi doctrine, entertained letter petitions from public-spirited individuals on behalf of groups of disadvantaged people, mobilized court-appointed commissioners to ascertain facts and gather evidence, and developed social-context reliefs and remedies unknown to jurisprudence in the past. The rationale for court intervention was the constitutional jurisdiction provided for enforcement of fundamental rights under Article 32 of the Constitution, and the power of judicial review of executive/legislative action. So was born judicial activism and public interest litigation in the 1980s which, while enlarged the capacity of higher courts to reach justice to vast sections of people who otherwise would not have received it, also brought the judiciary in direct conflict with the other two branches of Government. Volumes have been written on the subject in support and against this aspect of courts' functioning and no assessment of judiciary is complete without appraisal of the role of court in this regard.

Though it is difficult to generalize, a student of Indian judiciary can discern at least two fundamental shifts in its approach to issues of constitutional governance and judicial protection of human rights. If in the first 25 years after Constitution, the court was largely conservative and positivist in its approach, in the next 25 years, the court was liberal and activist thereby infusing a new life in the working of the

Constitution with a central role assigned to judiciary itself. Of course, it disturbed the pre-existing balance of powers and raised sharp criticism both from the executive and the legislature. The people by and large welcomed the shift, rose in defense of the judiciary and thereby thwarted attempts to contain the expansive judicial review jurisdiction of courts. The popular support was so intense and widespread that the Government could do nothing even when the court so interpreted the provisions of judicial appointments so as to effectively exclude any executive role in it. It is interesting to see how the judiciary came to exercise such near absolute power probably not envisaged by the framers of the Constitution.

De Facto IAS