

VIDYAVARDHAKA LAW COLLEGE

SHESHADRI IYER ROAD, MYSURU-1

IQAC

Organizing

Special Lecture

On

Transformative Constitution

By

Prof (Dr).P. Ishwar Bhat

Hon'ble Vice Chancellor

KSLU

Hubballi

Date: 27th September 2019

Venue: Sri P.M Chickkaboraiah Hall

Report on Constitutional Law Special Lecture

On 27th September 2019 special lecture on Indian Constitution was organized. Prof P. Ishwar Bhatt, Hon'ble Vice Chancellor, KSLU spoke on 'Transformative Constitution'. Speaking on the occasion he said in declaring Section 377 to be unconstitutional, however, the Court was deeply reflective about the fact that for Constitutional rights to acquire a meaningful purpose for the marginalized communities, disciplining State action alone will not be sufficient. In this regard, the Court did not mince words when it stated that it is both, criminality of the law and the 'silence and stigmatization' of the society towards the LGBT+ community that orchestrates the marginalization and the exclusion of the former. Implicit in that claim was the understanding that inequality, hierarchy and prejudice transpires as much from State action as it does from societal sanctions, community conventions and private relationships.

Highlighting on the question -Does the Constitution has an equal role to play in shaping normative values among individuals within the society? He said-

The Court unequivocally embraced the latter narrative and found that the Indian Constitution envisions an expansive role for both the State and the individual to actively promote social change within the contours of the Constitution. It seeks transformative change 'in the order of relations not just between the State and the individual, but also between individuals'. The transformative potential in Indian Constitution is a conscious 'attempt to reverse the socializing of prejudice, discrimination, and power hegemony in a disjointed society'. Therefore, the Constitution, the Court surmises, obliges not only the State not to violate fundamental rights, but also individuals to 'act in a manner that advances and promotes the Constitutional order of values'.

The understanding of a constitution as a transformative document is certainly not new and has an established lineage in several post-colonial constitutions. The idea of transformative constitutionalism lies in its emancipatory pursuit and in the conviction that large-scale social change within a certain political system is possible through the process and instrumentality of the law. Transformative constitutionalism enjoins a certain reading of the constitutional text that eschews formalism, pure positivism and legalism and advances an interpretation that acknowledges and responds to the reality of hierarchical structures and power relationships within a society. Most importantly, however, a transformative constitution breaks with the legal tradition of situating private relationships and community conventions outside of the constitutional mould, subjecting societal mores to constitutional values. The Court held that a substantive understanding of Art. 14 reflect 'the quest for ensuring fair treatment of the individual in every aspect of human endeavor and in every facet of human existence'.

Such a demanding standard notwithstanding, the Indian Supreme Court was equally pragmatic and underscored that transformation and change within the Indian society, especially through the

instrumentality of the law is going to be an incremental process. Through which framework and within what paradigm does one need to advance such transformation? The Court answers that it is only through the ideals of 'Constitutional morality' that the transformative vision of the Constitution fully comes alive. Constitutional morality in this sense is the 'guiding spirit' to achieve transformation within the society. Referring to one of the founding members of the Indian Constitution, Dr. B.R Ambedkar, and the Court identified constitutional morality in its most pristine form as encapsulating the notion of 'diversity' and 'inclusiveness'. Therefore, law and in this case Section 377 which perpetuates discrimination and breeds inequality towards a certain social class, even if endorsed by 'public/social morality', fails the test of constitutional validity.

The Court's reading of the Indian Constitution in the present case is far-reaching, especially as regards the question of when and under what circumstances the State is allowed to restrict fundamental rights. The Court's insistence on an expansive reading of substantive equality would entail a higher scrutiny of future State legislation that tramples individual rights. The use of 'legitimate State purpose' to circumscribe a certain right can no longer be merely a reflection of social morality and has to meet the test of 'constitutional' morality. Moreover, the real import of transformative constitutionalism lies in positive measures that the State ought to take in bringing the Constitution closer to the most deprived. It will be interesting to see how that translates into a fuller interaction of the chapter on Directive Principles of State Policy and Fundamental Rights under the Constitution.

Presidential address was delivered by Prof K.B Vasudeva, Director of Legal Studies and a vote of thanks was proposed by Smt Indumathi M.J, Asst Prof, VVLC. All the teaching staff felicitated Prof Bhat as a mark of celebrating teacher's day.

