

Indira gandhi vs. raj
narain and its relation
with jeremy
bentham's
sovereignty e...



Case Study : Smt. Indira Nehru Gandhi vs Shri Raj Narain And Anr. on 7 November, 1975

On 23 September, 2013

Jeremy Bentham was among the first few philosophers to advocate equal status to both men and women. This quality was recognised in Plato's republic, but after Plato's republic it was discontinued for over 2,000 years. In his philosophy Bentham considered sovereign as someone with unlimited power by which he can legislate anything and everything. The supreme government authority, though not infinite must unavoidably, be allowed to infinite unless limited by express convention. The only thing which can resist sovereign from exercising unlimited power is sovereign himself. Bentham no doubt considered written constitution as guarantees of government but was against any type of intervention in legislature in form of bills of right, limitations upon the powers which can restrain sovereign from doing anything and regarded them unsound in theory and worthless in practice. He believed that rights are there only to give more power to sovereign. Following Hume, Bentham rejected the common lawyers' notion that political authority rested on a social contract (Bentham 1977, 97). Instead, he defined political society in terms of the people's habit of obeying the commands of a certain sovereign ruler. "A number of persons accustomed or agreed to act in all things as a certain person or persons shall command," Bentham wrote, "is called a State. The sovereign is not bound to follow any individual right. He believes in giving enormous power to sovereign as he believes a system with weak sovereign cannot go very further.

At some points in his early writings, Bentham spoke of the limitations on the sovereign in a way as to suggest that any act by the sovereign exceeding them would be regarded simply as ultra vires. Once the supreme body had marked out bounds to its authority, "the disposition to obedience confines it- self within these bounds" and "beyond them the subject is no more prepared to obey the governing body of his own state, than that of any other" (Bentham 1977, 489) A government was liberal and despotic according to the arrangement of distribution and application of supreme power. Indira Nehru Gandhi vs. Raj Narain, 1975 is a case in respected Supreme Court of India. In this civil Appeal No. 887 of 1975 the appellant is Indira Nehru Gandhi and the respondent is Raj Narain. In civil Appeal No. 887 of 1975 the appellant is Indira Nehru Gandhi and the respondent is Raj Narain. 5th Lok Sabha elections were conducted in March 1971, wherein Indira Gandhi campaigned heavily during the election campaigning period, for herself and her party and steered the Congress to a landslide victory by securing 352 seats out of 518 seats, which were contested for, in the said elections.

Indira Gandhi herself fought from Rai Bareilly and won by huge margin from opposing candidate Raj Narain of Ram Manohar Lohia's SSP. Raj Narain was so sure about his win in the election that he had a winning rally before the results only, but as the result was against him. On 24 April, 1971, he challenged the Prime Minister's election by a petition in Allahabad High Court due to rigging and corrupt practices used by Indira Gandhi during her election campaigning. The petition alleged that the campaign process had violated the election code enshrined in the Representation of the People Act

of 1951 as the campaign was assisted by a gazetted government official, the armed forces and local police. It also alleged that she had used government vehicles, distributed liquor and blankets amongst the voters and had also exceeded the campaign expenses prescribed. The case was admitted by the High Court and hearing began on 15 July, 1971 before Justice BN Lokur. The case went on through 1973 and 1974 and on 5 April, 1974, the Supreme Court granted leave for the third appeal during the hearings. This time, it was the claim of Indira Gandhi's privilege of not to produce the blue book (Rules and Instructions for the Protection of the PM when on tour or travel) to the court. In Allahabad high court decision was given in Raj Narain favour and Indira Gandhi was held guilty under Section 123 (7) of the Representation of the People Act, 1951 and was made illegible for contesting for 6 years.

Immediately after the verdict, Indira Gandhi's counsel moved for a stay and Justice Sinha gave an unconditional stay for 20 days. Indira Gandhi appealed to the Supreme Court challenging the 'unseating' verdict against her by the High Court. She, has also sought 'absolute stay' of the judgment and order under appeal. 14) The vacation judge of the Supreme Court VR Krishna Iyer on 24th June 1975 granted a conditional stay which meant that electoral disqualification stood eclipsed during the stay. However, it was also stipulated that Indira Gandhi could address Parliament but was debarred from participating and voting in the Lok Sabha debates and could not draw remuneration as member. Case continued in Supreme court and in between there were many amendments in the constitution all for protecting Indira Gandhi ex: 39th amendment act, Indian constitution etc. final verdict of supreme court comes on 7. 11. 1975 changing this decision, court in its very

famous case say that we are just the watch dog of our constitution and have the right to protect it, we owe to our legal system and our bound to stick by it. In between something happened which is still the black spot on the Indian legal system and also for the world's biggest democracy, EMERGENCY.

Summary of Jeremy Bentham's theory

Bentham thinks a political society exists when " a number of persons are supposed to be in the habit of paying obedience to a person, or an assemblage of persons, of a known and certain description". But, unlike Austin, he sees how habits and dispositions of obedience can limit a sovereign body: dispositions to obey can be limited, " beyond them the subject is no more prepared to obey the governing body of his own state, than that of any other." This view develops in Bentham's later work into a popular conception of sovereignty. In the Constitutional Code, written in the 1820s, Bentham concludes that the powers of government owe their existence to the Constitutive power which " resides in the whole body of active citizens throughout the state." " For the happiness of the people, every security that can be given is reducible to this one - the supremacy, or say the sovereignty, of the people: the sovereignty of the people, not nominal merely, but effective, and brought into action, or rather capable of being brought into action, as frequently as the exigency of the case requires, and the nature of the case renders possible.

In this work the interesting move that Bentham makes is to conceptualize the various powers of government - the legislative, administrative, and judicial - as the Operative power, itself a creation of the Constitutive power.

Bentham transfer sovereignty to " We, the People" and is so doing
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transforms the Hobbesian understanding of sovereignty as a power to command. Bentham, and some of the founders of the American system attributed sovereignty to the people, and the French *Déclaration des droits de l'homme et du citoyen* of 1789 claims sovereignty for the "nation". The doctrine of "popular sovereignty" - the idea that peoples are the rightful bearers of sovereignty - is especially influential in the American and French political traditions and is held by many to be the foundation of modern democracy. Our notion tends to be one of divisible, limited sovereignty.

But it is worth noting that to attribute even limited sovereignty to a monarch or state may be to grant it considerable power. For the sovereign retains the power to judge the nature of the limits to its authority, and its judgment here is final and supreme. Even if sovereignty is not absolute, it remains formidable. Bentham's views on rights are, perhaps, best known through the attacks on the concept of "natural rights" that appear throughout his work. These criticisms are especially developed in his *Anarchical Fallacies* (a polemical attack on the declarations of rights issued in France during the French Revolution), written between 1791 and 1795 but not published until 1816, in French. Bentham's criticisms here are rooted in his understanding of the nature of law. Rights are created by the law, and law is simply a command of the sovereign.

The existence of law and rights, therefore, requires government. Rights are also usually (though not necessarily) correlative with duties determined by the law and, as in Hobbes, are either those which the law explicitly gives us or those within a legal system where the law is silent. The view that there could be rights not based on sovereign command and which pre-exist the

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establishment of government is rejected. Bentham differs from all others on one part that he mentioned that sovereign is "we the people". He believed that as people are sovereign so they must have unlimited access to power, he believed a society with weak sovereign not go very further in this world. By mentioning we the people he wants to say about representatives of people that is the parliament. He assumed parliament to be sovereign and any alteration with its power by any means of amendments, bill should not be done.

CONCLUSION

Theory given by Jeremy Bentham and this case seems going hand by hand. On one go it seems that case was very right on the theory part as in theory it is clear that Bentham was against any amendment which can restrain the power of sovereign and thus an amendment which gives more power to sovereign seems welcoming. Bentham is very right in saying that any resistance in the sovereign sovereignty will be hazardous to the society as a sovereign restriction holds the society. He believed that sovereign should have unlimited access to power so that he can do anything which he desires and same happens in this case when Indira Gandhi amended the constitution changing all the laws which proved her guilty. She imposed emergency, every opposite party leader was arrested and it might seem justified with the philosophy as she as a leader of parliament and a voice of people can enjoy enormous power as stated by philosophy of Jeremy Bentham, but what concerns me more is the basic idea behind the philosophy and its contradiction with regard to the judgement of supreme court, what Bentham

mean from philosophy was the welfare of common people at large thus he referred it to "we the people".

What appealed to me from "we the people" is unlimited access to power to common people so that they can enjoy their every right and any resistance to it by any amendment is not allowed but what I feel in this case the condition is different, but amending constitution and other laws, the concern was not of protecting their rights but was misuse of power and misuse against the common people only. So it contradicts the Bentham philosophy here as the rights of common are being curtailed which was not what Jeremy Bentham meant from this philosophy. Even for changing law the procedure adopted was very debatable and was just for the sole benefit of the nation's prime minister at that moment, after the verdict of Allahabad High Court and declaration of election as void, Emergency was declared under article 352 which was also declared illegal later as the condition at that moment as the reasons given were not relevant with the conditions at that moment and it was done just for the sole benefit of then prime minister Indira Gandhi which was also contradicting to the public interest at large, even public (common people) suffered much from this emergency. Had she been any ordinary person, she would have never been able to make these amendments, she misused the power given to her as the Prime Minister, for her own benefits.

Every charge that was made on her by the Allahabad High Court was well taken care of in these Amendment Acts. She changed the definition of "candidate" The definition of "candidate" in Section 79(b) of the 1951 Act until the amendment thereof by the Election Laws (Amendment) Act, 1975 was as follows: 'Candidate' means a person who has been or claims to have
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been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. This definition was substituted by Section 7 of the Amendment Act, 1975, as follows: 'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election. She also made sure that Yashpal Kapoor's resignation was held valid from an earlier date, by Section 8(b) of the Amendment Act, 1975, by introducing Explanation 3 at the end of Section 123(7) of People's Representative Act. These two changes helped her to show that she did not take any help from Yashpal Kapoor while he was a Gazetted officer. Thus she removed all grounds of guilty charge on herself. I therefore feel that the Supreme Court acted in a very ignorant manner. Its duty was to do justice.

Here Indira Gandhi had committed an offence but she used her power to amend the very laws that charged of being guilty and the Supreme Court all this while was sleeping, and when Raj Narain pleaded for justice, all that Supreme Court could do for him were long unnecessary and unwanted reasons or rationale of how the issue was out of their jurisdiction. The only time in this judgement where the Supreme Court did uphold the constitution was when it struck down clause '4' & '5' of Article 329 A as being violating of Basic Structure. Over all I personally feel that the Supreme court acted in a bird-brained manner, the reason why it only struck down clause '4' & '5' of Article 329 A was because it saw these clauses as a threat to itself. It knew that the other issues did not hurt the Supreme Court in any manner and therefore it acted dormant in matters of those issues.