

**‘LAW AS A TEXT’- LOOKING FROM JURISPRUDENTIAL LENS OF
“IDEA OF DECONSTRUCTION”**

*Samrat Bandopadhyay**

*Abdur Rahman Mallick***

ABSTRACT

The ‘law as a text’ is one of the vital components in the endeavour of analysis by myriad of legal scholars of the current era. The vividness of the law and the interpretation posits the vital questions, Is Law limited in its understanding by ‘Competing Policy Choices’. This facet of curiosity also beckons one to ask some of the associated vital questions, Is it dependent on the disposition and underpinning concepts, which has evolved with the passage of time? Is it limited to the ‘models of reality’, as to question the reality itself in its basis essence where one visualises things, as it seems to be constrained by slavery of common sense and the pre-conceived notions and perceptions influencing the decision-making which in turn is limited by the faculties of mind? Is it beyond the realm of scientific and social understanding of the law and limited to the statutory interpretation, or is it that any common man’s general understanding of law has better conceptualisation? Are there any inherent dichotomy with respect to the legal tenets that has been established, seemingly which remain hitherto the complete standalone domain of law makers and whereby the framers and makers of the Constitution of India are limited in their understanding of statutory provisions- Is there something beyond? Well, the answers to these questions have baffled the legal scholars from time immemorial and in this context, the instant paper is an attempt to relook the extant ‘laws as a text’ from the lens of legal jurisprudence. Though there cannot be any definitive answers to the questions posited, the instant paper is trying to rebuild the analysis from the perspective of the ‘Idea of Deconstruction’, which is evolving as a versatile tool in interpretation of law and the intent of the legislature while framing the legal provisions in the realm of law.

*Joint Director, Central Government Civil Services Officer, Group A, Government of India, BE (Information Science and Engineering), MBA (VGSOM, IIT Kharagpur) and presently pursuing LL.B at RGSO IPL, IIT Kharagpur.

** Young Professional (Law), Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India

Keywords: Deconstruction; Navya-nyaya Doctrine of Negation; Inversion of Hierarchy; Literary Criticism; Meta-Physics of Presence; Nihilistic Analysis; Law as text; Radical Understanding.

INTRODUCTION

Judicial system is constantly evolving in its journey of delivering quality, efficient and effective justice. With the passage of time, the jurisprudence has also analysed emerging scenario, with a philosophy of emancipating the mind from the shackles of common sense understanding with a Radical view that there is something beyond Physics. There is a view that law is about interpretation, equality, fairness, good conscience and beyond from the prism of Meta-Physical understanding. Whereby, the perspective of 'law as a text' is a dynamic tool which is unfettered by any restrictions in its interpretation. Seeing and observing is the slavery of common sense, could this be liberated with any method where one is required to liberate the text from authorship and employ the tools of '*Inversion of Hierarchy*' to find the hidden antinomies of thought process? The question, has been inherently existing since the genesis of the study of jurisprudence itself. The Process of doing an interpretation of 'Law as a text' is utilisation of a method which is simple, at the same time, it provides an unprecedented power by the applicability of the method of 'Deconstruction'. The instant paper would try to delve into the nitty-gritty of the aforesaid subject in a holistic manner.

REVIEW OF LITERATURE AND JUDICIAL PRECEDENTS

Reliance has been placed on varied judicial precedents in the legal system of India while analysing the various facets of this topic of analysis. The jurisprudence employed by philosophers, scholars and stalwarts such as French philosopher Jacques Derrida, analysis of deconstruction, which he applied in numerous texts, and which was later developed in the context of phenomenology by Jack M. Balkin¹, Prof. Gayatri Chakravorty Spivak², Prof Bimal Krishna Matilal³, who have analysed and relied upon in this subject of 'Deconstruction'.

PROBLEM STATEMENT

The instant research paper is trying to vividly and comprehensively address the pertinent questions and problems in the domain of 'Deconstruction'. The problem is more specific to

¹ Knight Professor of Constitutional Law and the First Amendment at Yale Law School

² A scholar and literary theorist, associated with Columbia University, famed and well-known with her essay "Can the Subaltern Speak?"

³ Worked on the theory of 'Navya-nyaya Doctrine of Negation', The Semantics and ontology of Negative Statements in Navya-Nyaya Philosophy. He has also delved on the topic of study in Cambridge: Harvard University Press, 1968

realm of ‘Deconstruction as a methodology’ with the seminal purpose to explicate and to delve into the correlation between the parameters which influence the study in this context. The instant paper also discusses the pivotal grounds for building a case for analysis of ‘Law as a text’ and to draw inferences from it.

The primary aim to frame the problem in this instant analysis is:

To critically analyse what is ‘Deconstruction’? Is it possible to emancipate the mind from the shackles of common-sense while interpreting from the perspective of ‘Law as a text’?

ANALYSIS

The Idea and the methodology of ‘Deconstruction’ has to be seen from the prism of three vital aspects:

1. Method of Literary Criticism – where the principle of deconstruction has to be analysed in two perspectives as ‘Law as a text’
 - a. Liberate the text from the author
 - b. Employ Inversion of Hierarchy to find the hidden antinomies of thought process
2. Inversion of Hierarchy – for the purpose of understanding Law as a dynamic field which is not fettered by choice of law makers. It is vital to have general understanding of how to read and make sense and emancipate the legal mind from the slavery of set of pre-conceived ideas, which is entrenched in culture and in society:
 - a. Need for inversion of hierarchy for vivid and better understanding turning common sense with a top-down approach.
 - b. Done for temporary period- to help identify the hidden antinomies of thought process
3. Meta-Physics of Presence
 - a. Emancipating the mind from common sense understanding with a Radical view that there is something beyond Physics as law is about interpretation and built on the tenets of equality, fairness and good conscience.
 - b. Seeing and observing is the slavery of common sense, for example the difference between serious and non-serious dialogue is an important and pivotal aspect in understanding the underlining conceptual clarity for vivid analysis as

to challenge the truth in the concept of model and How Real is the Reality? As described by Prof. Stephen Hawking in his book as author in 'Grand Design'

CASE REFERENCES

It is pertinent to mention that great scholars and eminent philosophers have relied on the 'Principle of Deconstruction' for better and complete analysis. In Indian Context, it beckons one of ask, Should the prism of analysis be restricted to what the Constituent Assembly members had contemplated and envisioned? or is it beyond that? To understand the underpinning theory and interpretation of 'word' by applying 'Theory of Deconstruction', the case in point is the judgment of *Maneka Gandhi v. Union of India*⁴ which tries to address some of the pertinent issues in this context. It is quintessential to note that the Constituent Assembly had no role as Hon'ble Supreme Court expanded the interpretation of *Article 21* of the Constitution of India⁵ at the same time it helps develop a new viewpoint to look at Chapter III of the Constitution of India, where the period can be bifurcated into Pre-Maneka Gandhi and Post-Maneka Gandhi period, whereby the concept of 'personal liberty' came up for discussion in *AK Gopalan*⁶ case also, where the petitioner was detained under Prevention of Detention Act, 1950. The focus of the Hon'ble Supreme Court of India showed how the expression 'due process of law' was re-interpreted as completely different from 'procedure established by law'. The term 'liberty' was provided a wider interpretation in contrast to 'personal liberty'. The 'law as a text' is one of the vital tools for subject matter analysis in the field of legal jurisprudence. While understanding the vividness of the law and its interpretation- the vital questions which emerges are – Is Law limited in the understanding by 'competing policy choices'? Is it dependent on the disposition and underpinning concepts which is evolving with the passage of time which is making law a 'dynamic' discipline? Thereby, it also beckons one to ask, Could there be differences between the interpretation from the readers viewpoint which may be completely different from that of the author?

As affirmed by Hon'ble Courts of Law in catena of cases surfacing before the respected Courts, *"The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not*

⁴ *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621

⁵ Constitution of India, 1950

⁶ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27

*necessarily be the same as those governing and the set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances.” This is the vital point which could be addressed by ‘Theory of Deconstruction’ in the parlance of Constitutional Law. The quintessential point is, “What is the interpretation of the word equals in equal circumstances?”. In *State of Jammu & Kashmir v. Triloki Nath Khosa & Ors.*⁷, it was held that dealing with practical exigencies a rule making authority may be guided by realities. In the *State Of Gujarat And Another v. Shri Ambica Mills Ltd, Ahmedabad*⁸ case, the Hon’ble Supreme Court of India explained “reasonable classification to be one which includes all who are similarly situated and none who are not. The question as to who are similarly situated has been answered by stating that one must look beyond the classification to the purpose of law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.” As seen in varied cases mentioned above, depending on the context and circumstances involved in the case, the interpretation of words also changes, that is the vital core essence of looking with a lens of ‘Law as a Text’ while analyzing *the scenarios from the prism of ‘Theory of Deconstruction’*.*

A better understanding of vital points which evolve over a period of time warrants freeing oneself from the shackles of the common sense understanding in the facts and circumstances of the case in question. That is the underlying essence of ‘Theory and Idea of Deconstruction’.

The Idea of Deconstruction, thus *operates on 2 principles*

1. *‘Liberating Text’ from the author*
2. *Employing ‘Inversion of hierarchy’ to find the hidden antinomies of thought process.*

Here it is important to analyse that 'Deconstruction' is not a restricted view of a methodology and a philosophic idea to critic a novel/a text/a literature or a legal statutory enactment. It is an important methodology, which has its root and genesis from ‘Hermeneutics’ which is the study of the methodological principles of interpretation in Bible and which was extended to the field of law as 'Legal Hermeneutic'. Legal scholars say that to drive home the point of ‘Deconstruction’ and its efficacy, for example, if Transfer of Property Act⁹ is a text just as any

⁷ State of Jammu & Kashmir v. Triloki Nath Khosa & Ors. 1974 SCR (1) 771

⁸ State Of Gujarat And Another v. Shri Ambica Mills Ltd, Ahmedabad 1974 SCC (4) 656

⁹ Transfer of Property Act 1882

other literary work, it is possible to interpret it as a basic philosophy underpinning vide a concept as 'Law is a Text'.

In *Minerva Mills Ltd and Ors. v. Union of India*¹⁰ it was held that, “*there can be no doubt that the intention of the Constitution makers was Fundamental Rights should operate within the socio-economic structure or a wider continuum envisaged by the Directive Principle, for then only would the Fundamental Rights become exercisable by all and a proper balance and harmony between Fundamental Rights and Directive Principles is secured...*”

As stated in the case *M. Nagraj & Others v. Union of India and Others*¹¹, “*the main issue concerns the extent of reservation. In this regard the concerned State would have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation*”.

So, using the tool of deconstruction is it possible to interpret the meaning of text such as ‘*proper balance and harmony*’ and “*extent*”, from the standpoint of readership perspective, devoid of the meaning and intent as may be alluded, inferred and communicated by the framers of the law. Authorship and readership are two standalone communities. A vital question which surfaces, Are interpretations subjective in its basis essence? Does it convey different meaning to different readers? Sociological, Cultural and Technological influences including legal understanding creates different prisms through which varied meanings are communicated in different manner as per the inherent background to different readers. Numerous examples can be instantiated to drive home the fact that emancipating the mind from common sense is the vital underpinning of ‘Meta-Physics of Law’ and ‘Inversion of Hierarchy’ to delve into the realm of vivid understanding by ‘Idea of Deconstruction’, which is ‘Nihilistic’ at the same time ‘Radical’ to some school of thought, as enumerated below:

1. Application in Number Theory, for example the ‘Bunyakovsky conjecture’.
2. Limitation of Formalism/Syllogism/Deductive reasoning as cancelling both sides of the equation on the premise that x is not equal to y , results in erroneous results. For, if x is equal to y then, dividing x minus y by zero (by transposing y in one side), results mathematically in solution as infinity and this leads to multiple infinite solutions and

¹⁰ *Minerva Mills Ltd and Ors. v. Union of India* 1981 SCR (1) 206

¹¹ *M. Nagraj & Others v. Union of India and Others* AIR 2007 SC 71

interpretations. Thereby, the principle of formalism and Formal structure advocated by American School of Realism, called as 'Realists' is brought to Question.

3. The Cardinal principle can be seen from what Prof JM Balkin¹² says when analysing the purpose of 'Deconstruction' as he states that it is to critically analyse, as Quoted in his paper, "*Lawyers should be interested in deconstructive techniques for at least three reasons. Firstly, deconstruction provides a method for critiquing existing legal doctrines; in particular, a deconstructive reading can show how arguments offered to support a particular rule undermine themselves, and instead, support an opposite rule. Secondly, deconstructive techniques can show how doctrinal arguments are informed by and disguise ideological thinking. This can be of value not only to the lawyer who seeks to reform existing institutions, but also to the legal philosopher and the legal historian. Thirdly, deconstructive techniques offer both a new kind of interpretive strategy and a critique of conventional interpretations of legal texts...*"¹³
4. The purpose of 'Deconstruction' is to analyse the subject matter comprehensively, as employed by Jacques Derrida¹⁴ to his philosophical practices regarding the interpretation of texts.
5. It is vital to look at it from the perspective of Indian Constitution's evolution, which was narrated by Sir Benegal Narsing Rau¹⁵, in his interaction with the then Chief Justice of America, had provided a vital and yet so empowering understanding of application of 'due process of law' with his distinguishing analytical and interpretation of law on 'procedure established by law'. So, it can be averred that 'Idea of Deconstruction' had a profound influence on stalwarts in the field of jurisprudence and know-how of Law as we see it today.

¹² Prof JM Balkin, University of Missouri- Kansas City. Harvard University A.B., 1978, J.D. 1981 envisions in his paper 'Deconstructive Practice and Legal Theory'

¹³ Ibid.

¹⁴ A French philosopher and a leading proponent who pioneered the analysis of 'Idea of Deconstruction'.

¹⁵ Sir Benegal Narsing Rau, who was one of the stalwarts in the framing and making of the Constitution of India and an Indian Civil Services Officer, though he did not have any formal training of law.

6. Prof. Gayatri Chakravorty Spivak¹⁶ in her translation of and introduction to Jacques Derrida's *'De la grammatologie'*, talked about sub-altern studies, which is based on the philosophy and a methodology. That 'methodology', she narrates it as a philosophical idea to critic a novel, a text and a literature; nonetheless, as a method which is 'liberating' from the fetter of 'common sense' and the interpretation as a text, from readership angle and whereby, liberating one-self from the prism of view of authorship is of vital essence.
7. It brings into the mind the basic question, if 'law is a text', Is it prone to subjective analysis?
8. Legal scholars and experts opine that a book is not just a carrier or a conveyor of hidden antinomies of thought process, but rather is a messenger of multiple thought process. This in essence is the underlying philosophy behind the related concept of 'Inversion of Hierarchy', where it is perceived in multiple or rather multitude of ways in a different manner by different reader.
9. The analysis of Prof HLA Hart in the form of textual interpretation of 'Core and Penumbra' understanding of Statute brings interesting facets to dynamic interpretation of subjective meaning of law whereby influences of cultural, economical, social, philosophical and technological views by the readers would have a bearing in the final subjective interpretation of the things and which has to be seen in totality. For example, a judge with rural upbringing and background may see a case of 'Cruelty' from one prism, in contrast to an urban educated judge, would have a completely different view of whether 'snoring' is a valid ground to invoke a case of 'cruelty'. If the judge is from rural background, it may not surmount to be a decision factor, in contrast to a judge of urbane thinking and upbringing. So, the choice among policy decisions is again left to the interpretation of the decision-maker, who are subject to influences of multiple factors.

¹⁶ Prof. Gayatri Chakravorty Spivak is scholar and literary theorist, associated with Columbia University, famed and well-known for her essay 'Can the Subaltern Speak?'

10. The evolving interpretation of ‘Law as a text’ has a background to ‘Navya-nyaya Doctrine of Negation’¹⁷ posited by Prof Bimal Krishna Matilal¹⁸, is another subject apt quoting in this context, whereby it is mentioned, “*Indian Philosophy aims at clarification rather than mystification... Carefully tooled in the technical apparatus of analytical philosophy as couched in the symbolism of Principia Mathematica and it is vital to use that technique to elucidate Navya-Nyaya doctrine...*”
11. As per Hans Kelsen¹⁹ the prism of analysis invokes thought provoking questions where the knowledge has two primary dimensions along with the external stimulus coming from the environment as
- i. ‘Apriori Knowledge’
 - ii. ‘A posteriori Knowledge’

His logic brings into question, the very intention and the basic tenet of legal interpretation, whether it is possible to liberate the text from the viewpoint of the author? Is it that the law which is given by the intention and motivation of thought-process or the intent of the law makers and framers of law is separated from the final interpretation? Is it that law makers intention is supreme in the interpretation of law?

Is it that readers of Parliamentary debates have a better interpretation with their knowledge base? Is it that Legislature intent is ‘Supreme’ always? Is there a necessity to give a clarion call that do not contemplate about the intention of law makers in strict sense and simply apply logic and knowledge to arrive at a final understanding of a subject matter or the issue in law? These questions imperatively imply that the theory behind the ‘*Temporary inversion of hierarchy*’ provides the answer which satiates the curiosity generated among the legal scholars and experts.

¹⁷ The Semantics and ontology of Negative Statements in Navya-Nyaya Philosophy by Prof Bimal Krishna Matilal in Cambridge: *Harvard University Press, 1968, xi, 208 pp. Appendix, Bibliography and Indices, Harvard Oriental Series Vol. 46*

¹⁸ Prof Bimal Krishna Matilal, an alma-mater of Harvard University with Fulbright fellowship with seminal efforts towards the ‘Journal of Indian Philosophy’ as its founding editor; his PhD under Ingalls on the Navya-Nyāya doctrine of negation, spells out the vivid picture of subject matter of philosophy of language and logic in his works.

¹⁹ An Austrian Jurist who was one of the vital proponents of Positivists School of jurisprudence.

CONCLUSION

Deconstruction is a method of analysing the text or a literary language critically, which is revolutionary, at the same time a dynamic process when applied in the realm of law. The technique and the idea of deconstruction propounded by great philosophers, scholars and stalwarts provides that window to analyse the text in a very creative way, which is a strategic endeavour in questioning the unquestionable metaphysical assumptions and inherent contradictions. In that context, it is a leap of unprecedented manner towards understanding the 'inner' meaning and thought process which is revolutionary and progressive in its outlook. The need of the hour is to look at the aforesaid deliberation as dwelt upon in the instant article in light of 'Doctrine of Conscionability' and what is *deemed fit in the interest of justice, equity and good conscience*.