

Upholding Rule of Law

In a landmark Judgement, the Supreme Court of India has ordered a retrial of 21 accused in what is commonly known as *Best Bakery* case in Gujrat. During the worst communal riots in the year 2002 in Gujrat state, 14 persons who were hiding in a bakery, were burnt alive by a violent group. The 21 accused in the case were acquitted by the trial Court and the acquittal was later upheld by Gujrat High Court. An eye witness to the carnage, Zahira Sheikh, who had lost almost her entire family in the incident, had appealed for a re-trial of the case outside the state of Gujrat. It may be the first case in the annals of the Criminal Jurisprudence that the highest Court of land has ordered a reinvestigation and retrial of the case even though the trial Court and the High Court had acquitted the accused in the case.

The Supreme Court Judgement, delivered by Justices Doraiswamy Raju and Arijit Pasayat underlines the strength of judicial institutions of the country. The Judgement has augmented the faith of common man in the justice delivery system. The Judgement, coming down heavily on the criminal investigation machinery in the state for its failure in protecting life and property of its citizens has remarked: *“The modern day, ‘Neros’ were looking elsewhere when innocent children and helpless women were burning and were probably deliberating how the perpetrators of crime could be protected.”* The dictum of the Judgement emphasizes the basic philosophy of the Constitution and the value system of a multi-cultural India. It unequivocally places the political interests of individuals and groups subservient to the constitutionalism and core cultural values of the country. It sternly orders to safeguard the criminal administration system and maintain its sanctity as underscored under the Constitution. The Judgement provides that *“Judicial Criminal Administration System must be kept clean and beyond the reason of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.”*

The Judgement reflects pain and anguish on the spectre of violence carried out by a section of fanatics ostensibly in the name of religion. The Judgement provides that: *“Criminals have no religion. No religion teaches violence and cruelty based religion is not religion at all, but a mere cloak to usurp power by fanning ill-feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than alien army.”*

In order to restore the confidence of complainants, the Supreme Court has ordered not only the reinvestigation of crime and retrial of the case outside the place of its occurrence in Gujrat, but also directed the state government to provide adequate security and protection to the witnesses so that they can *“depose freely without any apprehension of threat or coercion from any person.”* The Supreme Court has ordered the appointment of a new Public Prosecutor in the case. However, making a departure from the normal course in which the witnesses or the victims do not have a choice in the matter of appointment of a Public Prosecutor, the Court has directed to take into account the suggestions of affected persons in the appointment of Public Prosecutor in view of the special circumstances of the case. The Supreme Court Judgement in *Best Bakery* Case has underlined the fact that in absence of effective institutional mechanisms of

enforcement, constitutional guarantees of protection of life and liberty remain merely letters of decorative value.

The National Human Rights Commission (NHRC) of India equally deserves kudos for seeking the indulgence of Supreme Court in prodding the state government to file an appeal after the acquittal of the accused by the trial Court. This action brought the case and later developments under the constant vigil and scrutiny of the Supreme Court.

We offer our salutation to the Supreme Court and NHRC on their effective assertion in upholding the rule of law.

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