

Role of Judiciary in Shaping Distributive Justice in India

Abstract

In India justice is a generic term which includes both procedural and substantive justice, and the precursors of the movement of distributive justice in its true sense were Swami Vivekanand and Gandhi ji, who denounced the discriminatory practices like untouchability, championed doctrines of material and spiritual equality, renunciation and service to society and equated distributive justice to social justice. Further Jawaharlal Nehru drove home that the first task of free India is to feed the starving people and clothe the naked masses and to give every Indian fullest opportunity to develop himself according to the capacity. While framing the Indian Constitution Dr. B.R. Ambedkar pin pointed three imperatives to make the Indian democracy and the Constitution a success, first, to follow Constitutional methods for achieving our social and economic objectives, second, to observe caution even against those who are interested in the maintenance of democracy, and not to lay their liberties at the feet of even a great man, or to entrust him the powers which enable him to subvert their institutions and, third, to make political democracy a social democracy as political democracy cannot last without social democracy. As a result the Indian Constitution aims to provide political and socio-economic equality to all people embodied clearly in the Preamble of the Constitution, the Fundamental Rights and Directive Principles of State Policy.

Keywords: Role of Judiciary, Justice in India, Rule of Law, Democracy.

Introduction

The rule of law is the bedrock of democracy, and the primary responsibility for implementation of the rule of law lies with the judiciary.¹ This is now a basic feature of every Constitution, which cannot be altered even by the exercise of new powers from parliament. It is the significance of judicial review, to ensure that democracy is inclusive and that there is accountability of everyone who wields or exercises public power. As Edmund Burke said: "all persons in positions of power ought to be strongly and lawfully impressed with an idea that "they act in trust," and must account for their conduct to one great master, to those in whom the political sovereignty rests, the people".²

Judicial Review and Judicial Activism in India

India opted for parliamentary form of democracy, where every section is involved in policy-making, and decision taking, so that every point of view is reflected and there is a fair representation of every section of the people in every such body. In this kind of inclusive democracy, the judiciary has a very important role to play. That is the concept of accountability in any republican democracy, and this basic theme has to be remembered by everybody exercising public power, irrespective of the extra expressed expositions in the Constitution.³

The principle of judicial review became an essential feature of written Constitutions of many countries.

Economics is a dynamic subject and integral part of our day to Seervai in his book *Constitutional Law of India* noted that the principle of judicial review is a familiar feature of the Constitutions of Canada, Australia and India, though the doctrine of Separation of Powers has no place in strict sense in Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the functions of another.⁴

The power of judicial review has in itself the concept of separation of powers an essential component of the rule of law, which is a basic feature of the Indian Constitution. Every State action has to be tested on the anvil of rule of law and that exercise is performed, when occasion arises by the reason of a doubt raised in that behalf, by the courts. The power of Judicial Review is incorporated in Articles 226 and 227 of the Constitution in so far as the High Courts are concerned. In

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regard to the Supreme Court Articles 32 and 136 of the Constitution, the judiciary in India has come to control by judicial review every aspect of governmental and public functions.⁵

After our independence a significant change has occurred in the role of judicial process in our society. Judicial activism figures prominently in the contemporary India with active assistance of social activists and public interest litigators for vindication of the governmental commitment to welfare and social justice. One of the meanings of judicial activism is that the function of the court is not merely to interpret the law but to make it imaginatively sharing the passion of the Constitution for social justice.

In my present paper I will discuss certain landmark decisions taken by Indian judiciary which have clearly shaped the various aspects of distributive justice in India.

In *State of Uttar Pradesh. Vs. Pradeep Tandon*,⁶ the Supreme Court accepted reasonable classification justiciable on the basis of unequal behavior between unequal people. In *Charanjeet Lal Vs. Union Of India*⁷ and *State of Jammu & Kashmir vs. Bhakshi Gulam Mohammad*⁸ it is held by the Supreme Court that due to some special circumstances one person or one body can be treated as one class. But the question is how to determine inequality? In India it is not easy to determine inequality.

This judicial activism sharing the passion of our Constitution for social justice was started since the Maneka Gandhi case in which fundamental right of personal liberty has been converted into a regime of positive human rights unknown in previous Constitutional diction. *Maneka Gandhi's case*⁹ ushered a new era in the socio-legal paradigms by expanding the meaning of our basic fundamental right; of Right to life and personal liberty and giving new dimensions to human rights jurisprudence, the meaning and content of the words '*personal liberty*' again came up for the consideration of the Supreme Court. In this case, the petitioner's passport had been impounded by the Central Government under section 10(3)(c) of the Passport Act, 1967. Here, the Supreme Court not only overruled A.K. Gopalan's case but also widened the scope of words '*personal liberty*' considerably. Bhagwati, J. observed:

"The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19."

With respect to the relationship between Article 19 and Article 21, the Court held that Article 21 is controlled by Article 19, i.e., it must satisfy the requirement of Article 19. The Court observed:

"The law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that Article."

Thus a law "*depriving a person of 'personal liberty' has not only to stand the test*" of Article 21 but it must stand the test of Article 19 and Article 14 of the Constitution.

Maneka Gandhi's case, gave the term '*personal liberty*' widest possible interpretation and gave effect to the *intention* of the drafters of the Constitution. This case, while adding a whole new dimension to the concept of '*personal liberty*', extended the protection of Article 14 to the *personal liberty* of every person and additional protection of Article 19 to the *personal liberty* of every citizen.

In *Air India vs. Nargesh Mirza*¹⁰ the Supreme Court declared the rule of Air India unreasonable and discriminatory. But accepting justiciable element in equality, it is try to make equality more effective and progressive. In *E.P. Royappa vs. State of Tamil Nadu*¹¹ Justice Bhagwati has held that equality is movable concept which has many forms and aspects. It can not be tightened in traditional and principlized circle. Equality with equal behavior prohibits arbitrariness in action, inequality will surely be there.

In *State of Haryana vs. Darshana Devi*¹² the Supreme Court chastised the appropriate authorities for their apathy and injustice towards poor.

To accept right to equality as an essential element of Justice, India Constitution prohibits unequal behavior on the grounds of religion, race, caste, sex. But Constitution accepts that strict compliance of formal equality will make up for inequality. But the system of special provision for backward classes of society, it is to try to make the principle of equality more effective. Under Article 15(4) the State shall make any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes, and the Scheduled tribes and in the same manner by accepting the opportunity of equality to employment under State in Article 16 (1), it has excepted the principle of equalization under Article 16(4). If it is in the opinion of the State that any class of the citizens has not adequately representation under State employment, State shall make any provision for the reservation of appointments. According to Article 46 the State shall promote with special care the educational and economic interests of weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

In a very important case of *Indra Sawhney vs. Union of India*¹³ the Supreme Court declared 27% reservation legal for socially and economically backward classes of the society under central services.

Basically protective discrimination is used to fulfill those lacks which arise due to a long time deprivation. It is a part of corrective and compensatory justice. It has been told that peoples of backward class of society have been bearing injustice for generation to generation. Some peoples of the society made supremacy on the benefits of the society and made deprived to others. So this provision of protective discrimination has been made for those

deprived people who are living in unbeneficial circumstances.

Through equal opportunity on the basis of quality the Supreme Court has tried to make a reasonable balance between distribution of benefits and distributive justice. In *M.R. Balaji vs State of Mysore*,¹⁴ the Supreme Court has held that for the object of compensatory justice, limit of reservation should not be more than 50%. In *Indra Sawhney vs. Union of India*¹⁵ full bench of nine judges approved this balance between distributive justice through quality and compensatory justice.

There is a very wide planning of justice according to necessity in the Constitution. It expects distribution of social benefits according to necessity by which more needy persons can get benefits. It is expected of the State that the State shall in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.¹⁶ Under Article 41, it is expected of the State that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underserved want. It is provided under Article 42 that the State shall make provision for securing just and humane conditions of work and for maternity relief. In Article 43 it is expected that the State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. In *People's Union for Democratic Rights vs. Union of India*,¹⁷ the Supreme Court has held that minimum wages must be given and not to pay minimum wages is the violation of human dignity and it is also known as exploitation. In the landmark case, *Randhir Singh v. Union of India*¹⁸, the court held that although equal pay for equal work is not regarded as a fundamental right, it is a Constitutional goal as per the provisions of Articles 14, 16 and 39(c).

In India, courts have performed a great role to make the Social justice successful. In the field of distributive Justice, Legislature and Judiciary both are playing great role but courts are playing more powerful role to deliver compensatory or corrective justice but these principles are known as mutually relatives not mutually opposites. Ideals and goals are to deliver social justice. Medium may be distributive or compensatory justice. The adopted type may be of quality, necessity, equality, freedom, common interest or other. Although the Supreme Court has not found any possible definition of Social Justice¹⁹ but has accepted it as an essential organ of legal system.

The Supreme Court of India has given a principal and dynamic shape to the concept of social justice. Social justice has been guiding force of the

judicial pronouncements. In *Sadhuram v. Pulin*²⁰, the Supreme Court ruled that as between two parties, if a deal is made with one party without serious detriment to the other Court would lean in favour of weaker section of the society. The judiciary has given practical shape to social justice through allowing affirmative governmental actions are held to include compensatory justice as well as distributive justice which ensure that community resources are more equitably and justly shared among all classes of citizens. The concept of social justice has brought revolutionary change in industrial society by changing the old contractual obligations. It is no more a narrow or one sided or pedantic concept. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio- economic disparities and inequalities. In *Jammu & Kashmir Cotton Spinning & Weaving. Co. Ltd. V. Labour Appellate Tribunal*,²¹ the Supreme Court of India pointed out that in industrial matters doctrinaire and abstract notions of social justice are avoided and realistic and pragmatic notions are applied so as to find a solution between the employer and the employees which is just and fair.²²

In another case of *Olga Tellis and others v. Bombay Municipal Corporation and others*²³, it was further observed: Just as a malafide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. The Court in the same strain analysed the ambit of Article 32 and asserted that for the protection of fundamental rights including the right to life²⁴ and livelihood of the poor, illiterate and disadvantaged persons it has all the powers to fashion new remedies and strategies.

In *I.R. Coelho v. State of Tamil Nadu*²⁵, the question that was before this nine Judge Bench on reference was whether on and after 24th April 1973, the date of which the decision in *Kesavananda*²⁶ was delivered, wherein the basic structure doctrine was propounded, is it permissible for Parliament under Article 31-B to immunize legislations from being struck down for violation of fundamental rights by inserting them into the Ninth Schedule and, if so, what is its effect on the power of judicial review of the Supreme Court and the High Courts.

The Supreme Court ruled that "Parliament has power to amend the provisions of Part III so as to abridge or take away fundamental rights, but that power is subject to the limitation of basic structure doctrine. Whether the impact of such amendment results in violation of basic structure has to be examined with reference to each individual case"? The Court further observed that "Since the basic structure of the Constitution includes some of the fundamental rights, any law granted Ninth Schedule protection deserves to be tested against these principles. If the law infringes the essence of any of the fundamental

rights.... "as reflected in the golden triangle of Article 21 read with Article 14 and Article 19"... "and the principles underlying thereunder", "or any other aspect of the basic structure then it will be struck down. The extent of abrogation and limit of abridgment shall have the fundamental rights. It was therefore impermissible for Parliament to immunize legislations from the test of the basic structure doctrine or judicial review simply by using Article 31-B and inserting them in to the Ninth Schedule. Regarding the power of judicial review with the Court it held that the judiciary was the ultimate protector of the Constitution, as the authority to enact and decide the legality of the limitations cannot vest in one organ. The Judiciary, as the ultimate interpreter of the Constitution, would therefore have to test whether or not the law which is sought to be inserted into the 9th Schedule violates the basic structure of the Constitution. Right to Education in *Mohini Jain vs State of Karnataka*²⁷ for first time included Right to education as part and parcel of Article 21 and presently Right to education is our Fundamental Right added under Article 21 A (86th Amendment Act, 2002) of the Constitution. Right to pollution free air and water, Right to privacy and just a few Rights which have led to social upliftment of common man and raising standard of living for people.

Legally also certain landmark judgments by Supreme Court have gone a long way in protecting right to citizen against excesses by the State and its agencies. In *Hussainara khatoon Vs Home secretary*²⁸, State of Bihar Supreme Court laid the principle for providing speedy trial.

In *Zaheera Habibullah H. Sheikh Vs State of Gujarat*²⁹ fair trial in criminal cases. In *M.H Haskot vs State of Maharashtra*³⁰ providing the right to free legal aid.

*Ashoka KumarThakur vs.Union of India*³¹ On 10 April 2008, the Supreme Court of India upheld the Government's 27% OBC quotas in Government funded institutions. The Court categorically reiterated its prior stand that "Creamy Layer" should be excluded from the ambit of reservation policy and private institutions are also not to be included in. The verdict produced mixed reactions.

Conclusion

These are just a few judgments out of the long list through which Supreme Court has very creatively used judicial activism for dealing with certain very sensitive socio-legal issues and is trying to keep pace with demands of people to provide justice with utmost caution and within timely framework of laws in the society. As far as distributive justice is concerned in India, there are many provisions in Constitution which provide for dispensation of distributive justice, but due to lack of will on the part of legislators it could not reach to the people in the real sense of the term. Judiciary has played a very significant role through various judgments some of which have been mentioned in the paper. Judiciary through its various directions in various judgments has not only shaped distributive justice but has also compelled legislature and executive to make sure that distributive justice reaches out to people of India .But the biggest

drawback has been lack of implementation mechanism. The need of hour is to evolve an effective implementation mechanism so that distributive justice reaches to all people in true spirit and letter.

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