

RULE OF LAW AND ADMINISTRATION OF JUSTICE WITHIN THE PRINCIPLE OF DEMOCRACY UNDER THE REFERENCE OF INDIAN JUDICIARY

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ABSTRACT

Every state has a central structure that consists of three main parts that are the legislature, executive, and judiciary. These institutions are specialized in performing specific functions provided under the constitution like rule-making, rule application, and adjudication with a great deal of precision and caution. In India, no institutions are allowed to perform the duty of others, as our constitution provides a theory of separation of powers. The Supreme Court of India enjoys very wide power under the constitution and performs various functions. The main function is to review the legislative and executive actions of the state that should not violate the fundamental principles enshrined under the constitution.

This right of constitutional review provides power to the Supreme Court to check upon the other organs of the government by ensuring the constitutionality of actions of the executive and the legislature. Along with the above functions Supreme Court performs some other functions also, it provides justice to the citizen against the process of the government and resolves disputes between the union and the states. If one state has a legal dispute with another state, then another state can approach the Supreme Court to decide the dispute. The Supreme Court can adjudicate upon civil and criminal matters also. Any person found guilty of any offenses can appeal to the Supreme Court of India. Further, it can review and cure its judgment if it is manifestly wrong. The Supreme Court of India can advise the President on points of law and fact if it is sought by the President. Apart from the judicial function the Supreme Court also performs administrative functions.

KEY WORDS: justice, administration, political etc

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INTRODUCTION

The origin of the present judicial system could be traced to the ancient judicial system. Its roots are covered in the history of mankind; the same is also applicable to the country's law and legal institutions. Renowned Constitutional expert M. P. Jain stated in this regard "The Legal system of a country at a given time is not the creation of one man or one day; it represents the cumulative fruit of the Endeavour, experience, thoughtful planning, and patient labor of a large number of people through generations. To comprehend, understand and appreciate the present judicial system adequately, it is necessary, therefore, to acquire background knowledge of the course of its growth and development." Therefore we can say that our judicial system is not evolved instantly rather it evolved with the changing time and civilizations. To understand the present-day judiciary, it is necessary to understand the history of the evolution of the judiciary. This research paper discusses the evolution of the judiciary in the ancient or Hindu period, medieval or Muslim period, and British period to understand the modern-day administration of justice in India. The main purpose of this research paper is to establish the bridge between the past and present-day judicial system and to give an outline of the current administration of justice in India².

1.1 MEANING OF ADMINISTRATION OF JUSTICE

Men by nature are social beings. They formed society by mutual interdependence that serves many purposes and needs. But this interdependence has favored human beings and also become a cause of conflict when individual interests collapse with social interests. In order to eradicate the conflict, society has come up with many rules and regulations that the individual living in the society has to follow. These rules are applied and enforced by the various organs of the state in the administration of justice and resolve the conflict of interest based on equity, justice, and a good conscience which are with the development of the Society recognized. Justice has always been the highest ideal of mankind. It has been a dormant urge behind all social upheavals and revolutions. The most interesting thing has been that all those who want to change

² The principle of Rule of Law was first given by Thomas Fuller, a 17th -century historian, and churchman, and later on, developed by A.V. Dicey.

the old order, those who defend the old order, and those who, with a neutral voice, advocate peace at any cost, do so in the name of justice. Justice motivates the most sublime sacrifices as well as the worst deed. The conventional meaning of access to justice is access to the court. Every common man regards courts as the essence of justice. It is believed by the common man that the court is the ideal and practical place of administration of Justice where both rights and duties are enforced and determined. In India, the Constitutional makers had placed at the highest pedestal and the preamble highlights the various sides of justice. The preamble of the Constitution of India assures “all citizens justice- Social, Economic, and Political; Liberty of status and opportunity, and promote among them all; Fraternity assuring the dignity of individual and the unity of the nation.” To achieve the goal enshrined in the preamble the Constitution of India provides structures for the organs of the state including the judiciary which carries out the duties provided by the Constitution³.

1.2 THE CONCEPT OF SUPREME COURT

There are many views regarding the concept of the judiciary, one view accepts that the existence of a civilized society is not possible without the judicial organ. Several legal scholars like Sidgwick, Laski, and Rawls accepted this view, Laski said that “when we know how a nation-state dispense justice, we know with some exactness the moral character to which it can pretend.” This view is also endorsed by John Rawls, who said “It is indispensable that there should be a judicial department to ascertain and decide rights to punish crimes, to administer justice and to protect the innocent from injury and usurpation, the judicial department is indispensable.” The second view about the concept of the judiciary is put forward by two sections, one is accepting the view that the function of the Court is to determine the rights and duties of the citizen and if the members of the state have knowledge of their rights and duties there is no requirement of the judiciary. This view to some extent rejects the concept of the judiciary when the people of the state are aware of their rights and obligations. The other view of this segment is represented by communist philosophers like Marx, Engels, and Lenin. Lenin is of the view that “we must administer justice ourselves”.

³ V. R. Krishna Iyer, Indian Social Justice in Crisis 16 (Affiliated East-West Press, New Delhi, 1983)

In this regard, Karl Marx has said western courts are “caste courts’ of the “privileged classes instituted to plug the law’s loopholes with the latitudinarian bourgeois conscience.” In recent times judiciary is required to interpret laws but it is also required to legislate law where there is no law. Further, it has to administer the law and strive to protect the rights of the individual against the atrocity of the state. The development of the judiciary as an important attribute of the state is greatly indebted to Montesquieu who advanced the theory of separation of powers. Democracy like India where constitutionalism is considered a norm of the State, the judiciary plays important role in the body politics of the nation. The judge-made laws cover a significant portion of the legal area in a political community⁴.

1.3 ADMINISTRATION OF JUSTICE: PRE-INDEPENDENCE PHASE

It is no denying fact that a clear understanding of the administration of justice in the present time cannot be completed without the perusal of the existing mechanism of administration of justice in the ancient India that is judicial system in ancient India. It could be divided into three distinct periods namely the Vedic, Medieval and British periods. The roots of the current judicial system are deeply rooted in the past which is said to be the roots of present society and the legal system. It is worth mentioning here that the present is the outcome of the past and it is very difficult to have a better understanding of the existing judicial system without a proper examination of the historical background. So, to have a better understanding of the growth and development of the modern-day legal system, one must have to concentrate on the past, especially the Vedic period or ancient period, the medieval period or Muslim period, and lastly, have more emphasis on the British period as the modern-day legal system is a replica of British Period legal system.

1.4 ADMINISTRATION OF JUSTICE IN ANCIENT INDIA

The administration of justice in India evolved through a long and gradual process, its foundations deeply buried in the past. In ancient people were living peaceful and

⁴ S. Wassem and M.Ashraf Ali, “Social and the Constitution of India”, 67 The Indian Journal of Political Science 767. See also Tarunabh Khaitan, “Constitutional Directives: Morally Committed Political Constitutionalism” 82 Modern law review 603(2019).

happy life through their virtuous actions and the function of government was to check the enforcement and respect of laws of nature. In Santiparva people were living without a king or law court for a long time. However later on morals and the virtues of the people were degraded, people become selfish, greedy, and cupidity began to sway their minds and the earthly paradise which they had been enjoying was soon converted into a 'veritable hell'. So, the need for the law was felt to control the behavior. Bramhadeva created a king to frame laws to control society. The administration of justice was done in the name of the king, he was considered the 'foundation head' of justice. The importance of the king is explained in Manu smriti and it has been declared that the king is god in human form as he is liable to protect the people according to the laws of Dharma against the enemies and look after their wellbeing. In Smritis, great emphasis was laid on the proper and impartial administration of justice which the King should employ to protect the people and this mechanism of administration of justice could alone bring peace and happiness to the king as well as the people.

In deciding the cases King should take the help of learned persons, though he was the supreme authority of the justice delivery system in the state, According to the Yajnavalkya, a King along with scholastic Brahmins and experienced ministers decide the cases in the light of rules of Dharmasastra. Katyayana said that the king was assisted by the learned Brahmins, the chief justice, and other judges, ministers, and learned persons, in the discharge of his judicial functions. The King's Court is the highest 'court of appeal', and has original jurisdiction over grave criminal offenses against the states. After the King's Court, there was the court of Chief Justice (Court of Pradvivaka), in which other judges were appointed to help and assist the Chief Justice. The appointment of the Chief Justice and other judges were made based on class which later crystallized into caste. The Brahmins were considered suitable for the appointment as Chief Justice and puisne judges. After the Brahmins, Kshatriyas and Vaisyas were allowed to be appointed as chief justice and puisne judge but in no

case, Sudras were appointed as chief justice or judge. Likewise Sudras no women were considered irrespective of their caste to be appointed as chief justice or judge.⁵

1.5 THE POSITION OF SUPREME COURT IN THE INDIAN POLITICAL SYSTEM

In the judicial system of India, The Supreme Court of India stands at the apex, it is an august institution in the judicial system. The Supreme Court has been considered the forum upon which the constitutional structure resides. It is the living voice of the Constitution; the will of the people as expressed in the fundamental law. It guarantees the rights of the people, who when their rights are threatened can appeal to the interpreter of the Constitution. Therefore, in a democratic country like India, the Supreme Court holds an eminent position, indeed it is the defender of the democratic government. The Indian Constitution provides the apex body of the judiciary i.e the Supreme Court of India and its declaration of law is binding on all courts within the territory of India and all authorities whether civil or judicial shall act in its aid. Therefore, in the declaration of law, the Constitution of India does not share the power with any other authority, and in this respect, the Supreme Court has no rivals. The declaration of laws by the Supreme Court covers both Central laws as well as State laws, its declaration of single law rules the whole country.

In India Constitution is supreme and every organ of the state be it executive, judiciary, or legislative derives its power from the Constitution. The constitutional makers have inducted many institutions across the world to make the constitution a living organism. To know the Constitution there must be an instrument when the cases arise. Constitutional laws are dead laws, the court expounds and defines their true meaning and operation. Through the device of Interpretation Judges enlarge the briefest meaning of the text of the Constitution and unfolds the hidden meaning of the provisions in relation to society. The Supreme Court of India has been conferred with the power of interpreter of the Constitution and it has to give meaning to the articles of the Constitution when it comes before the apex Court for disposal or it is referred to it for an advisory opinion by the President under Article 143 of the Constitution.

⁵ Hoveyda Abbas and Ranajay Kumar, Political Theory 152 (Pearson India Limited, 2012).

Interpretation is the process through which the broadly worded constitutional principles are precisely taken out in the light of specific circumstances, facts, and situations. It is here pertinent to note that the Constitution is not end in itself but it is an instrument to achieve certain social, political, and economic goals. In a democracy like India, the Constitution should not be stagnant or rigid rather it should be flexible to accept the recent changing needs of the society. It must change with the changing needs of the society otherwise it becomes an iron chain that keeps the nation stand still as the world moves forward.⁶

1.6 THE RECENT DECLINE OF PROBITY IN THE ADMINISTRATION OF JUSTICE: SOME EXPERIENCE FROM THE SUPREME COURT OF INDIA

There has been a constant decline in judicial objectivism with different benches have been giving conflicting decisions, this is why justice Frankfurter suggested to B.N. Rao that the highest court of appeal should not sit in divisions because they may make the law uncertain. The quality of judgment is directly proportional to the personal integrity and rectitude of judges. Well-known legal scholar H. M. Seervai comments on this matter, “This fall in the conduct and character of judges is reflected in the falling standard of their judgments. It is submitted that apart from cases of bribery and corruption, of repaying debts of gratitude which judges owed to their seniors or friends at the Bar, and apart from settling old scores with some counsel, whom the judges disliked at the Bar, another factor has emerged which has not been generally noticed.

It is that in cases involving the Union or the State governments on matters to which those Governments attach great importance, consciously or unconsciously, judges have allowed their judgments to be deflected by the thought that their chances of elevation to the Supreme Court would be prejudiced if their judgments went against the Union or the State. In admitting the charges of corruption brought against him, Lord Chancellor Bacon pleaded in mitigation that his offences were offences of the times. In his introduction to Mr. Cecil’s book, ‘Tipping the scales’ a distinguished

⁶ Salmond, *First Principles of Jurisprudence* 74 (University of Michigan, 1893). See also Mayank Shekhar, “Administration of Justice” available at <https://www.legalbites.in/administration-of-justice/> (Accessed on 05/03/2019)

judge of our day, Lord Devlin, Brought our the full implication of Lord Bacon's plea when he said that the lesson to the learned from Mr. Cecil's book was that 'judges are not now, neither they have been in the past, much better or much worse than other public servants.'⁷

in the light of several judgments, we can say that the judgment of the Supreme Court instead of clearing its stand on a particular point brought more confusion. For illustration, the right to establish and administer educational institutions is a contentious issue which is provoked the legal mind considerably. This issue has been discussed by the Supreme Court of India in 35 leading decisions up to 2005. Eleven judge bench in the case of T.M.A. Pai Foundation v. State of Karnataka overruled its decision of constitution bench judgment J.P. Unnikrishnan v. State of A. P, which directed the national government or other state agencies to interfere in admission practices of private unaided professional colleges, including structuring the fees to be paid by the student. Further, it held that these restrictions are not allowed under Art 19 (6) of the Constitution in respect of the fundamental right of all citizens to run educational institutions as an occupation to establish and run educational institutions under the right to carry on any occupation.

But after some time the Supreme Court constituted Five judge bench in the Islamic Academy of Education v. State of Karnataka, to review its earlier judgment of 11-judge bench in the case of T.M.A. Pai⁶¹. In an unprecedented manner, the five-judge bench overruled the 11- Judge bench in the name of interpretation. The Court took the recourse of the Art 142 of the Constitution to justify its unconstitutional act which conferred extraordinary power on the Supreme Court to do complete justice. However, the new Seven Judge bench is constituted by the Supreme Court in P.A. Inamdar v. State of Maharashtra , which overrules its judgment in the Islamic Academy case. This Attitude of the Supreme Court of India has led to the fall of the independence and integrity of the Court. There should be some firmness in the justice

⁷ Aharon Barrack, *The Judge in a Democracy* 101(Princeton University Press, 2009)

delivery system of the apex court, it should not function in the manner where there has been confusion in the mind of the people who come to the Court for Justice.⁸

1.7 ADMINISTRATION OF JUSTICE IN THE SUPREME COURT OF INDIA

Administration of justice is the major function of the Supreme Court of India. The credibility of the Supreme Court, in fact, is justified for its function of administration of justice. The Supreme Court while exercising its jurisdiction in hearing matters on civil, criminal, constitutional, or other matters is aimed to achieve the ends of the administration of justice. For this purpose, the Supreme Court is conferred with various jurisdictions in order to advance the administration of justice. While administering justice the Supreme Court performs some other functions such as Application of laws, Interpretation of law, Guardian of the Constitution, and Protector of Fundamental rights

1.7.1 Public interest litigation and Individual Rights

There has been an apparent change from legal centralism to legal pluralism, it was realized that social conduct was regulated by the interaction of normative orders, the notion of popular justice, community justice, and distributive justice was sought to be institutionalized, though outside the sphere of the formal system and in opposition to it. Public interest litigation is the outcome of the formal legal system, the nature of Anglo-Saxon law prescribing legal formalism, and the formal legal system's failure to deliver justice has forced the informal justice system to take a separate path of justice system. The Anglo-Saxon model of the legal system had more focus on procedural technicalities such as the adherence to the principle of locus standi and adherence to the adversarial system of litigation. This formal legal system has been more suitable for the rich and influential people, but the marginalized and disadvantaged groups continued to be denied their basic rights.

Public Interest litigation signifies the content of the informal legal system without the intricacies of the formal legal system. Public interest litigation had transformed the

⁸ Brian C Smith, Judges and Democratization Judicial independence in new democracies 10 (Taylor and Francis, 2017).

state into a mechanism of social change. Social justice is the result of this exceeding the formal legal system. The Indian concept of Public Interest Litigation is a very much refined version of the U.S.A version of PIL. According to the “Ford Foundation” of the U.S.A., “Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that the ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities, and others. These include not only the poor and disadvantaged but ordinary citizens, who, because they cannot afford lawyers to represent them have lacked access to the courts, administrative agencies, and other legal forums in which basic public decisions affecting their interests are made.”⁹

1.7.2 Public Interest Litigation and Rule of Locus Standi

Anglo-Saxon Jurisprudence is largely based on the doctrine of locus standi i.e. a person whose rights were affected alone could have approached the court with the limited exception of a habeas corpus petition or a petition by a minor, where others were also entitled to approach the court. However, it was realized that if the guarantee of fundamental rights under the Constitution had to be more meaningful to everyone and not only to the rich and informed, the court would have to make itself more accessible by relaxing the rules of locus standi and allowing public-spirited persons to approach the court for redressal of grievances on behalf of the silent suffering oppressed. In *S.P.Gupta v. Union of India*, the Court held that it would relax the rules of locus standi and entertain cases by third persons if the petition was in ‘public interest’.

The Court held that “It may now be taken as well established that where a legal wrong or legal injury is caused to a person to a determinate class of persons by reason or violation of any constitutional or legal right or any burden is imposed in contravention

⁹ J.W. Garner, *Political Science and Government* 684 (American Book Company, Cambridge University, 1928)

of any constitutional or legal provision or without the authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 of the Constitution seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.” The Court further held that a writ petition by way of PIL was also maintainable in cases where the state's illegal or unconstitutional act has done a public wrong or made the general public suffer¹⁰.

CONCLUSION

The people of India have reposed faith in the judicial system simply because the judiciary is the only institution from which people get relief. In the present scenario, everyone looks towards the judiciary with hope for relief, and in such situations, independence and impartiality become the symbol of democracy. Independence and impartiality are hallmarks of the judiciary therefore, it has been expected from the judiciary that it should be independent and impartial so that the integrity of the judiciary is not compromised and the faith and confidence of the people are not shaken. Judiciary can protect the rights of individuals and can provide equal justice without fear and favor. For this purpose, the Constitution of India provides many privileges to the judiciary to maintain its independence, impartiality, and integrity. With this aim, the constitution makers put the words justice, social, economic, and political in the Preamble of the Constitution of India. It is expected from the independence of the judiciary that the people howsoever high, must conform to the discipline of law.

Judicial independence is not meant only for the judges but for the people also. The judicial system of our country is an instrument protecting the rights of the weak and

¹⁰ Bojan Spaic, Pierluigi Chiassoni, et.al. (eds.), *Judges and Adjudication in Constitutional Democracies: A view from legal realism* 50 (Springer International Publishing, 2020)

oppressed. The Supreme Court of India through its interpretative capacity protected the rights of oppressed and weak people. The Constitution of India has conferred various kinds of jurisdiction to the Supreme Court and by exercising its jurisdiction court protected and preserve the rights of the people of India. The Supreme Court of India employed various kinds of tools Such as public interest litigation that focussed on policy-oriented cases which affect a large number of people. Another instrument is a judicial review which enhances the importance of the judiciary. It ensures the proper check on the exercise of public power. The Supreme Court of India through its constitutional interpretation expands the horizons of fundamental rights. It expands the amplitude of the Art.21 of the Constitution of India not only to the right to life but it also includes the right to travel abroad, free legal aid, protection of prisoners languishing in jail suffering inhuman treatment, etc. The Supreme Court of India is instrumental in the protection of the aims and aspirations of the Constitution which set up a republic of the people who were guaranteed "justice- social, economic and political"¹¹.

¹¹ D. Eufemio, "Constitutional Law in Retrospect" 37 Philippine Law Journal, 1 (1962).