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## **POLITICAL CLIMATE AND THE APEX COURT**

*Can the political climate of a country deter the Apex Court from impartially dispensing justice in the matters of national importance?*

This paper comments upon how the Apex Court of a democracy generally dispenses justice in an impartial manner and is largely not influenced by the political climate. In the initial part of the paper, I have reflected upon the ideas of separation of powers, independence of judiciary, and meaning of justice. Then, I have tried to put my observations about the Supreme Court of United Kingdom. Thereafter, I have discussed about the Supreme Court of India in detail by stating how this court functions impartially in delivering justice. I have also remarked on some instances in the past where I felt the Supreme Court of India might have been deterred by the political climate to deliver an impartial judgement. Then, I have discussed some recent cases decided by the Indian Supreme Court to portray the present scenario.

The political climate of a country should ideally never hamper the functioning of the Judiciary as this can lead to an imbalance in the division of power and this can also weaken the integrity and credibility of the justice delivery system as a whole. In a democracy, there needs to be separation of powers between the Legislative, Executive and Judicial organs of the State.<sup>1</sup> For smooth and transparent functioning of all the three organs and for making them accountable, a system of checks and balances is a necessity. This system of accountability, established through checks and balances is generally witnessed in a Parliamentary system of government where the executive, particularly the Council of Ministers are drawn from the legislature and they are accountable to the legislature.<sup>2</sup>

In a representative democracy, administration of justice to the citizens and protection of their fundamental rights from arbitrary actions of the legislature and executive must be amongst the topmost priority of the State. For the process of the administration of justice to be fair and reasonable, the independence of the judiciary is of paramount significance. This independence of the judiciary empowers the Apex Court and other integrated courts to act effectively as the guardian of the Constitution as well as the rights of the citizens.<sup>3</sup> The Apex Court of any democracy is expected to dispense justice in a fair, reasonable and equitable manner. The courts should always try to uphold the ‘principles of natural justice’ while delivering any judgement.<sup>4</sup>

<sup>1</sup> Ian Adams and RW Dyson, *Fifty Major Political Thinkers* (2<sup>nd</sup> edn, Taylor & Francis Group 2007) 65.

<sup>2</sup> Subhash C Kashyap, *Our Political System* (1<sup>st</sup> edn, National Book Trust, India 2008) 67-68.

<sup>3</sup> Subhash C Kashyap, *Our Constitution* (5<sup>th</sup> Revised edn, National Book Trust, India 2019) 259-260.

<sup>4</sup> PB Mukharji, ‘Administrative Law’ (1958) 1(1) *Journal of the Indian Law Institute* 40 <[www.jstor.org/stable/43952882](http://www.jstor.org/stable/43952882)> accessed 14 November 2020).

The Apex Court in every country always strives towards the goal of dispensing justice in a fair and impartial manner. Nevertheless, there will always be more than one persuasive viewpoint to any judgment. A verdict of the Apex Court which seems fair to one person, might seem unreasonable and unfair to another person. This ambiguity exists because of the very nature of justice being abstract. There is no comprehensive and an all-encompassing definition for the term 'Justice'. There are various theories around justice which have developed over centuries by various philosophers like Aristotle, Justinian-I, J.S. Mill, John Rawls and so on.<sup>5</sup> Without delving into the nitty-gritties of various theories of justice such as the Utilitarian theory, Corrective theory, Distributive theory, etc., if one simply looks at a dictionary of law, then 'Justice' would mean 'administration of laws in a fair and proper manner'.<sup>6</sup>

With respect to the Supreme Court of United Kingdom, which is a relatively newer institution, it is a bit unclear on whether the Apex Court of U.K. is deterred to function in an impartial manner due to the political climate of the nation. This Court has limited scope with respect to powers of judicial review for the reason of existence of Parliamentary sovereignty in the country.<sup>7</sup> However, its impartial and valiant attitude is evident in the recent case of *R v The Prime Minister*<sup>8</sup> in which it was clearly established that the advice rendered by the Prime Minister of U.K. to the Queen to prorogue the Parliament was unlawful and it was beyond the powers of the Prime Minister to tender such an advice to the Queen.<sup>9</sup> This judgement was significant in reinforcing the idea of separation of power by keeping a check on the arbitrariness of the executive.

The Supreme Court of India has proved through its judgements in the past that it is an independent institution, and it is generally not dissuaded by the political climate to dispense justice impartially. The Supreme Court started off its glorious journey with a passive stance. Such a stance can be witnessed through its judgement in the Sankari Prasad case where it interpreted the word 'law' under Article 13(2)<sup>10</sup> and excluded the constitutional amendments from the ambit of this article, thereby bestowing constituent powers on the Parliament to amend the Constitution under Article 368<sup>11</sup> including Fundamental Rights.<sup>12</sup> In my opinion, the Supreme Court didn't want to disturb the status-quo at that time and allowed the government to implement the Land Reform Acts which were in conformity with the Directive Principles.

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<sup>5</sup> Miller and David, 'Justice', The Stanford Encyclopedia of Philosophy (Fall edn, 2017)

<<https://plato.stanford.edu/archives/fall2017/entries/justice/>> accessed 11 November 2020.

<sup>6</sup> Bryan A Garner (ed.), *Black's Law Dictionary* (18<sup>th</sup> edn, Thomson West 2004) 2528.

<sup>7</sup> Subhash C Kashyap, *Our Political System* (1<sup>st</sup> edn, National Book Trust, India 2008) 64-65.

<sup>8</sup> [2019] UKSC 41.

<sup>9</sup> *R (on the application of Miller) v The Prime Minister and Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41 para 69.

<sup>10</sup> Constitution of India 1950, article 13(2).

<sup>11</sup> Constitution of India 1950, article 368.

<sup>12</sup> *Sankari Prasad Singh Deo v Union of India* (1951) AIR 458: 1952 SCR 89 para 13.

In the late 1960s, the Supreme Court had a reversal in its approach and in the *Golaknath's* case<sup>13</sup>, it reversed all the prior the judgements like *Sankari Prasad*<sup>14</sup> and *Sajjan Singh*<sup>15</sup>. Then this stance continued and was evident in the cases of *R.C. Cooper* case where it struck down the Bank Nationalisation Act, 1969<sup>16</sup> and also the case of *Madhav Rao Scindia* where it struck down the abolition of Privy Purses by the government<sup>17</sup>. Subsequently, the Parliament amended the Constitution to bypass these judgements and to implement the changes that it sought. In early 1970s, the entire country witnessed the impartial attitude of the Supreme Court in the *Kesavananda Bharati* Case which was not only a landmark case towards protection of the Constitution from arbitrary legislations but also a significant milestone in the maneuver of the court towards safeguarding the citizens' fundamental rights. In this case, the Supreme Court formulated the 'basic structure doctrine' according to which the Parliament can amend the Constitution in the manner it wants to, as long as it keeps the basic structure of the Constitution intact. The separation of powers between the three organs and the independence of Judiciary were held to be one of the elements of this basic structure.<sup>18</sup> Also, in the *Raj Narain's* case, the Supreme Court struck down the 39<sup>th</sup> Constitutional (Amendment) Act, 1975 as being "violative of the basic structure of the constitution."<sup>19</sup>

Subsequently, the gloomy days of emergency came right after the Supreme Court's Judgement in the *Raj Narain* case<sup>20</sup>. During the period of emergency, certain judgements of supreme court and the conduct of certain judges were questioned and criticized by the legal jurists in particular and the public in general. The political climate that was prevalent during this period apparently might have deterred the Supreme Court from pronouncing judgements which were meant to question the intention of the government about the repressive policies that it was implementing. There was a cloud of fear and anxiety which prevailed in this political climate and it was an aggregate effect of widespread arrests, strengthening of MISA<sup>21</sup>, curbing the freedom of press through a regime of censorship, and numerous other amendments to the Constitution. Some Supreme Court Judges just like other middle-class Indians succumbed to the arbitrary polices of the government that were designed to infringe upon the rights of the citizens, on the assumption that there is no possibility of emergence of an authoritarian rule in India.<sup>22</sup> One might criticize this lackadaisical attitude of

<sup>13</sup> *IC Golaknath & Ors v State of Punjab & Anrs* (1967) AIR 1643: (1967) SCR (2) 762 (It was held in this case that the Parliament cannot infringe upon the Fundamental Rights of the citizens and it does not have constituent powers to amend the Fundamental rights.).

<sup>14</sup> *Sankari Prasad Singh Deo* (n 12).

<sup>15</sup> *Sajjan Singh v State of Rajasthan* (1965) AIR 845: (1965) SCR (1) 933 (The judgement in this case was similar to that of *Sankari Prasad* in which it was reiterated that the Parliament has powers to alter or amend any part/article of the Constitution including the Fundamental rights.).

<sup>16</sup> *Rustom Cavasjee Cooper v Union of India* (1970) AIR 564: (1970) SCR (3) 530 (The Supreme court in this case held that the Constitution guarantees Right to compensation to the citizens if their property is acquired by the government, and it also struck down the Bank Nationalisation Act).

<sup>17</sup> *Madhav Rao Scindia v Union of India* (1971) AIR 530: 1971 SCR (3) 9 (The Supreme court in this case held the abolition of Privy Purses through the Presidential order was arbitrary and the court struck down this order.).

<sup>18</sup> *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461 paras 503,2101.

<sup>19</sup> *Indira Nehru Gandhi v Raj Narain* (1975) AIR 1590 (This judgement was aimed at reinforcing free and fair elections in India and declared clause (4) of Article 329-A of the Constitution which was inserted through 39<sup>th</sup> Constitutional Amendment Act as unconstitutional).

<sup>20</sup> *ibid.*

<sup>21</sup> Maintenance of Internal Security Act 1971.

<sup>22</sup> Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980) 31.

the court from keeping the powers of the government under check as being a dereliction on the part of the judges to perform their duty as guardians of the constitution.

The Habeas Corpus case<sup>23</sup> was an infamous case in the Indian jurisprudence. It was considered controversial and was even seen as an instance when the Apex Court was dissuaded by the ferocious political climate created by the emergency, to dispense justice in an impartial manner. There was an invasion into the powers of courts, and this was especially witnessed with respect to the High Courts, when their powers of granting the writ of habeas corpus to grant temporary relief to political prisoners<sup>24</sup> and to uphold right to life and personal liberty of the citizens was curtailed by the judgement in the Habeas Corpus case which enunciated that even if the actions of the government is arbitrary, it cannot be questioned during an extraordinary period of emergency.<sup>25</sup> It is evident from the dissenting opinion of Justice H.R. Khanna that the government cannot violate one's right to life and liberty even during the suspension of Article 21<sup>26</sup> as this would be antithetical to the rule of law.<sup>27</sup>

I have observed that in recent times, the Supreme Court has tried to keep itself detached from the political climate. It is evident from its judgement in the National Judicial Appointments Commission (NJAC) case in which the Supreme Court struck down the NJAC Act of 2014 as being unconstitutional.<sup>28</sup> NJAC would have led to involvement of politicians in the process of appointing judges, thereby promoting the "Patronage Rationale" which would have endangered the independence of judiciary.<sup>29</sup>

Also, the judgement of Supreme court in the Joseph Shine case<sup>30</sup> and the Navtej Singh Johar case<sup>31</sup> which decriminalized the offence of Adultery and consensual intercourse between same-sex adults respectively. These two cases symbolize the modern view of the Apex Court which is contrary to the present right-wing and socially conservative political climate in India. The impartial nature of this Court can also be seen recently in its Ayodhya Verdict. Generally, in suits relating to title disputes, only one party wins the case by gaining the title, but in this case the court granted some relief to the losing party as well.<sup>32</sup>

In conclusion, the Supreme Court of India has established itself over the years as an institution which is impartial in dispensing justice, but recent events like the nomination of former Chief

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<sup>23</sup> *Additional District Magistrate Jabalpur v Shivkant Shukla* (1976) AIR 1207.

<sup>24</sup> *Upendra Baxi* (n 22) 32-33.

<sup>25</sup> *Additional District Magistrate Jabalpur* (n 23) paras 33, 35.

<sup>26</sup> Constitution of India 1950, article 21.

<sup>27</sup> *Additional District Magistrate Jabalpur* (n 23) paras 527, 544, 553 (Justice HR Khanna).

<sup>28</sup> *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1 (The Supreme Court declared the 99<sup>th</sup> Constitutional Amendment Act 2014 and National Judicial Appointments Commission Act 2014 as unconstitutional).

<sup>29</sup> Khagesh Gautam, 'Political Patronage and Judicial Appointments in India' (2017) 4 *Indon J Int'l & Comp L* 653 (Political Patronage implies the involvement of the executive body in the appointment of Judges which can hamper the appointment of Judges based on merit and can jeopardize the independence of judiciary).

<sup>30</sup> *Joseph Shine v Union of India* (2018) SC 1676.

<sup>31</sup> *Navtej Singh Johar v Union of India* (2018) WP (CrI) No 76 of 2016.

<sup>32</sup> *M Siddiq v Mahant Suresh Das* (2019) Civil Appeal Nos 10866-10867 of 2010 para 80.

Justice of India, Mr. Ranjan Gogoi to Rajya Sabha by the President<sup>33</sup> raises serious questions in my mind about whether the Apex Court is actually detached from the political climate in the present scenario.

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<sup>33</sup> V Venkatesan, 'CJI Ranjan Gogoi's nomination to the Rajya Sabha: More than a sinecure' *Frontline* (Chennai, 24 April 2020) < <https://frontline.thehindu.com/the-nation/article31248619.ece> > accessed 14 November 2020.