

Understanding the Class Bias: A Study of Judicial Behaviour

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ABSTRACT

This article is all about the relation between the working-class and the judiciary. The evidences gathered from the analysis of the higher and highest judicial pronouncements show that judiciary by and large behaves as being corporate friendly and on many an occasion, it has gone on against the poor working classes. At the beginning, the words and terms such as bias and class have been defined and presence of class-bias in judiciary is investigated. This article discusses the relationship between the fundamental rights in Part-II and Part-IV of the Constitution of India. Article 43A is discussed as the first step towards accomplishment of socialism in India. The decision of Supreme Court of India in BALCO Employees Association and the Union of India is analyzed to a good extent from the stand-point of natural justice and the history of industrial democracy has been highlighted. The decision of Bombay High Court in the Writ Petition No. 305 of 1995 has been analyzed to show how the lives of the four lakhs of poor slum dwellers in the so called Sanjaya Gandhi National Park region in Bombay got demolished by the armed state under the supervision of the Court. Some reliable information has been shared to show that judges are yet to get rid of caste and class prejudice.

Keywords: Bias, Class, Class-bias, Judicial behaviour

Introduction

Rarely has there been 'impoverishment' as a subject in the agenda when conferences are held on constitutionalism. Between constitutionalism and impoverishment, judiciary is decorated with a heavy task of minimizing the existing inequalities in the society of ours which is fractured into multiple castes and classes since time immemorial. The preambular conscience of the Constitution of India reflected in Article 14 says that the state shall not deny to any person equality before the law or equal protection of the laws and the judiciary being the judicial branch of the state can't escape the task fixed constitutionally for the state. Article 39 (a) directs the state to take steps, so that men and women shall have adequate means of livelihood and the sub-articles-'b' and 'c' mandate that the state has to take steps towards distribution of ownership and control of the material resources of the community (nation), so that the best of the common good is accomplished and the economic system is so framed that wealth and means of production (of the Nation) must not be concentrated (in a few hands) as to the detriment of the common people. Article 43A as a constitutional directive binds the state to take suitable steps so that workers and labourers can participate in the management of industries. These directives are meant for minimization of inequalities at various layers of Indian societies. The directives in the Part IV of the Constitution of India are fundamental to the fundamental rights in the Part III. These constitutional mandates, if put to action,

would lead India, to a little extent though, towards accomplishment of socialism. On the contrary, Union of India since its inception has adopted the path of capitalism which does not allow socialism to flourish the way it ought be. The 42nd Amendment Act, 1976 adopted the word ‘socialist’ in the Preamble of the Constitution of India. Under the prism of the conscience of the Constitution as said afore, the behaviour of the Supreme Court of India is brought under the public scanner and is made to face much wrath in public. Even though the Court has sometimes taken shelter under the provision of contempt arising out of scandalizing the Court, the public wrath does not seem to assuage. On the other hand, despite all the topsy-turvy, thousands of people every day pray before the Court to get a little respite from the legal hazards in their social, economic and political life. In this context, a search for class bias in judiciary has become highly demanding.

Bias Defined

Bias means a strong feeling in favour of or against one group of people or one side in argument, often not based on fair judgement.¹ Bias is a personal and often unreasoned judgement for or against one side in a dispute.² Bias is the second limb of natural justice. Prima facie, no one should be a judge in what is to be regarded as ‘sua causa’. Nemo iudex in sua causa literally means no one can be a judge in his own cause.³ It is further said that justice must not only be done but must be seen done. Bias is a disproportionate weight in favour of or against an idea or thing and usually a way of being in a state of closed mindedness, prejudicial or unfair.⁴ Bias is a natural inclination for or against an idea object group or individual and is highly dependent on variables such as a person’s socioeconomic status, race, ethnicity, educational background, gender expression, gender identity and religion. Bias can be institutionalized into politics, practices and structures.⁵ bias is colloquially defined as any tendency which limits impartial consideration of a question or an issue.⁶ A bias is a tendency, inclination or prejudice toward or against something or somebody and biases are often based on stereotypes, rather than actual knowledge of an individual or circumstances and can result in making pre-judgements which may lead to rash decisions or discriminatory practices.⁷ Biases are defined as having unfair views of a person or a group, either positively or negatively skewed toward it. Having biases or being biased impacts decisions and reactions and it also makes people overlook facts and ignore other viewpoints.⁸ A bias often dose stem from deeply ingrained societal stereotypes, cultural norms, personal experiences and even institutional structures. Hence, biases result in seeping into decision-making process, which leads to unfair treatment and resultantly perpetuating systemic inequalities and in consequence, it causes unequal opportunity, hindrance in career advancement and deep feeling of exclusion and marginalization of individuals or communities and it so happens in the field of criminal justice.⁹ Etymologically, the term/word ‘bias’ happens to be a derivative of the word ‘biais’, a native of old southern France. It means sideways, askance (with an attitude or look of suspicion or disapproval) and against the grain meaning different from what is normal or usual. English language seems to have developed ‘biais’ into bias and it is used in a game called “the game of bowl in which balls of greater weight are kept on the one side of the bowl and played. As time elapsed, it came to be known as one-sided tendency of mind and later on, in law it means “undue propensity”.

Some examples would suffice in making out the term ‘bias’ in better way. Nigerians have a belief that a woman should never call herself a feminist, since feminists are unhappy because they can’t find husbands.¹⁰ This is an example of societal stereotype in respect of the women who fight for women liberty and feminism as whole is considered a societal stigma. The mainstream feminist calls for solidarity centered only on the comfort of white middle-class women at the expense of other women and since its

inception, the mainstream feminism has been insisting on the logic that some women have to wait longer for equality that once the group of usually white women achieves equality, the gate to equality for other women will open.¹¹ This is the bias of colour-racialism within the mainstream feminist movement. In Bacon's experimental method, there was a dichotomizing between male and female and a conjunction of masculine and scientific dominating over nature, women and the non-west. Modern science was a consciously gendered, patriarchal activity.¹² Irrespective of the occupation in which poor women are involved, they have access to only unskilled, back-breaking and physically exhausting work. Most frequently they are employed as head-load transporters of goods. The example is women's work in construction industry.¹³ This is an example of the bias that women's work is less strenuous than that of men's. It shows the artificial divide between physical work and mental work and however back-breaking hard and exhausting labour a woman contributes, the society dominated by men does not recognize. It is consciously done only to keep the women's wage lower than that of men's, so as to treat women inferior to their male counterpart. Among those under the poverty line in India, 70 % are women. Among 155 countries, only 23.7% of political seats in national parliaments are allocated for women.¹⁴ This is gender discrimination against women who are still made to suffer political discrimination across the globe. Changes in agricultural economy in India began in 1990s and it overwhelmingly favoured the landed and caste Hindus over the landless Dalit and other agricultural workers. The effects of these economic changes are witnessed in rural women in Haryana and it is found that women are made to suffer from discrimination in land appropriation, wages and the rulings from Khap Panchayats against the women's behaviour as transgression of caste and gender norms. Also, it is found that the economic changes in rural areas since 1990s fuelled intensified hierarchies of caste and gender and it placed Dalit and Adivasi women in the positions of increasing vulnerability.¹⁵ This is an example of caste, gender as well as socioeconomic bias in India. It is widely acknowledged that one of the features of a just society is that all the members of a society are allowed to share the benefits as well as the burdens of living together fairly. Nobody in a just society has to systematically and systemically take on more burdens than others unless they choose to do so and unless they are offered proper compensation. Nobody in a just society is entitled by default to more benefits and to less burdens.¹⁶ Gender division or sexual division of labour is an age-old injustice to women. The existing method of testimony in rape complaints is not trustworthy. The rape complaints which are not filed immediately after the occurrence are hard to be considered and a woman's credibility is tested on the basis of her sexual reputation that her previous sexual conduct is questioned and women's sexuality is defined by men's sexuality. It is in the sense that the requirement of vaginal penetration is the only standard with which a woman's body can be sexually violated in rape.¹⁷ Of course, now a days there has occurred some change in the concept of sexual penetration which is beyond the vaginal, but still woman's previous sexual conduct is investigated in the courts while adducing evidence in searching for her consent, so as to nullify her complaint of rape.

Class Defined

What is 'class'? The history of all hitherto existing society is the history of class struggles.¹⁸ Thus, since the time immemorial, class struggles have been going on. Marx and Engels have used two terms- bourgeois and proletarians. The former means the class of modern Capitalists who are owners of the means of social production and they are the employers of the wage labour. The latter means the class of modern wage-labourers who have no means of production of their own and they are reduced to selling their labour-power in order to live. In the ancient epochs of history, a complicated arrangement of society was found and there

were various orders of society. For example, the ancient Rome had classes called patricians, knights, plebeians, and slaves etc. Each of these ranks was a class of people. The Middle Ages were witness to landlords, vassals, guild-masters, journeymen apprentices and serfs etc. Each of these ranks had their respective sub-gradations. Manifesto of the Communist party, 1848 pleads that the modern bourgeois society is a product of the old feudal society and it has not done away with the class contradictions inherited from feudalism. It has only simplified the contradiction between bourgeois and proletariat and now in our time the two great classes face each other directly. India has both caste and class. There are classes in each caste and there are castes in each class. Dr. B. R. Ambedkar's concept is that caste is the primary issue in India and hence annihilation of caste is essential to bring inequalities to an end In India. Karl Marx's concept is that class is the primary issue in the world. However, synthesizing both class and caste can produce a theory, the practice of which can end all forms of exploitation.¹⁹

Article 17 of the Constitution of India abolishes untouchability, which is a hard push to caste system. Since the word 'socialist' has been inserted into the Preamble, the part-IV of the Constitution has gained more binding force on the state to apply the Directive Principles of State Policy. Therefore, it may be assumed that Marx and Ambedkar have been interwoven in the combined reading of the Parts-III and IV. But unfortunately, the state has failed in putting both Ambedkar and Marx into action and although 75 years have eclipsed since the inauguration of the Constitution, there has been no spectacular change in the status quo of caste and class. Rather, India is growing more caste-class ridden.

Working of the Democratic Constitution & Judiciary

In this scenario, the working of the democratic Constitution is to be tested. In this context, the immortal Shakespearean dialogue from 'Julius Caesar' that "the real fault, dear Brutus, is not in our stars, but in ourselves, that we are underlings" would suffice.²⁰ Thus, the state which is under obligation is to answer and since judiciary is the judicial branch of the state, it can't escape its liability of answering the question why the working of the Constitution has failed in translating the conscience thereof in remaking India into a socialist democracy. Some reported incidents expose Judges' biases. When a litigant wins a case in a high Court or in the Supreme Court, people generally enquire about which chamber of advocates represented his case. P. Shiv Sankar who was himself a Dalit and a union mister of law once reported that, in North India, if two judges of a high Court were to take oath on the same day, the judge belonging to higher caste is invited first as to have seniority over the judge belonging to lower caste.²¹ Recently, Justice Muralitharan, a former Chief Justice of Odisha High Court reported in public that a High Court judge belonging to higher caste sprinkled Ganga jal (water from the holy river, the Ganga) across his seat before he sat on to get it sanctified as the earlier judge sitting on the same seat belonged to a lower caste. Justice M. C. Karnan, a former judge of Madras High Court, has informed public that he used to be humiliated and looked down upon severally by his fellow colleagues in the Court owing to his lower caste identity. All these incidents say how some judges are yet to be purged off their caste biases. A judge in the public eye is not an individual but an institution in himself.

A judge ceases to be an individual belonging to any caste, race, religion or region since the moment he takes oath of the office. But contrary to their oath, judges have their bias involving parochialism. On March 18, 1981, P. Shivshankar the Union law minister issued a circular to the governor of Punjab and the chief ministers of all states²² and the relevant portion is reproduced here below.

"It has repeatedly been suggested to Government over the years by several bodies and forums including the States Reorganisation Commission, the Law Commission and various Bar Associations that to further

national integration and to combat narrow parochial tendencies bred by caste, kinship and other local links and affiliations, one-third of the Judges of the High Court should as far as possible be from outside the State in which that High Court is situated. Somehow, no start could be made in the past in this direction. The feeling is strong, growing and justified that some effective steps should be taken very early in this direction.”

Judges are the product of a class and have the characteristics of that class.²³ Sanjay Gandhi National Park in Mumbai was shelter of around four lakhs of Indian humans, the poor and humble slum dwellers whose lives were demolished by the ‘Courtastrophe’²⁴. The report of the Forest Department indicates that by the year 1995, there were 78,000 to 86,000 huts and between 3,90,000 and 4,30,000 people outside the core area of the park. Eviction, demolition and confiscation was conducted under the armed State under the supervision and by the order of the Bombay High Court in the Writ Petition No. 305 of 1995. The relevant portions of the order are submitted below.

“The authorities are directed to conduct a survey of the inhabitants of the national Park Division within a period of two months from today, Any person found to be in possession of a hut for which he himself does not have a valid photo pass must be evicted forthwith and the structure demolished and the authorities are directed to prosecute any person who refuses to vacate the land and the authorities are under the direction to forth demolish all occupied huts, structures found within the National Park Division and all materials shall be confiscated so that the same is not used to re-erect the structures.”²⁵

The above order is what courtastrophe is and means. This is judicially created catastrophe that demolished nearly four lakhs of poor people who are the real lifeline of Bombay as they used to watch houses, cook food for others, keep children safe when parents were on work at different distant places and it is they due to whose sweat, households in the city used to have smile, they were demolished by the armed State under the whip of the Court. Adding salt to the wound, bus services in the National Park region were largely suspended, taxis and autos got prohibited from the area, all telephone lines were disconnected, commercial establishments were ordered to be demolished and all this was done to force the dwellers to vacate the area. This was judicially done in violation of the international agreements to which India is one of the signatory state-parties. The International Covenant on Economic, Social and Cultural Rights and the Resolutions on Forced Evictions 1991/12 and 1993/77 to which the union of India is committed to abide by mandated the state-parties to provide housing to their people and the forced evictions have been condemned thereby. The nearly four lakhs of slum dwellers were treated as if they were unpeople as their houses, shops and medical dispensaries along with all other civil amenities were demolished. This is why Charles Dickens through the character, Mr. Bumble in his novel Oliver Twist has said that “law is an ass”.²⁶

The Court has traditionally maintained a stance that it would not enter the thicket of economic policy, leaving the issues to the political field.²⁷ The judicial outcome in BALCO Employees Union v. Union of India set the course for the disinvestment policy in India. It is not a fact that the Court does not interfere in economic policies. The Court is found being increasingly vocal, even assertive, on the matters such as environment and corruption. So, to keep away from economic policies which cause environmental degradation and corruption is simply to pretend to be an independent organ of the state which is a political organization. As an outcome of the Nehruvian concept of economic policy, which economists adore as ‘dirigiste’ which aims at distributive justice, robust public sector industrial units were set up and at one point of time, PSUs contributed one-fifth to Gross Domestic Products. In 1956, an Industrial Policy Resolution was passed and accordingly, Bharat Aluminium Company Limited was established in 1965.

However, the Disinvestment Commission recommended to sell forty per cent of the shareholding of Balco in April, 1997. In the year 1998, the commission took a decision to sell fifty one percent shares of the company. At this juncture, the BALCO Employees Union requested the BALCO management to give them an opportunity of hearing before the sale out, which was turned down. Hence this case. The employees' union submitted before the Court that BALCO is a state and once the company would cease to have the status of a state if it is sold out to any private party. It was submitted further that the constitutional rights of the workers and employees under Articles 14 and 16 would be no longer available to them. Their argument was that they had a right to be heard before the management took any decision for disinvestment and so, their right to natural justice required, at the least, consultation with them before any disinvestment. The Court rejected the workers' pleas with a note that workers and employees have certain interest in the running and management of a company or an industry, but the very interest(right) could not be extended to dictating the policy choices of the employer. The Court held that the rules of natural justice would not be invited to play as long as the decisions of the employer were taken in good faith and not illegal. It was also held that although a responsible employer is expected to take all aspects including welfare of the workers into consideration before taking any policy decision, the workers and employees were not entitled to demand a right of hearing and so consultation. In addition to this holding, the Court went ahead on satisfying itself that the workers and employees would not be worse off by privatization.

What the Court held as above infringed the conscience embodied in Article 43A. The insertion of this provision is the first active step towards socialism in India²⁸. Although 'economic democracy' and 'industrial democracy' convey different meanings, they are indeed intimately related and the same relationship traced out among the terms such as 'workers participation', 'codetermination' and 'employee involvement'. During the period between 1912 and 1913, the term industrial democracy was borrowed from the Fabian Socialists.²⁹ The BALCO judgement did not reflect the history of the development of industrial democracy. Many a scholar opine that workers and employees are not mere workers and employees. They are also citizens of the nation and they have inalienable right to question and debate on policies taken by the management of the industry. Gordon MacCaffrey³⁰ recounts the history of industrial democracy that the demand for workers' participation in industrial decisions has its roots in the earliest days of the industrial revolution. Their growing consciousness of themselves as members of a class made them take concerted actions against industrial conditions existing then and there, and also against the new capitalist power that controlled the state-power and the state-structure. The Supreme Court's decision in BALCO is the Court's bias not only against the workers, but against the citizens too. The Judges of the Supreme Court largely act as the representatives of the State and the State acts as the representative of the class whom 'Manifesto of the Communist Party 1848' declares as bourgeois.

Conclusion

Law is to be interpreted with human compassion to change the status quo from inequality to an egalitarian society and if it does not get done, the State and its legal system itself happens to be its own casualties. At least Augustus's wife must be above the doubt. Judges have their caste and class bias. They are in the practice of parochialism and they serve the wealthy and the empowered as seen above. The objective purpose behind writing this article is to trace out the presence of class bias in judiciary and hence to rouse awareness among the legal fraternity and common readers to save the great Constitution of ours which carries the legislative intent of building India a least unjust society. Unfortunately, the few judgements

from the higher and the highest echelon of judiciary in India discussed above show that there is presence of class bias in judiciary. The above discussions show that judicial behaviour is shaped largely in good accord with the character of the state and the policies of disinvestment or privatization of public sector industries taken by the state is determined by capitalists. Therefore, judicial behaviour shapes according to the needs and satisfaction of the capitalists. On the other hand, some incidents as reported by eminent persons like those of P. Shivshankar and justice Muralitharan show that some judges are still suffering from caste bias. However, if all is not well, all about Supreme Court of India is not bad. The systemic fallouts are bound to be reflected in the supreme exercise of the judiciary. It is often said of the Supreme Court of India that it is the most powerful court in world.³¹ Thus, people's expectations from the most powerful court in the world is anything bigger than the Supreme Court. Much more about the judiciary remains to be studied and the present article is definitely insufficient to ascertain the presence of class bias in judiciary.

REFERENCES

1. Oxford's Advanced Learner's Dictionary.
2. Wharton's pocket Law Dictionary.
3. H. M. Sinha's Concise Legal Dictionary.
4. Wikipedia
5. The university of Chicago, <https://help.uchicago.edu>.
6. A. Popovic, www.ncbi.nlm.nih.gov
7. Psychology Today, <https://www.psychologytoday.com>
8. BBC, <https://www.bbc.co.uk>
9. The Oxford Review, <https://>
10. Chimamanda Ngozi Adichie, We Should All Be Feminists, at the page 9.
11. Mikki Kendall, Hood Feminism, chapter-Solidarity Is Still For White Women, at the page-1&2.
12. Vandana Shiva, Staying Alive, chapter-Science, nature and Gender, at the page-16& 17.
13. Leela Gulati, Myth and Reality, In the Context of Poor Working Women In Kerala, compiled in Indian Women, edited by Josodhara Bagchi, page-82-83.
14. Dr. Datchana Moorthy Ramu, Gender Equality & Sustainable Development Goals In India, chapter-Discrimination, page-4&5.
15. Elizabeth Armstrong, Gender & Neoliberalism, chapter-5, Anti-Casteism In Tamil Nadu, at the page-139.
16. Dr. Ishita Chatterjee, Gender Justice And Feminist Jurisprudence, at the page-3&4.
17. Kathleen Mahoney, Judicial bias: The Ongoing Challenge, Journal of Dispute Resolution, volume 2015, issue-1, page 47.
18. Karl Marx & Frederick Engels, Manifesto of the Communist Party, section-Bourgeois and Proletarians.
19. Bojja Tharakam, Caste and Class, publishes by The Shared Mirror, www.thesharedmirror.org
20. Shakespeare's play Julius Caesar, Act 1, Scene 2, Cassius speaks to Brutus.
21. Fali S. Nariman, The State of The Nation.
22. Zia Mody, Ten Judgements That Changed India, Appendix, at the page 184 & 185, D.O. No.66/10/81-Jus. Ministry of Law, Justice and Company Affairs, India, New Delhi-110001, March 18, 1981.
23. Prof. Griffith, The Politics of the Judiciary, cited by V.R. Krishna Iyer, J. Off the Bench.

24. V.R. krishna Iyer, J. Off the Bench, chapter-Justices and Justicing, at the page-14 &15.
25. V. R. Krishna Iyer, Off the Bench, at the page 17.
26. Emmanuel Abasiubong Bassey, The Law Is Ass? Linkedin.com, March 30, 2022
27. Kirpal Saurabh, Fifteen Judgements, chapter-No business to Be in Business: The Case for Privatization, page-119 to 135.
28. Durga Das Basu, Constitutional law of India, Seventh Edition, Object behind Article 43A, at the page-134.
29. Walther Muller-Jentsch, industrial Democracy, From Representative Codetermination to Direct Participation, International journal of political Economy, Vol. 25, No. 3, 1995, researchgate.net.
30. Gordon MacCaffrey, Industrial Democracy, vol.27, No. 3, 1972, Erudit, <https://www.erudit.org>.
31. George Gadbois, Supreme Court Decision Making, Banaras Law journal, 10 (1974) cited by Aparna Chandra and et al, in Court on Trial.