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Supreme Court of India Social Justice Bench: Maiden Dichotomy Between Equity and Law in Indian Jurisprudential History

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ABSTRACT

Equity was always administered through and not in opposition to the law in India by the courts. Recently, however, the Chief Justice of India, H.L. Dattu, has ordered the constitution of a two-judge bench, the Social Justice Bench ('SJB'), in the Supreme Court of India, to deal specially with the matters related to social justice. Now, plausibly establishing an integral nexus between Equity and Social Justice (in the Indian context) will signify a dichotomy being created between judicial administration of Equity and Law insofar as a separate SJB has been created. Rationalizing such a claim relative to the English context would bear radical implications for legal jurisprudence in India. Therefore, this paper attempts to determine the nature of relationship, if it exists, between Equity and Social Justice and, accordingly, to examine the extent and veracity of the claim that the SJB has dichotomized Equity and Law in India.

KEYWORDS

Social Justice Bench, Supreme Court of India, Equity, Constitution of India, Social Justice, Social Equity, Individual Equity, Private Equity, Public Equity

1. Introduction

In 1873, the English Supreme Court of Judicature was subdivided into the High Court of Justice (with a separate Chancery (equity) Division and Queen's Bench (common law) division), and the Court of Appeal, administering both Common Law and Equity.¹ While the practical distinction between Equity and Common Law vanished with the fusion of Courts of Equity and of Law; intellectual distinction still remained between these two systems in the nature of claims and remedies available therein (Hudson 2015, p.17-19).² Equity generally followed the Common Law or statutes, unless it was unconscionable to do so (ibid, p.27). However, in case of conflict or variance, principles of Equity prevailed over uncodified rules of Common Law.³

On the contrary, Equity was always administered 'through and not in opposition to' the law in India by the same courts (Gandhi 2010, p.27; Jois 1990, p.39, 41, 46). Prior to the advent of the British rule, equitable principles were a source of law in both Hindu Law (*Dharma*) and Islamic Law (particularly, *Hanafi* and *Hanbali* schools of *Sunni jurisprudence*), recognized through popular usages (*vyavahara*, meaning, 'removal of various doubts') and juristic preference (*istihsan*, meaning 'to approve') respectively (Gandhi 2010, p.27; Jois 2001, p.66-67).⁴ When the British codified the law in India simultaneously recognizing the principles of Equity therein (Gandhi 2010, p.28),⁵ an epoch began wherein Equity was imbibed in the juridical framework in India and this fusion was recognized statutorily.

Courts in British India implemented the principles of Equity (with required modifications) where specific rules of law were inapplicable. Therefore, *Adalats*, which were exceedingly elementary judicial bodies established by Warren Hastings through the Judicial Plan of 1772, adjudged disputes, not involving Hindu or Mohammadan Law, according to principles of justice, equity and good conscience (Jain, 2006). Parallel to *Adalats* were Supreme Courts, established in the Presidency Towns with The Regulating Act of 1773, which were headed by English judges who also administered English Common Law as liberalized by Equity (ibid). After the merger of the erstwhile Presidency Supreme Courts and *Adalats* into High Courts through the Indian High Court Act, 1861, the High Courts retained the inherent power to secure the ends of justice through liberal interpretation of statutes in consonance with principles of equity, justice and good conscience.⁶ However, the Supreme Court of India ('SCI')

possesses the overarching power to do complete justice between the parties through Article 142(1) of the Constitution of India ('Constitution').⁷

Article 142(1) of the Constitution empowers the SCI to administer complete justice in any matter pending before it.⁸ As Preamble to the Constitution states, justice is a coalescence of social, economic and political justice. Heretofore, all the benches of the SCI were equally equipped to uphold this three-dimensional concept of justice taken as a whole, such that the expediency of supreme judiciary was unaffected by the hazy semantics of social, economic or political justice. Recently, however, the Chief Justice of India, H.L. Dattu, ordered the establishment of a two-judge bench titled the Social Justice Bench ('SJB'), in the SCI, to 'deal specially with the matters relating to society and its members, to secure social justice, one of the ideals of the Indian Constitution'.⁹ While setting up dedicated benches in the Supreme Court is not itself unheard of, but these have been primarily to address economic or technical issues of law (Monalisa and Masoodi, 2015). Such benches have always been 'technical' or 'expert' benches dealing with specialist areas of law. For instance, the Forest Bench, later renamed as the Green Bench, has been dealing with environmental cases for nearly two decades. On the contrary, SJB is not a 'technical' or 'expert' bench in that it does not require specialized knowledge of a complex or technical specie of law. Rather, SJB is constituted solely to administer *social justice*. SCI's Notification¹⁰ ('Notification') declaring constitution of SJB does not define the term 'Social Justice' but, illustratively includes therein 'several cases highlighting social issues...where the constitutional mechanism has to play a proactive role in order to meet the goals of the Constitution'.¹¹ Such cases include, *inter alia*, provision of public distribution of food grains, night shelters, medical facilities, hygienic drinking water, and safety and secured living conditions for children, women, and the destitute.¹² Releasing surplus food stocks among people in drought affected areas, providing hygienic mid-day meals to children, and ensuring secured living conditions to women who are otherwise forced into prostitution are other illustrations of issues concerning social justice.¹³

While the constitution of a dedicated SJB to deliver social justice is riddled with fallacies of its own,¹⁴ it has also raised jurisprudential questions relatively alien to Indian juridical framework. Constitution of a separate SJB has arguably estranged Social Justice from the concept of justice, which erstwhile taken as a whole formed the bedrock of Indian judicial, legal and constitutional framework. Currently, SJB is expected to administer Social Justice, which is entirely a naturalist concept. Contrarily, other benches of

SCI are expected to primarily administer positive law with obscured yet (probably) subsisting modicum of economic and political justice. However, this dichotomy between administration of Social Justice and positive law is not the only possible outcome of conceptualization of SJB. If an integral nexus between Social Justice and Equity can be plausibly established in the Indian context, SJB could also be macrocosmically seen as dichotomizing judicial administration of Equity and Law. Rationalizing such a claim would signify both a practical and an intellectual distinction being created between systems of Law and Equity, and correspondingly their judicial administration, for the first time in Indian legal history. This paper, therefore, attempts to determine the nature of relationship, if it exists, between concepts of Equity and Social Justice and, accordingly, to examine the veracity of the claim that the SJB has dichotomized Equity and Law in India.

2. Social Justice in the Indian Context

As stated before, SCI's notification does not define the term 'social justice' but contextualizes it apropos the Indian Constitution. Accordingly, we must restrictively conceptualize and construe it.

Primarily, the Preamble to the Constitution secures social justice for all citizens. It is a settled law that the Preamble is an integral part of the Constitution,¹⁵ and invaluable aids in its interpretation by highlighting its underlying purpose.¹⁶ Accordingly, provisions contained in Part III (Fundamental Rights), IV (Directive Principles of State Policy or 'DPSP'), XVI (Special Provisions Relating to Certain Classes), and like, are interpreted as furthering the objective of social justice enshrined in the Preamble (Basu 2011, p.418; Singh 2012, p.4). Therefore, as established by the constitutional jurisprudence, Social Justice *inter alia* includes elimination of inequalities (of status and opportunities, caste, religion, gender etc.),¹⁷ ensuring equal access to justice (including free legal aid to the economically or socially backward),¹⁸ just and humane conditions of work including maternity relief,¹⁹ affirmative action through special provisions for women, children, the socially and educationally backward, etc.,²⁰ and reservation of seats for Scheduled Castes and Scheduled Tribes in the House of People in the Parliament and the Legislative Assemblies of the States, etc. Insofar as the aforementioned Constitutional provisions can be implemented only through State action, the onus of securing social justice lies fundamentally with the State.²¹ Understood thus; Article 37 of the Constitution obliges the State (as defined in Article 12) to enforce DPSP through Rule of Law. Article 38(1), additionally,

obliges the State to promote welfare by ensuring social justice to everyone. Adoption of such a model of 'social welfare state' also conforms to the philosophy of socialism imbibed in the Preamble.²²

Beside the State, the Judiciary also plays a significant role in dispensing social justice while interpreting relevant statutory and Constitutional provisions,²³ adjudicating upon rights of parties involved, and providing remedies.²⁴ Therefore, Judicial attempts to interpret law is in a manner which ensures the attainment of social justice without any deprivation of legal rights.²⁵ Similarly, it seeks to harmonize the rival claims and interests of different social groups while bearing in mind social welfare and common good.²⁶ In aiming to secure social justice, the Judiciary 'refuses to yield blindly to abstract notions' and 'adopts a realistic and pragmatic approach' while devising remedial frameworks for parties concerned.²⁷ Therefore, in *Sadhuram Bansal v. Pulin Behari Sarkar*,²⁸ SCI, in furtherance of pragmatic socialism, they allowed the petitioners, who were originally trespassers on impugned land, to competitively bid for that land. This case also evidences that Courts seek to adjudge even the private disputes involving socialist claims viz. attainment of livelihood (including equitable wage structure),²⁹ accommodation, maternity relief,³⁰ industrial disputes,³¹ etc. through the pragmatic lens of social justice. Insofar as 'Social Justice' is a species of the genus 'Justice',³² SCI's and the High Courts' inherent power to do complete justice (in accordance with Articles 32, 136, 142 and 226 of Constitution) includes the power to interpret, ascertain, evolve and declare such law, and to pass such directions, orders or other remedies which are socially just.³³ Nevertheless, social justice cannot be administered through the exercise of such power in supersession or contravention of applicable statutory or constitutional provisions.³⁴

Therefore, while there is no universally acceptable definition of what *is* Social Justice,³⁵ Constitutional directives and judicial decisions provide useful insight into what *may constitute* Social Justice. While, microcosmically, it means rectification of injustice in personal relations between people; social justice in its macrocosmic form indicates complex and dynamic social change, in the edifice of a welfare state, aimed at: harmonizing rival claims and interests of different groups, and reconciling individual conduct with general social welfare; removing social, economic and political imbalances (and all forms of inequalities) from social order; and/or providing distributive justice and proportional equality to all, especially the deprived sections of society (Lahoti 2004, p.100; Raju 2006, p. 2-3; Singh 2015).³⁶ Even though the illustrations annexed to the SCI's Notification are (apparently) of Social Justice in its macro form only, it will be a travesty to assume that SJB will not have jurisdiction to entertain private disputes

involving socialist claims. Therefore, both these dimensions of social justice assume importance *qua* SJB.

In effect therefore, the conceptualization of Social Justice is undeniably plausible, but its concretization is not. The obscured semantics of Social Justice will indeed allow SJB to resolve the definitional questions by interpreting it either expansively or specifically tailor-made to facts and circumstances. This, however, will also result in certain undesirable outcomes: first, uncertainty in the litigant's assessment of suitability of his cause of action before SJB; second, deliberate abuse of such uncertainty by the litigant either in an attempt to be heard by a sympathetic bench³⁷ (i.e. bench-hunting) or in an attempt to delay hearing of the matter by the proper bench; and third, unpredictability in even SJB's own assessment of suitability of any cause of action arising before it. It is interesting to note that one of the primary objectives behind the constitution of SJB was to expedite delivery of social justice.³⁸ This objective may however, be eclipsed by bench-hunting, which is highly likely given the obscured contours of Social Justice.

3. Dichotomy between Social Justice and Law (Post SJB)

Having understood the concept of social justice; let us analyze the consequence of establishing the SJB on the dichotomy between social justice and law.

It is important to note that the SJB is a mere division bench and thus, it cannot entertain cases involving a substantial question of law such as the interpretation of the Constitution.³⁹ This is because, Article 145(3) of the Constitution states that the minimum number of judges who are to sit for the purpose of deciding such cases is five. Theoretically therefore, SJB may not entertain novel questions *qua* substantial interpretation of Constitution even apropos social justice, though it may still apply, construe or extrapolate the settled principles.⁴⁰ As manifest from the SCI's Notification itself, SJB may even entertain fresh cases and frame 'fresh scheme(s)' for say, public distribution of food grains. This is presumably because framing such schemes, absent any corresponding government policy, is mere judicial application of well-settled principles of social justice. Even so, SJB must refrain from engaging in framing such fresh policies as a matter of course. This is because, firstly, it raises apprehensions over legitimacy and accountability of such judicial activism. Secondly, it indicates judicial encroachment upon the legislative function of Legislature⁴¹ and policy-making functions of the Executive⁴² (thereby,

providing the possible circumvention of the doctrine of separation of powers). Thirdly, it raises the element of uncertainty and unpredictability in remedies awarded by the Court. Nevertheless, justice, more so, social justice, is a naturalist concept with its fundamental core being fairness (Rawls 1958, p.164-194) and characteristically therefore, SJB, unlike other SCI benches, will be naturally expected to administer social justice by devising remedies (including fresh schemes) where none existed before. In devising such remedies, SJB may draw support from Constitutional or statutory interpretation but will rest the foundation stone of its judgments on the naturalist concept of social justice. On the other hand, other benches of SCI will now refrain from even entertaining cases that substantially or wholly involve issues of social justice, let alone basing their judgments on the notion of social justice. In fact, given the hazy contours and frequent overlap of social, political and economic justice, it is not improbable that other benches may even refrain from entertaining matters that involve questions not founded on interpretations of law but on the concept of justice, be it of any kind. Other benches may now be able to confidently seize themselves of only such matters which involve interpretation of positive law. In effect therefore, the constitution of the SJB has the potential to dichotomize judicial administration of (naturalist concept of) Social Justice from (positive) Law.

However, one may argue that, even though the ends of Social Justice may be found in naturalism, the foundational basis of Social Justice still lies purely in positive law, which is Constitution, in it being declared as a Fundamental Right under Article 14 and 21 of the Constitution.⁴³ This argument fallaciously assumes that the concept of justice, or of social justice, is derived from the Constitution. Instead however, in placing justice as an ideal in its Preamble, the Constitution merely aims to achieve this goal of securing justice (including social justice). It is not the case that the ideal of social justice was nonexistent prior to its insertion in the Constitution. As has been elaborated above; even prior to enactment in the Constitution, social justice was administered judicially (for instance, through *Adalats*). Therefore, the fact that social justice is secured to the people by the Constitution does not mean that the Constitution is its foundational or existential origin.

4. Relationship between Social Justice and Equity in India

Beside demonstrating the dichotomy being created between judicial administration of Social Justice and of Law by constitution of SJB (above); it is important to establish a sufficient nexus between Social

Justice and Equity to rationalize the claim that the SJB has the potential to estrange Equity from Law in the Indian context. Therefore, let us examine the relationship between Equity and Social Justice.

As elaborated before; proportional equality is a means to achieve social justice such that, distributive justice connotes social justice.⁴⁴ In fact, *Plato* has also defined equality as ‘a sort of justice’.⁴⁵ Now, the well-settled maxim of *aequalitas est quasi aequitas* (i.e. ‘equality is equity’, where equality is proportional equality)⁴⁶ holds that equity aims to achieve distributive justice, i.e. *pari passu* distribution of assets or liabilities proportionate to the status and claims of parties involved (Gandhi 2010). It is equitable that no party is put to unjust enrichment or unjustified loss *qua* another. While the Constitution of India doesn’t use the word ‘equity’ as an interchange for ‘equality’, the aforesaid maxim is incorporated in various statutory provisions, viz. Section 43 of the Indian Contract Act (‘any one of joint promisors may be compelled to perform’), Section 27 of Indian Trusts Act (contribution between co-trustees), etc. Thence, equating proportional equality with Equity, one may argue that without Equity, Social Justice is in itself unachievable.

As a corollary, Equity may be perceived as including within its sweep Social Justice. This is because Equity, in its broad sense, is understood *as* justice and fairness, and includes within its sweep natural law or rights, and remedial construction of statutes to further the ends of justice (Gandhi 2010, p.6-7). Even *Aristotle* remarked that, equity and justice ‘coincide’ (Douzinas 2000, 42; Hudson 2015, p.10). Contrarily, social justice is a mere species of genus ‘justice’, which also includes political and economic justice (Basu 2011, p. 419). Therefore, Equity is more expansive in scope and arguably includes within itself the concept of Social Justice.

Correspondingly; SCI in the *ONGC case* held that Articles 32, 136, 142 and 226 of the Constitution confer equity jurisdiction upon the SCI and High Courts to grant discretionary relief justified in law, while the power to do complete justice is derived solely from Article 142.⁴⁷ Apropos Article 142, the SCI held that an appropriate order may be passed ‘in equity *or* by implementing the doctrine of social justice’.⁴⁸ Now, whether the conjunction ‘or’ was used to indicate dichotomy between Equity and Social Justice or, to indicate their similitude remains equivocal. However, insofar as the latter proposition is in consonance with the aforementioned argument surfacing the interrelationship between Equity and Social Justice, it is reasonable to adopt the same. Thence, in expansively interpreting equity jurisdiction as

including ordering implementation of doctrine of social justice, *ONGC case* also arguably manifests that Equity includes Social Justice.

This interrelationship between Equity and Social Justice accordingly manifests itself in their identical nature – Equity and Social Justice are both fluid and dynamic. SCI has held that, where rigid obedience to doctrine of *stare decisis* leads to social injustice, the Court is not bound to follow precedents.⁴⁹ Since Social Justice is an evolving concept, absence of an authoritative precedent must not deter the court from socially engineering new horizons of social justice.⁵⁰ Similarly, it is well settled that equity acts *in personam*, being neither bound to follow precedents nor determined to set any. Additionally; their mode of remedying the plaintiff is also identical – just like equity will not suffer a wrong to be without a remedy, courts have often engaged in judicial activism to frame remedial policies necessary for achieving the ends of social justice, especially when no remedy was available in preexisting constitutional or legal frameworks. Formulation of guidelines for the prevention of sexual assault on women in workplaces,⁵¹ for prison reforms,⁵² for compensation regime to retrenched workers (where statutory compensation was unavailable),⁵³ etc., are such examples. However, *Scarman* argues that social justice is beyond equity for it needs new kinds of remedies (1974, p. 28-19; Swarup and Singhvi 1006, p.70-71). Howsoever beneficial this argument may seem, one must keep in mind that the conventional remedies devised by Courts of Equity, viz. compensation, injunction, etc., were *in personam*, such that the list of remedies available under Equity always remains illustrative, and a court may devise another equitable remedy to mitigate injustice to the parties according to the peculiar facts and circumstances of each case. Even *Aristotle* remarked that equity is ‘superior’ to justice because it is not bound by any formalistic or rigidified framework of what is *just*, viz. justice in rectification, distribution, exchange, etc. (Douzinas 2000, 42; Hudson 2015, p.10). All these factors indicate that there exists an integral relationship between Equity and Social Justice.

However, before conclusively accepting the argument that social justice is a subset of equity, it should be reexamined in light of *Sadhuram Bansal v. Pulin Behari Sarkar*.⁵⁴ In *Sadhuram* case, SCI had allowed the petitioners, who were originally trespassers on impugned land, to competitively bid for that land. In doing so, SCI overlooked the principle of equity that ‘he who comes to equity must come with clean hands’⁵⁵ and held that pragmatism requires that such a technical rule must not stand in the way of attainment of social justice (which is to be achieved through harmonization of individual claims with

public interest). The *Sadhuram* case should not be construed as demonstrating Social Justice at loggerheads with Equity; rather, it must be understood as delimiting the scope of *Individual (or Private) Equity* with public interest, and thereby holding that, Social Justice may outweigh Individual Equity in furtherance of public interest. Even in *Shrijee Sales Corporation vs Union of India*,⁵⁶ the SCI held that ‘public interest is accepted as the superior equity which can override individual equity’. This is also in consonance with *Drury v Hook* in English Law which holds that, equitable principle of *ex turpi causa non oritur actio* is inapplicable where upholding the plaintiff’s claim is in the public interest.⁵⁷ Notably, this Individual (or Private) Equity (as relevant for *Sadhuram*, *Shrijee* or *Drury* case) must be contrasted with *Social (or Public) Equity*.⁵⁸ Equity is usually, but not merely, concerned with resolution of private disputes. It may equally be used as an instrument of advancing social welfare or public interest in disputes concerning harmonization of social, economic, or political interests of different sections of society, or of balancing individual rights (in law or in equity) with larger public interest.⁵⁹ Such disputes may even concern policy frameworks of representative government or other state actions. Examples of such Social Equity include:

- i. Charities or Public Trusts:** The interplay of Equity and public interest is particularly manifest in the case of Charities or Public Trusts. It is settled law that Equity is the foundational basis of Trusts (Hudson 2015, p.17-19). Under Section 1(1)(a) of The Charities Act 2011 (UK), ‘charity’ is an institution established for ‘charitable purposes’ only. ‘Charitable purpose’ has been defined in Section 2(1)(a) as falling within host of public welfare purposes enlisted in Section 3(1) viz. advancement of education, religion, health, environmental protection, elimination of poverty, etc. Additionally, all charities must be for ‘public benefit’ defined in Section 4 r/w 2(1)(b) of the Act. Even in the Indian context,⁶⁰ Courts have conterminously construed the words ‘public’ and ‘charitable’ as in English Law (Gandhi 2010, p.269). Therefore, not only are Charities (or Public Trusts) an example of the inter-relationship between Equity and Social Justice, but also an emphatic illustration of Social Equity.
- ii. Promissory Estoppel against the Government:** It is settled law that the doctrine of Promissory Estoppel arises in Equity in both English and Indian contexts.⁶¹ It holds that, where the Government makes a promise in a sovereign or administrative capacity, knowing or intending that it would be acted on, and the promisee alters his position relying on such promise, the Government is estopped

from going back on its promise on the basis that it will be inequitable. If, however, the enforcement of such promise is against public interest, it will be inequitable to hold the Government to such a promise.⁶² This not only demonstrates that Social Equity lies in balancing Individual Equity with public interest, but also suggests that public interest is ‘superior equity which can override individual equity’.⁶³

- iii. Inter-generational Equity in the context of Environmental Disputes:** The doctrine of sustainable development, precautionary principle, and polluter pays principle, etc. in the context of environmental cases are derived from concept of inter-generational equity, which holds that there must be proportional equality of access to natural resources among present and future generations.⁶⁴ This doctrine is fundamentally based on overarching principles of proportional equality and thus, equity (because, ‘equality is equity’).⁶⁵
- iv. Harmonization of Interests of Different Sections:** In *Secretary, State of Karnataka vs. Umadevi*,⁶⁶ SCI denied regularization of contract laborers in public employment in equity because it would have jeopardized equity for ‘teeming millions of this country seeking employment and a fair opportunity for competing for employment’. Therefore, Equity may also mandate harmonization of interests of all sections of society in relation to a social claim, viz. public employment. In such a scenario, the resulting Equity will be Social (or Public) Equity.
- v. Public Interest Litigation [‘PIL’]:** In *S.P. Gupta* case, J. Bhagwati laid the foundation stone of PIL by holding that, ‘any member of the public having sufficient interest can maintain an action for judicial redress for *public injury* arising from breach of public duty or from violation of some provision of Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision’.⁶⁷ In *Narmada Bachao Andolan*, the SCI held that, ‘a person seeking relief in *public interest* should approach the Court of Equity, not only with clean hands but also with a clean mind’.⁶⁸ The SCI has therefore settled the dust in holding that equity jurisdiction is also applicable in relation to matters concerning public interest. Such public interest may stem from Fundamental Rights guaranteed under the Constitution, or statutory rights or any other public duty. Therefore, Equity jurisdiction includes the Courts’ power to achieve social justice through Constitutional or legal remedial frameworks.

All these factors reinforce our previously drawn conclusion that in the Indian context, Social Justice (in its microcosmic and macrocosmic sense) is a subset of Equity (which is, Social Equity plus Individual Equity). Nevertheless, it is worth admitting that insofar as there is no precedential authority for claiming this, it may be susceptible to doubt for some. On no account however should such susceptibility weaken our initial finding that Social Justice is intricately and integrally linked to Equity.

5. Nature of the dichotomy between equity and law in India (Post SJB)

Having argued that Social Justice is a subset of Equity (considered in its widest sense as including Social Equity); let us consider the jurisprudential impact of the creation of a separate SJB in the SCI.

As has been elaborated previously, there existed an unquestionable fusion of Equity and Law in both legal and judicial administrative frameworks in India. Now, however, Social Justice, which is a subset of Equity, will be principally administered by the SJB. Thus, the SJB in effect becomes a Court of Equity in administering social justice. Therefore, the realm of Social Justice, and with it, a substantial part of Equity, has been dichotomized from legal milieu insofar as the SJB has been constituted to specially deal with matters involving socialist claims. The SJB may not have wholly annihilated the fusion of Equity and Law; but, it has partly separated the two, at least to the extent to which disputes substantially involving issues of social justice will constitute a faction of cases adjudged distinctly (through SJB) from other legal disputes. While one may argue that this is true for instance with civil disputes for which separate benches in the SCI are (or may be) allotted; one must understand that this separation between Equity and Law brought about by the SJB, be it partly, is significant not only in semblance but also in substance. This is because the concept of Social Justice is much more intricately linked to Equity than its merely nominal manifestation in procedural aspects of say, civil disputes (when considered in the Indian context). Equity, considered in its widest sense, is integral to achieving the ends of social justice; while this is not true for any other manifestation of formalistic sense of justice, say, justice considered in the rigid legal sense of fair adjudication of civil disputes in India. Therefore, insofar as the SJB has created a distinction between Equity and Law through separate adjudication of disputes involving social justice, the distinction so created is intelligible, albeit partial.

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ENDNOTES:

¹ Supreme Court of Judicature Act 1873 (36 & 37 Vict c 66).

² Even though the litigant or the Court no longer had to decide whether the impugned claim related to equity or to common law for all Courts were empowered to administer both systems of rules, there still remained a distinction between claims and remedies available at common law or in equity.

³ Supreme Court of Judicature Act 1873, s 25(11); *Earl of Oxford's case* [1615] 21 ER 485 (Ch)

⁴ 'Istihsan', *Encyclopedia Britannica* <<http://www.britannica.com/EBchecked/topic/297047/istihsan>> accessed 01 February 2015.

⁵ For instance, Specific Relief Act 1877, The Indian Trusts Act 1882, The Indian Succession Act 1925, The Guardians and Wards Act 1890, The Indian Contract Act 1872, The Transfer of Property Act 1882, The Indian Divorce Act 1869, etc.

⁶ See presently, the High Courts in India have powers similar to do complete justice in the form of inherent powers as under Section 482 of the Code of Criminal Procedure 1973 and Section 151 of the Code of Civil Procedure 1908; See also *Bindeshwari Prasad Singh v Kali Singh* [1977] 1 SCR 125 and *B.S. Joshi v State of Haryana* [2003] AIR 1386 (SC) for alication of Section 482.

⁷ While High Courts do not have the power to do complete justice, they are not completely toothless in events not covered by statutes. They still possess their inherent powers to secure the ends of justice, see *ibid*.

⁸ *G.M., O.N.G.C. Ltd. v Sendhabhai Vastram Patel and Ors.* [2005] Su¶ (2) SCR 448

⁹ Notification issued by Supreme Court of India, 2 <http://supremecourtsofindia.nic.in/FileServer/2014-12-17_1418816381.pdf> accessed 01 February 2015.

¹⁰ *Ibid*.

¹¹ *ibid*, 1

¹² *ibid*.

¹³ *ibid*.

¹⁴ *Ibid*: SJB is to sit on every working Friday at 2 pm to entertain fresh and pending cases pertaining to issues of social justice. However, whether SJB will actually expedite or contribute to further delay in hearing of such matters (given their large number and relatively only half-day allotted for functioning of SJB) is debatable and should ideally be left for future to decide.

¹⁵ *Kesavananda Bharati v State of Kerala* [1973] 4 SCC 225; *Charan Lal Sahu v Union of India* [1990] 1 SCC 613, 647-51; *Jacob M Puthuparambil v Kerala Water Authority* [1991] 1 SCC 28, 41, 42

¹⁶ *In Re Berubari Union and Exchange of Enclaves* [1960] AIR 845 (SC) 856

¹⁷ Article 38(2), Directive Principles of State Policy, Part IV, The Constitution of India: *S.P. Gupta v President of India and Ors.* [1982] AIR 149 (SC) 26

¹⁸ Article 39A, Directive Principles of State Policy, Part IV, The Constitution of India: *L. Babu Ram v Raghunathji Maharaj* [1976] AIR 1734 (SC) 1; *Hussainara Khatoon v. State of Bihar* [1980] 1 SCC 98; *M.H. Hoskat v. State of Maharashtra* [1979] SCR (1) 192

¹⁹ Article 42, Directive Principles of State Policy, Part IV, The Constitution of India: *Consumer Education and Research center and others v Union of India and others* [1995] AIR 922 (SC); *Municipal Corporation of Delhi v Female Workers (Muster Roll)* [2000] 3 SCC 224, 32, 33

²⁰ Articles 15(4) and 16(4), Fundamental Rights, Part III, The Constitution of India: *Chattar Singh v State of Rajasthan* [1997] AIR 303 (SC)

²¹ See *Sanjeev Coke v Bharat Coking Coal Limited* [1983] AIR 239 (SC); *State of Tamil Nadu v L Abu* [1984] AIR 326 (SC); *M. Nagaraj v Union of India* [2007] AIR 71 (SC)

²² *Ibid*; *Balbir Kaur v Steel Authority of India* [2000] AIR 1596 (SC); *D.S. Nakara v UOI* [1983] AIR 130 (SC)

- ²³ *S.P. Gupta v President of India and Ors.* [1982] AIR 149 (SC) 26
- ²⁴ *Sadhuram Bansal v. Pulin Behari Sarkar* [1984] AIR 1471 (SC)
- ²⁵ *ibid*
- ²⁶ *Crown Aluminum Works v Workmen* [1958] AIR 30 (SC); *R.S. Swamiji v State of Mysore* [1966] AIR 1171 (SC)
- ²⁷ *J.K. Cotton Spinning & Weaving Co. Limited v Labour Aellate Tribunal of India* [1964] AIR 737 (SC) 743
- ²⁸ [1984] AIR 1471 (SC)
- ²⁹ *Supra* 26, 27; *Workmen v. Reptakos Brett* [1992] AIR 504 (SC)
- ³⁰ *Municipal Corporation of Delhi v Female Workers (Muster Roll)* [2000] 3 SCC 224, 32, 33
- ³¹ *ibid.*; *N.S. Giri v Corporation of City of Mangalore* [1999] AIR 1958 (SC)
- ³² *Consumer Education and Research center and others v Union of India and others* [1995] AIR 922 (SC)
- ³³ *G.M., O.N.G.C. Ltd. v Sendhabhai Vastram Patel and Ors.* [2005] Su (2) SCR 448
- ³⁴ *Supreme Court Bar Association v Union of India* [1998] 4 SCC 409
- ³⁵ *Prakash Cotton Mills (Private) v The State of Bombay* [1957] 59 BOMLR 836 (Bombay High Court) 6
- ³⁶ *Crown Aluminum Works v Workmen* [1958] AIR 30 (SC); *Muir Mills Company Limited v Suti Mills Mazdoor Union* [1995] 1 SCR 991; *Consumer Education and Research center and others v Union of India and others* [1995] AIR 922 (SC); *Dalmia Cement (Bharat) Ltd. and Anr. v Union of India (UOI) and Ors. and Suresh Kumar and Ors. v Union of India (UOI) and Ors.* [1996] 10 SCC 104; *Air India Statutory Corporation, etc. v United Labour Union and others* [1997] AIR 645 (SC); *Gajaji Gopalji Jadeja v State of Gujarat* [2005] 2 GLR 1142 (Gujarat High Court)
- ³⁷ SJB, being a specially constituted bench for securing social justice, will readily grant remedies sought by the petitioner even in borderline cases.
- ³⁸ Notification issued by Supreme Court of India 2 <http://supremecourtfindia.nic.in/FileServer/2014-12-17_1418816381.pdf> accessed 01 February 2015
- ³⁹ See *Chunnilal V. Mehta and Sons Ltd. v Century Spg. & Manufacturing Company Limited* [1962] AIR 1314 SC, *State of Kerala v Attesee (Agro Industrial Trading Corporation)* [1989] AIR 222 SC, apropos concept of ‘substantial question of law’
- ⁴⁰ Practically however, this is almost insignificant for five judge benches are rarely constituted by SCI and most of the matters are handled by division benches only.
- ⁴¹ See generally *Vishakha v. State of Rajasthan* [1997] AIR 3011 (SC)
- ⁴² See generally *PUCCL vs. Union of India and others*, Writ Petition [Civil] 196 of 2001 (SC)
- ⁴³ *Ashok Kumar Gupta v State of UP* [1997] 5 SCC 201, 26
- ⁴⁴ *Dalmia Cement (Bharat) Ltd. and Anr. v Union of India (UOI) and Ors. and Suresh Kumar and Ors. v Union of India (UOI) and Ors.* [1996] 10 SCC 104
- ⁴⁵ *Jones v Maynard* [1951] Ch 572
- ⁴⁶ *Steel v Dixon* [1881] 17 Ch D 825
- ⁴⁷ *G.M., O.N.G.C. Ltd. v Sendhabhai Vastram Patel and Ors.* [2005] Supp (2) SCR 448, 25-27
- ⁴⁸ *ibid*
- ⁴⁹ *D.S. Nakara v Union of India* [1983] 1 SCC 305; relying on *Minerva Mills Limited v Union of India* [1980] 3 SCC 625, 681
- ⁵⁰ *Ibid.*
- ⁵¹ *Vishakha v State of Rajasthan* [1997] 6 SCC 241
- ⁵² *Sunil Batra v Delhi Administration (II)* [1980] AIR 1579 (SC)
- ⁵³ *Anand Bihari and others v Rajasthan State Road Transport Corporation, Jaipur and another* [1991] AIR 1003 (SC)
- ⁵⁴ [1984] AIR 1471 (SC)
- ⁵⁵ In latin, *ex turpi causa non oritur actio*
- ⁵⁶ *Shrijee Sales Corporation and Anr. v Union of India* [1997] 89 ELT 452 (SC)
- ⁵⁷ [1636] 2 Ch Cas 176
- ⁵⁸ See *Dr. Preeti Srivastava & Anr. v State of M.P. & Ors.* [1999] AIR 2894 (SC); *Shrijee Sales Corporation and Anr. v Union of India* [1997] 89 ELT 452 (SC)
- ⁵⁹ *M.P. Mathur and Ors. v D.T.C and Ors.* [2007] AIR 414 (SC)

⁶⁰ Bombay Public Trusts Act 1950; Charitable Endowments Act 1890; Religious Endowments Act 1863; Charitable and Religious Trusts Act 1920, etc.

⁶¹ *Sunil Batra v Delhi Administration (II)* [1980] AIR 1579 (SC); *M/s Motilal Padampat Sugar Mills v State of Uttar Pradesh & Ors.* [1979] 2 SCR 641; *Hughes v Metropolitan Railway Co* [1876–77] LR 2 A Cas 439 UKHL 1

⁶² *Sunil Batra v Delhi Administration (II)* [1980] AIR 1579 (SC), relying on *Shrijee Sales Corporation and Anr. v Union of India* [1997] 89 ELT 452 (SC), *Sharma Transport v Government of A.P. and Ors.* [2002] AIR 322 (SC), *Bannari Amman Sugars Ltd. v Commercial Tax Officer and Ors.* [2004] 192 CTR 492 (SC), *Pawan Alloys and Casting Pvt. Ltd. v U.P. State Electricity Board and Ors.* [1997] AIR 3910 (SC), *Sales Tax officer and Anr. v Shree Durga Oil Mills and Anr.* [1998] 97 ELT 202 (SC)

⁶³ *Shrijee Sales Corporation and Anr. v Union of India* [1997] 89 ELT 452 (SC)

⁶⁴ *Glanrock Estate (P) Ltd. v The State of Tamil Nadu* [2010] 10 SCC 96

⁶⁵ *Ibid.*

⁶⁶ *Secretary, State of Karnataka and Ors. vs Umadevi and Ors.* [2006] AIR 1806 (SC)

⁶⁷ *S.P. Gupta v President of India and Ors.* [1982] AIR 149 (SC) 216, 23

⁶⁸ *Narmada Bachao Andolan v State of Madhya Pradesh and Anr. and State of Madhya Pradesh v Narmada Bachao Andolan and Anr. and Narmada Hydro-Development Corporation v Narmada Bachao Andolan and Ors.* [2011] AIR 1989 SC, 138

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