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ESTABLISHING 'EQUITABLE JUSTICE': THE CLIMACTERIC ROLE OF THE SUPREME COURT

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Abstract

With the Supreme Court becoming an omnivorous arbiter of the last, and in current period, even the first, resort, there has been an increasingly mounting pressure on this guardian of the Constitution to secure the aspirations of the common man. The Constitution of India vests wide ranging powers in the Supreme Court to protect the fundamental rights of the citizens and these are the very rights that secure to the citizens their aspirational prowess. The following article seeks to expound the theoretical underpinnings of the common-law system in which our Supreme Court works and how such a system has bestowed upon the court a way of ensuring the rights of citizens is preserved. The article goes on to discuss a variety of cases, including three landmark ones and finally concludes on a humble note to remind the readers that not every story of heroism is a fairy-tale and has discovered its own pit-falls owing to vulnerability to Indian political context. The theme of social preservation features as an important pivot which sustains the framework on which the workings of the court is modelled. The socio-legal aspects discussed in the article seek to reaffirm the transformative role played by the Supreme Court in asserting its commitment to "equitable justice".

I. INTRODUCTION

India's diverse social landscape poses a pressing demand for a justice system which acknowledges and caters to the litigants' specific needs, thereby structuring such a justice system on the noble ideal of equity. While this could not only be dexterous but also daunting it can, in true sense, help to materialize the idea of a utopian society based on tolerance, inclusivity and representation. Therefore, a justice system that demolishes the barriers rife with marginalisation, social stratifications and cultural stigmatization, can profoundly impact the members of the civil society not only through concrete decisions in cases but also through a prolific influence on policy decisions of lawmakers.

The society envisioned by the members of the Constituent Assembly of India got reflected in the Constitution, which came into force on 26th January 1950, securing to the citizens their enforceable fundamental rights and prescribing the state certain unenforceable directives to lead their state policy. Such directives attain only a symbolic value in light to present injustices reigning in the society. Perhaps to strike a meaningful balance between such rights and directive principles, the courts must resort to invoking a system of “justice” led by “equity” to enforce the spirit of the law than just the rule of the law. In this context, “equity” is construed as the spirit and habit of fairness, justness and righteousness which regulates the intercourse of men with men, hence a broader synonym of natural right or justice “grounded in precepts of conscience and not in any sanction of positive law”¹. Further, “equitable” may be defined as something which is marked by what is fair and impartial, in accordance with natural justice.² It can be inferred thus that “equity” is inherent to the idea of “justice”.

The role of the Upper Judiciary- the High Courts and the Supreme Court- in establishing “equitable justice” has been pivotal. The Supreme Court of India, through judgements pronounced in landmark cases like *Vishakha and Ors. v. State of Rajasthan and Ors.*, *M. C. Mehta and Anr. v. Union of India and Ors.*, *Navtej Singh Johar v. Union of India*, *Savelife Foundation and Ors. v. Union of India* and *Olga Tellis v. Bombay Municipal Corporation* among others, has spearheaded a new brand of “equitable justice”. The Supreme Court’s proactive role in promoting a societal shift towards better implementation of social justice underscores its role in advancing social equity³. It is clear that Supreme Court somewhat assumes an identity that recognizes the plight of the litigants and offers them redressal which lawmakers fail to incorporate in their policies.

II. A PHILOSOPHICAL VIEW OF THE INDIAN LEGAL SYSTEM

Indian legal system still follows the Common Law model, prevalent in countries once part of the British Commonwealth, cross-fertilized by typical Indian values as embellished in the Indian Constitution⁴. As such, the Indian Legal System is adversarial, where the judge is a neutral arbiter and assumes an active role, both during and beyond the trial process, to protect

¹ HENRY CAMPBELL BLACK, *BLACK’S LAW DICTIONARY* 634 (4th ed. 1957).

² P. RAMANATHAN AIYAR, *ADVANCED LAW LEXICON* 489 (3rd ed. 2007).

³ MONORANJAN SARKAR & AMIT VERMA, *DYNAMICS OF DEVELOPMENT ADMINISTRATION* 86-87 (2022).

⁴ B. N. Srikrishna, *The Indian Legal System*, 36 *INT. J. LEG. INF.* 241, 242 (2009).

the rights of victim and punish the wrongdoer⁵. The inherent flexibility in this system allows judges for a timely and relevant response to changing societal requirements and formulation of principles that cater to developing areas of law⁶. The genius of common law lies in the fact that it is flexible and adaptability, which is an integral part of the constitutional function of judiciary⁷.

In civil law jurisdictions, while judges have a purely interpretative role led by doctrinal guidance of exhaustive and extensive statutes, the common law jurisdiction allow for law making that is both comprehensive and focused⁸. The statutes only provide selective explanations of certain areas hence judges must resort to individual discretion⁹. Thus, the courts are often faced with the challenge of dealing with legislative gaps and reconciliation of contradictory statutes coupled with a lack of clarity with the most appropriate methods of statutory interpretation; thus, courts have come to favour a purposive approach over a plain meaning or literal rule¹⁰.

Clearly, from the above discussion, it can be inferred that we live in a legal system where judges and hence, courts, have an extensive role in ensuring that “justice” is the last word, through careful and thorough examination of cases. It is also true that Indian statutes cannot always provide for a remedy for every particular situation and hence judges must resort to a naturalist approach rather than a positivist one in order to carve out a remedial framework for the litigants. “Equity” forms the basis of natural justice, as rightly described by *Osborne*¹¹. Lon. L. Fuller, a naturalist, took strict objection to strict positivist approach due to their separation of what law *is* and what law *ought* to be¹². Fuller stressed on purposive interpretation of human behaviour “when we accept the full consequences that flow from a view which treats human action as goal-directed, the relation between fact and value assumes an aspect entirely different from that implied in the alleged "truism" that from *what is* nothing whatever follows as to *what*

⁵ Dastagir Rajekhan Pathan, *Role of Adversarial Model in Indian Criminal Justice: A Critical Analysis*, 5 INT. J. LAW MANAG. HUMANNIT. 1019, 1019 (2022).

⁶ Margaret Fordham, *Comparative Legal Traditions- Introducing the Common Law to Civil Lawyers in Asia*, 1 AS. J. C. L. 1, 1 (2006).

⁷ Justice M. N. Venkatachaliah, *KEEPING THE SPIRIT OF THE COMMON LAW ALIVE*, 5 NUJS L. REV. 291, 292 (2012).

⁸ Fordham, *supra* note 6, at 3.

⁹ *Id.* at 2.

¹⁰ *Id.* at 5.

¹¹ OSBORNE, *DICTIONARY OF ENGLISH LAW* 724 (Roger Bird ed., 7th ed. 1990).

¹² Charles L. Palm, *The Natural Law Philosophy of Lon L. Fuller*, 11 CATH. LAW. 94, 100 (1965).

*ought to be*¹³. One cannot interpret the statute without knowing what its purpose is.

The analysis of law must begin with experience and not self-imposed abstraction. Judges can improve a tradition while transmitting it. Fuller states that the *collaborative articulation of shared purposes* is what has produced the traditional case by case development of the common law and which has emerged as the way of solving the problems of law while keeping in pace with the changing social order¹⁴. The purposive and creative element is essential to let law grow and reproduce itself anew. The onus is on the judge to see what is *right*- right for the litigant and right in light of the litigant's purposes¹⁵.

On a conceptual level, the development of concept of "equity" in England was an attempt to introduce a branch of common law where the existing procedures and remedies could not grant relief in a particular case¹⁶. Thus, "equity", may further be defined as a body of legal principles that emerged to supplement the common law when the strict rules of its application would limit or prevent a just outcome¹⁷. The two systems- that of equity and of common law- got fused in England through the *Judicature Acts* of the 1870s. What we have today is a concept of "equity" heavily ingrained in common law traditions of the present, hence in that of India's legal systems too.

III. THE SUPREME COURT'S INDISPENSABLE ROLE

The Indian Legal system places a heavy reliance on the body of laws made by judges. Hence, casebooks and good textbooks play a crucial role in summarizing the judgements given by the top court. The doctrine of *stare decisis* dictates that a lower court must follow the decision of the courts above it in the judicial hierarchy¹⁸. The Supreme Court of India can actively police the High Courts and subordinate courts through the power conferred upon it by virtue of Article 141 of the Indian Constitution¹⁹. However, what is relevant to us is the fact that the Indian Supreme Court is not bound by its past precedent and may overrule decisions that appear "plainly erroneous" premised upon "changing times"²⁰. This mirrors the approach that we have

¹³ Fuller, *Human Purpose and Natural Law*, 3 NATURAL L. F. 64, 68 (1958).

¹⁴ *Id* , at 73-74.

¹⁵ FULLER, REASON AND FIAT IN CASE LAW 4-7 (1943).

¹⁶ 12 CRAIG DUCAT, CONSTITUTIONAL INTERPRETATION G3 (1st ed. 2009)

¹⁷ BLACK, *supra* note 1, at 433.

¹⁸ Fordham, *supra* note 6, at 3.

¹⁹ INDIA CONST. art 141. The Article states: "141. Law declared by Supreme Court to be binding on all courts".

²⁰ Bengal Immunity Company Limited v. The State of Bihar, A.I.R. 1955 S.C. 661.

discussed under the previous sub-heading.

In *Chandra Bansi Singh v State of Bihar*²¹, the Supreme Court declared itself as not only a court of law but also a court of equity; quite as if denoting the commensurability of the two concepts. The Supreme Court has also been granted wide powers under the Article 142 of the Indian Constitution²² to render “complete justice”, wherein it can grant equitable relief and may pass necessary order for keeping balance equities amongst parties²³ and may also grant equitable relief to eradicate injustice²⁴.

Furthermore, under Article 32 of the Indian Constitution²⁵, the Supreme Court and the High Courts may issue a variety of *writs* for enforcement of an individual’s fundamental rights. In *Vishal Jeet v. Union of India*²⁶, the Supreme Court issued directions to check the evil of child pornography under Article 32 of the Constitution. In another case²⁷, the Supreme Court issued directions for the revival of a company (viable units) having regard to the fact that living had been denied to 10,000 workers for five years, invoking Article 32. In yet another case²⁸, the Supreme Court held that segregating children of prostitutes by locating separate schools and providing separate hostels would not be in the interest of such children, using its powers under the said article.

Under Article 136 of the Indian Constitution²⁹, the Supreme Court may grant special leave to any order, decree, judgement, determination or sentence passed by any tribunal or court in India. It is a power that grants the court power to value equity and one that incorporates a justice-oriented approach rather than strict adherence to law³⁰. Additionally, the Supreme Court under the said article may issue directions if the law does not provide a solution of a problem,

²¹ *Chandra Bansi Singh v. State of Bihar*, (1984) 4 S.C.C. 316.

²² INDIA CONST. art 142, cl 1. The clause states that:

“142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc

(1)The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe”.

²³ *Srivasaiah v. H. R. Channabasappa*, A.I.R. 2017 S.C. 2141.

²⁴ *Manish Goel v. Rohini Goel*, A.I.R. 2010 S.C. 1099.

²⁵ INDIA CONST, art 32, cl 2.

²⁶ *Vishal Jeet v. Union of India*, A.I.R. 1990 S.C. 1412.

²⁷ *Workers of M/s. Rohtas Industries Ltd. v. Rohtas Industries Ltd.*, A.I.R. 1990 S.C. 481 (India).

²⁸ *Gaurav Jain v. Union of India*, A.I.R. 1990 S.C. 292.

²⁹ INDIA CONST. art 136, cl 1.

³⁰ *State of Punjab v. Rafiq Masih*, A.I.R. 2015 S.C. 696.

as an interim measure, till the proper law is enacted by the Legislature³¹.

The cases and the relevant articles discussed above provide a clear snapshot of the powers of the Upper Judiciary, especially of the Supreme Court, to exercise its discretion and exercise purposive application of law to adjudicate cases, which is the finest example of “equitable justice”. The powers of the Supreme Court under relevant articles gives it the discretion in order to give complete justice. Discretion, a defining feature of common law jurisdictions, lies at the heart of equity jurisdiction³².

IV. RELEVANT CASE LAWS

In the case of *Vishakha* case³³, a writ petition was filed before the Supreme Court with the broader cause for the enforcement of the fundamental rights of the working women under Articles 14, 19 and 21 of the Constitution, alongside an immediate cause being the brutal gang-rape of a social worker in a village of Rajasthan. The Court identified violations of the rights flowing out of the aforementioned articles and further held that:

*“Such violations, therefore, attract the remedy under Art. 32 for the enforcement of these fundamental rights of women. This class action under Art. 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon”*³⁴.

As inferred under previous subheadings, the creative element of law is essential for ensuring “equitable justice”. In the present case, the Supreme Court states that when instances of sexual harassment of women are brought before them, the court must lay down some guidelines for the effective redressal to protect the rights guaranteed under Arts. 14, 19, 21 to fill the legislative vacuum.

*“When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Arts. 14, 19 and 21 are brought before us for redress under Art 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum”*³⁵.

³¹ Rajasthan State Road Transport Corporation v. Santosh, A.I.R. 2013 S.C. 2150.

³² Zygmunt J.B. Plater, Statutory Violations and Equitable Discretion, 70 CALIF. L. REV. 524, 533 (1982).

³³ Vishakha and others v. State of Rajasthan and others, A.I.R. 1997 S.C. 3011.

³⁴ *Id.*

³⁵ *Id.*

The Court noted its obligation under Art. 32 of the Constitution and took cognizance of international norms and conventions existing at that time, in the absence of domestic laws, for the purpose of formulation of guidelines. This is a fine example of law actively reproducing itself in order to supplement the common-law understandings of “equality” as enshrined in articles of the Constitution, through providing equitable remedies.

In another landmark case of *M. C. Mehta and Anr. v. Union of India and Ors.*³⁶, a writ petition before the Supreme Court sought the closure of the *Shriram Food and Fertilizers* and several other industries on the ground that they were hazardous to the community. Furthermore, during pendency of the petition, there was a massive escape of oleum gas from one of the units of *Shriram* and the people harmed as a result of the escape filed separate applications for compensation; all such applications, clubbed with the writ petition, were finally presented before a 5-judge bench of the Supreme Court citing “issues of great constitutional importance”³⁷. However, what makes this judgement special is the Court’s affirmation of its epistolary jurisdiction and devising the principle of *absolute liability* to render equitable justice.

Epistolary Jurisdiction is a unique feature of Public Interest Litigation³⁸, which enables the Constitutional Courts in India to treat a letter by a person or on behalf of an aggrieved person, telegram or an article in the newspaper as a writ petition³⁹. In India, the Supreme Court emerged as the symbol of hope for the deprived and vulnerable sections of the society⁴⁰ and to meet the ends of justice, the court relaxed the technical procedures in order to treat mere letters addressed to Courts as writ petitions where there is a glaring violation of citizens’ basic rights⁴¹.

In the oleum gas leak case, the Court did away with the principle of *strict liability* as developed in the English case of *Rylands v. Fletcher*. The court held that:

“Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other

³⁶ *M. C. Mehta and Anr. v. Union of India and Ors.*, A.I.R. 1987 S.C. 1086.

³⁷ *Id.*

³⁸ N. Satish Gowda, *Epistolary Jurisdiction: A Tool to Ensure Human Rights of Have-Nots*, 4 CMR UNI. J. CONTEMP. LEG. AFF. 204, 204 (2022).

³⁹ *Id.*, at 204.

⁴⁰ P. N. Bhagwati & C. J. Dias, J

⁴¹ *Fertilizer Corporation Kamgar Union v. Union of India*, A.I.R. 1981 S.C. 344.

*foreign country. Although this Court should be prepared to receive light from whatever source it comes, but it has to build up its own jurisprudence, evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy*⁴².

The principle of *absolute liability* mandated that enterprises engaged in hazardous or inherently dangerous activity posing a threat to health and safety of workers working inside the enterprise as well as those outside the enterprise premises owe an “absolute non-delegable duty to the community” and that such enterprise must be absolutely liable should any harm result on account of its activity, “irrespective of the fact that the enterprise had taken all reasonable care”⁴³.

The court drew this power to formulate an equitable principle on basis of power conferred upon by Art. 32.

*“It is in realisation of this constitutional obligation that this Court has, in the past, innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning*⁴⁴.

In *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*⁴⁵, a writ petition was filed before the Supreme Court of India by journalist Olga Tellis along with two pavement dwellers whose establishments were destroyed following an order of eviction and deportation of slum and pavement dwellers by the Government of Maharashtra in accordance with the Bombay Municipal Act 1888. This was followed by a second group of petitioners whose plea was heard along with the first petition. Allegations were raised that attempts were made to deport the dwellers from their places of settlement despite an injunction order against the same.

On the question of whether there can be any *estoppel* obtained against enforcement of Fundamental Rights, the court held that:

“No individual can barter away freedom conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or

⁴² M. C. Mehta and Anr. v. Union of India and Ors., A.I.R. 1987 S.C. 1086.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, A.I.R. 1986 S.C. 180.

any subsequent proceedings. Such a concession, if enforced, would defeat the purpose of Constitution”⁴⁶.

The Supreme Court of India went on to interpret the Article 21 of the Indian Constitution⁴⁷. The contention whether *right to life* meant a *right to livelihood* was cleared by the court as it unequivocally stated that:

*“An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life”*⁴⁸.

The Court, giving due consideration to the plight of the pavement and slum dwellers who have “no means of livelihood in villages” and the economic compulsions that force them to live an dreadful life in cities, held that the *right to occupation* as well as the *right to settle* as in Article 19(1)(e) “to reside and settle in any part of the territory of India” and 19(1)(g) “to practise any profession, or to carry on any occupation, trade or business”, have been violated by the Bombay Municipal Corporation. The Court reminded the State of its obligation to secure to its citizens *right to livelihood* and *right to work*.

In light of the case, the Court upheld the principle of *audi alteram partem*- that the dwellers should have been given an opportunity to be heard- and closed the case, passing an eviction order while providing for alternative pitches with a month’s notice to the pavement dwellers. This is a strong example of “equity jurisdiction” of Supreme Court, whereby it paved way for a decision which respects and recognizes the plight of the litigants.

Thus, Supreme Court can invoke its equity jurisdiction to adjudicate matters concerning the public, especially when domestic laws are either absent or silent on the issue or do not provide

⁴⁶ *Id.*

⁴⁷ INDIA CONST. art. 21. The Article states that:

“21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law”.

⁴⁸ *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, A.I.R. 1986 S.C. 180.

just and fair relief in the eyes of the Court, often through their interpretation of the laws or development of equitable principles.

V. CONCLUSION

Law is akin to an ongoing *conversation* between two categories of law makers- *judges* and *legislators*- who decide “what sort of society we must live in?”⁴⁹. While judges decide upon concrete cases, the legislators create laws that regulate the way we live in a society. In deciding such cases, the judges often have to give in to the statutes created by the legislatures. If any such statute is in contravention of any fundamental right conferred upon the citizen of the country by the Constitution of India, Article 13 of the Constitution⁵⁰ gives the power of *judicial review* to the Constitutional Courts to declare a law void, if it is inconsistent with the Constitution, to the extent of its inconsistency⁵¹.

Courts have taken a stance that have upheld the concept of “equitable jurisdiction”, by ensuring that laws are in consistence with the fundamental guarantees of the Constitution and fill in legislative voids or interpret laws in manner which benefit the larger interests of the society. The discretionary role of the upper judiciary plays a crucial role here. Supreme Court’s “equitable jurisdiction” also gains importance against a background where social injustices peak. Under the contemporary modern egalitarian legal system, the right to access justice has two prongs, one is its accessibility to all and second being its quality of being just and fair.

However, the answer to the question, “what sort of society we must live in?” has not always led to the best answer, the most fitting example being the *Bhopal Gas Leak Tragedy Case*⁵², where the inability of the Supreme Court to stand alongside the cause of the victims left many Indians frustrated⁵³. There was no reference in the Supreme Court order to any international precedent regarding payment of damages; calculations done by the Supreme Court showed that it compared the gas-leak disaster to a mere motor accident cases⁵⁴. The case hastened the decline in equitable reliefs in environmental cases more than in any other case.

⁴⁹ NICHOLAS J. MCBRIDE & JASON VARUHAS, *LETTERS TO A LAW STUDENT* 18 (3rd ed., Pearson 2014).

⁵⁰ INDIA CONST. art 13.

⁵¹ Mohd Faiz Khan & Syed Umam Fatima Hasan, *Doctrine of Judicial Review in Indian Constitution*, 2 INTL. J. LEG. SC. INNOV. 83, 84 (2020).

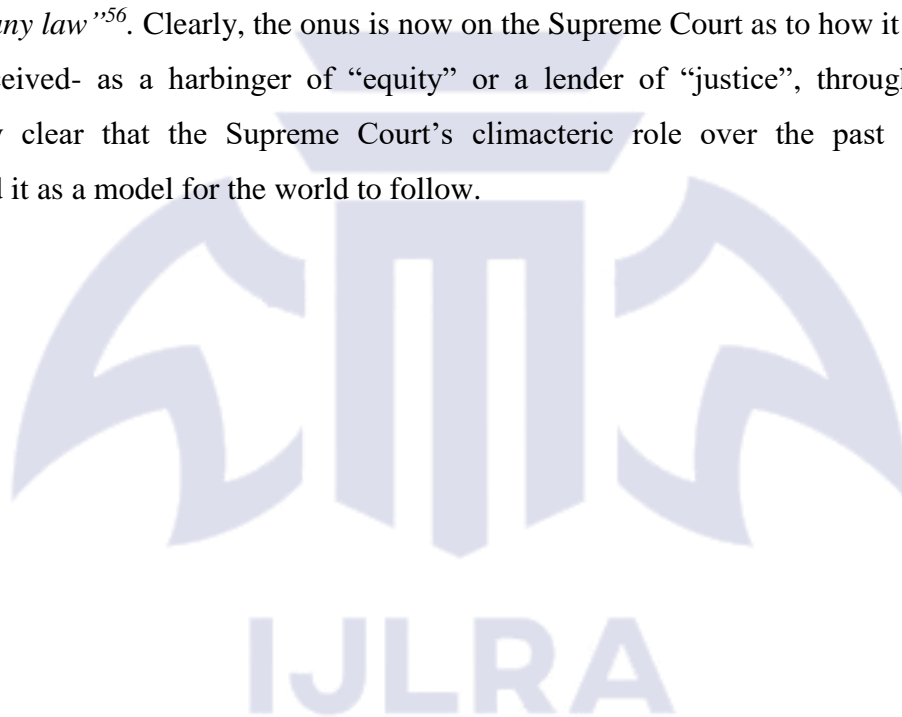
⁵² *Union Carbide Corporation v. Union of India etc.*, A.I.R. 1990 S.C. 273.

⁵³ Colin Gonsalves, *The Bhopal Catastrophe: Politics, Conspiracy and Betrayal*, 45 EPW 68, 69 (2010).

⁵⁴ *Id.*, at 70.

It is important to understand that the Supreme Court, as the guardian of the Constitution, has made significant strides at strengthening the confidence of the people in itself. This is also reflected in the increasing number of cases in the upper judiciary. Between 2005 and 2011, the number of cases appealed to the Supreme Court increased by 44.9 per cent while the number of cases accepted for regular hearing increased by as mammoth 74.5 per cent while the number of cases disposed of by the subordinate courts increased only by about 7.8 per cent.⁵⁵

William Blackstone wrote, “*a court of equity and a court of law, as contrasted to each other, are apt to confound and mislead us: as if the one judged without equity, and the other was not bound by any law*”⁵⁶. Clearly, the onus is now on the Supreme Court as to how it wishes itself to be perceived- as a harbinger of “equity” or a lender of “justice”, through it remains undeniably clear that the Supreme Court’s climacteric role over the past decades has established it as a model for the world to follow.



⁵⁵ RAJEEV DHAVAN, THE SUPREME COURT UNDER STRAIN (1978).

⁵⁶ WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND: A FACSIMILE OF THE FIRST EDITION OF 1765—1769 (1979).