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## THE SOCIAL JUSTICE BENCH OF THE SUPREME COURT OF INDIA: REACHING OUT

On 12<sup>th</sup> December 2014 the Supreme Court of India established its Social Justice Bench (SJB). The Supreme Court is no stranger to the terms 'social justice' and 'human rights' as this paper demonstrates. In the 1980's the Supreme Court created a unique procedure entitled Public Interest Litigation, (PIL) to promote, in the widest manner, access to the courts. Paradoxically, the very success of PIL constitutes a reason for the creation of the SJB. This paper traces the genesis of this novel bench.

This article shows how the Indian judiciary, working within a common law system, has applied a human rights lens to analyse and address social justice issues. The constitutionally protected 'right to life' under Article 21 of the Constitution of India is examined in this context. The question of what is social justice has been vigorously debated over centuries.<sup>1</sup> A generally accepted definition of social justice is hard to achieve and harder to implement. Implementing social justice requires the creation of a geographical, sociological, political and cultural network thereby building a platform upon which relations between individuals and groups can be understood, assessed, and characterized as just or unjust. Social justice in contemporary context is treated as synonymous with distributive justice requiring the promotion of 'social progress and better standards of life in larger freedom' and of "the economic and social advancement of all peoples".<sup>2</sup> Putting it succinctly, we consider social justice in India, based upon dicta taken from Supreme Court judgments, to be a dynamic term that seeks to remove social imbalances through processes, including the law, that harmonise rival claims or interests of different groups, sectional interests or individuals in order to build a welfare state.<sup>3</sup>

### INDIA'S CONSTITUTIONAL MANDATE

Delivering social justice is part of India's constitutional mandate to undo historic and current injustices, inequities and discrimination against the weaker sections of society particularly the scheduled castes, tribes and 'backward' classes. The Preamble and the Directive Principles of State Policy [DPs] of the Constitution of India reflect the centrality of social justice. In *Air India Statutory Corporation v. United Labour Union*<sup>4</sup> the Supreme Court stated 'the Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of 'social justice' which the Constitution of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen... Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor from handicaps, penury, to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain a

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<sup>1</sup> Loretta Capeheart and Dragan Milovanovic, *Social Justice: Theories, Issues and Movements*, (Rutgers University Press 2007), pp.29-44.

<sup>2</sup> The International Forum for Social Development, *Social Justice in an Open World: The Role of the United Nations*, (Department of Economic and Social Affairs ST/ESA/305, United Nations 2006), p.14.

<sup>3</sup> *Dalmia Cement (Bharat) Ltd v Union of India* (1996) 10 SCC 104; *M. Nagaraj v Union of India* (2006) 8 SCC 212; *Consumer Education & Research Centre v Union of India* (1995) 3 SCC 42; *Madhu Kishwar v State of Bihar* (1996) 5 SCC 125

<sup>4</sup> (1997) 9 SCC 377 at 419

substantial degree of social, economic and political equality, which is a legitimate expectation and a constitutional goal...'

Article 38, one of the DPs, directs the state to undertake positive discrimination in favour of the disadvantaged by providing facilities and opportunities for the welfare of people in order they may live with dignity and equal status. Additionally, other social rights include the right to livelihood, protection of children and youth against exploitation, securing health and strength of workers (Article 39); effective provision within the limits of the state's economic capacity for rights to work, education and public assistance in event of unemployment, old age, and sickness (Article 41); fair wages and conditions of work and a decent standard of life (Articles 42 and 43); free and compulsory education to all under the age of fourteen (Article 45); and raising the level of nutrition and standards of living and public health (Article 47).

However, the framers of the Constitution endorsed the non-enforceability of these rights, their fulfilment being contingent on the state's economic capacity.<sup>5</sup> However, they should be included in government policies if the state could afford to do so. Consequently, the positive obligations on the state housed within financial resource limitations, constrain these principles.

Nevertheless, the Supreme Court of India interpreted and adapted these social rights to promote social justice by shifting from 'fine-spin technicalities and abstract rules to recognition of human beings as human beings and human needs as human needs...'<sup>6</sup> Social rights generally serve as a vehicle for expressing the values of equality, justice and democracy with the state being a key player in securing these goals. Accordingly, the Supreme Court through judicial craftsmanship developed an integrated approach to merge non-enforceable social rights [DPs] with enforceable fundamental rights, Part 3 of the Constitution, particularly the right to life with dignity. In *Dalmia Cement (Bharat) Ltd v Union of India*<sup>7</sup> the Supreme Court observed:

'It is a settled law that the Fundamental Rights and the Directive Principles are two wheels of the chariot; neither of the two is less important than the other. Snap one, the other will lose its efficacy. Together, they constitute the conscience of the constitution to bring about social revolution under rule of law. The Fundamental Rights and the directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation'.<sup>8</sup>

The integrated approach effectuated the fundamental rights and directive principles as mutually supplementary and complementary. A major beneficiary of this approach is the right to life- a human right that envisages a quality of life consistent with human personality.<sup>9</sup> Article 21 of the

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<sup>5</sup> Shylashri Shankar, *Scaling Justice India's Supreme Court, Anti-Terror Laws, and Social Rights*, (Oxford University Press 2009), p. 122.

<sup>6</sup> Justice Fazal Ali in *Sadhuram Bansal v Pulin Behari Sarkar* (1984) 3 SCC 410, p. 423

<sup>7</sup> (1996) 10 SCC 104

<sup>8</sup> *Ibid* p.120

<sup>9</sup> Justice Ruma Pal and Samaraditya Pal, *M.P. Jain Indian Constitutional Law*, 6<sup>th</sup> edn (LexisNexis Butterworths Wadhwa 2011), p. 1493

Constitution<sup>10</sup>, the right to live with dignity, was given an expansive interpretation to recognise not only physical existence but also the necessities of life and a better tomorrow.

The right to livelihood<sup>11</sup>, education<sup>12</sup>, shelter<sup>13</sup>, health<sup>14</sup>, just and humane conditions of work to workers<sup>15</sup>, proper living conditions in the government protective homes particularly for women and children<sup>16</sup>, and others became and are a part of the understanding of what constitutes a meaningful life. The concept of proportional equality expects the state to take affirmative action in favour of the disadvantaged sections of the society to reduce the ever-widening gaps of inequality and secure personal dignity. Thus, human rights and social justice are interlocked.

## **PUBLIC INTEREST LITIGATION**

In order to promote the interests of the poor the Indian judiciary sought to improve access to justice through the creation of public interest litigation [PIL] or 'social action litigation' (SAL), as Baxi describes it.<sup>17</sup> PIL is envisioned as a broad-based, people-oriented court's response to the inaction of the state or improper action of state agencies to perform their statutory duties which under Article 21 of the Constitution resulted in impairing the dignity of the life of the people.<sup>18</sup> The rationale of PIL is to support the lost and lonely and those whose social backwardness is a reason for their inability to access the courts. It is an opportunity for the government and its officials to make basic human rights meaningful to the deprived and vulnerable sections of the community and to promote social and economic justice. PILs are not intended to advance political gains, settle personal scores or fight legal battles. Justice Bhagwati in *S.P. Gupta v Union of India*<sup>19</sup> stated:

... where a legal wrong or a legal injury is caused by a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of

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<sup>10</sup> Article 21 of the Constitution of India states 'no person shall be deprived of his life or personal liberty except according to procedure established by law.'

<sup>11</sup> *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180; *Centre for Environment and Food Security v Union of India* (2011) 5 SCC 676

<sup>12</sup> *Unnikrishnan v State of A.P.* AIR 1993 SC 2178; *Society for Unaided Private Schools of Rajasthan v Union of India* (2012) 6 SCC 1

<sup>13</sup> *Chameli Singh v State of Uttar Pradesh* AIR 1996 SC 1051; *Ahemdabad Municipal Corporation v Nawab Khan Gulab Khan* AIR 1997 SC 152

<sup>14</sup> *Consumer Education & Research Centre v Union of India* (1995) 3 SCC 42; *Ramakant Rai (1) v Union of India* (2009) 16 SCC 142

<sup>15</sup> *Delhi Jal Board v National Campaign for dignity and rights of the sewerage and allied workers* (2011) 8 SCC 568

<sup>16</sup> *Upendra Baxi v State of U.P.* (1998) 8 SCC 622; *In re Exploitation of children in orphanages* (2014) 2 SCC 193; *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC 1

<sup>17</sup> Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" (1985) *Third World Legal Studies*, pp.107-109. Baxi argued that whereas PIL in the United States has focused on "civic participation in governmental decision making", the Indian PIL discourse was directed against "state repression or governmental lawlessness" and was focused primarily to support the rural poor. Also see, C. D. Cunningham, "Public Interest Litigation in Indian Supreme Court" (1987) 29 *Journal of Indian Law Institute*, p.494; P. N. Bhagwati, "Judicial Activism and Public Interest Litigation" (1984) 23 *Columbia Journal of Transnational Law*, p. 561.

<sup>18</sup> S.P. Sathe, *Judicial Activism in India Transgressing Borders and Enforcing Limits*, (Oxford University Press 2002), p 210

<sup>19</sup> 1981 Supp SCC 87

any constitutional or legal provision or without authority of law or any person determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, *any member of the public* can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32. ...<sup>20</sup>

Access to justice through PIL was significantly improved by court procedures devised to help those seeking justice who otherwise under established procedures were unable to approach the court. PIL has been viewed as a 'magic bullet' through the transformation of adversarial proceedings into a polycentric, conflict resolving process. The proactive judiciary created innovative features to make effective human rights and promote social justice discourse. The modification of traditional locus standi allowed any person, acting bona fide, to advance claims against violations of human rights of victims who because of their poverty, disability or socially or economically disadvantaged position could not approach the Court for judicial enforcement of their fundamental rights.<sup>21</sup>

NGO's and activists working on behalf of the poor and tribal people have entered the courts by exercising this procedure. In *Mumbai Kamgar Sabha v Abulbhai Faizullabhai*<sup>22</sup> the court observed '...procedural prescriptions are handmaidens, not mistresses, of justice and failure of fair play is the spirit in which courts must view (procession) deviances.'

Additionally, appointment of investigative commissions, liberalising the procedure to file writ petition, allowing epistolary jurisdiction and evolving innovative remedies such as continuing mandamus sought to protect the powerless group and secure their entitlements.<sup>23</sup>

PIL is not without its critics nor is it universally accepted as the 'magic bullet.' Critics see the courts adopting responsibilities traditionally exercised by Parliament and the executive. The hoary jurisprudential chestnut of the appropriateness of judicial law making is no better illustrated than in India. The Supreme Court through its PIL hearings has been accused of being a hyper active law-making body.<sup>24</sup> Judges on occasions have ignored the doctrine of separation of powers by trespassing upon areas traditionally within the domain of the executive and the legislature.<sup>25</sup>

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<sup>20</sup> Ibid p, 211 (emphasis added)

<sup>21</sup> G.N. Gill, "Human Rights and the Environment in India: Access through Public Interest Litigation" (2012) 14 *Environmental Law Review*, p. 201

<sup>22</sup> AIR 1976 SC 1455

<sup>23</sup> M. Galanter and J. Krishnan, "Bread for the Poor: Access to Justice and the Rights of the Needy in India" (2004) 55 *Hastings Law Journal*, p. 795

<sup>24</sup> Varun Gauri, "Public Interest Litigation in India: Overreaching or Underachieving?" (2009) Policy Research Working Paper 5109, The World Bank, p.4; A. H. Desai & S. Muralidhar, S. "Public Interest Litigation: Potential and Problems," In *Supreme but not Infallible: Essays in Honour of the Supreme Court of India*, edited by B. N. Kirpal, A. H. Desai, G. Subramaniam, R. Dhavan & R. Ramachandran ( Oxford University Press 2000); M. P.Jain, "The Supreme Court and Fundamental Rights" in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India*, ( Universal Law Publishing 2008) p.86.

<sup>25</sup> For example, see *Vishaka v State of Rajasthan* (1997) 6 SCC 241(judicial legislation in regarding the prevention of sexual harassment of women in the workplace); *M. C. Mehta v Union of India* Order dated July 1998 (Delhi Government to convert its commercial vehicles to a fleet running on compressed natural gas)

The relaxation of the locus standi has opened the Court to the possibility of 'forum shopping' whereby justice according to law is more personality driven than subject to institutionalised adjudication.<sup>26</sup> Such judges encourage the cult of individualism that, in turn, reduces the predictability factor inherent within the doctrine of precedent. Judgements should be based neither upon the whim of the individual nor the pre-selection of a supportive judge.

PIL has also been exploited by the usage of either frivolous or bogus litigation that is collusive, profiteering or speculative.<sup>27</sup> Manipulative litigants may seek to damage rivals or competitors through this procedure. One unwelcome consequence is increased case workload resulting in further delays.

A further concern relating to PIL is its meaningful implementation and impact. Singh argues 'a judge may talk of right to life as including right to food, education, health, shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced'.<sup>28</sup> The question remains whether PIL provides effective or symbolic justice?

## THE REALITY

Notwithstanding the above-mentioned constitutional and judicial approach, the social reality of India remains disturbing. A 2015 UN Report states that nearly 300 million people live in extreme poverty in India and face deprivation in terms of access to basic services including health, education, water, sanitation and electricity.<sup>29</sup> The UN Annual Hunger Report, 'The State of Food Security in the World 2015', states that India is home to 194 million hungry persons: a figure that surpasses China.<sup>30</sup> In 2012 India had the highest global number of under-five deaths with 1.4 million children dying before reaching their fifth birthday.<sup>31</sup> The federal and state governments' policies and acts to acquire fertile land for 'speculative investment, urban sprawl, for mines and factories, for highways and expressways' for a pittance have trapped farmers in crippling debt and resulted in numerous suicides. These land grabbing actions have detrimentally affected the livelihood of farmers and indigenous people. Sixty five percent of India's population remains agrarian. According to Vandana Shiva, a leading activist 'while land has been taken from farmers at Rupees 300 (\$6) per square

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<sup>26</sup> B.N. Srikrishna, 'Judicial Activism – Judges as Social Engineers, Skinning a Cat' 2005 8 SCC J 3; L. Rajamani, "Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", (2007) 19 *Journal of Environmental Law*, pp.293-321.

<sup>27</sup> Surya Deva, "Public Interest Litigation in India: A Critical Review", (2009) 1 *Civil Justice Quarterly*, p.35; Sahu, G., 'Implementation of Environmental Judgments in Context: A Comparative Analysis of Dahanu Thermal Power Plant Pollution Case in Maharashtra and Vellore Leather Industrial Pollution Case in Tamil Nadu' (2010) 6/3 *Law, Environment and Development Journal*, p.335.

<sup>28</sup> M. P. Singh, 'Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation' in Singh, Goerlich and von Hauff (eds), *Human Rights and Basic Need*, p.322.

<sup>29</sup> The UN Economic and Social Commission for Asia and the Pacific, 'India and the MDGs: Towards a Sustainable Future for All' (The UN India Report 2015), see <http://www.unescap.org/resources/india-and-mdgs-towards-sustainable-future-all> [accessed June 30, 2015]

<sup>30</sup> [http://articles.economictimes.indiatimes.com/2015-05-28/news/62765761\\_1\\_hunger-report-food-insecure-hungry-people](http://articles.economictimes.indiatimes.com/2015-05-28/news/62765761_1_hunger-report-food-insecure-hungry-people) [accessed June 27, 2015]

<sup>31</sup> <http://www.thehindu.com/news/national/poverty-child-maternal-deaths-high-in-india-un-report/article6188227.ece> [accessed June 20, 2015]

metre by the government - using the Land Acquisition Act - it is sold by developers at Rupees 600,000 (\$13,450) per square metre - a 200,000 per cent increase in price - and hence profits. This land grab and the profits contribute to poverty, dispossession and conflict.<sup>32</sup>

Further, inadequate protection of women's and children's fundamental rights to live with dignity plagues India. Human trafficking of women and children due to poverty is on the rise. They are bought from their families and sold to brothels, into organised beggary or exploitative labour. Violence against women takes a dismaying variety of forms – domestic abuse, rape, honour killings, female foeticide, dowry deaths, acid attacks, public stripping and parading, 'eve' teasing and sexual assault.

Non-inclusive growth patterns and impregnable, though invisible, walls of separation between people on the grounds of caste, class, religion or gender have promoted social and economic inequality. Opportunities for upward mobility within Indian society are limited and not accessible to all, thereby, adversely affecting the daily quality of life of millions of poor people. The ineffectiveness of both the political leadership and the administrative authorities in discharging their constitutional role and statutory duties coupled with widespread corruption signify the absence of social justice and the blatant violation of human rights.

Within the administration of justice, trial time in India challenges and possibly surpasses Jardine v Jardine in Dicken's 'Bleak House'. If justice delayed constitutes justice denied then India's justice quota is severely constrained. It is a result of court clogging, adjournments, missing papers, absent and intimidated witnesses, conscious delaying tactics by both lawyers and the parties, deep pocket litigants, bribery of judges and paradoxically the relaxation of the locus standi in PIL. The Law Commission of India in its 77<sup>th</sup> Report stated 'delay is a product of too much business for too few judges and the demand simply exceeds the supply of resources.'<sup>33</sup> A backlog of more than thirty million cases is pending in courts across the country. According to Bloomberg Business week 'if the nation's judges attacked their backlog nonstop and closed 100 cases every hour, it would take more than 35 years to catch up. India had only 15.5 judges for every million people in 2013. The number of pending cases in the Supreme Court was 64,919 on December 1, 2014.'<sup>34</sup> Though the Supreme Court created a procedure that allowed indigents and concerned citizens to access the courts via PIL it did not prove to be a 'magic bullet'. Its very success has contributed to the growing pressure on the courts to resolve social issues thereby contributing to the backlog of cases awaiting trial or conclusion.

Can social justice and the right to live with dignity become an Indian reality? Are these lofty ideals producing cynicism? Are they legal rights constrained and devalued by time? Do the unheard 'victims of marginalization and poverty' have an accessible and effective platform to vent their sufferings?

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<sup>32</sup> <http://www.commondreams.org/views/2011/06/08/great-land-grab-indias-war-farmers> [accessed October 28, 2014]

<sup>33</sup> Law Commission of India 77th Report, Delay and Arrears in Trial Courts (1978)

<sup>34</sup> <http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>  
<http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases> [accessed 10 March, 2015]

## THE SOCIAL JUSTICE BENCH

It is against this backdrop of delay and systemic inequality that the role of the senior Indian judiciary assumes seminal importance. The Supreme Court in its endeavour to give voice and protect the interests of the poor and disadvantaged has embarked on a new path based on a linguist ability- 'language of compassion' -to frame and mobilize responses to social justice and human rights issue by establishing the SJB in December 2014.

The 'language of compassion' as described by Nussbaum and Davies, contains three elements- cognitive element (understanding the other), an affective element (feeling for the other) and a voluntarist element (doing something about the other).<sup>35</sup> Concerned about listening to the voices of the people and encouraging deeper deliberation on the rights and responsibilities of the state, the Chief Justice of India H.L.Dattu ordered the establishment of the SJB with the objective 'that these cases shall be given a specialized approach for their early disposal so that the masses will realise the fruits of the rights provided to them by the constitutional text.'<sup>36</sup> The SJB first sat on 12th December 2014. Justices Madan B Lokur and Uday U Lalit comprise the bench and sit every working Friday for two hours to hear not only the identified PIL pending cases but also fresh matters on pertinent and pressing issues. Out of the two hundred cases pending in the Supreme Court, sixty five have been identified to be listed before the SJB either because they are subject to unacceptable delay or merit urgent consideration.

One of the authors of this paper was afforded unique academic access to interview Justice Madan B Lokur on 24<sup>th</sup> March 2015. The interview was semi-structured, recorded and subsequently transcribed. Permission to use all recorded material was obtained. According to Justice Lokur:

'A number of social justice issues are pending in the Supreme Court. SJB is wide enough to deals exclusively with social matters, including the right to food, medical assistance, shelter for the destitute, crime against women and children and others. A need was felt to have a bench which would specifically look into social justice issues as distinct from cases filed as PIL. We have categorised cases on the basis of impact on human lives. There are two kinds of impact- direct and immediate; and indirect and remote. Presently, the SJB is concerned with direct and immediate impact. For example, homeless people constitute a case of direct and immediate impact. In Delhi during winter, the question arises about taking care of the homeless people. The Government of India has developed a policy and programme for the urban homeless, the National Urban Livelihoods Mission. The mission aims at providing shelter equipped with essential services to the urban homeless in a phased manner. The Supreme Court of India has brought into focus the plight of the urban homeless by holding that the right to dignified shelter is a necessary component of the right to life under Article 21 of the Constitution of India. The SJB looks into whether the scheme is being implemented; what are the hurdles in the implementation of the scheme; and how best it can be implemented.

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<sup>35</sup> Conor Gearty, *Can Human Rights Survive? The Hamlyn Lectures 2005*, (Cambridge University Press 2006), p.43

<sup>36</sup> [https://www.google.co.uk/?gws\\_rd=ssl#q=supreme+court+release+on+social+justice+bench](https://www.google.co.uk/?gws_rd=ssl#q=supreme+court+release+on+social+justice+bench);  
<http://www.thehindu.com/news/national/special-sc-bench-to-hear-monitor-social-issues/article665917>  
[accessed January 20, 2015]



We are dealing with issues relating to children. Missing children including by abduction, kidnapping, trafficking is a big problem. So how does one trace missing children; what is the magnitude of the problem; after tracing them how do you restore them to natural parents ; and if not then the process of rehabilitation. Again, what about child trafficking, child labour and child bondage? Exploitation of children in circuses is yet another problem.

These and such kinds of cases, though filed as PIL, form a specific class/category raising the issue of social justice having a direct and immediate impact on the lives of the person. On the other hand, cases concerning environmental matters, if looked in a broad sense form a part of social justice but the impact is indirect and remote.'

The proceeding before the SJB is not adversarial but a cooperative and collaborative process to adjudicate in a social context. The judges are not only sensitive to any inequality of parties but also positively inclined towards the disadvantaged, thereby adopting a problem-solving approach to secure the observance of basic human rights. The cooperative and collaborative process aims to involve the petitioner, the State or public authority and the Court through means of dialogue, contestation and norms for eliciting grounded factual realities for implementing schemes and programmes of the relevant ministries, departments and programmes of state governments dealing with skills, livelihoods, entrepreneurship development, health, education, social assistance and others.

A 'twin-strategy of expediency' is adopted by the SJB to decide the cases. Emphasis is placed on tackling delay, reduction of paper work and time allowed for oral submissions. According to Justice Lokur:

'The first strategy is to minimize the workload and update the position about the two year or more pending cases to know their exact status particularly where government of India is responsible for social welfare programmes/schemes. The second strategy is to ask the parties to submit written submissions as the SJB does not want to spend hours hearing arguments or going through records running into thousands of pages. After receiving the written submissions, we have time to read and focus on important issues such as implementation and related matters. The written submissions will be supplemented by a brief oral submission in the court. It may take thirty minutes or one hour but the time limit for making oral submissions would definitely be reduced. We will be in a position to solve these issues and bring about a fundamental change in Indian society.'

To-date, the SJB has heard matters relating to rehabilitation of the tribal people displaced by the long running Narmada dam dispute, exploitation of children in circuses, child trafficking, inhumane conditions in some 1,382 prisons, unsafe and unethical sterilisation of poor women, shelter for the homeless and laws regulating the employment of construction workers.<sup>37</sup> As the SJB adopts a cooperative and collaborative process, emphasis is placed on involving the stakeholders and finding solutions to apply and implement social justice in order to enforce the rights of the poor and promote social welfare.

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<sup>37</sup> *Sampurna Behrua v Union of India* and *Bachpan Bachao Andolan v Union of India*, Orders dated 11<sup>th</sup> September 2015; *Gaurav Bansal v Union of India*, Order dated 7<sup>th</sup> August 2015.

## CONCLUSION

Justices A.K. Ganguly and T.S. Thakur in *Imityaz Ahmad v State of U.P.*<sup>38</sup> stated 'Unduly long delay has the effect of bringing about the blatant violation of the rule of law and an adverse impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21.'<sup>39</sup>

Legal timescales do not reflect the daily challenges experienced by the poor. The indigent, sick, aged, disabled and uneducated in India live from day to day not from year to year. For them and their supporters PIL appeared to be a way to access justice through the courts. Indeed, for some it was a success. But such success has also contributed to the numbing paralysis affecting India's courts.

The presentation of social justice remains a goal of the Supreme Court. With this in mind Chief Justice Dattu announced the establishment of the SJB. Its function is to fast track urgent cases and those that have been pending for more than two years. Essentially, the poor cannot wait as their constitutionally protected needs are immediate.

The challenge for the bench is significant particularly given the limited bench time that is currently available. We consider that more judicial bench time and an increased bench size is necessary if the SJB is to tackle its stated function successfully. Nevertheless, the SJB is an illustrative start and a reflection of a progressive judicial commitment to provide social justice in a nation of 1.28 billion people.

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<sup>38</sup> (2012) 2 SCC 688

<sup>39</sup> Ibid p, 699

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