CHAPTER VI
CONCLUSION

An exploration of the role of the judiciary in achieving social justice leads to an appreciation of the complex socio-economic history of India whereby various forces have been at work to tilt the balance in favour of certain affluent and powerful sections and to burden the lives of the oppressed with hardships and handicaps.

Equality is the foundation of social justice. It recognises that all men are equal in society. Social justice is necessary for different classes of people of the society, i.e. the women, children, bonded labourers, agriculturists and backward classes (including the scheduled castes and scheduled tribes). This thesis mainly deals with social justice given to the agriculturists and backward classes by the machinery of the judiciary in India. Indian judiciary is a relatively fledgling institution and the role it has played in securing social justice to these vulnerable sections of the society is thus admirable.

The judiciary might have faltered in distributing social justice in a truly comprehensive manner, but it has at the same time tried to give life to the
socialist ideals of the Constitution. According to Justice Krishna Iyer, "the judicial veda is the Constitution, an organic document which makes the paramount pronouncement that justice shall be secured to every citizen."\(^1\) The founding fathers of our Constitution realised that the only way by which social justice can be meted out to its people is through socialist principles though the word 'socialism' was introduced only in the forty-second amendment. Socialism leads to the equal distribution of material resources of the community leading to egalitarianism.

The legislature gave a great impetus to social justice by the abolition of the zamindari acts and thereby removing the imbalance in the society that prevailed. However, it was the judiciary which provided the final seal of approval on these legislations which are binding on all courts and all civil authorities. In executing this task there arose a conflict and tussle between the judiciary and the legislature. This was particularly so with regard to fundamental right to property when the rift between the legislature and the judiciary started immediately after the Constitution was enshrined. The tussle was mainly over appropriating private property for public purposes and the question of payment of compensation. The payment of compensation was the main cause of animosity because the judiciary realised that the private property is to be taken over for public purposes which would lead to equitable distribution of the material resources of the community. Though there was a tussle, the judiciary was not against taking over of private

property or initiating land reforms and to bring about agrarian reorientation in the Indian society. From *State of Bihar vs. Kameshwar Singh*\(^2\) to the latest verdict the judiciary has tried its best to usher in social justice through agrarian reforms. The upholding of the validity of the first amendment was a clear indication that the judiciary wanted to introduce agricultural reformation in the country. The verdict in *Golok Nath vs. State of Punjab*\(^3\) is criticised on the ground that it put a blockade to the agrarian reforms by stating that the Parliament has no right to amend the Constitution. However, this criticism is hardly tenable because this interpretation brought the doctrine of ‘prospective overruling’. If the judiciary did not adhere to this principle then all the agrarian legislations would have been stillborn with no justice being given to the landless agriculturist. But still *Golok Nath* stands out to be on the critical side over judicial interpretation. When the court gave the verdict in *Keshavananda Bharati vs. State of Kerala*\(^4\) that the basic structure of the Constitution cannot be amended, it broadened the basis of judicial interpretation in India. This greatly empowered the judiciary and so the fundamental right to property was taken away from part-III of the Constitution and was given the status of only a constitutional right. If this judgement had not been delivered then the legislature would have found it impossible to shift the right to property as a constitutional right. In fact the judiciary by this interpretation has enabled the legislature to bring about more social reforms with

\(^2\) AIR 1952 SC 276.
\(^3\) AIR 1967 SC 1643.
\(^4\) AIR 1973 SC 1461.
regard to land. Before this pronouncement the zamindars of U.P. and Bihar put legal obstacles in the path of land reforms.

The forty-fourth amendment paved the way for speedy agricultural reforms ushering in social justice to the actual tillers of the soil in India. The judiciary has played a pivotal role affirming the dignity of the individual and assuring social justice to the masses, specially in the post Golok Nath Era. It was only for a brief period in *Burrakur Co. vs. Union of India*\(^5\) that the judiciary stated that it could not interfere in land reform jurisdiction because the issue of compensation was non-justiciable. But in a later case such as *State of Gujarat vs. Shanti Lal*\(^6\) the judiciary did intervene which was necessary in order to give fair justice to all. At one point the judiciary said that it would not interfere with the amount of compensation. But later it could not continue with these interpretations and stated that the judiciary *would* interfere with regard to compensation if it found that the compensation was illusory or inadequate. However, what is inadequate or illusory was never well-defined by the courts. The twenty-fifth amendment was a tremendous success story for the legislature and the judiciary when 31(c) was added. 31(c) said that any law giving effect to the directive principles, i.e. 39(b) and (c) cannot be questioned for violating Articles 14, 19, and 31. This view was also upheld by the judiciary. So, if any law gives validity to the agriculturist it cannot be questioned on the ground that such a law violates Article 14, 19 and 31. The court will interfere only when the law has no direct

\(^5\) AIR 1961 SC 954.
\(^6\) AIR 1969 SC 634.
relation with the directive principles, i.e. 39(b) and (c). The divergence and convergence of opinion with regard to the right of property was laid to rest by enacting Article 300-A. But it does not mean that it is immune from judicial review. The executive is not the sole judge to say whether property can be taken for public purpose but the role of the court is a determinate factor. So the judicial interpretation is quite important and necessary because if any omissions and commissions are committed by the executive then it can be rectified by the process of judicial review. Sometimes the legislature guided by political motives might resort to takeover of property by flouting laws. Then the judiciary comes to the rescue of the private owners.

It can be argued that when the matter comes to the judiciary in the payment of compensation, then the judiciary can ask that the poor owners of the land be paid the market value and the rich owners less than the market rate. If complaint of inequality is made then it can be pointed out that the principle ‘unequal being treated unequally and equals treated equally’ has been followed. Again if controversy arises then the judiciary can ask the state committees (to be established) to decide the matters or forward suggestions. The local panchayat can also play a great role in this regard. Justice Krishna Iyer has said: “that judges should give a progressive lead in upholding the community interest over the interest of few individuals specially when constitution of land reform
legislation is concerned.\textsuperscript{7} It can be submitted that it is quite the right and appropriate method because the judges in India by their interpretation can save democracy and lead it to greater heights. But despite the different land reform verdicts, land is often not adequate as an economic holding, so alternative methods of employment should be provided in the rural economy.

Regarding reservation the framers of the Constitution wanted to initiate certain measures and policies by an Act through which the backward classes were to be uplifted from their enclosed shell. They thought that providing reservation in the fields of jobs and education to the schedule castes, schedule tribes and other backward classes would be a great leap in enforcing equality for those who have suffered historical disadvantages. So the government followed the policy of ‘Reserve for those who deserve’. The Constitution gave primacy to social and educational backwardness as the guiding factors for reservation. The educational backwardness is discernible whereas social backwardness may be due to poverty, caste, occupational position etc. So, it can be submitted that the framers by projecting social backwardness as a factor for reservation have brought about complicacies and intricacies. In fact, it would have been proper and appropriate if they had adopted educational and economic backwardness as the prime factors for reservation. For it is clear that educational backwardness itself leads to social backwardness. As per the provisions of the Constitution the first Backward Class Commission, i.e. the Kelkar Commission was constituted but its

recommendations were not followed because there were flaws. In fact, Kaka Saheb Kelkar in the letter forwarding first backward class commission said: “I am definitely against reservation in government services for any community for the simple reason that the services are not meant for the servants but they are meant for the service of the society as a whole.”

So, when there was a fear of reservation leading to a further disintegration of society, then the judicial intervention put at rest many doubts and queries.

Reservation is undoubtedly an important policy but the legislature made it so excessive that the very purpose of this policy was thwarted. The judiciary then intervened and said that at no point of time the reservation should be more than fifty percent in *Balaji vs. State of Mysore*\(^9\) and this dictum still holds good in the post Mandal era. Moreover, there was an increasing quest for identifying the level of backwardness which had to be redressed. But the court suggested in *K.C. Vasant Kumar vs. State of Karnataka*\(^10\) that the level of backwardness should be determined according to the caste-cum-means test. From the beginning the legislature was all for providing reservation on the basis of caste alone. But the judiciary refuted this policy by stating in *State of Rajasthan vs. Pratap Singh*\(^11\) that the caste cannot be the sole factor to measure backwardness. It should be coupled with other factors like education, economic etc. So the shift from caste to economic factor to measure backwardness also found prevalence in the Mandal

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9 AIR 1963 SC 649.
10AIR 1985 SC 1495.
11AIR 1960 SC 1208.
Commission. The courts have realised that giving too much emphasis on caste would break the edifice of reservation, thus thwarting the ideal of an equal society. Now backward class status is fast becoming a subject of politics rather than that of constitutional law. The judiciary did not favour reservation in the matter of promotion but later the government by the eighty-second amendment said that reservation should be effected in promotion as well. Reservation in promotion has been accepted as a principle but it should not be at the cost of efficiency of administration. Reservation was accepted by the founding fathers because in a pluralist society like India equal rights cannot provide equal opportunities.

The court was particular about the handicaps of the backward class citizen. Regarding the risk of reservation in promotion it has been said that when the state implements reservation in appointment then there is a risk that everything will be diluted. The concept of 'creamy layer' in reservation was the ultimate guideline for reservation to be made more meaningful, achievable and equitable. If the 'creamy layer' (i.e. the advanced section of the backward class) is not withdrawn then the backward class people cannot be benefited and reservation will not penetrate enough to benefit the really deserving sections. The whole idea of reservation leading to the equality of opportunity and establishing an egalitarian society would be undermined. Justice O. Chinappa Reddy has observed: "Nowhere else in the world is there competition to assert
backwardness and to claim we are more backward than you." The importance of caste as a factor for reservation has been particularly widened by the identification of *creamy layer* and that too among the other backward classes. In case of reservation we find that when the judiciary wanted to introduce some reforms in reservation, it was often offset by the legislature through passing an amendment. It is also true that the persons who have suffered should be provided some positive action in order to help the penurious to rise from their backward position. Reservation is an issue which has till now persisted and will continue to be an important issue. Reservation itself presents the unedifying picture of a government which has not been able to ameliorate the condition of the backward classes. The government instead of reducing reservation by different formulas has tried to extend it and introduce it even in the centrally managed institutes like the IIMs and IITs. Questions like whether reservation should be in the judiciary or in the private sector has boggled the minds of the experts and advisors. The architect of reservation Dr. Ambedkar did not anticipate that reservation would continue for such a long period of time in India. We cannot put things in a close-circuit enclosure and say that the judiciary has been successful with regard to reservation. In fact, when the Constitution was made functional the legislature and the judiciary were busy with the right to property and did not concern itself with the reservation issue. But in the 1980's, i.e. after the Mandal Commission the judiciary has played and adopted an activist approach with regard to

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12 Shourie, p. 237.
reservation, trying to balance the claim of the pro-reservationists and anti-
reservationists. It was necessary because the judiciary is the only institution
which is neutral in its efficacy and operations – giving justice, equality and
fairness to ‘We the People’ (the common man). To achieve equality the
government has adopted reservation by providing facilities to the unequal. The
judiciary supported this without making anything excessive because reservation
is the means and not an end to achieve equality.

But just reservation of seats and jobs is not enough to bring about social
justice to the have-nots. The government should provide special coaching, free
education, scholarship etc to the scheduled castes, scheduled tribes and other
backward classes. Moreover, scheduled castes and tribes should be provided easy
and soft loans for the establishment of handicraft and cottage industries, and
vocational and rural base training should be given and provided by the
government. Health education and sanitation facilities should be suitable and
adequate steps taken for it. The panchayats should be given a certain
accountability to this class of people and those panchayats which have
responsibly worked for this purpose should be given national awards. It can be
submitted that the reservation should not be considered as a half-baked,
patchwork solution for disadvantaged sections but in order to really benefit them
other options should be adopted. Otherwise the judiciary can ask the legislature
and the executive to take appropriate steps. Herbert Spencer’s words will be
appropriate in the Indian context if we are able to achieve social justice.
According to him, "No one can be perfectly free till all are free; no one can be perfectly moral till all are moral; no one can be perfectly happy till all are happy."\textsuperscript{13} When we can wipe every tear from every eye then only we can hold our heads high and say that this the land of Buddha, Mahavira and Mahatma.

\textsuperscript{13} Quoted in V.R. Krishna Iyer, \textit{Justice at Crossroads.}, p. 186.