CHAPTER -- 2

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2 : 1

THEORETICAL FRAMEWORK

The problem with which the political scientists and the students of public law are confronted, is the problem of understanding the behaviour of the judicial systems, first, in the context of their own political systems and, second, in their relationship to their counterparts of other political systems . In an attempt to deal with this problem, a large variety of ways of analyzing and comparing judicial institutions was developed . The majority of the researches conducted in earlier periods was descriptive in nature and dealt with the judiciary in terms of its constitutional powers and functions and in terms of the formal organisations and procedures .

In the U.S.A. , a large number of political scientists has explored the phenomenon of judicial behaviour . These scholars have attempted to study judiciary in the context of the totality of the political system . They have also tried to understand the interrelationship of background factors and judicial behaviour .

The question which is now asked is no longer concerning how the judiciary operates , but how Judges behave within the judicial system as a sub - system of the political system .

It is generally believed that the Judge's voting is influenced by several factors . They may broadly be

classified under two categories ---- internal and external . Among the internal factors, the most important are the social background , the environment in which the Judges were brought up , etc . Among the external factors, the influence of the Chief Justice, the influence of the Pressure Groups, and several others, are most important .

Again, although scholars have recognised that courts make political or policy decisions , until recently, very few considered the political factors in their analysis . Traditional models relied too heavily upon ' stare decisis ' as the explanatory variable . If a court or a Justice disregarded precedent, he was criticised for deviating from law, thereby preventing satisfactory explanations for the court's decision . Decisional models were designed to go beyond these narrow ' legal ' explanations for decisions of Judges .

C. Herman Pritchett's " The Roosevelt Court : A Study in Judicial Politics and Values , 1937 - 1947 " (1) reshaped the study of constitutional law . As a consequence, studies of judicial decision - making specifically , and public law generally, took on a new life and turn .

Pritchett concentrated on many non - unanimous decisions of the Supreme Court and through bloc analysis and scaling of the votes , illustrated how the Justices revealed 'information about their attitudes and their values . ' (2)

Pritchett noted that court decisions clearly demonstrated that even Judges' begin with different assumptions, and their value sy - stems are differently constructed and weighted.' Consequently, ' their political, economic and social views contrast ' and influence their decisions . But what underlies those votes ---- the Justices attitudes and values constitute the explanatory and predictive elements of the decisional approach . Attitudes, ideologies, or values of Judges become most important as explanations for votes and decisions .

Most decision - making models are forms of STIMULUS - ORGANISM - RESPONSE (S - O - R) model common to psy - chology . (3) Under the classification scheme of this model, legal policies (decisions) are regarded as purposes . Constituttions , statutes , case law , and court rules, along with informal norms such as customs, legal treatises, and concepts of justice, are reg - arded as one kind of stimuli . Evidence, circumstances of the case, the nature of the parties to the dispute, constitute the ' facts' of the case and are regarded as another kind of stimuli . The indivi - dual characteristics (attributes and attitudes) of the Judges and their position vis - a - vis other Judges and participants in the court room are the relevant dimensions of the organism . The model is mechanistic and the unlinear in the sense that nothing happens unless a stimulus is present and the sequence is from ' S ' through ' O ' to ' R ' .

SIMPLE DECISION MAKING MODEL

STIMULI ---------- ORGANISM ---------- RESPONSE

(1) Formal and Informal Rules.

(2) Facts and circumstances of the case.

JUDGE

(a) Attitudes and Attributes (Ideology)

(b) Interaction with other participants.

Decisions (Policy)

Although emphasis is still directed toward the ' S ' and ' R ' (of the model, increasingly, the ' O ' has received attention. For it is the " Organism ", the Judge, ----- and his attitudes ------ which shapes the outcome of judicial decisions.

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2 : 2 (DEFINITION OF CONCEPTS)

JUDICIAL BEHAVIOUR

Judicial behaviour is part of the broader approach in political science that has come to be called behaviouralism . (1) The aims, theory and methods of the study of judicial behaviour are, in general, the same as those which characterise the field of political behaviour ; what distinguishes judicial behaviour from behaviouralism generally is its specific focus upon the decision - making of Judges .

Behavioural approach is an approach to the analysis and explanation of political phenomena , which is sometimes referred to as behaviouralism . It is essentially a point of view and an approach to the study of politics . The principal unit of analysis is not the institution, but the individual as he behaves in groups and in relation to other individuals.

The behavioural approach to judiciary seeks to explain legal phenomena in terms of operationally defined concepts and empirically verifiable hypotheses concerning human behaviour. (2) More practically , judicial behaviour is an approach to the study of American public law which emphasizes the analysis of decision - making behaviour of the Judges . (3) Underlying this approach , is the assumption that discoverable uniformities in political behaviour with predictive value exists at least in a statistical sense

and also that ethical evaluation and empirical explanations must be kept separate . The " scientific approach " systematization , integration with other social science techniques , and quantifi - cation , are stressed .

In the present study, the term judicial beha - viour has been used to mean the voting behaviour of the Judges in the cases (non - unanimous) that came to the Supreme Court during the period 1967 to 1976 in relation to Fundamental Rights guaranteed to the citizens by the Constitution of India . The voting behaviour has been analysed in terms of ' liberal ' and ' conservative ' ; i.e. , pro - individual and pro - government criteria .

DECISION - MAKING

Decision - making studies are studies that focus on all factors relevant to a policy choice and not just on the formal - legal relationships of decision makers . In partic - ular , they tend to include an analysis of the formal relation - ships among decision - makers, the role of actors outside the organisation, and all the non - rational as well as rational considerations that influenced the behaviour of all who were inv - olved in making the decision . The present study focuses atten - tion on both internal and external factors . The influence of the Chief Justice has been considered as an internal influence on the

decision - making process and the role played by the pressure groups, has been considered as an external influence . By internal factors , the influence of the Chief Justice has been considered as a factor withih the court room and by the external factors the influence of the pressure groups has been considered as a factor outside the court room .

VALUES

Values are beliefs about what is desirable or 'good' and what is undesirable or ' bad ' . Values reflect the culture of a society and are widely shared by members of the culture . Judges cannot be without the influence of the traditions and values of the society in which they have been reared . Justices are products of their environment, past and present, and it is a large part of their task to apply the values derived from these experiences to resolving cases before them . (4) The personal values of the Justices play an undeniably important role in the decision - making process . (5)

Since judicial behaviour remains human behaviour, judicial decisions often reflect the emotional biases, values and policy predilections of individual Judges . (6) Every Judge reflects certain values in his decisional behaviour . Judges follow a mental process and decides a case in a more or less methodical way which becomes a habit with him . In deciding cases Judges must choose . They must choose between opposing litigants, between

competing claims to abstract justice, between conflicting princi - ples of jurisprudence, between different public policies that may flow from a decision, and thus often between specific values . (7)

The statutes, executive orders, and constitutional provisions that Judges apply are rarely so clear as not to admit of two or more reasonable interpretations in difficult cases . Thus , in deciding cases, the working of legal documents creates a wide range of choice for Judges . Where general principles of jurisp - rudence are unclear, constitutional, statutory, or administrative phrases vague, precedents unimpressive and history uncertain , a Judge's personal values cannot help but have a great impact . Indeed, a Judge's very perception of his alternatives ---- or even in realization that , in fact , alternatives are open ---- will ine - vitably be heavily influenced by his values .

Supreme Court decisions are the products of the constant and forceful interaction of judicial minds and personali - ties, of precedents and traditions of the past and perceptions of the future, and of the conflicts and reinforcements which develop in its relationship to other political institutions . (8)

In the present study, the values of the Justices have been considered in the decisional process of the Supreme Court .

ACTIVISM

Judicial activism is used to describe the

vigorous use of judicial power to advance policy considerations of the state and protect the Fundamental Rights of the citizens.(9) The activists believe that the court should be willing to grapple boldly with major problems and issues and to make clear-cut definite decisions that go to the heart of the issue .(10) Judges of this persuasion, do not deny their duty of deference to community values when the law is dubious . They seem however, to have a special ingenuity for dissipating doubt . Where others are torn between alternatives, they are apt to find unmistakable guidance, in the wisdom and purpose of the founding fathers or in some " higher law " . It is the willingness of Judges to use their powers either to expand present policy or even create policy .(11)

Again, judicial activists insist that political choice is inevitable and inherent in judging and that Judges should make no false pretense of objectivity . Rather , they should recognize that they are making policy and they should consciously exercise their judicial power to ackieve social justice .(12) It is the duty of the courts to do all in their power to protect those freedoms which are guaranteed by our constitution . The courts can act as the collective conscience of a sovereign people . With courts performing their duty of proclaiming the eternal rights and liberties of the people, the people will not be slow to defend the the banners raised by the courts . The Judges must do , according to to the judicial activists, in deciding cases and controversies involving the rights of human beings .

In otherwords, it denotes a search for an absolute meaning of the words in the constitutional text as the governing test in the constitutional interpretations . In the present study, the term activism has been used to denote that the Judges who take a liberal stand in favour of the individual's rights in the cases where the government 's interest is involved .

SELF RESTRAINT

The self restra- restraint group insists that the question whether a statute is good or bad is solely a matter for legislative determination, and that his role as a Judge is merely to decide whether the act is constitutional . Judicial self-restraint presupposes an attitude of non - involvement in regard to governmental action touching on property or civil liberties or any such controversial matter . It implies an acceptence that the basic fact of legislative or executive wisdom in policy making and is a deterent to the tendency of the judiciary to enter the arena of policy - making .

Judicial self - restraint is a position which counsels the limited and infrequesnt use of judicial power . (13) Advocates and practitioners of judicial self - restraint further believe that the courts should play a more modest role and avoid major problems unless these are what it narrowly defines as just - iciable questions . They favour making decisions on narrow grounds and to avoid broad sweeping decisions . (14) In otherwords , the

proponents of judicial self restraint would try to immunise the court from the problems of value choice by minimizing the opportunities for the court's ruling on substantive issues , insisting on very strict observance of procedural requirements by the parties to a case before the court will rule on a policy - decision . (15)

The protagonists of this theory recognize the Judge's difficulty in rising above his own biases , but they insist that objectivity is the goal that he should aim for . As the people's political representatives, the legislators and executives , they argue , have the chief responsibility for working out the accomodation of interests, that is the essence of legislation . The advocates of self - restraint also insist that Judges must be very careful to avoid injecting their own wishes into the judicial process , since it is the responsibility of other branches, and not their responsibility to determine public policy . (16)

In the present study , by self - restrained Judges have been meant those Judges who are usually conservative in their attitude , i.e. , they are pro - government while deciding a case between an individual and the government .

LIBERALISM

By liberalism is meant ' a state of readiness to accept ' new ' constitutional interpretations . It is used to identify Justices who take a liberatian stand on civil liberties

cases , or in otherwords , it means deciding for the individual against the government . It is one that favours the little people, small business versus big business , poor versus rich , free speech and equality , etc . The term ' liberal ' is also applied to Justices who approve a wide range of governmental activities in economic and social spheres . (17) In the context of evaluating Supreme Court policies , liberalism means essentially deciding for the imdividual against the government , or supporting government economic regulation against business claims . (18) Students of judicial attitudes have found two types of liberalism ---- an economic liberalism and political liberalism . Political libera - lism was an underlying factor in cases in such areas as freedom of speech , criminal procedure , and equal protection for mino - rities .

Economic liberalism has,as its sub - components, fiscal claims , governmental regulation of business , union manag - ement disputes, freedom of competition , and constitutionality of state taxation .

In the present study , the term liberalism has been used to denote the liberal attitude of the Judges for the individual in the cases of Fundamental Civil Rights involving dispute between the individuals and the government .

CONSERVATISM

By conservatism is meant a state of reluctance

to accept ' new ' constitutional interpretations . Conservatism is applied to those Judges who take a less liberatarian stand and restrict governmental activities in economic and social spheres.(19) The conservative Judges are less likely to take a stand in favour of the individual . While the liberal Judges take a definite course of action in the cases where the individual interest is involved , the conservative Judges do not .

In the present study by conservatism is meant that in the cases relating to Fundamental Civil Rights , a Judge takes the side of the government against the individual .

PRESSURE GROUP

Pressure group is an organisation of people , with a certain amount of formality , based upon some sort of common interest on a set of closely related common interests , bound together by shared goals and attitudes , who attempt to obtain decisions favourable to their preferred values by all means at their disposal . Pressure groups seek to promote particular interests within the society by exercising its collective influence on various segments of society .(20) It attempts to control or influence the formulation or execution of policy and the making of public decisions in order to protect and enhance its interset .

The Supreme Court is subject to pressures by

groups as is anyother political body . (21) In any form of gove - rnment , one can predict that wherever there is a decision - maki - ng body that makes decisions involving the lives of many people , and when these decisions affect different people differently , there will be attempts, by at least some of the people involved in the issue, to resolve it in their own favour . What the organised groups fail to get through the legislature and executive , they desire it to be done through the judicial process, keeping in view the fact that the judiciary is the ultimate guardian of the rights of the people and the protector of the constitution . Hence the penetra - tion of politics of interest groups in a judicial system is ines - capable despite every possible arrangement of maintaining the inde- pendence of Judges .

In the present study, the influence of pressure groups on the decision - making process has been taken into acc - ount .

AMICUS CURIAE

It is a Latin phrase meaning ' friend of the court ' . (22) In Anglo - American jurisprudence , a Judge usu - ally has discretionary power to permit persons who are not actual parties in a legal proceeding to present briefs in which they argue a position relative to a pending case and seek to influ - ence the decision . In this manner , the judicial system recog - nises that a specific case may have social implications

extending beyond the parties directly involved .

The interest groups come to the picture as an aid to the party involved in the case as a friend because the parties concerned lack the necessary time , skill and money . In the present study , the sponsorship of the cases by pressure gr - ups has been taken into account .

LEADERSHIP

A leader is a person who influences the acti - vities of the group to which he belongs and who play a central role (23) in shaping group activities . Leadership denotes the occupancy of a status and the active performance of a role that mobilises more or less organised , collective and voluntory effort toward the attainment of shared goals and objectives . (24)

Two types of leadership may be defined ---- Task leadership and Social leadership . (25) Danelski sugges - ted that the task -leader of the conference is that member who is concerned with getting the job done and who consequently " makes more suggestions , gives more opinions , orients the discussion more frequently , and necessarily defends his ideas more often than the others . He is held in high esteem by his colleagues . The social leader of the conference is concerned with the maintaining friendly relations within the group . He is the diplomat who strives to lessen tension and to promote cons - ensus . He " attends to the emotional needs of his associates by

affirming their values as individuals and court members " and consequently is well - liked .

In the present study , the term leadership has been used to indicate the status and position of the Chief Justice who play a key role in the decision making process of the Supreme Court .

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2 : 3 (OBJECTIVE OF THE STUDY)

The present study " Supreme Court in the Indian Political System : A Study of Judicial Behaviour and Judicial Decision Making , 1967 - 1976 ", makes an attempt to study the voting behaviour of the Judges adorning the Bench during the period 1967 to 1976 in relation to Fundamental Rights guaranteed to the citizens and persons by the Constitution of India .

The major focus has been given on the investigation of the voting records of the Judges and their direction as pro - individual or pro - government , and their attitude or disposition as liberal or conservative, in the traditional and modern senses

In addition to this, this study seeks to throw light on the background characteristics of the Judges of the Supreme Court during the same period .

Apart from these, this study seeks to throw light also on the decision - making process of the Supreme Court . While studying the decision -making process , the influences of the Chief Justice , Pressure groups and also the influence of politics have been taken into account .

This study, finally, makes an attempt to undertake and carry out an opinion survey of the Judges with the help of a questionnaire on different aspects of judicial behaviour and judicial decision - making .

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2 : 4 (JUSTIFICATION OF THE STUDY)

A survey of the literature on the Indian Supreme Court will lead one to the inevitable conclusion that very little have been written on the Indian judicial behaviour and judicial decision - making . Behavioural study of the Judges of the Indian Supreme Court remained a neglected aspect of public law until recently . No works have been done in India in this respect except by a foreign scholar (1) and an Indian scholar. (2)

The studies so far conducted, relating to the Supreme Court of India, have been mainly on traditional lines and the focus was mainly on the institution . The Judges who comprise the Bench of the Supreme Court did not attract the attention of the Indian scholars while , on the other hand , the behavioural study of the Judges of the American Supreme Court started in the 1940 's with the pioneering work of C. Herman Pritchett , (3) and since then , there has been a plethora of works . Compared to the American studies , the number of studies conducted in India seems to be very insignificant . Viewed from this angle , this study will , to a great extent , fill a research gap in an important segment of the Indian political system .

Moreover, this is perhaps the first study which has been conducted through survey method for supplementing the data of voting records collected from law reports like the

All India Reporter and the Supreme Court Reports .

The coverage of the period of the present study is from 1967 to 1976 . The year 1967 has been choosen be - cause of the fact that this year marks a water - shed in the history of Indian judiciary .

The Golaknath Case (4) introduced a significant change in the court's role and set in motion a new trend . Consider - ring all these aspects , this study may demand a considerable amount of justification and a great deal of importance .

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2 : 6 (HYPOTHESES)

The following hypotheses will be tested in the present research .

(1) The Judges of the Indian Supreme Court hail from well - to - do families .

(2) Most of the Indian Supreme Court Judges are foreign educated .

(3) The Judges of the Indian Supreme Court are above fifty years of age .

(4) The Chief Justice has a great impact on the decision making process .

(5) The political party in power has an influence on the decision - making process .

(6) The pressure groups exert influence on the decision making process of the Supreme Court .

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2 : 6 (VARIABLES)

In the present study , the Judges have been considered as dependent variables . The independent variables are different background characteristics including religion , caste, paternal occupation , and their income , academic qualification , etc ., which might influence the behaviour of Judges in their task of decision - making .

In addition to these , the scale of values and the social philosophy of Judges have been treated as independent variables on which depend the attitude and voting behaviour of the Judges who are dependent variables in the present study .

Also , political attachment of the Judges has been considered as an independent variable which may also influence Judge's behaviour in deciding a case .