



CONTRIBUTION OF INDIAN JUDICIARY AND PUBLIC INTEREST LITIGATION

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Introduction

Pandemic times have brought a lot of changes in people's working style, technology, demography, competitiveness, conflict, ideology, political life, economic policy, and legal principles. Even in the midst of these difficult times, judicial activism in India touched its highest peak with lots of landmark judgements directly affecting the common man and the business fraternity alike. If we look at the historical judgments of the Supreme Court, whether it be the questions related to universal vaccination, essential commodities, gender justice, social media, rules for the workplace, or e-commerce transactions, the Apex Court of the country has risen to the occasion to bring about social transformation. Liberty and justice are hailed as the hallmarks of Indian democracy.

Neo-normalcy after the Covid era has seen evolutionary legislation on the part of our parliament igniting social changes and women's empowerment. The democracy in India is moving ahead many steps further with its latest socioeconomic policies along with the changes in technology. The country is witnessing an enthusiasm like never before. The social transformation in our country is made possible by the judiciary by giving importance to human rights. Individuals enjoy their fundamental rights, valuing the rights of others. These fundamental rights point at the need of the masses to be treated in a just, decent, and humane manner irrespective of their gender, colour or creed. Since these rights are basic to the survival of states, human rights violations mean denying the natural rights of people.

Importance of the Constitution

The constitution of a country is the largest legal-political document for its government. It also embodies the statement of rights of the people as lawfully established. In a general sense it lays down the structure of power and obligations of the rulers towards the ruled. Such obligations imply not only the limit of governmental power but also the expectation of the people from the government. A significant point about a constitution is that it is future-oriented, rather than concentrating on the past.

When India became free, it had been in such a state that economic rights could not be added in Part III of the Indian Constitution as the fundamental rights. However, it finds a place in the Directive Principles of State Policy,

which mentions the basic guidelines that the welfare state of India has to keep in mind while framing legislation for the masses. Now the times have changed, and India is ripened into a welfare state in its fullest potential. Whether it be the schemes of the government or the activist judicial pronouncements of the Supreme Court, the matter of “greatest happiness to the greatest number of people” always takes a place of pride. We are moving fast towards a dynamic society.

The Preamble to Indian Constitution

The Preamble to the Indian Constitution mentions the noble ideals of our state. The Preamble begins with the words "We, the people of India," who, in the Constituent Assembly of India, adopted, enacted, and gave to ourselves this Constitution. The status of our Constitution, as the supreme law of the land, is derived from the people and not from the sanction of any external sovereign. India is a democratic and sovereign country. India is also a republic. Our state does not recognize function under hereditary rule. The democratic character of the state is ensured by the right of the people to elect the members of the lower house of the Union Parliament and the state Legislative Assemblies on the basis of adult franchise. Every resident, adult citizen of sound mind, and not legally prohibited on the grounds of any crime, corruption or illegal practice, is entitled to be registered as a voter (Article 326 of the Constitution). The Constitution also guarantees to all its citizens justice (social, economic, and political); liberty of thought, expression, belief, faith, and worship; and equality of status and of opportunity and promotes among them all fraternity, assuring the dignity of the individual. By an important amendment in 1976, the aims of establishing secularism and socialism and promoting the unity and integrity of the nation were added to the Constitution.

Thus, the Indian Constitution upholds the liberal democratic framework with an advanced scope for governmental intervention with a view to promoting social reforms and welfare. There is a prohibition on the state to violate the rights and equality of the citizens, the rights that were purely of negative character. Society is prevented from practicing untouchability. Guidelines are provided to the state to take special measures for the improvement of marginalized sections of the society.

Significance of Fundamental Rights and Directive Principles

Human rights added in the Constitution are divided into two separate parts. Part III of the Constitution mentions the “fundamental rights,” which in conventional human rights terminology are termed as civil and political rights. Part IV of the Constitution includes the directive principles of state policy (DPSPs), which include all the social, economic, and cultural rights. Social rights, or basic entitlements, have been recognized internationally as being as important as other civil and political human rights. Social rights are protected by comfortable forms of judicial intervention. When the fundamental rights mentioned in Part III are justiciable under the Constitution, DPSPs are not justiciable rights, and their non-compliance cannot be taken as a claim for enforcement against the State.

The fundamental rights are negative in character inasmuch as they set boundaries on the governmental authorities from violating these rights. While most of these rights are against the state, some of them, like the right against untouchability (Article 17) and the right to protection of minorities (Article 29), are available against the society.

Since most of the rights are available to the individuals, some are granted as group rights (Articles 27, 29, and 30). Most of these rights are restricted on the basis of public interest, law and order, decency, and welfare of certain backward sections of the society. The above-mentioned aspects are significant in the understanding of the nature of rights in India.

In India, the practice of untouchability by members of the upper castes is directly an offense against the Constitution. Similarly, the violation of the rights of minorities by members of the majority community. The state holds direct constitutional responsibility to protect the social rights of the Scheduled Castes, Scheduled Tribes, and the religious and linguistic minorities. The specification of limits of the rights are set by the Constitution of India itself when compared to the Constitution of America, where such restrictions are set by the courts of law and depend upon the personal findings of the judges. Such personal views are not totally ruled out in India, but they are supported by the Constitution itself. As has been mentioned, these constitutional limitations arise from the Constitution's concern for not only law and order but also public interest in general, including decency, morality, and welfare of the downtrodden sections of the society.

Constitution and Social Transformation in India

The Constitution not only provides the framework for governance, but it is also futuristic in envisioning what social and economic transformation India would undergo. In this sense, the vision of the constitution makers was the establishment of a dynamic constitution. The Constitution aimed at a new social order based on social, economic, and political justice. Social reforms were held at the topmost level of the national agenda by the Constituent Assembly and DPSPs. The bifurcation between civil and political rights and social and economic rights was made under the Constitution because the latter, it was felt, could not be made enforceable until appropriate action was taken by the State to bring about changes in the economy.

Since the emergency is declared in the seventies, there has been a considerable change in the judicial pronouncements on this question of the justifiability of DPSPs, and the Apex Court of our country has been reassuring that both the fundamental rights and DPSPs must be interpreted harmoniously, thus strengthening the path for the principle that social rights are complementary, interdependent, and indivisible from civil and political rights. It was held by the Supreme Court that there is no disharmony between the directive principles and the fundamental rights, because they complement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare state, for which the seeds are sown in the preamble. Underlining this aspect, in Unni Krishnan's case¹, the highly acclaimed right to education judgment, Justice Jeevan Reddy declared, "The provisions of Parts III and IV are supplementary and complementary to each other and not exclusionary of each other, and the fundamental rights are but a means to achieve the goal envisaged in Part IV." The structure of rights in the Indian Constitution intends an active role of the judiciary in bringing forth social transformation.

¹ Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors, (1993) AIR 217, (1993) SCR (1) 594

Civil and political rights provide guarantees against oppression and discrimination in the civil and political life of people. Economic, social, and cultural rights equip us to prosper and grow as the world's number one democracy. The judiciary guarantees civil and political rights, takes progressive steps to ensure economic, social, and cultural rights, and takes actions to protect group rights.

Social transformation is thus an ever-widening concept, changing with the progress of mankind, the complexity of government, and time. It is progressive, responsive, and dynamic, and its greatest virtue is flexibility. In a constitutional democracy like India, social transformation ensures equality, personal freedom, and justice between man and man and between man and the state.

The power attached to the judiciary is felt by every Indian citizen. The role played by the audiovisual media in this regard is commendable. Every word spoken by the judiciary is met with enthusiasm by the people. It has become the most effective instrument in bringing social transformation throughout Indian territory.

In the last two decades, the higher judiciary in India transformed non-justiciable economic and social rights such as basic education, health, food, shelter, speedy trial, privacy, anti-child labor, and equal wages for equal work into legally enforceable rights through various landmark judgments.

Momentous decisions come out almost every day, ensuring a smooth transition into a dynamic society. Justice N. Anand Venkatesh, a judge of the Madras High Court hearing a same-sex marriage case, decided to enroll himself for a 'psycho-education' session with a counsellor having expertise in handling LGBT issues before delivering his judgment. It shows the quality of the judiciary to analyze various life situations on a higher plane and ensure the rule of law in all walks of life.²

Arbitrary laws are struck down as a measure to widen the scope and content of judicial activism to facilitate social transformation. The domain of social transformation in India is safe in the hands of the judiciary, which is quite independent from other branches of the government.

Judicial activism

Judicial activism involves the willingness of a judge to go beyond the traditional role of interpreting and applying the law and taking a more proactive role in addressing societal problems. Nowadays, it is seen as a measure to achieve social change, especially in cases where the legislative or executive branches are not effectively addressing societal issues.

Justice Sikri, while speaking on a petition filed by the Campaign for Judicial Accountability and Reforms (CJAR), observed, "Anybody and everybody, however high, has to be subject to the rule of law... We as judges have a duty to protect the rule of law and justice."³ These valuable words reflect the dimensions of judicial conscience in India and the social transformation it brings to the country.

² "Madras High Court Judge Seeks Counselling Before Giving Verdict In Same-Sex Wedding Case," The Times of India, April 30, 2021

³ "Anyone, however high, is subject to rule of law" The Hindu, November 10, 2017

Judicial activism is prominent in the area of environmental protection also, which can be visibly seen in the landmark judgements.⁴ In India, strategic litigation, where the use of lawsuits as a means of bringing about social change, is exercised in the context of environmental protection. It forces government agencies as well as private corporations to comply with environmental regulations.

Another form of judicial activism involves the courts taking a more proactive role in addressing societal problems. In the context of environmental protection, proactive judicial decision-making involves the courts taking a more active role in enforcing environmental laws and regulations.

Article 14

Article 14 came out to be the germane provision which specifically leads the society into a smooth transition. The apex court of our country has time and again declared it as one of the “basic features.”⁵

Equality before the law and equal protection of the laws enshrined in Article 14 “discloses the anxiety of the framers of our constitution that no aspect of inequality, whether positive or negative or in any other form or shape, should be favoured or placed under any disadvantage by the state in circumstances that do not admit of a reasonable justification for a different treatment.”⁶

The intention of Article 14 is based on the theory of classification. To reconcile constitutional equality with the facts of life, some distinction, classification, gradation, or differentiation is inevitable. Permissible classification is inherent in legislation. This theory held the field for a long time. The theory of non-arbitrariness is later stitched on to the article by the Supreme Court. According to the new doctrine, Article 14 invades arbitrariness in state action and ensures fair and equal treatment.

In the dreaded era of the pandemic, when governments in most parts of the world failed to establish the “rule of law,” the Indian judiciary quickly came to the rescue of the daily laborers, migrants, and poor patients, upholding the constitutional value of equality, and it became easy at the national level to overcome the difficulty brought in by the tough times and for society to move forward to normalcy.

Article 21

Another important factor that adds charm to our democracy, ensuring a progressive society, is Article 21. It protects the life and liberty of an individual against state action. A restricted field was attributed to it earlier. Now it is an all-embracing concept acting as a limitation on arbitrary actions of the state. By applying the principles of natural justice, a new life is added to it.

⁴ M.C. Mehta And Anr vs Union Of India & Ors (1987) AIR 1086

⁵ Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr (1973) 4 SCC 225
S. P. Gupta v. President of India AIR 1982 SC 149 (known as Transfer of Judges case)

I. R. Coelho v. State of Tamil Nadu and others (2007) 2 SCC 1

⁶ JILI. 1959-60. 297, P29

After the Maneka Gandhi's case,⁷ day by day the scope and content of judicial activism is expanding, taking in its cauldron every dimension of all human faculties. This case revolutionized the meaning of Article 21, applying to various situations. The court imported the American "due process of law" into India by holding that natural justice is engulfed in Article 21.

The article is used as a weapon against police atrocities, prison injustice, and delayed execution to ensure a peaceful life for people. Unprecedented dimensions sanctioned by the Supreme Court in upholding judicial activism are the reigning norm in India today.⁸ The right to life under the article guarantees the right to life with dignity.⁹ And nowadays the right to choose his or her life partner is a fundamental right under Article 21.¹⁰ Landmark judgments by the apex court of the country forced the Legislature to pass the Right to Education. The social transformation brought by these judgements has revolutionized the Indian democratic principles.

Under the Right to Education Act, 2009, free and compulsory education is provided to children, and it is enforced as a fundamental right under Article 21-A. Article 21 gains special importance in light of the pandemic situation with an extended view to the right to health.

When the health and welfare of our nation is at peril, it brings forth the fundamental right of 'right to health'¹¹ in the limelight. Accessibility to the medical facilities for the marginalized is ensured by the Supreme Court so many times.

The framers of our constitution used both of the above provisions abundanti cautela so as to cover every possible case and eventuality. The provisions are not just leaves of a book but form the means of ordering the life of a progressive population. There is grave danger in confining these provisions to watertight compartments.

In effect, the traditional role of the judiciary is no longer continued. Effective legislation and policy guidelines are pronounced in succession. The seeds sown by the Judiciary in the form of public interest litigation have become a great tree with multiple branches.

Public Interest Litigation

The Supreme Court developed the strategy of public interest or social action litigation, with the aim of making our legal system more accessible to the poor and powerful. In doing so, the Court redefined the doctrine of locus standi. Traditionally, the doctrine required a prospective petitioner to show that some personal legal interest had been infringed by the opposite party; it barred a person who was merely interested as a member of the general public in the resolution of a dispute from being heard in the courts; he must have had a personal interest in the

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

⁸ *Govind v. State of Madhya Pradesh*, AIR 2003 SC 3357

Murli S. Deora v. Union of India, AIR 2003 SC 3357

Vishakha v. State of Rajasthan, AIR 1997 SC 3011 : (1997) 6 SCC 241.

⁹ *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621

¹⁰ *Shakti Vahini v. Union of India*: 2018 (7) SCC 192

¹¹ *Consumer Education and Research Centre V. Union of India* AIR 1995 SC 922

outcome of the controversy. However, in a significant move away from the traditional contours of the doctrine and in a highly activist mode, the Apex Court of India has held that any member of the public or social action group may approach the Court on behalf of a victim who is unable to do so due to poverty, disability, or socially or economically disadvantaged position. The basic theme behind the relaxation of the doctrine of locus standi is to establish the rule of law. Being a constitutional democracy, the Constitution is the supreme law of the land. Accordingly, our constitutional courts can legitimately exercise the power of judicial review. By encouraging people to challenge the unconstitutional acts of the State, judicial review makes the government accountable for its individual acts, and it thereby promotes a constitutional culture in the country. In a move to further eliminate barriers to access to the downtrodden, the Supreme Court has even held that a petitioner can move the court by means of a simple letter, giving way to the establishment of epistolary jurisdiction, jurisdiction invoked by writing epistles or letters to the court. While being a relatively newly developed jurisdiction, its scope has been well defined by the court in different cases.¹²⁽¹¹⁾ These cases clearly reveal that the courts in India have issued certain directions. Some of them are admittedly legislative in nature, but the same have been issued only to fill up the existing vacuum till the legislature enacts a particular law to deal with the situation.

The Supreme Court of India today is clearly one of the most powerful constitutional courts in the world. The Court has taken on an active and pivotal role in the governance of the Indian polity through its activity in public interest litigation cases and, in some cases, has virtually taken over functions that were once the domain of our Legislature and the Executive. Within the past two decades, the Indian Court wrested control over judicial appointments from the Executive and assumed a leading role in policymaking in the areas of affirmative action, education, environmental policy, and development. The Court has generally exercised a great amount of authority in securing compliance with decisions in which it has asserted extensive power.¹³

In cases of environmental protection, public interest litigation is also applied to suing government agencies or private corporations for violating environmental laws and regulations.¹⁴

Conclusion

Power forms the opium of the authorities. The mission of the judiciary is to curtail and regulate the discretionary powers of the executive so that they are properly exercised with reasonableness for the purposes authorized by the legislature and not for any ulterior purposes. It ensures the smooth functioning of the democracy.

Definitely, the role of the judiciary in changing the society through its landmark judgements, as visible today, is only one side of a coin. On the other side lies the tale of rampant corruption, like the Vijay Mallya Scam in 2016; blatant violations of individual rights, as alleged in the case of inadequate oxygen supply to Covid-19 patients in

¹² Miss Veena Sethi v. State of Bihar, AIR 1983 SC 339

¹³ Citizens for Democracy through its President v. State of Assam & Ors., AIR 1996 SC 2193.

¹⁴ M.C. Mehta v. Union of India, (1987) 1 SCC 395

hospitals; and violence against women, as happened in Manipur, and against children and backward sections of the community. The scene is quite disturbing considering the current scenario.

The Constitution is supreme in India. The Supreme Court's decisions are tested on the touchstone of constitutional provisions. If any reform is to be made to clean the realm of public administration, it must start with the changes in the constitutional provisions. Though the Supreme Court breathes new life into the constitutional provisions by expanding meaning through various PILs. We have added unenumerated rights also in our Constitution. It is suggested that these rights may be given a fine shape by a suitable constitutional amendment to strengthen our democracy.

