

Glimpses of Indian Judiciary System

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Abstract: Indian Judiciary System is one of important and powerful institution in the world. The present form of the Indian Judiciary has evolved through various transitions. From the early stage, the Indian judiciary is a free and privileged institute. The Indian Judiciary System stands as a cornerstone of the country's democratic framework, playing a pivotal role in upholding the rule of law and ensuring justice for its diverse population. It can be said that the judiciary has tried to perfect its work even after the efforts of the Executive to bring some limits. The faith of the Indian people in the judiciary has remained unshakable under all circumstances.

With the help of Public Interest Litigation and the use of judicial activism, the Supreme Court made many more historical decisions. The judiciary's role extends beyond dispute resolution to safeguarding the constitutional values, checking legislative and executive actions, and ensuring access to justice for all sections of society. Challenges such as backlog of cases, delays in the legal process, and the need for judicial reforms persist. As India continues its journey towards progress and development, the judiciary remains a steadfast pillar, ensuring justice, equity, and the rule of law for its diverse citizenry.

Introduction: The establishment of the Indian judiciary system can be traced back to the colonial era and the struggle for independence. During British rule, India was subject to a legal system that primarily served the interest of East India company i.e. British administration. The need for a separate and independent judiciary was recognised as a crucial component for a democratic and sovereign India. After independence it was modernized by Indian constitution makers. The Montagu-Chelmsford Reforms laid the foundation for the constitution of India. While not fully satisfying nationalist aspirations, they marked a significant step towards self governance and included provisions for a legislative council and a judiciary. After that the government of India act 1935 shaped the legal and constitutional framework. It proposed the establishment of federal and provincial courts.

The Republic of India came into being on 26 January 1950 after the Constitution came into force. The Sapru Committee Report, published in 1945, suggested that judges have fixed salaries and tenures, and that they could only be removed for gross misbehaviour. Judges were to be appointed by the president, in consultation with the CJI. Jawaharlal Nehru, however, supported the Sapru Committee's proposals. In 1949, India's first Prime Minister Nehru said that Constituent Assembly judges ought to be individuals of "the highest integrity", who could "stand up against the executive government, and whoever may come in their way."

Independence of the judiciary system calls for the 'Separation of Power'. This basically means that both the executive and legislature are not allowed in to interfere in the function of the judiciary. The Indian judiciary system is a hierarchical structure composed of various courts at different levels. The Supreme Court is the highest judicial authority in the country. It has both original and appellate jurisdiction. Each state in India has its own High Court, and some union territories also have High Courts. Subordinate Courts are divided into District Courts and below. There are some other specialised courts, Tribunals and Constitutional Courts also.

The Indian judiciary system shares many similarities with other judicial systems around the world, but there are also notable differences. The Indian judicial system is one of the oldest legal systems in the world today. Without a security of rights and guarantee of freedom by the judiciary, citizens can't enjoy their living. They are more dependent upon the judiciary system than the executive and the legislature for justice. Judiciary is the balancer of the government because when there is a dispute between the center and state, among the states and between the state and citizens, judiciary can control the dispute and pass judgment. Judgment passed by the judiciary is binding on all whether it may be citizens or government. It is the guardian and interpreter of the constitution.

It is very difficult to answer the question that whether the Judges in the Indian judiciary system are free from political influence? If the judges become partial or if they work under the influence of political leaders, the whole system will be under threat.

Some landmark judgements which shaped Indian jurisprudence:

I) The Golaknath vs. State of Punjab case (1967) was a landmark constitutional case in India. Title refers to I.C.Golaknath, a landowner who challenged the First, Fourth and Seventeenth Constitutional Amendments to limit property rights. The importance of the case lies in its impact on the debate on fundamental rights, particularly regarding property rights. 44 new laws were inserted in the 9th Schedule by the 17th Amendment. The Supreme Court in this judgment held that Parliament cannot make any constitutional amendment to any other fundamental right, including property rights, through constitutional amendment. This decision upheld the right of judicial review.

II) The 1971 midterm elections to Parliament took place. In this Indira Gandhi got a huge majority. During this period, her government passed The Banking Companies (acquisition and transfer of undertakings) Act in 1970 and the Institutional Salary Freeze Act. Both these laws were struck down by the court on the grounds that they violated fundamental rights. However, Indira Gandhi overturned the Golkanath decision by passing the 24th and 25th constitutional amendments in Parliament in 1971. And great curtailed the right of judicial review.

As seen in the judgments in the Shankari Prasad case (1951) and the Sajjan Singh case (1965), the Supreme Court gave full power to Parliament to amend the Constitution. However, in the Golaknath case (1967), the Supreme Court held that Parliament cannot amend the Fundamental Rights and only the Constituent Assembly has the right to amend the Constitution. Kesavananda Bharati was the abbot of Ednir Math. The Kerala Land Reforms Act, 1963 raised the issue of property belonging to religious institutions. So Kesavananda bharati challenged this land reform act.

While deciding this case, the Supreme Court accepted that the Parliament can amend any part of the Constitution as a fundamental right of the Parliament; but Parliament has no power to change the basic structure of the Constitution. By this means the court kept its right of judicial review intact. The Supreme Court has repeatedly upheld the doctrine of basic structure. It has also been elaborated in many case decisions.

Parliament again touched upon the basic structure of the Constitution by passing the 42nd Amendment in 1976. This act amended Article 368 and declared that there is no limit to parliament about constituent power. Also, no question can be raised to the justice system on any constitutional amendment issue. However, the Supreme Court invalidated this provision in the Minerva Mill vs

Union of India case. From the various judgements, lots of elements or components have emerged as 'basic structure' of the constitution.

III) The Indira Gandhi vs. Raj Narain case in 1975 is famous for declaring the election of then PM Indira Gandhi as void on grounds of electoral malpractices. It reinforced the Independence of the judiciary in safeguarding democratic principles.

IV) S.R. Bommai vs. Union of India case in 1994 established principles regarding the misuse of Article 356, which deals with President's Rule in states. It reinforced federalism and limited the power of the central government to dismiss state governments.

V) Vishakha vs. State of Rajasthan case in 1997 laid down guidelines for preventing sexual harassment in the workplace. It recognised the right to a safe working environment as part of the fundamental rights under Articles 14, 19 and 21.

VI) Shreya Singhal vs. Union of India case in 2015 Supreme Court struck down Section 66A of the Information Technology Act, 2000, which criminalized the sending of offensive messages online. The judgment of the court emphasized the importance of free speech in the digital age.

VII) Justice K.S. Puttaswamy(ret) vs. Union of India case in 2017 commonly known as the Aadhar case, this judgment declared the right to privacy as a fundamental right under the Constitution. It had far-reaching implementations on issues related to data protection and individual privacy.

VIII) Mohammad Ahmed Khan vs. Shah Bano Begum Case in 1985 dealt with the issue of maintenance for Muslim women after divorce. The Supreme Court ruled in favour of Shah Bano, upholding her right to maintenance under Section 125 of the CrPC, highlighting the need to balance personal laws with fundamental rights.

IX) Bandhua Mukti Morcha vs. Union of India case in 1984 was a PIL case which focused on the bonded labour system in India. The Supreme Court's intervention led to the release and rehabilitation of bonded labourers, highlighting the judiciary's role in addressing social injustices through PIL.

X) Indra Sawhney & Others vs. Union of India, also known as the Mandal verdict. It was an Indian landmark public interest litigation case delivered by an eleven-judge constitution bench.

The Constitution of India recognizes reservation based on social and educational backwardness. The suit was against the government's decision to provide only 10% reservation for economically backward upper castes in various government jobs. In 1993, Indira Sawhney filed a case against the Narasimha Rao government.

The Supreme Court, in its verdict, upheld the government order, thinking that caste was an acceptable indicator of backwardness. Thus, the recommendation of reservations for OBCs in central government services was finally implemented in 1992. The Supreme Court of India ruled that 27% of significant government reservations for OBCs are valid. Judgment laid down the limits of the state's powers: it upheld the ceiling of 50 per cent quotas, emphasised the concept of "social backwardness", and prescribed 11 indicators to ascertain backwardness. The nine-judge Bench judgement also established the idea of qualitative exclusion, such as the "creamy layer". The creamy layer is only applicable in the case of Other Backward Castes and not applicable to another group like SC or ST.

XI) In June 2016, Navtej Johar and five others from the LGBT community filed a writ petition in the Supreme Court challenging Section 377 of the Indian Penal Code. Section 377 of the Indian Penal Code was struck down unanimously by a five-judge bench in September 2018.

The court allowed consensual relationships among the individuals of the LGBT community which made it one of the landmark Supreme Court judgments. The Supreme Court also made it clear that the choice of LGBT persons to enter into physical relationship with persons of the same sex is their choice. They are equally entitled to the enforcement of their Fundamental Rights.

The Apex Court also decriminalized relationships in the same sex when it was consensual. The Court, however, upheld provisions in Section 377 that criminalize non-consensual acts performed on animals.

XII) The electoral bond scheme launched by the Modi government in 2018 to facilitate anonymous donations to political parties has been declared unconstitutional by the Supreme Court In 2024. The Supreme Court highlighted that anonymous electoral bonds are violate of the right to information under Article 19 (1) (a) of the Constitution. A five-judge bench headed by Chief Justice Chandrachud gave the unanimous decision in the case of Association for Democratic Reforms and ANR vs. Government of India, Union Cabinet Secretary and others. Earlier in April 2019, the Supreme Court had rejected the stay of the electoral bond scheme.

These and many more like this cases illustrate the judiciary's role in interpreting and expanding the scope of fundamental rights, addressing social justice issues and promoting the public interest through PIL. They have had an impact on Indian jurisprudence, the protection of individual and collective rights and ensure that actions align with constitutional values and the rule of law.

Collegium System and NJAC: National Judicial Appointments Commission This proposed commission was created by the Parliament through the 99th Amendment Act 2014. The NJAC would have replaced the collegium system of appointment of judges. In October 2015, the Supreme Court declared the amendment unconstitutional by a 4:1 majority.

The Supreme Court has quashed this commission on the issue of independence of judiciary. The Constitution Bench had expressed a clear opinion that the independence of the judiciary is the basic basis of the Constitution and it cannot be compromised. At the same time, the Supreme Court also admitted that the prevailing 'collegium' system is not transparent and completely flawless. Before the collegium system; from 1950 to 1993, the power to appoint judges rested with the government. The only provision in the Constitution is that the President will appoint the judges of the Supreme and High Courts with the advice of the Chief Justice. In 1993, Justice J.S.Varma pioneered a system of judicial selection that was not under the influence of the Crown. The efforts bore fruit and the then President K.R. Narayanan implemented the collegium system. In 1993 S. P. Gupta v. Central Government judgment on 6 October 1993 made it clear that the advice of the Chief Justice is binding on the President in matters of appointment and transfer of judges. From the judgment of the Supreme Court Advocates on Record Association v Central Government (1993-94), it was clarified that the meaning of 'Consultation' (consultation) was meant by the Constitution makers by giving priority to the advice of the Chief Justice over the Cabinet regarding appointments in the High Court and Supreme Court.

No procedure is prescribed for collegium system. A person with 10 years of legal experience can be appointed as a judge. The effect of this seems to be on existing and newly appointed judges. Almost 400 family members in India are seen occupying the post of judge. From this, the number of representatives of the Bahujan community in the judiciary is negligible. The Constitution of India provides for All India Services. Under which selections like IAS, IPS, IFS are made. However, IJC (Indian Judicial Commission) has not been established from this.

The issue of position of benefit: According to Article 124(7) of the Constitution of India, judges who retire from the Supreme Court cannot hold any office of profit in the judiciary. Also, Supreme Court judges cannot practice in any court after retirement. In 1958, the Law Commission of India made a recommendation in its Fourteenth Report. According to this recommendation, judges were to be barred from accepting government posts after their retirement. But this recommendation was never implemented.

It is not new for a retired judge to accept a position of benefit. But in recent times, this number seems to be increasing. Fazal Ali as the Governor of Odisha, the first woman judge of the Supreme Court, Fatima Bivi has been appointed as the Governor of Tamil Nadu and P. Sadasivam as the Governor of Kerala. Justice Ranganath Mishra, Justice Baharul Islam, Justice Ranjan Gogoi have appeared in the Rajya Sabha at different times. There are several posts to which only retired judges of the Supreme Court can be appointed e.g. National Company Law Appellate Tribunal. Although the history of the appointment of judges to the position of benefit is long, the recent increase in its prevalence and the association of decisions made by benefit judges while on the court is thought provoking. However, the judiciary can be affected by the greed for the posts of Governor, Rajyasabha.

UAPA : The Bill to amend the Unlawful Activities Prevention Act, 1967 was passed in July 2019. Due to this, the right to declare an organization a terrorist has now reached the individual level. The government has acquired the right to designate a person as a terrorist without complicated legal procedures. Advocate Sajal Awasthi, who filed a Public Interest Litigation i.e PIL in the Supreme Court against some of the provisions of these amendments to the UAPA Act, says, “According to Sections 35 and 36 of the UAPA Act, the government can designate a person as a terrorist, without any prior notice, following any prescribed procedure. When can a person be designated as a terrorist? What can be done during this investigation? What will happen after this? What will happen during the hearing? Before arrest? All these questions are not answered in this Act.”

The Terrorist and Disruptive Activities (Prevention) Act i.e. TADA and Terrorist Activities Act (POTA) which preceded UAPA are not in existence at present. But when these laws existed, they were widely abused. Researcher Ramizur Rahman says, “Whether it was TADA Act or POTA, there were violations of citizens’ rights, illegal arrests, torture, false cases and prolonged imprisonment. Out of the 76,036 people who were arrested under the TADA Act, only one percent of the charges could be substantiated.” (bbc.com, 2019) Similarly, by the time the POTA Act was repealed in 2004, 1,031 people had been arrested under the Act. Out of these, only 18 had been tried and 13 had been found guilty.

NCRB data revealed that 23 per cent and 45 per cent more cases of hate speech were registered under the UAPA in 2022 as compared to 2021. According to NCRB data, 5,610 cases of ‘crimes against the state’ were registered across the country in 2022. While in the year 2021 their number was recorded at 5,164. Offenses against the state include cases of sedition, UAPA, damage to public property and Official Secrets Act etc.

Lok Sabha was told by the Central Government that 701 cases of sedition and crimes against the state have been registered from 2018 to 2022 and 5,023 cases under the Anti-Terrorism Act and Unlawful Activities (Prevention) Act (UAPA).

Case Pendency in India and vacancy in courts: The Indian judicial system operates at three hierarchical levels of the Supreme Court, high courts and district courts. According to the written

reply given by Law Minister Arjun Ram Meghwal in the Lok Sabha, 4.46 crore cases pending at the district and subordinate courts. Along with this, 80000 in the Supreme Court and more than 61 lakh high court cases are pending.

According to statistics, the Supreme Court currently has fulfilled its maximum strength. However, there are around 331 vacant posts of judges in the various high courts, while in response to the raised in Lok Sabha; the law minister said in the latest monsoon session, 19858 judges are working presently out of 25246 sanctioned judges for district and subordinate courts in India.

Conclusion: The Indian judiciary has seen many ups and downs since independence till today. He has done an important job of giving strength to the hopes and aspirations of the Indian people. In any system, there are some things that are more or less. The Judiciary has till date performed its duty of protection of the fundamental rights enshrined in the Constitution and upholding the rule of law effectively and efficiently. We move forward, it's crucial for the judiciary to stay updated and efficient. Embracing technology, improving procedures, and ensuring timely justice are key for a fair legal system.

On the occasion of the completion of 75 years of functioning of the Supreme Court, the CJI said - "In the near future, we must address the structural issues affecting the judiciary, such as pendency of cases, archaic procedures, and the culture of adjournments. Our effort in our work as judges and administrators must be to ensure dignity to the district judiciary, which is the first point of contact for citizens. Our ability to remain relevant as an institution requires us to recognize challenges and begin difficult conversations".

There appears to be a huge gap in representation on the basis of gender and caste in the Supreme Court of India. It took 49 years for India's first female judge and we still await a first female Chief Justice. The Supreme Court has only eleven female judges and as the current Supreme Court deals with issues of caste, some, including the government, have noted a lack of representation from OBC, SC and ST. all constituents must receive minimum representation.

It appears that the court is not taking a very firm stand on issues like UAPA. Efforts should be made to bring transparency in the collegium system. Finally as Dr. Ambedkar said, "However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good."

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