

THE INTERNATIONAL JOURNAL OF BUSINESS & MANAGEMENT

Judiciary in Contemporary India: Post-Independence Scripts

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Abstract:

The framers of the Constitution of India provided the country an independent and impartial judicial system which in coming years has been functioning as one of the foremost institutions of India's republican democracy as an instrument of rule of law. The benefits of a good judicial system are many covering economic, political and social spheres. The importance of the judiciary lies in checking abuses of government power, enforcing property rights, enabling exchanges between private parties and maintaining public order. A balanced, swift, affordable and fair justice delivery system-besides promoting law and order-aids in the development of markets, investment and affects economic growth positively. Good economic policies need strong and accountable institutions to support and implement them. Strong justice institutions thus form the basis of lasting social order as a leading member of the Constitution Drafting Committee predicted, 'the future evolution of the Indian Constitution will depend to a large extent upon the Supreme Court and the direction given to it by the Court. While its function may be one of interpreting the Constitution, it cannot... ignore the social, economic and political tendencies of the times.

Keywords: *Independent India, social justice, judicial judgements.*

1. Judicial Foundation

The Constitution of India in post-1947 period started its operation in happy harmony with the instrumentalities of the Executive, Legislature and Judiciary. Among the three pillars of the democratic set-up the three wings have their own rights, duties and bounds within the framework of the Constitution. The legislature is to legislate the subordinate norms for the good governance of the country, in all walks of national life which require a well-established and regulated path to proceed on. The Executive is to implement the legal policies of the legislature and the likewise tasks. And on the other judiciary is to watch the validity and conformity of all the legislative enactments and the application thereof the Executive in the manner intended by the legislature and prescribed by the Constitution with the philosophy of the Rule of Law. Clearly it was based on the principle of separation of power which meant that the three organs of the State, the legislature, the executive and the judiciary must respect each other and must not ordinarily encroach into each other's domain, otherwise the system cannot function properly (Katju, 2012). Since independence the high judiciary, especially the Supreme Court, has fully utilized its rights and obligation to enforce and interpret the Constitution. It has set up high standards of independence from the executive and legislative arms of the government. It has also been in the forefront of the defence of fundamental rights. According to Article 32 the Supreme Court has original jurisdiction in case of appeals or writs relating to enforcement of Fundamental Rights, that is, a person can straightway appeal to the Supreme Court without going through the normal layers of the judicial hierarchy. The Supreme Court has also original jurisdiction in all disputes between the Union and States as well as between states.

The Supreme Court has played a major role in interpreting the Constitution especially with regard to the changing relationship between Fundamental Rights and Directive Principles. While it is limited in its powers in comparison to the US Supreme Court when it comes to declaring any law unconstitutional, since it does not have the clause of 'due process of law' or standards of natural justice, it has made up by evolving the doctrine of 'Basic Features' on the basis of which even an amendment to the Constitution can be declared invalid if it is destructive of the Basic Features of the Constitution. It has not only inherited the mantle of the Judicial Committee of the Privy Council as the final court of appeal in all matters but has also been made the ultimate interpreter of the laws and the Constitution, the arbiter of federal disputes and the constitutional protector of the fundamental rights of individuals and of minority groups (Singhvi, 1979). In sheer amplitude of judicial powers and the variety and range of jurisdictions, the Supreme Court of India is without a rival in any other system in the world. The nature of controversies which our Supreme Court has called upon to resolve inevitably makes its role vital and vulnerable. In a sense and to a certain extent, the Constitution is what the Supreme Court says it is. All authorities, civil and judicial are obliged to act in aid of the Supreme Court.

Initially for years the Indian judicial system represented a conservative and status quoist character and remained insensitive to social issues and movements and resulted in its standing in the way of radical socio-economic legislation in the name of defence of individual rights. For instance, at the beginning the Supreme Court interpreted the right of property to negate land reforms, nationalization of banks, etc. It also tended to ignore the Directive Principles of State Policy laid down in the Constitution (Chandra, 'et al.', 2002:475). It was the period when Indian judiciary was maintaining the British legal system but the new system of India

combined the principles of liberal democracy with socialist aspirations of general equality and welfare. In fact, the Supreme Court performs judicial functions but it has also to deal with many issues and controversies which have partisan origins and political consequences. A constitutional court, howsoever moderate and self-restrained, cannot evade or avoid pronouncements on matters of public concern. It cannot turn a deaf ear to complaints against arbitrariness. It cannot turn a blind eye to unreasonable invasion on fundamental rights. In several judgements relating to the rights of prisoners, the court has done substantial justice by holding that a prisoner does not totally lose his fundamental right to liberty once he enters the prison.

2. Expansion and Reach of Judicial Judgements

Since its inception, the peculiarity of the Supreme Court is that it exercises not only a legislative function but also a constituent one for it can make and unmake constitutional amendments. In the context judicial review is a substantive and cherished right of the judiciary to declare a statute invalid; if it comes in conflict with the constitution. Article 372(1) mentions that all the pre-constitutional laws would remain in force 'subject to the provisions of constitution' if those laws are not inconsistent with the cherished rights of the citizens enshrined in Part III of the Constitution. Likewise, Article 245(1) vests legislative powers in the Parliament and make it 'subject to the provisions of the constitution'. Whether a law pre or post is in accordance with the provisions of the Constitution or not is a question comes under the purview of the concept of Judicial Review (*Soni, 1976: 1099*). Besides, Article 13 also gives powers of Judicial Review in the sense that a law should not be in derogation to Part III, dealing with Fundamental Rights.

In addition, there has been the practice of judiciary to invalidate the law made under Article 368 on the ground of breach of "Basic Structure". The power of judiciary to review and determine the validity of a law or an order may be described as the power of "Judicial Review". It means that the Constitution is the Supreme Law of the land and any inconsistent therewith is void. The term refers to "the power of a court to inquire whether a law, executive order or the other official action conflicts with the written constitution and if the court concludes that it does, to declare it unconstitutional and void. In brief, the term judicial review has two prime functions: (i) Legitimizing government action; and (ii) to protect the Constitution against any undue encroachment by the government." The Constitution of India, in this respect, is more akin to the US Constitution than the British. In Britain the doctrine of Parliamentary supremacy still holds goods. No court of law there can declare a parliamentary enactment invalid. In India, the power of judicial review of legislation is given to the judiciary both by the political theory and text of the constitution. Along with the Supreme Court the high courts are also made protector and guarantor of Fundamental Rights under Article 32 and 226. Articles 251 and 254 say that in case of inconsistent between union and state laws, the state law shall be void.

On the issue of invalidating the laws/executive orders, the Supreme Court of India, in the historic case of *Golaknath vs. The state of Punjab (1967)* in which the validity of three constitutional amendments (1st, 4th and 17th) was challenged, reversed its earlier judgements made in 1951, 1955 and 1964 by a majority of 6 to 5 and held that Parliament under Article 368 has no power to take away or abridge the Fundamental Rights contained in chapter II of the Constitution. In this judgement the Supreme Court had opined that the decision in *Shankri Prasad* case contained the seeds of destruction of the cherished rights of the people. In this very case an iron wall before the implied powers of the Parliament to amend the Constitution under Article 368, was built by the Supreme Court (*Soni: 1100*). In *Golaknath's* case, the Supreme Court experimented two doctrines, viz., *Ultravires* and "Prospective Overruling". By applying the doctrine of prospective overruling the laws prior to the date of decision were declared valid and by applying the doctrine of "ultra vires" the Parliament was restrained to amend particularly the provisions of Part III with effect from 27 February 1967. The decision of *Golaknath's* case which was decided by a "paper thin" majority of 6:5, was made crystal clear: (i) that the Parliament can amend any part of the constitution: and (ii) provided by the "Basic Structure" of the constitution cannot be amended by the Parliament. Thus, in initial years the Indian judiciary laid stress on personal, inalienable rights and protected the traditional social structure. In general, old laws protecting privileges were actively enforced whereas reforms in favour of the oppressed, meant to foster social change were inadequately implemented.

3. Views and Counterviews

Viewed particularly the judicial judgements from the premiership of Jawaharlal Nehru to his daughter Indira Gandhi's first term in office, the Indian Supreme Court was not seen as an ally of the poor and oppressed. Rather, it was considered to be a conservative protector of the economically better off. Nehru was in favour of land reform. But the Supreme Court insisted on full financial compensation of former landlords reducing the Indian Republic's redistribution options. Nehru repeatedly criticized specific rulings, but being a trained lawyer himself, he never put the judicial processes or institutions in doubt. In opposite to her father Indira Gandhi intended to nationalize the Indian banking sector and abolish the privy purses and other privileges of the nobility that had formally ruled Indian princely states in colonial days. The Supreme Court overruled her decrees as not being in line with the constitution. As a next step, Indira Gandhi portrayed the government as being obliged to pursue socialist policies by Part IV of the constitution, the Directive Principles of State Policy. She accused the Supreme Court of not being committed to these goals and also claimed that the directive principles were superior to the fundamental rights. An important consequence of this analysis is that in the process of constitutional adjudication, intentionally or unintentionally, the court is invariably drawn into the politics of the establishment or the politics of the opposition. In the context of the Indian state, which is dominated by one party or coalition of parties, the implication of this is that opposition groups come to the court for protection from the tyranny of the dominant party. They also challenge the pursuit of policies or values of the ruling party through the process of constitutional adjudication, and in such cases the court cannot just give a neutral result (*Jaising, 1979*). A theory of the state is therefore, a necessary precondition to the understanding of the role of the judiciary. 'Invalidating status is not only an act of judicial wisdom but also an act of political will. It is in this role that the court has time and again tried to influence the "agenda for political action" and in the sense the legal process is a spec of the political processes.

Especially after the breaking down of emergency rule, the Supreme Court of India has reasserted its position and sought to refurbish its image with a new activism which championed the rights of those who are prevented from the claiming the privileges of full citizenship because of social and economic disability. The success of the Supreme Court's attempt to open its doors to new constituencies, and its efforts to curb the lawlessness of government and enhance public accountability, greatly depend on the strength of social action movements which have produced a new consciousness about problems and struggle for survival of the poor. This move and Public Interest Litigation (PIL) of Supreme Court was also interpreted by some analysts as an expression of the ongoing conflict between Parliament and the Supreme Court. However, it has now become more sensitive to social issues, from the rights of women, workers and minorities to ecology, human rights, social justice and equality and social discrimination. With the practice of Public Interest Litigation (PIL) and its widening the poor and the disadvantaged have actually acquired an easy access to justice. It has opened a window that was completely shut earlier. Over the years since its inception, the Court has advanced, rationalized and consolidated the law in its myriad applications in our vast sub-continent. Its integrating and unifying impact on the life of the nation has been substantially conducive to our national coherence, stability and a sense of fraternity.

4. References

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