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India Judiciary and Judicial Reforms

ANURADHA[1]

ABSTRACT

As very rightly stated in a quotation by 19th Century British Politician Lord Acton that power corrupts but absolute power corrupts absolutely. In India, to ensure that the concept of 'absolute power' does not take over, it is divided among three organs of the government- the Legislature, the Executive and the Judiciary. This division of powers results in the balance of functioning of these organs of the government. These three pillars to the Indian government works within their arena wherein the role of the Legislature is to make laws, the role of the Executive includes the implementation of the laws made by the Legislature but the Judiciary acts as a Watchdog for both the Executive and Legislature. The Judiciary ensures that no law passed by the Legislature is implemented by the Executive that takes away, in any manner, the rights of the individual or the citizens which are guaranteed by the Constitution. Article 13(2) of the Indian Constitution states that the State shall not make any law which takes away or abridges the rights conferred by this Part (Part III of the Constitution) and any law made in contravention of this clause shall, to the extent of contravention, be void. And it is because of this Article that the Judiciary remains vigilant for the purpose of keeping a check on the validity of these laws.

I. INTRODUCTION

The Constitution of India is the lengthiest written Constitution of the world. It came into force on 26 January 1950. It is said to be the 'Grundnorm' that is the parent law. It is considered to be the supreme law of India which means that every Act, Statute passed by the Legislature derives its power directly from the Constitution, not only power, but also the philosophical concept behind such a statute, the need to have such a statute, and other relevant reasons can be said to have actually originated from the interpretation of the text, deduced form the wordings of the Constitution. For instance, the rights of equality and dignity given to women as they being a part of the society, various laws have been enacted for ensuring that the aforesaid rights under Articles 14, 15, 21, 23 are being given to the women in India without any compromise. Examples of such laws includes the Protection of

[1] Author is an Advocate in India.

 [ISSN 2581-5369]

Women from Domestic Violence Act, the guidelines to prohibit the sexual harassment at workplace, etc. and this has been achieved when we have independent judiciary in India which will be later discussed in this article. It is well settled principle that the independence of judiciary is a basic structure of the Constitution.[2]

India follows the system of rule of law. The concept of Rule of Law was originated in England by professor Dicey. Three meanings were assigned by him to the 'Rule of Law' namely absence of arbitrary power or the supremacy of law, equality before the law, and thirdly, the Constitution to be the supreme law of the land. According to him, law treats everyone as equal that is, law is equal for everyone be it the President or the peon. This concept can be seen as included under Article 14 of the Indian Constitution which states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

To ensure that justice is being provided to all the persons, and to uphold the Constitutional provisions, the division of Judiciary in India is done at four levels, besides the formation of fast track courts, Lok Adalats, tribunals so as to reduce the burden of pending cases.

The Judiciary in India functions at four levels- the Supreme Court at the top, the High Courts at the State level, the District Courts at the District level, and the lower judiciary. Each of the level of the judiciary derives its constitution and power from the constitution of India. With the latest Supreme Court (Number of Judges) Amendment Act, 2019 the strength of the Supreme Court has been increased to a total number of 33 judges including the Chief Justice of India.

II. PROVISIONS REGARDING THE JUDICIARY IN THE CONSTITUTION OF INDIA

Articles 124 to 147 deals with the Union Judiciary that is the Supreme Court which incorporates the provisions like the qualifications to become a Judge of the Supreme Court, jurisdiction and powers of the Supreme Court, Special Leave Petition, etc.

Article 138 of the Constitution has the provision of enlarging the power of the Supreme Court. According to the aforementioned Article, the Parliament is empowered to confer on the Supreme Court with such additional jurisdiction and powers with respect any of the matters mentioned in the Union List as it thinks fit.

Article 214 to Article 237 under the constitution of India incorporates the provisions regarding the High Courts in the States in India and the subordinate courts.

[2] S.P. Gupta v. President of India, AIR 1982 SC 149

 [ISSN 2581-5369]

Article 32 and Article 226 of the Constitution of India gives the power to the Supreme Court and the High Courts respectively to protect the guaranteed fundamental rights given under Part 3 to all the citizens, persons (as the case may be) in India. But in this context, it is important to mention that the scope of the powers of the High Courts is wider than that of the Supreme Court because under Article 226(1), it has been expressly mentioned for the enforcement of any of the rights conferred by Part 3 and *for any other purpose'.*

III. ROLE OF JUDICIARY IN INDIA

History has witnessed the growth of Judiciary in India from having a limited and narrow approach to justice towards adapting a new, well defined, broad approach to ascertain the achievement of Constitutional goals. From having a point of view there exist a basic structure of the Constitution to not agreeing that Preamble is a part of the Basic Structure theory, to evolving the notion that Preamble does not only reflects the high purpose and noble objective of the Constitution makers[3] but also the most important part of the Constitutional basic structure. It has been held by the Apex Court that the objectives specified in the Preamble contain the basic structure of the Constitution which cannot be amended in exercise of the power under Article 368 of the Constitution.[4]

By number of judgements and pronouncements made by the Supreme Court, the underlying, hidden concepts have been identified and accepted by the people in India and at places, scope of certain Articles have been extended to meet the current scenario of justice as was expected by the makers of the Constitution. By 'hidden and underlying', what is meant are the concepts and meanings that were already existing, just a glimpse from different angle was required. For instance, the concept of Judicial Review has been discovered. It can be said that it was already there under Article 137. As already been declared in the case of **Kerala Bar Hotels Association v. State of Kerala**[5] that judicial review is justified only if the Government policy is arbitrary, unfair or violated Fundamental Rights.

By widening of the scope of certain Articles, it is meant that so as to cover the current demand of justice, the ambit of articles have been increased. For instance, inclusion of private entities under Article 12 of the Constitution or including equal pay for equal work under Article 14 or Article 21. The fundamental right to life and personal liberty and the fact that the State cannot deny this right except according to procedure established by law has been extended from being limited to life and personal liberty in strict sense. For instance, right to

[3] Pradeep Jain (Dr.) v. Union of India, AIR1984 SC 1420
[4] Keshavananda Bharti Sripadgalvaru v. State of Kerela, AIR 1973 SC 1461
[5] AIR 2016 SC 163

 [ISSN 2581-5369]

live with human dignity was held to be a part of fundamental right to life in the case of Francis Coralie v. Union Territory of Delhi[6], right to have and pollution free air and water is a part of fundamental right to life under Article 21 as held in the case of **Subhash Kumar v. State of Bihar**[7]. In the case of **Olga Tellis v. Bombay Municipal Corporation**[8], the scope of Article 21 was extended to include the right to shelter within the meaning of right to life. Right to free legal aid and right to speedy trial is a fundamental right as has been held in the case of **Hussainara Khatoon v. Home Secretary Bihar**[9]. The same right was upheld in the case of **M.H. Hoskot v. State of Maharashtr**a.[10] Recently, in the case of **K. S. Puttaswamy (Retd. Judge) v. Union of India**[11], it has been held that the right to privacy is a part of fundamental right to life and liberty. Right to education in the case of **Unnikrishnan v. State of Andhra Pradesh**[12], right to bail in **Babu Singh v. State of U.P**.[13], and in the case of **Parmanand Katara v. Union of India**[14], it was held to be the professional obligation of all doctors to provide healthy and medical assistance. In the case of **Kharak Singh v. State of U.P**.[15] it was held that the article 21 not only provides freedom from physical restraint but also grants varieties of rights. It also held that domiciliary visits are violative of Article 21. The same was held in the case of **Govind v. State of Madhya Pradesh.**[16] The self determination of gender is an integral part of article 21 of the Constitution of India as was held in the case of **NALSA v. Union of India**.

In the case of **Joginder Kumar v. State of Uttar Pradesh**[17] the guidelines to arrest during investigation were laid down in the case of **DK Basu v. State of West Bengal**[18] the right of arrested person for the first time written down in the form of guidelines.

Similarly, in the case of **Union of India v. Association for Democratic Reforms**, it was held that right to vote, and to know about the leaders information is a part of fundamental right under Article 19 (1) (a). Likewise in the case of **Sanjit Roy v. State of Rajasthan**[19] it was

[6] (1981) 2 SCR 516
[7] 1991 AIR 420
[8] 1986 AIR 180
[9] 1979 AIR 1819
[10] 1978 AIR 1548
[11] Writ Petition (Civil) No. 494 of 2012
[12] 1993 AIR 2178
[13] 1978 AIR 527
[14] 1989 AIR 2039
[15] 1963 AIR 1295
[16] 1975 AIR 1378
[17] AIR 1994 SC 1349
[18] 1997 1 SCC 416
[19] AIR 1983 SC 328

 [ISSN 2581-5369]

held that payment of wages lower than the minimum wages to person employed in a famine relief work is violative of article 23.

IV. Interpretation of recent reservation amendment, the 'Judicial Mind'

Article 14 of the Indian Constitution states that the State shall not deny any person equality before law or the equal protection of laws within the territory of India. Reservation is not a violation of Article 14. Article 14 ensures the equality among equals. However if there is any classification done, it is required to be done on the principle of intelligible differentia i.e. reasonable classification but it should not be arbitrary. Reservation as a rule works upon the aforementioned principle. Reservation is done for the purpose of providing equal treatment among the equals and to ensure that no class is left behind due to the reason of being educationally or socially backward.

The Constitutional (103rd Amendment) Act received the assent of the President on 13th January 2018. This amendment provides the reservation in jobs provided by Central government and government educational institutions. This reservation is made for citizens who belongs to economically weaker sections within the income bracket of 8 lacs per annum and aims to provide admissions in higher educational private institutions. Through this amendment clause (6) is added to the Articles 15 and 16. This allows 10% of reservations to the economically weaker sections from upper caste. According to me, this amendment is valid as the reservation given to the already weaker sections has left the weaker class within the general category as vulnerable in matters of education and employment. Reservation to an SC means reservation to the whole caste of SCs and the likewise. Therefore, in order to protect the interest of the under privileged economically weaker sections in general and other caste, this Amendment Act is valid and benefitting. However, the total reservation shall not exceed 50% as held in the case of **Indra Sawhney v. Union of India**[20], but the 103rd amendment is not violating any established statute. And had it been a part of a codified law, for the benefit of the citizens, amendments can still be proposed.

The judiciary too alike an infant has learnt through these times after the independence. It has pronounced judgements that were overruled or are being overruled. The application of fundamental rights should be extended to private authorities in my opinion. Reason s for such applicability includes the example of miscarriage of justice in the case of **Ajay Hasia v.**

[20] AIR 1993 SC 477

 [ISSN 2581-5369]

Khalid Mujib[21]. The straight jacket formula applied in that case was not enough to include the private entities carrying out the quasi-governmental functions. The definition of State given under Article 12 of the Constitution is not wide enough to keep a check on the violations of fundamental rights done by such private authorities carrying out important public functions. Such authorities that have effects on the life of the community and welfare of its people shall be regarded as State. Even though the burden upon the Supreme Court and the High Courts would be increased as a result of such inclusion, the District Courts shall also be allowed to issue writs to lower the burden of the higher judiciary. As very rightly stated in the case of Maneka Gandhi v. Union of India[22], that the courts should make attempts to expand the reach and ambit of such private authorities instead of restricting their content and meaning.

V. JUDICIAL REFORMS IN INDIA

Besides the case laws that have been set as precedents, besides the working of Judiciary and developing on its own, there have been external and internal factors that have led to certain judicial reforms. Beginning from the case of **Union of India v. Sankalchand Sheth,**[23] wherein it was held that under Article 222, the word 'consultation' meant full and effective consultation. Consultation does not mean concurrence and the President is not bound by it. In the case of **S.P. Gupta v. Union of India**[24] popularly known as the judges transfer case, the decision of Sankalchand Seth's case was upheld.

In in **Re presidential reference,** also known as transfer of judges' case 3[25] the Constitution 99th Amendment Act 2014 added three articles namely 124A, 124 B and 124C. It also amended Articles 124(2), 127 and 128. The provisions of National Judicial Appointments Commission was added under Article 124A which provided that a commission which is to be known as National Judicial Appointment Commission shall consist of the Chief Justice of India (chairperson ex-officio), 2 other senior judges of the Supreme Court next to the Chief Justice of India who are to be members (ex-officio), the Union Minister in-charge of law and Justice member (ex-officio) and 2 eminent persons to be nominated by the Committee consisting of the Prime Minister, the Chief Justice of India and their leader of Opposition in the House of the People or where there is no such leader of opposition, then the leader of single largest Opposition party in the House of the People.

[21] 1981 AIR 487
[22] 1978 AIR 597
[23] AIR 1977 SC 2328
[24] AIR 1982 SC 149
[25] AIR 1999 SSC 1

 [ISSN 2581-5369]

The functions of the National Judicial Appointments Commission included the recommendation to be made of persons for appointment as Chief Justice of India, judges of the Supreme Court, Chief Justice of the High Court and other judges of the High Courts to determine the transfer of any such Judge and to ensure that the person recommended is of ability and integrity.

In the very next year that is 2018, in the case of **Supreme Court advocates on record Association v. Union of India**,[26] the Supreme Court declared the Constitution (99th Amendment) Act, 2014 and the establishment of National Judicial Appointments Commission Act, 2014 as unconstitutional and void. What was followed prior to the 99th Amendment Act, which is the collegium system was to be operative.

What was more dangerous in the National Judicial Appointments Committee Act, 2014 was that it breached the basic structure of the Constitution in context of independence of the Judiciary and separation of powers. It had given veto power to any two members of National Judicial Appointments Committee which would have impacted the privacy of judiciary in the matters of selection and appointment of judges to the higher judiciary.

Instead of passing the National Judicial Appointments Committee Act, 2014 the Parliament would have taken the path of Article 368 through which it would have provided alternative methods or procedure for the appointment of judges to the higher judiciary. But since the National Judicial Appointments Committee Act, 2014 was affecting the separation of powers and independence of the judiciary which are considered to be the core components of the basic structure of the Constitution, this could not have been allowed to remain in force.

Judicial Backlog

If we talk about the judicial reforms in India, we can notice that since independence, Judiciary has been working indeterminate to ensure that justice is being provided to all but the problem lies with the delay in justice. Lacs of cases are pending since years. A few of them are 20 years old, 10 years old cases which are still pending in front of the judiciary. The strength of the Supreme Court has been increased but what about the strength of the High Courts and lower judiciary. In fact, the strength comes second, firstly the required number of judges are not even present. Their seats are vacant so how can we even think of getting off the burden over the judiciary!

[26] 2015 SCW 5457

 [ISSN 2581-5369]

Judicial corruption

Judiciary in India is considered to be the second most corrupt profession. There are many known reasons and no idea of the number of those which are yet to be discovered. No doubt there are judges who are honest, hardworking and intelligent yet the fact remains undisputed that number of judges get influenced inappropriately in their decision making.

Adjournment is an exception but not a rule but in the recent judicial trends, adjournment has shifted to being a rule. Now there are cases which are impacted by political gains. A case which can effectively and efficiently decided within a year at maximum, takes years to come to a conclusion. The purpose of restoring justice is failed because of such gains, be it political or the judicial itself. Delivering of judgements within the time frame, i.e. to say, justice is not delayed and so not denied has become an exception. Seldom is there any case which is decided within justifiable time. Adjournment has become a rule. Every case is adjourned and most of them are adjourned till the death of the party are the petitioner.

On 24th April 1973, when the then Chief Justice of India Justice Sikri got retired, Justice A.N. Ray was made the Chief Justice of India thereby ignoring the fact that 3 Justices Shelat, Grover and Hegde JJ were next in seniority after CJI Sikri. Another instance could be given is of Justice H.R.Khanna whose dissenting view in the case of ADM Jabalpur v. Shivkant Shukla (4:1) was appreciated. But just because of this dissenting view against the Government led to the making of Justice Beg as the Chief Justice of India despite the fact that Justice H.R. Khanna was the senior most judge in the Supreme Court at that time. What justice Khanna favoured was that at the time of National Emergency, no government can take away the rights from the Judiciary to entertain the cases of violation of fundamental rights.

None of us will be unaware of the transfer case of the Chief Justice of High Court of Tamil Nadu, Justice Vijay Kamlesh Tahilramani to the Meghalaya High Court.

As has been very rightly stated in the 230th Law Commission Report that there must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code. The recommendations in this Report are the suggestions made by the Hon'ble Shri Justice Ashok Kumar Ganguly, a Judge of the Supreme Court.

It is being observed that where the retired or serving judges of Supreme Court or the High Courts are serving members of any Commission or Organization, the seat at such Commission or Organization remains vacant till the required ex-officio member is retired.

 [ISSN 2581-5369]

The vacancy of seat is in fact forced by the judge member so that he can assure his own seat. This is a part of judicial corruption where either using the judicial power or the monetary power, these seats are not filled thereby affecting the fair imparting of justice.

Or as it appears in the worst case, the recent cases of lower examination, wherein the selected candidates are either relatives or known of the higher judiciary judges or the money works well here for purchasing of seats or buying and selling of the leaked question papers. Judicial processes should not be used for political gains.

Judicial overreach

Being protector of civil rights, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect fundamental rights given under Part 3 guaranteed by the Constitution of India in general and Article 21 in particular. Therefore, any such precedent established by the Judiciary that is in the very nature not only protecting the fundamental rights but also the justice in social, economic and political matters. And such an act by judiciary shall not be over counted in judicial overreach.

For example, in the case of **Swaraj Abhiyan (I) v. Union of India**[27], the Supreme Court regarding the declaration of the drought in the State held- no judicial standards can be laid down for the declaration of the drought in the State but not withstanding the absence of judicial manageable standards, the judiciary cannot give a totally hands-off response. In view of Article 21 of the Constitution, the judiciary and must consider issuing appropriate directions should a State Government or Union of India fail to respond to a developing crisis or crisis in the making but there is lakshman rekha that must be drawn.

But yes, at the same time there have been instances of interference being unnecessarily made by the judiciary. And not only by the judiciary, but also by other organs of the Government.

In exceptions to the Rule of Law, we have learnt that ministers and executives are given wide discretionary powers by the Statutes wherein a Minister may be allowed by the Law 'to act as he thinks fit' or if he is satisfied' such power is being abused. Today, a large number of legislations is passed in the form of delegated legislation, i.e. rules, orders or statutory instruments made by ministers and other bodies and not directly by the Parliament.[28]

When the Parliament under Article 124C included that the Parliament may by law regulate the procedure for the appointment of Chief Justice of India and other judges of the Supreme Court and High Courts, the manner of selection of persons for appointment and such other

[27] AIR 2016 SC 2929
[28] Dr. J.N. Pandey- Constitutional Law of India, pp. 85-86 (54th Edition)

 [ISSN 2581-5369]

matters as may be considered necessary by it, the use of these words 'such other matters considered necessary by it' are vague and definitely impacts the independence of judiciary. Such other matters may include anything. If it is 'considered' by the Parliament, then how judiciary in India can be freed and separated from the other two organs of the government.

Just like we have discussed the parliamentary overreach for the passing of the National Judicial Appointments Committee Act, 2014, in the same manner the Judiciary has also at times overreached its ambit of power and working. At times it is the lawmakers who feel that Judiciary crosses its limits for the purpose of interpreting the law.

Sometimes it is the concept of judicial review that is being misunderstood as being judicial overreach. Now it's been a long time since the Indian judiciary has acquired the role of an active judiciary in the form of judicial activism earlier known as Judicial review this concept was first introduced in the case of **Marbury v. Madison**[29] in USA.

Independence of Judiciary

In a country, which follows the Rule of Law, independence of the judiciary is sacrosanct. There can be no Rule of Law, there can be no democracy unless there is a strong, fearless and independent judiciary. This independence and fearlessness is not only expected at the level of the Superior Courts but also from the District judiciary." The Supreme Court emphasised that High Courts are "*the protectors and guardians of the judges falling within their administrative control"* and exercise disciplinary power over subordinate courts under their jurisdiction. [30]

The independence of Judiciary can be said to be directly linked with the human rights in order to be a perfect example of a democratic government in the 21st century. It should be ensured that the judiciary is independent from any arbitrary control. It should be allowed to work as per the constitution and to uphold the spirit of constitutionalism.

VI. CONCLUSION

The constitution operates as a fundamental law the government organs and owe their origin to the constitution and derive their power from and discharge their responsibilities within the framework of the constitution. the union Parliament and the state legislature are not sovereign the validity of a law weather Union or state is it judged with reference to their respective jurisdictions as defined in the constitution. The Judiciary has power to declare a law

[29] 5 U.S. 137

[30] Shruti Mahajan, What the Supreme Court held on initiation of disciplinary proceedings against Judicial Officers, BAR & BENCH (December 6, 2020, 10:24 am) https://www.barandbench.com/news/what-the-supreme-court-held-on-initiation-of-disciplinary-proceedings-against-judicial-officers

unconstitutional if the law is found to have contravened any provision of the constitution.

As it is already mentioned stated in the Preamble of our constitution that 'We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist Secular Democratic Republic and to secure to all its citizens justice social economic and political , liberty of thought expression belief faith and worship, equality of status and opportunity..... Enact and give to ourselves this Constitution. The judiciary has always tried to protect the Preamble which is the part of the basic structure of the Constitution, the fundamental rights, the Directive Principles of State Policy, fundamental Duties. Seldom can be said that Judiciary has failed on its part. However there have been certain criticisms on various acts of the judiciary but it's not that the Judiciary is the only organ to overreach its Ambit of the Parliament, the legislators have also at times done the same mistake. Therefore, to have a free and fair justice system in India, it is required by the three pillars of the government to act judicially so as to reduce conflict.

 [ISSN 2581-5369]