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A JUDICIAL REVIEW ON STRENGTHENING CONSTITUTIONAL RIGHTS AND DEMOCRACY IN INDIA

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ABSTRACT

This judicial review critically examines the evolving landscape of constitutional rights and democracy in India, focusing on the role of the judiciary in safeguarding and enhancing these fundamental principles. The Indian Constitution, a beacon of democracy, enshrines a comprehensive set of rights aimed at fostering justice, liberty, equality, and fraternity among its citizens. However, the dynamic nature of society necessitates constant scrutiny and adaptation to ensure the relevance and effectiveness of these constitutional provisions. The review delves into landmark judicial decisions that have shaped the trajectory of constitutional rights and democracy in India. It analyzes cases that have addressed issues such as freedom of expression, right to privacy, equality before the law, and social justice. Additionally, it explores the judiciary's response to emerging challenges, including the intersection of technology and rights, social inequalities, and the protection of marginalized communities. Furthermore, the review examines the relationship between the judiciary and other branches of government, emphasizing the importance of checks and balances in preserving the democratic fabric. It scrutinizes instances where the judiciary has played a pivotal role in upholding the constitutional principles against potential encroachments by the executive and legislative branches, contributing to the overall resilience of Indian democracy. The study also investigates the efficacy of legal mechanisms, such as Public Interest Litigations (PILs), in addressing systemic issues and promoting social justice. It evaluates the judiciary's proactive stance in responding to public interest concerns, thereby enhancing its role as a guardian of constitutional values.

I. INTRODUCTION

During our freedom struggle, the leaders of the freedom movement had realised the importance of rights and demanded that the British rulers should respect rights of the people. The Motilal Nehru committee had demanded a bill of rights as far back as in 1928. It was therefore, natural that when India became independent and the Constitution was being prepared, there were no two opinions on the inclusion and protection of rights in the Constitution. The Constitution listed the rights that would be specially protected and called them 'fundamental rights'. The word fundamental suggests that these rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Fundamental Rights are so important that the Constitution itself ensures that they are not violated by the government. Fundamental Rights are different from other rights available to us. While ordinary legal rights are protected and enforced by ordinary law, Fundamental Rights are protected and guaranteed by the constitution of the country. Ordinary rights may be changed by the legislature by ordinary process of law making, but a fundamental right may only be changed by amending the Constitution itself. Besides this, no organ of the government can act in a manner that violates them. As we shall study below in this chapter, judiciary has the powers and responsibility to protect the fundamental rights from violations by actions of the government. Executive as well as legislative actions can be declared illegal by the judiciary if these violate the fundamental rights or restrict them in an unreasonable manner. However, fundamental rights are not absolute or unlimited rights. Government can put reasonable restrictions on the exercise of our fundamental rights.

Right to Equality

- Equality before law – equal protection of laws
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth – equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- Equality of opportunity in public employment Abolition of Untouchability
- Abolition of titles

Right to Freedom

- ✓ freedom of speech and expression;
- ✓ assemble peacefully;
- ✓ form associations/unions;
- ✓ move freely throughout the territory of India;
- ✓ reside and settle in any part of India;
- ✓ practise any profession, or to carry on any occupation, trade or business.

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- Protection in respect of conviction for offences
- Right to life and personal liberty
- Right to education
- Protection against arrest and detention in certain cases

Right against Exploitation

- Prohibition of traffic in human beings and forced labour
- Prohibition of employment of children in hazardous jobs Right to Freedom of Religion
- Freedom of conscience and free profession, practice and propagation of religion
- Freedom to manage religious affairs
- Freedom to pay taxes for promotion of any particular religion
- Freedom to attend religious instruction or worship in certain educational institutions Cultural and Educational Rights
- Protection of language, culture of minorities
- Right of minorities to establish educational institutions Right to Constitutional Remedies
- Right to move the courts to issue directions/orders/writs for enforcement of rights

II. RIGHT TO CONSTITUTIONAL REMEDIES

One would agree that our Constitution contains a very impressive list of Fundamental Rights. But merely writing down a list of rights is not enough. There has to be a way through which they could be realised in practice and defended against any attack on these rights.

Right to constitutional remedies is the means through which this is to be achieved. Dr. Ambedkar considered the right to constitutional remedies as 'heart and soul of the constitution'. It is so because this right gives a citizen the right to approach a High Court or the Supreme Court to get any of the fundamental rights restored in case of their violation. The Supreme Court and the High Courts can issue orders and give directives to the government for the enforcement of rights. The courts can issue various special orders known as writs. ± Habeas corpus: A writ of habeas corpus means that the court orders that the arrested person should be presented before it. It can also order to set free an arrested person if the manner or grounds of arrest are not lawful or satisfactory.

Mandamus: This writ is issued when the court finds that a particular office holder is not doing legal duty and thereby is infringing on the right of an individual.

Prohibition: This writ is issued by a higher court (High Court or Supreme Court) when a lower court has considered a case going beyond its jurisdiction.

Quo Warranto: If the court finds that a person is holding office but is not entitled to hold that office, it issues the writ of quo warranto and restricts that person from acting as an office holder.

Certiorari: Under this writ, the court orders a lower court or another authority to transfer a matter pending before it to the higher authority or court.

National Human Rights Commission (NHRC)

The real test of the rights given by any constitution is in their actual implementation. The poor, illiterate and the deprived sections of the society must be able to exercise their rights. Independent organisations like the People's Union for Civil Liberties (PUCL) or People's Union for Democratic Rights (PUDR) have been working as watchdogs against the violations of rights. In this background, the government has established in 1993 an institution, the National Human Rights Commission. The National Human Rights Commission (NHRC) is composed of a former chief justice of the Supreme Court of India, a former judge of the Supreme Court, a former chief justice of a High Court and two other members who have knowledge and practical experience in matters relating to human rights. The Commission's functions include inquiry at its own initiative or on a petition presented to it by a victim into complaint of violation of human rights; visit to jails to study the condition of the inmates; undertaking and promoting research in the field of human rights, etc. The Commission receives complaints in thousands every year. These relate to custodial death, custodial rape, disappearances, police excesses, failure in taking action, indignity to women, etc. Its most significant intervention has been on disappeared youth in Punjab and investigation and trial of Gujarat riot cases where its intervention proved effective. The Commission does not have the power of prosecution. It can merely make recommendations to the government or recommend to the courts to initiate proceedings based on the inquiry that it conducts.

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Fundamental Duties of citizens

In 1976, the 42nd amendment to the Constitution was passed. Among other things, this amendment inserted a list of Fundamental Duties of Citizens. In all, ten duties were enumerated. However, the Constitution does not say anything about enforcing these duties.
± As citizens, we must abide by the Constitution, defend our country, promote harmony among all citizens, protect the environment.
± However, it must be noted that our Constitution does not make the enjoyment of rights dependent or conditional upon fulfilment of duties. In this sense, the inclusion of fundamental duties has not changed the status of our fundamental rights.

Democracy, Separation of Powers and the Judiciary

In a democracy, the Constitution reigns supreme, with the Judiciary serving as its guardian. Democracy allows people to participate in decision-making through elected representatives or direct involvement. The separation of powers divides governance into three branches: the Legislature makes laws, representing public interests; the Executive enforces laws, led by a President or Prime Minister; and the Judiciary interprets and applies laws, ensuring constitutional compliance and safeguarding rights. This separation prevents the concentration of power. In parliamentary systems like India, the Executive and Legislature are interdependent. The Judiciary acts as a vital check, upholding the Rule of Law and protecting against power abuses, ensuring a balanced democratic system.

III. ROLE OF AN JUDICIARY IN DEMOCRACY

India is the largest democracy in the world and any healthy democracy cannot thrive without an independent Judiciary. As a safeguard against potential violations of the Rule of Law, an independent Judiciary provides the guarantee that justice is carried out impartially. As Dr. B.B. Chawdhry writes, "Justice which is the soul of the state must be administered without fear or favour."

Various provisions have been included in the Indian Constitution to ensure an independent Judiciary. This includes the appointment of judges, salary and allowances, procedures on removal and even the power to penalise in case of violation of law.

The importance of an independent Judiciary is highlighted for various reasons. Firstly, the Judiciary serves as the first line of defence against any excessive or unauthorised power of the Executive or the Legislative branch, providing a system of checks and balances. Furthermore, the Judiciary examines and if needed, invalidates any law that violates the Indian Constitution by declaring it null & void. This prevents any centralisation of power. An impartial judicial system is essential for defending the rights of minorities & other marginalised groups in a multicultural and diversified nation like India. In addition, a strong independent Judiciary is essential to maintaining the Rule of Law. It ensures that everyone is governed by the same set of laws, irrespective of their position or power.

IV. JUDICIAL REVIEW

The Judiciary has the power to review any law or executive action that it considers violating the provisions of the Constitution. This power is exercised through the process of judicial review, which is the power of the Judiciary to declare a law or executive action unconstitutional. This power of judicial review has been instrumental in shaping the Constitution of India and ensuring that the provisions of the Constitution are implemented effectively. Judicial review is adopted by the Constitution of India from the Constitution of the USA.

In India, judicial review is broad in scope and deals with a variety of issues. The Supreme Court has the power of Judicial Review in various ways, including when there is a conflict between the Centre and States, or when there is a violation of the jurisdiction exercised by the Legislature and Executive. Most importantly, the Supreme Court is the guardian of Fundamental Rights. It protects the fundamental rights of Indian citizens, through issuing various writs provided under Article 32.

Some landmark cases are as follows;

Keshavananda Bharati vs. State of Kerala (1973)

An important turning point in Indian constitutional history was highlighted by this landmark case when the Supreme Court established the "basic structure doctrine." The Court ruled that although Parliament has the authority to amend the Constitution, it cannot change its basic structure. This historic decision outlined basic principles that serve as the cornerstone of Indian constitutionalism.

Indira Gandhi vs. Raj Narain (1975)

In this instance, the Supreme Court rendered a significant decision that made the proclamation of an emergency in India unlawful. The Court's ruling upheld the fundamental idea that nobody- not even the Prime Minister is above the law and the Constitution.

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Maneka Gandhi vs. Union of India (1978)
By emphasising that any law denying a person their life or personal liberty must be just, fair, and reasonable, this case broadened the definition of personal liberty. It developed the idea of "procedure established by law" under Article 21, to ensure that any procedure established by law must be fair and just.

Vishakha vs. State of Rajasthan (1997)
This significant case involved workplace sexual harassment and prompted the creation of guidelines (known as the Vishaka guidelines) to address and avoid it. Through this ruling, the Court closed a gap in the law and set the stage for legislation to deal with workplace harassment.

Union of India v. Navtej Singh Johar (2018)
By invalidating Section 377 of the Indian Penal Code, which classified homosexuality as a crime and described it as 'carnal intercourse against the order of nature', the Supreme Court in this case decriminalised homosexuality. The ruling marked a key turning point in the acceptance of the LGBTQ+ community's rights.

Judicial Activism and PIL
Judicial Activism, born in the United States, empowers the judiciary to proactively protect citizens' rights by going beyond rigid interpretations of laws or the Constitution. It bridges legislative gaps, ensuring the safeguarding of fundamental rights when the legislature falls short. It adapts legal principles to evolving societal needs and acts as a check on executive authority, preventing overreach. This activism defends democracy, minorities, and marginalized groups while promoting equality, social justice, and good governance.

Public Interest Litigation (PIL) in India empowers citizens to address issues affecting the public at large, not just individually. The judiciary has actively used PILs to champion environmental protection, sustainable development, and wildlife preservation. It has been instrumental in upholding individual liberties, including the right to privacy, freedom of speech, and combating discrimination. Landmark judgments have also advanced education, women's rights, and decriminalized homosexuality, leading to significant social change.

Challenges
- Critics argue that Judicial Activism could weaken the separation of powers, leading to Judicial Overreach when the Court obstructs the legislative and executive branches.
- The Indian judicial system faces a significant backlog of cases, delaying justice and eroding public confidence. While some reforms have been initiated, more extensive changes are needed.
- Many Indians, especially disadvantaged groups, struggle to access legal services due to factors like limited legal knowledge, financial constraints, and inadequate infrastructure. To address this, efforts are needed to enhance legal literacy, provide affordable legal assistance, and make the legal system more user-friendly.

V. CONCLUSION
In conclusion, the Judiciary is a crucial component of Indian democracy and plays a far larger role than simply reading the law. It is the foundation of justice, defending personal freedoms, enforcing responsibility, and supporting the Rule of Law. However, issues still exist, including the need for better accessibility and the backlog of cases. A dynamic democracy like India must keep improving its judicial system, promoting transparency, and fortifying the systems that provide justice for all. The Court will continue to flourish as a bulwark of democracy through such initiatives, directing India toward a future of justice, equality, and the preservation of democratic ideals.

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