

Original Article**The Role of Judiciary in India: If Balancing Activism or Working Under the Influence of Politics?****Reetika Bansal¹, Vertika Bansal²****Author Affiliation**

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Abstract

"The wheels of Justice are known to grind very slowly. But turn they do, although in many cases the wait may involve years if not decades."

Judiciary is the third very important organ of Indian Government. Other two organs are Legislature and Executive. Their functions are making of laws and execution of laws respectively. It is the backbone of the government because whenever there is a dispute between the Center and State, between State and the citizens and among the states, Judiciary is the only organ which controls the dispute and pass judgment. Judgment passed by the Judiciary is binding on all whether it may be citizens or government. Judiciary is the guardian of the human rights, protector of the constitution and promoter of peace and cordiality in India. It checks and balances the legislative or executive actions of the Government. It is very difficult to answer the question that whether Judges in India are free from political influence? As we all know that it is the sole responsibility of Supreme Court and high Courts in India to protect the Fundamental Rights of Citizens in our country. So, it is natural that wide powers should be given to the Courts so that they will maintain harmony and attain the objective set out in the Preamble of the constitution. If the judges become partial or if they work under the influence of politicians, the whole system will paralyze. In this article an effort has been made by citing various examples which shows that judiciary is playing its role impartially or without any kind of political influence. Role played by the Judiciary is highly appraisable. It is moving its approach from outdated methods of punishment towards innovative methods of punishment. In all over the world this effort of our Judiciary found recognition and appreciation.

Keywords: Judiciary; Activism; Supreme Court; Fundamental Rights.

How to cite this article:

Reetika Bansal, Vertika Bansal. The Role of Judiciary in India: If Balancing Activism or Working Under the Influence of Politics? Indian J Law Hum Behav. 2019;5(2):177-182.

Introduction

The constitution of India is the largest Constitution of the world. It provides three main organs upon which the democracy functions. These three organs include (a) Legislature (b) executive (c) Judiciary. Legislature is the law making body. There are two houses i.e. Lok Sabha (The Lower House) and the

Rajya Sabha (The Upper House). Bills are drafted and passed with the majority in the Lok Sabha. Then after passing, the bill moves to the Rajya Sabha for discussion and if it is passed in Rajya Sabha then it moves to the president for taking the assent. Once the assent is given by the President the bill becomes law. Executive is another important organ of the constitution. The role played by the Executive

includes the enforcement of the law. If the law is not enforced literally then the Judiciary has the power to punish the guilty. So, very important role is played by the judiciary i.e. to punish the guilty or the wrong doer. It is, therefore, expected from the judiciary to play its role very cautiously and impartially so that justice should not be denied to anyone on the ground of sex, caste, creed or religion.

This unique three tier system is the basis which makes our constitution the largest constitution in the world.

Role of Judiciary

The Indian Constitution protects the citizens from any partial judgment. That's why supreme power is given to the Judiciary to make decisions based on the rule of law. The courts in India neither are nor controlled by the government and they do not represent any political authority¹.

(a) **Separation of Power:** This independence of Judiciary calls for 'Separation of Power'. This basically means that both the legislature and executive are not allowed to interfere in the functioning of the Judiciary. So, in order to successfully execute their independent authority, the judges of both the Supreme Court and the High Courts must be appointed without any influence on interference from other branches of the government or from private or partisan interests.

(b) **Structure of Courts:** The Judiciary is one of the three lynchpins of a democracy, the other two being the legislature and the executive.² All three work in the concert to ensure that the democratic system works efficiently. However, the executive and the legislature need checks on their power. Judiciary has many important roles to fulfill which includes:

- (i) To act as guardian and interpreter of the constitution.
- (ii) To protect fundamental and other rights of the citizens of India.

To fulfill the duty imposed on the shoulders of judiciary, the judicial system is divided into three levels of Courts in India.⁴

- **District Court:** It is the lowest court situated in every district of each State. This is where most citizens go to for any dispute in their city or religion.

- **High Court:** Each state has its own High Court, which is most certainly the highest judicial authority of the state. Any person aggrieved by the order of the District Court can appeal to the high Court for its grievances.

- **Supreme Court:** This is the Apex Court in a country. All other Courts including High Courts and the District Courts are subordinate to it. The decisions made by the Supreme Court stands above all other subordinate courts. Decision passed by the Supreme Court is final and binding on the parties.

(c) **Dispute Resolution:** The courts also have the right to punish people for the crimes they commit. Almost every social situation which needs a rule is managed by the Judiciary. So, whenever there is a dispute, the courts intervene in providing solutions. Whether that dispute may be between citizens, citizens and government or between two governments or even the central and state government, the State is responsible for dispute resolution.

(d) **Judicial Review:** The judiciary has the final hold on the Constitution of India. As such, if there is any violation of the fundamentals of the Constitution, the court can even over write laws passed by the Parliament. This process is called Judicial Review.⁴

(e) **Upholding the Law and Enforcing Fundamental Rights:** Almost all fundamental rights of Indian Citizens are defined in our Constitution. In case, any citizens feel that any of such rights are violated, they can approach their local High Courts or the Supreme Court under Articles 226 or 32 of the Constitution.

Judiciary under Indian Constitution

Judiciary under Indian Constitution plays a pro vital role. Its achievement has been significant in all areas of the nation's life. As it is one of the powerful institutions of the world, it decides cases touching all facts of human life and relationship. It is the guardian of the human rights, protector of the constitution and promoter of the peace, cordiality and balance between different organs of the government. The Constitution of India which was drafted by the Constituent Assembly and which came into force on 26th January 1950 contains number of provisions that deal with structure, functions and power of the

judiciary. It introduced a unified system in all the States and Union Territories. It virtually introduced a three tier judicial system viz. the Supreme Court, the High Courts in every States and Union Territories.

The degree of intervention of judiciary may depend on the legal system followed in Different countries of the world. For example, in Britain, as there is no written Constitution, the Judiciary may exercise only limited powers of judicial review *Vis-a Vis* the delegated legislation and ministerial action of the government. So, the law of the judiciary in Britain is of law application and law interpretation.

In USA, the judiciary is considered as the supreme body over the legislature and executive. The Constitution of USA enables the judiciary to check the other two organs if they indulge in any excess.⁵

However, in India, the judiciary has come to exercise vast powers of Judicial Review in respect of the legislative and executive functions of the State and of the judicial actions of the Judiciary. The Supreme Court and High Court in India not only act as the arbiters to determine or resolve the disputes that may arise between the Centre and State but it also protect and enforce the fundamental rights of the citizens against arbitrary action of the States. They also interpret the laws made by the legislature. The verdict of the Supreme Court is final if by any act of the legislature or Executive, any Fundamental rights or human rights are abridges.

Very unique feature of the Indian Apex Judiciary is that it has the power to determine the validity of constitutional amendments which perhaps is seen nowhere under any other constitution, whether codified or un codified.

In nutshell, the judiciary generally performs one or many of the following functions in constitutional democracies:-

1. Interpreting the constitution with due difference to the wishes of the framers of the constitution.
2. Upholding the federal principle of maintaining the balance between the various organs of the government or between center and the states.
3. Guarding and protecting the fundamental rights of the citizens.
4. Applying and interpreting the laws made by the legislature.
5. To check and balance the legislative or executive actions of the government.
6. Under Article 32 and 226 the Supreme Court

and the High Court respectively has the power to issue writs or orders for achieving the objectives of those articles.

7. Through Public Interest Litigations, Judiciary has the power to ask the government about the implementation of the schemes run by the government. For example, in *Direction in Common Cause v. Union of India*⁶, the Apex Court laid down directions for how blood should be collected, stored and given for transfusion and how blood transfusion could be made free from hazards.

Again in *M.C. Mehta v. Union of India*⁷, the Supreme Court issued directions to the government to disseminate knowledge about environment through slides in cinemas, theatres or special lessons in schools or colleges.

In a very popular case⁸ the Apex Court laid down directions as to how children of prostitutes should be educated.

Similarly, directions in the *Azad Rickshaw Puller's Case*⁹ were issued by the Supreme Court to the Punjab National Bank to advance loans to the rickshaw pullers and contain a whole scheme for the repayment to such loans.

However, Chief Justice J.S. Verma in *Vishakha and Others v. State of Rajasthan*¹⁰ said, "The primary responsibility for ensuring the safety and the dignity of the citizens through suitable legislations and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however instances of violation of fundamental rights of citizens taken place then some guidelines should be laid down for the protection of this right to fill the legislative vacuum."

Is Indian Judiciary Really Free from Political Influence?

It's a very difficult question to be answered. A political influence can be removed from a system if you remove the politicians from it. The Supreme Court is the guardian of the constitution. It has the sole responsibility to protect the fundamental rights of every citizen of our country but the transparency of the judiciary depends on the Honorable Judges and their appointments.

Let's take the following points into consideration:

1. Till August 2014, the appointment of the Judges was done by the Collegium System.¹¹ With this system for the appointments of the judges, the judiciary has nothing to do with

the politicians and their opinion and was completely out of the political influence.

Then comes a turning point.¹² There is a commission called as National Judicial Appointments Commission (NJAC). This body is responsible for the appointment and transfer of Judges to the higher Judiciary in India. The NJAC was established in India by amending the constitution of India, through the Ninety-Ninth Constitution Amendment, Constitution (Ninety-Ninth Amendment) Act, 2014 passed by the Lok Sabha on 13th Aug, 2014 and by the Rajya Sabha on 1st Aug, 2014.

Within one day only both the houses passed the above stated bill.

(a) *Composition of NJAC:* Let's have a look over the composition of NJAC:

As per the amended provisions of the constitution, the NJAC will consist of the following six persons:

1. Chief Justice of India (*Chairperson, ex-officio*).
2. Two other senior Judges of The Supreme Court next to the CJI (*ex-officio*).
3. The Union Minister of Law and Justice (*ex-officio*) (This is the source of political influence).
4. Two eminent persons.¹³

Now we can make a prejudice that how would it be out of the political influence? Can our Judges be able to provide a fair and fearless decision to the common man against politicians?

The answer in the general pretext is NO. The Judiciary is not free from the political influence. It is well known in legal circles that certain Judges outright favour particular political affiliations and it is a source of bitterness within the Bar.

But *directly* Indian Judiciary is free from any kind of political influence. There are so many examples in common law where we feel proud on our Judiciary or on our Judicial System.

Indian judges took appraisable decision in strict to strict cases. It is the organ which always retains faith in the public *in rem*.

Let's discuss some of the cases in detail.

1. The first case which is important to cite here is that the Apex Court asked Mayawati (Bahujan Samaj Party's Supremo) to return the money-approximately ₹ 2000/- Crores from her own pocket¹⁴.

A Public Interest Litigation (PIL) was filed by advocate Ravi Kant in 2009 in the Apex Court. CJI Hon'ble Ranjan Gogoi heard the petition and asked

Sushri Mayawati to pay ₹ 2000/- Crores from her own pocket.

A verdict in case could settle once and for all the issue on spending public money on building elephant statues, including her own, in Lucknow and Noida during her tenure as Chief Minister of U.P.

Although BSP Supremo Sushri Mayawati in her own verdict said that her statues represent the Dalit struggle, there was proper budgetary allocation to build the statues and as far as elephant's are concerned, elephants do not only represent BSP. They are an architectural symbol used in Indian Traditional architecture.

This case shows that our Judiciary is totally free from political influence despite the fact that the person is president of any political party or any influential group.

2. Another important case which is important to cite here is the case of Bihar's Chief Minister Nitish Kumar and his involvement in the murder of a Congress worker, Sitaram Singh on November 16, 1991 case¹⁵. Although the Bihar's Chief Minister consider it nothing but "Political Vendetta".

One Ashok Singh, who claimed to be a relative of Sitaram, alleged against Nitish Kumar and several others of hatching a conspiracy to kill Sita Ram in order to win the elections.

On 15th March 2019, Justice A Amanullah of Patna high court set aside the criminal proceedings initiated against Bihar Chief Minister Nitish Kumar by a lower court in a 28 years old murder case.¹⁶

This case cited an example of faith reposed in Judiciary by a citizen of India.

3. In July 2017, Nitish kumar again faced a new problem. One Mr. M.L. Sharma, a lawyer in Delhi had filed a PIL in the Supreme Court seeking cancellation of Kumar's election to the Bihar Legislative council on the ground that he had allegedly cancelled the pending criminal case against him in the affidavit he filed before the election commission.

Sharma also claimed that Kumar had hidden his criminal records while filing election affidavit since 2004, except in July 17.

However, on the basis of the submission made by the Election Commision, Supreme Court dismissed Sharma's PIL by saying that it was "devoid of any merit".

4. Justices B.K. Roy and N. Sud of Punjab and Haryana High Court in *Court on its Own Motion v. Ajay Bansal and Ors.*¹⁷ Observed that

"Those who attack the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself. In the very nature of things, it cannot engage itself in an open war nor indulge in releasing contradictions."

5. Judiciary in India is free from political influence, popularity of a person and on how important and prestigious position one occupied. Judiciary passed its verdict free from any kind of influence.

On February 12, 2019 Hon'ble Chief Justice of India Ranjan Gogoi passed an unprecedented verdict. He ordered former interim director of the CBI, M. Nageswara Rao and the agency's legal advisor, S. Bhasuran, to sit "*in the corner of the court room*" for Contempt of Court till it rose for the day.¹⁸ They were also directed to pay Rs. 1 Lakh each as a fine within a week. Their offence was that they "willfully" disobeyed orders of the court not to transfer an investigating officer probing the Muzzafarpur Shelter Home Abuse Case.¹⁹

Their apology was hardly convincing to the court as they insisted in their affidavit that the officer concerned, A.K. Sharma, a joint Secretary was transferred because it was a promotion and that they assumed that they could get the court's consent for it retrospectively.

Although the Court has the power to sentence a contemnor to sit in the court room till it rises for the day, to ask someone to sit in a corner of the courtroom, as if to humiliate him, is unheard of.

The Chief Justice of India's unconventional order was similar to others passed by Judges elsewhere.

6. Another landmark judgment where we can say that judiciary is free from political influence is where Justice Nazmi Waziri of Delhi High Court ordered five respondents in the famous 2G Appeal Case to plant 3000 trees each for seeking more time to file their responses.²⁰

They were Swan Telecom Private Ltd's Promoter, Shahid Balwa, Director of Kusegaon Fruits and Vegetables Pvt. Ltd. Rajeev Agarwal and the three films, Dynamic Realty, DB Realty Ltd. and Nihar Constructions Pvt. Ltd.

Justice Waziri directed them to appear before the Deputy Conservator of Forests (DCF) on February 15 for planting the trees in Delhi's South Ridge Forest Area. The DCF was asked to allot them the land for their exercise. The companies

were to be represented through their authorized signatories.

Justice Waziri also ordered the private secretary to former Union Minister A Raja to plant 300 trees, allowing him to file his response in the case as a last opportunity.

The Court stipulated that the plants should be indigenous, three and half years of nursery age and six feet in height. The respondents were asked to submit photographic proof in the court ensuring the plant's good health.

Conclusion

The Supreme Court in Indian Democracy plays a pivotal role. It is the highest court in the Indian Judiciary system and one of the three coequal branches of the national government. It has primary, though not exclusive responsibility for interpreting the Indian constitution and for defining the scope and content of its key position. As a principle guardian of the constitution, the courts are frequently called upon to assess the validity of statutes passed by legislative majority. The Supreme Court in India also maintains a check and balance on the other two organs of the government.

It is a fact that the judiciary led by the Supreme Court has at times made forays into the typical political arena but it has retracted to its own jurisdiction because of self realization and public outcry.

So in the end this study revealed that the Supreme Court has by and large played its constitutional role very well and has always upheld the principle of constitutionalism. The courts must stay-off from political arena by not donning the political role. They should remember that the court cannot save the country but they may be able only to buy the time necessary for revitalization of other institution of the government. Though it is a very well established fact that the judicial activism of the Supreme Court has helped in enforcing the rights and interests of the citizens and also in keeping the other branches of the government within their constitutional boundaries, the judiciary should constantly remind itself that the need of the hour is the supremacy of the constitutional and not the supremacy of the judiciary.

To sum up the judicial activism in India, it will be very appropriate to quote the words of Dr. A.S. Anand, Chief Justice of India, who said:

"26th January 2000 marks the completion of fifty years of the Supreme Court of India. At this juncture, it is time to weigh that it has contributed and where it has lagged behind. This all the more so when the Supreme Court is the custodian of the Indian Constitution and exercises judicial control over the acts of both the legislature and the executive."

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6. (1996) 1 SCC 753 (Blood Bank Case).
7. AIR 1992 SC 382: (1992) 1 SCC 358.
8. Gaurav Jain v. Union of India, AIR 1990 SC 292.
9. AIR 1981 SC 14.
10. AIR 1997 SC pp 3012-13.
11. "Collegium System" is a system under which appointments and transfers of judges are decided by a forum of the Chief Justice of India and the four senior most Judges of the Supreme Court.
12. <http://www.quora.com>, visited on 21st May 2019.
13. These two eminent persons will be nominated by either CJI or by the Prime Minister (who again is a source of political influence) and leader of opposition in Lok Sabha (source of political influence) or where there is no such leader of single largest opposition then one person would be from the SC or ST or OBC or Minority communities or a woman. The tenure of such eminent persons shall be for a period of three years and shall not be eligible for re nomination.
14. Quoted from Magazine Indian Legal, dated 25th February 2019, PP.18-20.
15. "Inexplicable Delay", an article published in magazine Indian Legal, February' 2019, PP.14-17.
16. www.m.economictimes.com, visited on 5th June 2019.
17. 2004 Cri.L.J.2601.
18. "Innovative Crackdown" an article published in Magazine Indian Legal by Venkatasubramanian, Dated: February' 2019, PP. 30-31.
19. Muzaffarpur Shelter Home Rape Case refers to a shelter home that ran under a non-governmental organization called "Sewa Sankalp Evam Vikas Samiti" at Muzaffarpur, Bihar, where cases of sexual abuse, rape and torture were reported. In a medical examination, sexual abuse of 34 out of 42 inmates living at the shelter was confirmed. FIR was lodged against 12 people on May 31,2018. Brajesh Thakur was the chief of the state funded NGO, ran several other NGOs and a Hindi Newspaper called 'Pratah Kamal'. Because of the political connections of Brajesh Thakur and the involvement of government officials and the apparent delay in investigation and CBI interference, the case drew criticism of Nitish Kumar's Government by opposition and the Supreme Court of India.
20. Supra Note 19.