
INDIAN JUDICIARY: A TOOL FOR GOOD GOVERNANCE AND PROMOTING DEMOCRACY

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ABSTRACT

In strengthening democracy and liberal values in India, the judiciary has played an extremely critical role; From being the guardian of the Constitution, an able protector of rights of the poor and disadvantaged groups against state excesses to an institution of last resort for millions of citizens. It checks and balances the legislative or executive actions of the Government. It is a constitutional paradox to aspire, to secure justice, social, economic and political, to the citizens without securing the infallibility of the dispensers of justice. In this Paper an effort have been made by citing various examples which shows that judiciary is playing its role impartially or without any kind of political influence. The judicial system has an important role to play ultimately in ensuring better public governance. In all over the world this effort of our Judiciary found recognition and appreciation. To suggest any improvements on the basis of findings and observations of the research.

Keywords: Independence, Judiciary, Rule of Law, Constitution, Good Governance.

1. Introduction

“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.”

In strengthening democracy and liberal values in India, the judiciary has played an extremely critical role; From being the guardian of the Constitution, an able protector of rights of the poor and disadvantaged groups against state excesses to an institution of last resort for millions of citizens. With some exceptions, for most of the last 75 years, the Indian Judiciary has been able to protect the Constitution and uphold the rule of law. It continues to be so notwithstanding the numerous ups and downs that it has been seen as a counter-majoritarian institution of governance

One of the most important principles of just democratic governance is the presence of constitutional limits on the extent of government power. Such limits include periodic elections, guarantees of civil rights, and an independent judiciary, which allows citizens to seek protection of their rights and redress against government actions. These limits help make branches of government accountable to each other and to the people. An independent judiciary is important for preserving the rule of law and is, therefore, most important facet of good governance.

Judiciary in India enjoys a very significant position since it has been made the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness etc. but borrowing the words of one of the founding fathers of the American Constitution, James Medison, I would say that the Judiciary in India is *“truly the only defensive armour of the country and its constitution and laws”*. If this armour were to be stripped of its onerous functions it would mean, *“the door is wide open for nullification, anarchy and convulsion”*.

The judicial system has an important role to play ultimately in ensuring better public governance. There may be a plethora of regulations, rules and procedures but when disputes arise, they have to be settled in a court of law. There is no area where the judgments of Supreme Court have not played a significant contribution in the governance – good governance – whether it be – environment, human rights, gender justice, education,

minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution. This is only illustrative.

Indian Judiciary has been pro-active and has scrupulously and overzealously guarded the rights fundamental for human existence. The scope of right to life has been enlarged so as to read within its compass the right to live with dignity, right to healthy environment, right to humane conditions of work, right to education, right to shelter and social security, right to know, right to adequate nutrition and clothing and so on. This has been achieved by filling the vacuum in municipal law by applying, wherever necessary, International instruments governing human rights.¹

Liberty and Equality have well survived and thrived in India due to the pro-active role played by the Indian judiciary. The rule of law, one of the most significant characteristics of good governance prevails because India has an independent judiciary that has been sustained, amongst others, because of support and assistance from an independent bar which has been fearless in advocating the cause of the underprivileged, the cause of deprived, the cause of such sections of society as are ignorant or unable to secure their rights owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies of the State on their respective toes.

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.

2. An Era of Judicial Governance

In 21st century, role of judiciary is not only limited to interpretation but it is seen as a tool for good governance and promoting democracy. Judicial governance allows judges to adjudicate in favour of a progressive society through social engineering. Supreme Court of India adopted the polluter pays principle for environment conservation. It leads to sustainable development with the judicial use of natural resources. Apart from environment, it provides a system of checks and balances for the other organs of the government. Supreme Court of

¹ *Apparel Export Promotion Council Vs. A.K. Chopra* [(1999) 1 SCC 759]; *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241] and *T.N. Godavarman Thirumalpad v. Union of India & Ors.* [(2002) 10 SCC 606].

India laid conditions for the imposition of Governor Rule in states in *S.R. Bommai* Case. Some issues demand different perspective and care which cannot be explicitly derived from Constitution. For example, *Triple talaq* case and *Sabarimala* case judgements ensured equality and women empowerment. During pandemic, Delhi High Court even issued a contempt notice to the Centre on the oxygen issue. Court played its role in micro-management of pandemic, fixing oxygen quota and distribution. Similarly, the Uttarakhand High Court pulled up the state government for allowing the *Kumbh Mela* to go ahead against scientific advice and not following standard operating procedures. According to a study, there is direct correlation between judiciary and economic growth. Thus, judicial governance becomes imperative in democracies.

2.1. Constitutional Safeguards for Good Governance and Promoting Democracy

In the words of Abraham Lincoln, democracy is a government "*of the people, by the people, and for the people.*" Functional democracy has traits of electing the government peacefully and removed by the people through free and fair electoral system. Here, judiciary plays an important role in ensuring free and fair election in India. In this regard, Supreme Court took report of Association for Democratic Reforms (ADR) report into considerations which claims that 43% of the elected MPs in 2019 general election are from criminal background. Consequently, Supreme Court ordered parties to publish criminal history of their candidates for Assembly and Lok Sabha elections along with the reasons for fielding suspected criminals over decent people. In 2017, the Supreme Court of India asked the central government to decriminalise politics by setting up special courts to exclusively try pending criminal cases against politicians in a time-bound manner. Similarly, Supreme Court recognised negative voting as a constitutional right of a voter and directed the Government to provide the 'NOTA' option in electronic voting machines.

The declining quality of parliamentary debates, increasing absenteeism, and low retention rate (only 35% of the MPs were able to retain their seats in general election of 2019) of peoples' representatives, according to ADR report, show the decline of parliamentary democracy. Thus, judiciary has often intervened in matters of legislation through judicial activism by guiding the Parliament. For example, Vishakha guidelines were stipulated by Supreme Court regarding sexual harassment at workplace. Later, Parliament legalized those guidelines through the Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013. Thus, it fills the void created by the legislature.

The Supreme Court has, over the years, elaborated the scope of fundamental rights consistently, strenuously opposing intrusions into them by agents of the State, thereby upholding the rights and dignity of individual, in true spirit of good governance. In case after case, the Court has issued a range of commands for law enforcement, dealing with an array of aspects of executive action in general, and of police at the cutting edge level in particular. Some instances:

- i. Reiterating the view taken in *Motiram*², the Supreme Court in *Hussainara Khatoon*³, expressed anguish at the “travesty of justice” on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that “the procedure established by law” for depriving a person of life or personal liberty (Article 21) also should be “reasonable, fair and just”.
- ii. In *Prem Shankar Shukla*⁴, the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). It observed that “to bind a man hand and foot’ fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture”. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to “manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood...”. The rule thus laid down was reiterated in the case of *Citizens for Democracy*⁵.
- iii. In *Ichhu Devi Choraria*⁶, the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects

² Motiram and others v. State of M.P. AIR 1978 SC 1594.

³ Hussainara Khatoon and others v. Home Secretary State of Bihar AIR 1979 SC 1360.

⁴ Prem Shankar Shukla v. Delhi Administration 1980 SCC 526

⁵ Citizens for Democracy v. State of Assam 1995 SCC 743

⁶ Ichhu Devi Choraria v. Union of India 1980 SCC 531

without trial observing that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.

- iv. In *Nilabati Behera*⁷, the Supreme Court asserted the jurisdiction of the judiciary as “protector of civil liberties” under the obligation “to repair damage caused by officers of the State to fundamental rights of the citizens”, holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the “duty of care” which could not be denied to anyone. For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.
- v. In *Joginder Kumar*⁸, the court ruled that “the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....”.
- vi. In *Delhi Domestic Working Women’s Forum*⁹, the Court asserted that “speedy trial is one of the essential requisites of law” and that expeditious investigations and trial only could give meaning to the guarantee of “equal protection of law” under Article 21 of the Constitution.
- vii. In *PUCL*¹⁰, the dicta in Article 17 of the International Covenant on Civil and Political Rights, 1966 was treated as part of the domestic law prohibiting “arbitrary interference with privacy, family, home or correspondence” and stipulating that everyone has the right to protection of the law against such intrusions.
- viii. In *D.K. Basu*¹¹, the Court found custodial torture “a naked violation of human dignity” and ruled that law does not permit the use of third degree methods or torture

⁷ Nilabati Behera v. State of Orissa 1993 SCC 746

⁸ Joginder Kumar v. State of UP and Others 1994 SCC 260

⁹ Delhi Domestic Working Women’s Forum v. Union of India & Others 1995 SCC 14

¹⁰ People’s Union for Civil Liberties [PUCL] v. Union of India and another AIR 1997 SC 568

¹¹ D.K. Basu v. State of West Bengal, AIR 1997 SC 610

on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”.

- ix. In *Vishaka*¹² Supreme Court said that “gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at all workplaces, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.”

The aforesaid cases are only few examples from numerous judgments concerning human rights. Playing a pro-active role in the matters involving environment, the judiciary in India has read the right to life enshrined in Article 21 as inclusive of right to clean environment. It has mandated to protect and improve the environment as found in a series of legislative enactments and held the State duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of the general public as also for the future generation. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the obligation of the State to anticipate, prevent and attach the causes of

¹² *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) 6 SCC 24

environmental degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment¹³.

Democratic form of Government of the kind adopted by India depends in its success of a system of free and fair elections regulated, monitored and controlled by an independent agency. We have in position a high powered Election Commission as an autonomous body to oversee the electoral process. Judiciary has made significant contributions through various pronouncements to plug loopholes and preclude the possibility of abuse by the candidates. I would illustrate this by just one instance.

Criminalization of politics has been one smoldering issue since it has an immediate bearing on the choice of candidates in an election and goes to the root of expectation of good governance through elected representatives. Treating the right to vote as akin to freedom of speech and expression under Article 19(1)(a) of the Constitution and enforcing the “right to get information” as “a natural right” flowing from the concept of democracy, in the case of *Association for Democratic Reforms*¹⁴, the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the decisions made by the voters while casting their votes. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the court gave various directions making it obligatory on the part of candidates at the election to furnish information about their personal profile, background, qualifications and antecedents.

In the field of education and the rights of minority, there are various judgments in last about 50 years which have contributed immensely in both these fields. Instead of going back 50 years to the cases of *Kerala Education Bill, St. Xavier College, St. Stephen College*¹⁵, let me only make a mention of few decisions in the last about 15 years [*Mohini Jain, Unni*

¹³ See *M.C. Mehta v. Union of India* [(1986) 2 SCC 176]; *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 3 SCC 212]; *Vellore Citizens' Welfare Forum v. Union of India* [(1996) 5 SCC 647]; *M.C. Mehta v. Kamal Nath*, [(1997) 1 SCC 388]; *S. Jagannath v. Union of India*, [(1997) 2 SCC 87]; *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, [(1997) 2 SCC 353]; *M.C. Mehta (Calcutta Tanneries' Matter) v. Union of India*, [(1997) 2 SCC 411]; *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India* [(1997) 3 SCC 715]; *Bittu Sehgal v. Union of India*, [(2001) 9 SCC 181] and *M.C. Mehta v. Union of India*, [(2002) 4 SCC 356].

¹⁴ *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294

¹⁵ *In Re. Kerala Education Bill, 1957.* 1959 SCR 995; *The Ahmedabad St. Xavier's Society & Anr. v. State of Gujarat & Anr.* (1974) 1 SCC 717; *St. Stephen's College etc. etc. v. University of Delhi etc. etc.* (1992) 1 SCC 558.

Krishnan (leading to insertion of Article 21-A), *TMA Pai, Islamic Academy and P.A. Inamdar* (leading to insertion of Article 15(5)]¹⁶.

Discussion on this subject would be incomplete without a brief reference to certain decisions which led to formation of the doctrine of basic structure as a limit on the constituent power of the parliament to amend the Indian Constitution. In 1952, in *Sankari Prasad's case*¹⁷, a Constitution Bench held that any act passed by the Parliament under its amending power under Article 368 would be valid even if it abridged any of the fundamental right contained in Part III of the Constitution. Again in 1964, another Constitution Bench in *Sajjan Singh's case*¹⁸ supported the views expressed in *Sankari Prasad*. These two cases were considered by an 11 Judge Bench in *Golak Nath's case*¹⁹. The views expressed in *Sankari Prasad* and *Sajjan Singh* was reversed. The Supreme Court held that fundamental rights are primordial rights necessary for development of human personality and these rights enable a man to chalk out his own life in the manner he likes best. The Bench expressed the view by majority judgment that fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament. But, at the same time, Parts III and IV of the Constitution were held to constitute an integral scheme forming a self-contained code. The scheme is so elastic that all the Directive Principles can be reasonably enforced without abridging or abrogating the Fundamental Rights.

Various constitutional amendments were made purporting to overcome the decision in *Golak Nath's case*. A larger Bench of 13 Judges in celebrated *Kesavananda Bharati's case*²⁰ examined the correctness of *Golak Nath's decision* to determine whether the law relating to Parliament's power of amendment of Constitution had been rightly decided in *Golak Nath's case* or not. In *Kesavananda Bharati's case*, by majority, the *Golak Nath's case* was overruled. It was held that Article 368 does not enable Parliament to amend the Constitution to alter the basic structure of framework of the Constitution. Implied limitations were read in Article 368.

¹⁶ Mohini Jain v. State of Karnataka & Ors. (1992) 3 SCC 666; Unni Krishnan & Ors. v. State of Andhra Pradesh & Ors. (1993) 1 SCC 645; T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (2002) 8 SCC 481; Islamic Academy of Education & Anr. v. State of Karnataka & Ors. (2003) 6 SCC 697; P.A. Inamdar & Ors. v. State of Maharashtra & Ors. (2005) 6 SCC 537.

¹⁷ Sri Sankari Prasad Singh Deo v. Union of India & State of Bihar, 1952 SCR 89.

¹⁸ Sajjan Singh v. State of Rajasthan (1965) 1 SCR 933.

¹⁹ I.C. Golak Nath & Ors. v. State of Punjab & Anr. (1967) 2 SCR 762

²⁰ His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr., (1973) 4 SCC 225

Various constitutional amendments were made after decision in *Kesavananda Bharati* including 39th amendment thereby introducing Article 329-A in the Constitution which, inter alia, sought to exclude judicial scrutiny of election of certain Members of Parliament. The provision in clauses (4) and (5) of Article 329-A were struck down by a Constitution Bench in the case of *Indira Nehru Gandhi*²¹ applying the basic structure theory. This was followed by proclamation of internal emergency from June 1975 to March 1977 during which period Articles 14, 19 and 21 stood suspended. Sweeping changes were also made in Article 368 with a view to provide that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the Constitution and also providing that no amendment of the Constitution including Part III thereof relating to Fundamental Rights shall be called in question on any ground. With the end of emergency, Articles 14, 19 and 21 again became enforceable. The constitutional amendment to do away with the limitation and judicial scrutiny were struck down, inter alia, on the ground that the exclusion of judicial review would expand the amending power of Parliament in contravention of the decision in *Kesavananda Bharati's case*.

In *Chander Kumar's case*, a Seven Judges Bench held that the power of judicial review over legislative action vested in the High Courts under Article 226 and Supreme Court under Article 32 is an integral and essential feature of the Constitution and is part of its basic structure. What is the extent of judicial review and the extent of power of Parliament to grant immunity to legislation by placing it in the Ninth Schedule is presently under consideration by a Nine Judge bench. The power of the Parliament to expel its members in exercise of its power, privilege and immunity granted under Article 105 is also awaiting the decision of the Supreme Court. On the insulation of Police and other investigating agencies from any kind of external pressure, Supreme Court issued various directions in *Vineet Narain*²² and *Prakash Singh*²³.

2.2. Protection of Weaker and Vulnerable Sections

Thomas Reid says that “*A chain is as strong as its weakest link.*” It indicates the significance of weaker sections in society. In other words, the strength of a chain is limited to that of the weakest link in the chain. Protection of weaker sections like women, children,

²¹ Smt. Indira Nehru Gandhi v. Shri Raj Narain & Anr., 1975 (Supp) SCC 1.

²² Vineet Narain & ors. v. Union of India & Anr., (1998) 1 SCC 226.

²³ Prakash Singh & Ors. v. Union of India & Ors., JT 2006 (12) SC 225.

minorities, transgender, and elderly people show the maturity of democracy in a country. It is the judiciary which protects the interests of the weaker sections. For example, NALSA Judgement asks for social justice through affirmative actions for transgender people.

During COVID-19 pandemic, it is the judiciary which ordered to fix “minimum” ex gratia of Rs 1 crore for every official who succumbed to the pandemic because of panchayat election duty. To protect the interest of poor people, Kerala High Court ordered a ceiling on charges in private hospitals for COVID-19 treatment. In Indira Sawhney case, Supreme Court upheld the social justice given to OBC community through affirmative action. Similarly, in Rohingya case, Supreme Court mandated that Rohingya shall not be deported until procedure is followed.

3. Challenges before Judicial governance

Judicial governance is often criticized as violation of separation of powers under Article 50 of Indian Constitution. Article 50 states that 'The State shall take steps to separate the judiciary from the executive in the public services of the State.' In Ram Jawaya case (1955), the court observed: “Our Constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another.” It implies that there should be a broad separation of powers among the three organs of the government.

In Deoki Nandan Aggarwal case (1991), the court state that the power to legislate has not been conferred on the courts. It is also claimed that judicial governance is against the principle of judicial restraints. It encourages judges to limit the exercise of their own power. Even the appointment process of the judiciary is criticized as anti-democratic. Even Dr. Ambedkar was not in the favour of collegium system where a judge chooses a judge. It is also criticized as a paradox when a group of unelected people is limiting the power of the government.

Apart from these, unlike the administrative authorities, the courts don't have expertise in the field of administration. For example, Supreme Court ordered to ban the registration of BS-IV vehicles after April 2020. It lacks the proper assessment of economic viability of this order which may hamper India's growth. The courts also lack the machinery to deal with highly sensitive and technical issues. Excessive critical observation of the court demoralizes the honest and dutiful officials and it is against the inclusiveness in democracy. Unnecessary

jumping into other's domain waste court's valuable time followed by increase in pending cases.

4. Suggestions and Conclusion

However, through the doctrine of basic structure, Supreme Court of India has established constitutional government in true sense by protecting basic ethos of the Constitution. To conclude, quoting Lord Bryce, *“There is no better test of the excellence of a government than the efficiency and independence of its judicial system.”* It means an independent, impartial and effective judiciary is an indicator of excellence of a thriving democracy.

The paradigm of Indian judicial system is testimony to the manner in which judiciary can contribute in good governance. Indian jurisprudence would insist upon enforcement of various rights, even of persons suspected of involvement in grave crimes. The rights thus guaranteed include right to life & liberty; right against torture or inhuman degrading treatment; right against outrages upon personal dignity; right to due process & fair treatment before law; right against retrospect of penal law; right to all judicial guarantees as are indispensable to civilized people; right to effective means of defence when charged with a crime; right against self-incrimination; right against double jeopardy; right of presumption of innocence until proved guilty according to law; right to be tried speedily, in presence, by an impartial & regularly constituted Court; right of legal aid & advice; right of freedom of speech besides right to freedom of thought, conscience & religion.

The approach of judiciary in India has time and again been that while it may be appropriate that the courts show due deference and margin of appreciation to the opinion formed by the executive, any State action making inroad into the personal liberties or basic human rights of an individual must invariably be subject to judicial scrutiny which would rest on objective proof, relevant material in accordance to law and through a procedure that passes the muster of fairness and impartiality. It is indeed a matter of great satisfaction that the two other chief organs of the State in India have always respected the jurisdiction of the judiciary to subject every State action to “judicial review” and, therefore, have either abided by the decisions taken or taken requisite follow-up action in furtherance of such decisions.

Judiciary has, thus, played a crucial role in development and evolution of society in general and in ensuring good governance by those holding reigns of power in particular.

Perhaps, there can be no two views about the significance of the role expected of judiciary, viz- a-viz, the goal and good governance in a free society.

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 principal 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 move 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.”

References:

- “Commentary on the Constitution of India” P.K.Majumdar, R.P. Kataria, Orient Publishing Company, 2003
- “Constitutional and Legal History of India”, Justice Rama Jois, publisher N.M. Tripathi, 1984
- “Judicial system and Constitutional order: A study of History and Development of Judicial System in India” By Dr. S.B.N. Prakash
- A.L. Basham, “The Wonder that was India” Revised Edition 1963, Hawthorn Books
- R. Ball: Modern Politics and Government, 1985, Chattam House, London.
- Abdul Rahim: The Principles of the Muhammedan Jurisprudence, London Luzac 1911, General Books LLC 2009
- B. Shiva Rao: The Framing of India’s Constitution, Published by Indian Institute of Public Administration, New Delhi, 1997
- Basu D.D. Judicial Review and Constitutional Limitations, (S C Sarkar & Sons, Calcutta 1972).
- C. K. Takwani, Lectures on Administrative Law, (Lucknow: Eastern Book Company), 4th Edition
- Chandra Bipin “Modern India”, New Delhi Publication Department NCERT 1990
- D. D. Basu, Shorter Constitution of India, 10th Edn 1988 (New Delhi, Prentice Hall 1988)
- Dicey A.V.: The Law of the Constitution (10th Ed.) Captus Press, 1991 Dr. P.N. Sen “Hindu Jurisprudence” Allahabad Law Agency, Allahabad 1984 352
- Dr. Radha Kumud Mukerji, “History of Medieval India” India Press 1966
- ECS Wade & G. Philips: Constitutional and Administrative Law, Franz Steiner, 1999
- Fontana Press; Fifth edition (Reissue) edition (4 Oct 2010)
- G. Austin - The Indian Constitution cornerstone of nation” Oxford clarendon press, 1966
- H. J. Abraham “The Judicial Process”, (5th Edn, 1986) Oxford University Press
- H.M. Seervai, Constitutional Law of India, vol.3, edn.4, 4th Edn, Universal Law Publishing Co Pvt Ltd.
- H.R. Dubey, “A Short History of Judicial Systems of India and some Foreign Countries” N. M. Tripathi, 1968
- J.N. Pandey “Constitutional Law of India” Central Law Agency, 39th Edition, 2003
- Jennings: Some Characteristics of the Constitution, Indian Branch, Oxford University Press, 1953
- Judicial independence: the contemporary debate By Shimon Shetreet, Jules Deschenes, Martinus Nijhoff Publishers, 1985
- K.P. Jayaswal, “Hindu Polity” The Bangalore Printing and Publishing Co. Ltd., 1943
- Kailash Rai “History of Courts Legislature and Legal Profession in India” Allahabad Law Agency
- Kulsresta, V.D., “Land marks in Indian and Constitutional History, Eastern Book Company Lucknow, 1981.
- Report of the National Commission to review the working of the Constitution Vol.I, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003.
- “Rise of the Mohammedan Power in India” , John Brigg, 2006,
- Adam Publishers S. Varadachariar “The Hindu Judicial System” Lucknow University, Lucknow 1964

- S.K.Puri “Indian Legal and Constitutional History” 1995 Allahabad Law Agency
- S.P Sathe, *Judicial Activism in India*, Oxford University Press, 2003
- S.S. Dhavan “Indian Jurisprudence”, (1963) Vol 8 *Journal of National Academy of administration*, 1963
- Satya Brata Sinha, *Judicial Activism Dimensions and Directions*, Vikas Publishing House Pvt Ltd., New Delhi, 2002
- Shimon Shetreet, “Judges on Trial: A study of the Appointment and Accountability of the English Judiciary” North-Holland Pub. Co., 1976
- Singh G.N.: *Landmark in Indian Constitutional and National Development*, Atma Ram, 1972
- Sir Ivory Jennings, “Law and Constitution”, University of London Press 1963
- *The administration of Justice in Medieval India*, by M.B. Amhad, The Aligarh Historical Research Institute, Allahabad, 1941
- V.N.Shukla: *The Constitution of India*, Eastern Book Company, Lucknow, 2005.
- *Mughal Administration*, by Sir Jadunath Sarkar, 4th Edn 1952,
- M.C Sarkar & Sons, Calucutta Mukhi H.R. “Ancient Indian Political Thoughts and Institutions” 1997
- SBD Publications P.B. Gajendragadkar *Indian Democracy, its Major Imperatives*, 1975,
- B I Publications, New Delhi P.V. Kane “History of Dharmasastra” (5 Vols in 8 parts) (vol 3), Bhandarkar Oriental Research Institute Puna. 1958.
- Prof. Bernard Schwartz: *Constitutional Law*, 5th Edn LexisNexis Matthew Bender, 2008
- Prof. G. Manohar Rao: *Constitutional Development through judicial process*, 1st Edn, 2009,
- Asia Law House, Hyderabad Prof. G.C.Y Subba Rao: *Administrative Law*, 6th Edn, 2003,
- S.Gogia & Co., Hyderabad Prof. J.A.G. Griffith, “The Politics of the Judiciary” (London: Fontona 1977)
- Pylle M.V.: “Constitutional History of India”, Asia Publishing House, 1967
- Omdutt, *Role of Judiciary in Democratic System of India (Judicial Activism under the Supreme Court of India)*: Golden Research Thoughts, September; 2012, Vol.2, Issue 3.