

## Role of Judiciary to Sustain Constitutionalism

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### ABSTRACT

All nations in the modern era embraced democratic political systems and welfare state ideologies, giving administrative agencies broad latitude to act as they see fit. In the lack of clear rules, etc., using those powers frequently becomes subjective. In order to guarantee that "the rule of law" is present in all governmental operations, it is, therefore, imperative to restrict discretionary powers. The Indian judiciary has been correctly cited as an illustration of this worldwide trend as courts have gained authority in recent years. The Indian Court has, in many respects, evolved into a model for good governance that judges the rest of the Indian government.

"On October 16, 2015, the Supreme Court of India (Supreme Court) issued a landmark judgment in NJLC. The judgment held unconstitutional the Ninety-ninth Amendment to the Indian Constitution, which established National Judicial Appointments Commission.

This Article argues that the Court has expanded its mandate as a result of the shortcomings of India's representative institutions. The Indian Supreme Court's institutional structure has also aided its rise and helps explain why the Court has gained more influence than most other judiciaries. This Article examines the development of India's fundamental structure doctrine and the Court's broad right-to-life jurisprudence to explore how the Court has enlarged its role.

**Keywords-** Rule of Law, judiciary, constitution, NJLC, uphold democratic form, Supreme Court.

### I. INTRODUCTION

Nowadays, the word "democracy" is more widely known practically everywhere. Following the French Revolution, almost all countries strongly preferred democratic forms of administration. Many countries began to build democratic governments through freedom battles or popular revolutions. Democracy is a political system of administration in which the people exercise political authority directly through direct elections or through elected officials. Because of this, it is clear that democracy is a people's governance. However, it presents difficulties for both citizens and elected officials.

The Greek word for "democracy" is "democracy," which means "ruling by the people" (demo

meaning "people" and cracy "government"). People choose their representatives by casting ballots, and the candidate receiving the most votes represents the majority's interests, which is made up of all the voters. That representative speaks on behalf of the majority who chose him and voted in a manner that reflects their preferences. This system is not faultless, though. What about those who don't belong to the majority? The term "minority" refers to this group. The minority keeps its fundamental rights despite the politician, like the majority, not directly representing it. It anticipates that the majority will respect such rights as well. The minority is also aware that they won't always be on every topic, even though they may not now be in the majority. The minority acknowledges that in order for our system to function effectively, the majority's will—in this case, its wishes—must be carried out.

## II. ROLE OF THE JUDICIARY IN PROMOTING DEMOCRACY AND GOOD GOVERNANCE

### *Basic structure theory*

The judiciary has the last say in how the constitution should be interpreted. In actuality, it serves as the defender and conscience of the rights and normative principles authoritatively granted by the state. In India, the constitution, which is largely founded on the idea of the "rule of law," is the fundamental source of rights. The higher judiciary is given a specific authority, known as "the Judicial Review Power," to oversee governmental operations and keep them within the bounds of the constitution in order to guarantee the "rule of law" in all governmental activities.

As part of this journey, the judiciary was given the authority to conduct judicial reviews in order to protect citizens' rights from the government's arbitrary actions and promote the democratic spirit of the Constitution. However, there were a lot of instances in India that put the democratic government at risk. Generally speaking, "government" and "governance" are two extremely similar concepts, and people frequently get confused about how they vary. In reality, a government is a collection of people who control or oversee a nation's administration. As opposed to this, governance is the process of wielding authority. "Good governance" is a broad phrase used in the context of international development to describe how public institutions execute government business and administer public funds. It comprises the decision-making process and the method through which choices are carried out or not. Additionally, excellent governance has a few key traits.

It upholds the rule of law and is responsible, transparent, efficient, and participative. It guarantees that corruption is kept to a minimum and that those most vulnerable are represented in decision-making. Additionally, it responds to the requirements of society, both now and in the future. Therefore, in order to accomplish all of these goals, the constitution's founders chose a higher judiciary to serve as its guardian. In truth, the Indian judiciary has been acting admirably since the beginning of the constitution. However, it was demonstrated in *Indira Nehru Gandhi v. Raj Narayan*<sup>1</sup>, where the Indian Supreme Court used the notion of basic structure to defend the democratic system. In this decision, the court overturned clause (4) of Article 329 (A), added by the constitution (39th Amendment) Act of 1975, on the grounds that it exceeded Parliament's authority to modify the Constitution since it eliminated its "basic characteristic."

The amendment was validated retroactively to the prime minister's election, which the Allahabad High Court had ruled invalid. Chandrachud, J., declared clauses (4) and (5) unconstitutional because they were an outright negation of the right to equality guaranteed by

Article 14, a right which is a fundamental postulate of our constitution. Khanna, J., dismissed the case on the grounds that it violated the right to free and fair elections, which was an essential postulate of democracy and was, in turn, a part of the fundamental structure of the constitution. He believed that these rules were arbitrary and intended to undermine or destroy the rule of law.

The rule of law, judicial review authority, and democracy, which involves free and fair elections, have now been added by the Supreme Court to the list of fundamental principles outlined in the *Keshvananda Bharti* case.<sup>1</sup>

The fundamental structural concept is upheld by Justice Beg's decision in *Indira Gandhi* with an argument that is idealistic in its support of the Constitution and pragmatic in its dread of sovereignty resting only with the institutions of the people's representative government. He concluded that "our notions of sovereignty must be consistent with the requirements of the people in our nation."

According to Justice Beg, the Supremacy of the Constitution notion is unquestionably more suited to the demands of our nation than any other idea that has been put out yet. It not only lays forth the objectives for the country to work toward, but it also serves as a directive for our Sovereign Republic's three branches of government.

"Can we deny (the Constitution) that supremacy which is the symbol and proof of the level of civilization?"

In his decision in the case of *Indira Gandhi*, Justice Mathew contrasts a "less civilized" pre-British Indian ruler in order to demonstrate the necessity of a division of powers in the amendment process and, by extension, within the Constitution more generally: A sovereign in any system of civilized law is not like an eastern dictator who is free to act wherever, whenever, and however he pleases. When evaluating how a pro-sovereign holder of the amending power in a nation regulated by a constitution should behave, it is irrelevant that the Nizam of Hyderabad possessed legislative, judicial, and executive authorities and could exercise any one of them by a fireman. In addition, Justice Chandrachud notes in his concurring opinion that even despots acknowledge the legitimacy of judicial checks on their authority. The most tyrannical monarch in the contemporary world loves to be equipped, even if only nominally, with the judgment of his Judges on the grievances of his subjects, the speaker continues, echoing Justice Mathews' observations that this is unquestionably true in a modern democracy as well.

"I find it contrary to the basic tenets of our Constitution to hold that the Amending Body is an amalgam of all legislative, executive, and judicial power. Whatever pleases the emperor has the force of law is not an article of democratic faith. The basis of our Constitution is a well-planned legal order."

In his interpretation of the fundamental structure concept in *Indira Gandhi*, Justice Beg examines the many historical restraints on sovereign authority to demonstrate that judicial review is a crucial component of effective government. He gives various instances, such as this one: The ideal King in ancient India was envisioned as a Judge who issued instructions to deal with particular circumstances in line with the *Dharma Shastras*.

The General Assembly also adopts two international covenants for securing human rights: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. It also appears that these international covenants frequently delegated the exercise of the power to administer justice. They are both international human rights treaties. Therefore, it is incorrect to claim that only Fundamental Rights are founded on human rights because Directive Principles belong to a different category than human rights. Amartya Sen's contention that the reason for safeguarding basic rights is not on the presumption that they are superior rights, but rather that protection is the best method to foster a fair and tolerant society was quoted by Chief Justice Sabharwal in *Coelho* in 2007 with approval<sup>1</sup>. The Court defends the fundamental structure doctrine's tenets by referencing essential components of what it contends is required for effective government, whether doing so on the basis of natural, moral, historical, or utilitarian reasons. The mandates of contemporary democracy are meant to limit the authority of parliaments.

### III. "ESTABLISHING JUDICIAL SUPREMACY: THE *THREE JUDGES' CASES*"

Shamsher Singh and Sankalchand Himatlal Sheth set the groundwork for the NJAC Judgment, while Justice Khehar's analysis was largely concerned with the cases of the Three Judges<sup>1</sup>. The First Judges' Case, *S.P. Gupta v. Union of India* (1982), presented a number of issues about the independence of the judiciary<sup>2</sup>. The multiple writ petitions submitted in this case contested a number of other high court justices' appointments, among other things<sup>3</sup>. The president was recommended to make these nominations in accordance with Article 224(1) of the Constitution by Prime Minister Indira Gandhi, who took office again in 1980.<sup>4</sup> In response to a temporary increase in the workload of the high court, Article 224(1) permits temporary judge appointments of up to two years. Senior attorneys in many high courts were among the petitioners who opposed these appointments on the grounds that they were a result of a government initiative to erode judicial independence. For example, by removing safeguards like permanent tenure, interim appointments may enable the administration to fill the bench with justices who embraced its agenda.<sup>1</sup>

One justification put out by the petitioners was that, in order to avoid this potential political manipulation, the Chief Justice should be given priority in appointment decisions.<sup>1</sup> This argument was rejected by Justice Bhagwati.<sup>2</sup> He concluded that consultation in Articles 124 and 217 indicates just that based on remarks made by Sankalchand and Ambedkar at the CADs.<sup>3</sup> According to him, the Central Government is free to decide on its own whether or not to nominate the specific candidate as a judge and is not required to follow the Chief Justice of India's advice.<sup>4</sup>

Justice Khehar acknowledged in the NJAC Judgment that the First Judges' Case did not establish judicial supremacy.<sup>1</sup> His description of it as "the lone divergence in a series of five cases from Shamsher Singh to the Third Judges' Case that established supremacy in the court under Articles 124, 217, and 222" but downplayed its significance. This is being overstated. As was previously said, Shamsher Singh and Sankalchand Himatlal Sheth each had different legal concerns and just mentioned the supremacy of the court in passing<sup>2</sup>. Justice Bhagwati referenced the latter with approbation to reach the same judgement in the First Judges' Case since it really stated that the president is not legally bound to accept the Chief Justice's guidance.<sup>3</sup>

But The Second Judges' Case (1994) made a U-turn and established judicial supremacy. The question of whether the Chief Justice has priority in judicial nominations and transfers was directly addressed in this case, unlike its predecessors. According to Justice Verma's majority opinion, which explicitly overturned the First Judges' Case, Bhagwati, J.'s (as he was then) position in that case "conflicts with this constitutional scheme" and "does not appear to be a correct construction of the provisions in Article 124(2) and 217," respectively (1). According to Justice Verma, the phrase "consultation" in these constitutional clauses was meant to establish a discussion between the executive and judicial departments. The main goal of this procedure is to consider the opinions of all the consultees, with the Chief Justice of India's judgment receiving the most weight because he or she is most qualified to assess the value of the nominee. Ideally, there should be agreement and no need for any actor to take the lead. If disagreements arise, however, primacy is given to the Chief Justice of India's final judgement, unless that appointment is deemed inappropriate for good reasons known to the executive and disclosed to the Chief Justice of India.<sup>1</sup>

The collegium system was formed as a result of this case, where senior Supreme Court Justices, headed by the Chief Justice, had the last word about judicial transfers and appointments. This structure was affirmed in The Third Judges' Case (1999), which also established the guidelines for the current consultation procedure.<sup>1</sup> Importantly, the federal government did not contest the legitimacy of the collegium in that instance, as Justice Khehar noted in the NJAC Judgment.<sup>2</sup> Instead, the

attorney general requested that the Court increase the size of the collegium from three to six Justices.<sup>3</sup>

The Court settled on a compromise: the collegium would consist of the Chief Justice and the next four most senior Justices. The Court further held that if the majority of the collegium is against the appointment of a particular person, that person shall not be appointed. Thus, a majority of Justices—not the Chief Justice or the president—would have the final say on judicial appointments.

#### **IV. “SAFEGUARDING FUNDAMENTAL RIGHTS AND PROMOTING DPSP<sup>1</sup>”**

The Indian constitution included fundamental rights to support the rule of law, which is a well-known fact. Therefore, to safeguard these rights, the Indian judiciary expanded its authority through the judicial review power, which is clear in many instances. Here, it's crucial to talk about Art. 21, the legal framework through which the court began to identify all human rights as basic freedoms. The Court amended article 21 to include a reasonableness or non-arbitrariness criterion in 1978. In Indian law, this resulted in the creation of natural justice or substantive due process. In the years that followed, article 21 was used to prohibit cruel or unusual punishment, ease the restrictions on pre-trial bail, limit the circumstances in which a debtor could be imprisoned, establish protections against custodial abuse and excessive delays in criminal proceedings, and offer legal assistance.

In part to reclaim the credibility it had lost during the Emergency and in its early judgements, which frequently sided with affluent property owners, the Supreme Court adopted this more populist orientation. The Court was also affected by the post-Emergency euphoria, a feeling of joy at the return of liberal democracy that swept the key institutions of Indian government at the time. In addition, the urban middle class, which had been singled out during the Emergency, wanted a strong, independent court to check the state's authority. The media, which had previously been reluctant to report on Indira Gandhi's misdeeds, began to cover civil rights violations and other social issues more and more vigorously.

The expansion of article 21 jurisprudence also sparked the emergence of public interest litigation as a fresh area of the law. The Court loosened its requirements for standing, allowing any public-spirited individual to petition the Court on behalf of anybody they believed to be being denied their rights. Additionally, it relaxed the filing requirements. For instance, when a journalist complained to the Court in 1982 that several female suspects were being tortured while being held by the police, the Court recognized the letter as a petition and issued instructions to safeguard the safety of these women and other inmates in similar circumstances. The habit of people submitting letters to

the Court requesting intervention on urgent social concerns was started as a result of the Court's action.<sup>2</sup>

“First, it regarded the Constitution's plan for a regulated social and economic transformation as a role for itself to play. Second, the Court used moral values or sound government principles as justification for its actions. The Court's right-to-life jurisprudence allowed it to take on various facets of government, such as requiring stricter enforcement of traffic laws or outlawing smoking in public areas. The Court assumed so many roles that its right-to-life jurisprudence expanded to include more than only defending life and more widely advocating good governance. The 1997 Taj Mahal case, *M.C. Mehta v. Union of India*, does a good job of illuminating this position.<sup>2</sup> The Supreme Court learned from this lawsuit that the Taj Mahal's white marble was being tarnished and that neighboring inhabitants' lungs were being polluted by coal-fired industry (although presumably no more than in other areas in India with coal-based industries). The Court used its right to life jurisprudence to rule that none of the polluting companies be allowed to operate nearby, citing the need to preserve this marvel of civilization. The Court seems to have recognised an inanimate object's claim to live. In fact, this case demonstrates that, in many of the court's right-to-life decisions, what is at risk is more broadly good governance than the right to life (of which the protection of life and its basic necessities is only one part).

#### **V. CONCLUSION**

Following the government's responsibility to defend India's democratic nature as a representation of the people elected by a majority, the opposition has a responsibility to defend the government's authoritarianism. The issues of black money and coal allocation—where, interestingly, allocations were cancelled across all Governments!—were two prime examples of how the opposition seized on the rhetoric of political corruption and ignored the crucial nuances of court rulings in the midst of the outrage against the incumbent and the delirious support for the opposition. Such problems became sensationalized and captured the public's attention, destroying the grand old party's rule. The current administration, however, is unable to ignore the critical difficulties with governance, which range from issues with land acquisition to those with education reforms, from regulatory uncertainties in the power sector to escalating gender-based crime. The Supreme Court recently emphasized to our democracy that celebrating an electoral win did not grant us time travel to a utopian country of riches.

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