

Courts And Socio-Economic Changes: Lessons from the Indian Experience

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Abstract-We have witnessed how socioeconomic changes in India over its 75-year history have evolved into the idea of distributive justice. Due to the judiciary's commitment to upholding the principles of our Constitution in letter and spirit, our society in particular has undergone a sea change. Numerous topics, ranging from social to economic, have been brought before our Honorable Courts over the years for consideration.

In this paper, we examine the role that judicial activism has played in India's significant social and economic changes. Along with understanding the effects of the changes, it also draws comparisons to comparable circumstances in other nations. It also sheds light on the legal nuances and constraints that courts must abide by as they explore the field of judicial activism, including how recent judicial rulings have affected legislative decision-making and how they influence socioeconomic change. This article provides an illustration of the legislative provisions created as a result of these judicial rulings.

The effects of socioeconomic changes on both criminal and civil statutes have been compiled in the paper's concluding section. This essay finishes with a consideration of the constitutionality of these socioeconomic changes and the scope of the court's authority to make such changes.

Keywords: socio-economic changes, judicial activism, constitutional spirit, distributive justice, rule of law

Introduction

The Preamble appended to the Constitution of India is the blooming ground over which the seeds of socio-economic justice were sown. In an ever changing society, socio-economic justice is achieved by way of legislations and judicial precedents. Indian courts have used the device of judicial review time and again to adjudicate upon the socio-economic issues emerging with passing time. From gender rights to criminal and economic jurisprudence, courtroom has indeed been a sanctuary of a myriad of socio-economic changes. In a landmark case of *S.R. Bommai v. Union of India*, 1994 AIR 1918, the court has held that social justice and judicial review form the Basic Structure of the Constitution of India. It is the concept of Judicial Review that has metamorphosed into the concept of Judicial Activism. It was in the case of *S.P. Gupta v. President of India & Ors*, AIR 1982 SC 149 that the concept of judicial activism emerged in our country's jurisprudence. It is owing to this instrument of change that our society is passing the test of time and evolving where it is requisite. In India, the higher judiciary has transformed non-justiciable economic and social rights such as basic education, health, food, housing, speedy trial, privacy, anti-child labor, and equal wages for equal work into legally enforceable rights over the previous three decades. In a landmark decision on the right to education, the judges even stated that a right may be considered fundamental even if it was not mentioned in the constitution's section on fundamental rights (Varun Gauri and Daniel M. Brinks, 2008). The forthcoming paper voyages through apex court's landmark decisions using the tool of judicial activism and attempts to understand their impact on society.

Objectives of the Study

- i. To comprehend the contribution made by the Indian judiciary to the emergence and advancement of judicial activism.
- ii. To examine how the judiciary's activist approach has brought about enormous socioeconomic changes in Indian society by establishing concepts like public interest litigation and judicial review.
- iii. To identify the barriers so that the judiciary can work more efficiently to advance distributive justice.

Methodology

In keeping with the goal of the study, an analytical technique has been used to comprehend the historical context of the idea of judicial activism and the extent to which it has contributed to socioeconomic changes in Indian society. The presentation of information from primary and secondary sources has made it possible. The Supreme Court of India's decisions in cases, Law Commission reports, the National Judicial Data Grid, and several laws and regulations are examples of primary sources. Secondary sources include materials from various national and international journals, publications, news items, and websites.

Judicial Activism in India: A Historical Perspective

Public interest litigation and judicial activism are two facets of the same coin. To understand the impact of judicial activism we first have to understand the role played by judiciary of India in the growth and development of judicial activism. Traditionally, India had an adversarial form of judicial system, wherein the judiciary had to play a passive role. Such role was limited to adjudicating disputes between two parties. In the contemporary era judiciary has assumed a more active role. The role of judiciary, as of now, transcends the erstwhile confines of mere dispute resolution and judicial review. The English Law related concepts of equity and natural justice form the plinth stone of this concept. The earliest evidences of the development of judicial activism can be traced back to the case of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). In this landmark case, the court went on to say that “it is for the court to say what law is”. Moreover, this judgment expanded the limits of the concept of judicial review by providing that “It is the duty of the court to enforce the constitution and ignore the law”. It is without a doubt that this judgment faced criticisms from all parts of society, but it made an everlasting impact on the power sharing dynamic between executive, legislature and judiciary. This was the birth of the concept of Judicial Review as we know today. After this with the landmark judgment of *Brown v. Board of Education*, (347 U.S. 483 (1954)) American judiciary gave birth to the modern concept of judicial activism.

In India, the seeds of Judicial Activism bloomed over sporadic intervals of time. The beginning can be traced to J. Mehmood’s dissenting opinion in a landmark case of 1893, wherein he gave the widest possible interpretation to the dictum “right to be heard” (Arpita Saha, 2008). But it was only after the independence that this concept matured in India. In the case of *Mumbai Kamghar Sabha v. Abdul Bhai*, AIR 1976 SC 1465 this doctrine was introduced into India’s judicial system. It was however, in the case of *Maneka Gandhi v. Union of India*, AIR 1978 SC 853 wherein the court actively amended the constitution and replaced the clause of “procedure established by law” under Article 21 to “due process of law”. Judicial Activism in India has had the effect of overturning the majority view of Parliament’s supremacy over Constitution that existed prior to 1970s. This shifting of viewpoint has brought gargantuan socio-economic changes in Indian society.

Social Changes and Judicial Activism

The myth of supremacy of Parliament was shattered by the judiciary in the case of *Kesavanand Bharti v. State of Kerala*, AIR 1973 SC 1641. In this case the Supreme Court developed the doctrine of Basic Structure. As per this doctrine, the amending power of Parliament was limited and was subjected to implied restrictions called Basic structure, which was also left open for the courts to determine. This doctrine is an important part of the history of judicial activism in India. It provided the judiciary with a weapon to become the flag-bearer of social change in the country, by deciding on the aspects that legislature fails or neglects to act upon. With the almighty sword of Judicial Activism powered by the doctrine of Basic Structure, the courts in numerous landmark decisions have restructured the societal fabric of our nation. Some of the most popular instances are dealt with hereinafter.

Judicial Activism and Environment

As the world faces the worst possible summer, the impact of Global Warming is now more evident than ever. Our judiciary has employed this concept of judicial activism to act for the welfare of environment and thereby the people who relish it. It took a responsible and sympathetic approach, by declaring the right to healthy environment a fundamental right under Article 21 of the Indian Constitution in a plethora of decisions. Moreover, in the case of *M.C. Mehta v. Union of India*, (1996) 4 SCC 750 the Supreme Court directed the companies involved to take active steps to reduce pollution and ensure a healthy environment. In a recent case, a division bench of apex court issued guidelines for the operation of brick kiln industries in NCR (NCR Brick Kiln Association v. Central Pollution Control Board and Ors, 2022).

Judicial Activism and Gender Jurisprudence

The dimensions of gender jurisprudence in our nation are now wider than ever. Gender is not a binary concept anymore. Western nations have long accepted the existence of a more genders than the commonly accepted “cis” male and female gender and have granted them equal rights. India was not far ahead in this social revolution until judiciary intervened. The other aspect of gender inequality still persists wherein women are continuously striving for an egalitarian society.

Women’s Rights

The court has time and again intervened to uplift the social status of women in the country. Be it the question of women’s right to maintenance, equality or a question of crime against women, judiciary has always lived up to the expectations of masses. The major amendment of 2013 in the Criminal Law was brought after the interference of judiciary in the matter. In the celebrated judgment of *Vishakha v. State of Rajasthan*, AIR 1997 3014 the apex court has laid down guidelines to prevent the sexual harassment of women at workplace. In another landmark case of *State of Punjab v. Major Singh*, 1967 AIR 63 the SC expanded the meaning of word “modesty” and explained that even a girl child possesses modesty. This wide definition to the term has been pivotal in tackling sexual offences against children. Furthermore, the court has recognised the right of Muslim women to an honourable marriage and honourable separation by striking down Triple Talaq as unconstitutional in the case of *Shayara Bano v. Union of India*, AIR 2017 9 SCC 1 (SC). In another case of *Randhir Singh v. Union of India*, 1982 AIR 879; 1982 SCR (3) 298 the apex court has held “It is true that the principle of equal pay for equal work has not been expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims equal pay for equal work as a directive principle of state policy. The directive principles, as has been pointed out in some judgments of this court to be read into fundamental rights as a matter of interpretation.” Therefore, the apex court has recognised the right of equal pay for equal work for both men and women. In *Air India v. Nargesh Meerza*, 1981 AIR 1829 the court struck down the condition of termination of service of air hostesses

on first pregnancy by calling it a “callous and cruel act”. In the landmark case of *Ms. Githa Hariharan v. Reserve Bank of India*, AIR 1999 2 SCC 228 the court recognized the right of a Hindu Women as a Natural Guardian even during the lifetime of father. The court in *Lata Singh v. State of U.P.*, (2006) 5 SCC 475 has also recognized the right of a woman to marry a person of her own choice and deemed honour killings as a blatant violation of both fundamental rights and human rights. The court held that Muslim women have a right to claim maintenance even under Section 125 of The Code of Criminal Procedure in the case of *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 AIR 945. In another landmark decision the court struck down exception 2 to the Section 375 of The Indian Penal Code, so far as it allows sexual intercourse with a girl child below the age of 18 years by her husband. Here the court borrowed law from Protection of Children from Sexual Offences Act, 2012 and held that “a rapist is a rapist regardless of his relationship with the victim” (*Independent Thought v. Union of India*, (2017) 10 SCC 800). The apex court gave another landmark judgment acknowledging the right of Hindu Female over Property given in lieu of maintenance under an instrument in the case of *V. Tulasamma & Ors v. Sesha Reddi (Dead) by L.Rs.*, 1977 AIR 1944; 1977 SCR (3) 261. The equal property rights of Christian women in father’s property were recognised by apex court in the case of *Mrs. Mary Roy etc. v. State of Kerala*, 1986 AIR 1011; 1986 SCR (1) 371. In *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469 the court recognised live-in relationships as relationships in the nature of marriage and held that the rights of women in such relationships are protected under the Protection of Women from Domestic Violence Act, 2005.

The right of Hindu women of all ages to enter into a temple was recognised by our judiciary in the case of *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.*, (2017) 10 SCC 689. The court has also decriminalised adultery by holding that “any provision of law affecting individual dignity and equality of women invites the wrath of the constitution. It is time to say that husband is not the master of wife. Legal sovereignty of one sex over the other is wrong”.

In the aforesaid discussion we find evidences as to how judiciary has performed the onerous task of securing equality for women in different spheres of society and re-shaped the obsolete dynamic of superiority of one gender over another.

Rights of the Sexual Minorities

It is to the credit of our Judiciary that the rights of sexual minorities are now being recognised in our society with legal backing. The partial decriminalisation of Section 377 of the Indian Penal Code, in the case of *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321 has had the effect of recognising the sexual freedom of Sexual minorities. In India itself the transgender were recognised as a third gender in the case of *National Legal Services Authority v. Union of India*, W.P Civil 604/2013. This recognition guaranteed by law has now resulted in social acceptance of third gender and therefore, equal protection of law and socio-economic opportunities. The court has also recognised the rights of a transgender person to travel abroad for the purpose of education in the case of *Shivani Bhat v. State of NCT of*

Delhi, W.P CrI. 2133/15. On March 3, 2015, the Madras High Court in *K. Prithika Yashini v. Tamilnadu Uniformed Services Recruitment Board*, 2015 SCC Online Mad 11830 allowed candidature of a transgender to Tamilnadu Police Services as Sub-inspector. The Court also directed Tamilnadu Government to include third gender as a separate category.

Rights of Socially Backward Classes

India has intrinsically been a caste based society. It is owing to this kind of institutionalised discrimination over past many centuries that we have numerous socially backward classes in India. Judiciary has played an indispensable role in making sure that constitutional spirit of equality is attained and the rights of socially backward classes are secured. The Constitution of India as per Article 46 mandates that “the state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”(The Constitution of India, 1950) This Article has been invoked by the apex court in laying down precedents for acknowledging the rights of socially backward classes. In a landmark case the High Court of Uttarakhand has held that, “the high caste priests cannot refuse to perform religious ceremonies on behalf of persons belonging to lower caste” (Pukhraj & Ors. v. State of Uttarakhand, WP PIL 199/2016). In the recent Maratha Reservation case, the apex court upheld the mandate of *Indira Sawhney v. Union of India*, AIR 1993 SC 477 and deemed caste based reservation as an important tool for the upliftment of socially backward classes.

Discussion

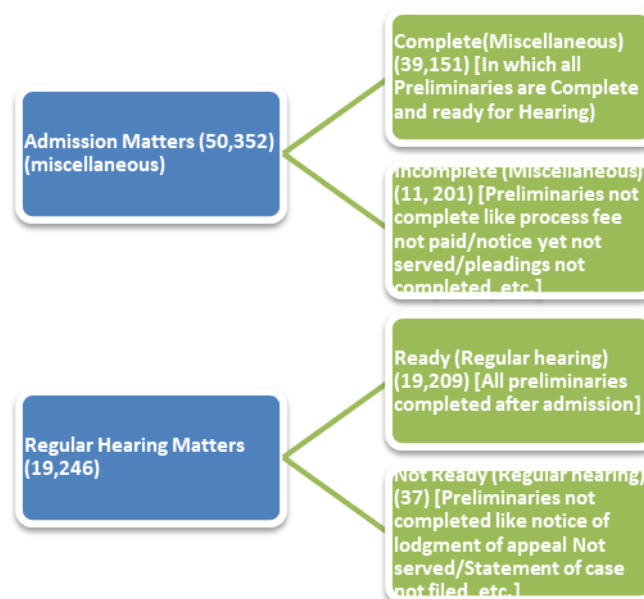
In modern society, the judicial system plays a key role in determining how a country is run. In India's Common Law system, judges are empowered to make judgments that supplement the laws approved by the legislature and the regulations adopted by the executive; in other words, they, too, make the law. Furthermore, the Constitution of India specifically imposes a reformist objective on the courts, an outlook that was justified by the need to bring "India out of medievalism, obscurantism, blind superstition, and anti-social behaviours" by a former Chief Justice of India, P.N. Bhagwati (Robert D. Baird, 1993). The court's action is ubiquitous on all levels of society, ranging from broad guidelines on the environment to the intimacy of the family, as it implements the agenda set out in the Constitution (Pratiksha Baxi, 2014). This omnipresence of the state as a result of the action of the courts is emphasized by Dhavan who, in discussing the articulation between “public” and “private” arenas of life in India, and writing more specifically about the promotion of “public interest,” notes out that the latter produces

highly intrusive agendas into the “private domain,” the “personal spaces” of individuals and the day-to-day lives of the people. The discretion of the people to order their own lives grows smaller and smaller because in this new dispensation they are expected to be “fair,” “just,” and “egalitarian” in every aspect in relation to friends, children, well wishers, detractors,

enemies, employers, employees, the work place, home and hearth. (G. Mahajan and H. Reifeld, 2003).

There is also the sheer size of the judiciary and the staggering number of cases that are filed in courts. In 2016, the number of lawyers in India was estimated at about 1.5 million, on a par with the USA (Quora, 2015). This quantitative importance testifies to the “success” of the courts in having litigations brought before them. There is, however, a much lower number of sitting judges than would be required, besides inadequate infrastructure, entailing an enormous backlog of cases in courts at various levels. As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts, while nearly 1,82,000 cases have been pending for over 30 years (The Hindu, 2022). Denial of 'justice in a timely manner' equates to denial of 'justice' itself. Two are indispensable to one another. Maintaining the rule of law and giving access to justice, which is a fundamental right, requires prompt disposition of cases. However, according to Law Commission Report No. 245 on Arrears and Backlog, the court system is unable to provide prompt justice due to a massive backlog of cases for which the existing judge strength is insufficient. Moreover, in addition to the already backlogged cases, the system is unable to keep up with the initiation of new cases and is unable to dispose of an equivalent number of cases. The already severe problem of backlogs is therefore getting worse by the day, resulting in a weakening of the Constitutional guarantee of prompt access to justice and a decline in the rule of law (Law Commission Report No. 245 – On Arrears and Backlog, 2014).

Even 69, 598 matters are pending before the Supreme Court of India as on 01.12.2022 (Supreme Court of India – Statistics, 2023). The following diagram clearly depicts the status of pendency in terms of admission and regular hearing matters.



*16.15% matters are Incomplete/ Not Ready required preliminaries to be completed.

*Number of Constitution Bench matters: 488 (54 main matters + 434 connected matters)

	Total	Main	Connected
Five Judges Bench Matters	338	43	295
Seven Judges Bench Matters	15	6	9
Nine Judges Bench Matters	135	5	130
Total	488	54	434

(Source: <https://main.sci.gov.in/statistics>)

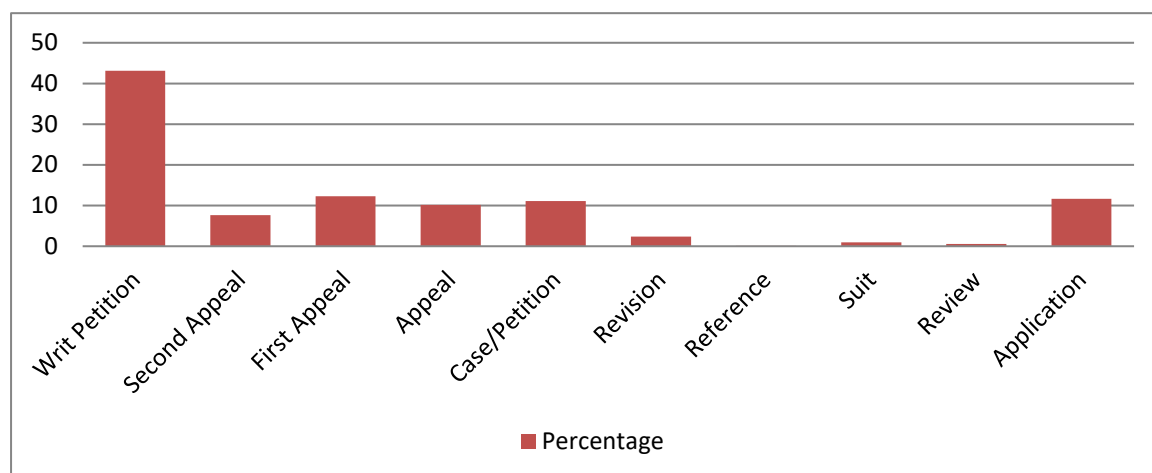
The data shared by National Judicial Grid regarding the duration and type of cases pending in different High Courts also speaks volume about the overburdening of our judicial system.

Duration	Civil	Criminal	Total
0 to 1 Years	1075057	483282	1558339
1 to 3 Years	753314	253313	1006627
3 to 5 Years	695687	244307	939994
5 to 10 Years	874533	318185	1192718
10 to 20 Years	717889	315071	1032960
20 to 30 Years	128791	48664	177455
Above 30 Years	47351	19073	66424
Total	4292622	1681895	5974517

(Source: National Judicial Grid, 2022)

Case Type	Number of Pending Cases	Percentage
Writ Petition	1644673	43.16
Second Appeal	292091	7.67
First Appeal	468793	12.30
Appeal	388605	10.20
Case/Petition	423155	11.11
Revision	89018	2.34
Reference	3391	0.09
Suit	35265	0.93
Review	20591	0.54
Application	444864	11.67

(Source: National Judicial Grid, 2022)



Despite enormous delays, insufficient facilities, and rampant corruption at the level of the judicial system, courts are paradoxically the main or only hope for many individuals. Undoubtedly, litigants are aware of the system's flaws, yet they may proceed to court because no unofficial solution could be established within the context of local power dynamics or another alternative conflict resolution method. In reality, socioeconomically disadvantaged claimants have limited institutional options for redressing their grievances regarding basic needs such as water, food, health care, sanitation, education, and safety, and the preceding section of this article bears ample testimony to the fact that the judiciary is acting as a catalyst for social change through its pronouncements and interpretation of the constitution.

Conclusion

From the discussion contained hereinabove, the popular adage that Supreme Court plays the role of sentinel on the qui vive holds true. The courts of our country have been at the vanguard of many socio-economic issues and have thereby provided respite to the citizens of our nation. The golden thread of equality that runs through Article 14, 15 and 16 has strengthened the fabric of Constitutional spirit of equality. The seeds of socio-economic justice as sown in the Preamble of Indian Constitution have bloomed to their complete potential with full support of the country's judiciary. As held in *Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.*, [1992] 3 SCC 336 the apex court has observed that "it is the solemn resolve of the people of India to secure to all its citizens justice-social, economic and political". It is true that there are two facets to every coin and judiciary has been accused of being overly zealous and failing to draw the line between judicial activism and judicial overreach. But we must not forget that, at times courts have also exercised judicial restraint to keep them from interfering in the matters, where legislative prudence is pivotal. It is such a balanced exercise of powers that has ensured harmonious existence of legislature, executive and judiciary. In a nutshell, the intervention of judiciary has proven indispensable in bringing about the highly requisite socio-economic changes in India.

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