



## ROLE OF JUDICIARY IN SAFEGUARDING SOCIAL JUSTICE UNDER THE INDIAN CONSTITUTION

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Dr. Vimal Kumar Mahawar

Associate Professor in Political Science

Samrat Prithvi Raj Chouhan Government College Ajmer

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### ABSTRACT

*The obligation that the Indian Constitution places on the judiciary to safeguard social justice is examined in depth in this article, as is the manner in which it is carried out in reality. A significant amount of assistance has been provided by the court in the areas of ensuring equality before the law, protecting the rights of marginalised and disadvantaged members of society, and defending fundamental rights. In the Indian Constitution, Articles 14 and 32 give individuals with the right to equality and constitutional remedies, respectively. The Indian court has used these rights in a number of landmark rulings in order to fight social injustice and promote justice. The subjects of this research include judicial activism, public interest lawsuits (PILs), and the role of the judiciary in the policymaking process to address structural inequalities. It then goes on to discuss the challenges that the Indian court has in attempting to strike a balance between the need for social justice and the necessity for judicial independence. It also discusses how the Indian court is always seeking to make society more inclusive and equitable.*

**Keywords:** *Judiciary, Social Justice, Indian Constitution, Fundamental Rights.*

### INTRODUCTION

India's constitution is the longest and most comprehensive of all the constitutions that have ever been written. It provides the democratic system with its three primary organs by virtue of this. The three branches that make up these three branches are the legislative, executive, and judicial branches. The legislature is responsible for the enactment of laws. The Lok Sabha and the Rajya Sabha are the two chambers that make up the legislative arm of the government. It is necessary to have a majority in the Lok Sabha in order to draft and approve a law. Immediately after the legislation is passed, it is forwarded to the Rajya Sabha for additional deliberation; after it has been passed by the Rajya Sabha, it will be sent to the president for his approval. After receiving the President's signature, a measure is regarded as having been passed into law. One of the most important branches of government is the executive branch. Legislative mandates are the responsibility of the Executive branch, which is responsible for carrying them out. If the law is not rigorously implemented, the Judiciary has the right to inflict punishment on individuals who have been proven guilty of doing anything wrong. The courts play a significant part in the process of penalising people who engage in illegal behaviour. As a result, the court is obligated to carry out its duties with the utmost prudence and impartiality, making certain that no individual is denied justice on the basis of their gender, 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:** Under the Indian Constitution, the suspension of partial judgements is protected from being overturned. This is the reason why the Judiciary has been given complete ability to make decisions that are in accordance with the law. The judicial system in India is not associated with either the legislative or executive branches of government, and it operates independently from both of them.

**Separation of Power:** To ensure that the Judiciary is able to function independently, "Separation of Power" is essential. A fundamental implication of this is that the legislative and executive branches are not permitted to interfere with the method in which the judiciary performs its duties. In order for the Supreme Court and High Courts to properly exercise its independent authority, the appointment of judges to those courts must be carried out in a manner that is independent of other branches of government, as well as between private parties and political parties.

## OBJECTIVE

1. The Indian Constitution's role of the judiciary in preserving social justice
2. To investigate how the court in India interprets the country's constitution to protect social justice.

## CONCEPT OF SOCIAL JUSTICE

The concept of social justice emerged throughout the course of time as a result of the development of society mores, laws, regulations, and ethics. In order to build a social intervention that is focused on the implementation of laws and regulations that are founded on principles that are in accordance with social equality, a focus on just action was established. On the other hand, the term "social" is obviously concerned with all members of society, while justice is related with freedom, equality, and rights. As a consequence of this, social justice ensures that individuals are free, that they are treated equally, and that their rights are protected within society. As a result, social justice may be described as the process of fostering the greatest potential of each and every person within a society. In the context of the discussion of social justice, it is essential to differentiate between the traditional sense of the word "justice" and the more contemporary understanding of "social justice," which seeks to establish a society that is more equal. On the other hand, the idea of social justice is a relatively recent phenomenon that emerged as a result of modern economic and social movements having a significant impact. As opposed to the modern notion of social justice, which is based on the assumption of a fair society, the traditional and conservative understanding of justice is concentrated on the qualities that define a "just" or virtuous person. When it comes to justice, ancient Greek and Hindu philosophies place more of an emphasis on the fulfilment of obligations than they do on the idea of rights. The idea that the state should take precedence over the individual is one that is held by both Plato and Aristotle. In line with the ancient Indian tradition, justice is nothing more than carrying out one's responsibilities in a manner that is in conjunction with one's dharma.

Within the framework of current liberal ideology, the idea of "justice" is not seen through the lens of obligations but rather through the lens of rights. These safeguards are derived from laws that have been enacted by the state and are designed to guarantee that the government is unable to usurp or restrict fundamental rights. A significant number of constitutions in modern democracies guarantee and secure the protection of these rights. As far as this perspective is concerned, justice is a desire to make sure that everyone receives what is legitimately theirs. Bentham, John Stuart Mill, Adam Smith, and John Locke are

only a few of the liberal scholars who have made significant contributions to the formation of the present liberal idea of justice. Rousseau contends that the private property system has perverted society and insured that current differences will continue to exist, despite the fact that men are naturally equal. Consequently, the perfection of man lies in the improvement of society, and one of the ways in which this might be accomplished is by paying attention to and cultivating the attitudes and sentiments that guarantee social justice and equality. In accordance with the Marxist perspective, the foundation of injustice is the private ownership of production means, which in turn results in social disparities between the bourgeoisie and the proletariat. For the sake of achieving justice, we must first eliminate the concept of private property and then construct a society that is devoid of social classes.

## **SOCIAL JUSTICE UNDER INDIAN CONSTITUTION**

When seen from Granville Austin's point of view, the Indian Constitution, which serves as the foundation of the country, was published with the intention of promoting social change. Previous to India's attainment of independence in 1947, the practice of positive discrimination was already widespread in the country. While the British were in control of the country, the government had established reservations for individuals of lower castes and tribal groups. The prior conceptions of the "untouchables" were reworked as a consequence of the new administrative categories that were established as a result of these policies. The Madras government was the first to use the phrase "backward classes" in 1870. This was done within the framework of an affirmative action program that was designed to help people who had a low level of education. In the 1920s, as the number of backward groups increased from 39 to 131, the untouchables insisted that they be treated differently from other minority groups. It was for this reason that in 1925, it was decided that the "backward" would be separated into "depressed classes" (which included untouchables and tribals) and "caste other than depressed classes." Following the year 1919, seats in the state and federal legislatures were reserved for those who belonged to economically disadvantaged strata during that time period. Despite this, the untouchables were legally acknowledged as Scheduled Castes with the passage of the Government of India Act in 1935, and the label was swiftly spread across the whole of British India. This group was legally recognised by the Constituent Assembly following the country's attainment of independence; nevertheless, the other members of the depressed classes were classified as the other backward categories. It was the intention of the Indian Constitution to have a policy of positive discrimination that would be beneficial to both of these groups.

A strong feeling of social justice and equality served as a great incentive for the people who took part in the process of drafting the constitution during the time of independence. It is also for this reason that they included wording that is comparable into the Indian Constitution. It is the concept of social justice that serves as the foundation for the Indian Constitution. It is well known that the individuals who drafted the constitution of India adhered to a variety of different conceptions of justice. People were looking for a different form of justice throughout the whole revolution, and they went out to get it that they were looking for. Pt. Jawaharlal Nehru addressed the Constituent Assembly with the following proposition: "The first task of this assembly is to make India independent by a new constitution through which the hungry will get full clothing and food, and every Indian will have the best opportunity to advance himself." This was the proposal that Pt. Nehru made.

In the years leading up to its formal acceptance into the Constitution, the idea of social justice was deeply rooted in the ideology of nationalists. According to Rajeev Bhargava, social fairness was one of the guiding

concepts that the nationalist movement aimed to achieve. A social welfare state is represented in the insertion of the adjectives "Socialist" and "Secular" to the preamble of the United States Constitution. The term "justice" is defined in the Preamble in three distinct ways: socially, economically, and politically from the perspective of the Constitution. Within the framework of the Directive Principles and the Fundamental Rights, there are specific provisions that ensure each of the three forms of justice. When we talk about "social justice," we are referring to a society in which no one is socially disadvantaged due to their gender, race, colour, religion, or any other feature. On the other hand, it indicates that women and groups belonging to lower social classes would see an improvement in their living conditions, and that no group will be given preferential treatment. A state of economic justice has been reached when persons are not treated differently on the basis of their financial condition. To achieve this, it is necessary to create a fair playing field in terms of wealth, property, and income. The concept of "distributive justice" refers to a system that ensures both economic and social fairness at the same time. In accordance with the principles of political justice, every individual ought to be granted equal political rights and participation in the administration of the community. In addition to providing financial assistance to individuals who are less fortunate, more than twenty-two measures provide equal protection under the law at the same time. The purpose of these measures, as well as any adjustments that may be made in the future, is to ensure that those who are economically disadvantaged will get political, social, and economic justice.

## **ROLE OF JUDICIARY ACTIVISM**

Review by the judiciary is the most important power that the Supreme Court has. By virtue of the review power that it has in particular, the Judiciary is vested with the capacity to interpret not only the constitution but also the legislation that has been enacted by the legislature. If the court judges that a legislation is in contradiction with the provisions of the constitution, then the statute is considered to be unconstitutional and inapplicable. Judicial activism may be defined as the process by which judges' viewpoints shift in reaction to changes in society. At the core of judicial activism is the promotion of responsible leadership and the protection of the general public's well-being. *Keshvanand Bharti v. state of Kerala*, *Gulalthanath v. state of Punjab*, and *Minerva mills v. Union of India* are all matters that should be taken before the court. All of these cases should be presented before the court. The *S.P. Gupta care ruling*, in which the Supreme Court declared that anybody might seek public interest integration on behalf of another disadvantaged person who was unable to reach the court, altered the manner in which judicial activism was carried out.

### **Case study: Air India vs Nergesh Meerza (Air hostesses case).**

*Air India vs. Nargesh Meerza* was a case that dealt with the challenge to the retirement service requirements of flight attendants working for Air India and Indian Airlines. The challenge was based on the argument that these criteria infringed the right to equality that is given by the Indian constitution. However, the section that terminated her job while she was pregnant was knocked down by the Supreme Court. The provision that permitted a "Air Hostess" to have her services terminated during the first four years of her marriage was upheld by the Supreme Court.

### **Kesavananda Bharti vs. State of Kerala**

The *Kesavanda Bharti* case, which is considered to be one of the most fundamental rulings ever handed down by India's top court, outlined the framework of the constitution with its provisions. In spite of the fact

that the Supreme Court has decided that parliament has the authority to revise any article of the Constitution, including fundamental rights, it has also decided that constitutional changes cannot change the fundamental structure of the Constitution.

### **Shan Bano Case**

1978 was the year when Shan Bano's spouse, a Muslim lady who was 62 years old at the time, filed for divorce from her. In addition to filing a criminal case with India's top court, she made a plea for alimony from her husband. According to a decision made by the Supreme Court, Muslim women who have been wrongly divorced shall be eligible for maintenance payments.

### **Shreya Singhal vs. Union of India**

The Indian Supreme Court has issued a verdict in the case of Indian government v. Shreya Singhal, which pertains to the issue of intermediate duty in India as well as online speech. Section 66A of the Information Technology Act, 2000, which dealt with restrictions on online communication, was declared unconstitutional by the Supreme Court of India because it breached the right to free speech, which is guaranteed by Article 19(1)(a) of the Indian Constitution.

## **JUDICIARY: FUNCTIONS, IMPORTANCE AND AN ESSENTIAL QUALITY OF JUDICIAR**

The Judiciary operates as the third branch of government. This body is responsible for resolving any issues that may arise and applying the law to specific cases. This so-called "meaning of law" is founded on the conclusions that judges have made in their respective rulings. The judiciary is considered by the people to be the most important arm of government. This is due to the fact that it serves as a check and balance on the authority that is held by the legislative and executive branches of government. As a result of its function as a protector of the constitution and the fundamental rights of the people, the Judiciary is held in more esteem than the other two arms of government. The many types of courts that are located at various levels of the Indian judicial system each has a unique set of powers that are determined by the jurisdictions that they have been allocated. The courts are structured in a tight hierarchy, with the highest court being the Supreme Court of India, followed by the high courts of each state, then district judges in district courts, second-class magistrates, and lastly civil judges in the junior division. This hierarchy is consistent with the order in which the courts sit.

The Supreme Court of India is the highest court in India, and one of its functions is to act as the last court of appeal in accordance with the Indian Constitution. It is also the court that has the jurisdiction to study the constitution. This influential organisation, which is comprised of thirty sanctioned judges in addition to the Chief Justice of India, have extensive authority in the areas of original, appellate, and advisory jurisdictions. As the last court of appeal in the country, it hears appeals the majority of the time from judgements that were handed down by the high courts of the several states that make up the Union, in addition to other tribunals and courts. Conflicts that arise between the several administrations of the nation are resolved, and the fundamental rights of the people who live there are safeguarded. The President of India has the authority to explicitly refer matters to it in conformity with the constitution, and it is the responsibility of this advisory court to hear and interpret such cases. The laws that are issued by India's highest court are obliged to be followed by all of India's subordinate courts, as well as by the federal government and the state governments.



According to the provisions of Article 142, the president is bound to carry out the orders or mandates that have been issued by the Supreme Court.

### **Functions of Judiciary and Its Importance:**

1. **To Give Justice to the people:** On a continuous basis, the court is obligated to carry out its main and essential responsibility, which is to serve justice. Individuals who have breached the law or infringed the rights of others are subject to a trial, after which it determines how they should be punished. The legal system provides those who have been harmed with the opportunity to seek justice and retribution for their wrongdoing. People have the ability to exercise their right to do so in situations when they have suffered a loss or when they are concerned that their rights may be infringed. Offender punishment is established by the court system, which also decides the amount of penalty and the harshness of the sentence. It is the ultimate and last arbitrator when it comes to the payment of damages to individuals.
2. **Interpretation and Application of Laws:** The provision of explanations and clarifications on the application of laws to specific circumstances is an important task that falls within the purview of the court. When making decisions on matters that are brought before them, judges are able to comprehend and apply the laws. In order to correctly apply any law to any given circumstance, it is necessary to take into account the accurate interpretation of that law. In this function, the judges are responsible for playing an important role. The meaning of the law is determined by the courts, and it is the meaning that prevails.
3. **Role in Law-making:** The judicial system is also involved in the process of lawmaking. In reality, the meaning, character, and extent of the laws that are approved by the legislature are exactly determined by the judgements that are handed down by the courts. By virtue of the fact that it is these interpretations that really define the laws, the interpretation of laws by the court is equivalent to the act of establishing laws. As an additional point of interest, the decisions that are handed down by the higher courts, which are known as the Courts of Records, are legally binding as well. On the basis of the judgements that were reached by the higher courts, the latter have the ability to judge the matters that are brought before them. There is a source of law that is comprised of judicial judgements.
4. **Equity (fairness) Legislation (law enactment):** When it comes to judging cases, judges rely on their sense of justice, fairness, impartiality, honesty, and wisdom. This is especially true in situations when a law is silent or unclear, or when it seems to be conflicting with another rule of the nation. Lawmaking is usually involved in choices of this kind. Generally speaking, it is referred to as equity legislation.
5. **Protection of Rights:** When it comes to protecting individual rights, the court is ultimately responsible for doing so. In the event that an individual believes that their rights are being violated or threatened to be violated by the government, private organisations, or even fellow citizens, they have the right to seek court protection. In these kinds of situations, it is the responsibility of the court to protect the rights of the people.

## CONCLUSION

Even though there has been a significant amount of progress made in the fields of science, technology, and infrastructure, the gap between those who are affluent and everyone else is growing farther and more with each passing day. Individuals who are economically disadvantaged and socially marginalised are often excluded from participating in the development of their nation. Their marginalisation is the outcome of a complex network of other injustices that are interconnected. In spite of the fact that the government has taken a lot of steps in the right direction, there are still lofty objectives that will need comprehensive policies and programs in order to be accomplished. The interpretation of the Constitution need to be open to change in order to transform it into a living document that can meet the aspirations and desires of the people. The judicial system has been crucial in bringing the constitution up to date by the constructive interpretation that it has provided with regard to it. It is necessary for all arms of government to work together in order to work towards the goal of achieving social justice for all inhabitants. In order to make social justice a potent instrument for the growth of society, it is vital to carry out policies in a way that is both balanced and suitable.

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