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## How Indian Judiciary Performs as a Watchdog in the World's Largest Democracy

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### Abstract :

*“There is no better test of the excellence of a government than the efficiency and independence of its judicial system” – Lord Bryce. Perhaps the above quote emphasis the fact that judiciary plays an important role to strengthen democracy. In the words of Abraham Lincoln it is “of the people, by the people, and for the people.” Indian democracy is purely democratic because here a government is elected or removed by a fair election conducted by Election Commission. As a watchdog Indian judiciary is independent and free from any external influence. As a part of constitution it controls disputes and pass judgements. By realising the future of Indian democracy the makers of Indian constitution make the judiciary system as a strong safeguard to the citizens. However, judiciary is in fact the guardian and the conscience keeper of normative values and rights that are authoritatively allocated by the state. Therefore, the article argues how Indian judiciary performs as a watchdog of democracy. At same time the article goes on to analyse the system of Indian judiciary which is not free from allegations. Finally, the article puts across solutions for the road ahead.*

**Keywords:** Introduction, Judicial Activism, Remarkable judgement of Supreme Court, Supreme Court fails to stand up in the court of public opinion, Conclusion

### 1. Introduction :

*“We must.... observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not ‘to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions’”.*

J.S.Mill quoted by BR Ambedkar on 25 November 1949, requited by Ranjan Gogoi, sitting CJI of India on Constitution Day (November 26, 2018). Judiciary is a part of the democratic political structure of the country. Indian Constitution has provided a unified and integrated judicial

system in India. Though India has a federal system, it does not have dual system of courts. This integrated judicial system of courts, adopted from the Government of India Act, 1935. The integrated judicial system places Supreme Court at the top and the High Court's below it, followed by hierarchy of Subordinate Courts, i.e. the District Courts and other Lower Courts. Articles 124 to 147 in Part V deals with Supreme Court, Articles 214 to 231 in Part VI deals with High Courts and Articles 233 to 237 in Part VI deals with Subordinate Courts.

## 2. Judicial Activism :

The Concept of Judicial Activism was first coined in 1947 by Arthur Schlesinger Jr., an American historian and educator. In India, the doctrine of Judicial Activism was introduced in mid-1970s. Judicial activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent, or are independent of, or in opposition to supposed constitutional or legislation intent. The followings are the example of judicial activism –

### i) **Hussainara Khatoon and others v. Home Secretary, State of Bihar (1979)**

This case had been brought up before the Supreme Court under its original jurisdiction by Writ petition. The petition was for the issue of writ of habeas corpus where the petitioners stated that a large number of men and women including children were in jails for years awaiting trial in courts of law and that the offences, even if proved, would not warrant punishment for more than a few months. Although sufficient opportunity was given, the state did not appear before the court. At the hearing, the govt of Bihar was directed to release under-trial prisoners in cases where the investigation had been continuing for more than six months.

### ii) **M.C. Mehta v. Union of India (Shriram Industries Case) (1986)**

Shriram Food and Fertilizers Industry a subsidiary of Delhi Cloth Mills Limited was producing caustic and chlorine. On December 4<sup>th</sup> and 6<sup>th</sup> 1985, a major leakage of petroleum gas took place from one of the units of the industry in Delhi which resulted in the death of several persons. M.C.Mehta filed a PIL under Articles 21 and 32 and sought closure and relocation of the Industry. Chief Justice Bhagwati showed his deep concern for the safety of the people of Delhi from the leakage of hazardous substances like the one here – oleum gas. But Supreme Court was of the opinion that total ban on the above industry of public utility will impede the developmental activities.

Besides, judicial activism of the apex court is found in State of Rajasthan v. Shree Rani Satiji Mandir Case in 1988 on Anti-sati law extended to all temples in Rajasthan, Subhas Kumar v. State of Bihar Case in 1991 on waste and hazardous substances and many other cases.

## 3. Landmark Judgments of the Supreme Court :

### • **AK Gopalan Case, 1950**

The case corresponds to the charges of violation of Articles 19 (the right to freedom), 21 (the right to life) and 22 (the protection against arbitrary arrest and detention). The Supreme Court

held that the constitutional validity of a law cannot be verified by the judiciary and the judiciary has only the capacity to verify whether the procedure according to the law has been followed.

- **Champakam Dorairajan Case (1951)**

The case challenged the reservations given to backward classes in educational institutions in Tamil Nadu. The Supreme Court overruled the caste based reservations as unconstitutional, citing Right against Discrimination as given in Article 15. However, to overcome the effects of this verdict the Union Government passed the First Constitutional Amendment Act inserting Article 15 (4).

- **Berubari Case (1960)**

While ceding a part of Indian Territory to an alien state, the court in an advisory opinion held that such process cannot take place unless a Constitutional Amendment to that effect is made.

- **Keshvananda Bharati Case (1973)**

For the first time, the Supreme Court propounded the Basic Structure Doctrine and held that certain basic features of the Constitution cannot be amended while others can be done, so without having a sweeping change in the Constitution. It also mooted the principle of harmonious construction of Fundamental Rights and Directive Principles of state Policy.

- **Shah Bano Case (1985)**

The Supreme Court held that Muslim women also have right to get maintenance from their husbands when they are divorced although such practice is not permitted under Muslim Traditional Laws.

- **St. Stephen's College Case (1992)**

The Supreme Court held that at least 50% of seats in minority institutions should be reserved for non-minority students.

- **SR Bommai Case (1995)**

The Supreme Court held that Federalism is a part of basic structure and State govt cannot be arbitrarily dismissed by a governor and any such test of confidence of the executive must be done on the floor of the assembly.



- **Black Money (2012)**

The government refused to disclose details of about 18 Indians holding in LGT Bank, Liechtenstein evoking a sharp response from a bench comprising Justice B Sudershan Reddy and SS Nijjar. The Court ordered the SIT to probe the matter.

- **Right to Reject (2013)**

Supreme Court recognised the right to negative vote for the electorate in the country. The Supreme Court directed the Election Commission to have a 'None of the Above' button on electronic voting machines and ballot papers which can be used by the voters to reject all the candidates contesting elections in a constituency.

- **Disqualification of Criminal Law Makers (2013)**

Supreme Court held that charges sheeted MPs and MLAs, on conviction for offences, will be immediately disqualified from holding membership of House without being given 3 months time for appeal as was the case before.

- **Trans-genders as 'Third Gender' (2014)**

Supreme Court created the third gender status for Hijras or transgender. Earlier, they were forced to write male or female against their gender.

- **Sabarimala verdict in Supreme Court (2018)**

A five-judge constitution bench, headed by CJI Dipak Misra, said that the provision in the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules 1965, which authorised the restriction, violated the right of Hindu women to practice religion. It also said that patriarchy in religion cannot be allowed to trump the right to pray. All judges ruled that devotees of Lord Ayyappa do not constitute a separate religious denomination.

- **Nirbhaya Case (2019)**

Supreme Court take tough stand against rising sexual offences against women and children. It upheld the death sentence of one of the four convicts in the 2012 Nirbhaya gang rape and murder case and came up with guidelines for setting up special courts in each district with over 100 FIRs to deal with POCSO cases.

- **M Siddiq (d) through LRs V. Mahant Suresh Das and others (2019)**

The case is famously known as 'Ayodhya Case'. In this case the five judge bench of Supreme Court decided to hand over the disputed land of 2.77 acres in Ayodhya to a trust for the construction of Ram Mandir and also under Article 142 of the constitution ordered to give an alternate five acre tract of land to the Sunni Waqf board to build the mosque. The act of placing idols beneath the central dome of the mosque in 1949 was declared to be an act of desecration i.e. acts of religious impurity.

- **Indibility Creative Pvt. Ltd and others v. Govt of West Bengal and others (2019)**

In this case a Bengali film 'Bhobishyoter Bhoot' (Future Ghost), was stopped from screening by the state govt by unlawful use of the powers of the police. The Supreme Court in this case stated that Right to Freedom of Speech and expression cannot be restricted by fear of mob violence and public officials are subject to the rule of law. The Court overturned the virtual ban imposed by the govt.

- **Anuradha Bhasin v. Union of India (2020)**

Supreme Court in this case held that Right to internet forms a part of freedom of speech and expression under Article 19(1) (a) and ban of internet in the State of Jammu and Kashmir is violative of it. The court also stated that an order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017.

#### 4. Supreme Court fails to stand up in the court of public opinion :

In some cases the verdict of the apex court is not free from questions. It may be direct participation of the judges in politics or their silence in important cases or may be their intimacy with political persona. Now a

days, post-retirement gift to the judges offered by ruling party creates a lot of questions. The following are the examples –

- i) In 1998, Ex CJI Ranganath Mishra was elected to Rajya Sabha as a INC member.
- ii) In 2014, CJI P Sathasivam was appointed as the Governor of Kerala, right after his retirement.
- iii) In 2020, former CJI Ranjan Gogoi nominated to Rajya Sabha, less than 6 months after his retirement under Article 80.
- iv) Observing the transparency in Rafale deal, former High Court Judge Justice B Kemal Pasha criticise by saying that while the courts were eager to show judicial activism in cases relating to civil and political rights, the same activism was missing in cases which impacted economic and

social impact on people. He stated “While considering pleas filed in connection with the Rafale deal, the Supreme Court said they have no power to intervene in the deal. It is the violation of Article 142, which deals with judicial activism”.

- v) Again question arises when a Bench of CJI Dipak Misra and A.M. Khanwilkar and D.Y. Chandrachud in April 2018 dismissed the petitions demanding independent probe in Justice’s Loya death after articles appeared in a magazine raising suspicious about his death in Nagpur in 2014. CBI special judge Loya was hearing on the Sohrabuddin’s case where then BJP president Amit Shah was parties. The order said that Loya died of natural causes and there is ‘absolutely no merit’ in the PILs alleging foul play in his death. Constitutional lawyer Gautam Bhatia has commented that the judgement “ reads like a trial court judgement that has been delivered without a trial.” The Court refused to allow the cross-examination of those judicial officers. It was enough to raise reasonable suspicion of commission of offence.
- vi) During COVID 19 seeking grant of food, shelter and free transport through DM an appeal was made to Supreme Court by migrant labourers. But Supreme Court rejected the plea saying it is a matter of state and how one can stop migrants from walking and sleeping on railway tracks, instead of providing a solution or providing free transport. At the same time this Supreme Court took Suo Motu and allowed Air India to schedule flights for migrants outside India.
- vii) Another disturbing concern is that of the revelations by judges regarding executive interference in administrative matters of judiciary such as appointment and constitution of benches. Country never forget historic press conference held by four senior judges on January 12, 2018. Justice Chelameswar said that administration of justice was not in order and that “many things which are less than desirable have happened in the last three months.” The judges handed over to media a letter written by them to then CJI Dipak Misra, which, among other things, stated that “cases having far-reaching consequences for the nation and judiciary were selectively assigned to benches of preference without any rational bias”. More clarity on this issue was provided by Justice Kurian Joseph, who in a post-retirement interview to Times of India said that there was “outside influence” in judiciary.

## 5. Conclusion:

However, as the most important organs of democracy main object of judiciary is to give equal justice to the people. Undoubtedly the apex court has given some remarkable judgements. That is why it is considered the most powerful institution free from external forces. But, the keeper the public conscience and the watchdog of fundamental rights is not free from questions. In this paper few cases are mentioned and it becomes easy to question the sanity of Supreme Court. Justice Ajit Prakash Shah said the Supreme Court has “completely abdicated its duty to defend fundamental

rights” and added that this will “affect the credibility of the court and its prestige”.

Therefore, to conclude I would like to quote Justice A P Shah “In several cases, the court has refused to act in defence of citizens who have been victimised for their protest and dissent or for simply exercising their fundamental right of speech and expression”.

### References:

1. Laxmikanth, M. (2017). *Indian Polity*. 5 th ed. pp. 26.1 – 28.5. McGraw Hill Education (India) Private Limited. Chennai, Tamil Nadu, India.
2. Kashyap, C. Subhash. (2001). *Our Constitution*. 3 rd ed . p. 232. National Book Trust. New Delhi, India .
3. Pandey, Manohar. (2015) . *General Studies* . p. 3-78 – 3.89. Arihant Publications (India) Limited. Darya Ganj, New Delhi .
4. The Indian Express. (January 13, 2019) . “*Judiciary needs backbone to stay as watchdog of the constitution*” .
5. The WIRE. (January 12, 2018). *Death of a Judge : What We Know, What We Don't Know* .
6. Ranjan, Riya & Rai,, Diva. (2020). *Supreme Court of India : fair or biased*.  
<https://thewire.in/law/supreme-court-modi-years> .
7. Times of India. (January 12, 2018) . “*Mysterious death of Justice Loya a serious issue : Supreme Court*”.

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