
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**INDIAN JUDICIARY SYSTEM AND ITS LACUNAS TO IMPART
JUSTICE: A CRITICAL STUDY**

- Pankaj Sagar¹

INTRODUCTION

For free democracies to function properly, the principle of judicial autonomy must be upheld. Aside from this, an independent and self-governing judicial system plays a crucial role in ensuring that the rights of citizens are shielded from any potential transgressions committed by the executive branch. The Judicial Branch is Still the Most Important Part of the Constitutional Checks and Balances System. In addition, the judicial system of the nation is accountable for upholding the fundamental standards and democratic principles of the nation and serves as the primary guardian of the constitution. In light of this, the Indian judiciary has been very important to the young republic's dramatic move toward democracy over the past seven decades. It has done an excellent job of extending a large number of additional rights and liberties to members of society who are vulnerable or have been dispossessed, in addition to ensuring that the executive branch remains within the bounds established by the Constitution.²

However, the judiciary has come under intense pressure in recent years, particularly since the rise of executive power under the current administration, which is led by the right-wing Bharatiya Janata Party. This has happened while the judiciary has been carrying out its

¹ LL.M Candidate, UILS, Panjab University, Chandigarh

² Anand, Utkarsh. 2015. "Supreme Court strikes down NJAC, revives collegium system." The Indian Express. Last modified October 17, 2015. <https://indianexpress.com/article/india/india-news-india/sc-strikes-downnjacrevives-collegium-system-of-appointing-judges/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

constitutional role of protecting individual freedom and acting as a major check on the excesses of the executive branch. As a result, the judiciary is no longer able to carry out its constitutional duties as efficiently as it once did. However, this ancient institution, which is well-known as a bastion of freedom and justice, is currently at a significant crossroads. This takes place against the background of a populist majoritarian government that clearly controls the judicial system. The "separation of powers" constitutional principle is currently facing significant difficulties. In recent times, there have been concerns regarding the appointments of judges, accountability, corruption, pendency, issues of access to justice for ordinary residents, the cost of justice, and questionable judgments. Additionally, there are concerns regarding the accessibility of regular citizens to justice. This article tries to provide a high-level overview of the development and essential characteristics of Indian judicial power, as well as its roles in establishing democracy and freedom, current issues, and potential solutions.³

After 75 years of functioning as a democracy and 72 years of abiding by the Constitution, India still is one of the youngest, yet one of the most steadfast democratic republics. Distancing modern independent India from its colonial past was not an easy feat. Post-Independence, one of the biggest challenges was modernization and shifting gears from primarily an agricultural economy to an industrial one. The 1960s and 1970s may be remembered as the most challenging periods in modern Indian history. Two wars, a liberation movement, armed rebellion by a certain section of students and the youth, nationalization of banks and general insurance companies, devaluation of the rupee and declaration of emergency, etc., marked the turbulent times of a young democracy. The 1990s were particularly difficult for the Indian economy.³⁹

The Gulf war, fall in foreign remittances, increase of global oil prices, the resultant depletion of forex reserves, a very high inflation rate – all in all, a crisis was at our doorstep. Desperate times called for desperate measures. The result was an attempt to end the License Raj, new market friendly legislations, and the formulation of the New Industrial Policy of 1991 which aimed at

³ Bhatia, Gautam. 2020 "ICLP Turns 7: A Constitutionalism without the court." Indian Constitutional Law and Philosophy. <https://indconlawphil.wordpress.com/2020/08/01/iclp-turns-7-a-constitutionalism-without-thecourt/>³⁹
Datar, Arvind P. 2013. "The case that saved Indian Democracy." The Hindu. Last modified April 24, 2013. <https://www.thehindu.com/opinion/op-ed/the-case-that-saved-indian-democracy/article12209702.ece>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

liberalizing the economy and attracting foreign investments. The end of the 1980s witnessed the beginning of formation of the coalition era in the central level the judiciary was also confronted with many challenges over this 72-year period. The Supreme Court distinguished itself by ironing out many wrinkles, and merging welfare with the rule of law. The Courts have played an important role in ensuring that the rights enshrined in the Constitution are not a dead letter. The judiciary has reinforced the idea that justice demands balancing the needs of an individual with the welfare of the community. It is because of these reasons that, today, we thrive as the largest democracy governed by a written Constitution. The Indian Supreme Court has immensely contributed towards the establishment of a constitutional culture in the nation.⁴

The Supreme Court initially had to expound on jurisprudence afresh, without the help of earlier court decisions on the constitutional front. Slowly, and progressively, in the first two decades of its functioning, the Court has built its own jurisprudence to ensure that Rule of Law is always maintained. Initially, the Supreme Court provided a very literal understanding of the Constitution, like in the AK Gopalan case. It was after almost three decades that the Supreme Court declared the transformative power of the Constitution in the Maneka Gandhi case. In Kesavananda Bharti, the Court for the first time expounded on its power to review amendments to the Constitution. It was only through such an exposition that the 39th Amendment Act was struck down in the Indira Gandhi vs. Raj Narain case. The power of judicial review is often sought to be branded as Judicial overreach. Such generalizations are misguided. The Constitution created three co-equal organs, namely the legislature, the executive and the judiciary. It is in this context that the judiciary has been given the role of reviewing the legality of steps taken by the other two organs.⁵

It is a well-known fact that; a popular majority is not a defence for arbitrary actions taken by a Government. Every action is mandatorily required to comply with the Constitution. If the judiciary does not have the power of judicial review, then the functioning of democracy in this

⁴ Dushyant, Dave. 2020. "The Supreme Court's greatest gift is the PIL and it is here to stay, whatever critics may say". The Wire. <https://thewire.in/law/supreme-court-pil-constitution-law>

⁵ Tata Trust. 2019. "India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid." <https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

country would be unthinkable. The concept of separation of powers cannot be utilized to restrict the scope of judicial review. This concept only protects bona fide legitimate actions. It is required that the legislative and executive wings recognize their limits under the Constitution to ensure the smooth working of the democracy.⁶

- **JUDICIARY: STRUCTURE AND INDEPENDENCE**

India's judicial system is widely regarded as one of the most robust anywhere in the world due to its extensive powers and the way its foundation was established during its functional independence. India has a unified court system, in contrast to the American legal system. The highest court in the country is the Supreme Court of the United States, followed by the statelevel High Courts and district courts. For alternative dispute resolution, there are also a variety of quasi-judicial organizations like mediation centers and tribunals. The Indian legal system includes not only the common law system but also statute law and regulatory law, in contrast to the British system, which is entirely based on the common law system from which it derived. The Constitution's founders made it abundantly clear that they wanted an independent judiciary. Important steps include laying the groundwork for transparent appointments of judges, guaranteeing the stability of their terms of office, and defining the parameters within which they work.

- **THE SUPREME COURT**

In the Indian legal system, the highest judicial body is the Supreme Court of India (SC). It was established by the Fourth and Fifth Amendments to the Constitution. The Supreme Court's composition and legal authority are described in detail in Articles 124 to 147 of the Constitution. It is, in essence, an appellate court that hears appeals of decisions made by the various provincial High Courts (HC). In cases of serious violations of human rights, it also accepts writ petitions. When a case has significant issues that must be resolved as soon as possible, this occurs.⁷

⁶ Kumar, Vikas. 2020. "S.P. Gupta v. UOI." India Law Portal. <https://indianlawportal.co.in/s-p-gupta-v-uo/>

⁷ Mahajan, Shruti. 2020. "Turning the clock back: How the Supreme Court has dealt with cases arising out of last year's abrogation of Article 370." Bar and Bench. <https://www.barandbench.com/columns/supreme-courtdealtwith-cases-abrogation-of-article-370-jammu-and-kashmir>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

• Composition

Provisions for the nomination of a Chief Justice and seven additional judges were included in the Constitution when the Supreme Court was first established. As the number of cases has increased over time, a larger number of judges have been required to oversee their administration. There are currently thirty judges on the Supreme Court, including the Chief Justice. The Chief Justice is appointed by the President of India, and the judge with the most years of experience typically holds the position. All of the other judges who will be appointed, including those to the High Courts, are selected by a collegium that consists of the Chief Justice and four senior Supreme Court judges. The structure of the collegium was established in 1998 as a countermeasure to any executive action in a series of judgments that were collectively referred to as "the judges case."⁸

• Powers and jurisdiction

The Supreme Court has been given a lot of authority and responsibilities. The Supreme Court has jurisdiction over cases at the initial, appellate, and advisory levels in order to carry out its responsibility as a guardian of the Constitution. The Supreme Court is referred to as the "court of records," indicating that all of its decisions and procedures are archived and accessible to the public. The Supreme Court's decisions must be followed by all lower courts. In addition, the court is authorized to reconsider previous decisions. The Supreme Court has the authority to provide economically disadvantaged individuals with free legal assistance.⁹

• The original jurisdiction

The Supreme Court's original jurisdiction extends to any conflict that arises between two or more states, as well as any conflict that arises between the Union and one or more states. Article 131 of the Constitution deals with this issue. According to Article 32 of the Constitution, the court

⁸ Menon, Vandana and Soham Sen. 2018. "Illustrating the Emergency: The darkest timeline in Modern Indian History." The Print. <https://theprint.in/india/governance/43-years-of-emergency-a-timeline-of-events/74568/>

⁹ Mohanty, Chiranjeeb. 2018. "ADM Jabalpur vs Shivkant Shukla (1976) 2 SCC 521 – Case Summary." Law Times Journal. <https://lawtimesjournal.in/adm-jabalpur-vs-shivkant-shukla-1976-2-scc-521-case-summary/>⁴⁶ Narlas, Shreyas and Shruti Rajagopalan. 2020. "The Judicial Abrogation of Right and Liberties in Kashmir." Article 14. <https://www.article-14.com/post/the-judicial-abrogation-of-rights-liberties-in-kashmir>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

has the authority to issue orders, instructions, or writs in the forms of habeas corpus, mandamus, prohibition, quo warranto, and certiorari in order to guarantee that fundamental rights are upheld. The court, on the other hand, does not have the authority to rule on treaties and agreements that were signed prior to the constitution's enactment. This means that there is a restriction in place.⁴⁶

•The appellate jurisdiction

The highest appellate court in the nation is the Supreme Court. It is therefore able to hear appeals against the decisions of the High Courts in civil and criminal cases involving significant legal issues and constitutional interpretations. The appellate authority of the Supreme Court covers a wide range of lower courts and tribunals nationwide. According to Article 136 of the Indian Constitution, the Supreme Court of India has the authority to grant special leave to appeal any court-issued decision, sentence, or order in any matter.

•The advisory jurisdiction

According to Article 143 of the Constitution, the President may refer a matter to the Supreme Court for its expert opinion if there is any ambiguity regarding the interpretation of a clause or if certain constitutional issues arise. To put it another way, the President can request the SC's opinion on the issue.

4.2 GROWTH AND EVOLUTION OF JUDICIAL POWERS: AN OVERVIEW

•First phase: a positivist court

The judiciary could only operate within the bounds set by the Constitution during its early years. Through the use of their judicial review authority, the courts vigorously opposed problematic legislative announcements. The three most significant components of the judicial system come to the forefront in the early years, beginning in 1950.

The constitution's wording was carefully scrutinized in the beginning. Second, the judiciary was unwilling to support the lofty goals of the administration that was in power at the time, and third, the judiciary was in agreement that Parliament should be able to change the Constitution. The

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

judiciary ruled that the abolition of democracy violated the right to property in the case of *Kameshwar Prasad v. State of Bihar*. However, because the parliament quickly enacted the First Amendment to the Constitution in 1951, which removed the provision from the scope of judicial review, it chose not to use the provisions of judicial review. In a similar vein, the court in *State of Madras vs. Champakam Dorairajan* ruled that the government's decision to implement caste-based reservations in educational establishments violated the right to equality. The court, on the other hand, did not oppose Parliament's right to amend the Constitution to justify caste-based affirmative action. To put it another way, the court did not overturn the government's decision to place reservations in educational facilities based on caste. Throughout the first 15 years of the court's existence, the judiciary followed a positivist interpretation of the Constitution in these and many other instances. Due to the fact that the issues at hand frequently involved civil liberties, freedom of speech, caste discrimination, and, most importantly, land reforms, the courts became involved in a great deal of contentious litigation during this time period.¹⁰

•Second phase: bending backward

Even though the court was initially viewed as politically neutral, the reservation policy frequently led to direct confrontation with the parliament, even when it dealt with politically sensitive issues like the eradication of the zamindari (the landed class structure). By providing a broad interpretation of fundamental rights in the Golak Nath Case, the courts made their official entry into this field.¹¹ In this case, the Supreme Court looked into whether the Seventeenth Amendment was legal. After doing so, it decided that the amendment in question wasn't legal. The Court decided that the parliament's amendment power should be subjected to basic rights

¹⁰ Padmanabhan, Vishnu and Sriharsha Devulapalli. 2018. "How the Supreme Court has evolved since 1950." Livemint. Last modified August 15, 2018. <https://www.livemint.com/Politics/iK7w9InnxqgsELzcf26HRN/Howthe-Supreme-Court-has-evolved-since1950.html>

¹¹ Rajagopal, Krishnadas. 2021. "A paradigm shift in Supreme Court after Justice NV Ramana takes over as CJI." The Hindu. Last modified May 4, 2021. <https://www.thehindu.com/news/national/news-analysis-aparadigmshift-in-supreme-court-after-justice-nv-ramana-takes-over-as-cji/article34477835.ece> ——— 2016.

"CJI Thakur's emotional appeal to Modi to protect judiciary." The Hindu. Last modified Aril 24, 2016. <https://www.thehindu.com/news/national/CJI-Thakur%E2%80%99s-emotional-appeal-to-Modi-toprotectjudiciary/article14257126.ece>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

examinations. The court went even further in the case of R.C. Cooper v. Union of India by declaring that the muchhyped plan to nationalize banks was illegal. It overturned non-controversial prior decisions during the course of the process. A frontal conflict between the legislative and judicial branches of government was ushered in as a result of this. The Parliament ratified the Twenty-fourth Amendment, which overturned Golak Nath and established Parliament's authority.¹²

The Supreme Court issued the landmark Keshavananda Bharti vs. State of Kerala decision as a result of the Twenty-fourth, Twenty-fifth, and Twenty-Ninth Amendments, limiting the sovereign power of parliament to amend the constitution. This verdict was handed down after the Twenty-fourth Amendment was passed. Seven of the thirteen judges on the Supreme Court bench came to the conclusion that, despite the fact that Parliament has the ultimate authority to amend the constitution in accordance with Article 368, it is not permitted to alter the "basic structure" of the constitution. This decision was made by a majority of the judges. The Supreme Court upheld this decision. The government of Indira Gandhi, which held an absolute majority at the time and was able to avoid three additional senior justices, reacted strongly when Justice AN Ray was appointed as Chief Justice of India. The Raj Narain case, which centered on whether Mrs. Indira Gandhi's election was legal, marked the turning point in the conflict that followed. The Allahabad High Court declared Mrs. Gandhi's election invalid in June 1975, which was followed by the declaration of a state of emergency. The judiciary's rapid marginalization was made possible by this decision.¹³

In the contentious case ADM Jabalpur vs. Shivkant Shukla⁶, which supported the government's act of suspending the right to life under Article 21 of the Fundamental Rights, the National Emergency and the supersession of judges, which led to the rapid politicization of the judiciary,

¹²Ravindher, Pranav. 2020. "Case Analysis: Golaknath vs. State of Punjab." India Law Portal. <https://indianlawportal.co.in/case-analysis-golaknath-v-state-of-punjab/>

¹³ Robinson, Nick. 2009. "Expanding Judiciaries: India and the rise of Good Governance Court." Washington University Global Studies Law Review 8, no. 1 (January) https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1067&context=law_globalstudies

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

actively contributed to judicial surrender to the executive. The Indian Supreme Court decided Shivkant Shukla. The administration's claims were supported by the Supreme Court, which upheld the findings of numerous High Courts that had found the suspension of habeas corpus to be illegal. The judicial system, which had been praised and respected for its impartiality and independence in previous decades, became an executive court after yielding to political pressure and losing its legitimacy.

•Third phase: the era of judicial supremacy

After the emergency ended, the judiciary tried to show "repentance" by adopting an activist stance in many of its later decisions. During the emergency, the judiciary was seen as submissive to the government. In the Habeas Corpus case (also known as ADM Jabalpur), the judicial system took the most immediate action by repairing the damage it had caused. The Indian judiciary expanded the scope of Article 21 by tying it to grounds of procedural and substantive justice in the well-known case Maneka Gandhi v. Union of India. To make the provision more applicable, this was done. In this particular case, the Supreme Court ruled that Article 21 was a restriction on lawmaking in addition to a guarantee against executive action that was not supported by law, which opened up a new dimension of the right to life and personal liberty. The Supreme Court opened up a new dimension of the right to life and personal liberty by coming to this conclusion. In the case of Minerva Mills, it also declared null and void the fundamental provisions of the Forty-second Amendment, which had prevented judicial review from falling under the purview of amendments to the Constitution. Through an imaginative use of a new weapon known as public interest litigation (PIL), the court gradually fashioned an era of judicial activism in the latter ten years of the century, largely based on the United States' experience.¹⁴

¹⁴ Sankhe, Shirish et al. 2020. "India's Turning Point." The McKinsey Global Institute.
<https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/India/Indias%20turning%20point%20An%20economic%20agenda%20to%20spur%20growth%20and%20jobs/MGI-Indias-turning-pointExecutivesummary-August-2020-vFinal.pdf>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Public interest litigation and judicial activism

The Public Interest Litigation (PIL) revolution was sparked by the landmark case *S.P. Gupta v. President of India* and Others. The key architect of PIL, Justice P.N. Bhagwati, loosened the requirements for locus standi in his judgment and made the judiciary more accessible to public-spirited citizens. This included people who wanted to help the poor and oppressed, as well as those who wanted to make sure that public duties were carried out. By providing victims with interim relief, determining the appropriate level of compensation, and regulating the procedure by which these decisions were made, the Supreme Court established new ground in cases involving matters of public interest. Thousands of conscientious individuals, attorneys, citizen forums, and organizations representing civil society were inspired to file lawsuits on behalf of disadvantaged and defenseless individuals and groups as a result of the court's proactive promotion of PIL. Using the Public Interest Litigation (PIL) process, the court creatively expanded substantive rights to include unstated but implicit rights like the right to a healthy environment, the right to health and medical care for workers, the right to live in dignity, and the right to a livelihood. A new era of active acknowledgment of societal disparities and difficulties faced by the underprivileged was ushered in by this active interventionist approach, but it occasionally overstepped the executive in terms of policy formulation and implementation. Despite the abundance of written material that has been produced on the possible benefits and drawbacks of this step, it is undeniable that this action was the catalyst for a culture of active participation in matters that are of concern to the general public.¹⁵

Collegium system and re-assertion of judicial independence

The judiciary expertly taking advantage of the opportunity presented by weak coalition administrations to stamp its authority on justice nominations during this time. The decision was made with the intention of bolstering the judicial system's preeminence in addition to protecting the judiciary from executive branch interference in nomination processes. The judiciary accomplished this through a series of decisions, or "three judges cases." *S.P. Gupta v. Union of*

¹⁵ Shah, A.P. 2020. "The Only Institution Capable of Stopping the Death of Democracy is Aiding it." The Wire. <https://thewire.in/law/supreme-court-rights-uapa-bjp-nda-master-of-roster> ——— 2020. "The Supreme Court, then and now." Economic and Political Weekly 55, no 40 (October) <https://www.epw.in/journal/2020/40/perspectives/supreme-court.html>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

India was one of the first cases brought by judges in 1981. This case was brought about as a result of the President of India listening to the opinion of the chief justice of the Delhi high court rather than following the consultative advice of the Chief Justice (CJ). Because it did not acknowledge the independence of the Chief Justice, this decision was criticized. In 1993, the question of whether the CJ's opinions on appointment hold primacy were raised in the Public Interest Litigation (PIL) that resulted in the Second Judges Case. In appointment matters, the second judgment determined that the Chief Justice's opinions should take precedence.

The question of whether the president's consultation should be limited to the CJ or involve additional judges was the subject of the third judges case, which was decided in 1998. The Supreme Court came to the conclusion that this should lead to the establishment of a collegium system, in which other judges are actively consulted when making appointments. This was contested in 2015 during the National Democratic Alliance (NDA) administration of the government led by Narendra Modi. The newly elected government went ahead and approved legislation to establish the National Judicial Appointments Commission (NJAC). In the year 10, a five-member Supreme Court bench declared the new statute unconstitutional because it was perceived as an attempt by the executive branch to steal the authority of nomination away from them. As a result, the judicial branch resisted any attempts by the executive branch to interfere in matters that it considered to fall solely under its authority.¹⁶

- **CHALLENGES IN INDIAN JUDICIARY**

This brings me to the various challenges before the Indian judiciary. Broadly these can be categorized into two groups. The first relate to issues before the judiciary due to changing times. The judiciary reached the pinnacle of its independence and power in the 1990s and late 2000s. In addition to acting as a check on the excesses of the state, it issued numerous landmark decisions during that time period that expanded the personal liberties and rights of vulnerable and underprivileged populations. However, the judiciary's independence and power are rapidly deteriorating at the moment. The right-wing Bharatiya Janata Party (BJP)'s rise to power has

¹⁶ Varshney, Hemanta. 2018. "Maneka Gandhi vs Union Of India – Case Summary." Law Times Journal.
For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

coincided with a significant decline in the power of the judiciary and the legitimacy it enjoys among the general populace. It is essential to note that the judicial power flourished during the time that successive coalition governments at the center of India were characterized by an "unstable" and "weak" executive. In contrast, that continuity was ended by the Bharatiya Janata Party (BJP), which was led by Narendra Modi and won a majority of seats in the 2014 general elections on its own.

•Need for domain expertise

Due to the rapid development of science and technology, new types of problems and cases are coming up every day. Take for example, the internet. Sale of illegal material on the dark web, identity theft, fraudulent online transactions, hacking, spread of defamatory content and hate speech, etc., are all challenges that we must confront. Another example relates to money laundering or crime funding through virtual currencies. At present, even understanding the mechanisms underlying such an offence might be beyond our Judges and investigators. An additional layer of complexity relates to issue of jurisdiction over the above. Apart from changing dimensions of criminal law, there are also new and complicated civil law issues that have arisen due to advance in technologies. These are all transforming the legal landscape and require judges and other authorities to have vast technical knowledge. Our understanding and the laws cannot lag too far behind changing technology. We are still discussing issues related to internet, while technologists are talking about the "Metaverse". An aspect that we need to contend with is the rise of specialized regulatory authorities like the Competition Commission, Securities Tribunal, the Electricity Regulatory Commissions and TRAI. The complexities involved in adjudicating such cases necessitated the co-opting of technical members in Tribunals.¹⁷

However, no such provision to co-opt experts is available to the judiciary, causing difficulties in deciding appeals. This issue becomes even more urgent when it comes to appeals or petitions

¹⁷ Vishwanath, Apurva. 2020 "10 free speech cases this year: In most, no relief from Supreme court – except when Centre did not object." The Indian Express. Last modified August 22, 2020. <https://indianexpress.com/article/india/10-free-speech-cases-this-year-in-supreme-court-6564796/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

relating to environmental pollution and the climate crisis. There is therefore a requirement of domain expertise. We not only need highly trained judges and lawyers well versed in fundamental legal principles, but also those with an understanding of developments across various fields. It is necessary to have continued judicial training from technical experts. Legal education needs to keep pace with the times and constantly update their curricula.

•Absence of Well-Considered Legislation

There is usually no impact assessment or basic scrutiny of constitutionality before passing of legislations. The minimal that is expected out of the legislature while drafting laws is that they abide by settled Constitutional principles. While making laws, they must also think of providing effective remedies for issues which may arise out of the law. But these principles seemingly are being ignored. A lack of foresight in legislating can directly result in the clogging of courts. For example, the introduction of the Bihar Prohibition Act in 2016 resulted in the High Court being clogged with bail applications. Because of this, a simple bail application takes 1 year to be disposed of. Un-refined law leads to a mushrooming of litigation. A proposed law can only be refined through the involvement of all stakeholders and through meaningful debate. Parliament introduced a remarkable mechanism in the 1990's to enhance scrutiny of bills - that of standing committees. However, it appears that the legislature has not been able to make optimum use of the Committee system. I hope this will change, as such scrutiny improves the quality of legislations.

•Non-Cooperative Executive

Courts do not have the power of the purse or the sword. Court orders are only good when they get executed. The executive needs to assist and co-operate for the rule of law to prevail in the nation. However there appears to be a growing tendency to disregard, and even disrespect Court orders by the executive. One ought to remember that ensuring justice is not the responsibility of the judiciary alone. Unless the other two coordinate organs make sincere efforts to fill the judicial vacancies, appoint prosecutors, strengthen infrastructure, and make laws with a clear foresight and stakeholder's analysis, judiciary cannot be held responsible alone.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

•Dysfunctional Criminal Justice System

There is a need to liberate the institution of public prosecutors. Total independence must be granted to them and to make them answerable only to the Courts. Historically, prosecutors in India have been under the control of the government. Hence it is not a surprise that they do not act independently. They do nothing to prevent frivolous and non-deserving cases from reaching the courts. Public prosecutors automatically oppose bail applications, without independently applying their mind. They attempt to suppress evidence during trial which could benefit the accused. A holistic rework needs to be undertaken. In order to insulate the public prosecutors, an independent selection committee may be constituted for their appointment. Best practices should be adopted after a comparative analysis of other jurisdictions. The responsibility of a public prosecutor is immense. They act as gate keepers who ensure that rights of citizens are not sacrificed and that citizens are not harassed through malicious prosecutions. Another facet of the criminal justice system that needs to be changed relates to investigators. There is absolutely no system of accountability in place for faulty and inordinately delayed investigations. A person wrongfully incarcerated due to false implication loses his right to liberty, property, etc. He suffers enormously. There is no real remedy left for him and no compensation whatsoever even after an acquittal.¹⁸

•Increasing Judicial Resilience

The necessity to co-opt technology in the judicial process was brought into sharp focus with the Covid-pandemic. Virtual hearings allowed Court proceedings to take place at the peak of the pandemic. It proved to be an essential tool towards enhancing access to justice. Of course, there are many issues with virtual hearing that need to be worked on. The main challenge is to turn it into an effective system. For the same, Courts, litigants and advocates must be equipped with adequate infrastructure across the country. Unfortunately, this is not yet in place.

¹⁸Anand, Utkarsh. 2015. "Supreme Court strikes down NJAC, revives collegium system." The Indian Express. Last modified October 17, 2015. <https://indianexpress.com/article/india/india-news-india/sc-strikes-downnjacrevives-collegium-system-of-appointing-judges/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

There is a wide gap to be bridged. Advocates and litigants who are from rural areas, smaller towns or who are economically weaker; are disadvantaged and excluded. They have suffered immensely. This needs to be remedied. Virtual hearings are just one method to increase the resilience of the system. However, this endeavor still needs much introspection and we need to develop tailor-made platforms to meet the specialized needs of the judiciary.

•Growing pendency and low bench strength

Pendency relates to cases which have not yet been disposed of, without any reference to the period it has spent in the system. Delay relates to cases which have been in the system for a period longer than what is generally required. Every delay is not an arrear. Some delays might be due to valid reasons. Unwarranted delays are arrears. Backlog refers to a situation where the number of cases instituted in a period is more than the number of cases that were disposed of. Tackling judicial delay refers to reduction of arrears and backlogs. Recent statistics indicate that 4 crore 60 lakh cases are pending before Indian Courts. By itself, this number is not a very useful indicator. Further, the population of India, which is nearly 1.4 billion, and the judge-to-population ratio of 21 judges per million must be kept in mind. An additional fact that needs to be considered are the types of cases clogging the system. A 2017 study by the Department of Justice indicated that Government litigation constitutes 46% of the total litigation.¹⁹

Actions or inaction of authorities leads to a lot of litigation in the country, expected particularly those relating to land acquisition. The Government needs to make settlement through ADR mechanisms, the norm in such cases. When other State organs fall short of constitutional expectations, people decide to approach the judiciary. After all, considering the monetary and psychological impact of litigation, no individual wants to approach the court without a serious grievance. Therefore, attributing this issue only to the judiciary is only viewing one side of the coin. To resolve this challenge we need to view the larger picture. Pendency is a complex issue. It can only be resolved through a multi-pronged approach. Increased use of ADR, clear legislations, executive actions within legally prescribed limits, cooperation of advocates and

¹⁹ Bhatia, Gautam. 2020 "ICLP Turns 7: A Constitutionalism without the court." Indian Constitutional Law and Philosophy. <https://indconlawphil.wordpress.com/2020/08/01/iclp-turns-7-a-constitutionalism-without-the-court/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

litigants, prompt implementation of orders, respecting the rule of law, etc., are part of the solution. Another aspect. Judges should identify the approach to dispose of a case expeditiously. Timelines should be adhered to. Judges should be strict with respect to adjournments. Additionally, technology should be effectively utilized for case management purposes. Ultimately, what is essential is for the judiciary to be quick to adapt and be flexible to resolve any challenge that comes its way. As a Greek philosopher had once said, “The only constant in life, is change”.²⁰

The moment any institution stagnates, it is bound to erode and collapse. The document that is the basis of our democracy, the Constitution, creates ample space for change as we move forward. It is incumbent upon us to evolve mechanisms and principles that enable our continued growth. Only by resolving issues and challenges in a manner satisfactory to the polity, we can maintain the credibility and legitimacy of the institution. When we fail to meet new challenges, we betray the Constitutional trust imposed on us by the people that we are meant to serve. It must also be understood that the success and failure of any organ is not dependent solely upon it. All of us are stakeholders in this judicial enterprise. It calls for a cooperative effort by all organs of the State, judges, advocates, academicians, and the public at large.

There has been a systematic use of all levers of state power to influence and control independent democratic institutions like the Election Commission, Information Commission, Central Bureau of Investigation, and Lokpal (Ombudsman), among others, since the election of a strong central government led by the charismatic Narendra Modi, a nationalist and populist figure with tendencies toward centralization. The Central Bureau of Investigation, the Information Commission, and the Election Commission are examples of these organizations.

However, the judicial system has been the target of the most vehement attacks. The judiciary did not back down when the executive branch intervened in the case of the National Judicial Appointments Commission, which was established by the government in 2015 to undermine judicial sovereignty over the selection of judges. However, this was an isolated incident. This is

²⁰ Datar, Arvind P. 2013. “The case that saved Indian Democracy.” The Hindu. Last modified April 24, 2013. <https://www.thehindu.com/opinion/op-ed/the-case-that-saved-indian-democracy/article12209702.ece>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

because the Supreme Court has not shown the leadership necessary to stop such flagrant interferences in judicial autonomy, and the central government, particularly the law ministry, has used administrative and other pretexts to delay or cancel certain appointments made by the collegium, which consists of senior justices. The situation had gotten so bad that the Chief Justice of India, T.S. Thakur, in 2016 made an emotional plea to the central government to expedite the process of processing the collegium recommendations because they were causing the judiciary pain. Aside from this, the number of cases in which the executive branch uses transfer options to interfere with individual judges who have spoken out against the government or made decisions against it is growing.

Even when policies go against constitutional principles, the executive branch has been able to persuade judges to support its policies by offering them post-retirement benefits or using other forms of pressure. This is in addition to interfering with judicial selections. An investigation that was carried out not too long ago by an Indian daily newspaper known as The Indian Express found that six of the ten most recent decisions made by the Supreme Court regarding free expression were decided in favor of the state¹³. These decisions were made in relation to free expression. The government either sided with the petitioner or had no objections to the request in each of the four situations in which the petitioner received their request. To put it succinctly, the judiciary that was once regarded as "assertive" now speaks "the language of executive and has become indistinguishable from executive." Through the decisions and decrees it has issued, the judiciary has transformed into a facilitator of the executive branch's unchecked power rather than a check on it.²¹

•Emergence of an executive court

There has been a systematic use of all levers of state power to influence and control independent democratic institutions like the Election Commission, Information Commission, Central Bureau of Investigation, and Lokpal (Ombudsman), among others, since the election of a strong central government led by the charismatic Narendra Modi, a nationalist and populist figure with

²¹Dushyant, Dave. 2020. "The Supreme Court's greatest gift is the PIL and it is here to stay, whatever critics may say". The Wire. <https://thewire.in/law/supreme-court-pil-constitution-law>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

tendencies toward centralization. The Central Bureau of Investigation, the Information Commission, and the Election Commission are examples of these organizations.

However, the judicial system has been the target of the most vehement attacks. The judiciary did not back down when the executive branch intervened in the case of the National Judicial Appointments Commission, which was established by the government in 2015 to undermine judicial sovereignty over the selection of judges. However, this was an isolated incident. This is because the Supreme Court has not shown the leadership necessary to stop such flagrant interferences in judicial autonomy, and the central government, particularly the law ministry, has used administrative and other pretexts to delay or cancel certain appointments made by the collegium, which consists of senior justices. The situation had gotten so bad that the Chief Justice of India, T.S. Thakur, in 2016 made an emotional plea to the central government to expedite the process of processing the collegium recommendations because they were causing the judiciary pain. Aside from this, the number of cases in which the executive branch uses transfer options to interfere with individual judges who have spoken out against the government or made decisions against it is growing.²²

Even when policies go against constitutional principles, the executive branch has been able to persuade judges to support its policies by offering them post-retirement benefits or using other forms of pressure. This is in addition to interfering with judicial selections. An investigation that was carried out not too long ago by an Indian daily newspaper known as The Indian Express found that six of the ten most recent decisions made by the Supreme Court regarding free expression were decided in favor of the state¹³. These decisions were made in relation to free expression. The government either sided with the petitioner or had no objections to the request in each of the four situations in which the petitioner received their request. To put it succinctly, the judiciary that was once regarded as "assertive" now speaks "the language of executive and has become indistinguishable from executive." Through the decisions and decrees it has issued, the judiciary has transformed into a facilitator of the executive branch's unchecked power rather than a check on it.

²² Tata Trust. 2019. "India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid." <https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

In the democratic system of India, the independent judiciary is regarded as one of the most significant and essential autonomous institutions. For the majority of its more than seven decades of existence, it has been successful in defending individual liberty and protecting fundamental rights, expanding access to justice for populations that are marginalized and disadvantaged, resolving disputes between the Center and States, and acting as a check on the excesses of the executive branch. During the 1970s, when a powerful executive branch led by Prime Minister Indira Gandhi coerced and influenced the courts to do her government's bidding, it was the only time it ever lost its autonomy and credibility. It was the only time it ever lost its independence and credibility at that point. The courts were aware of their mistakes and quickly regained their position and reputation by becoming more assertive and autonomous in the decades that followed. They accomplished this by innovating the court system and issuing a number of precedent-setting judgments. It eventually came to be known as a people's court that upheld democratic principles and civil liberties.

However, the judiciary has been subjected to a great deal of pressure to carry out the government's will over the past seven years while operating under a government with a complete legislative majority. The judiciary as a whole is failing to abrogate or review laws that are widely discriminatory and violate the basic structure of the constitution, defend and protect dissent and freedom of expression, check executive excesses on violations of personal liberty, and so on. Even though a powerful executive still exerts pressure on some individual judges and is determined to control every democratic institution, the judiciary as a whole is failing to curb executive excesses that violate personal liberty. In general, India is experiencing a significant decline in constitutionalism and judicial freedom, which is negatively affecting fundamental aspects of democracy, the rule of law, and human rights. However, recent reports suggest that the judicial system, particularly the higher courts, is gradually recognizing the decline and the harm to its reputation. In recent times, a number of high courts, including the Supreme Court, have been consistently attempting to regain public confidence in the judicial system. This

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

argument is well-executed by its most recent treatment of the COVID-19 petitions and state excesses.²³

CONCLUSION

Women, who are more likely to be the victims of masculine behavior, are denied access to justice when men control public institutions. Ladies are more averse to move toward government workplaces and state their various legitimate freedoms when there are men working in those workplaces. This is because men are discouraged by the presence of men in government institutions. Particularly with regards to circumstances in which ladies are casualties of wrongdoings like as assault, lewd behavior, eve-prodding, and different privileges that are connected. Law and order focuses on that male authorities, who make up most of those holding senior jobs in government associations, can't manage issues relating to ladies without showing bias. By implying that women will lose their virginity, reputation, prestige, and various other things depending on the girls' status, they typically encourage women to give up their rights or endure the crimes of criminals. Masculinity suppresses feminine gender in every conceivable way and works to protect male offenders who are deprived of financial rewards. As a result, it sets unfavorable precedents, which in turn prevents all laws pertaining to women from being implemented. Due to cultural, social, economic, educational, and political factors, we have not been able to achieve the desired results in India despite implementing numerous legal safeguards and welfare programs with the intention of elevating the status of women and involving more of them in the nation's development efforts. Women must give the media their full attention to news and general information.

Women encounter the same issues as men do, and men employ the same tactics to deceive girls into falling for their traps. These tactics include trafficking women based on false employment opportunities, luring women into relationships with false promises of love, and other forms of cheating that can be learned from the media. Women need to have access to both self-defense training and sex education in today's rapidly changing society. It is workable for ladies to acquire and declare their freedoms with the help of coordinated works, for example, ladies' self-

²³ Kumar, Vikas. 2020. "S.P. Gupta v. UOI." India Law Portal. <https://indianlawportal.co.in/s-p-gupta-v-uo/>
For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

improvement gatherings, ladies' clubs, affiliations, parts of ladies' payments, and different kinds of gathering exercises. Both male and female organizations are speaking out against the atrocities that are being committed against women these days, which has resulted in significant modifications to our country's policies and legal framework. The formal social control system needed to be expanded and strengthened in order to boost women's confidence in the legal system.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>