

Original Research Article

## Indian Judiciary as a Catalytic Agent of Social Change

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### ARTICLE INFO

Article History

Received: April 21, 2020

Accepted: May 14, 2020

Volume: 2

Issue: 3

### KEYWORDS

Social-change, Catalytic, Governance, Judiciary, Fundamental Rights

### ABSTRACT

Social Change is concerned with the question of how our society changes, in what directions and by what forces the change occurs day by day. By social change we basically mean such alterations that occur in social organization, that is, structures and functions of society. Man is a social animal, so by social change we mean, there has been a change which taken place in human thinking, values and lifestyle also. Here in this paper we will discuss about the catalytic role of Indian Judiciary particularly the role of Indian Supreme Court in promoting social change in India. Indian judiciary through its judicial verdict and interpretations of the Constitution plays a major role in inducing social change. There are many areas where the judiciary takes active role for social change. Some of these areas relating to social justice with special focus on women and children, fundamental right to life, accountability in public governance and environmental adjudication. Through various cases Indian Judiciary plays as an agent of social change.

### Introduction

Social Change is the change which occurs in the established patterns of social relations, or change in social values, or change in structures and subsystems that working in our society. Any change that alters is basically the established patterns of social relationship, thus masculinizing in some measure the social structure, is called social change. It is a change which reflects in all aspects of our social life, that is family, neighborhood, work group, play group, religion, economic and political aspects, leisure activities etc. the social change is of two types that is partial and total, though mostly it is partial in nature. A change which is resulted from enacting a law that prohibiting untouchability might be called a partial change in society. But the difficulty is in recognizing total change in the society or in a social system. When we say that not something but everything has changed in the society, it may be called as total change, but it often happens in our society. Similarly, a few aspects of family system, or marriage system, or banking system, or caste system, or factory system etc. may change but we never find a total change in any of these social systems. No social system ever changes in total. Social change is always or mostly partial in nature.

Social change is not a unique phenomenon. Some kind of social change are very common or universal in human experience. Societies are not static whether it is traditional or modern. The speed of social change may be different from one society to another society. The speed may be slow in the traditional society that it may appear that the society is static but it is not so as it seen. The so called modern contemporary society is changing very rapidly and constantly. These changes are neither temporally nor spatially isolated, that is, changes occur in sequential chain rather than as 'temporary' crisis. Social change takes place in chains-reaction sequence, that is, change in one part of society brings changes in other part of the society to.

Social change is not a simple but a complex phenomenon, it cannot be possible to predict about its speed, direction and causes in accurate and exact terms as we see in natural sciences. An astronomer can predict the ordinary relations among plants in a solar system, but a sociologist or a social scientist cannot precisely predict about human relations. It cannot possible whether a marital relation between a man or a woman will last for life long or just will end in divorce after a few days. The proportion

of modern contemporary change is much higher than the classical or formal times. The area or the range of material technology and social strategies is expanding very fast and its net effect is arrived or cumulative.

### **Objectives**

This study tries to

1. To know the basic notion of social change.
2. To examine the role of Indian judiciary in promoting social change.
3. To explore the major areas in which judiciary have induced social change.
4. To find out the major judicial cases that deal with social change in India.

### **Literature Review**

Steven Vago in his book "Social Change" (Pearson Publication; 5th edition, 2003) shares the age-old concern with social change, which the most important, challenging and existing topic in social sciences. It is discussed with the question of how our society changes, in what directions and what are the causes by which social change occurs. Vago by using such existing real-life examples draws attention in this book to the characteristics, processes and perspectives of social change in all the different culture. It covers theories, patterns, spheres, reactions, impact, duration, costs, assessments and strategies of social change.

Trevor Noble in his "Social Theory and Social Change" (Palgrave Macmillan, 2000) said that understanding and explaining the causes and effects of social change has been an important subject to social theorists throughout the history of social science. This book focuses on a rich and rivers body of theoretical work, from Adam Smith and A. Comte to Lyotard and Baudrillard, in order to portrait the relevance of both traditional and contemporary social theory to the wider social world. It also shows that while social theory may not deliver all the answers we might like, it does improve the quality of questions that we can ask about how social change comes out, what's are its consequences and where it is leading us.

S.P. Sathe in his "Judicial Activism in India (Law in India)" (Oxford University Press, 2002) showed a socio-political study of judicial review. By this book Sathe traces the evolution of the Indian Supreme Court from a passive, positivist court into an activist articulating counter majoritarian checks on democracy.

S P Verma in his edited book "Indian Judicial System: Need and Directions of Reforms " (Kanishka Publishers and Distributors, 2004) represents differences of issues relating to the Indian Judicial System. The article looks into the challenges before the system and gives some remedies. After introducing the existing structure of judicial system, author focuses in this book on essentiality for the speedy justice as reflected mainly from efforts of Indian Law Commission. Here the author also focuses on the independence of judiciary from political executive 's middling in appointment and transfer of judges and also discussed in detail the suggestions of possible remedies to ward off the threat to corruption. The articles look at aliment of our judicial system while suggesting possible remedies.

Z Modi in her "10 Judgements That Changed India" (Penguin Books India, 2013) deals with Supreme Court's ten pivotal judgements that have transformed Indian democracy and change our daily lives. With detailed discussion about such vital themes like reservation and environmental jurisprudence, the book conceptualizes the judgements, explains main concepts and also their major impacts on society.

### **Methodology**

Research is always carried out with the assistance of proper and well-defined methodology. Here in this paper, historical and descriptive method have been used. That of the present study have been collected from both primary data and secondary sources. Primary source of data is collected from government reports, All India Reports, Supreme Court's reports etc. The secondary source of data has been collected from books, journals, periodicals, newspapers etc.

### **Judiciary as an Agent of Social Change**

In every democratic country there have been three pillars that is legislature, executive, judiciary and judiciary is the third pillar. In any democratic polity, highest power of a state is shared among these three principle organs as constitutional functionaries. Each of the organs act independently and within its jurisdiction and none is superior to other. Justice has been delivered through the courts and such administration would relate to social, economic and political spheres of justice as mentioned in the preamble

of the constitution. Thus, the judiciary becomes the most important and outstanding weapon in the hand of constitutional system to fulfilled the mandate of the constitution. The judiciary has also to take up a positive, active and creative function for providing socioeconomic justice of the people of India. The Constitution which assigned various tasks to the judiciary is in no way lesser than the other two constitutional organs that is legislature and executive. Indeed, it is the function of the judiciary to carry out the Constitutional message, and it is the duty of judiciary to keep a vigilant watch on the functioning of democratic system in accordance with the directive and imperative command of the Constitution. But the judiciary should function this by checking excessive authority of the other constitutional functionaries beyond ken of the constitution. In that sense the judiciary has to work as a watchman on the qui vive.

Judiciary plays a very catalytic role as a change agent in a democratic country. It is an instrument of social change in the hand of judiciary particularly with the power of interpretation of the constitution and through its verdict on different cases. From traditional point of view there are three functions of Indian judiciary, they are rule adjudication and conflict resolution; rule interpretation and inter organ control and regulatory functions over legislature and executive. Among these three functions, rule interpretation, according to constitution, is the most important instrument in the hands of judiciary that can bring and accelerated the process of social change. In modern times, with the emergence of 'judicial activism', in the field of judicial functions, the judiciary may deliver more liberal and progressive interpretation of the constitutional articles and this is undoubtedly one of the means by which the process of social change may be realized. The judiciary may also bring the process of social change by interpreting traditional concepts that are like big strokes on a vast arena in such a way as to make them relevant to the present conditions of the society.

By this time, Indian judiciary has completed its 70 years of its existence and has made many contributions to the system of governance which has affected the life of the people in a long way and bring changes in the Indian social structure. In many ways it has affected the nature, scope and processes of public governance and can claim credit for expanding the meaning of the constitution in favour of different segments, especially for poorer of the society. There are other areas where the judiciary keep its prominent role, say for instance, it strengthens Indian federation, played important role to achieve goals, it deepened Indian democracy and also protect peoples against excesses of the state. It also plays a very significant role to promote peace, cordiality and balance and coordination between different organs of the government. Once it was said that the role judiciary is only to interpret the law and regulations in accordance with the constitution and provide judgements from legal point of view. But this perception has been changed today. It seemed that the growing public support to the activist role of Indian judiciary has come to occupy the faithful position among three organs of the government. Now the judiciary has been entertaining a number of petitions, which involve, apart from legal issues, that relate to the administration, governance and policies of the government.

Further the Indian judiciary has been conscious about the good governance if it means a simple, fast, accountable and responsive governance. It is observed that the judicial approach, which noticed from several judgements of the court signifies its growing concerns for efficient and effective governance resulting in the improvement of the living conditions of all members of the society by creating and expanding various opportunities and access to the growth and development of all segments of society, and to provide an equal and equitable environment wherein the members of the society can flourish to their maximum. It can be said that the keen interest of judiciary in the principle of good governance is also showed in the various judgements which deliberated by the Supreme Court or various courts in India. They mainly focusing on rule of law, fundamental rights of people, human rights, and also gender justice and various directions and guidelines that issued from time to time on matters relating to police and prison reforms, electoral reforms, uniform civil code, right of child and women etc. Apart from these such affirmative actions in favour of the Dalits and the deprived class like SCs, STs and OBCs to environmental jurisprudence that has given a new conception to the right to life as well as reconciliation between development and protection of ecology and environment.

But Indian judiciary 's, particularly the Supreme Court's, pro-active role comes under some controversies as it is termed as judicial overreach and violation of the principles of separation of power and a very delicate jurisdictional balance between the three organs because such directions come to mean as an instructions in the boundary of the legislature and the executive. But it is fact that the judiciary has earned an increasing public faith and support for its active role in correction of the government. Because people losses their trust in their leaders due to corruption, nepotism etc. Hence to solve their problems people knock the door of courts. Not only that people being frustrated with the indifference and negligence of the present and future need of the society, inefficiency in the public servant, people see a ray of hope in the judiciary. The judiciary has trying to fill the

bridge between promise and performance. People strongly believed that the rule of law and the principle of liberty and equality of the people is in place because of the independent judiciary.

There are many areas where the judiciary plays a catalytic role for bring social change in our country. Some of these areas are relating to social justice with special focus on women and children, fundamental right to life, accountability in public governance etc. This changing role has been examined from the point of view of the approach of the judiciary to the emerging social identities and conflict in the scenario of democratic pressures from different sections of people on the government to deliver goods and services to the people honestly, efficiently and effectively. The increasing demand and pressure from the people for inclusive growth and change have also brought on to the field new players in the political arena. With the emergence of the concept of Public Interest Litigation has further enhance the efficacy of the society to question of arbitrary use of the authority. It has also an instrument in the hand of the people to force, through the judiciary the Executive to take action in the areas where they are required to do so.

### **Major Indian Supreme Court Cases**

The Supreme Court of India has deliberated a number of judgements in various cases which effects Indian society at a large scale. Some of these cases are discussed below:

#### **Golaknath Case**

Golaknath vs State of Punjab case or simply we can say Golaknath Case, was a 1967 Indian Supreme Court Case, in which the court said that the Parliament could not amend any of the fundamental rights of the Constitution. The main issue of this case was, the family of Henry and William Golaknath hold over 500 acres of farmland in Jalandar, Punjab. But by mentioning the Punjab Security and Land Tenants Act, the state government held that the Golaknath brothers could only keep thirty acres each, a few acres would go to tenants and the rest was declared as 'surplus'. This decision was challenged by Golaknath brothers in the courts and the case was transformed to the Supreme Court in 1965. The family filed a petition under Article 32 which is fundamental right to constitutional remedies, and challenged the 1953 Punjab Act. On the basis of this constitutional rights they argued that the Act denied them their constitutional right to acquire and hold property and practice any profession and also it violates the right to equality and equal protection of rights guaranteed under the constitution. The issue in this case was whether the amendment is a law under the meaning of article 13(2) of the constitution, and whether the Fundamental Rights can be amended or not.

In response to Supreme Court's judgements in Golaknath case, the Parliament passed the 24th amendment of the constitution in 1971 to abrogate the judgement delivered by Supreme Court. Indian Parliament amended the constitution to express that the Parliament has the right to amend any part of the constitution including the fundamental rights. This amendment was done to exclude amendments made under article 368, from article thirteen's prohibitions of any law abridging any of the fundamental rights. Hence this case has left a deep impact on society specially in the relation of executive and judiciary.

#### **Vishakha and Ors. Vs State of Rajasthan Case**

Vishakha and Others Vs State of Rajasthan case was an Indian Supreme Court case that was filed in 1997 where Vishakha and other women groups filed a Public Interest Litigation (PIL) against the State of Rajasthan and Union of India to implement Fundamental rights of working women under article 14,19 and 21 of the constitution. The petition was filed after a brutal gang rape incident with a social worker of Rajasthan namely Bhanwari Devi. She was raped by many just as to stop a child marriage. By hearing of the case the Supreme Court decided that the International Conventions and norms are very important for the purpose of interpretation and elaboration of the guarantee of gender equality, right to work with human dignity in articles 14, 15, 19(1)g, and 21 of the constitution and protection against sexual harassment at workplace. This petition resulted in what we popularly known as 'Vishakha Guidelines'. This judgement gave us the basic definition of sexual harassment at workplace and gave a detailed guideline to deal with it. It is observed as a significant legal victory for woman's groups in India. Before this case there was no formal guidelines for how sexual harassment should be dealt by an employer. They experiencing sexual harassment at workplace had to lodge a complaint under section 354 of India Penal Code which deals with the criminal assault of women to outrage women's modesty.

#### **Bandhua Mukti Morcha Case**

In Bandhua Mukti Morcha Case the Supreme Court claim the right to keep sharp watch on the implementation of a legislation that sought to abolish bonded labour. Because this evil practice was totally forbidden by the constitution of India and it had survived only because of inaction of the government. It was very interesting to see that the Supreme Court had started its

activism on matters relating to legal aid and abolition of bonded labour. It was a part of the twenty-point programme of the emergency regime. The emergency regime was suffered from a guild complex for forced imposition of authoritarian order on people and to overcome the feeling of guilt it had enacted various progressive law like The Civil Rights Acts, 1955., it was the replacement of the Untouchability Offence Act., the Bonded Labour (Abolition) Act 1976 and the Urban Lanes Ceiling and Regulation Act 1976 etc. The court had very tactfully become activist first of all on issues the emergency regime had included in its agenda. When the Supreme Court took up these issues in its hand by suo-moto, it could no longer be said to be the protector of property owners or to come in the way of social change. Now the question was reversed as the court started insisting on the of policies for the pro-poor reform that the executive had initiated through the legislation. The government stand was defensive, still it couldn't blame the court because the court asked the executive to do what it promised to do through the legislation. This role of judiciary had also kept its huge impact in society like India.

### **Shah Bano Begam Case**

Shah Bano case was a 1985, controversial maintenance lawsuit case where Shah Bano Begam filed a petition against her husband for maintenance. The fact of this case was Shah Bano, a 62 years old Muslim mother of five children from Indore, Madhya Pradesh, was divorced by her husband in 1978. She filed a criminal case in the apex court of India, where she won the right to alimony from her husband. However, she was denied the alimony when the Indian Parliament reserved the judgement because of the pressure of various Islamic Organizations. The judgement was in favour of women, hence many Muslim orthodoxy denied to accept this decision. They argued that this judgement was against their holy Quran and conflictual with Islamic Law. It raised the controversy about the extent of having different civil codes for various religions, especially for Muslim minorities in India. This case brought a difficult situation for the Congress government, which was in absolute majority at that time, because did not want to dissatisfied Muslim community due to their vote banks. As a result, the government pass The Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the judgement of the Supreme Court by saying that the maintenance for the divorced women is to paid only for iddat period that is ninety days. This act has led Muslin women for receiving a large one-time payment from their husband during the period of iddat that is ninety days instead of a maximum monthly payment of five hundred rupees. It is however seen that because of its unique feature of no ceiling on quantum of maintenance, the act is sparingly used because of the lack of knowledge. The legal fraternity generally used the CRPC provisions while moving maintenance petition.

### **Results and Discussion**

The people of our country definitely continue to have faith in our judiciary, judges and the justice delivery system because if they did not there would be chaos. But it is very unfortunate to state that the faith has been shaken by such events of the last few years and unless and until we are rescued from the quicksand through very quick preventive measures, all of us will find ourselves in the sinkhole. It can undoubtedly be said that the biggest problem facing by the judiciary is the huge number of pending cases. Presently there are over three crores pending cases before our judiciary. Not only the pending cases but the most controversial aspects of judiciary is the appointment of judges and this issue has been for many decades.

Inspite of these difficulties we can say every dynamic society is bound to face controversies. So, the judiciary is no longer exception of this and cannot be insulted. The judiciary get involved in controversy when they are called upon to decide constitutional matters that can affect the large sections of society. The political thicket tactics has been evolved by the courts to maintain distance from issues that are purely of a political nature and raised no question of constitutional interpretation. But there are several instances when the legislature has refused to exercise its powers. There are also many instances when the executive is unable to implement social justice laws and various welfare schemes for the benefit of the people. Here the judiciary plays a very catalytic role for social change. Here in this article we see the judgements of the above-mentioned cases creates an important role of judiciary in making social change. After Vishakha case we found that India enacted its law on prevention of sexual harassment against female employees at workplace. As a consequence, working womens get very much aware against sexual harassment and feel much protected than before. The Bandhua Mukti Morcha case on the issue of child labour and a range of child labour eradication campaign have been successful in raising awareness among the society. The impact of Shah Bano judgement was huge on Indian society. After the Act enacted by Parliament the faminst workers became very active as Shah Bano reject to take maintenance. The then Rajeev Gandhi government was riding on pendulum, on the one hand they were trying to appease Muslim minorities and on the other hand they did not want to dissatisfy the majority Hindu population. The Triple Talaq case also was on the footprint of the Shah Bano case.

## Conclusion

After the discussion, we can say that the Indian judiciary has great role to play in the process of social change. The judiciary's role in enforcing the basic human rights of the poor and the deprived classes in making the judiciary dynamic and important institution of the state. The court, for the purpose of implementing and reaching social justice to the common people are evolving new methods and innovative strategies and different tools. It is no denying fact that the Supreme Court of India, has been instrumental in this regard which is *sin qua non* for any society. The Supreme Court of India plays a very active role, may be referred 'activist role' by giving landmark judgements in various cases which help the society to achieve its goals. This key role played effectively by the Supreme Court of India on a number of occasions since the effectiveness of the constitution in 1950.

## About the Author

**Arup Ghosh** presently works as an Assistant Professor of Political Science in Balurghat Mahila Mahavidyalaya, which is under University of Gour Banga, Malda, West Bengal, India. He did his graduation from A B N Seal College, Cooch Behar, West Bengal, India, and took master degree from North Bengal University, Darjeeling, West Bengal, India, with specialization in Indian States and Society. He has completed his M.Phil degree from again North Bengal University. Before joining as Assistant Professor, he worked in a school as Assistant Teacher of Political Science, before that he has served in a college as a guest lecturer. During that period of time he attend some seminars and workshops. He has also publications on Dalit and Tribal issues. His area of interests is in those matters relating to Indian Society, women politics, panchayat related issues etc. This is a brief about the author. Thank You.

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