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## Current Trends in Indian Jurisprudence

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*Law has been an inalienable instrument in bringing a reformation in the social structure of the Country. Judicial Activism stimulates the Judges to depart from the traditional precedents and align the law to a progressive society. The liberalization of the locus standi rule by Public Interest Litigation widened the prospects for the redressal of social difficulties. Social and economic conditions are no more a challenge in invoking the assistance of the Court for seeking Justice. The concept of 'liability for misfeasance' developed, restraining the politicians from misusing their power, embarking on private gains, and awarding exemplary damages. Letter & newspaper cuttings are now treated as writ petitions and the Apex Court now takes suo moto action on the same. Gradually excessive PIL led to the redundancy of well-defined rules of procedure and thus the provision for separation of powers in the Constitution was gradually getting defeated. The tool must be used with great caution and circumspection to avoid frivolous PIL.*

**Keywords:** *trends, jurisprudence, judicial activism.*

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### INTRODUCTION

Looking back at the root we humans have blessed ourselves by devising phenomenal means for structural alterations in our social system backed by the advancement of our sagacity and civilization. Considerably, the law has been an inalienable instrument for bringing homogeneity

in the heterogeneous population in India- a developing nation and law, as a tool for reformation, has been proven to be the effective and safest method to achieve this end.

The Indian legal system is completely subservient to colonial jurisprudence, which is a major setback for the Courts. India has had a long history for over two centuries with British culture. The theory and practice of the British legal system were a giveaway by the Britishers much before the independence of India and therefore Indian legal system always operated with the circumference drawn by the British Laws. However, with society progressing and advancing vastly in all spheres of life, the outmoded and outdated laws need to be replaced-if not completely but gradually and steadily. The Indian society at present seems to be at crossroads as we face challenges like poverty, unemployment, political vandalism, communalism, and corruption. The role of law in a civilized society is either direct or indirect. But the legislation would fail if they aren't accepted and interpreted properly keeping in mind the social changes.

### **THE INDIAN CONSTITUTION - A SOCIAL DOCUMENT**

For the imagination of the aspirations of the common man could be given the shape of virtual reality, the law can be considered one of the major and effective tools. The intrinsic relationship of law and society inspired Rudolph Von Ihering, a sociological jurist to enunciate his theory for the study of law. His legal philosophy, more commonly known as "jurisprudence of interests" divorces individualism from the legal theories of social realities. The main tenets of Ihering's study can be summarised as-Law being the result of ever longing struggle and the same should<sup>1</sup> serve a social purpose not being the only measure to control society. Therefore, society must not be segregated while we discuss the scope and the ambit of the law.

A close look at the Indian Constitution underlines the supremacy of law; the Preamble enunciates the holistic principles of social, economic, and political justice, secularism, and democracy. The incorporation of a formal declaration of Fundamental Rights constitutes the basis of a democratic society. Though the Fundamental Rights are transcendental, they are not

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<sup>1</sup> *Chintaman Rao v The State Oo Madhya Pradeshram Krishnav* AIR (1978) SC 759

absolute but subject to certain restrictions. Thus, it strikes a balance between individual liberty and social interests ensuring the security of the State. The Supreme Court in a catena of cases has recognized the paramountcy of fundamental rights.<sup>1</sup> In contrast, Part IV of the Indian Constitution provides mandates for the state to ensure the welfare of the society as a whole. Article 37<sup>2</sup> of the constitution of India clearly states that although they are not justiciable yet the Directive Principles of State Policies are fundamental in the governance of the country, thus, bridging the gap between individual and societal needs. However, in an enormously diverse country like India, social reforms cannot lead the way by just the spells of Acts and Statutes. The law-making process must synchronize with the law in action. Considerably, conscious legislation taking in the realities of the social and economic structure of the country would solve the purpose. Discussing the Indian legal system, morality cannot be divorced or side-lined. Morality in law provides greater force and commands voluntary obedience from people. But this is not the only essence of the law. Indian legal system is based on morality nevertheless it considers the development of the economy as well.

The Bearer Bond Case,<sup>3</sup> in which the Special Bearer Bonds (Immunities & Exemptions) Act 1981 was standing clearly against morality by granting immunities and exemptions to tax evaders and burdening honest taxpayers, was challenged on the ground that it is manifestly lacking in moral foundations and confers legal sanctity to black money and tax evaders and the same is against the public interest. However, the Apex Court rejected these contentions and upheld the Act to be valid stating it to be in the larger interest of the national economy as the Act helped to unearth black money which would have otherwise remained secret. The ethical grounds stood rejected. But if we also take a close look at Articles 19(2)<sup>4</sup> & 19(4)<sup>5</sup> of the Constitution, it is clear that there can be restrictions on immoral or pseudo-immoral activities on the ground of reasonableness and the right to freedom of speech and expressions and right to form an association, etc. is not absolute in nature. Thus, establishing the intent of the framers of the

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<sup>2</sup> Constitution of India 1950, art 37

<sup>3</sup> *R.K Garg v Union of India* AIR (1981) SC 2138

<sup>4</sup> Constitution of India 1950, art 19(2)

<sup>5</sup> Constitution of India 1950, art 19(4)

Constitution in not excluding morality from law. The moral fabric of Indian Society can be preserved by Judicial interventions of Courts solely.

## JUDICIAL ACTIVISM

Judicial Activism can be referred to as the convictions of the judges which stimulate them to depart from traditional precedents and meet the needs of the progressive society in forming policies. The accelerating society demands a dynamic process of judicial outlook and dimensions called "Judicial Activism". The Indian Judicial system has had a healthy response in interpreting the law in a social context. Formerly, the unbending rules of *locus standi* hardly allowed the weaker sections to approach the Courts for the enforcement of their fundamental rights enshrined in the Constitution. However, the wide gap has been bridged by the liberalization of *locus standi* rule by Public Interest Litigation, thus, ensuring prospects for redressal of social difficulties. The sensational remedies demanded by the activists through Public Interest Litigation writs without seeking recourse to the conventional approach of the lawyers have tackled social issues relating to convicted prisoners and undertrials,<sup>6</sup> unorganized workers,<sup>7</sup> personal liberty,<sup>8</sup> pavement dwellers,<sup>9</sup> inhuman treatment of children,<sup>10</sup> atrocities towards women,<sup>11</sup> and a lot of many others.

In the famous *Judges Transfer's Case*,<sup>12</sup> Justice Bhagwati quoted "where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the Court to provide judicial redress to the person wronged or injured so that the legal wrong or injury caused to a such person does not go un-redressed and justice is done to him." This marked the burial of

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<sup>6</sup> *Hussainara Khatoon v State of Bihar* AIR (1978) SC 1360; *Sunil Batra v Delhi Administration* AIR (1980) SC 1579

<sup>7</sup> *Fertilizer Corporation Workers Union v Union of India* AIR (1981) SC 388

<sup>8</sup> *Maneka Gandhi v Union of India* AIR (1978) SC 597

<sup>9</sup> *Olga Tellis v Bombay Municipal Corporation* AIR (1986) SC 180

<sup>10</sup> *Sheela Barse v Union of India* (1986) 3 SCC 596

<sup>11</sup> *Vishakha v State of Rajasthan* AIR (1997) SC 3011

<sup>12</sup> *S.P Gupta v Union of India* AIR (1982) SC 149

*locus standi* and carved a new path for Public Interest Litigation which serves as a major strategy to uplift and mainstream the weaker section of society and not just confined to fundamental rights but also spreading its tentacles to redress any legal injury, actually caused or threatened.

### **DAMAGES FOR WRONGFUL TRANSGRESSION BY PUBLIC SERVANTS**

The trend of awarding laudable damages in a historic case<sup>13</sup> was set by the Apex Court in which a public interest petition brought by a voluntary organization highlighted the arbitrary misuse of official powers by a former Petroleum Minister who exercised superior control on the allotment of petrol pumps and gas agencies, completely ignoring the rule of law, for few of his chosen ones. The Supreme Court was sharp enough to award exemplary damages for Rs.50 Lacs to the Minister for his arbitrary, atrocious, and unconstitutional act, and the concept of “liability for misfeasance” rolled out for the first time in the Indian Jurisprudence and it further restrained the politicians from misusing their discretionary powers for their private gains. Further, the Apex Court did not dodge to award exemplary damages for Rs.60 Lacs in another case<sup>14</sup> in which a public interest writ petition was filed against the Former Urban Minister for allocating shops and stalls in a prime locality of Delhi to her personal favorites arbitrarily, and the same was sheer violation of the policy laid down for allocations.

### **EPISTOLARY JURISDICTION**

The Supreme Court and High Courts have expanded their dimensions and have paved way for ordinary letters and newspaper cuttings by treating them as writ petitions and initiating suo moto actions against the public authorities under its epistolary jurisdiction. The cause of judicial activism has been championed by the former Judges of the Supreme Court to promote social justice, by liberalizing the *locus standi* rule. A Public Interest Litigation Cell has been designed and established in the Supreme Court to ensure the genuineness of letter petitions through thorough scrutiny by the Registry of the Court before the presentation of the same before the Court. Mere Judicial pronouncement would hardly heal the wounds inflicted by trailing social

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<sup>13</sup> *Common Cause, A Regd. Society v Union of India* AIR (1997) SC 1886

<sup>14</sup> *Shiv Sagar v Union of India* AIR (1997) SC 1483

injustice. However, judicial activism has embarked on administrative lapses and high-handedness, but unless the faulting authorities are highly penalized, concrete results would be a long way.

### EXCESSIVE PIL-CAUTIONED

Judicial Activism through public interest litigation aimed at reducing the social and economic disparities at the onset. But excessive PIL led to an explosion of Judicial Activism. Several statistical reports in the past have shown the Judiciary-overburdened with cases. Moreover, the push by the number of PIL led to the redundancy of well-defined rules of procedure. In this context, Justice R. S Pathak in a case<sup>15</sup> had strongly opposed the entertainment of unverified letters which departed from the standard forms. However, his opinion was side-lined in another case<sup>16</sup> and to the contrary, the Court held that such letters from individuals or social action groups acting *pro bono publico* could be addressed. The over-liberalization of the *locus standi* rule has generated individuals who step into the shoes of both petitioner and Judge.<sup>17</sup> Also, the Courts have assumed the role of the State by creating certain new norms and ensuring their implementation. The constitutional mandate for socio-economic reforms must be kept in mind without usurping the role of the legislative.

A close scrutinization also shows that Judicial Precedent is becoming obsolete. The assumption of the roles of legislative and executive in the guise of Judicial Activism disfigures the structure of the Indian Constitution. Out of many, the sexual harassment case<sup>18</sup> is a prime example whereby the Judiciary, though with *bonafide* intent, has overstepped from its ambits. In this case, the Supreme Court issued detailed guidelines and mandated the same to be followed unless the Parliament enacted separate laws. This was a silent burial to the theories of separation of powers since the guidelines would assume the status of statutory law if the Parliament does not enact

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<sup>15</sup> *Bandua Mukti Morcha v Union of India* AIR (1984) SC 802

<sup>16</sup> *M.C Mehta v Union of India* AIR (1987) SC 1086

<sup>17</sup> *Seela Barse v Union of India* AIR (1988) SC 2211

<sup>18</sup> *Vishakha v State* AIR (1997) SC 3011

the law at all. The spirit of the law can be given a direction but basic socio-economic reforms cannot be dragged into the ambits of the Court.

Though the Courts initially developed the tool of PIL for the weaker sections of society who couldn't afford to battle out in the Courts, there has been sheer misuse of the same. There are two aspects to the misuse discussed briefly. Firstly, excessive PIL has become the routine of the Court and has posed a threat to choke the dockets of superior Courts obstructing the hearing of regular cases for years long. Also, mostly the Judiciary has no remedy to the PIL.<sup>19</sup> Secondly, the *bona fide* aspect of a PIL is missing and it has acquired the shape of personal gain or private motive and is inspired politically. Justice Arijit Pasayat in the case of *M/s Holicow Pictures Pvt.Ltd v Prem Chandra Mishra & Ors*<sup>20</sup> observed that the "Court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

Analyzing the current situation it can be stated that the Judiciary must seek not to encroach on the domain of other constitutional institutions and must recognize their privileges. The Constitution has blessed the Judiciary with one of the mightiest armories i.e. interpretation of laws. Therefore the tool for uplifting socio-economic standards must be used with great care and circumspection and mandatory provisions for exemplary costs must be brought in to contain motivated and frivolous PIL.

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<sup>19</sup> *Common Cause (A Regd Society) v Union of India* AIR (2008) SC 2116

<sup>20</sup> *M/s Holicow Pictures Pvt.Ltd v Prem Chandra Mishra & Ors* AIR (2008) SC 913

## LEGAL AID AND LOK ADALATS-FACETS OF SOCIAL JUSTICE

To streamline and rationalize the neglected and downtrodden against the onslaughts of the elite section of society, the Constitution of India in its' Preamble enshrines Justice-Social, economic and political. Justice is served to all alike under Article 14 of the Constitution which lays down the principles of equality before the law and equal protection of the law. Also, the (42<sup>nd</sup> Amendment) Act, of 1976, inserted Article 39-A ensuring legal aid and assistance to the poor and indigents. This law ensures that the mere social-economic standard of a person does not cause hindrance in approaching the Courts to redress their grievances. The origin of the concept can be traced back to Article 40 of the *Magna Carta* of 1215. In India, the movement marked its beginning with the appointment of Justice Bhagwati Committee in the year 1949 to scrutinize the practicability of providing legal aid to the disabled and indigent. The Committee made recommendations and pointed out that the existing provision in Order 33 Rule 1 of the Code of Civil Procedure, 1908 were inadequate to meet the requirements of the poor litigants as it only exempted them from the court fees and not other legal expenses borne in a suit. The Legal Service Authorities, 1987 seeks to avoid delays and enable's people participation in Judicial administration which also helps in the disposal of disputes in the shortest possible time. The Supreme Court has played a commendable role in ensuring legal aid and assistance to the poor and indigents. The rules have been designed to assist undefended accused tried for an offense mandatorily by a competent lawyer. In a historic decision,<sup>21</sup> the Apex Court observed that free legal aid is implicit in the mandate in Article 21 of the Indian Constitution relating to the protection of life and liberty of persons.

A similar provision is also provided under Section 110 of the Code of Criminal Procedure, 1973. Constitutional provisions contained in Articles 14, 19(g), 21 & 22 were interpreted in such a way that they may create awareness among the people for the urgency of legal aid to the deprived. The Court also laid guidelines<sup>22</sup> for ensuring that the rights of convicted persons were not jeopardized. Also, the Apex Court cleared the air by spelling out its decision in the *Khatri v State*

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<sup>21</sup> *Hussainara Khatoon v State of Bihar* AIR (1979) SC 1360

<sup>22</sup> *M.H. Haskot v State of Maharashtra* AIR (1978) SC 1548



of Bihar<sup>23</sup> and clarified that the right to legal aid of an accused begins from the time he is produced before the Magistrate and obligates the Magistrate or the Judge to convey the same to the accused in case he is unable to defend himself due to lack of adequate financial resources.

The Indian Judicial system has also marked the significant institution of Lok Adalats which serves as a bridge, particularly to the ones in rural and remote areas to secure justice without any hardships. The outlining aim of the Lok Adalat is the suitable settlement of disputes between the parties by mutual consent which in return lessens the burden of the Judicial system in delivering justice. The essence of Lok Adalat which sounds lucrative is the involvement of minimum procedural formalities. Earlier, people knocked on the doors of the Court to get justice and in the present scenario, the Judicial system doorstep justice delivery. Delay is no more a hindrance in the dispensation of justice and the framework also ensures the welfare of the people as a whole.

## **PLEA BARGAINING**

The concept of Plea Bargaining was introduced in India by the Criminal Law (Amendment) Act, 2005 in the Code of Criminal Procedure, 1973 but it owes its origin in the U.S Criminal Justice System. The plea of guilty to a lesser charge often results from Plea Bargaining on the advice of the defense counsel. If the Magistrate is convinced that the plea of bargaining is voluntary with no promises of a lesser sentence and is according to the true wishes of the accused. Earlier, when plea bargaining had not been recognized statutorily, the Apex Court in a case<sup>24</sup> had observed that the disposal of cases based on plea bargaining is not permissible as mere acceptance of guilt does not qualify the accused to be punished less. This would have lowered the standard of the criminal justice system. However, the legislature has taken into account the concern and observations of the Apex Court and makes provision that the application of plea bargaining does not extend to offenses punishable with a sentence of more than seven years and such

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<sup>23</sup> *Khatri v State of Bihar* AIR (1981) SC 939

<sup>24</sup> *State of Uttar Pradesh v Chandrika* AIR (2000) SC 164

offenses that affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

### **VICTIM COMPENSATION**

The lacunas of the existing judicial system are being gradually recognized for which the higher Courts have started working on the crucial aspects of justice by granting compensation relief to the victims of crime. Section 357(1) and (3) of the Criminal Procedure Code, 1973 amended in the year 2008, has statutorily recognized the urgency for the protection of the victim's rights. The focus is equally now on punishing the offender and also securing the rights of the victims. Though their sufferings cannot be lessened, the compensation serves as a measure of interim relief and efforts are being made for their rehabilitation and re-socialization. However, comprehensive legislation is still awaited.

### **ELIMINATION OF GENDER INDISCRIMINATION IN INDIA**

The condition of women in our society was awful, as they were denied individuality and were treated as mere chattels by the men dominating society. Post-Independence, India has made striving efforts to eliminate the discrimination against women and ensure their equal status as enshrined in the Preamble. The Constitution of India envisages a just society with equal opportunity for all without any gender biases and ensures justice-social, economic, and political for everyone. Article 14, 15(1), 15(3), 16, 42, 43 39(d) & 51-A(e) seek to implement the objective of gender just society. Besides these provisions, there have been certain other measures taken up by the legislature such as the Child Marriage Restraint Act, 1978, The Commission of Sati (Prevention) Act, 1987, Indecent Representation of Women (Prohibition) Act, 1956, Dowry Prohibition Act, 1961 and many other statutory provisions. Women are found to be achieving success on Global platforms and make places at the top. However, the fact that the approach toward women's development needs more strategic ideas cannot be ruled out. The progressive society gives place to women but the tentacles have t spread wide.

## FEMINISM JURISPRUDENCE

Feminism seeks to prevent the exploitation of women in society, the workplace, and within the family by utilizing the law as an instrument and bringing out a change in the approach of men towards women. The judiciary's favorable response to feminist theory is reflected in its exercise of the power of judicial review in gender administration cases. Adopting the feminist approach the Supreme Court in *Jugendra Singh v State of Uttar Pradesh*<sup>25</sup> *inter-alia* observed: "Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offense against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right to encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposing the sentence as per law." Expanding the scope, stringent punishment for the offense of rape, Section 376B, 376-C & 376D have been incorporated in the Indian Penal Code, 1860 thus embarking misused of official position.

## CONCLUSION

The Judicial System of India has carried out a trend over the past few decades in responding the socio-economic issues and the same has been vowed with a humanistic and holistic approach. India is a progressive society and getting a revolution and changing its' structure overnight is impossible. However, the above trends mentioned above have been seeking to lessen the huge gap between the elite and the deprived. Apart from the Courts, the preponderance of selfish and individualistic approaches has gone deep and the same has to change for the realization of basic human standards from societal perspectives and aim at the welfare of the society as a whole.

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<sup>25</sup> *Jugendra Singh v State of Uttar Pradesh* AIR (2012) SC 2254

The Judiciary has served impeccable opportunities in reducing the gap and mainstreaming all human beings in a single platform under equal circumstances.