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The Role of the Judiciary in Safeguarding Constitutional Democracy

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This article examines the crucial role of the judiciary in maintaining constitutional democracy, emphasising its function as the guardian of the Constitution and protector of individual rights. It examines the judiciary's essential role in maintaining the system of checks and balances within a democratic structure, ensuring that legislative and executive actions do not overstep constitutional boundaries. Through landmark judgments such as Kesavananda Bharti v State of Kerala (1973), Maneka Gandhi v Union of India (1987), and Navtej Singh Johar v Union of India (2018), the judiciary has actively protected fundamental rights, expanded the scope of constitutional provisions, and decriminalised oppressive laws. Additionally, it has addressed issues of gender equality, freedom of worship, and the rights of marginalised communities, exemplified by the Sabarimala Temple Case (2018) and the decriminalisation of homosexuality. The article also highlights the judiciary's evolution from a colonial institution to an independent body post-independence, safeguarding democratic principles through the application of judicial review and the protection of human rights. Ultimately, the judiciary's commitment to justice, equality, and the protection of the Constitution is vital for maintaining the integrity of the democratic system, ensuring a balance of power, and upholding the rule of law.

Keywords: *judicial review, constitutional democracy, fundamental rights, independence of judiciary, separation of powers.*

INTRODUCTION

The judiciary plays a crucial role in safeguarding constitutional democracy through the system of checks and balances. As the guardian of the Constitution, it ensures the supremacy of law and protects individual rights. With the separation of powers into the legislative, executive, and judicial branches, the judiciary's role is to uphold the Constitution and prevent abuse of power. The judiciary is that subset of the universal set of- constitution, which safeguards and checks the other organs of democracy. It ensures that there is no abuse of power. To maintain a well-organised system of democracy, the Judiciary plays an essential and leading role. There are various Landmark cases where the judiciary showed dominance over protecting the citizens' constitutional rights.

The judiciary plays the role of Jack, which supports the vehicle to lift and stabilise it. The judiciary supports the other organs, helps to maintain and stabilise the other organs of the government, and ensures the safeguarding of constitutional democracy. It ensures that the other organs do not overpower or influence the constitutional democracy. The judiciary plays an important role, just like the police, in safeguarding citizens from political abuse or any other abuse. The Judiciary is the law enforcement agency that keeps checking on law enforcement and other governmental bodies.

Just like police authorities, which keep a check on the enforcement of the law, the judiciary oversees the constitutional rights of the citizens and democratic values. Even the Supreme Court of India had passed such a judgment that held that nobody, not even the prime minister, is above the law. A famous quote of B.B. Chaudhary that enlightens the judiciary is "Justice, which is the soul of the state and must be administered without fear or favour."¹

Even the judiciary has the power to declare void laws violating the Indian Constitution. Once, James Madison wrote - In a society governed by laws, the law must be supreme; the great object is to protect the rights of the individual from the tyranny of the majority.² In this way, the judiciary not only defends the Constitution but ensures that the democratic system functions fairly.

¹ B.B. Chaudhary, *The Constitution of India: A Commentary* (2nd edn, EBC 2019)

² James Madison, *The Constitution of the United States* (National Archives 1787)

JUDICIARY: HISTORICAL PERSPECTIVES

There was an essence of the colonial framework of the judiciary before independence. But, after independence, it was subsequently transformed into an independent institution as a constitution was formed in 1950. Thinkers like John Locke and Rousseau were in favour of the separation of powers into the branches of democracy. As per the famous thinker & political scientist Sir John Locke, the only justification for the government is the consent of the governed.³ This signifies the judiciary's responsibility to safeguard constitutional democracy and also shows the transformation of an absolute monarch to a democracy. However, in Britain's colonial system.

High courts were subordinate to the British authority. Further, other martyrs (Mahatma Gandhi and Jawaharlal Nehru) demanded justice and equality. After Independence, in 1950, the Constitution was formed and enforced, in which articles 14 to 30⁴ cover fundamental rights, making the judiciary a legal authority to safeguard the constitutional democracy. Even the judiciary took a step forward by public interest Litigation (PILs) in the 1980s to ensure the topic for the welfare of society and ensuring human rights and democratic values. Also, the Supreme Court was established as the highest & supreme judicial authority to interpret the Constitution. This was the evolution of the judiciary through the transformation from British colonial democracy, which had made the judiciary below the British authorities, to the Indian constitution, which had made the judiciary an independent authority to keep a check on human rights and safeguard the constitutional democracy.

THE JUDICIARY'S ROLE IN UPHOLDING CONSTITUTIONAL DEMOCRACY: KEY CASE LAWS

The judiciary plays a pivotal role in preserving the principles of constitutional democracy. Through landmark judgments, the courts act as the guardians of the Constitution, ensuring that fundamental rights are protected and that the rule of law prevails. *Marbury v Madison* (1803)⁵ is the landmark case that generated a new principle of Judicial review, allowing the Supreme Court to declare laws and executive actions unconstitutional. It has been proven

³ John Locke, *Two Treatises of Government* (first published 1689, Liberty Fund 1988)

⁴ Constitution of India 1950, arts 14-30

⁵ *Marbury v Madison* [1803] 5 US 137

that the Constitution is supreme, and the judiciary plays an important role in keeping a check on other branches of the government.

Our Indian constitution is partly rigid and partly flexible, so it may be amended, but without disturbing the basic structure of the Constitution. This point is shown in one of the landmark cases, *Kesavananda Bharti v the State of Kerala* (1973),⁶ in which the main issue was that the amendments made in the Indian Constitution (Article 378) sometimes destroy the basic structure of the Indian Constitution. Since the Indian constitution's basic structure can't be altered. Such power is provided in the Indian Constitution in Article 378.⁷ It is not limitless. Therefore, amendments that destroy the basic structure of the Indian Constitution can be checked or overruled by the judiciary. Hence, this reflects the Judiciary's function to limit the powers provided by our Indian Constitution.

Furthermore, the judiciary has the power to expand the scope of provisions provided in The Indian Constitution which is observed in one of the other landmark case *Maneka Gandhi v Union of India* (1987)⁸ in which Hon'ble Supreme court expanded the scope of Article 21, ruling that the right to life and personal liberty includes not just the protection of life but also the right to live with dignity and freedom. In this case, the judiciary interference with Article 21⁹, when the passport of the petitioner, namely, Menaka Gandhi, was ordered to be impounded by the regional passport officer in Delhi and was ordered to surrender her passport under section 10 (3) (c) of the Passport Act, 1967.¹⁰

It was held that Article 21¹¹ The Indian constitution was construed narrowly only as a guarantee against executive action unsupported by law, but subsequently, in the decision of this case in 1987, the court made a major finding, which is restated as the constitution framers never intended that the procedure need not necessarily be fair, just, and reasonable.

There exists a special relationship between the provisions of Article 14¹² (equality before the law and equal protection under the law), Article 19¹³ (right to freedom of speech and

⁶ *Kesavananda Bharti v State of Kerala* (1973) 4 SCC 225

⁷ Constitution of India, art 378

⁸ *Maneka Gandhi v Union of India* (1978) 2 SCR 621

⁹ Constitution of India 1950, art 21

¹⁰ Passport Act 1967, s 10(3)(c)

¹¹ Constitution of India 1950, art 21

¹² Constitution of India 1950, art 14

¹³ Constitution of India 1950, art 19

expression), and Article 21¹⁴ (guarantee against executive action unsupported by law) and each law must pass the tests of the said provisions.

Further court also stated that the interpretation of personal liberty shall not remain in the small bucket and strict sense, but it should be done in a liberal and broad sense. Hence, the judgment also gave way to the apex court to bring relevance to other rights under Article 21 of the Indian Constitution. Even the judiciary has the power to interfere in the laws that hinder the dignity of any autonomy, community, civilization, or group.

LGBTQs are part of the nation and are equally important to the nation. Section 377 of the Indian Penal Code¹⁵ criminalised any type of carnal intercourse and, hence, violated the fundamental rights of the community as a part of India. One of the landmark cases- *Navtej Singh Johar v the Union of India* (2018)¹⁶ showed the equal importance of the LGBTQ Community in society. This case was a leading case held by the Supreme Court's three-judge bench, which made section 377 of the Indian Penal Code¹⁷ unconstitutional since it punishes all types of carnal intercourse done voluntarily. Even in the judgment of the Supreme Court, they have submitted an apology to the community of LGBT and held that there is a violation of articles 14, 15, 19, and 21¹⁸ for the citizens belonging to the community of LGBT community.

Such criminalisation of carnal intercourse against the order of nature criminalises the entire LGBT community. The Supreme Court of India drew certain conclusions in paragraphs 21 and of its judgment that section 377¹⁹ was held unconstitutional and was amended in 2018. This showed the power of the judiciary in maintaining human rights; whether the citizen is a minuscule fraction of the country's population, it can check whether all the citizens are getting the benefit of their rights or not. Our democracy is always the government "for the people, by the people, and of the people" (quote by Abraham Lincoln).

In *S.P. Gupta v Union of India* (1981)²⁰ also well-known as Judge's transfer case or First Judge's case, Advocate S.P. Gupta, feeling aggrieved by the circular order passed by the Ministry of

¹⁴ Constitution of India 1950, art 21

¹⁵ Indian Penal Code 1860, s 377

¹⁶ *Navtej Singh Johar v Union of India* (2018) AIR SC 4321

¹⁷ Indian Penal Code 1860, s 377

¹⁸ Constitution of India 1950, arts 14, 15, 19, 21

¹⁹ Indian Penal Code 1860, s 377

²⁰ *SP Gupta v Union of India* (1982) 2 SCR 365

Law, Government of India, filed a petition challenging the process of appointment of judges or transfer of judges to the other high courts, as permanent judges. The petitioner contended that the procedure followed by the government violated the Constitution of India, as such a procedure lacks consultation with the judiciary. It destroys the independence of the judiciary, which is the key feature of the judiciary.

In this case, the main issue was of the Locus standi that what was the role of advocates in filing such petition, if their rights are not being infringed and secondly, as to whether the Chief Justice of India (CJI) and the collegium system should have a predominant role in the appointment of judges to the higher judiciary or as to whether the executive (i.e., the President of India, on the advice of the Prime Minister and Cabinet) could have the final say. The issue laid down was that the process of appointment of judges of the higher judiciary is provided in articles 124, 217 & 233,²¹ which is followed for the appointment of judges in the higher judiciary. The legal issue is whether the judiciary's involvement is required in the process or how much power does executive holds in this process.

It was held by the Hon'ble apex court in its judgment that the opinion of the Chief Justice of India is not binding on the President of India. The President, acting on the advice of the Council of Ministers, is free to make appointments as per the procedure established by law. It means that the executive is free to make their decision as per the due procedure of the law. Also, the court contended that the petitioner, being an advocate, has a standing to challenge the circular passed by the government. Independence of the judiciary is the founding faith of the Constitution, and the power to appoint judges is executive in nature, and the President is bound by the advice of the cabinet, as per Article 74 of the Indian Constitution.²²

As far as the question of appointment and extension of the additional judges is concerned, consultation with constitutional functionaries must be meaningful and result-oriented; none of them can exercise a veto in the matter, and the proposal can emanate from any of them. This landmark case again showcases that the judiciary and executives are independent with some balances and checks.

Hence, it is proven that the judiciary is an independent pillar of the cornerstone of

²¹ Constitution of India 1950, arts 124, 217, 233

²² Constitution of India 1950, art 74

democracy, which also keeps a balance and checks on its other two strong & independent pillars. However, this judgment of the *S.P. Gupta v Union of India*²³ was revisited in 1993. In *Post SP Gupta- 1981, revisited judgment- Supreme Court Advocate on record association v Union of India (1993)*²⁴ provided that the executive had the last call on the appointment of judges on the higher authority.

AOR Association contended that the executive may not dominate the judicial appointments because it demolishes the independence of the judiciary & also hinders the basic structure of the Indian constitution. They contended that the collegium system should have the final say over the judicial appointment of the higher judiciary judges.

A big legal question arose whether the executives are solely responsible for the final call for the appointment of judges, or the collegium system, comprising members and the CJI, must take the final call in an appointment? In conclusion Hon'ble Supreme Court of India overruled *SP Gupta v Union of India* by stating as follows:

1. Independence of the judiciary is a basic feature of the Constitution, and it cannot be sacrificed.
2. The process of appointment must be done by the judiciary in consultation with the executive, but the final says rests with the judiciary.
3. Judicial appointments cannot be a matter of political influence; it is for the judiciary to ensure that judges are appointed impartially and without any external pressure.

Hence, the Hon'ble Supreme Court of India overruled that the final call for the judicial appointment should be taken by executives and amended that the collegium comprising of the Hon'ble Chief Justice of India and all the most respected Hon'ble judges of the Supreme Court has the power to take the final decision for the higher judicial appointments. Therefore, the Collegium system became the official procedure for the appointment of higher judges.

In my view, while the judiciary is undoubtedly an independent body, it is equally crucial to ensure that judicial appointments and transfers are free from corruption. To achieve

²³ *SP Gupta v Union of India* (1982) 2 SCR 365.

²⁴ *Supreme Court Advocate on Record Association v Union of India* (1993) 4 SCC 441

this, there should be a balanced level of involvement from the executive. If decisions regarding judicial appointments and transfers are solely in the hands of the judiciary, there is a risk of diminished transparency in the system. Therefore, a collaborative approach between the executive and the judiciary can help maintain both independence and transparency in the selection process. Also, in a constitutional democracy, the judiciary ensures that the government exercises power within the limits of the constitution, safeguarding individual liberties from potential abuse.²⁵ Our Indian Constitution is the lengthiest & the supreme law, it gives fundamental rights to all citizens, whether it is men, women, or any community.

But, somehow, due to the practice of old rituals, women were exploited, restrained from worshipping, and their rights were exploited. In *Young Lawyers Association v The State of Kerala*, i.e. *Sabarimala Temple Case*,²⁶ a public interest litigation was filed by the Young Lawyers Association for the welfare of the women of menstruating age 10 to 50 years, who were barred from entering the premises of the Sabarimala temple in Kerala.

The legal issue that Petitioner contended was that such restraint over women has the following violations of their constitutional rights: violation of Articles 14²⁷, 15²⁸ and 25.²⁹ This put a restraint on a woman to practice religion freely. It was concluded in the matter of the Sabarimala temple in Kerala, the Hon'ble Supreme Court of India 2018 ruled in favour of women of 10 to 50 years of age who were barred from entering temple premises due to religious customs. This case was filed by a young lawyers' association as public interest litigation against the state of Kerala for the violation of constitutional rights, i.e. Article 14 and it showcases how social media shaped public voice, opinions & ideologies, and has a massive debate on the constitutional rights of citizens, religious rights & gender equality.

As a result, due to one of the reasons for the influence of social media, the Hon'ble apex court ruled in favour of women in a ratio of 4:1. Hon'ble Former Chief Justice of India D.Y. Chandrachud's opinion - The exclusion of women from the Sabarimala temple is an

²⁵ John Rawls, *The Law of Peoples* (HUP 1999) 45

²⁶ *Young Lawyers Association v State of Kerala* (2018) AIR SC 243

²⁷ Constitution of India 1950, art 14

²⁸ Constitution of India 1950, art 15

²⁹ Constitution of India 1950, art 25

affront to the dignity of women. A woman's right to worship cannot be subordinated to the notion of purity that is rooted in patriarchy.

The judiciary played a crucial role in upholding fundamental rights and safeguarding constitutional democracy by ensuring gender equality and freedom of worship. From my perspective, the Indian Constitution is the supreme law of the land, providing rights, duties, and provisions to its citizens and residents. The judiciary needs to ensure that gender equality is integrated into its decisions, especially when it comes to the interpretation of laws affecting women. While significant strides have been made, the judiciary should continue to adopt a gender-sensitive approach, particularly in cases of sexual violence, workplace discrimination, and reproductive rights, to better reflect the advancing societal practices. The judiciary, as an organ of government, was established with the sole purpose of protecting the Constitution and maintaining its sanctity. The Judiciary is an independent body and organ of the democracy & has an important role in safeguarding individual liberties while ensuring national security. In the case of *Shah Feasal v State of Jammu and Kashmir* (2020).³⁰

Feasal Shah came into popularity because he topped the Union Public Service Commission examination in 2010. Subsequently, in 2019, he resigned from the Indian Administrative Services to protest against the abrogation of Article 370 in Jammu and Kashmir, which revoked the special status of Jammu and Kashmir. Faesal's resignation was met with widespread attention and sparked debates about his right to protest and the government's actions in the region.

After his resignation, Shah Faesal was detained under the Public Safety Act (PSA) and was also placed under preventive detention. This detention, along with other restrictions imposed on political leaders in Jammu and Kashmir after the revocation of Article 370, was challenged by Faesal in the Supreme Court. The Legal Issue reflected that the key legal issue, in this case, was whether Shah Faesal's detention under the Public Safety Act (PSA) was illegal, unconstitutional, and a violation of his fundamental rights under Articles 21³¹ and 19³².

³⁰ *Shah Feasal v The State of Jammu & Kashmir* (2020) AIR SC 3601

³¹ Constitution of India 1950, art 21

³² Constitution of India 1950, art 19

Another aspect of the case was whether his right to free speech and expression was being unduly restricted by the government's actions. It was held that the Supreme Court of India issued a notice to the Union of India and sought a response regarding Shah Faesal's detention under the Public Safety Act. The Court also asked the authorities to clarify whether the detention was a result of any preventive detention or whether it was politically motivated. The Court, while not delivering a final verdict at that time, took serious note of the matter and recognized that detention under PSA is subject to judicial scrutiny. The Court has a crucial role in reviewing whether the detention orders are lawful and justified. The matter was further adjourned for further hearings and the government's response.

It also involved the fundamental rights of individuals, especially in the context of the freedom to protest and freedom of speech guaranteed under the Constitution. In this case, the judiciary acted as a check on executive power, making sure that preventive detention laws were not used arbitrarily or to suppress dissent. The Court's role was crucial in upholding the democratic principle of freedom of expression and ensuring that detention was not used as a tool for political suppression.

CONCLUSION

In conclusion, the judiciary plays a crucial role in maintaining constitutional democracy by ensuring a balance of power among the government branches. Through landmark judgments, it has safeguarded individual rights, upheld democratic values, and preserved the Constitution's core structure. Key cases like *Kesavananda Bharti*³³, *Maneka Gandhi*³⁴, and *Sabarimala Temple*³⁵ reflect the judiciary's commitment to justice, equality, and fundamental rights, including gender equality and freedom of worship.

The *S.P. Gupta v Union of India*³⁶ case reinforced judicial independence, highlighting the need for judicial consultation in appointing and transferring judges to prevent executive interference. The judiciary's role extends beyond rights protection, acting as a stabilising force in the political and social order. It ensures the government functions within the

³³ *Kesavananda Bharti v State of Kerala* (1973) 4 SCC 225

³⁴ *Maneka Gandhi v Union of India* (1978) 2 SCR 621

³⁵ *Young Lawyers Association v State of Kerala* (2018) AIR ONLINE SC 243

³⁶ *SP Gupta v Union of India* (1982) 2 SCR 365

constitutional framework, preventing executive overreach. Moreover, it upholds human rights, ensuring that constitutional promises are fulfilled, particularly for vulnerable and marginalised groups. The Navtej Singh Johar case decriminalizing Section 377 of the Indian Penal Code,³⁷ demonstrates how the judiciary protects the rights of marginalised communities. Such decisions affirm the judiciary's role in defending human dignity, freedom, and equality, even against societal biases or outdated laws. Ultimately, the judiciary is the guardian of democracy, ensuring the rule of law and protecting citizens' rights from potential abuses of power, making it an indispensable pillar of a healthy constitutional democracy.

³⁷ Indian Penal Code 1860, s 377