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Legal Realism: Investigating how Social and Political Factors Influence Judicial Decision-Making

Pragya Hooda^a

^aBharati Vidyapeeth Deemed University, New Delhi, India

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Legal realism, a jurisprudential approach, challenges the notion that law is an area free of social and political influences. This study investigates the impact of legal realism on the Indian judiciary, emphasising how social and political issues influence judicial decision-making. The study aims to demonstrate the extent to which external forces influence the Indian legal system by examining landmark cases and the conduct of judges. Legal realism stresses judges' discretionary authority and the social relevance of their verdicts, claiming that judicial choices are influenced by personal opinions, cultural background, and policy concerns. This abstract emphasises the essential role that judges play in creating legal procedures, extending beyond simple interpretation to actively impact legal progress. Examining case judgments from a realist viewpoint reveals the subjective character of judicial thinking, calling into question the concept of entirely objective legal interpretation. As legal realism gains traction, understanding the dynamic interplay between judges and the law becomes crucial for comprehending the intricate structure of legal systems. The findings emphasise the significance of recognising and comprehending the socio-political components of judicial decision-making to create a more transparent and responsible legal system. This study adds to the greater discussion of legal realism by offering an Indian viewpoint and emphasising the complicated reality of judicial action in a varied and changing culture.

Keywords: *legal realism, judicial decision-making, Indian judiciary, social and political influences, judicial behaviour.*

INTRODUCTION

The view that law is primarily the product of the legislators, with judges just issuing decisions, is widespread. However, the study of jurisprudence, particularly legal realism, helps us comprehend how laws work in practice. The realist school of jurisprudence holds that judges have an important role in developing and enforcing laws. Despite the primacy of the Indian constitution, American realism has had a tremendous impact on the Indian court.

Legal realism, more than other jurisprudential schools, sees judges as central to the formulation and implementation of law. Some scholars contend that legal realism should not be regarded as a distinct school of law, but rather a subset of sociological thought. This perception is relevant because it underscores the conventional understanding of a strict separation between the roles of the legislature and the judiciary, where lawmakers create the law and judges merely apply it.

Legal realism challenges this dichotomy by arguing that judges do not simply interpret pre-existing rules but actively shape the law through their decisions. This view brings attention to the practical realities of legal processes, where judicial discretion, social context, and individual perspectives often influence outcomes. Recognising this dynamic is essential to understanding how law functions beyond its formal structures, particularly in jurisdictions like India, where constitutional supremacy coexists with judicial creativity influenced by American realist thought.

The Realist School is sometimes considered part of the functionalist approach, and it differs from the sociological school in that it focuses less on the aims of legislation. American and Scandinavian legal realism are important movements within the Realist School, with American realism being credited with starting the movement in the 1970s.¹

Unlike legal positivism, which treats law as a system of rules created and applied through formal sources regardless of moral or social considerations, legal realism emphasises judicial discretion and the real-world functioning of law within specific societal contexts. While positivism upholds a clear-cut separation between law and morality, realism challenges this rigidity by focusing on how judges decide cases, often influenced by personal, social, and economic factors. This contrast

¹ Justice G.P. Singh, *Principles of Statutory Interpretation* (LexisNexis 2021)

underscores realism's functionalist orientation, particularly evident in American legal realism, which prioritises the behaviour of courts over the abstract logic of legislation.

This research will focus on American realism, excluding the American Critical Legal Studies Movement and Nordic realism. According to Friedmann, famous thinkers like as Oliver Wendell Holmes, Grey, Cardozo, Karl Llewellyn, and Jerome Frank were intellectual pioneers of American legal realism. They stressed the practical study of law, concentrating on how courts interpret and construct laws rather than how statutes are drafted.²

The influence of American realism, particularly through landmark judgments like *Brown v Board of Education*³, which emphasised the role of courts in achieving social justice, is reflected in India's Public Interest Litigation (PIL) culture. The Indian judiciary, especially during the post-Emergency era, adopted an activist approach in cases such as *S.P. Gupta v Union of India*⁴ and *Bandhua Mukti Morcha v Union of India*⁵, where courts went beyond strict legal formalism to address broader social issues. This shift mirrors the realist emphasis on judicial behaviour and outcomes over rigid adherence to statutory text. American realist thinkers like Jerome Frank and Karl Llewellyn inspired this transformation by advocating for a pragmatic, judge-centred understanding of law, which aligns with the evolving Indian judicial trend of prioritising substantive justice over procedural rigidity.

Realists are particularly concerned with how law operates in society, and they investigate the social elements that influence both the formulation and impact of laws. Justice Oliver Wendell Holmes, Jr., a leading member of the Realist School, frequently disagreed with academics who saw law as a set of logic or moral principles. He famously referred to the law as a good reason for a bad man, emphasising his notion that real consequences, rather than abstract principles, guide judicial judgments.

LEGAL REALISM IN THE INDIAN CONTEXT

According to positivism, legislation expresses the state's will, which is largely enacted by the legislature. Legal realism, on the other hand, regards the law as a court-mediated manifestation of governmental purpose. Unlike positivist thinkers such as Austin, who see

² Wolfgang Gaston Friedmann, *Legal Theory* (Stevens 1967)

³ *Brown v Board of Education of Topeka* [1954] 347 US 483

⁴ *S.P. Gupta v Union of India* (1982) 2 SCC 365

⁵ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161

the law as the command of the sovereign legislature, realists believe that the courts are the sovereign entity.⁶ During British colonial authority in India, the legislation was frequently repressive and failed to address the socioeconomic demands of the Indian people. Sanctions were applied strictly Austinian-style, under the pretence of justice according to law, but British citizens were granted several exemptions and special rights. This resulted in a dual legal system, one for the British and one for the Indian people.

Laws such as the Rowlatt Act 1919, which allowed the government to imprison individuals without trial, and the Vernacular Press Act 1878, which curtailed freedom of expression, exemplify the rigid, command-based nature of colonial jurisprudence rooted in Austinian positivism. The application of law adhered strictly to the sovereign's command and sanctions, while British subjects often received preferential treatment. This dual legal system alienated the native population and led to widespread perceptions of injustice. In contrast, legal realism, by emphasising the role of judicial discretion and the actual functioning of law, resonates with the post-independence Indian legal system.

The enactment of the Indian Constitution, guided by Dr. B.R. Ambedkar's vision of justice, liberty, and equality, marked a break from colonial formalism. Subsequent judicial activism, especially in areas like Public Interest Litigation and socio-economic rights, reflects the realist approach of prioritising the effects of law in society over rigid textual interpretation.

The growth of nationalism and intellectual awakening resulted in calls for civil freedoms and fundamental human rights, which were mostly neglected. Under colonial control, repression, persecution, and exploitation of the Indian population persisted uninterrupted, with attorneys and judges strictly following the text of the law without regard for its impact on the people. Precedent theory was rigidly enforced. The end of British rule and the creation of the Indian Constitution by the Constituent Assembly, led by Dr. B.R. Ambedkar, signified the dawn of Indian constitutionalism. Dr. Ambedkar highlighted that with the termination of British authority, India could no longer blame foreign rule for future problems.⁷

The Indian Constitution, which went into force on January 26, 1950, includes chapters on basic rights and directive principles of state policy to balance individual and social rights. In

⁶ Sir John W. Salmond and Patrick John Fitzgerald, *Jurisprudence* (12th edn, Sweet & Maxwell 1966)

⁷ Justice V R Krishna Iyer, *The Indian Law: Dynamic Dimensions of the Abstract* (Universal 2009)

post-independence India, the Constitution is regarded as the Grundnorm, from which all laws draw legitimacy, and is based on the social consent of the Indian people.⁸ Post-independence Indian positivism varies from Austinian positivism in that it seeks to integrate the 'is' and 'ought.' This is obvious in the Supreme Court's approach to instances where basic rights and directive principles clash, which seeks a balance of justice and morality.⁹ However, the Court has occasionally taken a rigid positivistic attitude, as evidenced in the Kerala Education Bill case, in which it ignored the socioeconomic imperatives driving the law.¹⁰

Similarly, in *Tilkayat Shri Govindlalji Maharaja v State of Rajasthan*¹¹, the Court recognised the sovereign's will as binding law. The effect of Austinian positivism was also obvious in the Habeas Corpus Case, in which the Supreme Court accepted the suspension of basic rights during an emergency, disregarding the social justice demands expressed in the Preamble, basic Rights, and Directive Principles of State Policy. However, Austinian positivism's influence is eroding, as the law is increasingly viewed as an instrument for social change.¹² In recent years, judicial activism and public interest litigation have developed in India, providing new opportunities to interpret the law in social situations.

This approach has built a new social order based on social fairness, with legislation serving as a tool for social reform. In *Indira Sawhney v UOI*,¹³ Justice P.B. Sawant underlined that the Indian Constitution is political and must be construed to reflect today's demands. Following independence, various welfare laws were adopted, with the Supreme Court frequently stating that the details of each case define the law's application. The Realist School of Jurisprudence, which is affiliated with the functional school, has firmly established itself in India, seeing the court as the custodian of the Constitution.

Judges must uphold high standards of honesty, as underlined in *Krishna Swamy v UOI*, where the judge is viewed as a living oracle who articulates society's requirements while acting within the reality of the period. Robust judicial accountability is required because the

⁸ *Keshavanand Bharti v State of Kerala* (1973) 4 SCC 225

⁹ *Minerva Mills v UOI* AIR 1980 SC 1789

¹⁰ *The Kerala Education Bill v Unknown* AIR 1958 SC 956

¹¹ *Tilkayat Shri Govindlalji Maharaja v State of Rajasthan* AIR 1963 SC 1638

¹² *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521

¹³ *Indira Sawhney v Union of India* AIR 1993 SC 477

boundary between judicial activism and excess can blur, possibly undermining the beneficial effects of judicial action.

INDIAN JUDICIAL SYSTEM AND LEGAL REALISM

R.W.M. Dias' thought-provoking comment draws a comparison that will surprise many Indian jurists. He observes that in a society like Britain, which has had relative stability, it has been relatively easy to preserve the analytical positivist worldview, which distinguishes the study of law from social, moral, and other value concerns. However, in countries where societal tensions threaten to disrupt national life, jurists and judges must make deliberate judgments to address these issues.¹⁴

The doctrine of separation of powers is critical for democracy because it ensures that no one authority has absolute power. To avoid dictatorship, democracies delegate differing degrees of authority to different parts of government. These branches are normally the legislative, executive, and judiciary. The legislative branch creates laws, the executive implements them, and the court interprets and enforces them. For these branches to function properly, they must preserve their independence and avoid excessive meddling. Although the Indian Constitution does not clearly state the notion of separation of powers, its provisions tacitly support it. The Indian Constitution sets the ultimate Court as a guardian, reviewing the acts of the legislative and executive departments to guarantee compliance with the law and the Constitution, which is regarded as the ultimate law of the nation.¹⁵

In *Indira Gandhi v Raj Narain*,¹⁶ the Supreme Court ruled on the limits of executive power, emphasising the judiciary's role in interpreting the Constitution and reviewing actions of the legislature and executive. This landmark case reinforced the idea that the judiciary must act as a check on the other branches of government to uphold constitutional principles, particularly in times of crisis or political tension.

Additionally, the *Kesavananda Bharati v State of Kerala* case is pivotal in establishing the basic structure doctrine, which holds that certain features of the Constitution, such as the separation of powers, cannot be altered by amendments. This judgment underscores the

¹⁴ *Brown v Board of Education of Topeka* [1954] 347 US 483

¹⁵ Constitution of India 1950, art 29

¹⁶ *Indira Gandhi v Raj Narain* AIR 1975 SC 2299

importance of maintaining judicial independence as a cornerstone of India's constitutional framework.

In India, the Supreme Court acts as a sentinel, ensuring that the legislative and executive branches carry out their duties by the Constitution. This duty is critical in a varied and dynamic country like India, where the judiciary frequently intervenes to preserve basic rights and uphold the rule of law during social and political upheavals. The Court's capacity to evaluate and potentially overturn legislation or executive acts that violate constitutional principles emphasises the necessity of judicial independence in preserving the balance of power and democracy.

India, with its codified constitution, is a democratic republic in which the Constitution, not the Parliament, has supreme authority. This founding declaration embodies the collective desire of the Indian people, who pronounced it the supreme law of the nation. In a democracy like India, the Constitution takes precedence over Parliament because it reflects the basic concepts and ideals that drive the country.

A disagreement may emerge about whether the will of the people, as represented via their elected representatives in Parliament, has greater sway than the will of the people embodied in the written Constitution. However, in India, the latter takes precedence because of the idea of the basic structure, which limits Parliament's capacity to change the Constitution in ways that affect its fundamental foundation. This idea assures that, while Parliament may change the Constitution, it cannot overturn its fundamental principles. It is a common misperception that because the judiciary is not an elected body, it lacks public input. The Constitution, as the ultimate law, permits the judiciary to declare legislative and executive activities illegal if they infringe people's guaranteed rights.

As the Constitution's custodian, the court acts on behalf of the people. The Indian court has been praiseworthy in its judicial activism, intervening where required to defend the rights and interests of the most vulnerable members of society. Advocates of judicial activism say that a strong court is required to protect these rights from possible injustice or foolishness by other arms of government.

From an Indian viewpoint, Legal Realism may be seen through the prism of the Constitution's provision for judicial review by the Supreme Court. However, it is critical to

distinguish between judicial activism, the proper use of judicial review and judicial overreach, or adventurism. The judiciary's job is to enforce the Constitution while ensuring a balance between the legislative, executive, and judicial departments. The judiciary should not intervene in the authorities of the other departments unless their acts are.

Judicial activism is not an oddity, but rather an essential component of a constitutional court. Courts must make a clear distinction between activism, populism, and excessive, ensuring that their activities are within institutional and practical bounds.¹⁷ In India's complex culture, with its economic inequalities, caste divides, and feudal history, the court should take a liberal stance on problems of social and economic justice, as well as human rights. This approach rejects the rigidity of rigorous legalism in favour of the spirit of the law, acknowledging that, while the letter of the law is necessary, the spirit gives justice life and meaning.

INFLUENCE OF SOCIAL AND POLITICAL FACTORS ON JUDICIAL DECISION-MAKING

The Indian court functions in a complex social and political environment, and its rulings frequently reflect wider community ideals and political processes. Legal Realism, as a school of thought, holds that the law is not an isolated collection of abstract ideas but is inextricably linked to social and political reality. This viewpoint is especially pertinent in India, where the court has had a significant impact on the country's legal and social fabric.

The Indian judiciary's rulings generally reflect their socio-economic background. For example, key decisions like the *Kesavananda Bharati Case* (1973) and the *Maneka Gandhi Case* (1978) demonstrate how the Supreme Court have read the Constitution in ways that address current social and economic concerns. These rulings demonstrate a belief that the law must adapt to fit the requirements of a developing society.

Court Activism and Public Interest Litigation: The development of Public Interest Litigation (PIL) in the early 1980s led to a substantial shift in court conduct, as witnessed in instances like *S.P. Gupta* (1982) and *Bandhua Mukti Morcha* (1984). These examples show how the court has taken an active role in addressing social injustices and protecting the rights of

¹⁷ *State of UP v Jeet S. Bisht* (2007) 6 SCC 586

underprivileged communities. This activity is frequently affected by social movements and public opinion, demonstrating a sensitivity to society's needs and desires.

Political forces: Although the court should be independent, it is nonetheless susceptible to political forces. Historical examples, such as the Emergency era (1975–1977), demonstrate how political influences may influence court rulings. The Habeas Corpus Case (ADM Jabalpur v Shivkant Shukla, 1976) is a vivid illustration of how political settings may affect court findings, resulting in contentious decisions that jeopardise civil rights.

The Role of Judicial Latitude: Judges in India, as elsewhere, have extensive latitude in interpreting laws. Personal opinions, societal values, and political ideologies may all have an impact on this choice. For example, progressive interpretations of Article 21 of the Constitution, which broaden the right to life and personal liberty, demonstrate a judicial preference for defending human rights and advancing social justice.

Balancing Judicial Activism and Restraint: The Indian judiciary's attitude frequently shifts between activism and restraint. While judicial activism has resulted in substantial social improvements, judicial restraint is also necessary to maintain the balance of power among the arms of government. Cases such as Krishna Swamy v Union of India (1992) highlight the significance of judicial accountability and the hazards.

Judicial Review and Constitutional Interpretation: Judicial review empowers the Indian court to protect the Constitution by ensuring that legislative and executive acts align with its provisions. This authority, however, must be used with prudence to prevent jeopardising democratic processes. The Basic Structure Doctrine, established in the Kesavananda Bharati Case, acts as a critical check on legislative authority, ensuring that the Constitution's essential ideals are upheld.

In the context of the separation of powers and judicial independence, the ruling in ADM Jabalpur v Shivkant Shukla¹⁸, often referred to as the Habeas Corpus case, is one of the most significant and controversial judgments in India's constitutional history. The case arose during the period of Emergency (1975-77) when Indira Gandhi suspended fundamental rights under Article 21 of the Constitution, including the right to personal liberty, and

¹⁸ *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521

detained several political opponents without trial. The Supreme Court, in a majority opinion, upheld the validity of such detentions, ruling that during the Emergency, the right to habeas corpus could be suspended, and the courts could not intervene in cases of preventive detention.

This decision was widely seen as a severe blow to judicial independence and the principle of separation of powers, as it allowed the executive branch (the government) to exercise unchecked powers, particularly regarding personal liberties. The socio-political ramifications of the ADM Jabalpur ruling were profound. The decision is often viewed as a period of judicial subservience to the executive, and it sparked widespread criticism, particularly from legal scholars, human rights activists, and political commentators.

The judgment undermined the protective role of the judiciary in safeguarding individual freedoms and further emboldened the executive's authoritarian actions during the Emergency. The ruling also had a long-lasting impact on the political climate in India. It highlighted the vulnerability of individual rights in times of political crisis and prompted calls for strengthening judicial independence and reinforcing checks and balances within the system. The aftermath of the ruling contributed to the Judicial Review movement, leading to significant reforms in judicial activism in the subsequent decades, particularly in areas related to human rights and personal liberties.

It wasn't until the 1978 judgment in the case of *Maneka Gandhi v Union of India*.¹⁹ The Supreme Court began to restore its role as a guardian of fundamental rights, emphasising that rights under Article 21 could not be taken away without the due process of law and that any law infringing on personal liberty must be just, fair, and reasonable.

The ADM Jabalpur case remains a symbol of the tension between the judiciary and the executive in India and serves as a reminder of the critical importance of maintaining the judiciary's independence in safeguarding constitutional values.

OPINIONS OF THE IMPACT OF SOCIAL AND POLITICAL FACTORS

Social Responsibility: The judiciary's involvement in resolving social injustices is admirable since it provides a legal remedy for oppressed populations. However, this obligation must

¹⁹ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

be matched with judicial restraint to avoid infringing on the legislative and executive branches' authority.

Political Neutrality: Although perfect political neutrality is desirable, it is difficult to obtain. To retain public trust in the judiciary's impartiality, judges must seek to limit political influences on their decisions.

Judicial accountability: The judiciary must uphold the values of the Constitution and the rule of law. To avoid the abuse of judicial power, accountability mechanisms should be enhanced.

Progressive Jurisprudence: The court should maintain a progressive approach to interpreting the law, particularly in terms - 'rights' and 'social justice'. However, this progressivism should be based on the letter and spirit of the Constitution.

Public perception has an important role in determining the legitimacy of the court. By maintaining openness and impartiality in judicial proceedings, the court can boost its reputation and public trust. Societal and political issues impact judicial decision-making in India. While these pressures might result in progressive and socially relevant jurisprudence, they also present obstacles to judicial independence and impartiality. Balancing these forces is critical for the court to fulfil its responsibility as a custodian of the Constitution and a defender of justice.

CRITICAL ANALYSIS OF LEGAL REALISM IN INDIAN JUDICIARY

The realism method, which has its roots in American pragmatic philosophy, emphasises practical issues above abstract legal ideas. This philosophy, first viewed as a rebranding of ancient thinking processes, rejects the concept of law as abstract and instead aims to anchor it in real-world facts and behaviours.²⁰

In India, the ultimate Court protects the Constitution and operates within the framework established by this ultimate law. Legal realism in India, therefore, is only partially fulfilled since the courts do not have full discretion; they must always support the Constitution, which expresses the will of the people and serves as the foundation of democracy.

²⁰ *Riggs v Palmer* [1889] 115 N.Y. 506, 22 N.E. 188

Legal progressivism in India is based on the judiciary's expertise, clarity of thought, and conviction. As long as Indian courts follow the spirit of the Constitution, they are free to operate as realists. In this environment, judicial intervention must be enthusiastic and vigorous.

In India, however, the judiciary is seen as a pseudo-realist institution in terms of constitutional protection and advancement. This view becomes more problematic when the court is believed to have faults, such as favouritism, nepotism, and corruption among the legislative and executive departments. If citizens lose trust in the court, the entire democratic system is jeopardised.²¹

Progressive judicial activity in India, notably in the post-Emergency era, stood in stark contrast to regressive judicial passivism. The judiciary's major accomplishments include improving access to justice through creative affirmative action and dynamic remedies. These policies have allowed underprivileged and disadvantaged people to seek justice directly or through non-governmental organisations (NGOs), resolving issues collectively rather than individually.

In the Indian setting, although Parliament functions on positivist principles, the courts use realism to maintain the Constitution's supremacy and advance constitutional ideals without aiming to achieve domination.¹⁵ The three pillars of the state – the legislative, executive, and judicial branches are intended to assist one another during moral or fundamental crises. However, doubts have arisen regarding who will hold the judges responsible. Judge V.R. Krishna Iyer advocated for judicial reform (*perestroika*) and transparency (*glasnost*).

He warned against judicial absolutism and tyranny posing as independence. Collegium established by the judiciary, as well as a lack of accountability, have the potential to corrupt even the most ethical persons. In a democracy, judicial accountability is critical to avoiding a robed dictatorship and ensuring that judges stay accountable to the people. Corrupt judges represent a huge danger to the judicial system's credibility.

²¹ *Haridas Das v Usha Rani Banik* 2006 (4) SCC 78

CONCLUSION

When considering democracy, it is critical to understand that it entails more than just a free marketplace of ideas. It also includes a realisation that no freedom is absolute. All liberties must be subject to legitimate limitations, including those based on constitutional principles, public order, morality, and national security. In India, the court is critical to upholding the Constitution.

Significant transformations in judicial thought happened between the late 1970s and the 1980s, resulting in the formation of new constitutional jurisprudence. This trend was accelerated by major decisions such as the *Kesavananda Bharti Case*, which established judicial authority in constitutional interpretation. The *Maneka Gandhi Case* altered the meaning of Article 21, broadening the scope of the right to life and personal liberty.

Legal realism, a school of thought emphasising that law is shaped by the decisions of judges within social and political contexts, plays a crucial role in understanding the Indian judicial landscape. Unlike legal positivism, which strictly separates law from societal influences, legal realism highlights how judges, rather than merely applying abstract laws, engage with the socio-political realities in making decisions. In India, this approach has influenced the role of the judiciary in safeguarding fundamental rights and ensuring justice in an evolving democratic framework.

The introduction of Public Interest Litigation (PIL) in the early 1980s was a watershed moment, as it removed the usual limits imposed by the *locus standi* doctrine. In seminal cases like *S.P. Gupta* (1982) and *Bandhu Mukti Morcha* (1984), the Supreme Court redefined standing, allowing a larger spectrum of people and groups to seek legal relief.

The Indian judiciary has gradually acknowledged that justice comprises more than merely following the rules; it requires a fair and just procedure. This necessitates three essential components: a competent and independent legal profession, an impartial and autonomous court, and procedural justice.

A just legal system must ensure a fair trial and access to legal advice, assistance, and representation for all parties involved. The Indian Constitution, as a dynamic and changing text, reflects these shifts in judicial attitudes, moving from a strictly positivist to a more realist

viewpoint. As a result, Indian law cannot be restricted to the rigid frameworks of Legal Positivism or Legal Realism.

The current legal system faces the constant problem of applying the timeless ideals of the rule of law within the holy framework of the Constitution. This necessitates striking a balance between adherence to established rules and the need to adapt to changing social, economic, and political situations, ensuring that justice is both attained and seen as reached by all persons.