



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## EVOLUTION OF JUDICIARY IN INDIA

### ABSTRACT

*"From its colonial roots to the present, the Indian judiciary has played a pivotal role in shaping the legal landscape of the nation." - Fali S. Nariman.* The evolution of the judiciary in India is a captivating journey marked by distinct phases. Initially, justice was decentralized, with village panchayats resolving disputes. Colonial influence brought structured transformation, establishing a hierarchical legal system based on common law principles. Post-independence, the judiciary underwent profound reforms, with the Constitution elevating it to a pillar of democracy. The Supreme Court's establishment centralized legal interpretation, promoting uniformity nationwide. The judiciary's role expanded beyond legal interpretation to safeguarding fundamental rights and promoting equality. It became a guardian of democratic principles, federalism, and parliamentary democracy. As its role expanded, questions of independence and accountability arose. Maintaining autonomy and ensuring lower court judges' independence became crucial. The Indian judiciary's transformation reflects a steadfast commitment to judicial independence, accountability, and the protection of fundamental rights. From its colonial roots to an independent institution, it plays a pivotal role in upholding democratic principles and ensuring justice. This research paper delves into the nuanced evolution of the Indian judiciary, highlighting its commitment to democratic governance, the protection of rights, and the complexities of ensuring justice in a diverse society.

**Keywords:** *Judicial system, British rule, Village Panchayat*

## **THE ROOTS : FROM ANCIENT SMRITIS TO A FLOURISHING LEGAL TRADITION**

The legal system in India is inextricably linked with the English language: both were originally imported from abroad ... Originally an English transplant with Anglo-Saxon roots, the legal system in India has grown over the years, nourished in Indian soil. What was intended to be an English oak has turned into a large, sprawling Indian banyan tree, whose serial roots have descended to the ground to become new trunks<sup>1</sup>.

In ancient India, the legal system was intricately woven into the fabric of moral law, diverging from the conventional understanding of law as dictated by a sovereign authority. In ancient India, 'law' was that which was believed to have been ordained by a Divine Author. The smritis, which means 'that which was remembered': particularly Manusmriti, served as foundational sources of legal principles, attributing their origins to divine authorship rather than human command. These texts were compilations of recollections from revered sages known as "smritikars."

Despite their role as compilers, they held no temporal power and owed their position to neither sovereigns nor lawmakers. Smritikars saw themselves as exponents of divine precepts and compilers of handed-down traditions. Changes in the smritis occurred gradually through the recognition of specific usages as having binding efficacy. The smritis, also called Dharmashastras, served as a composite compendium regulating human conduct, blending religious, moral, and social duties.

Manusmriti, compiled between 200 BC and AD 100, held unparalleled authority, with its twelve chapters covering diverse legal subjects, including both civil and criminal law.

Yajnavalkya's code, compiled between AD 200 and AD 300, showcased a logical and synthesized treatment of legal issues, particularly emphasizing the rights of women. The Mitakshara, a leading commentary, further expounded on this code. In contrast to Manusmriti, Yajnavalkya's approach reflected a more liberal perspective, possibly influenced by Buddhist teachings.

Naradasmriti, compiled around AD 200, provided a straightforward presentation of legal principles, addressing subjects such as inheritance, ownership, property, gifts, and partnership.

---

<sup>1</sup> Nariman, Fail. S. *India's Legal System Can It Be Saved?*

Notably, Naradasmriti was the first among the Dharmashastras to acknowledge the supremacy of king-made laws over traditional smritis. This marked a significant departure from the prevailing notion that smritis held ultimate authority. The concept of "*nyaya*" or justice was integral to these legal frameworks.

In pre-British India, scholars debated whether the underlying concept of justice in the legal system could supplement or supplant the law. Much of ancient Indian law is lost, but the discovery of Kautilya's *Arthashastra* in 1909 revealed an imperial code predating Manusmriti. The *Arthashastra* reflected a secular perspective, written during the politically unified **Maurya dynasty 325–185 BC**), while Dharmashastras emerged with the Brahmin empire of the **Sunga dynasty (185 BC)**. The *Arthashastra*, describing 'King's courts of justice,' coexisted with Dharmashastras until Manusmriti gained prominence, after which Hindus turned to smritis for legal guidance. Despite political consolidation, local jurisdictions in popular assemblies ('sabha' or 'samiti') remained significant in administering justice in ancient India. The Maurya empire marked a historical landmark with its strong central government and established courts of law.

While European scholars initially perceived ancient Indian law as inseparable from religion<sup>2</sup>, later perspectives, including John D. Mayne's, challenged this notion. The complex interplay between morality, religion, and governance shaped the legal landscape in pre-British India, with the smritis evolving and gaining prominence over time.

### **JUSTICE IN BRITISH INDIA:**

Before British dominance in India, justice administration in northern India was managed by courts established by emperors, including the **Mughals (1526–1761)**. The legal profession originated in these courts, with '*vakils*' representing clients more as agents. The East India Company, initially focused on commerce, gained territorial responsibilities after battles in **1757**<sup>3</sup> and **1764**<sup>4</sup>. Warren Hastings, in 1772, centralized civil and judicial administration in the Company. Provincial civil courts ('*mofussil dewanny adawlat*') and superior courts like '*sudder dewanny adawlat*' were

---

<sup>2</sup> First expressed by Sir Henry Maine in his classic work *ancient law*, published in 1861

<sup>3</sup> Battle of Plassey

<sup>4</sup> Battle of Buxa

established for civil justice. Similarly, criminal courts (*'foujdary adawlat'*) and *'sudder nizamat adawlat'* were set up for criminal justice, all operating under Mughal suzerainty. The Company's legal status was that of a zamindar, limiting its authority to Persian-speaking courts. The earliest British Crown authority for justice in India dates back to James I (1622) and later charters (1661), granting power to the East India Company to judge and execute judgment according to English law, including non-Europeans within their factories.

Justice in Bombay operated under the authority of the Crown of England, distinct from Mughal jurisdiction after it was gifted to the King of England. Bengal's legal status changed in 1694 when the Company, acquiring zamindar status, established a settlement in Calcutta.

Mayor's Courts were established in Madras, Bombay, and Calcutta by **King George I** in 1726, applying English common law and equity. After restoration of Madras in 1749, a new charter in 1755 reinstated Mayor's Courts with Indian consent required for their jurisdiction. As Mughal rule declined, permanent British settlements in Bombay, Calcutta, and Madras solidified in the 18th century. Mayor's Courts were replaced by the Supreme Courts of Judicature in 1774, covering the Presidencies of Calcutta, Bombay, and Madras. Elijah Impey served as the first Chief Justice of the Supreme Court in Calcutta. Subordinate courts in each presidency were collectively termed 'Company's Courts.' Two parallel judicial systems existed: Supreme Courts in Presidency towns and adalats in 'mofussil' areas.

In British India, the judicial system aimed to cater to Englishmen's needs, replicating the English system in Presidency towns. However, in mofussil towns with a predominantly Indian population, efforts were made to administer indigenous Hindu and Muslim laws. The disparate systems persisted until 1862 when high courts were established, marking the precursor of the modern Indian legal system.

In cases governed by Hindu law without clear guidance from shastras, judges invoked 'JUSTICE, EQUITY, AND GOOD CONSCIENCE.' This principle was evident in a case where a murderer sought to inherit the victim's estate. The Privy Council upheld the High Court's decision, emphasizing the application of 'principles of equity, justice, and good conscience' in the absence of specific Hindu law provisions. Even post-1950, the Supreme Court continued the practice, deciding cases based on 'justice, equity, and good conscience' in the absence of explicit shastric texts. The court's

decisions, guided by these principles, resembled private legislation, filling gaps in substantive law with English common law and statute law.

For almost two centuries after British arrival, efforts focused on creating a court system without a developed body of law. Recognizing deficiencies, conscious efforts to form a coherent legal framework began around 1833. The Great Codes—The Code of Civil Procedure, 1859, The Indian Penal Code, 1860, and The Code of Criminal Procedure, 1861—established the foundations of governance and justice, shaping the Indian legal system. Alongside acts like the Indian Contract Act, of 1872, Indian Evidence Act, of 1872, and Transfer of Property Act, of 1882, they remain fundamental to Indian law.

Personal and customary laws governed a substantial sphere, with Hindu law being codified post-independence<sup>5</sup>. Before codification, courts interpreted ancient texts, contributing to a vast body of case law that served as a reference for resolving issues related to Hindu law in British India.

Since the Shariat Act, of 1937, Muslim personal law, applicable to Muslims in India, covers various matters like succession, marriage, maintenance, and more. The Mahomedan law applies in specific areas, leaving Muslims, like Hindus, subject to general laws in civil procedure, criminal law, and evidence.

After the Indian Mutiny of 1857, the Government of India Act, of 1858, marked the end of Mughal rule and established a unified legal system with high courts and a tiered pattern of civil and criminal courts. The subordinate judiciary was established, and civil courts were organized in a regular hierarchy in each district courts of the District Judge, the Additional District Judge, sub-ordinate judges and the munsif. Criminal courts were organized into Courts of Sessions, Presidency Magistrate Courts, and Courts of First-, Second- and Third-Class Magistrates. The high courts were given appellate and supervisory jurisdiction over all civil and criminal courts in the province.

---

<sup>5</sup> The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Minority and Guardianship Act, 1956; And the Hindu Adoption and Maintenance Act, 1956

The Privy Council served as the appellate authority until 1937. The Government of India Act, of 1935, introduced the Federal Court of India, and post-1950, appeals were directed to the newly established **SUPREME COURT OF INDIA**.

### **LEGAL TRANSFORMATIONS IN POST-INDEPENDENCE INDIA**

The Constitution of India, 1950, maintained the British-Indian legal system, encompassing statutory, personal, customary, and common law. The common law, carried by the English wherever they expanded their influence, became the basis of legal systems in territories conquered by the British Empire. Even after political ties were severed post-1945, the common law endured in independent states, forming the foundation for legal systems in countries like India. Sir Vivien Bose noted that the common law deeply influenced India's laws and customs<sup>6</sup>.

Notably, Muslim personal law, codified under the Shariat Act, applies to various aspects of Muslim life, emphasizing the coexistence of personal laws within the broader legal framework. The historical transition from British rule to independence retained the common law as a cornerstone of the Indian legal system.

### **Village Panchayats in Pre-British India and the Impact of British Rule**

Before British rule in India, a decentralized legal system existed at the village level, primarily managed by panchayats—groups of arbiters that played a crucial role in resolving disputes. This indigenous system, embedded in Indian culture with terms like '*panch*' and '*panchayat*,' had deep historical roots. Unlike the British-imposed adversarial litigation, the panchayat system was a local and traditional means of administering justice.

In pre-British India, various local jurisdictions with overlapping authorities existed. Disputes were typically settled within communities, either by the village headman, local tribunals, or caste-based councils. The decisions of these entities were generally honored, showcasing the effectiveness of decentralized justice.

---

<sup>6</sup> Justice Vivek Bose 1960 [Vol.76] Law Quarterly Review

## **THE ROLE OF JUDICIARY IN INDEPENDENT INDIA**

*"The evolution of the Indian judiciary reflects a commitment to justice that transcends time, navigating challenges and embracing reforms." - Justice Ruma Pal*

The Preamble of the Constitution of India, 1950, prominently articulates the commitment to securing justice, encompassing social, economic, and political dimensions. This commitment reflects a profound acknowledgment of historical injustices, particularly towards Scheduled Castes (SCs), Scheduled Tribes (STs), and backward classes.

To address historical disadvantages, the Constitution empowers Parliament to make special provisions for the advancement of socially and educationally backward classes, SCs, and STs. The Constitution's framers sought to rectify past injustices through measures such as reservations in educational institutions and public employment. However, the path to achieving justice has been complex. The judiciary's role in interpreting compensatory discrimination clauses has been dynamic and at times inconsistent.

The framers of the constitution, acknowledging the deep-seated discrimination, addressed untouchability directly. Article 17 emphatically declared the abolition of untouchability and prohibited its practice in any form. This legal stance was reinforced by the Untouchability Offences Act of 1955, later renamed the Civil Rights Act in 1967. The legislation imposed legal sanctions against any manifestation of untouchability, affirming the commitment to break the shackles of a discriminatory past.

### **Judicial Interpretation and Evolving Notions of Justice**

The third key aspect unfolds as the Constitution of India delineates the social, economic, and political dimensions of justice, explicitly articulated in the Preamble. This expansive vision is further elaborated in Articles 38 to 51, constituting the Directive Principles of State Policy in Part IV of the Constitution. Although these principles are labeled as "fundamental in the governance of the country," Article 37 stipulates that they are not enforceable in any court<sup>7</sup>.

---

<sup>7</sup> Under article 37 it is mentioned that the DPSP "shall not be enforceable by any court".

One notable case reflecting the court's reliance on societal expectations and justice considerations is the case of *BUDHAN SINGH V. BABI BAX*. Originating in a village in Uttar Pradesh, this case revolved around the interpretation of the term "held" in the context of land rights. The Court, led by Chief Justice Subba Rao, chose an interpretation aligned with the perceived intent of lawmakers to uphold fairness and equity. The decision asserted that it was reasonable to assume that lawmakers enact laws that society deems honest, fair, and equitable. The Court's role, in this context, was not merely to mechanically apply the law but to ensure that justice was served in the specific circumstances of the case.

### **Directive Principles of State Policy:**

Despite this non-justiciable nature, the DPSP serves as a guiding framework for lawmakers, urging them to legislate in a manner that aligns with the principles of justice and reason. The DPSP encompasses the social, economic, and political aspects of justice, as stated explicitly in the Preamble. These principles provide a roadmap for Parliament and state legislatures to frame laws that promote the welfare of citizens and strive towards achieving a just society.

Over the years, even though the DPSP is not legally binding, the courts, especially post-1980, have increasingly considered these principles while making decisions.

One notable example is the invocation of DPSP in environmental matters. In a Public Interest Litigation case, the Supreme Court directed the Delhi government to prescribe the type of fuel used in vehicles to minimize pollution, citing Articles 39(e), 47, and 48-A of the DPSP. The court justified its intervention by emphasizing the state's duty, as outlined in the DPSP, to secure public health and protect the environment.

### **Judicial Review and Prospective Overruling:**

Traditionally, the common law principle held that judges merely discover the law and that decisions are retrospective. However, the doctrine of prospective overruling introduced a nuanced approach. It allows the courts to declare a law unconstitutional but limit the retrospective effect of



the declaration. This means that the law remains valid for past actions, avoiding disruption while signaling its unconstitutionality for the future.

The application of prospective overruling in the *GOLAKNATH CASE*<sup>8</sup> marked a significant departure. Golaknath challenged the government's power to restrict property rights through constitutional amendments. The court, invoking this doctrine, held that the amendments were unconstitutional prospectively, asserting the judiciary's authority to shape constitutional interpretation.

In a tax-related context, the *VEND FEE CASE*<sup>9</sup> illustrated the judiciary's reliance on prospective overruling. The court, years later, declared the levy of a vend fee on industrial alcohol as ultra vires. This decision showcased the court's ability to declare taxes unconstitutional but temper the consequences by applying the doctrine prospectively.

The use of prospective overruling is not without controversy, raising questions about the judiciary's authority to selectively apply constitutional rulings. Nevertheless, it represents a strategic approach to reconcile constitutional challenges and maintain a delicate equilibrium between legal stability and justice.

### **Embracing Alternative Dispute Resolution**

The post-independence era in India witnessed a dynamic transformation in the role of the judiciary, marked not only by its adjudicatory functions but also by its proactive initiatives to innovate and streamline the legal landscape. A notable facet of this evolution has been the integration of Alternative Dispute Resolution (ADR) mechanisms into the broader framework of justice administration.

#### **A. Conciliation and Arbitration:**

The Arbitration and Conciliation Act of 1996 stands as a testament to the judiciary's recognition of mediation (conciliation) as a viable mode of dispute resolution alongside traditional arbitration.

---

<sup>8</sup> I.C. Golaknath & Ors. V. State of Punjab & Ors- AIR 1967 [2] SCR 762

<sup>9</sup> Somaiya Organics (India) Ltd. v. State of Uttar Pradesh (2001) 5 SCC 519

Encouraging party autonomy and minimizing judicial intervention, this legislative stride challenges the traditional court-centric mindset, reflecting a commitment to fostering mutually agreeable solutions.

#### B. Lok Adalats - Indigenous ADR:

In 1980, the judiciary introduced Lok Adalats as an indigenous ADR method, representing 'courts of the people.' Functioning as forums for ad hoc conciliation, Lok Adalats offer a unique blend of judicial and public participation, effectively resolving disputes and alleviating the burden on the formal court system. The judiciary's support for Lok Adalats underscores its commitment to bringing justice closer to the people through community-based resolution mechanisms.

#### C. Specialized Tribunals:

Recent legislative enactments establishing specialized tribunals, such as the Consumer Protection Act (1986) and the Telecom Regulatory Authority of India Act (1995), showcase the judiciary's adaptability to sector-specific needs. These tribunals, while serving specific industries, operate under the overarching legal authority of the judiciary, striking a balance between specialized expertise and the broader judicial framework.

#### D. Online Dispute Resolution (ODR):

Embracing the digital age, the judiciary has witnessed the emergence of Online Dispute Resolution (ODR) platforms. These platforms, leveraging technology for online dispute resolution, particularly in areas like e-commerce, signify the judiciary's responsiveness to changing modes of commerce and the need for convenient, accessible alternatives.

Incorporating ADR mechanisms into the discourse on the role of the Indian judiciary highlights its commitment to adaptability, innovation, and the pursuit of justice beyond conventional courtroom proceedings.

### **JUDICIAL ACTIVISM IN CONTEMPORARY INDIA**

In contemporary India, judicial activism has expanded beyond the traditional role of interpreting laws to actively participating in the formulation and implementation of policies. The judiciary has played a crucial role in addressing socio-economic disparities, protecting fundamental rights, and responding to emerging challenges. Instances of the judiciary intervening to protect the environment, ensuring social justice, and safeguarding individual rights showcase the scope of judicial activism.

**FOR EXAMPLES:**

Vishakha Case (1997)<sup>10</sup> was a landmark judgment that showcased judicial activism in response to social injustice. It dealt with the issue of sexual harassment of women at the workplace. The Supreme Court, in the absence of specific legislation, laid down guidelines to prevent and address sexual harassment at workplaces. This proactive stance by the judiciary was a response to the pressing need for protection of women's rights in the workplace.

India has witnessed significant judicial activism in addressing environmental issues. Courts have played a proactive role in interpreting and enforcing environmental laws to ensure the protection and conservation of the environment. Some key aspects include:

- Notable instances include THE OLEUM GAS LEAK CASE (SHRIRAM FOOD AND FERTILIZER FACTORY)<sup>11</sup> and the GANGA POLLUTION CASE<sup>12</sup>, where the judiciary intervened to ensure industries comply with environmental norms.

India's Constitution guarantees fundamental rights to its citizens, and the judiciary plays a crucial role in upholding and interpreting these rights. Judicial activism in this context involves the judiciary actively ensuring the protection and enforcement of fundamental rights beyond what might be explicitly mentioned in the Constitution. Here are some aspects to consider:

Kesavananda Bharati Case (1973) is a landmark judgment where the Supreme Court introduced the "*basic structure doctrine*." It held that while Parliament has the power to amend the Constitution, it cannot alter its basic structure. This decision marked a significant instance of the

---

<sup>10</sup> Vishaka & Ors. v State of Rajasthan & Ors. ((1997) 6 SCC 241) – landmark case on sexual harassment.

<sup>11</sup> Mehta v/ Union of India Air 1987 SC 965

<sup>12</sup> M.C. Mehta v/s Union of India: Ganga Pollution Case - Citation AIR 1988 SC 1037;(1987) 4 SCC 46

judiciary actively shaping constitutional principles to safeguard the fundamental framework of the Constitution.

The MANEKA GANDHI CASE<sup>13</sup> expanded the interpretation of Article 21 (Right to Life and Personal Liberty). The Supreme Court held that the term "personal liberty" is not confined to mere freedom from physical restraint but includes a variety of rights that go to the essence of personal liberty. This decision broadened the scope of individual rights and demonstrated the judiciary's proactive role in protecting them.

### **Legislative Intent vs. Judicial Interpretation:**

In the Indian legal system, laws are drafted by the legislature with a specific intent, and it is the role of the judiciary to interpret and apply these laws. However, judicial activism sometimes involves courts interpreting laws in a broader or more expansive manner, going beyond the literal or original intent of the legislature.

One significant case that illustrates this tension is the S.R. BOMMAI CASE<sup>14</sup>. In this case, the Supreme Court of India addressed the dismissal of state governments using Article 356 of the Constitution. The court laid down guidelines to prevent arbitrary use of President's Rule and emphasized the need for substantive material to justify such dismissal.

### **Public Interest Litigation (PIL):**

The concept of PIL emerged in the 1960s and 1970s as a response to the need for justice for the marginalized and underprivileged. Justice Krishna Iyer was among the early proponents, emphasizing the idea that anyone acting bona fide and having sufficient interest could bring a matter of public importance to the attention of the court.

The 1980s marked a turning point when the Supreme Court of India formally recognized the PIL as a means to ensure justice for the common people. The case of HUSSAINARA KHATOON

---

<sup>13</sup> Maneka Gandhi vs union of India AIR 1978 SC 597

<sup>14</sup> S.R. Bommai vs Union of India ([1994] 2 SCR 644: AIR 1994 SC 1918: (1994)3 SCC1)

V. STATE OF BIHAR (1979)<sup>15</sup> is often cited as a landmark early PIL case, where the court addressed issues of delayed justice and overcrowded prisons.

The concept of PIL was given further structure through guidelines laid down in the case of S.P. GUPTA V. UNION OF INDIA (1982, commonly known as the Judges' Transfer case. The court outlined the scope and procedure for filing PILs, broadening access to justice for the public.

Over the years, PIL has been used to address a wide range of issues, including environmental concerns, human rights violations, corruption, and issues related to public health and safety. The MC MEHTA CASES IN the 1980s, addressing environmental issues like the Ganga pollution, are noteworthy examples.

## CONCLUSION

India's legal system's history, from prehistoric times to the present, is reminiscent of a narrative interwoven with social mores, legal principles, and the notion of justice. Laws were once thought to be essential to preserving social order. They drew inspiration from several Indian cultures' ideas and ideals. It became evident over time how crucial it is for judges to remain impartial and disciplined. They have to lead by example and inspire others to do the same. A significant turning point for the court was its independence. It implied that judges may render judgments free from outside interference. For society to remain equitable and stable, they were considered essential.

However, there have been difficulties encountered. It can be challenging for the courts to keep up with the volume of cases they have to handle. Furthermore, determining what is just and fair isn't always simple, which gives rise to discussions on the consistency of the legal system. In order to stay up to date with the times, the courts have embraced new concepts such as considering potential future effects of laws. They've also begun to base more of their decisions on moral principles. Going forward, reform is being pushed. The public wants to see greater efficiency and justice for

---

<sup>15</sup> Hussainara Khatoon & Ors vs Home Secretary, State of Bihar 1979 AIR 1369, 1979 SCR (3) 532

all inside the legal system. Thus, the legal system's history in India is still being written. However, as it has done for centuries, it is hoped that it will continue to deliver justice and fairness to society.