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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **ROLE OF JUDICIARY IN THE PROTECTION AND PROMOTION OF HUMAN RIGHT**

AUTHORED BY - MUNTAZIR NAWAB & SUMBUL FATIMA

Faculty of Law, Jamia Millia Islamia, New Delhi

## **Abstract**

This research paper examines the role of the Indian judiciary in protection and promotion of human rights. The Indian judiciary plays a pivotal role in promoting and protecting human rights enshrined in the Constitution of India. This paper will explore the various functions of the judiciary in the protection and promotion of human rights through its constitutional power, particularly within the scope of fundamental rights (Article 12-35). The judiciary is considered as a guardian of civil liberties, which provide a platform to seek justice. With the development of many judicial mechanisms like PIL it became easier for people to knock the door of the judiciary and access justice. However there are many challenges before the judiciary like overburdened courts that hinder the judiciary in timely disposal of cases.

**Keywords:** *Judiciary, justice, human rights, constitution, fundamental rights, violations.*

## **I. INTRODUCTION**

The state upholds the social order by making various rules, legislation, statutes without which the existence of state would be impossible. Numerous proponents of the social contract theory argued that upholding and defending individual rights is the primary goal of state formation.. According to Aristotle, the state came into existence because of the basic necessities of humans, the State is a necessary condition of a good life.<sup>1</sup> Locke opined that the end of state is to remove the obstacles that hinder the development of an individual. Therefore, it can be said that the motive of the state is to protect the rights of its citizens.<sup>2</sup>

Human rights are a set of principles concerned with equality and fairness.<sup>3</sup> Human rights are rights we have simply because we exist as human beings - they are not granted by any state.

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<sup>1</sup> Dr. S.R. Myneni, *Political Science* 26 (Allahabad Law Agency, Allahabad, 2023).

<sup>2</sup> *Ibid*

<sup>3</sup> 'An Introduction to Human Rights' (*Humanrights.gov.au*2024) <<https://humanrights.gov.au/our-work/education/introduction-human-rights>> accessed 13 November 2024

These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status.<sup>4</sup> They are about living a life free from fear, harassment or discrimination. In the early times, people had human rights because of their membership in a group such as family. Then, in 539 BC, Cyrus the Great, after conquering the city of Babylon, did something totally unexpected—he freed all slaves to return home. Moreover, he declared people should choose their own religion. The Cyrus Cylinder, a clay tablet containing his statements, is the first human rights declaration in history.<sup>5</sup> At international level various efforts have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. International bill on human rights has been incorporated in the UN Charter. The UN Charter contains various provisions for the promotion of human rights and fundamental freedoms in the Preamble and in various Articles 1, 13(b), 55, 56, 62 (2), 68 and 76(c).<sup>6</sup> Apart from UN Charter there are four international instruments created under the auspices of the United Nations known as International Bill of Human Rights, which include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966.<sup>7</sup> The international human rights regime is continuously growing with the passage of time, it provides certain accepted legal standards which all the nations should accept and implement in their domestic laws. The Governments of all the nations must work to promote the welfare of people by eliminating all forms of discrimination and provide the right to equality and justice to all.

The judiciary plays a crucial role in upholding human rights in India, acting as the guardian of the Constitution and the protector of individual rights. Through various landmark judgments and interpretations, the judiciary has not only enforced the rights explicitly mentioned in the Constitution but has also expanded the scope of these rights to include unenumerated ones, thereby ensuring comprehensive protection of human dignity.

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<sup>4</sup>‘What Are Human Rights?’ (OHCHR2023) <<https://www.ohchr.org/en/what-are-human-rights>> accessed 13 November 2024

<sup>5</sup> ‘Background , History of Universal Declaration of Human Rights : Youth for Human Rights Video’ (Youth for Human Rights 2019) <<https://www.youthforhumanrights.org/what-are-human-rights/background-of-human-rights.html>> accessed 13 November 2024

<sup>6</sup> S. K. Kapoor, *International Law & Human Rights* 800(Central Law Agency, Allahabad, 17th edition 2009).

<sup>7</sup> Id. at 817.

## II. CONSTITUTIONAL PROVISIONS RELATED TO HUMAN RIGHTS IN INDIA

Part III of the Constitution of India contains a long list of fundamental rights. This chapter of the Constitution of India has very well been described as the *Magna Carta* of India.<sup>8</sup> In the case of *Maneka Gandhi v. Union of India*<sup>9</sup>, The Supreme Court of India speaks about the importance of fundamental rights “Fundamental rights represents the basic values cherished by the people of India and they are calculated to protect the dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent. The object behind the inclusion of this chapter in the Indian Constitution is to establish a *Government of law and not of men*.”<sup>10</sup> In *M. Nagaraj v. Union of India*<sup>11</sup> the Supreme Court held that the fundamental rights are not gifts from the state to citizens but they are basic human rights that every human being possesses by reason of that they are humans.

Article 14 to 18 of the Constitution of India guarantees the right to equality to every citizen of India. Article 14 tells the general principles of equality before law and prohibits and kind of discrimination between persons. Article 14 embodies the idea of equality enshrined in Preamble to the constitution of India. Article 15 relates to prohibition of discrimination on the basis of religion, race, caste, sex and place of birth. Article 16 guarantees equality of opportunity in public employment. Article 17 abolishes ‘Untouchability’ whereas Article 18 abolishes title.

Article 19-22 deals with personal liberty as a basic right. Article 19 includes the right to freedom of speech and expression, the right to freedom of assembly, the right to freedom of association or union, the right to freedom of movement, the right to freedom of residence, freedom of profession, occupation, trade or business. Article 20 protects against arbitrary arrest and detention. Article 21 safeguards the right to life and personal liberty. Article 22 protects against arbitrary or unlawful imprisonment.

Articles 23 and 24 of the Indian Constitution talk about Right Against Exploitation, dignity

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<sup>8</sup>‘Constitutional Law of India - Chapter 6 - Fundamental Rights’ (*Manupatra.com*2024) <[<sup>9</sup> AIR 1978 SC 597](http://student.manupatra.com/academic/abk/constitutional-law-of-india/CHAPTER-6.htm#:~:text=Part%20III%20of%20the%20Constitution%20is%20rightly%20described%20as%20'magna,consitutional%20remedies%20(Article%2032).>” accessed 13 November 2024</a></p></div><div data-bbox=)

<sup>10</sup> Dr. J.N. Pandey, *Constitutional Law of India* 59 (Central Law Agency, Prayagraj, 2023).

<sup>11</sup> AIR 2007 SC 71

and freedom of a person are inviolable. No one can be forced into labour against their will. This article also talks about other forms of forced labour and victims of human trafficking. Every Indian citizen needs to know about their rights enshrined in the constitution so that they can fight for their rights if violated Article 25-28 of the Constitution protects the right to freedom of religion. In 1976, by The Constitution (42nd Amendment) Act, 1976, inserted the word “secular” in the preamble. In *S.R. Bommai v. Union of India*<sup>12</sup> the Supreme Court held that secularism is a basic feature of the Constitution.<sup>13</sup>

Articles 29 and 30 deal with the cultural and educational rights of Indian citizens. This fundamental right intends to preserve the culture of minority groups in India. Indian society is a composite heterogeneous one and its diversity is one of its strengths. The Constitution guarantees these rights to minorities so that the diversity of this country is preserved and provides avenues for all groups including marginalized ones to protect, preserve, and propagate their culture.

### III. RIGHT TO CONSTITUTIONAL REMEDY (ARTICLE 32)

Dr. Ambedkar said about Article 32 in the Constitutional Assembly;

*“If I was asked to name any particular Article in this Constitution as the most important, an Article without which this Constitution would be a nullity -I could not refer to any other Article except this one(Article 32). It is the very soul of the Constitution and the very heart of it”*<sup>14</sup>

*“ubi jus ibi remedium”* where there is a right there is a remedy<sup>15</sup>. It is very true that declaration of fundamental rights is meaningless if there is not effective machinery for enforcement. For this purpose the makers of the constitution inserted Article 32 which empowered the citizens of India to reach the apex court in case of violation of any of the fundamental rights mentioned in Part III of The Constitution of India for the restoration of that right by way of issuing writ. Article 226 of The Constitution of India empowers the High Courts to issue writs for the enforcement of fundamental rights.

Article 32(1) guarantees the right to move to supreme court in case of violation, whereas

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<sup>12</sup>(1994) 3 SCC 1

<sup>13</sup> S.R. Bommai v. Union of India, (1994) 3 SCC 1 at para 184.

<sup>14</sup> Constitutional Assembly Debate, Volume VII at 953

<sup>15</sup> ‘Ubi Jus Ibi Remedium’ (Oxford Reference 2024)  
<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803110448446>> accessed 13 November 2024

Article 32(2) empowers Supreme Court to issue direction, or order or writ. Writ in the nature of *habeas corpus*, *mandamus*, prohibition, *quo-warranto*, and *certiorari* for the enforcement of right enshrined in Part III of the Constitution of India. The Parliament may by law authorize any other court to exercise within local territorial limit same as the power exercised by the Supreme Court under Article 32(2). Writs are public law remedies. The rights granted to citizens through fundamental rights as outlined in Part III of the Constitution are a safeguard against state only. The writ can be issue against whoever comes under the definition of state mentioned in Article 12 of The Constitution of India

In a recent case *Skill Lotto Solutions (P) Ltd. v. Union of India*<sup>16</sup> the Supreme Court of India held, “Article 32 confers a right to move to the Supreme Court for enforcement of the right conferred by Part III, which is guaranteed by clause (1) of Article 32 of the Constitution. Article 32 is an important and integral part of the basic structure of the Constitution. Article 32 is meant to ensure observance of rule of law. Article 32 provides for the enforcement of the fundamental rights, which is most potent weapon.”

However, the Fundamental Rights are not absolute in nature. They are subjected to many other clauses of the Constitution of India. The six Fundamental Rights outlined in Article 19 are immediately suspended when a declaration of national emergency is made, in accordance with Article 358. Article 359 suspends all other Fundamental Rights enshrined in Part III during the period of emergency. The Parliament by The 44th Amendment Act of 1976 amended Article 359 and restricted it’s scope and put an exception for Article 20 and Article 21, hence Article 20 and 21 remain in force even during the emergency.

#### IV. SOME OTHER MECHANISMS.

In recent days, there have been many developments in the role and function of the Judiciary. Judiciary also evolves many new concept such as the concept of Judicial Review, Judicial Activism, Public Interest Litigation *etc.*

**Judicial Activism:** *Meeriam Webster* defines judicial activism as “the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent”.<sup>17</sup> It is the power of the Supreme Court for the protection of an individual's

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<sup>16</sup> (2021) 15 SCC 667

<sup>17</sup>Merriam-Webster Dictionary’ (Merriam-webster.com2024)

<<https://www.merriam-webster.com/legal/judicial%20activism>> accessed 13 November 2024

constitutional rights. In the case of *Hussainara Khatoon (V) v. Home Secy., State of Bihar*,<sup>18</sup> the supreme court using the power of judicial activism held the right to speedy trial to be a fundamental right guaranteed under Article 21 of the Indian Constitution. In *Sunil Batra v. Delhi Admn.*,<sup>19</sup> the court held that the writ of *Habeas corpus* can not only be issued for releasing the person from illegal arrest but it can also be issued for the protection of prisoners inside jail. In *D.S. Nakara v. Union of India*,<sup>20</sup> the court held that registered societies, NGOs, and voluntary organisations can also reach court under Article 32 for the enforcement of rights of large number of pensioners who can not approach the court individually. In *M.C. Mehta v. State of Tamil Nadu*<sup>21</sup> the court held that children can not be employed in match factories in the forefront as the ingredients used in the manufacturing of matches is hazardous within the definition of Employment of Children Act, 1938. However children can work for packing process but the work should be done at a distant place. In *M.C. Mehta v. Union of India*<sup>22</sup> the Supreme Court ordered the closure of leather tanneries at Jajmau in Kanpur, polluting the Ganga. In *D.K. Basu v. State of West Bengal*,<sup>23</sup> the Supreme Court issued guidelines to prevent custodial violence, underscores the judiciary's role in upholding human dignity even within the confines of state authority.

**Public Interest Litigation (PIL):** The traditional rule of *locus standi* that a petition under Article 32 can only be filed by the aggrieved party has been completely relaxed by the Supreme Court of India by giving many judicial decisions. In the Case of *S.P. Gupta & Ors. v. President of India & Ors.*<sup>24</sup>(popularly known as Judges Transfer Case), a 7 judge bench of the Supreme Court of India established a rule of public interest litigation and held that any member of the public having sufficient interest can approach the court for enforcing the right of another person. The phrase 'Public Law Litigation' was first used by an American scholar Abram Chayes to describe the effort of lawyers who seeks social change through decree of court that reform legal rules or existing laws etc.<sup>25</sup> Public law litigation concerns not only the parties, representing two sides of a disagreement but also the public interest. The efforts of Justice P.N. Bhagwati (17th CJI of India) is very commendable that he introduced the concept of PIL in

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<sup>18</sup> (1980) 1 SCC 108

<sup>19</sup> (1978) 4 SCC 494

<sup>20</sup> (1983) 1 SCC 304

<sup>21</sup> AIR 1991 SC 417

<sup>22</sup> 1987 4 SCC 463

<sup>23</sup> (1997) 1 SCC 41

<sup>24</sup> AIR 1982 SC 149

<sup>25</sup> Abram Chayes, 'The role of the judge in 'Public law Litigation', 89 Harvard Law Review 1281 (May 1976)

Indian Judiciary and he rightly earned the title 'Father of PIL'.<sup>26</sup> In the case of *M.C. Mehta v. Union of India*<sup>27</sup>, the Supreme Court for the first time examined the scope of Public Interest Litigation in the area of environmental laws.

There have been many instances where the court using these recently developed mechanisms protects and promotes human rights. These roles were done by the judiciary under Article 32 for Supreme Court and under Article 226 for High Courts. After the introduction of these mechanisms the courts now became more capable and has spread their hand for the protection and promotion of human rights.

## V. JUDICIARY AS THE GUARDIAN OF HUMAN RIGHTS

The court plays an important role in upholding human rights by interpreting constitutional laws, conducting judicial review, protecting fundamental rights, adjudicating human rights cases, and establishing checks and balances within the legal system. The Supreme Court of India plays a crucial role in protecting human rights through:

- **Interpretation of the Constitution:** The Supreme Court interprets the Constitution whenever required and ensure that the right to citizen is protected. The judicial review allows the Supreme Court to safeguard fundamental rights and struck down legislations which are violative of Constitutional provisions. Under Article 13, 32, 131-136, 143, the Supreme Court and under Article 226 and 246 the High Court can review any law and therefore, these courts are known as constitutional courts.
- **Judicial Review:** It is the power of the court under which a government's executive, legislative, or administrative actions are subject to review by the judiciary. In a judicial review, a court may invalidate laws, acts, or governmental actions for being unlawful.
- **Writ Jurisdiction:** Under Article 32 of the Constitution of India the court can issue 5 forms of writ for the protection of fundamental rights given under Part III of the Constitution.
- **Public Interest Litigation (PIL):** The court entertain pleas filed by anyone other than interested parties when the matter is of public importance. By virtue of this mechanism the voice of marginalised groups who are incapable of knocking the door of justice

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<sup>26</sup>Katarki AV, 'Justice P.N. Bhagwati: A Active, Activist and Astute Judge Sorely Missed in These Dire Times – the Leaflet' (*The Leaflet – An independent platform for cutting-edge, progressive, legal, and political opinion.* 21 December 2023) <<https://theleaflet.in/justice-p-n-bhagwati-a-active-activist-and-astute-judge-sorely-missed-in-these-dire-times/>> accessed 13 November 2024

<sup>27</sup> AIR 1987 SC 1086

reaches the apex court of India and hence their right is protected.

- **Landmark Judgments:** From time to time the apex court gives landmark judgement for the protection and promotion of fundamental rights. This judgement is applicable throughout the territory of India by virtue of Article 141 of the Constitution of India.
- **Protection of Vulnerable Groups:** The court also protects the interest of the minorities, children, women, transgenders etc. When their right is at stake the court interferes and protects their right. *National Legal Services Authority v. Union of India*,<sup>28</sup>: This was a landmark decision where the apex court legally recognised “third gender”/transgender persons for the first time and discussed “gender identity” at length. The Court recognised that third gender persons were entitled to fundamental rights under the Constitution and under International law.<sup>29</sup> Recently the Kolkata High Court ordered 1% reservation for transgender persons in public employment.<sup>30</sup>
- **Environmental Protection:** In the case of *M.C. Mehta & Anr. vs Union Of India & Ors*<sup>31</sup>, the Supreme Court held that the right to clean environment is a fundamental right guaranteed by Article 21 of the Indian Constitution.
- **Constitutional Values:** The Supreme Court can examine the action taken by both state and centre government, and if they are found violative of constitutional values, the Supreme Court can declare it unconstitutional. The Supreme Court keeps the values of the Constitution at supreme priority. In *K.Gopalan v/s State of Madras*,<sup>32</sup> the court upheld that it is the constitution that is supreme and a statute law to be valid, must in all cases be in conformity with the constitutional requirements

## VI. LANDMARK JUDICIAL DECISIONS ON HUMAN RIGHTS.

The Constitution of India evolves from time to time to achieve the mentioned goal and hence popularly known as living documents. This special feature of our constitution makes it distinct from the constitution of any other county. The Supreme Court of India is considered as the guardian of the Constitution. From time to time, to uphold the constitutional values, the

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<sup>28</sup> (2014) 5 SCC 438

<sup>29</sup>Menon S, ‘The Transgender Community to Be Formally Recognised as the Third Sex and Also to Avail the Benefits Of...’ (*Livelaw.in* 15 April 2014) <<https://www.livelaw.in/transgender-community-formally-recognised-third-sex-also-avail-benefits-socially-economically-backward-communities-supreme-court-directs-centre-stat/>> accessed 13 November 2024

<sup>30</sup>Singh R, ‘Calcutta High Court Orders 1 per Cent Reservation for Transgender Persons in Public Employment’ (*Bar and Bench - Indian Legal news* 18 June 2024) <<https://www.barandbench.com/news/calcutta-high-court-1-per-cent-reservation-transgender-persons-public-employment>> accessed 13 November 2024

<sup>31</sup>(1986) 2 SCC 176

<sup>32</sup> AIR 1950 SC 27

judiciary comes with landmark judgement. Many times the judiciary to protect the rights of individual which are enshrined in the Constitution of India, basically natural rights, they came at the fore-front and deliver remarkable judgement which not only protects the rights of individual, it also set a precedent which is to be followed in case of violation of the same nature. Below some such judgements are of this nature.

***Maneka Gandhi vs. Union of India***<sup>33</sup>: In order to balance the rights of individuals with public interest and the goal of the state to achieve any comprehensive solution, the Supreme Court of India came up with a new concept of ‘golden triangle’, to understand what a successful democracy requires. Golden triangle constitutes Article 14, 19, and 21 of the constitution of India. Article 14 guarantees equality and equal protection of law. This treats citizens and non-citizen alike. Article 19 guarantees ‘freedom of speech and expression’ except for some reasonable restrictions mentioned in the same Article for maintaining public order, health and morality. This promotes the healthy functioning of democracy. Article 21 guarantees ‘right to life and personal liberty’. No one shall be deprived of their life except according to the procedure established by law. The main component of this Article is life, liberty and dignity. The harmonious coexistence of these is necessary for the purpose of maintaining the position of equilibrium.

***Vishaka vs. State of Rajasthan***<sup>34</sup>: The Supreme Court in this laid down a elaborate guideline to deal with the fear of sexual violence at work place. The apex court observe that sexual violence is a gender centeric offence due to deep-rooted inequality in our society and also deprives a women of his life, liberty and dignity, which is a clear cut violation of fundamental right guaranteed by Article 14 & 21 of the constitution of India. After 14 years of this judgment the Parliament of India passed the **Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013**.

***National Legal Services Authority v. Union of India***<sup>35</sup>: In this case the court declared that Hijras, Eunuchs are to be treated as the “third gender” and come within the scope of Indian Constitution thus are fully entitled to the rights guaranteed therein. Article 14 guarantees equality to “any person” which means man, woman, and third gender. They are equal in terms of employment, health care, education, and civil rights. Discrimination on grounds of sexual orientation is violation of Article 14.

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<sup>33</sup> (1978) 1 SCC 248

<sup>34</sup> (1997) 6 SCC 241

<sup>35</sup> (2014) 5 SCC 438

## VII. CHALLENGES

There are several challenges faced by the judiciary which result in inefficient and ineffective in the functioning. The Indian judiciary faces a big hindrance in the performance of its function in the form of judicial delays. It is due to overburden of pending cases, insufficient infrastructure, deficient judicial resources and an unfavourable ratio of judges to population. These all result in prolonged waiting time for pending cases. According to The Hindu, there are 62 thousand pending cases in various High Courts which are more than 30 years old.<sup>36</sup> Out of which Allahabad High Court has the largest number of pending cases. At the end of the 2023, there are 80,221 cases pending in the Supreme Court.<sup>37</sup> As of now, the judge - population ratio in the country is approximately 21 Judges per million population.<sup>38</sup> In order to ensure justice and safeguard the entitlements of individuals, it is crucial that stakeholders, comprising the judiciary, legal professionals, and the government should act jointly to tackle these problems.

## VIII. CONCLUSION

The state's primary responsibility is to promote and protect the rights of the citizens, which is derived from the social contract theory. The universality of human rights means that every individual has a right and these rights should be guaranteed in the national constitutions and the international systems such as the United Nations Declaration. In India, the protecting role is vested in the judiciary which interprets the provisions of the Constitution and passes progressive statutes in favour of preserving human dignity and equal rights. The Courts protect the Fundamental Right and transform with the society, through the provisions of judicial review, writ jurisdiction and Public Interest Litigation among others. These developments strengthen the role of the judiciary in protection of human rights which is consistent with the rationale that the Constitution is dynamic and modifies itself where necessary to dispense equity to all its subjects especially the vulnerables. It is through these interventions that the judiciary promotes the values of liberty, equality and justice enshrined in the Constitution.

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<sup>36</sup>PTI, 'Nearly 62,000 of Cases Pending in High Courts Are over 30 Years Old' (*The Hindu* 7 September 2024) <<https://www.thehindu.com/news/national/nearly-62000-of-cases-pending-in-high-courts-are-over-30-years-old/article68616991.ece>> accessed 13 November 2024

<sup>37</sup>'80,221 Cases Pending in the Supreme Court in January 2024 - Supreme Court Observer' (*Supreme Court Observer* 23 May 2024) <<https://www.scobserver.in/journal/80221-cases-pending-in-the-supreme-court-in-january-2024/>> accessed 13 November 2024

<sup>38</sup>According to answer given by Shri Arjun Ram Meghwal, Minister of Law And Justice in Parliament on 9th FEBRUARY, 2024