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# **ROLE OF JUDICIARY IN SHAPING LEGISLATIONS IN INDIA**

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## **Abstract:**

Judiciary plays indispensable role in the governance of a country. It serves as a check on the actions of legislature and the executive. It promotes constitutionalism and protects individual rights. While primary function of judiciary is adjudication of disputes, it plays crucial role in shaping laws by using judicial review, methods of interpretation and following various legal principles. It strives to uphold rule of law and protect basic structure of the Constitution. This article marks the role of judiciary in shaping legislations in India.

**Keywords:** Constitution, Democracy, Interpretation, Judiciary, Legislation, Federalism, Basic Structure, Governance

## **Introduction:**

India is recognized as world's largest democracy. It functions through its three distinct organs i.e legislature, executive and judiciary. These organs play vital role in enacting laws, implementing them and ensuring their fair application. The Legislature has been entrusted with the responsibility of enacting laws and formulating policies for governance. It includes Parliament and State Legislatures. The Executive has been vested with the power of enforcement of laws, implementation of policies and administration. While the judiciary functions as a watchdog and serves as a check on the other two organs. It plays crucial role in interpretation of laws formulated by the Parliament and securing impartial and legitimate implementation of these laws by the executive. Although these three organs function in interconnected manner, the Constitution of India provides for their separation of powers, demarcating the extent of their respective jurisdiction.

Indian Constitution provides for independent as well as integrated judicial system, despite

having a federal political structure. Factors such as appointment of judges based on collegium system, security of tenure, fixed salaries and allowances, separation from executive, power to punish for contempt, judicial review, etc. make judiciary independent of political influence and it acts without fear or favor. Further, Indian judicial system resembles a pyramid with Supreme Court at the apex, followed by High Courts and then subordinate courts. This unified system enforces both central as well as state laws. Decisions made by Supreme Court are binding upon all lower courts which ensures uniformity and consistency in application of laws throughout the country.

Judiciary has been primarily vested with the power of interpreting and examining laws enacted by the legislature and policies made by the executive. In India, Judiciary plays crucial role in shaping legislations by interpretation of laws, judicial review and settling of precedents. Further, it strikes down laws which violate the basic structure of the Constitution and are derogatory with the fundamental rights. It aids in filling up gaps within the legislations which gives it a distinct form and determines intention of legislature behind such enactment. In doing so, it employs several techniques and relies on various legal principles.

## 1. Interpretation of Laws

Interpretation of law is the process whereby judiciary examines the legality of legislations enacted by the Parliament and their extent of consistency with the Constitution and other laws. Judiciary has been empowered with the interpretation of legislations and policies made by the Legislature and Executive branches. It acts as a final interpreter of laws. Judicial interpretation of laws is critical for :

- a. Determining true meaning and legislative intent : Legislations made by the Parliament may not always determine its true meaning and intent. This may create arbitrariness and result in injustice. Therefore, determining their true meaning and legislative intent is crucial.
- b. Providing clarity and consistency : Examination of laws by the courts provides clarity and consistency upon such laws. For instance, some provisions of a particular statute may be vague and ambiguous leading to chaos with respect to a particular subject matter. In such circumstances, judicial interpretation aids in determining clarity upon such provisions.

- c. Filling up lacuna : Lacuna refers to a gap or missing piece in a particular legislation. In interpreting statutes, courts may sometimes encounter lacuna which may result in inability in providing remedies to many legal questions. In such a situation, judicial interpretation provides for identification of such gaps and determining true meaning of such laws using various tools and techniques of interpretation and considering legislative intent.
- d. Consistency with Constitutional provisions : Laws made by the Parliament must be consistent with the constitutional provisions. Also, Article 13 states that, laws made by the Parliament in derogation with fundamental rights shall be void to the extent of their inconsistency. In many cases, laws made by the Parliament may encroach upon constitutional provisions including fundamental rights guaranteed to the citizens. In such cases, judiciary plays important role in examining such laws and striking them down to the extent of their inconsistency. Thus, it acts as guardian of the Constitution and protector of fundamental rights of the citizens.

#### Rules of Interpretation :

- a. Literal rule : It is the primary rule of interpretation which states that legislations shall be interpreted strictly by giving them their plain, ordinary and literal meaning. It seeks to minimize judicial discretion by adhering to law as it is written. However, where such law is ambiguous and unclear, judiciary may step further and apply other techniques for its interpretation.
- b. Golden rule : Golden rule allows courts to deviate from literal rule in interpretation of laws. It provides that where application of literal rule results in absurdity, inconsistency and unintended results, it may be applied for determining true meaning of the provisions. Its objective is to prevent arbitrary, irrational and illogical interpretation, contrary to legislative intent. Thus, it allows courts to ensure fair and just applicability of laws.
- c. Mischief rule : Mischief rule is a remedial approach in interpretation of statutes which aims at suppressing the mischief and advancing the remedy. In other words, it aids in neutralizing the issue and provide remedy for the same. It permits courts to look beyond the strict wording of the statute and consider underlying problem that legislature intended to address. It was developed in the famous Haydon's case of 1584.
- d. Rule of Harmonious Construction : This is one of the significant rule in interpretation of statutes. The essence of this rule lies in harmonizing the conflict between two or



more provisions of a statute or of two different statutes. In such circumstances, the court strives to harmonize the conflicting provisions, ensuring that they co-exist and operate effectively. The aim is to avoid conflict that renders one provision redundant and negates the purpose of another. It emphasizes that the statute should be read as a whole and conflicting provisions should be reconciled wherever possible.

- e. Noscitur a sociis : It is a latin phrase which means 'it is known by it's associates'. It states that where in a statute, the meaning of a word is ambiguous or unclear, it's meaning may be interpreted by considering the words with which it is associated. In other words, the context provided by the surrounding words helps to determine the intended meaning of such word. It prevents words from being interpreted in isolation which may lead to absurd outcomes.
- f. Ejusdem generis : It is a latin maxim which means 'of the same kind or nature'. It states that when a statute lists specific items followed by a general term, the general term should be interpreted to include only items that are similar to specific ones. It provides that general words that follow specific words restrict to the same class of specific words. It aims to give effect to the legislative intent by preventing general words from being interpreted in an overly broad manner. Essentially, this doctrine must be applied by the courts cautiously to clear the ambiguity in statutory provisions and fulfilling the object of the legislation.
- g. Reddendo singula singulis : It is a latin principle which means 'referring each to each'. It suggests that where a complex sentence contains multiple subjects or objects, which part of such sentence relates to which, should be determined. It helps in distribution of meaning appropriately by ensuring that each part of the sentence is applied to its intended counterpart. In simpler terms, this principle helps to clarify ambiguous sentences by ensuring that each element is correctly assigned to it's corresponding part. It is commonly used in interpretation of contracts and testaments.

Furthermore, judiciary employs internal as well as external aids in the interpretation of laws. Internal aids are present in the statute itself such as long title, preamble, headings, marginal notes, definitions, provisos, schedules, illustrations, punctuation, etc. While external aids are the sources outside the statute which include dictionaries, parliamentary history, legal treatises and commentaries, reports of committees and commissions, etc.

Thus, judiciary plays pivotal role in the interpretation of laws that involves determination of legislative intent, clarification of ambiguities and filling up gaps between legislations in order

to ensure justice to the people.

## 2. Protecting Basic Structure of the Constitution

The doctrine of Basic Structure emerged in the landmark Kesavananda Bharati case of 1973. It is a significant judicial principle which has stood the test of time in safeguarding the Constitution of India. It was the outcome of the issue over the extent of Parliament's power to amend the Constitution.

Earlier, in the Shakari Prasad case of 1951, Supreme Court ruled that Parliament has power to amend the Constitution which also includes power to amend Fundamental rights under Article 368. Accordingly, Parliament may alter or curtail fundamental rights of the citizens which cannot be held as unconstitutional. However, in the GolakNath case of 1967, Supreme Court reversed its decision and ruled that fundamental rights are inalterable and cannot be amended even under Article 368 of the Constitution. Parliament, reacted to this judgement by way of 24<sup>th</sup> Constitutional Amendment Act of 1971 which declared that 'law' under Article 13 does not include Constitutional Amendment Act. Therefore, Parliament has power to amend every part the Constitution. Further, several constitutional amendments were passed by the Parliament that restricted property rights of citizens in implementing land reforms. Also, some amendments encroached upon other fundamental rights of the citizens.

Consequently, in the landmark case of Kesavananda Bharati, a 13-judge bench of Supreme Court, with a 7:6 majority, held that Parliament has the power to amend the Constitution, subject to the Basic Structure. This means it cannot amend or alter the features including fundamental rights which form the basic structure of the Constitution. This principle was further reaffirmed in the case of Indira Gandhi election case of 1975 and Minerva Mills case of 1980.

This cases established the doctrine of basic structure and asserted that certain fundamental features of the Constitution are inviolable and cannot be altered. It placed a crucial check and restricted the power of Parliament to amend the Constitution.

Elements of basic structure include – Democracy, Supremacy of the Constitution, Secularism, Rule of Law, Judicial Review, Independent Judiciary, Federalism, Separation of powers,

Welfare state, harmony between fundamental rights and directive principles of state policy, fair, free and periodic elections, etc.

Thus judiciary, particularly the Supreme Court, acts as guardian as well as interpreter of the Constitution. It plays crucial role in protecting basic structure and core values of the Constitution for maintaining balance of power between different branches of government. Also, it strengthened role of judiciary in promoting constitutionalism and upholding rule of law.

#### **4. Upholding Rule of Law**

The role of judiciary in upholding rule of law is of paramount importance. Rule of law is a fundamental legal principle which means, law is the highest authority in every society and no one is above it. Every government shall function based on the principles of law and not according to men forming it. The essence of rule of law lies in preventing arbitrary executive actions and safeguarding individual liberties in order to ensure governance based on principles of law.

However, rule of law cannot be achieved without an independent, impartial and effective judicial mechanism. Judiciary ensures that the executive actions are not arbitrary and based on legal principles. Further, judicial interpretation of laws helps in discarding legal ambiguities. It secures that laws enacted by the Legislature are clear, unambiguous and consistent with constitutional provisions and other laws.

According to Justice Vivian Bose, 'rule of law is the heritage of all mankind'. It strives to uphold individual rights and dignity.

Role of judiciary in upholding rule of law is crucial because:

1. It strives to maintain supremacy of law through the process of judicial review which empowers it to strike down laws violating constitutional provisions and legal principles.
2. It ensures that everyone is treated equally before law and is entitled to equal protection of law without any special privileges.
3. It warrants executive accountability to the law and highlights limitations on their powers.
4. It guarantees fair and just application of laws.

5. It plays vital role in guarding individual rights and liberties.
6. It establishes legal precedents that guide future cases and contribute to the development of law.

Thus, Judiciary follows highest integrity, refraining from inappropriate conduct and observing the values of fairness, equality, diligence, impartiality and equality that have immensely contributed in upholding rule of law.

#### 4. Maintaining Federalism

Indian Constitution provides for a federal political structure. It establishes dual political system, with government at the centre as well as in the states. Federalism was adopted with the rationale because it ensures efficient governance of the country and also reconciles regional autonomy. The framers of the Constitution had the foresight to know that an independent and effective judiciary is essential to ensure federalism.

1. Article 1 : Although, the word 'federation' has nowhere been used in the Constitution, Article 1 states that India shall be the Union of States, emphasizing its indestructible nature. Unlike USA, Indian federation has not been formed as a result of an agreement, therefore, no state has right to secede from the Union.
2. Supremacy of the Constitution : The Constitution is the supreme law of the land which itself establishes a federal political structure. Accordingly, both central and state government should operate within their respective spheres.
3. Independent Judiciary : The Constitution establishes an independent judicial mechanism with the Supreme Court at the apex and High Courts for the states.
4. Division of Powers : Constitution divides powers between the centre and the states in terms of three lists contained in the Seventh Schedule – Union List ( containing subjects on which centre should make laws ), Concurrent List ( containing subjects on which centre as well as states may make laws ) and State List ( containing subjects on which states should make laws ). However, residuary powers have been vested with the centre.
5. Rigidity of the Amendment : Provisions related to federal structure can only be amended by special majority and with the approval of half of state legislatures. Thus, the procedure of amendment is rigid.

Role of judiciary is important in maintaining federalism because :

1. It ensures functioning of both central and state governments within their respective jurisdiction including enacting and implementation of laws.
2. Judicial interpretation by Supreme Court and High Court's examines the legality of laws enacted by both Parliament and State Legislatures.
3. It upholds division of powers and ensures that laws made are consistent with the constitutional provisions.
4. It strives to resolve disputes between the central government and state government and between state governments which helps to maintain balance of power and prevents conflicts from escalating.
5. It guarantees that federalism, forming the basic structure of the Constitution, is not encroached upon by the arbitrary actions of executive.

In the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), Supreme Court ruled that federalism forms the Basic Structure of the Indian Constitution. Further, in *S R Bommai* case of 1994, Supreme court laid down guidelines regarding use of power by the President under Article 356 in order to ensure state autonomy. The *Minerva Mills* case of 1980, further, solidified role of courts in preserving federal character of Indian Constitution.

Thus, Indian Judiciary plays vital role in maintaining federal nature of Constitution through various processes and decisions that essentially contribute in shaping laws and policies.

## 5. Judicial Review

Judicial review is the fundamental legal principle that confers power upon the judiciary to examine the constitutionality of legislations enacted by the Parliament and executive policies of Central and State governments. It was propounded for the first time in the case of *Marbury v. Madison* (1803 ) by the US Chief Justice John Marshall. It aims to determine the legality and consistency of legislative enactments and executive policies with the Constitution and other laws. It upholds the rule of law and supremacy of the Constitution. It ensures that the Legislature and the executive does not exceed their authority.

The Constitution of India confers power of judicial review on both Supreme Court and High Courts. It acts as an essential tool in the hands of judiciary that helps in protection of fundamental rights by invalidating laws that violate them. Further, Supreme Court, has declared



judicial review as the basic structure of the Constitution which cannot be altered even by constitutional amendment. Supreme Court has used its power of judicial review in many cases such as *GolakNath v. State of Punjab* (1967), *Kesavananda Bharati v. State of Kerala* (1973) and *Minerva Mills* case of 1980. Further, it held 99<sup>th</sup> Constitutional Amendment Act and National Judicial Commissions Act 2014 as void and unconstitutional.

Thus, judicial review helps to maintain federal balance and protects fundamental rights of the citizens. In essence, it preserves the integrity of the Constitution and protects rights of citizens.

## 6. Judicial Activism

Judicial Activism reflects a philosophy whereby the courts act in a pro-active manner by going beyond strict interpretation of laws and precedents and making decisions for shaping legislations, in certain circumstances, for addressing societal issues and promoting broader social values. It indicates proactive role played by the judiciary in promoting social justice and protecting individual rights and liberties. It emphasizes decision making by the judges based on their views rather than strictly adhering to statutes and precedents. The term 'judicial activism' was first used by American historian and jurist Arthur Schlesinger Jr. in an article titled 'The Supreme Court' in 1947. In India, Justice PN Bhagwati, Justice O Chinappa Reddy and Justice VR Krishna Iyer have notably contributed in the development of judicial activism.

### Key Elements :

1. Broader interpretation of law and judicial precedents
2. Addressing Social Justice
3. Promoting societal values
4. Active use of Judicial Review
5. Protecting individual rights and liberties
6. Addressing deficiencies in Governance

Judicial activism ensures proper functioning of legislature and the executive. It strives to uphold constitutionalism and rule of law in cases where the legislature fails to discharge its constitutional duties, where legislature is dominated by executive creating struggle in the enactment of laws, suppressing views of other members and where both legislature and executive fail to protect and promote individual rights.

In India, civil rights activists, non-governmental organisations, environmental activists, labour unions, consumer rights groups, media, public interest litigations have widely contributed to the development of Judicial Activism. PIL is major driver of judicial activism whereby individuals and groups approach courts for preserving interest of public, particularly the marginalized communities.

However, some critics argue that judicial activism leads to encroachment upon legislature's power to enact laws. Also, it may lead judges to impose their personal beliefs and political inferences in interpretation of laws that may lead to injustice and situation of chaos. Despite critics, judicial activism strives to protect individual rights and highlights deficiencies in law making.

### **Conclusion:**

Thus, over decades, the role played by judiciary in shaping legal landscape in India has been significant. It maintains checks and balances over the functioning of legislature and the executive in the enactment and implementation of laws. It promotes constitutionalism and upholds rule of law. It ensures that the laws enacted by the Legislature are consistent with the constitution and does not encroach upon individual rights.