

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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“JUDICIAL ACTIVISM AND SOCIAL TRANSFORMATION IN INDIA”

AUTHORED BY - RADHIKA DATAR

Abstract:

The purpose of the research article is to study and analyse relationship between judicial activism and social transformation. ‘Social transformation’ is a broad concept used to indicate social dynamics. The ideas, conveying the meanings of evolution, progress and change on the one hand and the meanings of development, modernisation and revolution, on the other, are incorporated within the concept of transformation. A judicial method known as judicial activism allows judges to interpret the law in a way that deviates from the text of the legislation or that enables them to develop new legal norms, principles, or standards. This strategy frequently involves using judicial review to invalidate laws or acts by the government that are judged to be against the Constitution or to enlarge individual rights beyond those previously recognized by the law. The study analyses several ways in which judicial activism through various landmark judgements in different case laws have contributed to social transformation. The ways in which judicial activism have contributed to social transformation includes protection of fundamental rights, elimination of social evils, promotion of social justice, environmental protection, access to education and healthcare, anti-discrimination and social inclusion and declaration of privacy as a fundamental right. The study also describes conclusions in these various case laws in order to analyse the actual transformation that has been made through judicial activism.

Keywords: Social transformation, judicial activism, landmark judgements, fundamental rights

INTRODUCTION:

Neither society nor social problems are static. Social problems are closely linked with social structure, ideologies, values, attitudes, institutions, power, authority and interests of society. The process of social transformation brings about change in these different aspects of social life and side by side generates new social problems. ‘Social transformation’ is a broad concept used to indicate social dynamics. The ideas, conveying the meanings of evolution, progress and change

on the one hand and the meanings of development, modernisation and revolution, on the other, are incorporated within the concept of transformation. Social transformation and social problems are closely linked with each other. Society is not static but the dominant groups in society sometimes want to perpetuate their hold over society and protect their interests by repressive methods. Thus, in a negative manner, if the process of social transformation is suppressed, it generates new social problems. On the other hand, if the process of social transformation is taking a natural course, the society faces the problems of adjustment during the transitional phase of the decline of the old system and the emergence of a new system.

Law is the reflection of the will and wish of the society. The law, though it is the product of the society is responsible for the social transformations. In fact, there are two modes of this aspect. First is, "Law changing the society", which means that the law of the land compels the society to be changed according to it. And secondly is, "Society changes the law", as per its needs. It means law is made by the society according to its requirement by its democratic institution i.e. Legislative or by adopting custom and usage. When law changes the society it is the sign of beginning of the development of the society. When society changes law it is the sign of maturity of the society.¹

Law is sometimes reflection of legal precedents. Legal precedents, also known as case law or judicial precedents, refer to the established principles and decisions made by higher courts in India, which serve as authoritative and binding examples for lower courts when deciding similar cases. These precedents play a crucial role in the Indian legal system and are based on the doctrine of stare decisis, which means "to stand by things decided. These landmark rulings of the courts can bring significant changes and social transformations through judicial activism. Judicial activism is a legal and political concept that describes the tendency of judges to interpret the law and make decisions that go beyond the literal or "strict" interpretation of legal texts, such as statutes and constitutions. We can easily assess the social transformation due to judicial precedents in many cases. Indira Sawhney case upheld the reservation policy for OBC's, Navtej Johar v. Union of India case, where the Supreme Court decriminalized homosexuality, recognizing the rights and dignity of the LGBTQ+ community, Justice K.S. Puttaswamy (Retd.) v. Union of India case which affirmed an individual's right to privacy, with far-reaching

¹ Law & Social Transformation by G P Tripathi

implications for personal freedom and autonomy. There are variety of such examples in India where legal judgements through judicial activism has played significant and important role in bringing social transformation.

THE CONCEPT OF SOCIAL TRANSFORMATION

In early sociology, concepts of 'evolution' and 'progress' were used to indicate the dynamic aspects of society. It was gradually realised that these were that these were value-loaded concepts, and therefore, replaced by 'social change' which was considered to be more neutral and value free. After the Second World War, concepts of 'development' and 'modernisation' occupied a significant place in the terminology of social sciences. These two concepts represent ideologies of the developed, industrialised, capitalist and democratic Western societies. The term 'revolution' was preferred by radical social scientists interested in overhauling the capitalist social system and influenced by the Marxist ideology. Thus, 'Social transformation' is a broad concept used to indicate social dynamics. The ideas, conveying the meanings of evolution, progress and change on the one hand and the meanings of development, modernisation and revolution, on the other, are incorporated within the concept of transformation.²

The concept of 'social transformation' has occupied a significant place in social sciences after the Second World War. The literal meaning of the concept is 'changing form or appearance or character or alter out of recognition'. This concept was specifically used by Karl Marx in his book 'German Ideology' (1846) to mean a facet of social change which arises out of contradictions in a society and leading to rapid change or revolution.³ Marx feels that at some stage of social development, there is a conflict between the material forces of production with the existing rules of production. The conflict, based on these contradictions, leads to social revolution. This phase of social revolution has been termed by Marx as a period of rapid social transformation. Social transformation indicates the change in the form of society or the rise of new formations. Rajni Kothari (1988) is of that view the modernisation and revolution are two models of social transformation.

² Law and Social Transformation by Kaushik C Raval, Krishna Pal Malik , 5th Edition, 2023

³ <https://testbook.com/ias-preparation/judicial-activism>

CONCEPT AND EVOLUTION OF JUDICIAL ACTIVISM IN INDIA:

Judicial activism is a legal and political concept that describes the tendency of judges to interpret the law and make decisions that go beyond the literal or "strict" interpretation of legal texts, such as statutes and constitutions. Judicial activists are often willing to shape or reinterpret the law to achieve certain public policy goals or to address societal issues. The concept of judicial activism is associated with judges taking an assertive and interventionist role in shaping legal and social outcomes. **Judicial activism means the proactive role played by the judiciary** in the protection of the rights of citizens and promoting justice in society. A judicial method known as judicial activism allows judges to interpret the law in a way that deviates from the text of the legislation or that enables them to develop new legal norms, principles, or standards. This strategy frequently involves using judicial review to invalidate laws or acts by the government that are judged to be against the Constitution or to enlarge individual rights beyond those previously recognized by the law.⁴

The Indian judiciary was largely passive in the early years of independence. It had a very limited role to play. With time, the judiciary started taking a more active approach, especially during the 1970s and 1980s. Initially more of a technocratic court, the Supreme Court of India has started to become increasingly involved in constitutional interpretation. The court transformed into an activist by its involvement and interpretation of the law and legislation, but the process took years and was slow. The court's early and rash declaration regarding the purpose and character of judicial review is where judicial activism first emerged. For the first ten years following independence, judicial activism virtually disappeared as the executive and legislative branches of the government actively controlled and meddled with the judiciary's operations. The Apex court began to examine the judicial and structural views of the constitution in the 1970s.

The first time the Indian judiciary showed instances of judicial activism was in the case of *Keshavanand Bharti v. State of Kerala*. The decision, in this case, marked a turning point in the evolution of judicial activism in India. Since then, the Indian judiciary has become active in shaping the law and public policy. It is a case that took place right before the declaration of the

⁴ <https://byjusexamprep.com/upsc-exam/judicial-activism#toc-1>

emergency. The Indian Supreme Court ruled that the executive branch lacked the authority to interfere with or alter the constitution's fundamental principles. Although the judiciary was unable to stop the urgency imposed by the then-prime minister Indira Gandhi, the idea of judicial activism began to gain more traction as a result.

METHODS OF JUDICIAL ACTIVISM:

Following are some common ways judges engage in judicial activism:

Broad Interpretation of the Constitution: Some judges interpret the constitution broadly, considering how society and culture have changed. They focus on the principles and values of the constitution, not just what the framers originally meant.

Creative Statutory Interpretation: Judges may interpret laws creatively to address current social issues. They may stretch the law's wording. They might also use techniques like purposive interpretation to achieve desired outcomes.

Expansion of Constitutional Rights: Activist judges may expand constitutional rights beyond what they were initially known to be. They might identify new rights or make existing ones broader. By this, they safeguard marginalized groups or tackle fresh social issues.

Judicial review and striking down laws: Activist judges review laws made by the government to see if they follow the Constitution. They try to get rid of laws that they think violate constitutional rights or principles.

Public Interest Litigation: Judges encourage public interest litigation. Here individuals or organizations bring cases to advocate for social or policy changes. This lets judges get involved in matters that might not have gone to court before. This makes a bigger impact on policies and social issues.⁵

⁵ <https://testbook.com/ias-preparation/judicial-activism>

JUDICIAL ACTIVISM AND SOCIAL TRANSFORMATION:

The role of judiciary in modern times has been immense. Judicial activism plays a crucial role in fostering social transformation. It refers to the willingness of the judiciary, particularly higher courts, to actively interpret and apply the law in a way that addresses societal issues, upholds fundamental rights, and promotes justice and equity. Previously laws were made only by the legislature but due to the various developments in many aspects of the society the judiciary started taking active role in developing laws through judicial activism and judicial review. In these processes if a particular case comes in front of the court in which the existing law is either not sufficient or is violating the rights of human beings ultimately denying access to the justice then the judiciary in that case has authority to declare that law ultra-vires or to repeal or to amend that law. In this way judiciary develops/amends laws to protect the rights and to remove injustices in the society and therefore it ultimately contributes to social transformation through that changed/alterd/amended law.

Judicial activism has a direct and profound impact on social transformation in several ways:

1) Protection of fundamental rights:

Judicial activism and the protection of fundamental rights are closely intertwined in India. The judiciary, particularly the higher courts, has played a significant role in actively safeguarding and upholding fundamental rights through judicial activism. When the judiciary actively enforces these rights, it promotes social justice and transformation by ensuring equal treatment and personal freedoms for all citizens. Judicial activists tend to interpret fundamental rights enshrined in the Indian Constitution broadly. They look beyond the literal text of the Constitution to discern the underlying principles and purposes of these rights. This expansive interpretation ensures that fundamental rights are not narrowly confined but are adapted to changing social contexts. Judicial activism empowers the judiciary to strike down laws that violate fundamental rights. When a law is found to be in conflict with the Constitution, the courts are often proactive in nullifying such laws to protect the rights of citizens. **Judicial activism has played the role in social transformation by delivering some landmark judicial decisions:**

Kesavananda Bharati v. State of Kerala (1973)⁶: In this historic case, the Supreme Court of India established the "basic structure doctrine," which limits the amending power of the Indian Parliament. The case ensured that certain fundamental rights and essential features of the Constitution cannot be altered or abrogated through constitutional amendments.

Maneka Gandhi v. Union of India (1978)⁷: This case expanded the interpretation of the right to personal liberty under Article 21 of the Constitution. It held that the right to travel abroad was part of the right to personal liberty, and any restriction on this right must be reasonable and fair.

Makhan Singh v. State of Punjab (1964)⁸: This case emphasized the importance of the right to legal representation and access to justice. It held that the absence of a lawyer at a trial amounted to a denial of the accused's constitutional rights.

These landmark cases have had a profound impact on the interpretation and protection of fundamental rights in India. They have expanded the scope of these rights, established important principles, and contributed to the progressive development of Indian jurisprudence.

2) **Elimination of social evils:**

The judiciary's pronouncements have been instrumental in combating deeply entrenched social evils. Several judicial cases in India have played a significant role in fostering the elimination of social evils by addressing and challenging regressive practices and norms. These cases have not only contributed to legal reforms but have also had a profound impact on changing societal attitudes. Here are some notable judicial cases that have fostered the elimination of social evils in India:

Sarla Mudgal v. Union of India (1995)⁹: This case addressed the issue of bigamy and explored the question of whether a Hindu husband, after converting to Islam, could solemnize a second marriage without divorcing his first wife. The court's decision reaffirmed the need for legal reforms and the protection of women's rights in cases of bigamy.

⁶ (1973) 4 SCC 225; AIR 1973 SC 1461

⁷ AIR 1978 SC 597; (1978) 1 SCC 248

⁸ 1964 AIR 381, 1964 SCR (4) 797

⁹ AIR 1995 SC 1531

***Vishaka v. State of Rajasthan (1997)*¹⁰**: This landmark case dealt with sexual harassment in the workplace. The Supreme Court's guidelines in this case laid the foundation for combating sexual harassment and ensuring safe working environments for women. It played a significant role in challenging gender-based discrimination and promoting gender equality.

***Shayara Bano v. Union of India (2017)*¹¹**: In this case, the Supreme Court declared the practice of triple talaq (instant divorce) among Muslims to be unconstitutional and a violation of women's rights. The decision contributed to the movement for gender justice within Muslim personal law.

***Independent Thought v. Union of India (2017)*¹²**: This case led to the criminalization of sexual intercourse with a minor wife, even if the marriage was consummated. The judgment aimed to address the issue of child marriages and protect the rights and well-being of minor girls.

***Child Marriage Restraint Act (1929)*¹³**: Although not a judicial case, the Child Marriage Restraint Act, also known as the Sarda Act, was a legislative response to the social evil of child marriage in India. The Act aimed to restrict and regulate child marriages, setting a legal age for marriage.

***State of Maharashtra v. Madhkar Narayan Mardikar (1991)*¹⁴**: This case addressed the issue of female genital mutilation (khatna) among the Dawoodi Bohra community. The court held that the practice violated the fundamental rights of women and girls and could not be justified on the grounds of religious freedom.

***Rekha v. State of Tamil Nadu (2006)*¹⁵**: In this case, the Madras High Court took a strong stand against the practice of honor killings. The court emphasized that individuals had the right to marry of their own choice, and any interference in their choice of marriage was a violation of their rights.

¹⁰ AIR 1997 SC 3011

¹¹ AIR 2017 9 SCC 1 (SC)

¹² WRIT PETITION (CIVIL) NO. 382 OF 2013

¹³ <https://wcd.nic.in/child-marriage-restraint-act-1929-19-1929>

¹⁴ AIR 1991 SC 207

¹⁵ CRIMINAL APPEAL NO(s). 755 OF 2011

*Nirbhaya Gang Rape Case (2012)*¹⁶: The brutal gang rape and murder of a young woman in Delhi led to widespread protests and demands for legal reforms to combat sexual violence. Subsequent legal changes, including amendments to IPC was made after this case. The penalty for rape was increased, Juvenile Justice Act was amended to enable the trial of accused aged 16-18 years as an adult if accused of "heinous crimes". All this was aimed at addressing this social evil.

*Sabarimala Temple Entry Case (2018)*¹⁷: This case challenged the ban on the entry of women of menstruating age into the Sabarimala temple in Kerala. The Supreme Court ruled in favour of women's right to enter the temple, challenging discriminatory practices based on gender.

These cases have been instrumental in addressing and challenging various social evils in India, such as gender-based discrimination, child marriage, sexual harassment, and regressive cultural practices. They have contributed to the legal and social transformation of the country, reinforcing the importance of individual rights and gender equality.

3) **Promotion of social justice:**

Numerous judicial cases in India have fostered the promotion of social justice by addressing issues of inequality, discrimination, and the rights of historically marginalized communities. These cases by judicial activism have played a pivotal role in upholding the principles of justice, equality, and inclusivity in the Indian legal and social system. Here are some notable judicial activism cases that have promoted social justice and resulted into social transformation in India:

*Indra Sawhney v. Union of India (1992)*¹⁸: Commonly known as the "Mandal Commission case," this case upheld the reservation policy for Other Backward Classes (OBCs) in government jobs and government's power to provide reservations in educational institutions and public employment to historically disadvantaged communities as a means of achieving social justice and equality. This landmark judgment addressed historical injustices, providing opportunities to the underprivileged and contributing to social equity and transformation.

¹⁶ WRIT PETITION (CRL.) NO.65 OF 2020

¹⁷ 2019, 11 SCC 1

¹⁸ AIR 1993 [SC](#) 477; 1992 Supp 2 SCR 454

*State of Karnataka v. Appa Balu Ingale (2003)*¹⁹: In this case, the Supreme Court of India held that the concept of "creamy layer" should be applied to reservations for Other Backward Classes (OBCs), ensuring that benefits reached the most disadvantaged sections within the OBC category.

*Chameli Singh v. State of U.P. (1996)*²⁰: This case highlighted the issue of bonded labor and laid down guidelines to address the practice, emphasizing the importance of social justice and the protection of labor rights. In this case it was held that, Right to shelter is an essential requisite to the right to live and hence it should be considered as a fundamental right.

*Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)*²¹: This case affirmed the right to education as a fundamental right and recognized the importance of ensuring equal access to education for all, fostering social justice in the realm of education.

These cases have played a crucial role in promoting social justice in India by addressing issues related to reservations, labor rights, prisoners' rights, education, and the rights of historically marginalized communities. They have contributed to the legal and social transformation of the country, reinforcing the principles of justice, equality, and inclusivity.

4) Environmental protection and sustainable development;

India has a rich jurisprudential tradition of cases laws that have played a significant role in fostering environmental protection. These judicial cases through judicial activism have been instrumental in establishing and strengthening environmental laws and regulations, holding violators accountable, and promoting sustainable development. Here are some notable judicial cases that have fostered environmental protection in India:

*M.C. Mehta v. Union of India (1986)*²²: This landmark case, also known as the Oleum Gas Leak case, addressed the release of toxic chemicals in the air by an industrial plant in Delhi. The Supreme Court's judgment led to the closure of hazardous and polluting industries in the Taj

¹⁹ AIR 1993 SC 1126, 1993 (1) ALT Cri 390, 1993 CriLJ 1029, 1992 (3) Crimes 1104 SC, JT 1992 Suppl 1 SC 588, 1992 (3) SCALE 339, 1995 Supp (4) SCC 469, 1992 Supp 3 SCR 284

²⁰ Appeal (civil) 12122 of 1995

²¹ 1993 AIR 2178, 1993 SCR (1) 594

²² 1987 AIR 1086, 1987 SCR (1) 819

Trapezium Zone and laid the foundation for environmental jurisprudence in India.

Vellore Citizens Welfare Forum v. Union of India (1996): In this case, the Supreme Court highlighted the issue of pollution in the town of Vellore, Tamil Nadu, and issued directions to address industrial pollution and protect water bodies. It emphasized the "polluter pays" principle, making industries liable for environmental damage.

T.N. Godavarman Thirumulpad v. Union of India (1996)²³: This case, often referred to as the "Godavarman case," dealt with the protection of forests and wildlife. The Supreme Court issued several directions to regulate activities in forest areas, protect wildlife, and prevent illegal logging and mining.

Subhash Kumar v. State of Bihar (1991)²⁴: This case addressed the issue of unregulated industrial development and pollution in the state of Bihar. The Supreme Court recognized the right to a clean and healthy environment as an integral part of the right to life under Article 21 of the Constitution.

A.P. Pollution Control Board v. M.V. Nayudu (1999)²⁵: This case dealt with the illegal discharge of effluents from a distillery into the Musi River. The court held that the "precautionary principle" should be applied, which obligates the government to take preventive measures to protect the environment.

Indian Council for Enviro-Legal Action (ICELA) v. Union of India (1996)²⁶: This case addressed the issue of pollution in the Ganges River and led to the formulation of the Ganga Action Plan to clean and rejuvenate the river. It demonstrated the judiciary's commitment to protecting India's lifelines.

These cases have contributed to the development of India's environmental jurisprudence, emphasizing the need for environmental protection, sustainable development, and the importance

²³ (1997) 2 SCC 267

²⁴ 1991 AIR 420, 1991 SCR (1) 5

²⁵ <https://indiankanoon.org/doc/1543623/>

²⁶ 1996 AIR 1446, 1996 SCC (3) 212

of a clean and healthy environment for the well-being of the people. They have also reinforced the principle that the protection of the environment is intrinsically linked to the protection of human rights resulting into social transformation.

5) **Access to education:**

Several judicial decisions through judicial activism in India have played a significant role in fostering access to education and upholding the right to education as a fundamental right. These cases have contributed to legal reforms and initiatives aimed at making education more accessible, inclusive, and equitable. Here are some notable judicial cases that have fostered access to education in India:

Mohini Jain v. State of Karnataka (1992)²⁷: In this case, the Supreme Court held that the right to education as a fundamental right, and the state was obligated to provide educational facilities to all. It emphasized the importance of eliminating disparities in access to education. This case is also one of the reason for the amendment which considered right to education as fundamental right. The Section 21A was added through 86th amendment in the constitution of India; requiring each state to provide free and compulsory education to all children between 6 to 14 of their age.

Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)²⁸: In this landmark case, the Supreme Court upheld the right to education as a fundamental right and recognized the importance of ensuring equal access to education for all. The court emphasized that the state must strive to provide education at all levels.

Tamil Nadu Education vs. T. Balu (2003)²⁹: This case addressed the issue of private schools charging exorbitant fees, which made quality education inaccessible to many. The court issued guidelines to regulate and control school fees, ensuring that education remained affordable.

Society for Un-aided Private Schools of Rajasthan v. Union of India (2012)³⁰: This case dealt with the implementation of the Right of Children to Free and Compulsory Education Act, 2009

²⁷ 1992 AIR 1858, 1992 SCR (3) 658

²⁸ 1993 AIR 2178, 1993 SCR (1) 594

²⁹ <https://indiankanoon.org/doc/53513472/>

³⁰ WRIT PETITION (C) NO. 95 OF 2010

(commonly known as the RTE Act). The Supreme Court clarified and upheld the provisions of the RTE Act, making it mandatory for private unaided schools to admit a certain percentage of students from disadvantaged backgrounds.

These cases have been instrumental in fostering access to education and upholding the right to education in India. They have contributed to efforts aimed at making education more inclusive and equitable, particularly for marginalized and economically disadvantaged communities.

6) Access to healthcare:

Access to healthcare is a fundamental right in India, and several judicial decisions have played a significant role in fostering and safeguarding this right. These cases have addressed various aspects of healthcare, including access to medical treatment, quality healthcare, and the protection of the health and well-being of citizens. Here are some notable judicial cases that have fostered access to healthcare in India:

*Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)*³¹: This case recognized the right to health and medical care as an integral part of the right to life under Article 21 of the Constitution. It emphasized the importance of safeguarding the health and well-being of citizens.

*Parmanand Katara v. Union of India (1989)*³²: In this case, the Supreme Court emphasized the right to emergency medical treatment for accident victims. The court ruled that hospitals could not refuse treatment to accident victims on the grounds of legal formalities and must provide immediate medical assistance.

*Consumer Education and Research Centre v. Union of India (1995)*³³: This case highlighted the issue of the high cost of life-saving drugs in India. The Supreme Court held that access to affordable healthcare was a fundamental right, and the government had a duty to regulate the prices of essential medicines.

³¹ 1981 AIR 746, 1981 SCR (2) 516

³² 1989 AIR 2039, 1989 SCR (3) 997

³³ 1995 AIR 922, 1995 SCC (3) 42

PUCL v. Union of India (2003)³⁴: This case highlighted the inadequate healthcare facilities in government hospitals and the challenges faced by patients in accessing medical treatment. The Supreme Court issued directives to improve healthcare infrastructure and services in public healthcare institutions.

These cases have contributed to the development of healthcare jurisprudence in India and have reinforced the importance of access to quality healthcare as a fundamental right. They have also provided guidance on various aspects of healthcare, including affordability, safety, and the protection of patients' rights and thereby bringing social transformation.

7) **Anti-Discrimination and Social Inclusion**

Several judicial cases in India have played a pivotal role in fostering anti-discrimination and social inclusion by addressing issues of caste-based discrimination, gender inequality, and the rights of historically marginalized communities and thus contributing to social transformation. These cases have contributed to legal reforms, social awareness, and the promotion of a more inclusive and equitable society. Here are some notable judicial cases that have fostered anti-discrimination and social inclusion in India:

Indra Sawhney v. Union of India (1992)³⁵: Commonly known as the "Mandal Commission case," this case upheld the government's power to provide reservations in educational institutions and public employment to historically disadvantaged communities to achieve social justice and equality.

S. R. Bommai v. Union of India (1994)³⁶: This case dealt with the issue of caste-based politics and the misuse of the anti-defection law to suppress political voices. The Supreme Court upheld the principles of secularism and the importance of allowing diverse political voices to be heard.

Navtej Singh Johar v. Union of India (2018)³⁷: In this landmark decision, the Supreme Court

³⁴ AIR 1997 SC 568, JT 1997 (1) SC 288, 1996 (9) SCALE 318, (1997) 1 SCC 301, 1996 Supp 10 SCR 321, 1997 (1) UJ 187 SC

³⁵ AIR 1993 SC 477; 1992 Supp 2 SCR 454

³⁶ 994 AIR 1918, 1994 SCC (3), 1, JT 1994 (2)215, 1994 SCALE(2)37

³⁷ 2018 INSC 790

decriminalized consensual same-sex relations between adults, reaffirming the right to equality and non-discrimination based on sexual orientation.

These cases have been instrumental in fostering anti-discrimination and social inclusion in India by addressing issues related to reservations, gender equality, sexual orientation, and the protection of the rights of marginalized communities. They have contributed to the legal and social transformation of the country, reinforcing the principles of justice, equality, and inclusivity.

8) **Privacy as a fundamental right:**

The recognition of the right to privacy as a fundamental right in India has been a significant legal development and social transformation. Several judicial cases have played a pivotal role in fostering and affirming this right. The right to privacy is now considered an intrinsic part of the right to life and personal liberty under Article 21 of the Indian Constitution. Here is the notable judicial decision that have fostered privacy as a fundamental right in India:

*Aadhaar Case (Justice K.S. Puttaswamy (Retd.) v. Union of India) (2017)*³⁸: This landmark case reaffirmed and strengthened the right to privacy as a fundamental right. The Supreme Court held that the right to privacy was an inherent part of the right to life and personal liberty under Article 21. The judgment laid the foundation for protecting citizens' privacy rights, particularly in the context of the Aadhaar biometric identification system.

The Indian judiciary's contributions to social transformation are undeniable. Through judicial activism and judicial review and by giving landmark judgments, it has consistently upheld and expanded fundamental rights, promoted social justice, protected the environment, combated discrimination, and advocated for the marginalized. As India continues its journey toward a more inclusive, equitable, and just society, the judiciary remains a stalwart pillar of support, ensuring the protection of rights and fostering social change. These judicial decisions exemplify the transformative power of the judiciary, setting the stage for a more just and equitable future for India.

³⁸ (2017) 10 SCC 1, AIR 2017 SC 4161

CONCLUSION:

Neither society nor social problems are static. Social problems are closely linked with social structure, ideologies, values, attitudes, institutions, power, authority and interests of society. The process of social transformation brings about change in these different aspects of social life and side by side generates new social problems. There are various factors which are responsible for social transformation such as technology, education, environment, culture, finance, market and many more. But law and judiciary is one of such most important factor which is responsible for social transformation. Law is the reflection of the will and wish of the society. The law, though it is the product of the society is responsible for the social transformations.

The role of judiciary in modern times has been immense. Judicial activism plays a crucial role in fostering social transformation. It refers to the willingness of the judiciary, particularly higher courts, to actively interpret and apply the law in a way that addresses societal issues, upholds fundamental rights, and promotes justice and equity. Previously laws were made only by the legislature but due to the various developments in many aspects of the society the judiciary started taking active role in developing laws through judicial activism and judicial review. In these processes if a particular case comes in front of the court in which the existing law is either not sufficient or is violating the rights of human beings ultimately denying access to the justice then the judiciary in that case has authority to declare that law ultra-virus or to repeal or to amend that law. Judiciary then gives landmark decisions to protect rights of the people which then causes to amend particular law. In this way judiciary develops or amends laws to protect the rights and to remove injustices in the society and therefore it ultimately contributes to social transformation through that changed or altered or amended law.