

election case. The court dismissed the petition and it was held that they had adhered to the theory of basic structure. The 42nd amendment of the constitution placed limitations upon the exercise of the power of judicial review. They were:

- (1) The power of centre was increased by transferring certain provisions from State List to the Concurrent List.
- (2) The power of the Supreme Court and High Courts were curtailed. With respect to Article 14, 19 and 31, Parliament can make any law to implement Directive Principles of State Policy.
- (3) The powers of the Supreme Court was further curtailed by stating that no amendment of this constitution made or purporting to have been made under this article shall be called in question in any court on any ground.
- (4) The validity of central law was to be decided by the Supreme Court (Art. 141A) and not by High Courts (Art. 228A) and subsequently the validity of the state law could be decided only by High Courts.
- (5) The power of issuing writs for implementation of Fundamental Rights were curtailed to the effect that these writs will not be issued unless substantial injury has taken place and also if alternative remedy is provided under any law;
- (6) Minimum seven judges of the Supreme Court should sit for the purposes of determining constitutional validity of central law and it cannot be declared unconstitutional unless two-thirds majority of judges decide and for the High Court there had to be five judges to determine the constitutional validity of a law.
- (7) Further, the appointment procedure of High Court were dealt extensively.
- (8) It was also stated that the decisions of any administrative tribunals can be questioned or challenged only in the Supreme Court under Article 323B.

The subsequent amendments, the 43rd and 44th amendments, did restore the lost glory of judiciary and the threat of judicial supremacy got lessened, the judiciary was

forced to look into the democratic values of the constitution and interpret them more generously. The 44th amendment:

- (1) Deleted Right to Property from the chapter as Fundamental Rights and placed it under article 300A.
- (2) Fundamental Rights were to be duly protected.
- (3) The powers of judiciary were partially restored by repealing article 131A and 226A and restored the power of judicial review to the courts.

In the *Minerva Mills* case the court struck a balance between Fundamental Rights and Directive Principles of State Policy by placing Article 39B and C above the chapter on Fundamental Rights. It was further held by Justice Bhagwati that, "It is for the judiciary to uphold the constitutional values and, to enforce constitutional limitations".

The court has also been called upon to exercise its power of judicial review in cases relating to presidential rejection of clemency for sentence of death. The court has upheld the decisions of the President.

Justice Krishna Iyer, spoke of judicial review in the following words, "No power in the republic is irresponsible or irresponsive, the people in the last resort being the repositories and beneficiaries of public power. But two constitutional limitations exist in our constitutional system. The court cannot intervene everywhere as an omniscient, omnipotent or omnipresent being. And when the constitution has empowered the nation's executive, excluding by implication judicial review it is presumptuous this court to be a super power unlimited. The second limitation conditions all public power, whether a court oversees it or not. That trust consists in the plurality of public authorities. All power, howsoever, majestic and dignified wielding it, shall be exercised in good faith with intelligent and informed care and honestly for public well being".

Further he held that the magnificent concept of judicial review is at its best when kept within the framework of broad principles of public policy and tested by the intentionability of the statute.

The working of the Supreme Court during the first three decades can be described as an arena of struggle between the

legislature and the judiciary in relation to Fundamental Rights and power of amendment. The Maneka Gandhi case gave new impetus to the concept of liberty. During this period the court adopted a strategy of coordination enhancing the glory of the institution and practised self-restraint. Many political observers and jurists have held that judiciary will always avoid a confrontation between popular sovereignty and independent judiciary.

The institutional rivalry dominated the Indian political process and judiciary till 1980s and the advocates of parliamentary sovereignty blamed the judiciary for non-implementation of their programmes aimed at weaker sections of the society-the poor and distressed. This led to the outflow of new ideas and dimensions in the minds of the socially progressive judges like Justice Krishna Iyer and Justice P.N. Bhagwati.

They led the movement to protect the socially oppressed with programmes like legal aid as provided in article 39A of the constitution inserted by the 42nd amendment and institutions like Lok Adalat and public interest litigation. This added a new dimension in an already existing jurisdiction and power of the judiciary.

Public Interest Litigation

PIL, or Social Action Interest Litigation as termed by Upendra Baxi, is an offshoot of liberalized rule of locus standi. The traditional rule of locus standi was based on the fact that judicial remedy can be sought only by those who have suffered an injury on account of violation of a legal right by some public authority. The PIL chose to liberalize this rule by making it clear that any person who suffers an injury but is unable to reach the court is helped by public-minded citizens to reach the court to seek justice.

The institution of PIL originated in the U.S. in mid-1960s and legal aid to these litigations were provided by private foundations. The PIL cases centered around issues relating to civil rights, liberties and problems of the distressed and this provided representation to those previously unrepresented groups.

The PIL is considered to be an off shoot of social forces where freedom suffered in the cruel hands and public participation was required to check the system. It was an opportunity for like-minded citizens to participate and reaffirm their faith in the legal process. The petition can be filed by any voluntary agency or a member of the public. However, the court must satisfy itself while accepting the petition and see that the person is acting bona fide and not for personal gain or profit.

The PIL involves issues connected with environmental protection, and a set of evolved fundamental rights like right to free legal aid, right against torture, right to humane treatment in prison, etc., reflecting the human dimension of the PIL. Further, it extended its domain in a delicate task of mediating between social actualities and social change. Issues like degraded bonded labour, humiliated inmates of protective homes, women prisoners, custodial violence, and other victimised groups are attracting remedial attention of the courts. For this, article 32 emerged as a forum of PIL in recent years and it has become a byword for judicial involvement in social, political and economic affairs of the society.

The movement of liberalization of locus standi started with the Bar Council of Maharashtra v. M. V. Dabholkar where the Bar Council was stated to be an aggrieved party. Further, the judiciary directed the government agencies to be responsive to public grievances. In the Fertilizer Corporation Case it was held that, 'in a society where freedom suffers from atrophy activism is essential for participative public justice. Some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pendency now surrounding locus standi.

As litigations became very expensive the affected persons joined together to fight for a common cause. Justice Krishna Iyer has observed in Akhil Bhartiya Shoshit Karmachari Sangh (Railway) case that our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is people-oriented and envisions access to justice through class actions, PIL and representative proceedings. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings instead of being driven to an expensive plurality

of litigations is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of cause of action and person aggrieved and individual litigation is becoming obsolescent in some jurisdiction.

The PIL got the required recognition in S.P. Gupta case who was not an aggrieved person. The court observed that the basis of judicial redressal was personal injury but today where there is public wrong or injury caused by an act or omission of the state or a public authority which is contrary to the constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The Asiad workers case further strengthened the rule of locus standi in the PIL. The PUDR was an organization for the protection of human rights which sought to enforce labour laws for the unorganised construction workers of projects concerning Asiad Games. Justice Bhagwati held that strategy has to be evolved for relaxing the traditional rule of locus standi so that justice becomes, easily available to the lowly and the lost. Judicial activism has become the root of PIL and this was reflected in various other cases. The Supreme Court with its wide jurisdiction and powers reflects the concern with providing social equality and rule of law. In India, the apex court has acted judiciously in changing socio-economic structure and the progress of a nation has been dependent on its decisions. The existence of this court gives a feeling of security among the citizens. It acts as an independent authority which puts check on extreme actions and upholds the constitutional values. It has adhered to values enshrined in the minds of the framers of the constitution.

Unfortunately, the apex court has not escaped controversy because of various reasons. Lately, the contempt of court cases have shown the sensitivity or the highhandedness of the Judges. The court has at last woken up to the repeated charges of human rights violations by law-enforcing agencies. Further, loads of cases and delays in judgement have reflected the loopholes of the judicial system.

As a democratic institution, the judiciary is answerable to the people. As Justice Krishna Iyer observed that all public

power is people's trust and so even judicial power has a fiduciary component... Executive power is accountable to the Parliament and Parliament to the people, judicial power is not accountable to the executive nor to the Parliament in any direct sense. The judiciary by deriving its power from the constitution, its accountability to people cannot be negated. Unfortunately, these ethnics have not been adhered to by judiciary and therefore whenever natural calamities struck the different parts of the nation it remained a spectator and could not reach the people at the grassroots level, be it Bhopal tragedy or Narmada andolan.

Many areas of the court need to be reformed like the code of conduct of judges, transfer of judges, and rigidity of the system to ensure and preserve its position as the guardian of the constitution and the protector of the basic rights of the individual and society at large. There is a great need to revamp the judicial system so that people can get access to justice and speedy justice. The experiment of Lok Adalat has met only with a limited success. Most cases referred to Lok Adalat are those where the state has to pay and it agrees to pay for an early settlement. The Supreme Court of India should inspire alternate dispute settlement machinery where public can redress its grievances and not burden it with special leave petitions. The Judges should write brief judgements and give early decisions. In a few cases judgments are pronounced only when a judge is to, retire, otherwise they remain reserved for unlimited period. Quality of judges and ability to handle cases with speed and honesty should be the criterion in selection. Unfortunately, politics has entered even in appointments. One finds that judges like ministers also come from different High Courts representing different castes, class, or religious backgrounds. It would be worthwhile to restrict the time for arguments. It need not be stressed that a lot of time is wasted by a few senior lawyers who keep arguing for days and many other cases suffer.

There is need to reform even the legal profession, which has made access to Supreme Court virtually impossible for millions in this country. Long and tardy procedure with further uncertainty whether the matter would be taken up or not on a particular day keeps the poor away from approaching the Supreme Court. Time has come when either we reduce the

cases that can come up before the Supreme Court or have its benches in different regions. The sitting judges should not be appointed for commissions of inquiry. There is need to have a fresh look at Advisory jurisdiction also. The recent reference on Ram Janam Bhumi-Babri Masjid dispute will not end the controversy even after the decision.

Judicial Activism

At the end, the fact remains that for the success of Indian democracy people still have their faith and hope in an independent judiciary and our Supreme Court has not entirely disappointed them.

THE UNION JUDICIARY

124. Establishment and constitution of Supreme Court.-

- (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
- (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that-

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
- (b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

- (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and-

- (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (c) is, in the opinion of the President, a distinguished jurist.

Explanation I.-In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.-In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

- (4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.
- (5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).
- (6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.
- (7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.