

## MARCH - ESSAYS OF THE MONTH

### Role of Judiciary in promoting judiciary in India

The Indian constitution, the fundamental law of the land has been drafted with the four-fold objective of securing justice, liberty, equality and fraternity to all the citizens. The constitution has allocated different distinct powers and functions to the three organs of the state viz. legislature, executive and judiciary. These three organs together form the very crux of the democracy by operating on “Check and balance” principle. The judiciary plays a vital and key role in constitutional democracies. The judiciary in India, specially the higher judiciary has been assigned a vital role in various areas like upholding the federal principle, interpretation of the laws made by respective legislatures, testing the validity of such laws and more importantly in protecting the fundamental rights of the citizens. The Supreme Court stands at the top of the hierarchy of the court constituted under the constitution. It is the final arbiter.

The activist role performed by the Indian judiciary, particularly the Supreme Court, has become a subject of increasing interest when it comes to the role of the judiciary. The Supreme Court and the Indian judiciary have changed dramatically in their view and operation over the last 50 years. This shift is consistent with changes in the role and standing of the judiciary in other modern democratic countries around the world. In terms of judicial activism in India, it has been shown that the Indian court is a latecomer in this area. Nonetheless, whenever there have been unjustified threats to India's democracy, the judiciary has been the forerunner of the nation's defence.

-The wakeup call for this transition in the tradition-bound institution started in the year 1973 with the historic judgment of *Keshvananada Bharati v. State of Kerala*, it is a [landmark decision](#) of the [Supreme Court of India](#) that outlined the [basic structure doctrine](#) of the [Indian Constitution](#). The case is also known as the Fundamental Rights Case for its ascertaining that no organization or set up is above the law of the land.

-The case of *Indira Gandhi v Raj Narain(1975)*, created history and led to the imposition of emergency in India from 1975 to 1977. This case adjudicated so many conflicted yet integral aspects of the Constitution. The Supreme Court upheld the constitution in as it struck down clause 4 and 5 of Article 329 being violative of the basic structure.

-In *Maneka Gandhi v. Union of India (1978)*, the Court significantly expanded the interpretation of Article 21 of the Constitution of India. It overruled [A. K. Gopalan v. State of Madras](#), which had implied the exclusiveness of fundamental rights, and established a relationship between Articles 14, 19, and 21 of the Constitution (known as the 'golden triangle' or 'trinity'), holding that a law depriving a person of 'personal liberty' must not violate any of them.

-Supreme Court in *Shah Bano v Union of India(1985)*, that it does not limit its jurisdiction and



powers to only enacted laws and has all the powers to go extra-judicial when the it the question of rights of the people.

- In S.R Bommai v Union of India (1994), where the Court discussed at length provisions of [Article 356](#) of the [Constitution of India](#) and related issues. This case had huge impact on Centre-State Relations. The judgement attempted to curb blatant misuse of Article 356 of the Constitution of India, which allowed [President's rule](#) to be imposed over state governments.
- Environmental law in India is in its entirety is a product of judicial activism.

Understanding judicial activism is contingent on one's understanding of the constitutional court's function in democracy. Even a liberal or dynamic reading of a statute is considered activism by those who define it narrowly, as limited to the application of pre-existing legal principles to a given context. Those who envision a constitutional court with a broader role, expecting it to provide meaning to numerous open-textured statements in a written constitution and giving them new meaning as the times demand, are likely to see judicial activism as a normal judicial function rather than an aberration.

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## Biased Media Is A Real Threat To Indian Democracy

Media is a very efficient tool in any democracy. Since a democracy means rule by people, it is the basic right of people to know every decision of a democratic government and media is very necessary to act as a bridge between government and people. Media is also one of the pillars of democracy. The Constitution of India in article 19 provides all its citizens freedom of speech and expression but it is subjected to reasonable restrictions. The duty of Media is to provide the facts and thus make way for a healthy debate and create awareness among the public about the each and every steps of government. Media cannot be biased and make judgement on any news but only should act as a platform which should only bring any issue to limelight.

### What are the threats?

1. Hiding the facts and spread of fake news: Hiding facts to please a political party or a person or for the sake of money. This may sometime instigate violence in the society and media is responsible for it.
2. Misuse of article 19 – Freedom of speech and expression and also it violates Section 66D of Information and technology act.
3. Media Biases can also topple a democratic government by false news against the government.
4. During COVID 19 pandemic many media were providing wrong statistics of death, wrong information about the vaccines, wrong information of the government budget allocation to fight against the pandemic are the examples of biases shown by some group of media against the government and all of these creates fear among people and indirectly violates fundamental rights of people.
5. In 1990 during the exodus of Kashmiri Pandits from Jammu and Kashmir by Islamic terrorists some media supported the violence rather than providing the actual conditions of the refugees and thus became responsible indirectly for violation of the fundamental rights of Kashmiri Pandits to live freely in the country.
6. Continuous circulation of fake news also causes communal disharmony amongst the communities.
7. There is a very big threat of biased media that its report may create soft corner against criminals who indulged in heinous or mass crimes.
8. Various useful or welfare schemes of government will not reach the common people if the media is biased. Also, there is a threat of giving false information or hiding the benefits of schemes and thus makes a democracy to fail. Examples- **In Citizenship amendment act and Agriculture Bills** – The Media failed to provide the merits and demerits of both bills which lead to protests and violence in some part of the country.

## Reasons for Bias

1. For TRP: Television Rate Point is important for any media to attract more investors. So for the sake of TRP and to attract more viewer media go for biased news.
2. 24x7 news channels: Media will not get news throughout the day. But to fulfil the 24x7 news criteria, they keep on filling created false news.
3. Some of the politicians would be silent partners of news channels. So such channels or newspapers do not publish the any facts against such politicians.
4. Competition between their rivalries also make the media to be biased.  
In all the above instances the media misuses article 19.
5. There are some instances where Media were forced to become biased due to political situations – Example – The Emergency of 1975 – it was declared by the then PM Indira Gandhi and there was no freedom of speech and expression at that time. This was the real threat to democracy.

Any individual can sue the media for spreading biased fake news against him

1. Section 66D Information Technology act – As per this the fake news circulating through media can be imprisoned for 3 years and penalized up to 3 lakhs.
2. Section 153 of Indian Penal Code– for provoking for a riot through false news can be imprisoned for 1 year and penalised.
3. There is a statutory board called Press Council of India – it can warn the news agency, editors if the agency is found spreading false news.  
On July 2006 it censored 3 newspapers – Times of India, Punjab Kesari and Midday, for failing to follow journalism ethics.
4. Broadcasting Content Complaint Councils, Indian Broadcast Foundation are there to file complaint against any fake news contents in the news channels.
5. Defamation cases could be filed against the false news circulating media.

For the smooth functioning and success of any democracy Media plays a vital role. As per a saying “By repeatedly saying a lie it seems to be truth” a biased media can completely change the opinion of a society and this leads to an unhealthy democratic society. Every media should understand its responsibility. It is the duty of media to ensure the correct performance of a democratic government. Thus a biased media proves not only a threat to democracy but also makes a democracy to collapse.

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## Role of Judiciary in Promoting Democracy in India

The constitutional makers of independent India divided the powers of the state into three main components. These three components became the pillars of our Indian constitution. They are legislative, Executive and judiciary

Legislative – Which has the power to make laws.

Executive – Which has the power to implement the laws made by the legislative.

Judiciary – Which interprets the constitution and the laws made by the legislative. Also it is guardian of the fundamental rights of the citizen.

The legislative has full authority to make laws for the interest of the people. But the problem arises when the legislative makes laws which can go against interest of the people and create disharmony among the masses. To avoid such unfortunate events, our constitution also has the unique method of keeping in check of such laws, known as **doctrine of checks and balances**. Wherein, each component of the state is kept in check by other two components so that, no extra constitutional laws or illegal laws are implemented and to uphold the **constitutionalism**. There were many such scenarios in the Indian constitutional history where time and again democracy was compromised, and the judiciary played a very important role in preserving and there by democracy.

**Part III of constitution, that is Article 12-35 talks about the exclusive rights of people known as fundamental rights.** These are the main and basic rights which **uphold the constitutionalism by implementing the limited government philosophy**. But these were compromised on several instances. **Article 368 of the constitution gives the right to parliament to amend the constitution.** Using this provision vested by the constitution, the parliament amended the fundamental rights which was challenged in the Supreme court, this case is known as **Shankari Prasad Vs Union of India** case where Supreme court said that the parliament can amend the complete constitution only with the help of constitutional amendment acts. Again this judgment was challenged in **Sajjan Singh Vs State of Rajasthan case**, where the supreme court gave judgment that the parliament is free to amend any part of constitution by both ordinary laws and constitutional amendment acts. This was again challenged in the **Golaknath Vs state of Punjab case**, where supreme court said that the parliament cannot amend the fundamental rights because they are the basic rights given to the people by our constitution and also interpreted on Article 368 that it only mentions about the procedure to amend, not the power to amend the constitution.

Later, it was again challenged in the **infamous Keshavananda Bharathi Vs State of Kerala**, wherein the Supreme court gave the landmark judgment where it introduced the concept of



**doctrine of Basic Structure.** Wherein Article 14, 21, 32 are part of the basic features of the constitution and **the parliament cannot amend the basic features of the constitution.** Elections in India are the major event where our democracy can be seen in use to its full extent. If the election procedures are compromised or any fault like tampering of votes, using state machinery for campaigning may lead to consequences of compromising Democracy. One such historical incident occurred, known as **India Gandhi Vs Raj Narain case in 1975.** In 5th Lok Sabha election Indira Gandhi contested from Rae Bareilly and won against her opponent Raj Narain. The latter thought he was supposed to win but instead Indira Gandhi won the election. Suggestive of Raj Narain went to the Allahabad court and filed petition against Indira Gandhi accusing her of election malpractice. **The Allahabad court investigated and declared the election of that constituency as void** as it proved election malpractices. It was for the first time that the Prime Minister's election was kept aside and was declared as void.

Indira Gandhi appealed to Supreme court which was on holiday, hence was granted a conditional stay. After this stay, emergency was declared in the country. At this emergency time, **the parliament passed 39th constitutional amendment act which barred the jurisdiction of supreme court in the election matters of prime minister, lok Sabha speaker.** This amendment was again challenged in the Supreme court.

The Supreme court upheld the judgment of **Keshavananda Bharati case** and said that the government cannot amend the laws which provide for **free and fair elections which is the basic structure of the constitution** and hence the 39th constitutional amendment act was struck down. In this way the Supreme court held the democracy by doctrine of basic structure. Under **People's Union for Civil Liberties vs Union of India case** in, when the people are not satisfied with any of the candidates contesting in the election, the Supreme court also considered this thing as a constitutional right of voter which is known as **negative voting** and **introduced None Of The Above option (NOTA)** and directed the government to introduce the NOTA as an option in electronic voting machines. If the constituency has a greater number of NOTA votes than any other member, then that constituency election is conducted again. Even after conducting for the 2nd time, still NOTA is the highest then, then the candidate with 2nd highest number of votes is declared as the winner. **By this the judiciary tries to promote democracy by considering NOTA as fundamental right of speech and expression.**

The rule of law is established by our constitution and also fundamental rights are given, which helps in limited government philosophy and judicial working of democracy. **Hence by protecting the Fundamental rights it also promotes democracy as we have seen in some landmark cases.**

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