



POLITICAL INTERVENTION IN THE JUDICIAL SYSTEM

By *Dixita*

From *Banasthali Vidhyapith, Jamnalal Bajaj Institute of Legal studies Rajasthan*

Abstract- when political system and judiciary in India somewhere gets mixed than the weaker or unstable one get dominated by the other. Political system in India is embodied under democracy in which government and opposition prevailed. On the other hand where judiciary talks about justice. All three legislature, executive and judiciary are the organs of government. All the three organs have their own function and distinct works to perform. But many times in India it was been seen that legislature and judiciary intervene in each other works or having tussle between them. Not only that appointment of judges in Supreme Court done by president and at times when in need president to need judge's advice related to a legal matter. Thus in almost each and every phase in one way or the other, judiciary and legislature intervene with each other works or functions. This paper in the Continuance talks about judicial system and political system in India. How both of it works. What are their major functions to perform and in what ways they intervene. Not only that, it aims to provide hierarchy of judicial system in India. Further this paper highlights the four phase till now in a sense how political system and judicial system exist and in what ways tussle prevailed between both of them.

Judicial system and political system prevailed -

- **Meaning , Work and functions - their difference**
- **Hierarchial judicial system**
- 1. **Meaning,, work and functions - their differences**

According to renowned political scientists, Gabriel Almond and James Coleman (1960), 'Political system is that system of interactions to be found in all independent societies which performs the functions of integration and adaptation by means of legitimate physical compulsion.'¹

The Concise Oxford Dictionary of Sociology (1994) defines it as, 'a political system is any persistent pattern of human relationships that involves (to a significant extent) power, rule and authority.'²

In the words of Robert Dahl, "Whether he likes it or not, virtually no one is completely beyond the reach of some kind of political system."³

In simple sense the meaning of political system is such which can not be define in static term. It is that interaction between human relationships which involve leaders meant to say power, able to handle the work meant to say authority and sometimes take decision in rigid manner so to rule in a systematic and proper manner. All these is to be done with the view to integrate people of a country and to change in accordance with time. Due to change in time, in nature, in mentality of the people, etc the nature and meaning of poliytical system changes, As instance, at the time of 1930's the main aim of political system or Congress is to build integrity so to get independence. But now-a-days the aim of political system is to build a developed nation from developing one.



Work and function of political system

Almond and Coleman (1960) have described the following three main functions of a political system:⁴

1. To maintain integration of society by determining norms.
2. To adapt and change elements of social, economic, religious systems necessary for achieving collective (political) goals.
3. To protect the integrity of the political system from outside threats.

They have grouped these functions into two categories:

- (1) Input functions—political socialization, interest articulation, interest aggregation, and political communication; and
- (2) output functions—rule making, rule application and rule adjudication.

- However, Its function categorised into two form i.e., primary and secondary one.
- Primary function are those functions which mainly integrate people either religiously, ethically, diversity in unity so to achieve desired goal. Every system has it desired goal to achieve for which political system use certain resources.
- Secondary functions are those functions which includes all those work which help in smoothing of a system and all such system are interdependence as in one system any change came into force the other will automatically get affected and changed and thus controlled when such change get stable. Political system also maintain the values, Norms, culture, historical background from one generation to other.

Meaning of judicial system in India - The judicial system in India has been a significant importance and is one of the

organ of government. And the judicial system in India built with a view to fulfill the requirements of citizen of country."The system of law courts that administer justice and constitute the judicial branch of government"⁵

The term judicial system connotes the meaning as such a system which work in stipulated manner and in a proper do to achieve its goal i.e., to provide justice. Unlike political system it is somewhat static in nature. It's aim dosen't hindered or changed according to time. Unlike political system neither it influences nor it

The main and foremost aim of judicial system in India is to provide justice to everyone irrespective of caste, creed, sex, place of birth, religion, etc. And to provide with effectiveness the structure of judicial system in India are as follows:-

- Supreme Court which is known as apex court of India.
- High court which is retained in every state
- District court which is lower than that of high court and Supreme Court.

Work and function of Indian judiciary - there are certain function and work of Indian judiciary that has been performed by the same and provide justice in different manner:-

- Prevention of violation of law.
- Judicial review is it's one of the most important function.
- Judiciary is independent.
- Protect individual rights, public at large.
- Sometimes Supreme Court works as a advisory body in legal matters to president



- Supreme Court as a guardian of constitution.
- Punish those who commit any offence.
- Directly or indirectly protect society from such person who could be danger for society.
- Supreme Court many time answered constitutional questions.
- Supreme Court at times frame new laws.
- High court which is highest authority in a state, has a supervisory role.
- Judicial system in India performs in a systematic and proper manner. The way to perform is stipulated and can not perform in any way it likes.

make decisions that are accepted by a subordinate as to guide his behaviour.

Hierarchical structure of Indian judiciary - the term hierarchy ensures systematic way of

Hierarchy of courts

The working of courts in India. As the highest or Apex court in India is SC, than HC and subordinates came into play. First the case will fall under the jurisdiction of District court than its appeal in High court and Supreme Court except in Art 32 and 226 of constitution of India.

Unlike political system, judiciary in India has been since years a systematic and stipulated procedure that has to be followed. Hierarchy is the result of inability of one boss or office to supervise it effectively a very large number of subordinates. And through this system hierarchy the work becomes manageable.

Lantham - Hierarchy is an ordered structure of inferior and superior being in an ascending scale. Authority is the capacity to

	<u>Political system</u>	<u>Judiciary</u>
Meaning	In the words of Robert Dahl, "Whether he likes it or not, virtually no one is completely beyond the reach of some kind of political system." ³	"The branch of government that is endowed with the authority to interpret and apply the law, adjudicate legal disputes, and otherwise administer justice."
Nature	Dynamic	Static
Aim	Integrity	Justice
Works	To maintain values, norms, culture, belief, etc	To punish those who commits offence or infringe any law.
Hierarchy	No systematic hierarchy found	Hierarchy prevailed
Powers	No specific or stipulated power	Powers enumerated in constitution.
Systematic working	Lacking somewhere	Procedure defined

Phase
Four phase



Till the death of Nehru ji 1964- The bench started with the 1950 judgment by the Supreme Court in the case of **Romesh Thapar vs state of Madras**, where the court stated that freedom of speech lay at the foundation of all democratic organisations. Thapar had moved the court after his magazine Cross Roads was banned by the Madras state government for reportedly publishing views critical or defamatory of the Congress. This case was heard with **Brij Bhushan vs State of Delhi** that related to a ban on another magazine, Organiser. The full court ruled that the imposition of pre-censorship on a journal is a restriction on the liberty of the press, which is an essential part of the right to freedom of speech and expression under Article 19 (1)(a). It said the freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the courts. The verdict added that free political discussion is essential for the proper functioning of a democratic government.⁶

After the First Amendment (which was brought about in response to cases such as Romesh Thappar vs State of Madras and Brij Bhushan vs State of Delhi), the modified Article 19(2) now read:⁷

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”⁷

This amendment not only widened the scope of art, 19(2) but also by adding the word "public order" and "incitement to ab offence" which clearly shows that it had been done with a view to get around the decision of Supreme Court which struck down the ban.

In **Sankari Prasad Vs union of India**, It was challenged that Amendment (in this case an amendment to Article 31A and 31B) that take away fundamental right of the citizens is not allowed by article 13. It was argued that “State” includes parliament and “Law” includes Constitutional Amendments. It was held that ‘Law’ in Article 13 is ordinary law made under the legislative powers. And therefore, the parliament has power to amend the constitution.⁸

At the time of government of Nehru ji, the decision laid down by judiciary were with a view that not even judiciary tried to challenge their stands as he is charismatic leader and at the same time legislature was so strong that judiciary by up and down, Right and left try to balance it and not given a judgment that would be against the policy and decision of it.

1964 -1981 (Emergency period) - there was also the period when the government and the ruling party had many differences with the judiciary. Three constitutional issues had emerged. Can the parliament abridge fundamental right? The Supreme Court said it can not. Secondly, can the parliament curtail the right to property by making an amendment? Again the court held that parliament can not amend the constitution in such a manner that rights are curtailed. Thirdly the parliament amended the constitution saying that it can abridge



Fundamental rights for giving effect to Directive Principles. But the Supreme Court rejected the provision also. This led to crisis as far as the relations between the government and the judiciary were concerned. In *keshavananda bhari case*, the court have a decision that there are some basic features of the constitution and the parliament can not amend these features.. Such are basic structure of constitution and parliament can not amend it. Immediately after the Supreme court's decision in 1973 in keshavananda case, the vacancy arose for the post of Chief Justice of India. It had been a practice to appoint the senior-most judge of the Supreme Court as the Chief Justice. But in 1973, the government set aside the seniority of three judges and appoint justice A N. Ray as the Chief Justice of India. The appointment became politicaly controversial because all the three judges who were superseded had given rulings against the stand of the government. This, constitutional interpretations and political ideologies were getting mixed up rapidly. Thus, the aforesaid picture of judiciary and government clearly shows the intervention of political in judiciary and not only that whenever government being weak judiciary streghthen it's scope and amplitude and vice versa.

In case of *Sankara Prasad vs union of India*, these controversy has came at the first time before the SC that Constitutional amendment is a law or not? The SC has decided that the constitutional amendment is not a law under clause 3 of Art13.¹⁰

In the second time these controversy came before the court in case of *Sajjan singh Vs State if Rajasthan*, the SC has decided again that the constitutional amendment is not a law.

But in case if *IC golaknath Vs State of Punjab* given the judgment deviant from 2 previous cases and decide the constitutional amendment is a law under a13(3) . The judgment of the SC had created the roaring controversy. By this way the parliament power to amend the constitution has become confined and cabinet.¹¹

Being affected by this judgment parliament made 24th and 25th Amendment and added clause (4) in Art 13. By this clause it has been expressly stayed that the constitutional amendment is not a law under art13(3). By the decision of keshavananda case it has fully settled or established that 24th Amendment is valid and constitutional Amendment is not falling within the definition of law.

In case of *Maneka Gandhi Vs union of India* J. P. N. Bhagwati again quite "A14 strikes at arbitrariness in state action and ensures fairness and equality if treatment". Thus the law made must be just, fair and reasonable in the due process of law .¹²

Thus, whenever there is political intervention in judiciary either amendment took place if the government at the time would enough strong to tackle or the historical judgment took place. Till the emergency in many cases, Amendments, political intervention in judiciary has been observed time to time which hinders the work of independent of judiciary. Such cases are Ramesh thapar case, sankalchamd case, Sajjan singh case, sankalchamd paper case, express newspaper case, IC golaknath case, Inre berubarian case, Ak gopalan case, Maneka Gandhi case, and many more. All such cases are examples where the



constitutionality questioned of one article or the other and leads to optical intervention in judiciary.

1984-2012 balanced judiciary and political intervention -

In the case of Landmark Development authority Vs MKG, the SC held that if loss or injury is caused to citizen by arbitrary action of state employ than the state is liable to pay compensation.¹³

In the landmark case *Vishakha Vs state of Rajasthan*, the SC laid down the guidelines of working women in place of their work. It was observed that Art 14,19 and 21 together constitute gender equality which includes protection from sexual harassment and right to work with dignity.¹⁴

In the year of 2013 the parliament has enacted the prevention of sexual Harassment work Act 2013 where the guidelines of Vishakha was realised.

In National Anthem case *bujoy Manuel Vs state of Kerala*, the SC held that no person can compel to sing National Anthem if he has genuine conscious objection based on his religious faith.¹⁵

In the landmark judgement in *Union of India v Association for democratic reform*, the SC recognise the right of voters to know about previous detail of candidate contesting election.¹⁶

Olga Tells Vs Bombay Municipal Corporation it was held that right to life includes right to livelihood.¹⁷

Gian kaur Vs state of Punjab, in this case the SC review the judgment of Ratnam's case Sec 309 is not unconstitutional. Right to life is natural termination embodied in art21 but suicide is an unnatural termination of extinction of life and therefore is incompatible and inconsistent.¹⁸

In *Aruna Shaubhag case*, SC for the first time recognise the difference between Active bad passive euthenasia.¹⁸

Thus, in all aforesaid cases there was no tussle between judiciary and government observed. It's true that there are many leading cases between this period but not strikes by political intervention as such.

2013 to til now both government and judiciary are enough strong to give amendments and leading cases-

Nirbhaya case as nd 2013 Criminal Law (Amendment) Act 2013 -

This case leads to various Amendments in criminal law, Indian Evidence Act, Crpc. And for the first time SC announced death penalty to the accused guilty of rape. And through this act the following amendments took place to stronger the punishment related to sexual offences. Altogether this amendment also leads some of the fgender biased sections in IPC. Both judiciary and government worked together so hard and make the justice possible. Many times it has been seen that due to political intervention in judiciary, hinders the work but this time both work together and proved that if both work together and mingled with each other than crimes in such a populous country can be decreased to the extent. Not only that the belief that government has a feature of "red tapism" proved to be wrong by passing the bill and assent ny president within approximately 3 months. These shows that when both judiciary and government worked together everything is possible.

Facts of the case

The gang rape in Delhi took place on the night of 16th December 2012. The victim, a 23 year old physiotherapy intern took a ride



home in a private bus that night, with her friend. There were six other people on the bus, including the driver.

The victim and her friend were beaten up when they raised their suspicions as to route of the bus to the destination. The woman was later raped by all the men while the bus was moving and her friend was beaten unconscious.[iv] After the beatings and rape, both the victims were thrown out of the moving bus by their perpetrators and left on the side of the road, partially clothed. Later, a PCR van arrived at the scene after receiving a call from a passerby. The victims were taken to the Safdarjung Hospital in Delhi for treatment.

Medical investigation of the woman suggested she was penetrated by a blunt object, probably a rod-like object that had caused extensive damage to the internal organs of the victim. Two blood-stained metal rods were retrieved from the bus on police inspection, which the medical staff later confirmed to be the object used for penetration that had caused serious injuries to the victim's uterus, genitals and the abdomen.

Within a day of the commission crime, arrests were made by the Delhi police in the case and all the six accused including a juvenile were arrested¹⁹

After such a case, rebellion by public, candle March and the hard work of government, judiciary, justice Verna committee led this possible.

National legal service Vs Authority of India, In a landmark judgment the Supreme Court in April, 2014 recognised transgender persons as a third gender and ordered the government to treat them as minorities and

extend reservations in jobs, education and other amenities²⁰

Yakub Abdul Razak Menon Vs state of Maharashtra, Yakub Abdul Razak Memon was convicted and sentenced to execution by hanging in March 2015 for his involvement in the 1993 Bombay serial blasts. His conviction sparked a nationwide debate on capital punishment in India.²¹

Supreme Court Advocates on Record Association Vs Union of India both houses of Union Legislature passed much awaited National Judicial Appointments Commission Bill, the Supreme Court struck down the NJAC Act by 4:1. Justices J S Khehar, J B Lokur, Kurian Joseph and Adarsh Kumar Goel declared the 99th Amendment and NJAC Act unconstitutional while lone minority, Justice Chelameswar upheld it. The judgement rendered by five judges runs over 1000 pages.²²

Vikram singh Vs union of India, the Supreme Court of India dismissed an appeal by a death row convict, and held that Section 364A awarding death penalty as a possible punishment, for kidnapping any person threatening to cause death in order to compel Government or any other person, to pay ransom, is not unconstitutional. Three Judge Bench of Justices T.S. Thakur, R.K. Agrawal and Adarsh Kumar Goel examined the background of the Section 364A and held that it was enacted for the safety and security of the citizens and the unity, sovereignty and integrity of the country²³

Right to privacy a fundamental right - K. S. Puttuswamy and anr. Vs Union of India and ors.



Triple talaq to be held unconstitutional - sharaya bano Vs Union of India

Right to die (living will, passive euthanasia) recognised - NGO common cause case

Thus, whenever both government and judiciary are enough strong than cases like nirbhaya, transgender people get justice and right respectively. And if judiciary and government both work together and gives country such a tremendous amendments and leading cases than the day will not so far from us when India would known for the least commission crime at global level. Political intervention in judiciary many times regarded as deteriorated for country but when both perform their respective function and don't intervene in each others work than tussle won't arise. And everyone get justice.

conclusion - From cases to amendments, philosophy to politics it has been observed and analyze that political intervention in a country, many times being seen and due that general public, country suffered a lot which not at all good for a country. But it also been observed that whenever both perform their functions well than the day will close to us when India know for least crime country. Earlier days till 1982 tussle between government and judiciary and political intervention in judiciary clearly shown by cases and amendments. Afterwards when situation gets balanced the time came when both work together and perform their functions which resulted in many leading judgments, Amendments and justice to people.

For a country free from crimes it is incumbent for judiciary and government to perform their own function instead of

intervention in each others work. In a democratic country like India it is true that judiciary and government can not work separately as whole but both should work together that could be possible and hope that the situation when tussle was arose at the time 1973 when J. A. N. Ray become CJI won't arise again.

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