

**BURNISHED LAW JOURNAL***SUMIT SRIVASTAVA**LAW STUDENT**BA L.L.B. (HONS)***INDIAN JUDICIARY: PROMISING REFORMS****ABSTRACT**

The Constitution of India provides for a one integrated judicial system with the Supreme Court at the apex, High Courts at the centre (state) level and District Courts at the local level. It also provides for an independent and powerful judiciary. Judiciary in India acts because the guardian protector of the Constitution and therefore the fundamental rights of the people.

Indian Judiciary is Dynamic & progressive in nature in today's scenario unlike it was not in past years.

**Indian Judiciary's progressive nature**

Although there's still huge room for improvement, we have come a long way when it comes to our country's ideological maturity as a whole. List of judgments that will show how far Indian Judicial system has come.

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1. When Supreme Court legalize live in relationships.
2. When SC Transgender as third gender.
3. When triple Talaq was struck down.
4. When section 377 of Indian Constitution was revised.
5. Judgment on Right to privacy.

Also features like Judicial Activism and Public Interest Litigation show the dynamic and progressive nature of Indian judiciary. In this article we are going to analyze all the points which make Indian judiciary progressive in nature.

# INTRODUCTION

The Judicial system of India administers a standard law system of legal jurisdiction, during which customs, precedents and legislation, all codify the law of the land. Indian judiciary has actually, adopted the system ingrained by the British and therefore the princely states since the mid-19th century, and has partially retained characteristics of practices from the traditional and medieval times. There are various levels of judiciary in India –various types of courts, each with varying powers counting on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts during which they decide, with the Supreme Court of India at the highest, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (JD) at rock bottom.



“As Indian Judiciary turns 70, there are so many things and phases to be proud of. The Indian judiciary has been the nation’s moral principles, speaking truth to political power, holding the rights of citizens, resolving Centre-state conflicts, providing justice to the rich and poor alike, and on several crucial occasions, saving democracy itself.”<sup>1</sup>

Although there's still huge room for improvement, we have come a long way when it comes to our country's ideological maturity as a whole. Also features like Judicial Activism and Public Interest Litigation show the dynamic and progressive nature of Indian judiciary

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<sup>1</sup> Available at <https://www.outlookindia.com/magazine/story/india-news-70-years-of-indian-judiciary-opinion-the-courts-must-reform-so-that-they-can-preserve-seven-must-dos/302680> (last visited on may 20, 2020)

# DYNAMIC & PROGRESSIVE NATURE OF INDIAN JUDICIARY

## Judicial Activism

“The term ‘judicial activism’ has not been defined anywhere in the Constitution of India nor it has been defined in any Indian statute. It is the power by which the judiciary examines or determines the unconstitutionality of the legislative and executive orders. In other words judicial activism also means re-interpreting the existing laws or any constitutional. Provisions to meet the current requirement and to keep both executive and legislature under control, by preventing it from under exercising or over exercising of power. According to Justice Markendey Katju “The judicial activism is use of judicial power to articulate and enforce what is beneficial for the society in general and people at large.”<sup>2</sup>

“The Supreme Court has been beginning with judicial decisions and directives aimed towards active protection of public interest and human rights. The Public Interest Litigation system has been picking up. The system of Lok Adalats has also taken a correct shape and health.”<sup>3</sup>

“The Indian Scenario- In the case of Keshavanada Bharathi case the Supreme Court held for the first time that a constitutional amendment duly passed by the legislature was invalid for damaging or destroying its basic structure. This was a big judicial leap unknown to any legal system.”<sup>4</sup>

<sup>2</sup> Available at <https://edupediapublications.org/journals> (last visited on May 20, 2020)

<sup>3</sup> Available at <http://www.yourarticlelibrary.com/essay/judiciary-in-india-11-salient-features-of-indian-judiciary/40371> (last visited on May 20, 2020)

<sup>4</sup> Available at <https://edupediapublications.org/journals> (last visited on May 20, 2020)

## PUBLIC INTEREST LITIGATION

Under this technique the courts of law in India can initiate and enforce action for securing any significant public or general interest which is being adversely affected or is probably going to be so by the action of any agency, public or private. Under it any citizen or a gaggle or a voluntary organization, or may be court herself, can bring back notice any case demanding action for shielding and satisfying a public interest. It provides for a simple, speedier and fewer expensive system of providing judicial relief to the aggrieved public. With this we will see that Indian judiciary is progressive and dynamic because it is giving importance to PILs which may bring changes within the society which also shows the Indian Judicial System is an impartial, free, powerful and efficient judicial system.

“All over the country, PIL has not taken very kind towards various court decisions. PIL is a welcome move direct from the judiciary that no one in the country even Public Interest Litigation activists must be responsible or accountable. The Supreme Court has also established legal aid services in favor of the millions of people in India, and it also plays an irresistible role in the field of PIL in expanding its ambit so that it turns to be a balance to the lethargy as well as inefficiency of the executive. The machinery governing PIL is undergoing a serious alteration or reestablishing for possible developments in this field so that the people deserved will be awarded justice as well as the people who abuses it will be punished.”<sup>5</sup>

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<sup>5</sup> Available at <https://blog.ipleaders.in/advantages-disadvantages-public-interest-litigation-india/> (last visited May 21, 2020)

# LANDMARK SUPREME COURT JUDGMENTS

## 1. Supreme Court upheld that couples don't need to be married to live together.

In landmark case of “**S. Khushboo v. Kanniammal**”<sup>6</sup>, the SC held that a living relationship comes within the scope of right to life under Article 21 of the Constitution of India. The SC also stated that live-in relationships are permissible and the act of two major living together cannot be considered illegal or unlawful.

The Supreme Court held that live-in relationships were recognized by the Legislature and they had found a place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

## 2. Supreme Court recognized transgender people as the third gender

In recent year Landmark case of “**National Legal Services Authority v. Union of India**”<sup>7</sup> came into picture.

The Supreme Court recognized transgender as a third gender, proclaiming the community's right to equality and recognition by the Constitution. It present transgender with the right to legally self-identify as male, female or third gender and granted them protections and reservations in educational institutions and jobs that has been treated as socially and economically backward for thousands of years.

“The court provided legal recognition for the third gender while pointing out that insisting on Sex Reassignment Surgery (SRS) as a requirement for changing one's gender is illegal. As a community that has been discriminated against and disenfranchised for countless years, they directed the government to recognize transgender as a socially and economically backward class and provide them with

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<sup>6</sup> (2010) 5 SCC 600

<sup>7</sup> Writ Petition (Civil) No. 400 of 2012, India: Supreme Court, 15 April 2014, available at: [https://www.refworld.org/cases,IND\\_SC,5356279d4.html](https://www.refworld.org/cases,IND_SC,5356279d4.html) (last visited on May 21, 2020)

reservations in educational institutions.”<sup>8</sup>

### 3. Right to Privacy (2017)

Case: “**K. S. Puttaswamy v. Union of India**”<sup>9</sup>

A nine-member SC bench declared, once and for all, that the right to privacy is an intrinsic fundamental right under Article 21 of the Indian Constitution – protection of life and personal liberty. The original writ petition in the case for right was filed by Retired Karnataka High Court Judge KS Puttaswamy in 2012 in a stand against the government’s move to make Aadhaar cards mandatory – creating a central online database with the biometrics and personal details of over a billion people, which, realistically speaking, could easily be misused by a number of parties.

“While Aadhaar may have been at the core of this latest judgment, its effects go much further than that. At a time when Indians are in a state of fear about basic choices like what they eat, what they wear, and who they love, the passages offered by these judges in the pages of their verdict offer hope again. It can also now limit the intrusion of State agencies in an individual’s personal lives, but in today’s day and age, it is a law for the protection of personal data overseeing the collection and its use by private companies that is indeed the next step towards digital privacy.”<sup>10</sup>

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<sup>8</sup> Available at <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-in-recent-> (last visited on May 21, 2020)

<sup>9</sup> Writ Petition (Civil) No. 494 of 2012 (Sup. Ct. India Aug. 24, 2017)

<sup>10</sup> Available at <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-in-recent-times> (Last visited on May 21, 2020)

#### 4. Decriminalization of Homosexuality (2018)

Case: “**Navtej Singh Johar vs. Union of India Ministry Of Law**”<sup>11</sup>

“The Supreme Court held that the unequal treatment of LGBT individuals violates Article 14. It targeted people exercising certain choices and treated them as “less than humans” and encouraged prejudices and stereotypes accompanied by debilitating social effects. This violates Article 14, which is the very basis of non-discrimination. The Court acknowledged that all persons, including LGBTQI individuals, had the right to express their choices without any fear. It recognized same-sex sexuality as a normal variant of human sexuality.”<sup>12</sup>

The Court held that Section 377 violates human dignity, decisional autonomy and the fundamental right to privacy. Every individual has the liberty to choose their sexual orientation, seek companionship and exercise it within their private space. “This verdict is ground breaking for all those who have lived with concealed identities all their lives and a massive step forward towards redefining the meaning of democracy for India. This verdict will go down in history as a massive step towards achieving the true essence of equality.”<sup>13</sup>



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#### 5. Triple Talaq struck down.

Case: “**Mohd. Ahmed Khan vs. Shah Bano Begum and Ors**”<sup>14</sup>

The Supreme Court stated that there is no place for a law, this archaic, in our times, and it was high time our court recognized this. This increased the rights and status of Muslim women in the society. This gave hope to each and every women of the country that Indian Judiciary is their to protect any type of injustice towards the women of the society. This clearly shows the progressive nature of Indian Judiciary as in country like India which is more male dominating judiciary want to make females also equally powerful and standing strong in the society.

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<sup>11</sup> WRIT PETITION (CRIMINAL) NO. 76 OF 2016

<sup>12</sup> Available at <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/> (last visited on May 22,2020)

<sup>13</sup> Available at <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-in-recent-times> (Last visited on May 22, 2020)

<sup>14</sup> 1985 AIR 945

## CONCLUDING REMARK

While talking about the Indian judiciary and its powers features and whatsoever the most important question arises every time i.e. is Indian judiciary is dynamic & progressive in nature or rigid & regressive in nature?

We can answer this question only by looking at the working of the judiciary in past so many years. Yes this is true that long time ago the judiciary was partially rigid & regressive as it is not doing anything extra ordinary or say something historic to bring change in the society but by looking at the working of judiciary in present scenario it contradicts the thought that we all had for the judiciary.

In present scenario judiciary is not making only landmark judgments for the society like legalizing homosexuality which made a history in Indian legal system as it puts the equality factor above the moral grounds of the country which is a great and positive approach to a modern society. Likewise the judgment of Triple Talaq was a great initiative to uplift Muslim women in the society who were facing injustice for a long period of time.

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Similarly features of Indian Judiciary like Judicial Activism PIL system also makes the judiciary dynamic & progressive as these both is simple speedy methods of giving justice to the matters which interest the public in whole and for the betterment of the society. For e.g. Right to privacy judgment came due to the PIL filed in the Supreme Court. Therefore there are judgments, features etc. which proves that the Indian judiciary system is progressive in nature also, this approach of the Indian judiciary gradually became its reflection of a progressive judicial institution 'Progressive Thinking'.

It is designed to help our nation's diverse progressive community and articulate a common philosophical values framework to a wider public. The court has broadened the arena of human rights. The Indian judiciary has not confined its shielding umbrella to its citizens only but has offered the constitutional protection of life and liberty to non-citizens as well. By all these points we came to the conclusion that Indian Judiciary is Dynamic & Progressive in nature.

## REFERENCES

1. <sup>1</sup> Available at <https://www.outlookindia.com/magazine/story/india-news-70-years-of-indian-judiciary-opinion-the-courts-must-reform-so-that-they-can-preserve-seven-must-dos/302680> (last visited on may 20, 2020)
2. <sup>1</sup> Available at <https://edupediapublications.org/journals> (last visited on May 20, 2020)
3. <sup>1</sup> Available at <http://www.yourarticlelibrary.com/essay/judiciary-in-india-11-salient-features-of-indian-judiciary/40371> (last visited on May 20, 2020)
4. <sup>1</sup> Available at <https://edupediapublications.org/journals> (last visited on May 20, 2020)
5. <sup>1</sup> Available at <https://blog.iplayers.in/advantages-disadvantages-public-interest-litigation-india/> (last visited May 21, 2020)
6. <sup>1</sup> (2010) 5 SCC 600
7. <sup>1</sup> Writ Petition (Civil) No. 400 of 2012, India: Supreme Court, 15 April 2014, available at: [https://www.refworld.org/cases,IND\\_SC,5356279d4.html](https://www.refworld.org/cases,IND_SC,5356279d4.html) (last visited on May 21, 2020)
8. <sup>1</sup> Available at <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-inrecent-> (last visited on May 21, 2020)  
BURNISHED LAW JOURNAL
9. <sup>1</sup> Writ Petition (Civil) No. 494 of 2012 (Sup. Ct. India Aug. 24, 2017)
- 10.<sup>1</sup> Available at <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-in-recent-times> (Last visited on May 21, 2020)
- 11.<sup>1</sup> WRIT PETITION (CRIMINAL) NO. 76 OF 2016
- 12.<sup>1</sup> Available at <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/> (last visited on May 22,2020)
- 13.<sup>1</sup> Available at <https://homegrown.co.in/article/8723/11-landmark-judgments-by-the-indian-supreme-court-in-recent-times> (Last visited on May 22, 2020)
- 14.<sup>1</sup> 1985 AIR 945



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