

Topic: JUDICIAL PROCESS IN INDIA

I am presenting this paper to explain what this term judicial process denotes and what the various Legal Luminaries, likes of Cardozo, Former CJI, Ahmadi, Friedman and likes thinks of judicial process. It also interesting to see that how the judicial process has taken a leap forward from first baby steps, which it started taking immediately after independence in 1947. In this endeavor we will also discuss the various Leading Judgments which formed the path of judicial process in India.

To understand what is judicial process in India. We must first understand what is Justice and the meaning of judicial and Process separately. Justice is an irrational term. In laymens term it means absence of fear it comes with lack of arbitrariness, freedom of liberty and equality and equal asses to quick affordable satisfactory credible dispute settlement forum. Justice in nut shell means rule of law.

DEFINING JUDICIAL PROCESS:

Judicial Means:

Relating to administration of justice or the function of a judge."

Process Means

Series of actions directed to some end or continuous action or series of changes and to handle according to a routine procedure.

JUDICIAL PROCESS MEANS:

Judicial And Process read together means everything done by judge in the process of delivery of justice. It basically confines itself to the study of "is" to "ought" of the law.

Judicial process is basically "whole complex phenomenon of court working"

By now we have understood what is Judicial Process . Now we move forward to see what is the perspective of various Legends in the field of law in this regard. Anything said about the term is incomplete in this area of law without talking about Benjamin Cardozo.

In *The Nature of the Judicial Process*, Benjamin Cardozo, who later served on the Supreme Court of America, accepted the fact that judges do make law. However, he stated that:

"He (the judge) legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of the interstices cannot be staked out for him on a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the performance of an art."

Cardozo, J. further states that justice, according to law means:

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains."

Jackson, J.

"we are final, not because we are infallible. we are infallible because we are final."

W. Freidmann said

"Justice is an irrational concept".

Legal Maxim

Justice delayed is justice denied.

The case lands in a court and is brought to a logical end and when the justice is delivered judges adopt various methods to deliver justice and lay down several principles for expeditious delivery of justice. Judges follow certain methods but over time many Supreme court has also laid down certain principles which are followed by lower judiciary.

In modern democracies, State is a protector of the public's rights and liberties and provides justice through its third pillar i.e. judiciary. Therefore, judiciary is the main source of judicial process and it is the life and blood of justice. This integral is based on "corrective justice" of law. It demands the uniformity in the legal system. Judicial process is important weapon and paramount norm of justice for strengthening the uniform legal integrals.

The common law countries like England recognized judicial process as rule of practice rather than rule of law, because rule of practice is essential requirement in the hierarchical system of the Courts. This system demands the uniformity in the legal integrals. Judicial process should be followed by the Courts because it marks the path of justice.

In Indian Context Hon'ble Former CJI of India, A.M. Ahmadi said:

".....to understand judicial Process in India we must understand why the nature of the judicial process in India has undergone a metamorphosis; the reasons underlying the expansion of the scope of judicial review and the legitimacy of such a response; and the need for, and factual reality of, what has euphemistically been called "judicial legislation".

H. L. A. Hart also accepted the judicial process as binding and authoritative force on lower Courts under the rule of recognition. He asserts that Acts of Parliament, and presumably also judicial decisions, have the

force of law because Judges, officials and private citizens recognize that primary rules are to be identified by reference to certain criteria, one of which is the enactment by the legislature makes law, and another of which would state that certain parts of certain judicial pronouncements bind other Courts in the Court's hierarchy. In this way Hart recognized the judicial precedent as process of the Court is binding in nature on the lower Courts on the same manner as legislation.

RELEVANT PROVISIONS RELATING TO JUDICIAL PROCESS IN CONSTITUTION OF INDIA

Article 14 casts a duty on the state which also includes judiciary to provide justice by giving equal protection of laws to all its citizens. But it has been seen that on many occasions judiciary has failed to provide the justice according to the provisions of constitution and statutes.

In the hierarchical system of the Courts in India our Constitution specifically lays down the proposition of judicial process in Art. 141 which says that "the law declared by the Supreme Court shall be binding on all Courts within the territory of India."

Article 225 gives jurisdiction to the existing High Courts and gives the power of administration of justice in the Court, including any power to make rules of Court and to regulate the sitting of the Court and of members thereof sitting alone or in Division Courts.

Article 256 gives a supervisory power to the union over state for compliance of laws, and

Article 356 read with Article 365 is the consequential result for non compliance of constitutional obligations by the state.

The Supreme Court acting within the 4 walls of the constitutional provisions sometimes acted in its anxiety to protect human rights, at times undertaken the roles of both organs of the government, the legislature and the executive. The Constitution does not confer such omnipotent power on the Judiciary. Judiciary has invented novel forms of action to provide relief

to the poor, underprivileged, downtrodden sections of the society. Era of epistolary jurisdiction is emerging. Epistolary jurisdiction allows access to justice to the poor and the weaker section of the society. The court entertains a letter as writ petition ignoring all procedural norms and technicalities. The epistolary jurisdiction is a new strategy adopted by the judiciary for protection of the human rights of the vulnerable sections of the society.

Now we move on to discuss few Judgments which set high standards of Judicial Process in India .

CASE LAW:

1. Maneka Gandhi's case

AIR 1978 SC 598

Supreme Court held that any state action affecting life and liberty of a person has to be 'right, just, fair and reasonable and not arbitrary fanciful and oppressive'.

Thereafter, there appeared era of progressive judicial activism for protection of human rights. In the post-Maneka period court's activism blossomed and flourished. A new trend was set in Maneka Gandhi's case.

2. In Olga Tellis v. Bombay Municipal Corporation

[1985] 2 Supp SCR 51

One Journalist of Bombay claimed relief against demolition of hutments of pavement dwellers by the Municipal Corporation of Bombay. His letter to the Supreme Court was treated as writ petition and the court granted interim relief to pavement dwellers.

3. Bandhua Mukti Morcha v. Union of India

A.I.R. 1984 S.C. 802.

An organization dedicated to the cause of release of bonded labours informed the Supreme Court through a letter that there were a large number labours working in the stone-quarries situated in Faridabad District under inhuman and intolerable conditions and many of them were bonded labours. The court treated the letter as a writ petition. The court after inquiry ordered release and rehabilitation of bonded labours.

4. Rudal Shah v. State of Bihar

AIR 1983 SC 1086.

An instance of breakthrough in Human Rights Jurisprudence. The Court granted monetary compensation of Rs.35,000 against the Bihar Government for keeping a person in illegal detention for 14 years even after his acquittal. The Court departed from the traditional approach, ignored the technicalities while granting compensation.

5. M.C.Mehta v. Union of India

AIR (1987) 4 SCC 463

The Supreme Court held that the power of the Court under Article 32(1) is not only injunctive in nature, that is, preventing the infringement of a fundamental right, but it is also remedial in scope. The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. The 'appropriate cases' are those cases where the infringement of fundamental right is gross and patent. It is considered unjust to ask the victim to go to the civil court for claiming compensation as it may take many years for the victim to get relief in a civil court.

6. Hussainara Khatun v. State of Bihar

A.I.R. 1979 S.C. 1377.

Reiterates the right of every accused person who is unable to engage a lawyer due to poverty, indigence or incommunicado situation, to have free

legal services provided to him by the State for obtaining bail as well as for defence at the time of the trial. The court added a further protection to this right by holding that if free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21.

7. Francis Coralie Mullin v. Administrator, Union Territory of Delhi

(1981) 1 SCC 608:

The Supreme Court, while elaborating the scope of the right guaranteed under Article 21 observed in that right to life cannot be restricted to mere animal existence. It means something more than just physical survival. Right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings

8. in D.K.Basu v. State of W.B.

AIR 1997 SC 610

The Apex Cour laid down 11 requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf. The requirements wereheld to be flowing from Articles 21 and 22(1) of the Constitution. In its anxiety to protect the interests of the arrested person, the court has exhibited an instance of judicial hyper-activism rather judicial waywardness.

9. Vishaka v. State of Rajasthan.

AIR 1997 SC 3011

In this case, the Supreme Court has virtually enacted a piece of legislation on the ground that there is a vacuum in the legislative field of sexual harassment of working women. There is a paragraph similar to the statement of objects and reasons. There is a definition clause and there

are 12 points similar to 12 sections. The Supreme Court laid down some guidelines and norms which are directed to be treated as law. It is submitted that these guidelines cannot be treated as laying down a precedent under Article 141, but this should be treated as unauthorized ad hoc legislation by the judiciary. Interpreting certain provisions of the existing law and laying down certain principles in the form of the precedent is what is envisaged under Article 141 and not ad hoc legislation by the judiciary when there is vacuum in the field. Vishaka is an example of judicial trespass in legislative domain.

10. Additional District Magistrate of Jabalpur v. Shiv Kant Shukla

AIR 1976 SC 1207

Popularly known as the Habeas Corpus case, a bench of five senior most judges of Supreme court ruled in favour of state's right for unrestricted powers of detention during emergency. Justices A.N. Ray, P. N. Bhagwati, Y. V. Chandrachud, and M.H. Beg, stated in the majority decision:

(under the declaration of emergency) no person has any locus to move any writ petition under Art. 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention.

Recent important cases

Among the important pronouncements of the Supreme Court post 2000 are as follows :

1. I.R. Coelho v. State of Tamil Nadu (Judgment of 11th January, 2007).

A unanimous Bench of 9 judges reaffirmed the basic structure doctrine. An authority on the Indian Constitution, former Attorney-General Soli Sorabjee commented on the judgment,

"The judgment in I.R. Coelho vigorously reaffirms the doctrine of basic structure. Indeed it has gone further and held that a constitutional amendment which entails violation of any fundamental rights which the Court regards as forming part of the basic structure of the

Constitution then the same can be struck down depending upon its impact and consequences. The judgment clearly imposes further limitations on the constituent power of Parliament with respect to the principles underlying certain fundamental rights. The judgment in Coelho has in effect restored the decision in Golak Nath regarding non-amenability of the Constitution on account of infraction of fundamental rights, contrary to the judgment in Kesavananda Bharati's case.

2. M. Nagaraj and others Vs. Union of India.

2006 (008)-SCC-0212-SC

To conclude, the theory of basic structure is based on the concept of constitutional identity. The basic structure jurisprudence is a pre-occupation with constitutional identity. In Kesavananda Bharati Sripadagalvaru and others v. State of Kerala and another (1973) 4 SCC 225, it has been observed that 'one cannot legally use the constitution to destroy itself'. It is further observed 'the personality of the constitution must remain unchanged'. Therefore, this Court in Kesavananda Bharati (1973) 4 SCC 225, while propounding the theory of basic structure, has relied upon the doctrine of constitutional identity. The word 'amendment' postulates that the old constitution survives without loss of its identity despite the change and it continues even though it has been subjected to alteration. This is the constant theme of the opinions in the majority decision in Kesavananda Bharati (1973) 4 SCC 225. To destroy its identity is to abrogate the basic structure of the Constitution. This is the principle of constitutional sovereignty. Secularism in India has acted as a balance between socio-economic reforms which limits religious options and communal developments. The main object behind the theory of the constitutional identity is continuity and within that continuity of identity, changes are admissible depending upon the situation and circumstances of the day....."

CONCLUDING REMARKS

Judiciary as a state within the meaning of Article 12 is duty bound to do complete and Restitutive justice under Article 14 read with Article 142, but on several occasions it has acted as dispute settlement forum. It is also duty bound under section 57(1) of the Indian Evidence Act 1872 to take judicial notice of all existing laws having force , whether it is mentioned in the plaint or not but judges deliberately fails to take notice of this section which proves their incapacity and misconduct to deal with the cases rendering them liable for punishment under section 166 IPC and for removal from the post by parliament , but still the legislature has fails to set an example of punishment by virtue of removal of any high/supreme court judge

Under constitutional power arrangement the work of judiciary is to say authoritatively what the law i.e. policy is controlling. Provisions of Article 142 and 226 of constitution, Section 482 CrPC and 151 of CPC though gives inherent power to the supreme court and high court to render complete justice, it means only to fill the gap within the parameter of the constitution and statute and it does not mean to supersede the constitution or statute as it did in Ramjawaya Kapoor and S.C Advocates on Records case.

It can be concluded that judicial process in India has moved in the right direction. The move is progressive in nature and has benefited the masses immensely and all credit goes to judiciary. Whether we take the environmental jurisprudence or developing the concept of PIL to acting on the initiative of NGO's or taking suo moto notice of the problems faced by citizens in day to day life.

