
IMPLEMENTATION OF JUDGMENTS ON HUMAN RIGHTS

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I have been an admirer of the Supreme Court of India for two decades, and perhaps I have been too optimistic. There are critics who claim I am too favourable to the Court, and others who say I am too critical.

The post-emergency jurisprudence of the Supreme Court developed judicial activism in two ways. First, it started **expanding rights** in a positive manner; and the whole concept of rights emerged after Maneka Gandhi, focused on Art. 21 and Art. 14. Secondly, it started **facilitating access**. In these two ways, the Supreme Court has gone ahead.

The Supreme Court is today looked upon as defender of the rule of law. When in Bangalore, I saw journalists of *The Hindu* being chased by Tamil Nadu police, there was a feeling that the Supreme Court would come to their rescue. In the Gujarat Election case, the Supreme Court decided when the election could be called. When Khare CJ lambasted the state government of Gujarat for not protecting the minorities, the Supreme Court expressed anguish on behalf of the entire people, and when that is done, it certainly boosts up the morale of all those who believe in the rule of law.

The Supreme Court has recognised many new rights, for example, regarding gender justice, livelihood, shelter, etc.

(Positive rights) These are the positive aspects but there are also negative aspects or failures of the Supreme Court. These are institutional shortcomings, and certain inherent limitations. to its work. When the Court establishes positive rights, such as in the right to shelter, or the right to a healthy environment or right to health care, it does not have the resources to make them a reality meaningful. In *Unnikrishnan*, the Supreme Court recognised the right to education as a fundamental right. But then the right to education did not become a fundamental right since 1993, but this happened only with the 86th Amendment which was passed in 2002. This means that the Supreme Court decision could only be treated as a declaration but did not become the law. In other words, the Supreme Court can say that there's a right to education, but it can't establish schools and teachers or put up blackboards. Though in *Ratlam Municipality*, Krishna Iyer J. pointed out that a municipality must provide for drainage and public hygiene, despite lack of money, have our cities and towns improved? Do they not continue to be dirty? Even Bombay or Delhi are not clean and healthy. Even where the Supreme Court lays down the law, the reality is different, as these rights are not capable of being enforced through the judicial process.

(Systemic Changes) On reading decisions such as *Hussainara Khatoon* regarding under trial prisoners, any foreigner reading the Indian decisional law would be very much impressed. But the reforms needed to expedite justice are not in the hands of the judiciary. In spite of *Sunil Batra*, there have been no prison reforms, and in spite of *DK Basu*, custodial deaths still occur. Where systems need to be changed, the Supreme Court becomes helpless.

The Supreme Court gives directions. In one case, J. Verma said that they have the force of law (*Visakha v. Rajasthan*). It seems that directions have become nothing but platitudes. In *Laxmikant Pandey*, the directions were relatively successful, as voluntary agencies pushed for their implementation. But in *Vishakha*, if they are not effective, is there any alternative to filing a contempt suit? Can every women's group do this in every case? There's no other remedy. The legislature has not passed a law on sexual harassment or on inter-country adoptions.

In *India v Prakash Hinduja* 2003 SCC 2612, the Supreme Court held that even if its directions are not obeyed, this will not amount to contempt of court. The Supreme Court has given directions on how many consumer courts have to be appointed in different districts, the extent of compliance required etc. Have these directions been implemented?

(Orders in Rem) Traditional judicial process has always been *in personam*. But the Supreme Court has now started saying that those who are not parties are also bound by their decisions. For example, in *Gopi Arora*, the Court said that the decision in *Jaganathan* (aqua farm culture) was binding even on those who had not been parties to *Jaganathan*. But how are decisions to be disseminated? If there is ignorance about statute law, what is the likelihood of the public in general being informed about such judgments? As a consequence, bandhs are declared unconstitutional and yet are taking place. Now someone has filed a suit for damages for being affected by a bandh.

Once something is recognised as a fundamental right, violation of a fundamental right should also be seen as a tort. The order by Justice AP Shah of the Bombay High Court, granting compensation in *Salman Khan's* case was seen as populist. However, a non-conservative approach such as this has helped in many cases. This was quite innovative and non-conservative but rendered effective justice.

The Supreme Court has in respect of many of its acts 'transcended borders and enforced limits' (to quote the title of my recent book). It has given orders of compensation, specific directions and continuing mandamus. And yet, as Arun Shourie notes in his book *Courts and Judgments*, why does the same case keep coming back before the Court?

The Courts are obeyed because large numbers of people still feel that it is their duty to obey. This respect is the source of the legitimacy of the Court. When it loses this respect, it will lose legitimacy. This will happen if it fails to do social justice. Courts are not obeyed because they can punish for contempt. That happens in a minority of the cases.

In *T.M.A. Pai Foundation* case private educational institutes wanted all the autonomy and the State wanted to escape from its responsibility. The parents and students were not represented. In *Gopi Arora* and *Jaganathan*, a notice was published in the papers inviting interventions but this was not done in *T.M.A. Pai Foundation* case. Why?

You are all judges and lawyers. I am a teacher of law, researching and studying law. I have been a student of the courts, including the Supreme Court of India, and am mostly concerned with the legitimacy of the courts. The Supreme Court is the last bastion for the protection of rights. Today, in India, all constitutional authorities such

as the Supreme Court, the Election Commission, the NHRC and the President, which are not elected, enjoy greater legitimacy than the elected authorities such as the Parliament, the Government or others.

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