

## LIVING TREE DOCTRINE: ROLE OF INDIAN JUDICIARY AGAINST CONSTITUTIONAL SILENCE IN INDIA

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### ABSTRACT

The Constitution of India serves as the basic norm of the land for determining the validity of the entire normative system of the country. As such, it becomes necessary that the Constitution be a reflective of the changing needs of the time. The Judiciary in India has been entrusted with the powers of Judicial Review while the Supreme Court of India acts as the custodian of the Indian Constitution. In such a situation, it becomes necessary for the Judiciary to interpret the Constitution in a broad manner. Here, the Doctrine of Living Tree finds relevance, for making the Constitution survive against the newly emerging issues both at domestic as well as at the International levels. The Supreme Court of India more or less has also applied this doctrine although not directly but in most cases indirectly since 1977 which made it possible for the Constitution to become wide enough to include new dimensions of jurisprudence.

The Judiciary in India has made it possible for the Constitution to make a noise over issues on which it would have remained silent if allowed to be interpreted in the same manner as it was intended by the framers in the strict sense. Thereby the Judiciary has allowed a liberal interpretation of the Constitution to make it relevant according to the changing needs.

This Article will thereby focus on analysing the role played by the Indian Judiciary in making the Constitution survive across time in order to have an insight into the efficiency of such role.

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## INTRODUCTION

As per Kelsen, there must exist in every legal system a Basic Norm, which he calls as Grundnorm that shall determine the validity of the normative system of a particular country. So, as per this view, the Constitution of India may be regarded as a Grundnorm in India from which the entire legal system of the country derives its validity. The Constitution of a country is important because it provides for individual freedom and maintains the check and balances amongst the different organs of the government in a country.<sup>1</sup> Therefore, the Constitution of a land must be up-to-date for running the Rule of Law of a particular country. In India, the Judiciary being one of the most vital organs of the Government has been entrusted with the function of defending the Constitution and to make it dynamic in the course of governance. As such, the Indian Judiciary has been performing its role in order to give recognition to the Living Tree Doctrine in India and to make the Constitution relevant in dealing with contemporary issues that are emerging before it.

## ORIGIN OF THE LIVING TREE DOCTRINE

The Living Tree Doctrine was first recognized in the case of *Edwards v. Canada*<sup>2</sup> (Attorney General) popularly known as *Persons Case* where Viscount Sankey stated that the British North American Act planted a living tree in the Constitution on Canada that is capable of growing and expanding in its natural limits. And this came to be known as Doctrine of Progressive Interpretation. This rule made it possible to interpret the Constitution in a way that will reflect the changing needs of the society at large, rather interpreting it only to the extent of the intentions of the framers whose intellectualities more or less might be reflective of a limited knowledge over the needs of that time when the Constitution was actually brought into force.

It is evident that with the changing of time, human civilization is likely to change and progress along with it new issues and problems will emerge. While

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<sup>1</sup> Geeta Chandresekhar, 'Why is Constitution Important' (2019) Quora, available at-<https://www.quora.com/What-is-the-Importance-of-the-Constitution> (last accessed 6 February 2019).

<sup>2</sup> *Edwards v. Canada*, (1930) A.C. 124.

the ongoing process of greater integration of the world community due to globalization will make it more necessary to enlarge the scope of the Constitutions of different nations to give effect to newly emerging international obligations. As such, it is necessary to interpret the Constitution of every nation in a much broader way to make its scope large to include new changes in the Country's Rule of Law or else the grundnorm may become out-dated, which will further invalidate the entire normative system of a country. And India is not an exception to it.

### **LIVING TREE DOCTRINE AND INDIAN CONSTITUTION**

Although in India, very rare expression was given to the Doctrine of Living Tree, but the framers of the Constitution of India were aware about the need of making a flexible Constitution to cater to the needs of the changing times in future, for which they included Article 368<sup>3</sup> which empowers the legislatures of the land to amend the Constitution whenever needed subject to necessary conditions as specified in the said Article. This Article provided for two types of amendments, via- first where the Parliament is made enable to amend the Constitution by a simple majority and second where besides simple majority of the Parliament, one-half majority of the State Legislature is also needed. In addition, as of January 2019, 103 amendments have been made to the Constitution of India,<sup>4</sup> which signifies the extent of flexibility of the Constitution.

At the same time, the Indian Judiciary has also given a broad interpretation and has extended the scope of the Constitution by including new concepts and suggesting new amendments to the Constitution. Since the Supreme Court of India has been entrusted with the role of being the Custodian of the Constitution, it has therefore been able to provide the widest possible interpretation to various provisions of the Constitution in deciding several cases before the Court.

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<sup>3</sup> INDIA CONST. 1950.

<sup>4</sup> Legislative Department, 'Amendment Acts', Government of India, available at- [legislative.gov.in/amendment-acts](http://legislative.gov.in/amendment-acts) (last accessed 9 February 2019).

## ROLE OF INDIAN JUDICIARY

Indian Judiciary has actively played an important role in defending the Constitution; however, the extent of Judicial Activism cannot be left unscrutinized. The Role of Indian Judiciary is mainly to interpret the laws of the land and to review them to check the validity of those laws as per the Philosophy of the Constitution for providing justice to their subjects and to protect the Rights of the Citizens as per provided by the Constitution. However, while doing so the Judiciary, especially the Supreme Court has provided different interpretations at different times to the Constitutional provisions even altering its own decisions. I will therefore try to analyse some of those vital decisions that have been provided by the Indian Judiciary while interpreting the Constitution, where the Living Tree approach or the Progressive Interpretation Doctrine has been applied to make our Constitution dynamic.

The biggest and the most controversial role was played by the Judiciary during the initial years after the Constitution of India came into force which the Indian Legal History will remember forever. It was the time when the newly independent India was trying to build a prosperous society based on the egalitarian distribution of resources, which demanded abolition of some then existing social evils like the Zamindari System. With this objective, various state governments across the country passed legislations like- Abolition of Zamindari Acts, Tenancy Reform Acts and Land Ceilings Acts. However, the Judiciary invalidated many of such laws on the ground of them being violating the Right to Equality and Right to Property, which occupied the position of Fundamental Rights under the Indian Constitution. This made the Parliament to bring the very First amendment to the Constitution whereby Article 31(A) and 31(B) was added along with a new schedule- Ninth Schedule which provided protection to certain laws passed by the Parliament from Judicial Review.<sup>5</sup> But, again this amendment was held invalid by the Supreme Court (SC) giving more prominence to Fundamental Rights and ignoring the Directive Principles of State Policy,<sup>6</sup> in short one can easily conclude that such

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<sup>5</sup> The *Constitution (First Amendment) Act*, 1951.

<sup>6</sup> INDIA CONST. part IV.

interpretation of the Judiciary gave wider recognition to individual Rights rather than the concept of Welfare State. Further, it gave a very narrow interpretation to the definition of law under Article 13(2)<sup>7</sup> and excluded the Constitutional Law from the scope of law under it. However, in the *Golaknath case*<sup>8</sup> the SC held that the Parliament can amend even the Constitution but cannot amend the Fundamental Rights and thereby the Constitutional Law was also included within the meaning of law under Article 13(2). The SC defended the Fundamental Rights to its widest possible extent and even went on invalidating some other laws in *Bank Nationalization Case*<sup>9</sup> and *Privy Purse Case*<sup>10</sup> on the ground of them to be violating Fundamental Rights via- Right to Equality, Right to Carry on any Business, Trade or Profession and Right to Property.<sup>11</sup>

In a subsequent case<sup>12</sup> in 1973, Constitutional 24<sup>th</sup> amendment, that introduced Article 31(C) in the Constitution and where Constitutional amendments were kept outside the scope of Judicial Review, was challenged before the SC, the Court this time however giving partial recognition to the decision of *Golaknath Case* upheld that the Parliament has the power to amend any part of the Constitution and even the Fundamental Rights but not the Basic Structure of the Constitution. The period saw huge conflicts between the organs of the government in India, or in other words between judicial activists and the political activists. There were arguments from both sides where one defended the Constitution as it is while the other opted for progressive development and thereby promoting changes into the Constitution for giving validity to progressive laws.

The 42<sup>nd</sup> amendment<sup>13</sup> of the Constitution also came under controversy, which limited the power of Judicial Review in over Constitutional Amendments. This Act was also held to be invalid in *Minerva Mills Case*.<sup>14</sup>

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<sup>7</sup> *supra* note 4.

<sup>8</sup> *Golaknath v. State of Punjab*, (1967) AIR 1643.

<sup>9</sup> *Rustom Cavasjee Cooper v. Union of India*, (1970) AIR 564.

<sup>10</sup> *H.H. Maharajadhiraja Madhav Rao v. Union of India*, (1970) AIR 530.

<sup>11</sup> INDIA CONST. arts. 14, 19(1)(f) and 31.

<sup>12</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>13</sup> *The Constitution (Forty-second Amendment) Act*, 1976.

<sup>14</sup> *Minerva Mills Ltd and Ors v. Union of India and Ors.*, (1980) SC 1789.

Similar stand was also adopted in plenty of cases that came before the SC, via- *Indira Gandhi v Raj Narain*,<sup>15</sup> *Waman Rao v. Union of India*,<sup>16</sup> *Bhim Singh v. Union of India*.<sup>17</sup> etc.

In the later years the opinion of the Judges seemed to have been divided based on the conservative approach for defending the Constitution according to the actual letters of it and on the other side the progressive approach who favoured for greater democracy and more flexibility of the Constitution. Both politics and judiciary seemed to have influenced each other's activities which even became evident by the controversy on the appointment of the Chief Justice of India during the reign of Mrs. Indira Gandhi as the Prime Minister of India. However, during this entire period, it has been found that all the organs of the Government especially the Judiciary and the Legislature were trying to limit each other's powers and functions more than trying to defend or enlarge the Constitution.

The biggest outcome was the Doctrine of Basic Structure, but this concept of basic structure besides giving power to the Indian Parliament to amend the fundamental rights, secured power of the Judiciary to interfere in the process of legislature in the name of safeguarding the Fundamental Rights of the citizens, since the scope of basic structure is increasing day by day. The judiciary in the initial years seemed to have dedicated its efforts for defending the constitutional morality in the literal sense of the Constitution rather than enlarging the scope of it for giving recognition to any new concepts, thereby limiting the domain of it. This period faced some serious challenges to the country's rule of law and the concept of check and balance between the different organs of the government. However, besides all these India managed to survive as one of the largest democracies of the world, while the role of judiciary significantly changed after 1977.

After the emergency was over, the political unsettlement in the country became quite stable and fortunately it brought solutions to some of the major questions on separation of powers, and the role of each organ of the

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<sup>15</sup> *Indira Nehru Gandhi (Smt) v. Raj Narain And Anr*, (1975), AIR 1590.

<sup>16</sup> *Waman Rao And Ors v. Union of India And Ors.*, (1982) SCC 362.

<sup>17</sup> *Bhim Singh v. Union of India*, (2010) INSC 358.

government became quite clear although controversies arose from time to time but their rates were comparatively low. This period was marked with several changes both at domestic as well as at global level which brought into existence new economic reforms, new concepts of human rights, cross-border sovereign political liabilities, environmental jurisprudence, etc. which made it necessary to give effect to such changes in the Constitution also. And in this process the Indian Judiciary did play a vital role while adjudicating on such issues before it. Some of the greatest changes that the Indian Judiciary brought can be analysed as below.

### ***Public Interest Litigation (PIL)***

Right to Constitutional Remedies was held to be the backbone of the Indian Constitution by B.R. Ambedkar, since it gave the citizens of India the Right to defend their fundamental rights against their violation before the Court of Law. However, prior to the emergence of the concept of PIL only the victims were entitled to approach the Judiciary, under the rule of *locus standi*. But the introduction of the concept of PIL brought a revolutionary change to the country's Rule of Law. Explaining its importance, the SC in the case of *S.P. Gupta v. Union of India*<sup>18</sup> held that poverty, helplessness, any economic, social or other disabilities shall not prohibit any person from getting access to justice, and if any violation of constitutional/legal right takes place against such person or if any wrong is done to such person then any member from the community may appear before the Court representing such person for his/her relief. The Doctrine of Living Tree may not find any concrete expression in this activity of the Indian Judiciary, but no doubt this has extended the scope of Article 32 and 226 of the Constitution, whereby the Right to Constitutional Remedies has now been made available even to the most disadvantageous sections of the society who themselves might not be able to appear before the Court in person. Further, since India is a poverty-stricken country it made access to justice possible for all thereby giving widest interpretation to the Constitution of India.

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<sup>18</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

### ***Right to Life***

If any part of the Constitution has been given the widest interpretation by the SC, then it's Article 21, which provides every person the Right to Life or Personal Liberty subject to the condition that this Right is limited to procedures established by law. The SC while interpreting this Article, provided that the phrase "procedures established by law" shall mean procedures that are only reasonable and just<sup>19</sup>. Thus, it provided a clarification to a most vital part of the Constitution that will have a far-reaching impact. This small Article has been broadened significantly by the SC to include several rights, via- Right to Shelter, Rights to Privacy, Right to Free Legal Aid, Right to Pollution Free Water and Air,<sup>20</sup> Right to Clean Environment,<sup>21</sup> Protection against Hazardous Industries,<sup>22</sup> Right to Free Education upto the age of 14 years,<sup>23</sup> Right to Livelihood<sup>24</sup>, Right to Speedy Trial<sup>25</sup> etc. All these Judgments of the Indian Judiciary have provided scope for creating a Constitutional voice over issues on which initially the Constitution was silent, thereby expanding the ambit of it to make it dynamic and worthy of living across the changing time.

Further, conflicts were even seen within the Indian Judiciary about the meaning of this Article. The greatest conflict was experienced over the issue that whether Right to Life includes Right to Die. It was initially held in a leading case<sup>26</sup> that Right to die comes within the ambit of Right to life and thereby struck down Section 309 of Indian Penal Code as unconstitutional. Later, however in a subsequent case<sup>27</sup> this ruling was overturned and Right to die was held as non-inclusive of Article 21 and upheld the validity of Section 309 of IPC. Finally, in *Common Cause Case*,<sup>28</sup> the SC legalized passive euthanasia

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<sup>19</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Gopalanachari v. Administrator, State of Kerala*, AIR 1981 SC 674; *Francis Coralie Mullion v. Union Territory of Delhi*, 1981 Cri LJ 306; *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 108.

<sup>20</sup> *BL Wadhera v. Union of India*, AIR 1996 SC 2969; *Indian Council for Enviro-Legal Action v. Union of India*, 1996 AIR 1446.

<sup>21</sup> *MC Mehta v. Union of India*, AIR 1987 SC 1086.

<sup>22</sup> *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

<sup>23</sup> *JP Unnikrishnan v. State of Andhra Pradesh*, 1993 AIR 217.

<sup>24</sup> *Madhu Kishwar v. State of Bihar*, (1886) 5 SCC 125.

<sup>25</sup> *Common Cause v. Union of India*, 1996 (4) SCC 33.

<sup>26</sup> *Maruti Shripathi Dubal v. State of Maharashtra*, Bom CR (1986) BOMLR 589.

<sup>27</sup> *Gian Kaur v. State of Punjab*, AIR 946 SCC (2) 881.

<sup>28</sup> *Shanbaug v. Union of India & others*, (2011) 4 SCC 454.



and also made living wills legal. This was a historic revolution brought about by the SC in recent times to the country's Rule of Law. This shows that how the Indian judiciary plays a vital role in making the Constitution of India broader and dynamic even to the extent of changing the very literal meaning of the Constitution to give recognition to the changing demands of the society.

### *Environmental Jurisprudence*

It was only in the second half of the 20<sup>th</sup> century that humanity realized the devastating impacts of their anthropogenic activities over the Ecosystem, for which it started framing principles to determine the responsibilities both at International as well as domestic levels to protect the environment. The first of such broad international initiative was the Stockholm Declaration in 1972 where the world community came together to accept some voluntary contributions to achieve the common goal of safeguarding the environment and utilizing the nature in a sustainable manner. India also gave recognition to such international obligations and amended the Constitution and entrusted responsibilities on both the State and the citizens to safeguard the nature and gave birth to the Environmental Jurisprudence in India as per demands of the changing time. However, the Judiciary too played a very active role in this regard and maintained the living nature of the Constitution by elaborating the meaning of those provisions from time to time. The SC played a vital role in implementing the internationally accepted principles and making them Constitutional in India. These principles included- Public Trust Doctrine, Polluter Pays Principle, Precautionary Principle, Doctrine of Strict and absolute liabilities, Inter-generational and intra-generational (sustainable development), Exemplary Damages Principle, etc.<sup>29</sup> The SC even went to the extent of issuing directions to the executive for implementing these principles and even constituted its own committees to decide over various issues related to such matters. The Indian judiciary in fact extended the scope of Fundamental Rights to give recognition to the Environmental Justice in India. All these activities of the judiciary in India widened the ambit of the Indian Constitution and enhanced the living spirit of it.

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<sup>29</sup> *Ratlam Municipal Corporation v. Vardichand*, AIR 1980 SC 1622.

### ***Child Rights***

Several provisions of the Constitution of India like Article 15(1), 23, 24, 39(e), (f), 42, 45 and 47 also speak about protection of Child Rights in India. These provisions provided the Indian Judiciary the opportunity to play a creative and dynamic role in promoting Child Rights in India. The Judiciary referred to International rules in this matter to widen the meaning of these provisions of the Constitution. For instance, SC applied the provisions of Article 3, 27(1), 31(1) and 36 of the Convention on Rights of Child in the case of *Bandhua Mukti Morcha v. Union of India*.<sup>30</sup> The Indian Judiciary provided that primary education of children at large and especially of the weaker and the poverty-stricken children in particular as fundamental rights. Further, it held that it's the Fundamental Right of the children in India to be free from slavery, bonded labour, pornography, poverty, and such other similar inhuman legacies. Furthermore, the SC referred to Article 12(b), 3, 13, 14 and 15(2) from the Convention on Elimination of All forms of Discrimination Against Women (CEDAW) to protect Women Rights in the case of *C. Maasilani Mudalian v. Idol of Sri Swamynathswamy*,<sup>31</sup> whereas Article 2(c) of CEDAW allowed the Court to breathe new life into the Indian Constitution.

### ***Human Rights***

In *ADM Jabalpur case*<sup>32</sup> the SC recognized the Fundamental Rights under the Constitution of India as the basic Human Rights thereby making the Constitution reflective of the various philosophies of human rights promoted by the United Nations' Declaration on Human Rights. The SC went on classifying the Fundamental Rights into two categories, via- those which are specifically mentioned in the Covenant on Civil and Political Rights as well as in the Indian Constitution as Specified Fundamental Rights and other Fundamental Rights and this division made the Indian Constitution compatible with that of the Covenant. The SC further held in the case that the Rights which are not specifically enumerated with the literal meaning of the fundamental rights under the Indian Constitution but finds expression in any of the International Covenants on Human Rights and are integral into the

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<sup>30</sup> *Bandhua Mukti Morcha v. Union of India*, (1992) AIR SC 38.

<sup>31</sup> *C. MaasilaniMudalian v. Idol of Sri Swamynathswamy*, (1996) AIR 1697.

<sup>32</sup> *A.D.M. Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207.

meaning of those Fundamental Rights must be regarded as Fundamental Rights. Thus, indirectly the living tree approach has been applied by the SC in elaborating the meaning of fundamental rights under the Indian Constitution. The SC in several cases gave recognition to the right to privacy as provided under Article 17(1) of ICCPR as Fundamental Right under Article 21 of the Indian Constitution.<sup>33</sup>

Some other rights which are mentioned in International Covenants and were held to be fundamental rights are as follows- Right to travel abroad,<sup>34</sup> Right to Speedy Trial,<sup>35</sup> Right to private legal assistant,<sup>36</sup> Right of prisoners to be treated with human dignity,<sup>37</sup> Right of Compensation.<sup>38</sup> Right to Information,<sup>39</sup> Equal Pay for Equal Work,<sup>40</sup> Right of workmen for Medical Benefits,<sup>41</sup> and various other Rights. All these are enough to prove the role played by the Indian Judiciary in making the Constitution broader enough to show respect even to newly emerging sphere of international individual rights.

### *Gender Justice*

The Constitution of India has provided with many provisions for promoting gender justice in India by virtue of Article- 14, 15, 15(3), 42, 45, 46, etc. where the judiciary has again widened the scope of these provisions from time to time. The SC made the concept of gender equality an integral part of the basic structure of the Indian Constitution in a case<sup>42</sup> thereby upholding the importance of gender justice. The Constitution provides for Uniform Civil Code,<sup>43</sup> despite of which a lot of discriminations are made though different personal laws in India amongst different religious communities against women.

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<sup>33</sup> *Kharak Singh v. State of UP*, (1964) 1 SCR 331; *Govind v. State of Madhya Pradesh*, (1996) 1 MPLJ 649; *People's Union for Civil Liberties v. Union of India*, (1997) AIR SC 5681.

<sup>34</sup> *Satvant Singh v. Asst. Passport Office, New Delhi*, AIR 1967 SC 1836.

<sup>35</sup> *Hussainara Khatun v. Home Secretary, State of Bihar (no. 1)*, (1980) 1 SCC 98.

<sup>36</sup> *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

<sup>37</sup> *Sunil Batra v. Delhi Administration (no. 1)*, (1979) SCR (1) 392.

<sup>38</sup> *Rudal Shab v. State of Bihar*, AIR 1983 SC 1086.

<sup>39</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>40</sup> *Randhir Singh v. Union of India*, (1982) AIR 879.

<sup>41</sup> *Regional Director, ESI, Corporation and Anr v. Francis De Costa and Anr*, (1996) 6 SCC 1.

<sup>42</sup> *Velamuri Venkata Sirprasad v. Kothuri Vankateswarlu*, (2000) 2 SCC 139.

<sup>43</sup> INDIA CONST. art. 44.

It is only the Indian judiciary that has tried its best to provide life to this dead provision of the Indian Constitution in its several judgments. The greatest reflection of such attempts can be seen from the SC's decision where the Muslim practice of Triple Talaq was held to be unconstitutional and against the fundamental rights of women in the recent times.<sup>44</sup> Earlier also the Judiciary has made several attempts to give life to this dead provision of Uniform Civil Code in India. While applying the Living Tree approach as an alternative means of interpreting the Constitution in a recent case<sup>45</sup> related to the entry Rights of Women in the Sabarimala Temple, it was argued that Article 17 may be interpreted to include a broad category of discrimination besides keeping it confined within its narrow literal meaning of untouchability, since women are prohibited from entering into the Sabarimala Temple only based on the assumption that they will impure the temple premises because of their natural menstruation process which is a discrimination based on social status, hence this can also be included within the meaning of discrimination under Article 17.<sup>46</sup> Thus, SC finally allowed women's entry into the Sabarimala Temple.

### CONCLUSION

The above mentioned were just a few instances where the Indian Judiciary especially the Supreme Court of India has applied a creative and a dynamic approach while interpreting the Constitution of India. It has not only interpreted the Constitution with a visionary approach but has also widened the ambit of it. While doing so although not directly but in most cases indirectly the Doctrine of Living Tree has been given expression, in order to maintain the living spirit of the Constitution against the changing demands of time and has introduced new concepts of jurisprudence that have emerged in

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<sup>44</sup> 'Supreme Court Declares Triple Talaq as Unconstitutional, Strikes Down by 3:2 Majority' (2018) Times of India, available at- <https://m.timesofindia.com/india/supreme-court-bans-triple-talaq-for-6-months-until-parliament-legislates-on-issue/article-how/60170130.cms> (last accessed 08 February 2019).

<sup>45</sup> *Indian Young Lawyers Association and Ors v. The State of Kerala and Ors.* (2018) WP (Civil) 373 of 2006 (SC).

<sup>46</sup> Thulasi K. Raj, 'Ways to Read the Constitution' (2018) The Hindu, available at- <https://www.thehindu.com/opinion/op-ed/ways-to-read-the-constitution/article24794977.ece> (last accessed 08 February 2019).

the contemporary international era quite distinct from the philosophy of the framers of the Constitution of India. The judiciary has thus provided scope for the Constitution to speak against those issues on which mostly it would have remained silent if left as it was framed by the framers with no change. Since law is an instrument of social change, thereby we can generally conclude that Indian Judiciary has served the purpose of making the Indian Constitution a representation of social change.

The judiciary besides performing its basic role of judicial review and defending the Constitutional morality has also went on performing legislative functions by providing guidelines as in cases like *Visakha Case*,<sup>47</sup> *Common Cause Case*,<sup>48</sup> etc. and executive functions by constituting its own committees for administration of justice as mostly done in environmental matters. The efficiency of this judicial activism although cannot be put to question since they are done due to the urgent needs of the time and to some extent due to the inefficiency of both the legislative and the executive to deal with such issues comprehensively on time, but still a vital question arises about the very democratic nature of the Indian Constitution. We cannot ignore that Judiciary is not the representation of the citizens of India and therefore it is not a democratic institution. As such it will be how far beneficial to allow such a non-representative institution to function in such a dominant manner in a democratic country. More than the accountability of the Indian judiciary it's the accountability of the other organs of the government including the civil society which I believe needs to be checked in a more vigilant manner. Whether the Indian judiciary shall be allowed to function as it is functioning right now or whether the other organs of the government shall become more responsible in maintaining the true democratic spirit of the Constitution has become a very vital topic for the legal scholars for doing research at present. However, there is no doubt that the judiciary has played a significant role in providing life to various provisions of the Constitution for its growth across times in India.

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<sup>47</sup> *Vishakha and Ors v. State of Rajasthan*, AIR 1997 SC 3011.

<sup>48</sup> *Aruna Ramchandra Shanbaug v. Union of India and Ors.*, (2011) 4 SCC 454.