

## POLITICS IN INDIA

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### BASIC CONCEPT OF POLITICS:

Politics, in its broadest sense, is the activity through which people make, preserve and amend the general rules under which they live. Politics is thus inextricably linked to the phenomena of conflict and cooperation.<sup>1</sup> From one viewpoint, the presence of opponent suppositions, distinctive needs, contending needs and restricting interests ensures contradiction about the guidelines under which individuals live. Then again, individuals perceive that, so as to impact these principles or guarantee that they are maintained, they should work with others. The word 'politics' is derived from polis, meaning literally city-state. Ancient Greek society was divided into a collection of independent city-states, each of which possessed its own system of government. The largest and most influential of these city-states was Athens, often portrayed as the cradle of democratic government. This definition was acceptable because it conceived the study of the polis covering not only the principles of governance but also ethical norms of conduct and social vision. The modern form of this definition is therefore 'what concerns the state'.<sup>2</sup> This view of politics is clearly evident in the everyday use of the term: people are said to be 'in politics' when they hold public office, or to be 'entering politics' when they seek to do so. Politics may be treated as an 'essentially contested' concept, in the sense that the term has a number of acceptable or legitimate meanings. Contrary to this, these different views may simply consist of contrasting conceptions of the same, if necessarily vague, concept. The concept of 'what is politics?' is worth pursuing because it exposes some of the deepest intellectual and ideological disagreements in the academic study of the subject. The different views of politics are:<sup>3</sup>

1. Politics as the art of government
2. Politics as public affairs

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<sup>1</sup> Anup Chand Kumar, *Principles of Political Science* (New Delhi: S. Chand, 2014)

<sup>2</sup> Andrew Heywood, *Political Theory: An Introduction* (Replika Press Pvt. Ltd., 2008)

<sup>3</sup> Ibid

3. Politics as compromise and consensus
4. Politics as power and the distribution of resources

**Politics as the art of government;** ‘Politics is not a science ... but an art’, Chancellor Bismarck is reputed to have told the German Reichstag. The art Bismarck had in mind was the art of government, the exercise of control within society through the making and enforcement of collective decisions. Since the state performs its functions through the government, its main forces remained on the personnel and machinery of government. To study politics essentially meant the study of government or more broadly the study of authority. David Easton defined politics as the "authoritative allocation of values"<sup>4</sup> by this he meant that politics includes all those processes through which government allocates benefits, rewards or penalties. This is how it meets the demands and needs of society.

**Politics as a public affair:** The second conception of politics moves the narrow realm of government to what is thought of as ‘public life’ or ‘public affairs’. In other words, the distinction between ‘the political’ and ‘the non-political’ coincides with the division between an essentially public sphere of life and what can be thought of as a private sphere. The institutions of the state (the apparatus of government, the courts, the police, the army, the social-security system and so forth) can be regarded as ‘public’ in the sense that they are responsible for the collective organization of community life. Moreover, they are funded at the public’s expense, out of taxation. In contrast, civil society consists of the ‘little platoons’, institutions such as the family and kinship groups, private businesses, trade unions, clubs, community groups and so on that are ‘private’ in the sense that they are set up and funded by individual citizens to satisfy their own interests, rather than those of the larger society. On the basis of this ‘public/private’ division, politics is restricted to the activities of the state itself and the responsibilities that are properly exercised by public bodies.

**Politics as compromise and consensus:** This is the third conception of politics and it explains to us that politics is a particular means of resolving conflict: that is, by compromise, conciliation and negotiation, rather than through force and naked power. In this view, the key to politics is therefore a wide dispersal of power. The disagreements that exist can be resolved without resort to intimidation and violence. This view of politics has an unmistakably positive character. Politics is certainly no utopian solution, but it is undoubtedly preferable to the

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<sup>4</sup> John Hoffman and Paul Graham, *Introduction to Political Theory* (England: 2009)

alternatives: bloodshed and brutality. In this sense, politics can be seen as a civilized and civilizing force.

**Politics as power:** This is the broadest and the most radical definition of politics. At its broadest, politics concerns the production, distribution and use of resources in the course of social existence. Politics is, in essence, power: the ability to achieve a desired outcome, through whatever means. This notion was neatly summed up in the title of Harold Lasswell's book *Politics: Who Gets What, When, How?* (1936). From this perspective, politics is about diversity and conflict, but the essential ingredient is the existence of scarcity: the simple fact that, while human needs and desires are infinite, the resources available to satisfy them are always limited. Politics can therefore be seen as a struggle over scarce resources, and power can be seen as the means through which this struggle is conducted. Politics, in this view, is everywhere; indeed, given the widespread potential for power-related conflict, politics may come to be seen as coextensive with social existence itself.<sup>5</sup>

### **Origin of state**

The question about the origin of the state has been examined for quite a long time. In the historical and philosophical subjects, this inquiry is a conflicting issue among researchers. With no solid proof to back any of the proposed hypotheses, it stays as theory. The greater part of the most acknowledged speculations do concur that the state must have certain essential components: territory, populace, government and sovereignty. Following are the most widely accepted theories of the origin of state as we know it today

**The Social Contract:** Social contract hypothesis, about as old as philosophy itself, is the perspective that persons' moral and/or political commitments are indigent upon an agreement or assentation among them to frame the general public in which they live. Socrates utilizes something entirely like a social contract contention to disclose to Crito why he should stay in jail and acknowledge capital punishment. Be that as it may, social contract theory is rightly connected with present day moral and political theory and is given its first full exposition and guard by Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the best known advocates of this gigantically powerful hypothesis, which has been a standout amongst the most prevailing speculations inside of moral and political theories all through the historical

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<sup>5</sup> Ibid.

backdrop of the cutting edge West. In the twentieth century, moral and political hypothesis recovered philosophical force as a consequence of John Rawls' Kantian variant of social contract hypothesis, and was trailed by new examinations of the subject by David Gauthier and others. All the more as of late, scholars from alternate points of view have offered new reactions of social contract theory. Specifically, women's activists and race-cognizant rationalists have contended that social contract hypothesis is at least a fragmented photo of our moral and political lives, and might disguise a portion of the routes in which the agreement is itself parasitical upon the enslavements of classes of persons.

**Organic Theory:** Organic Theory of the State is one of the earliest endeavors to follow the origin and development of the State. It depicts a very unique picture of beginning and structure of the State in contrast with the vast majority of alternate Theories. The organismic theory is basically a biological concept which depicts the working of the state in organic terms. The primary idea of this Theory is to draw an analogy between the State and a living creature as both have inclination to develop as a body furnished with various organs and faculties to perform and act as per the necessities of the time and need. It presumes that the State is similar to a genuine natural body or a living life form and the connection between the State and the individual is the same as that between a living being and its cells.

### **POLITICAL SYSTEM IN INDIA: DEMOCRACY**

Most popular form of government in the world today. As the society progresses it moves towards democracy as it reaches a certain level of maturity.

Derived from the Greek word *demos* meaning people and *kratos* meaning rule. So it means rule by the demos.<sup>6</sup>

There are two kinds of democracies:

#### **I. Direct democracy<sup>7</sup>:** (also called participatory democracy)

It is based on direct, unmediated and continuous participation of citizens in the tasks of the government. In other words people themselves are involved in the process of decision-making in a direct manner.

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<sup>6</sup> Andrew Haywood, *Political Theory: An Introduction* (Haryana: Palgrave, 2004), 221.

<sup>7</sup> Andrew Haywood, *Political Theory*, 70.

Example: Ancient Rome, it was achieved through a process of mass assembly where all the citizens of Rome came together.

Merits:

- It is democracy in its truest and purest form, more control and participation of the people.
- People are actively involved in the process, they are well informed and there is a higher level of literacy.
- Free and direct expression of views of the public.
- As they are directly the decision makers they are more likely to accept the decisions.

But it is not possible to implement in today's world.

## ***II. Representative Democracy:***

Limited and indirect form of democracy. People do not exercise power themselves they elect others to make decisions on their behalf.

Practiced in most countries of the world including India.

This system usually works through a process of election and formation of political parties by the people.

Merits

- Practically possible
- Ordinary people are freed from dealing with such matters and people more adept to such tasks can take over.
- Lends greater stability to the people.

Demerits

- Not a democracy in the true sense
- People not directly involved in the decisions
- Many a times their will is not considered, there is exploitation of power by the few who are elected.
- Decision making is slow.



Bi-Party System: Refers to a political system in which two major parties are engaged in political rivalry to get into power.<sup>8</sup> Even though more than two parties may exist over here, it may not matter as they are not significant enough to make a difference.

Example: there are two political parties in England- Conservative Party and Labour Party

America – the Republican and the Democratic party

Multi-party system:<sup>9</sup> Here more than two political parties are functioning.

Example: India, France, and Denmark.

## **POLITICS AND ELECTIONS IN INDIA**

### **Introduction**

On 15 August 1947, India i.e. Bharat, the world's largest democracy was born. After decades of struggle by the people and the leaders of the various political organizations, the British rule over India ended with the creation of two separate nations India and Pakistan. As per the 2011 survey, India's population stands at 1.252 billion, out of which the Hindus constitute 80.5 %, Muslims 13.5 %, Christians 2.3 %, Sikhs 1.9 %, and other religions 1.8 %. Schedule 8 of the Indian Constitution recognizes 22 languages spoken in different parts of the country. This diversity has made the country's politics very peculiar and different than most of the nations both developing and developed.

After a century and a half of British colonial rule, India went on to become a federal state. It officially became a republic on the 26 January, 1950. The principles of liberty, equality, fraternity, justice, secularity which have been enshrined in the Indian Constitution have been well preserved by the parliament and the judiciary, and have efficiently been implemented by the executive. This section is going to deal with some of the particular aspects of Indian Politics like the Panchayat Raj System which make it so different than other democracies. It will also

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<sup>8</sup> C.N.Shankar Rao, *Sociology: Principles of Sociology with an Introduction to Social Thought* (New Delhi: S.Chand and Company Ltd., 2012), 402.

<sup>9</sup>*Ibid.*

describe the various factors like caste, religion and language which have been playing an important part in influencing and deciding modern day politics, and how these have been exploited by various political parties for their own gains.

### **Panchayati Raj System**

The word Panchayat is derived from the Hindi words, 'Panch' meaning five, and 'yat' meaning council, literally meaning 'the council of the five'. Panchayats have been the backbone of the Indian villages since the beginning of recorded history, with evidences from the Vijaynagara empire in the 15th and the 16th century. "In 1946, Gandhi had aptly remarked that the Indian independence must begin at the bottom and every village ought to be a Republic or a Panchayat with powers."<sup>10</sup> His dream got translated into reality with the introduction of the three-tier Panchayati Raj system after the 73rd amendment in 1993. Mahatma Gandhi advocated Panchayati Raj the foundation of India's political system, "it would have been a decentralized form of government where each village would be responsible for its own affairs. The term for such a vision was Gram Swaraj (village self-governance)."<sup>11</sup> Although the Father of Nation, Mahatma Gandhi, advocated for 'a village based political formation fostered by a stateless, classless society' for the creation of Gram Swaraj, the idea of Panchayati Raj did not find a place in the Draft Constitution of India. This happened because the Congress Constitution Committee rejected the idea 'believing that the Congress could neither forgo its political role nor become so utterly decentralised' as envisaged in the Gandhian concept of Gram Swaraj.<sup>12</sup> Ambedkar was forced to incorporate Article 40 in the Directive Principles of State policy which directed the state to set up Village Panchayats and endow them with the authority to function as units of self-government. A huge step towards the modern PRS was the result of the Balwant Rai Mehta Committee in 1957, which recommended the establishment of three tier PRS at the village, block, and district levels. "The recommendation also included the aims of promoting political consciousness amongst the local population and the settlement of local problem by local means."<sup>13</sup> This was formally adopted after the liberalization policies of the government and a new look on decentralization within the five year plan of 1992-97. As per the Constitution, Panchayats in their respective areas would prepare plans for economic

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<sup>10</sup>"Panchayat Raj System in India." Issues of India. 2012, <https://socialissuesindia.wordpress.com/2012/09/06/panchayat-raj-system-in-india/>.

<sup>11</sup>R. S. Sisodia, "*Gandhiji's Vision of Panchayati Raj: Panchayat Aur Insan* (1971), 9–10.

<sup>12</sup>Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966), 29.

<sup>13</sup>Subrata K. Mitra, *Politics in India*, 147.

development and social justice and also execute them. The functions of Panchayats are divided among different Committees (as ministries are formed in state and union governments), which are called Standing Committees/Sthayee Samitis/Upa Samitis, different in different states. Apart from grants received from the government under the recommendation of the Finance Commission, Panchayats receive schematic funds for implementation of schemes like MGNREGA, BRGF etc. They can also raise revenue by imposing taxes, fees, penalties etc. as per rule of the state.

### **Caste and Politics**

Caste in Indian society refers to a social group where membership is decided by birth. Members of such local group are endogamous, i.e. they tend to enter into marital relationships among themselves. They often have related political preferences too. There are about 2000 jatis in the Indian society, broadly classified into four varnas i.e. i) Brahmins; were the priests who used to perform rituals and other religious acts, ii) Kshatriyas; were the rulers and warrior class, iii) Vaishya; were the merchants and the traders, iv) Sudras; were given all the menial works considered improper for the other castes. "The untouchables were outside the Varna system."<sup>14</sup>

If a lower caste are concentrated enough in one area, it can then translate that pocket of concentration of its caste members into political power and then challenge the hegemony of locally dominant upper caste. This leads politicians to exploit these people. Caste in politics plays a very important factor even in modern day politics. Some people say when describing elections and castes in India as, "In other democracies you cast your vote, whereas in India you vote your castes."

Historically, it has been very difficult to separate out caste from politics, and after the liberalization policies of 1992, there has been a flux in caste politics. Rajni Kothari examined the relationship between caste and politics by analysing the issue as to what happens to political system because of the vote of castes. He found that three factors—education, government patronage, and slowly expanding franchise (including 18-21 year old young persons in electorate)—have penetrated the caste system because of which it (caste system) has come to

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<sup>14</sup>Subrata K. Mitra, *Politics in India*, 73.



affect democratic politics in the country.<sup>15</sup> Economic opportunity, administrative patronage, and positions of power offered by the new institutions and the new leadership drew castes into politics.

Voting provides an important opportunity for lower castes to assert themselves. Caste is a voting determinant in India. Just as in Britain, voting is determined by class, in the USA it is determined by race, in the same manner in India it is determined by caste. 'Caste values' and caste interests influence his socialisation and consequently his political thinking, awareness and participation. He banks upon caste solidarity for occupying and performing a leadership role. All political parties give great weight age to the caste factor in selecting their candidates, in allocating constituencies to their candidates and in canvassing support for their nominees in the election. In the election campaigns, votes are demanded in the name of caste. Caste factor influences the policies and decisions of the state governments.

### **Religion and Politics**

The word 'secular' was added to the constitution in 1976, which implies a wall between a religion and the state, and also equality of all religions. For understanding the political dynamics of India, it is necessary to realize the dominant religious forces prevalent.

The mainstream parties in India also have conflicting ideologies, while the Congress claims to be 'secular', the BJP is a Hindu nationalist party with RSS as the parent organization which never shies away from giving and radical statements against non-Hindus, particularly Muslims. This is usually used by the 'Hindu nationalists' in getting votes by giving statements like those who don't support the ideologies of the BJP i.e. the Hindus are bastards<sup>16</sup>. When adherents of a religion are regionally concentrated, such as Sikhs in Punjab and Muslims in Kashmir, there is a convergence of religion and regional identity. . Whereas in Kashmir there have been separatist movements from 1947 and continues today. So, religion and politics have played an important part in India as a whole, and in some states. But, there have been incidents of communal harmony which outweigh those of the communal violence, which can be seen in the recent rout of the BJP in the state elections of Delhi and Bihar last year. Especially in North India, there are places where Mosques and temples stand adjacent to each other.

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<sup>15</sup>"Relationship between Caste and Politics in India." YourArticleLibrary.com The Next Generation Library <http://www.yourarticlelibrary.com/politics/relationship-between-caste-and-politics-in-india/39169/>

<sup>16</sup>Niranjan Jyoti, "Indian Minister Calls Non-Hindus 'Bastards'" Time. <http://time.com/3619564/niranjan-jyoti-racist-india-bjp/>.

## Language and Politics

Language plays a very important part in defining nationalism. If we look at the case of East and West Pakistan, both had the same religion, i.e. Islam and both in 1947 wanted a separate homeland for Muslims. Considering all this East Pakistan still went on to become present day Bangladesh. The only reason; the leaders in West Pakistan vouched for Urdu as the state language, whereas Bengali people took this as an attack on their identity, which was preserved by their language. Regional languages are the main medium for official transactions within regions. Linguistic movements in India have, thus contributed to the greater differentiation of the political system as well as to the overall legitimacy of the state, without at the same time, damaging the basis of national integration.<sup>17</sup>

## Rigging in Elections

Vote rigging practices are not limited to bribery or voter intimidation. They include disseminating scurrilous rumours and false campaign propaganda, tampering with election machinery by stuffing ballot boxes with fraudulent returns, counting or reporting the vote dishonestly, and disregarding electoral outcomes by incumbent officeholders.

Voter intimidation involves putting undue pressure on a voter or group of voters so that they will vote a particular way, or not at all. Intimidation can take a range of forms, Violence or the threat of violence, Attacks on polling places, Legal threats, Another method of confusing people into voting for a different candidate than they intended is to run candidates or create political parties with similar names or symbols as an existing candidate or party. The aim is that enough voters will be misled into voting for the false candidate or party to influence the results.<sup>18</sup>

## NOTA

“None of the above” is a proposed voting option in India that would allow voters who support none of the candidates available to them to register an official vote of “none of the above”, which is not currently allowed under India election regulation. The Election Commission of India told the Supreme Court in 2009 that it wished to offer the voter a “none of the above” button on voting machines; the government, however, has generally opposed this option. On

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<sup>17</sup>Subrata K Mitra, *Politics in India*(New Delhi: Oxford University Press, 2014), 71.

<sup>18</sup>Jonathan P. Hicks, 'Seeing Double on Ballot: Similar Names Sow Confusion', *The New York Times*, July 24, 2004.

27 September 2013, Supreme Court of India pronounced a judgement that citizens of India have Right to Negative Vote by exercising None of the above (NOTA) option in EVMs and ballot papers.

## POLITICAL THINKERS OF MODERN INDIA

### Nehruvian political ideology

He strove to guide India towards a socialist pattern of society following a path based on his interpretation of socialism drawn on a mixed recipe of classical Marxism and a version of capitalism that evolved in India under the aegis of colonialism<sup>19</sup>. His foreign policy was also a unique blend of realism and ideology that seemed to have worked, presumably due to 'distrust' among the major powers and generally vitiated circumstances of cold war Era.<sup>20</sup>

One of the foundation pillars of Nehru's political ideas was 'Marxism'. From Study of Marxism he gathered that industrialism would not only ensure economic development but would also create socio-economic and political forces supportive of new milieu and critical of the decadent interests upholding archaic values.<sup>21</sup> Nehru's political modernity endeavoured to democratize the urban and rural political structures, to reform the administration and its functioning to discard the colonial residues of subjects and rulers, to create modern citizenry, and to institutionalize equitable governance, transparency and accountability.<sup>22</sup> Policy of Non-Alignment was based on the principles of 'Panchsheel' and was perhaps the most realistic and pragmatic way of protecting India's interest<sup>23</sup>. He set India to a path of growth, based on creative interpretation of socialistic values and principles and he remains significant in today's neo-liberal world because of his transcendental political thought that continues to inspire alternative discourses<sup>24</sup>

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<sup>19</sup>Chakrabarty and Pandey, *Modern and Political thought*, 122.

<sup>20</sup>Chakrabarty and Pandey, *Modern and Political thought*, 122.

<sup>21</sup>Chakrabarty and Pandey, *Modern and Political thought*, 127.

<sup>22</sup> Singh and Joshi, *Indian Political Thought*, 169.

<sup>23</sup>Chakrabarty and Pandey, *Modern and Political thought*, 143

<sup>24</sup>Chakrabarty and Pandey, *Modern and Political thought*, 143.

### **Ram Manohar Lohiya and his political thoughts**

Lohiya appeared to be aiming at preparing the ground establishing socialism as the most appropriate theoretical format for steering India on the path of an equitable and all-round socio-economic development. While he accepted socialism as the viable ideology for India and tried to conceptualize it in light of the Gandhian inputs, he came out with idea of new socialism in 1959 with the plea that it offers a comprehensive system of socio-economic and political life for the people in India<sup>25</sup>. He maintained that the incorporation of Gandhian principles in the socialist philosophy would lend greater practicability of socialism to the Indian situations<sup>26</sup>

The cumulative effect of a new theory of socialism argued Lohiya would be in providing such a complex web system of life for the people that they would not only be able to live an egalitarian and content life within the country but would also aspire to become a part of the world government.<sup>27</sup>

Lohiya gave the concept of 'permanent civil disobedience' i.e. resistance against state. According to him it should be permitted whenever or wherever an individual's freedom was in danger or excessive state interference created an obstacle in path of development of individual personality. Lohiya gave model of four pillars of state 'Chaukhamba Model' to fit within the framework of decentralized democratic polity he recommended for the country. He believed that by replacing the two-tier administration system to four pillar state many problems of Indian administration will be solved.

### **PROBLEMS IN THE POLITICAL SYSTEM OF INDIA – I**

#### **Corruption**

Corruption is one of the social evils, which is rampant in all societies of world. Unfortunately, India is regarded as one of the countries in which corruption is widespread during recent years. India is a vast and beautiful land but however the beauty and goodwill of this nation is spoiled with corruption, which is happening in every sector. According to Civil Law Convention on Corruption, "Corruption" means requesting, offering, giving or accepting, directly or indirectly,

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<sup>25</sup>Chakrabarty and Pandey, *Modern and Political thought*, 184.

<sup>26</sup>Chakrabarty and Pandey, *Modern and Political thought*, 184.

<sup>27</sup>Chakrabarty and Pandey, *Modern and Political thought*, 185.

a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof<sup>28</sup>& As per section 161 of Indian Penal Code The intentional abuse of public office by way of accepting, obtaining, agreeing to accept, attempting to accept or to obtain from anyone for himself or for any other person any gratification other than legal gratification as a motive or reward for doing or forbearing to do any official act, or for showing in the exercise of his official function, favouring or disfavours any person, or rendering or attempting to render any service or disservice to any person.

"Power corrupts and absolute power corrupts absolutely" this quote is given by Lord Acton, a British historian.

### **Embezzlement**

Embezzlement means the theft of entrusted funds, it turns to political when the public money that is entrusted to the public officials use it for their own personal use not specified by the public. It means that government tries to send some benefit like money, medicine, food to recipients, and officials who are in charge of sending benefits simply steals them rather than delivering to needy people.

### **Kickbacks**

Kickbacks are a form of negotiated bribery in which there is a commission to be paid to bribe taker in exchange for the service given. Kickbacks are the most common type of government corruption; it is a share of misappropriated funds allocated from his or her organization to an organization, which is involved in corrupt bidding. so a politician who is in charge of choosing how much public funds should be spent for a particular work, he can give a contract to a company that is not the best bidder, or allocate them more than they deserve so in this way the public official can use their power and allocate the bid to the company they want, now the company gets benefit, and in exchange for betraying the public the public official or politician gets a kickback payment from the company. For example Bofors Scam-1980 & 1990s- Rs 100 to 200 Crores. The Bofors scandal is known as the hallmark of Indian Corruption.

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<sup>28</sup>"Civil Law Convention on Corruption. "Treaty Office. <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174>



## Nepotism

The word nepotism comes from Italian word 'Nepotismo' which has its root word in Latin as Nepos which means nephew. Nepotism in simple is favouritism granted to the members of the family at the time of recruiting candidates for public office with no regard given to their merit. In India politics is not an occupation but a family business if someone's father is MP his son or his daughter will regard the constituency as their family heirloom and when the time comes to choose a candidate for the general election, parties give more tickets to the relatives of MPs. India politics can be called as the motherland of Nepotism right for independence we see nepotism in our political system, According to Patrick French in his study of Indian Parliament, he unearthed some troubling data. He found that 100 per cent of MPs in the current lower house or parliament under the age of 30 are from the families with a political background, French dubbed them "hereditary" MPs. Of the MPs who were aged 40 and above 2/3rd were hereditary M.P.s.<sup>29</sup>

## Criminalization of Politics

Many years ago, Napoleon said that the great difficulty with politics is that there are no established principles. Criminalisation of politics means to use politics or political power for personal gains and also we find that political power has been used for attainment of undue privileges and when this is rampant in politics we called it as criminalisation of politics. But there are steps taken to curb this criminalization in politics The Vohra report submitted by the former, Indian Union Home Secretary, N.N. Vohra in October 1993, studied the problem of the criminalization of politics and of the nexus among criminals, politicians and Bureaucrats in India. The report contained several observations made by official agencies on the criminal network which was virtually running a parallel government. It also discussed criminal gangs who enjoyed the patronage of politicians — of all political parties — and the protection of government functionaries. . But in 2005 lawyer Lily Thomas and former IAS officer S.N Shukla filed a public interest litigation asking the courts to set aside Section 8(4) of the Representation of the People Act because it allowed sitting MPs and MLAs to continue to be elected representatives even when convicted in a court of law. The petition appealed that this special protection was unconstitutional and hence should be struck down. By this PIL the SC

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<sup>29</sup>Amrit Dhillon, "Nepotism: the way they do politics in India" (March 2014)<http://www.smh.com.au/comment/nepotism-the-way-they-do-politics-in-india-20140327-zqnpg.html>.

ordered that upon conviction, charge sheeted MPs and MLAs would be disqualified with immediate effect from holding membership of the house and this offered a ray of hope towards curbing criminalization of politics.

### INTERVENTION OF JUDICIARY IN POLITICS

The role of the parliament is that of a supreme law making body and the judiciary acts as the supreme authority for the interpretation of the constitution and the laws passed by different legislative bodies. It is widely accepted that the independence of judiciary plays a crucial role in the quality of governance of the nation. Therefore, the constitution makers have given various provisions that keep the judiciary independent from the executive and legislature. The framers of the Indian constitution were determined to provide for a judiciary that is independent and scrupulously guards the fundamental rights. There is always a need to maintain balance between judiciary and legislature.<sup>30</sup> It is very well known that the judiciary has time and again intervened in political matters to safeguard democracy.

In November, 2015, the Supreme Court had agreed to hear a public interest petition on de-criminalisation and de-communalisation of Indian politics through electoral reforms. The petition demands lifetime ban on persons who are convicted, from contesting polls or becoming office-bearers in a party. It is contended that coveted goals of the Preamble will be impossible to achieve if there is nepotism and corruption in Indian politics, and if the criminalisation of politics exists.<sup>31</sup> Whatever outcome might come out of this petition, it is evident that judiciary has been proactively concerned about the condition of politics in India.

The concepts of judicial activism and public interest litigation are examples of the intervention of the judiciary in politics. The judiciary has also attempted to tackle environmental issues which the executive and legislature was supposed to handle. The judiciary has adopted “progressive interpretation” rather than sticking to a narrow interpretation. This is done in order to protect the basic and fundamental rights of the weaker and vulnerable sections of the society.

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<sup>30</sup>Hamid Ansari, “Need to maintain balance between judiciary, legislature”, *Deccan Herald*, March 16, 2011.

<sup>31</sup>“SC to Hear PIL Seeking De-criminalisation of Politics.” *The Hindu*, November 23, 2015,.

<http://www.thehindu.com/news/national/sc-to-hear-pil-seeking-decriminalisation-of-politics/article7909081.ece#comments>.

Judicial activism means a philosophy of decision making whereby judges allow their personal views about public policy, among other factors, to guide their decision, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.<sup>32</sup> Justice does not mean to simply interpret the black letter of law. In a divergent society like ours, it is crucial to interpret the law in such a way that it satisfies the need of the society.

In a remarkable judgement,<sup>33</sup> the Delhi High Court had legalized the marriage of an underage girl (17 years old) which was a matter pertaining to “run-away marriage”. The court held that there was no law in India that prohibited love marriage. The court had also kept in mind the atrocities that are perpetrated on the couples who run away.<sup>34</sup> If the court had simply interpreted the law, it might have declared the marriage void on the ground that the girl was underage. Instead it chose to see the best interests of the society.

### **What is the scope of judicial activism?**

Articles 13, 32, 141, 142 and 226 of the Constitution are important in judicial activism. Article 32 makes the Apex Court as the guarantor and protector of the fundamental rights. Article 13 confers power of judicial review to the Supreme Court. In carrying out judicial review, the Supreme Court can look upon the constitutionality of legislative or executive act. In this regard, the High Court hold the same power. Article 141 states that the Supreme Court has the power to declare the law but not to enact it. However, in course of interpreting the law, it can alter the law. Article 142 enables the Supreme Court in to pass such order or make such order as is necessary for doing complete justice in any cause or matter pending before it. With the help of these articles, the High Courts and Supreme Court have played a crucial role in redressing various environmental and social issues.

The activist approach of the court came only during the late 1970s.<sup>35</sup> Although a lot of amendments were made in the Constitution of India soon after it was being enforced, the

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<sup>32</sup>Bryan A. Garner and Henry Campbell Black. *Black's Law Dictionary* (St. Paul, MN: West Group, 1999), 850.

<sup>33</sup>AIR2006Delhi37

<sup>34</sup>Dhananjay Mahapatra, “SC Says Orders on Lowering Marriage Age No Precedent”, *The Times of India*, March 28, 2006.

<sup>35</sup>S.P. Sathe, *Judicial Activism in India* (New Delhi: Oxford University Press, 2002), 52-53.

amendments made during the Nehru era were far less controversial in nature than those made during the era of Indira Gandhi and Rajiv Gandhi. The amendments made during the Nehru era did not affect the fundamental rights to the same extent.<sup>36</sup>

The prime example of judicial activism during that time period was the case of *Kesavananda Bharati*<sup>37</sup> (fundamental rights case). That case over-ruled the judgement given in the *Golaknath*<sup>38</sup> case. It held that the parliament could only make amendments in the Constitution so long as the Basic Structure of the Constitution was not altered or damaged. In other words, everything in the Constitution can be amended provided that the basic structure of the Constitution remains the same. It was the first significant act of judicial activism by the apex court.<sup>39</sup>

A very important area of judicial activism is Public Interest Litigation (PIL). It is a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected. "Public Interest" does not mean anything so narrow as mere curiosity or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national Government.<sup>40</sup>

PIL made the progress of judicial activism easier and due to that it has become very popular. It has liberalised the way in which *locus standi* (the right of a party to appear and be heard on the question before any tribunal, frequently disputed in private bill legislation)<sup>41</sup> was viewed. Even a letter can be accepted in the court as PIL. Only the party who was aggrieved could approach the courts and ask for remedy, before 1980s. Whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury.<sup>42</sup> Justice

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<sup>36</sup>G. C. Thomas Raju, *Democracy, Security and Development in India* (UK: Palgrave Macmillan, 1996) 86.

<sup>37</sup>AIR 1973 SC 1461

<sup>38</sup>AIR 1967 SC 1643

<sup>39</sup>J.S Verma, *New Dimensions of Justice* (Delhi: Universal Law Publishing Co. Pvt. Ltd., 2000), 68-82.

<sup>40</sup>*Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305, 331; 1993 SCC (Cri.) 36

<sup>41</sup>J. J. S. Wharton, *Wharton's Law Lexicon: With Exhaustive Reference to Indian Case Law: Along with Legal Phrases and Legal Maxims: Including Glossary of Unique Words Used by Justice V.R. Krishna Iyer, Former Judge, Supreme Court of India*. 15th ed. (Delhi: Universal Law Pub., 2009), 1019.

<sup>42</sup>*Kumari Shrilekha Vidyarthi etc. v. State of Uttar Pradesh & others*. AIR 1991 SC 537

Bhagwati has observed that there is a need to bring new methods and strategies that would make it possible for people who are denied of human rights to access justice.<sup>43</sup>

### **Why is judicial activism required?**

Judicial activism become crucial in India because the executive and legislature have failed in addressing people's causes properly. While certain people apprehended that by exceeding its power and making inroads into executive and legislative, judicial activism had upset the constitutional system of checks and balances, some welcomed the way in which the judiciary was re-defining its function a corruption-ridden system.<sup>44</sup> Judicial activism has disinterred a number of scandals and scams, Fodder scam, Fertilizers Import scam, Hawala scam and St. Kits case, to name a few. For example, through Vineet Narain's PIL, the Hawala scam, a political scam that involved a bribery of US \$18 million that implicated some of the leading politicians, was unearthed.

Judicial activism has also provided some sort of stimulation to the judiciary along with the executive and legislature. Various legislations have come into existence due to the hyperactivity of the judiciary. It has led to the creation of an environment of accountability and transparency. Also, it has to be taken into consideration that in a democracy one of the crucial motives is to maximise the welfare of the public. Therefore, if one wing of government takes up the responsibility of the other coordinated wings, there needs to be no disapproval or worry.

The independence of the judiciary is an essential component of the Constitution. It cannot be entrenched upon by legislation or even by amendments in the constitution.<sup>45</sup> Judicial activism needs go on without any type of hindrance. Judiciary is not immune to public scrutiny. Former CJI, Adarsh Sen Anand said that the true strength of the judiciary lies in the confidence of the people in it. Judicial authorities have a duty to make sure that this confidence is not lost. It is the fear of change of this public opinion that will stop the democracy from judicial transgression.<sup>46</sup>

### **What are the causes of Judicial Activism?**

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<sup>43</sup>S.P. Gupta v. Union of India, 1981(Supp) SCC 87: AIR 1982 SC 149

<sup>44</sup>Bal Krishna, "Judicial Activism at its Peak", *The Hindustan Times*, December 26, 1996, 10.

<sup>45</sup>Kashmir Singh, "Appointment of Judges of the Supreme Court", in B.P. Sehgal (ed.), *Law, Judiciary and Justice in India* (New Delhi: Deep and Deep Publications, 1993), 112-25.

<sup>46</sup>"CJI defends Judicial Activism", *The Hindustan Times*, October 30, 1998, 10.



Today, people's faith in the efficiency and integrity of governmental bodies remains seriously scoured. Former Chief Justice of India, J.S. Verma says that the primary reason of judicial activism is the inaction of the governmental authorities. Many a times the courts have invoked their writ jurisdiction for passing orders through the process of judicial activism.<sup>47</sup> However, they got the public support as this was done for public good. Intervention by the judiciary is increasing as the executive and legislature are not performing their part properly. People generally go to courts when there is no other means available to them. It is unfortunate that the governments are not responsive to protests that are expressed by the people.

Corruption has become rampant in the Indian society. Corruption along with lethargy and inefficiency has been prevalent in almost all states of India, and has become a nuisance which is being faced by lot of people in India. So far, no state government has been able to remove such elements from the administrative offices.

The reason for the growth of judicial activism is that there has been a change in the traditional view of the functions performed by the judges. In *Vineet Narain v. Union of India*<sup>48</sup> the Supreme Court had directed on how the appointment of the Vigilance Commission should be done. It was clearly beyond its power. However, intervention of the judiciary appeared to be a ray of hope for the people who were disgusted by corruption and fed up with misuse of power done by people holding powerful positions.<sup>49</sup>

In *Champakam Dorairajan v. State of Madras*<sup>50</sup>, the Supreme Court listening to a petition on state government's action to reserve seats in government funded engineering and medical colleges, held that the same is unconstitutional and is in violation of Article 15(1) of the constitution of India. It observed that directive principles of state policy cannot override the guaranteed fundamental rights.

Another reason for the judicial intervention is the denial of natural justice doctrine. In the case of *Maneka Gandhi v. Union of India*<sup>51</sup>, Justice V. R. Krishna Iyer had observed "Natural Justice is a distillate process". Normal citizens have, over a period of time, apprehended that the administration has become apathetic, and corruption, inefficiency and criminality are

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<sup>47</sup>M. A. Khan and S. & Farooq, *Environment, Biodiversity, and Conservation* (New Delhi: A.P.H. Pub. Corp., 2000), 508.

<sup>48</sup>1998 1 SCC 226

<sup>49</sup>S.P. Sathe, *Judicial Activism in India*, 278.

<sup>50</sup>AIR 1951 SC 226

<sup>51</sup>AIR 1978 SC 597

widespread, so it leaves them with no recourse but to move the courts with the help of PIL, thus expanding the field for judicial intervention.<sup>52</sup> Due to this reason judicial activism and PIL have touched almost all facets of public life.

### **Cases of intervention of Judiciary in Politics**

The responsibility of the betterment of people is on legislature as well as judiciary. Given the way Supreme Court has taken its stance for the “progressive interpretation” of the Constitution and laws made by other bodies, the courts too are accountable to the common citizens. People expect transparency in terms of governing process from both legislature and judiciary. In the past 3-4 decades, courts have made efforts to enforce the policy that protects the public interests. Below are some examples of cases decided by the apex court where judicial intervention was done in governmental work.

The amicus curiae also reported that the prisoner explained the reason for inflicting such torture was due to the unfulfilled demand of the warden for money. Also, attempts were made by the officers of the department to cover up the crime by frightening the victim and jail doctor. A story was made that the injury was caused because a fall or due to piles. The bench headed by Justice V.R. Krishna Iyer, in this case, held that the writ of habeas corpus can be issued for releasing a person from illegal detention as well for the protection of prisoners from inhuman and barbarous treatment.

#### **I. *Abhiram Singh v. C.D. Commachen (Dead) By LRS. & ORS.*<sup>53</sup>**

In this latest judgment by the apex court of India the contention was that a BJP leader was elected from Santa Cruz constituency and was alleged of appealing of votes in the name of Hindu religion. The Supreme Court gave a broad interpretation of the section 123 of the Representation of People Act, 1951.

#### **II. *State of Uttar Pradesh v. Raj Narain*<sup>54</sup>**

In 1975, the Allahabad High court found the then Prime Minister Indira Gandhi guilty of election malpractice, invalidated her candidature and barred her from holding an elected office

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<sup>52</sup>Anil Divan. "Judicial Activism and Democracy." *The Hindu*, 2007, <http://www.thehindu.com/todays-paper/tp-opinion/judicial-activism-and-democracy/article1822007.ece>.

<sup>53</sup><http://barandbench.com/supreme-court-interpreted-section-123-rp-act>

<sup>54</sup>1975 AIR 865

for six years. The decision caused a political crisis and resulted in the imposition of state of emergency. It however, consolidated the power required for the introduction of PIL.

2G Spectrum case and Commonwealth Games case and Noida land acquisition case. The concept of judicial activism has been used by the courts as a strategy to provide justice to the deprived sections of society.

## CONCLUSION

Politics in India is of every concern to every individual in the country. Politics play a major role in a democracy. The type of political system chosen by India includes choosing of representative by the people, their trust and voice should be heard but with time we see a lot of corruption etc. happening which has led to weaken of the Indian democracy. After seeing the amount of success the judiciary has had in protecting fundamental rights, it seems that judicial intervention is a necessity. It seems as if the executive and legislature have failed to care about the aspirations of public. In the fight to dominate the vote bank, the public good is totally disregarded. In such a situation, the common citizen looks up to the judiciary. The judiciary has been able to deliver results and therefore there is a sense of accountability.

The intervention by judiciary has acted as a boon for the people fed up by the selfish and corrupt practices of the various governmental bodies. The government, once elected, many a times acts in a high-handed manner. People feel as if they are powerless for 5 years, once the elected party fails to deliver.

One might raise a concern that the power of the courts must also be kept in check. But it would be safe to say that neither legislature nor executive is in any position to check the power of the apex court, as both are involved in corrupt practices. The judiciary must use its independence to vouch for the fundamental rights of the citizens. As Justice V.R. Krishna Iyer said, "This vulnerable yet impregnable value of independence of the judiciary is not the pampered privilege of elite brethren but the people's dearest in desideratum in societies where imperilled human freedoms still matter."<sup>55</sup>

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<sup>55</sup>V.R. Krishna Iyer, *Human Rights and Inhuman Wrongs* (Delhi: B.R. Pub. Corp., Delhi, 1990), 16.