

## **Drivers of Change: Judiciary as a Catalyst.**

Indian judiciary has been increasingly proactive in recent years. Public interest litigation (PIL) has become a common route to force reform on the governance system. Through these PILs, the Supreme Court and High Courts in the states are accepting complaints or petitions from public-spirited individuals and groups, and treating them as writ petitions. The Constitution provides for such writ jurisdiction of the higher courts to protect the fundamental rights of citizens. Since 1980's, the writ jurisdiction has been substantially expanded by the courts, widening the scope of fundamental rights through judicial interpretation, and forcing reform on the political system. There are over six hundred judges in higher courts in India, each of whom can function as a constitutional court with vast powers.

There are three broad areas which attracted the attention of courts in this form. First, fundamental rights have been creatively interpreted and expanded. For instance, right to information has been derived from Article 19(1) which guarantees freedom of expression. In this manner, right to information law has become a major issue of public debate, and recently such a statute was enacted by the Parliament. The Supreme Court extended such a right to the electoral arena, and directed that all candidates for elective office should disclose their financial record and criminal antecedents, if any, as a necessary part of the nomination. Similarly, right to full and fair rehabilitation of displaced persons, release of under trials if prosecution is prolonged unreasonably, and expansion of public distribution system as part of right to life and food are rights derived by judicial interpretation.

Second, several directives were given in recent years about environmental protection, coastal regulatory zones and other such conservation issues. Courts have even directed the use of certain fuels and prohibited others on environmental grounds. Sometimes, even industries were closed down en masse.

Third, directives are given to government on a variety of issues, ranging from insulating crime investigation from political interference to taking up a public work or programme. For instance, the courts have ordered certain measures to enhance the independence of the investigative agencies like CBI. As a result, a new law is now being considered for enactment.

Clearly, this judicial “activism” has been one of the important factors influencing the evolution of Indian polity and governance in recent years. In general the media and urban middle classes are strongly supportive of such judicial intervention. However, there are certain concerns expressed in several quarters. For instance, the Supreme Court has decided that appointments of judges in Supreme Court and High Courts shall be made according to judicial recommendation, and the government has no role. Similarly, at times the courts tended to give directives enhancing the emoluments, allowances and facilities to judges. There is a large body of opinion among the political parties, and even among jurists, advocating greater accountability of higher judiciary and appointment of judges through a collegium. A National Judicial Commission is proposed for judicial appointments and disciplinary action, and such a proposal has broad appeal across the political spectrum.

In general, the courts have played a significant role as agents of change, and as catalysts. While some of the vast powers of the courts are likely to be curbed, the judiciary will continue to be a strong, vibrant, independent and proactive institution enlarging fundamental rights and forcing the pace of change.