

VOYAGE OF INDIAN JUDICIARY

*Justice Brijesh Kumar,
Judge,
Supreme Court of India*

50 years, i.e. half a century is no doubt a very long period, but in context with building of a nation and its history, it may not be that long. Past 50 years of Indian Judiciary have been very significant for the beginning of judiciary of independent India as this period also included the formative and foundational period of its judiciary. India got independence in 1947 and our Constitution came into force in January, 1950 under which our Supreme Court was established on January 28, 1950. The citizens of the free country started breathing fresh air, free from numbness of slavery and colonial laws. Privy Council was replaced by the Supreme Court as highest Appellate Court and more power, and the High Courts though existing since long before, were vested with new powers to break and tread into new fields, to reach the new destinations of Rule of Law and freedom from many wants and bondages. People had new hopes, expecting better quality of life, better education, better bringing up of their children and better opportunities for self-development and achievement of excellence. The burden of oppressive laws was being shed and freshness of breeze was felt in the atmosphere. This is how the Indian Judiciary started its voyage, as judiciary of a free country 50 years ago. The contents of the new hopes and aspiration of people are to be found in Part-III of the Constitution as Fundamental Rights and the goal set to be achieved by the States in Part-IV of the Constitution, namely, the Directive Principles of the State Policy. These two chapters played a very significant role in the last 50 years. The medium through which the goals were to be achieved and rights of the people in general were to be protected and enforced are mainly the

powers vested in the High Courts and the Supreme Court under Article 226 and 32 of the Constitution respectively. The burden on the shoulder of the judiciary in context with reconstruction of a free and independent society was heavy. What was sought to be achieved was nothing so small, it was tremendous task of transformation and bringing about a social change altogether. With the above background, a change in the judicial scenario was but natural. In a society governed by Rule of Law, transformation and changes are brought about through laws and legislations which have to pass through the test on the Constitutional touch stones set for the purpose.

In many States old land laws were abolished and new agrarian reforms were introduced., eliminating the intermediary class to bring about a social change to ensure benefit to the tillers of the land whose interest was undermined for long. A number of social welfare legislations were promulgated for the benefit of weaker or ignored sections of the society, more transparency was brought about in the administrative actions. People became more conscious of their rights and started asserting the same in respect of which earlier they had even not dared to protest. Public authorities were sought to be made more accountable through legal actions. The individual disputes started taking a back seat and the rights of the people in general vis-à-vis the State or instrumentalities of the State became more prominent. It changed the whole scenario of judicial panorama.

Realising the onerous role of the judiciary, the first Chief Justice of the Supreme Court Hon'ble Mr. Justice H. J. Kania on the occasion of its establishment had expressed the hope that the Court would be able to perform its duties without fear and favour and if it succeeds, it would contribute its share to the progress of Republic of India and render a service to the country which none else can render. The testing period of the Indian Judiciary started right from the inception of the Supreme Court and investing the High Courts with new powers. In the Year 1950 itself in the case of A. K. Gopalan (AIR 1950 SC 27) the Hon'ble Supreme Court of India was called upon to examine

the validity of law relating to preventive detention and a particular legislative provision relating to non-disclosure of the reason for detention of the detenu was struck down being unconstitutional. Again in the same year, precensorship of publication by the Press was deprecated in the background of Freedom of Speech. Things started shaping and later the laws relating to agrarian reforms were upheld and rights of workmen were better recognized. Undue pressure on newspapers was disapproved in Newsprint case. Such decisions in the initial period of half a century placed a lead role and to put the rail on the right track and decision by decision, the law developed from case to case and Judicial Review of Administrative Actions was well established with a view to ensure protection from arbitrariness and mala fide actions. Meaning assigned to the expression "Life and Liberty" under Article 21 of the Constitution introduced a new concept about dignity and quality of human life. Right to education to the children, pollution free environment, protection against custodial atrocities and protection to women in their workplaces were also recognized. It took long 50 years to the Indian Judiciary to reach the present day stage by interpreting the laws and the Constitutional provisions giving meaning to freedom attained by this country and making the society to realize their free existence and their rights. The principle of 'locus standi' was also relaxed to a great extent so that public causes and causes of those for whom it would be difficult to approach the Courts, could be considered without hindrance of technicalities and whatever is due could be given to a person or a particular section of the society even on the basis of a letter petition in an appropriate and suitable case. The impact of the role of the judiciary has been felt almost in every sphere of human activity.

