



## SOCIAL CONTEXT ADJUDICATION

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**Abstract:** *Judiciary in a democracy is like a charioteer of a carriage. It does not only give meaning to the intent of legislature but also by means of “social context adjudication” promotes the cherished ideals of the constitution. Our body of law is largely a colonial heritage, based on adversarial system of trial. In spite of this Indian judges have seldom been bound by its inherent impositions. Indian judiciary has not only been a guardian or even a reactor to social change but also active initiators of progressive social change and have breathed a lease of life in the dry letters of law by creative and socially responsive interpretation. It has donned the mantle of an active referee as opposed to a mere umpire, as envisaged in a strictly adversarial system. Gender-Justice, Prison Reforms, Rights of the Accused and victims of crime, children’s rights, Criminal justice reforms and poverty jurisprudence bears testimony to the activist role played by our judiciary. In a contest between religious rights and gender justice the judiciary has walked this tightrope and served the cause of gender equality. Right of maintenance of a Muslim woman, bolder interpretation of provisions of procedural laws by successive judicial decisions have all greatly contributed to social justice in India. The right to maintenance of a second wife is also another classic example of activist decisions by the judiciary to wipe every tear from every eye. The liberality in terms of bail has emancipated greatly the poor and indigent languishing in jails for periods larger than the offence that they ultimately get acquitted of. The monitoring of investigation by the magistrate, which has been traditionally seen as making serious inroads into the traditional concept of separation of powers, is now possible, , bringing in the elements of an inquisitorial system which our criminal justice system is in badly need of. In this paper I propose to analyze such instances of creative interpretation, which have reaffirmed the role of our courts as the sentinel on the qui vive of fundamental and basic human rights of our citizens.*

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### I. INTRODUCTION

Our nation, India is a developing one inhabited by a vast population professing different religions, speaking different languages, living in different conditions and having varied ambitions.



The preamble to the Constitution of India lays down certain goals to be achieved for the people of our country, they being- JUSTICE- social, economic and political, LIBERTY- of thought, expression, belief, faith and worship, EQUALITY-of status and of opportunity; and to promote FRATERNITY assuring dignity of the individual and the unity and integrity of the nation. These four goals pave the way for enactment of many socially relevant legislations as well as state actions.

Social justice is a preamble goal in our country. Protection from the cradle to the grave. To effectuate this objective –India, the largest democracy of the world by its Constitution envisages a *tries political* principle, i.e. separation of power between three organs of the government- legislature, executive and judiciary. A co-operative federalism, a broad separation of powers, with the three organs act as checks and balances on each other. In this, the judiciary has an added responsibility to check the constitutional and legal validity of the actions of other organs. In this paper, I Endeavour to examine and analyze with the role of judiciary in not only protecting but also promoting social justice for the people of the country.

India like many other common law countries follows the adversarial system of law. It has now been generally accepted that in an advocate dominated adversarial system, there are certain inherent inequalities. Prof. Robert A. Kagan has written that “Adversarial legalism’s procedural tools exacerbate its potential for inconsistency and unequal treatment. In a regime of adversarial legalism, the quality of justice is especially dependent on equality in the quality of the dueling lawyers. Adversarial legalism therefore is far less effective for achieving equal justice in everyday legal processes.”<sup>1</sup> Thus, a huge gap subsists in the quality of legal services extended to the rich and the poor. This leads to widening of the fissure between the haves and have-nots. The rights of the poor lay in a dormant state because of various procedural technicalities and sub-standard legal services available to them. In such state of affairs it becomes crucial that judiciary, which is the guardian of constitutional rights, steps in and provides proper contours to the idea of social justice. In an adversarial system it is often the side with the better lawyer that wins. ‘Truth as the ultimate quest’ is not the guiding principle in adversarial trials. Having succeeded to a legal heritage entrenched in

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<sup>1</sup>Kagan, Robert A., *Adversarial Legalism: The American Way of Law*, Harvard University Press, 2003



common law and adversarial culture, which is incompatible or at any rate unsuited to our societal milieu. The Indian Judiciary had to go an extra mile to ensure that our legal system does not accentuate inequality any further. An Indian Judge had the added responsibility to be sensitive to the inequalities between the parties so as to exterminate any possibility of miscarriage of justice. This can be accomplished by “Social Context Adjudication”. A judge when he is elevated does not divorce himself from the ground social realities. A judge cannot afford to live in an ivory tower. He has to be alive to the social responsibility cast on him and be socially responsive. The interplay between rigours of law, judicial decision making and societal imperatives have been pulled into debate once again by the Supreme Court in **Badshah v. Urmila Badshah Godese and Another**<sup>2</sup>, wherein Justice A.K. Sikri of the Supreme Court of India has observed that “... drift in the approach from ‘adversarial’ litigation to social context adjudication is the need of the hour.” This is an attempt to examine the role of the Indian Judiciary *vis-à-vis* social context adjudication.

## II. JUDICIARY AS A CATALYST FOR SOCIAL JUSTICE

As a corollary to the doctrine of separation of powers, a judge merely applies the law as it is enacted by the legislature. Consequently, the Anglo-Saxon legal tradition has been that the judge only reflects the law regardless of the anticipated consequences, considerations of fairness or public policy.<sup>3</sup> This notion has been time and again emphasised *qua* democratic setups. It is debated that it is the legislature and not judiciary which has the umbilical cord attached with the will of the people. It is often argued that the judges not being directly elected by the people of the country should not venture into domains which have legislative shadows. They should apply the law as it is enacted by the legislatures, who are the true representatives of the will of the people. I would like to counter this notion by analyzing how the Indian judiciary by social context adjudication has fortified the spirit of the will of the people. For this purpose I will appraise the role of judiciary with respect to various facets of social justice. I would like to demonstrate how in spite of having no direct democratic mandate the courts have been more sensitive and responsive to the needs of the people, and therefore

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<sup>2</sup> (2014) 1 SCC 188

<sup>3</sup> Dr. Justice B S Chauhan, Retd. Judge, Supreme Court of India- *Legislative Aspect of Judiciary: Judicial Activism and Restraint*, Articles- Tamil Nadu Judicial Academy



for good reason commands great respect and credibility, even in these times of extreme cynicism and disillusionment with the idea of 'State'.

## ❖ *Court as the promoter of rights of women*

It is an accepted fact that India is still far from the dream of gender equality. Even in this date of globalization and development, a huge number of women in India do not have access to education, job opportunities, and representation in many sectors and infect the rot begins at home where they are anything but equal. Gender discrimination is deeply entrenched in our society. Various laws have been enacted for the elevation of the status of women. In spite of this, we still have a long way to go to realize the true spirit of Article 14 and Article 15 of our Constitution. Indian judiciary has played an exemplary role in diminishing the pervasive gender inequality in our society. Through many landmark judgments, the bench has widened the horizon of rights of women by not only interpreting various laws in their true spirit but also by going beyond the four corners of legislation. Judges have time and again strengthened the rights of women by expanding the scope of various provisions of law and by humanizing the practices which were unfair to women.

In the landmark case **Mohd. Ahmed Khan v. Shah Bano Begum**<sup>4</sup>, the Supreme Court held that muslim women were also entitled to maintenance even beyond the period of *Iddat* under Section 125, Criminal Procedure Code, 1973. The court through its judgment gave the message loud and clear that its interpretation of the provisions of law will be guided by the constitutional values of dignity and equality. Muslim women were greatly benefited by this judgment. Prior to this judgment, in case of divorce they were given a meager amount which used to subsist them only during the period of *ideate* and they were expected to fend for themselves after that. But this socially relevant judgment gave them the right to maintenance even beyond the period of *ideate* and brought them on the equal footing with women of other religions. However, in a bizarre twist of events, the government, as per paper committed to the cause of gender equality, under pressure from certain orthodox sections of Muslim community, who argued that the Court by this judgment has interfered in their personal law,

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<sup>4</sup>(1985) 2 SCC 556



passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which provided that under section 3(1)(a) a divorced women is entitled to reasonable and fair provision and maintenance *within* the *ideate* period, thus trying to dilute the beneficial sweep of Shah Bano judgment. But again the judiciary by a path-breaking judgment in the case of **Daniel Latifi v. Union of India**,<sup>5</sup> though upholding the constitutional validity of the said Act held that “A muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the *iddat* period must be made by the husband within the *iddat* period by terms of Section 3 (1)(a) of the Act.”<sup>6</sup> The court by creative interpretation held that the words ‘within’ referred not to the duration for which payment is to be made but the time within which the same is to be done. Thus, the court again by this judgment assured that it would not allow the cause of social justice to be defeated by any consideration including state’s actions.

**Vishaka v. State of Rajasthan**<sup>7</sup> is another example of social-context adjudication, where the Supreme Court laid down specific guidelines to be followed to address the reprehensible act of sexual harassment of women at workplace. At that time - India had no legislation to specifically remedying this. The Apex Court to strengthen the cause of safety and dignity of women which are part of our preambular values laid down guidelines to be followed with respect to addressing of sexual harassment at workplace. The Court thus filled the vacuum of the much required legislation and reiterated that gone are the days when the court merely interpreted the law. The Court actually laid down a much needed law, in this *non liquet* situation and inertia of the legislature.

Very recently in the case of **Badshah v. Urmila Badshah Godese and Another**<sup>8</sup>, the Apex Court amplified the scope of Section 125, Criminal Procedure Code, 1973, by holding that even a second wife is “wife” within the meaning of this section, if she has been duped into the marriage by suppressing the factum of the first marriage. The court observed that “If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation

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<sup>5</sup> (2001) 7 SCC 740

<sup>6</sup> Ibid.

<sup>7</sup> (1997) 6 SCC 241

<sup>8</sup> Supra





should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result." Also very accurately the court observed that "while dealing with cases under this provision, drift in the approach from 'adversarial' litigation to social context adjudication is the need of the hour.

The humanisation of Triple Talaq is another feather in the cap of the judiciary. The Supreme Court in **Shamim Ara**<sup>9</sup> held that a triple talaq in order to be valid needs to be a proper declaration (formal proclamation) and a mere averment in a pleading would not serve as a talaq. The Delhi High Court in an extremely progressive decision in **Masroor Ahmed**<sup>10</sup> has held that a triple talaq in order to be effective has to be preceded by attempts at reconciliation. It has further been held that, marking a departure from earlier law on the subject that a triple talaq uttered in jest or intoxication or otherwise in a state of mental disarray is not valid. The Court went a step ahead and held that such a talaq is revocable giving adequate opportunity for the same to be revoked even after pronouncement and the possibility of a re-marriage between the same spouses even after divorce without an intervening marriage is now open, which was hitherto forbidden by the law on the subject.

The rights of a woman, as a mother have also not been out of the judiciary's consideration. As opposed to earlier reading of law, where a Hindu mother was considered to be the natural guardian of her children only in the cases of death, lunacy or other 'absence' of her husband, the Supreme Court in **Githa Hariharan and another v. Reserve Bank Of India**<sup>11</sup> has held that the words 'absence' in the related section, refer not just to literal absence of father but even constructive absence, which in other words means, that when the father is never there or indifferent or oblivious to the needs and interests of the children, the mother can be the 'natural guardian' even in his lifetime and presence.

### ❖ *Judiciary's attitude towards sexual minorities*

Sexual minorities are basically people whose sexual orientation, identity or practices are different from the majority of the people in a society. India traditionally has been very open to such classes as

<sup>9</sup>*Shamim Ara v. State of U.P. and Anr*, (2002) 7 SCC 513

<sup>10</sup>*Masroor Ahmed v. State* (2007) Delhi High Court, J. B.D.Ahmed

<sup>11</sup> (1999) 2 SCC 228



is evident from various texts, paintings at Khujrao and other cultural references. Ironically, as the time progressed such people were sidelined as they did not subscribe to the majority notions of gender and sexuality. Resultantly the basic rights to such people were denied. Till date we are following the colonial laws which criminalize their sexual acts and ergo make them susceptible to persecution. While dealing with judiciary's attitude towards the said class of people, I will analyse how crucial is social context adjudication to ensure the constitutional rights to all.

First, I will discuss the path-breaking judgment of Delhi High court in the case, **Naz Foundation v. Government of NCT and others**.<sup>12</sup> In the judgment the Delhi High Court declared Section 377 of Indian Penal Code as unconstitutional to the extent of consensual sex between adults. The Court very rightly observed that the said provision is not in compliance with our constitutional ideals of liberty and equality. This judgment had great significance as once again it became crystal clear that our courts will ensure that nobody including state can infringe the values of liberty and equality. However, in an unfortunate turn of events, Supreme Court in **Suresh Kumar Koushal v. NAZ Foundation**<sup>13</sup> set aside the Delhi High Court judgment. The Apex Court, going by what may be termed as 'judicial restraint bordering on abdication of the very role of protector of rights', held that there was not enough evidence to prove that sexual minorities were being persecuted. The Supreme Court following the Anglo-saxon notions held that the law was constitutional and to weigh it on the scales of propriety is within purview of legislature and not judiciary. This case is an unfortunate example that when court becomes a mute spectator and becomes apathetic to the spirit of constitutional values, it results in a situation of gross violation of equality, liberty, dignity and social injustice. If Court had been guided by the notions of social context adjudication, it would have stepped up as a guard to protect people from such injustice. This was again proved when the Supreme Court passed its judgment in the case **National Legal Services Authority v. Union of India**<sup>14</sup>, wherein it held that transgenders should be treated as a third gender and that they may decide their gender within the male/ female binary regardless of their biological sex. The Apex Court observed that when it is a matter of violation of minority rights, "Constitutional Courts cannot be mute

<sup>12</sup> MANU/DE/0869/2009

<sup>13</sup> MANU/SC/1278/2013

<sup>14</sup> MANU/SC/0309/2014



spectators". In the judgment the court made the pertinent observation that "Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders...gender constitutes the core of one's sense of being as well as an integral part of a person's identity".<sup>15</sup> This judgment again demonstrates that the empathy of judiciary towards the cause of social justice.

### ❖ *Evolution of Criminal Law jurisprudence and the Supreme Court*

Crime is a state of societal disequilibrium. State by the instrumentality of Criminal Law attempts to restore the balance of the society disturbed by anti-social behaviour that we call crime. An ideal criminal law regime does not merely deal with crime once it has happened by handing out the appropriate punishment but also by deft sentencing seeks to prevent future crime and also serves as a palliative for the victim, so that he remains not a forgotten entity. Since criminal law touches life & personal liberty of an individual more intimately than probably, any other branch of law and its exercise directly results in the denial of a person's liberty, the guarantee of fair trial is writ large over the entire Code of Criminal Procedure, 1973. The Supreme Court of India vide various decisions has accentuated the beneficial scope of these provisions considerably. It is now generally accepted that the overall conditions of our criminal justice administration are dismal and in practice it leaves a lot to be desired. Non registration of FIR, arbitrary exercise of power of arrest, custodial torture, faulty and unscientific investigation by the police, endemic delays in the courts, dismal conviction rates, denial of rights of the victims, lack of adequate legal aid are some of the problems that have been the bane of our criminal justice system. This is the context in which our criminal law operates. These harsh social realities had necessitated a more pro-active approach on the part of the highest echelon of justice of our land, and there is no gainsaying that the Supreme Court of India has been equal to the task. We have a rich legacy of decisions whereby the provisions relating to criminal law have been interpreted widely with the Supreme Court donning the mantle of the sentinel on the qui vive of

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<sup>15</sup> Ibid.





the citizens' rights with great fervour. The Supreme Court has upheld the right of silence of an accused even during police investigation as a necessary component of the principle against self incrimination, alongwith the right to consult a lawyer at the stage of investigation itself<sup>16</sup>. Speedy trial has similarly been held to be an important component of a fair trial<sup>17</sup> and needlessly protracted prosecutions and trials are routinely quashed by the Courts. Having said that, in order to rule out unwarranted benefit of the same to the accused, the Supreme Court has tempered the right to speedy trial with the rights of the victim by holding that the concept of speedy trial is a relative concept and in each and every case, delay shall not entail a quashing of conviction<sup>18</sup>. The Supreme Court has time and again emphasized the importance of fair trial, and in cases of faulty and inadequate legal aid, a trial itself may be held to be vitiated<sup>19</sup>. A literal reading of the connected provisions in the Code reveal that the law, strictly read, provides for legal representation only during trial. However, the Supreme Court recently in **Mohd. Ajmal Amir Kasab v. State of Maharashtra**<sup>20</sup>, has extended the right to have legal representation to the very first production of the accused before the Magistrate for remand, in order to assist the accused especially in a case where he intends to make a confession or in other cases to seek bail and generally to ensure fair investigation and to rule out police excess. The Supreme Court, in no ambiguous terms, has held that an accused at the time of his first production before the magistrate has to have a counsel, and in case of accused not being able to brief a counsel, a legal aid counsel, provided free of cost by the state (in practice called legal aid remand advocates) should represent him on the first day of remand. The Supreme Court further adds that any magistrate failing to ensure the same shall liable himself to departmental action. Hence the message is loud and resoundingly clear. The Supreme Court, taking note of police excesses and rampant misuse of the power to arrest, recently in **Arnesh Kumar versus State of Bihar**<sup>21</sup> has directed all police officers, to record reasons in writing before effecting an arrest as per provisions of Section 41 of the Cr.P.C (as amended) justifying the need of an arrest. Arrest therefore, even in cognizable cases, is not a

<sup>16</sup>*Nandini Sathpathy v. P L Dani*, AIR 1978 SC 1025

<sup>17</sup>*MotiLal Saraf Vs. State of J & K.* (2006) 10 SCC 560

<sup>18</sup>*Niranjan Hemchandra Sashittal & Anr v. State of Maharashtra*, 2013 STPL (Web) 203 SC

<sup>19</sup>*Hussainara Khatoon & Ors. (V) v. Home Secretary, State of Bihar*[(1980) 1 SCC 98]

<sup>20</sup>(2012) 9 SCC 1

<sup>21</sup>(2014) 8 SCC 273



matter of right for the police officer but a decision taken only in view of imperatives of a fair investigation, prevention of further crime, protection of the victim/complainants or to prevent absconding of the accused. A duty has also been cast on the Magistrate to ensure the existence of such reasons while remanding the accused to police or judicial custody.

Marking a departure from the strict theoretical stance of an adversarial systems, wherein the judge merely acts as an empire and where there is strict separation of judiciary and executive, the Supreme Court has recognized and emphasized the inquisitorial functions of a judge, whereby power to monitor the investigation by the magistrate has been affirmed by the Supreme Court<sup>22</sup> This has been done to ensure a fair, impartial and effective investigations by magisterial vigil at all times. The thrust of the Supreme Court on a judge being participative is therefore clear. The court at various occasions has emphasized the liberal exercise of provisions of Section 165 of Indian Evidence Act and Section 311 of the Cr.P.C, and encouraged asking of right questions and calling of necessary witnesses. This is done to prevent the aberrations of a strict adversarial system from defeating a fair trial. Hence the possibility of a judge being alert and to even do, what I may term as - protective discrimination to ensure level playing field has been recognized in many decisions.<sup>23</sup> When a prosecutor acts as a defence counsel, fair trial becomes a mirage, society and the victim of crime become persona non grata. The Supreme Court demonstrated in **Best Bakery Case**<sup>24</sup> as to how a trial judge should be alive to these risks and wherever the need be intervene to ensure that the tripartite interests (accused, victim and the society) in a criminal case are balanced and protected, with the north star throughout the trial being 'truth'. A criminal trial is a voyage of discovery with the truth being the ultimate quest and the motto of our judicial process as '*Satyamev Jayate*' i.e. 'Truth alone shall triumph', have been reiterated by the Court on more occasions than one.

Coming back, taking the right of the accused to know the accusation against him one step ahead, the Supreme Court recently has recognized the right of the accused in not only to have a copy

<sup>22</sup>*Sakiri Vasu vs. State of Uttar Pradesh* - (2008) 1 Supreme Court Cases (Cri) 440

<sup>23</sup> *Ram Chander v. State* AIR 1981 SC 1036,

<sup>24</sup>*Zahira Habibullah Sheikh (5) V. State of Gujarat*, (2006) 3 S.C.C. 374



of the chargesheet but also documents placed by the police in the police file but intentionally not made a part of the chargesheet<sup>25</sup> as a necessary component of a fair investigation.

The rights of the complainants and victims have also been given a greater thrust by the Supreme Court by decisively holding that the Police officers are under an obligation to register the FIR once the complaint discloses commission of a cognizable offence in a recent Constitution Bench decision.<sup>26</sup> The Right of the complainant to compensation has been a part of the Criminal Procedure Code for quite some time, but not exercised as often as it should have been. Section 357 of the Cr.P.C provides that the court 'may' award compensation to the victim of the crime. In this regard the Supreme Court, in a classic example of creative judicial interpretation & social context adjudication, has interpreted the words 'may' as 'shall' and cast an obligation on every criminal court to, at the time of end of trial, to consider the question of grant of compensation to the victim of the crime or their legal heirs.<sup>27</sup> Holding the power under section 357 Cr.P.C to be a power coupled with duty can largely contribute to the attainment of restorative justice for the victims of crime. This interpretation has been furthered by the Delhi High Court<sup>28</sup> whereby in addition to mandatory consideration of question of compensation in Road Accident cases, the Court has envisaged preparation of a Victim Impact Report in all such cases, in order to facilitate the reparation and rehabilitation of victims of crime.

It is manifest that the highest courts of our land have greatly streamlined the criminal justice administration and the benefits (as they trickle down) of these decisions shall result into a more socially responsive and humane criminal law regime.

### ❖ *Supreme Court and Civil Law*

Procedure has been the undoing of our civil law. Civil Court's delays are endemic. In the average Indian Civil Litigation – winner is the loser and the loser is dead – in terms of cost, time and effort. The originally well intentioned procedure has now been hijacked by recalcitrant litigants to delay and

<sup>25</sup> V.K. Sasikala v. State, (2012) 9 SCC 771

<sup>26</sup> Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1

<sup>27</sup> Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770

<sup>28</sup> Satya Prakash v. State 2013 X AD (Delhi) 303



protract cases. Miscellaneous applications, adjournments have led to a situation where civil cases take decades to be decided. The procedure, which was supposed to be a handmaiden of justice, has turned a tyrant. From the dog wagging the tail, the tail has now started wagging the dog.

The Courts however have been alive to these problems. Increased emphasis on resolution of disputes by Mediation, Arbitration and other forms of ADR (Alternative Dispute Resolution Mechanisms)<sup>29</sup>, imposition of realistic and deterrent costs on frivolous litigation<sup>30</sup> and unwarranted adjournments, bear testament to this. The courts have recognized the need for more concise pleadings, better framing of issues – in order to narrow down the domain of controversy, more proactive use of power of discovery and interrogatories to arrive at the real issues in the case, to prevent obfuscation and wastage of judicial time. The Supreme Court has also ruled out grant of injunctions at the behest of mere occupiers/licensees of property against the owners, by holding that such persons once they get an injunction, try to prolong and protract the litigation to their unjust enrichment by occupying the property<sup>31</sup>. Such a litigant stands to gain on the cost-benefit analysis, as cost if any imposed by the court or the legal costs are far less than the value they gain by occupying the property sans any title. Hence the need for giving mesne profits/damages for unlawful occupation of the property commensurate with the market value of the property has been advocated.

There is a discernible trend now and the courts are now regularly exercising, the hitherto forgotten provision of Order 12 Rule 6 of the CPC with much greater vigour these days to pass judgments on the basis of admissions, not just actual but constructive admissions, especially in cases of landlord – tenant disputes, where the tenant does not dispute landlord's title but merely raises technical objections.<sup>32</sup> This is a huge check to filter cases where there is no real issue and the judgment can be passed on the basis of admission of the parties.

<sup>29</sup>Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24

<sup>30</sup>Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249

<sup>31</sup>Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira, (2012) 5 SCC 370

<sup>32</sup>Sky Land International Pvt. Ltd. vs Kavita P Lalwani – 2012 Delhi High Court.



Such socially relevant interpretation of procedural laws are pumping blood into the veins of constitutional values, especially enshrined in Article 14, 15, 19 and 21 of Constitution of India and helping realise the goal of access to justice that is effective and speedy.

### III. CONCLUSION

An analysis of judiciary's endeavour to give a fresh lease of life to various constitutional rights through a plethora of its judgments demonstrates that in this country the need of the hour is courts of justice and not just courts of law. Indian judges have seldom been bound by inherent constraints of adversarial system. Our judiciary has recognised that law does not exist in a vacuum. Law affects and is in turn affected by the societal milieu it operates in. In India judges have not only been reactive but active initiators of progressive social change and have breathed a lease of life in the dry letters of law by creative and socially responsive interpretation. Our body of law is largely a colonial heritage, based on adversarial system of trial. Over the years it has become clear that the traditional adversarial stance of judge being an umpire is not suited to our own peculiar social setup, problems and limitations. The Indian judge has to sometime drop the mantle of the traditional judge and don the robe of an active referee who does not merely act as the impartial umpire but run with the parties to ensure fair play in action. He has to protectively discriminate to ensure a level playing field. Due to poverty and various forms of inequities existing in our society – the Indian judge has had to take a pro-active approach. It has been observed by our Courts that in India, courts do not exist merely to adjudicate matters but the ultimate objective is quest of truth. Social context adjudication thus has proved to be of great significance for our democracy. In a country like ours where many politicians indulge in vote-bank politics, enactment of legislations aiming for social justice cannot be expected all the time. “The democratic government necessarily is a majoritarian government. Whatever representations majority get would depend on their strength as vote-bank. There would inevitably be sub-culture minorities, linguistic minorities. But their needs also have to be attended to.”<sup>33</sup> In such scenario it becomes imperative that judiciary being another equally important organ of democracy furthers the constitutional goals. Balance of interests is often maintained by courts. The

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<sup>33</sup> DK Sampath, *Adjudication in Trial Courts*, First Edition, 2012





judge plays a role of a quasi-politician role when he treats them as equals of majority people coming before the court. The unavoidable harshness of majoritarian rule is often softened by the courts. What the political institutions are not able to achieve as they are in control of the majority, the courts seek to achieve. Social context adjudication thus is a way to ensure that democratic and constitutional aspirations of the people are fulfilled, and to quote Tagore, to encourage the creation of a state of affairs where each citizen's head is held high and the mind is without fear. Let the courts usher us into that golden age.