



Dr. Adarsh Jain Anand
Chief Justice of India



FOREWORD

26 January 2000 marks the completion of fifty years of the Supreme Court of India. At this juncture, it is time to weigh what it has contributed and where it has lagged behind. This is all the more so when the Supreme Court is the custodian of the Indian Constitution and exercises judicial control over the acts of both the legislature and the executive.

In retrospect, it is satisfying to see that its achievements have been significant in all areas of the nation's life. It has not shied away from its responsibility of upholding the goals of the Constitution. One of the most powerful institutions of the world, the Court decides cases touching all facets of human life and relationships. It is the defender of the Constitution and the principles enshrined therein, guardian of human rights, and promoter of peace, cordiality, and balance between different organs of the government. At the time of its inauguration on 28 January 1950, Justice Harilal Kania, the first Chief Justice of the Court said that the Supreme Court would declare and interpret the law of the land, and with the tradition of the judiciary in the country, it would work in 'no spirit of formal or barren legalism', within the limits prescribed by the Constitution. The Court, as part of the federal system and as the defender of democracy, is responsive to the changes in Indian society.

It has, therefore, intervened to protect democracy and the rule of law on which the Constitution rests. The Court has always been guided by the Latin maxim *boni judicis est ampliare jurisdictionem*, that law must keep pace with society to retain its relevance, for if

the society moves but law remains static, it shall be bad for both. In order to create a civil society in which respect for human dignity is the corner-stone of its functioning, the Supreme Court has zealously protected the human rights of individuals. The Court has given a liberal interpretation to Article 21 of the Constitution by giving it more content, meaning and purpose. In expanding the ambit of right to life and personal liberty, the Court has evolved compensatory jurisprudence, implemented international conventions and treaties, and issued directions for environmental justice. It has given directions, and also prescribed guidelines for the enforcement and achievement of human rights of various groups such as children, women, disabled, scheduled castes, scheduled tribes, bonded labourers, minorities, and socially and economically backward classes.

In view of the enormous diversity of our population in terms of race, language, religion, community, caste, and culture, the Supreme Court has had the onerous task of protecting the ideal of secularism and respecting the sensitivities of all groups of people, and all this without compromising the need to impart real justice in the circumstances of the case. The *Shah Bano* case is an example of this.

It is common knowledge that judges no longer merely apply the law. They have added new dimensions to various statutory provisions by their liberal interpretation, or by evolving principles of justice, equity, and good conscience. The process of evolution of the judicial component in legislative provisions started from the very first year of the inception of the Court, in the minority view of Justice Fazal Ali in *A.K. Gopalan's* case¹, and is an ongoing judicial process.

The Court has also been aware of, and sensitive to, the changing social, cultural, and environmental needs of the society. It has filled the gaps between statutory legislation and decision-making by laying down extensive guidelines, which have the force of law, in several matters. The judgements on inter-country adoptions in *L.K. Pande v Union of India*² in the 1980s and *Visakha v State of Rajasthan*³ and *Export Promotion Council v A.K. Chopra*⁴ judgments

¹ AIR 1950 SC 27.

² AIR 1984 SC 469, AIR 1986 SC 272, AIR 1987 SC 232.

on sexual harassment at workplace are vivid examples. A beginning of a new concept of victimology, which entitled victims of administrative wrongs or administrative lawlessness to compensation started by the Court in *Rudul Shah's* case⁵, culminated in *Nilabati Bebra*⁶ and *D.K. Basu*⁷, thus making an enforceable right to compensation, a part of the public law regime in India. In *Doon Valley* case⁸, the Court read the right to clean environment as a part of right to life in Article 21 and held that the permanent assets of mankind cannot be allowed to be exhausted.

Today, it is because of public opinion that the higher judiciary in the country occupies a position of pre-eminence among the three organs of the State. An independent judiciary is a national asset. It is the solemn duty of a judge to extend the jurisdiction of the court—based as it is on the principle that law must keep pace with society to retain its relevance. The Indian judiciary has, indeed, during the last few decades, extensively followed this principle, particularly in cases where protection of fundamental rights or basic human rights are concerned.

The Court has always been aware of its special responsibility towards the weaker sections of the society, who due to poverty, ignorance, and illiteracy find it difficult to access the Court for justice. Hence, it evolved the strategy of public interest litigation (or social action litigation) to bring justice within the reach of the underprivileged classes. PIL has evolved as an effective tool of the justice delivery system, where the traditional concept of *locus standi* has been expanded. PIL has led to many landmark judgements and is the tool that has helped the Court to act its role of a social engineer.

In the landmark judgments in *I.C. Golaknath v State of Punjab*⁹ and *Kesavananda Bharati v State of Kerala*¹⁰ the Court laid down the parameters of the Parliament's powers to amend the Constitution. It ruled that Article 368 of the Constitution is not to

³ AIR 1997 SC 3011.

⁴ J.T. 1999 (1) SC 61.

⁵ AIR 1985 SC 1086.

⁶ (1993) 2 SCC 746.

⁷ (1997) 1 SCC 426.

⁸ (1985) 2 SCC 431.

⁹ AIR 1967 SC 1643.

¹⁰ AIR 1973 SC 1461.

be construed as an independent source of power and that it merely provides the procedure to amend the Constitution. Amendments to the Constitution by the Parliament cannot encroach upon fundamental rights, and if they do so, the amendments would be void. In *Kesavananda Bharati's* case, the Court ruled that the Parliament, through amendment of the Constitution, cannot abrogate or destroy the basic structure on which the very foundation of the Constitution is built.

As an *independent judiciary*, under the scheme of the Constitution, the Court has played its role effectively in acting as a watchdog through *judicial review* over the acts of the legislature and the executive. The major contribution of the Supreme Court has been to uphold the Constitution by delineating the role of the three organs of the State. When two organs of the State fail to perform their duties, the judiciary cannot remain a mute spectator. While acting within the bounds of law, the Supreme Court has always risen to the occasion as one of the guardians of the Constitution, criticism of 'judicial activism' notwithstanding.

This volume is a befitting tribute to the august institution and its working over a period of five decades. It is hoped that the papers contained in this book will be helpful in appreciating the role of the Supreme Court during the last five decades.

Dr Justice A.S. Anand
Chief Justice of India, and
President, Indian Law Institute