

# Role of the judiciary in democracy



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In a liberal democratic state, the judiciary has four main responsibilities including formulating the rule of law through the interpretation and application of law to respond with a verdict, settling disputes, checking legality and being a player in state politics. To accomplish these four duties, the basic principles of a liberal democratic state must be upheld along with the principles of a legal democracy and state. The judiciary also has to interpret and apply the law along with the constitution, and to provide impartial adjudications of disputes between the state and individuals, between individuals, and between different levels of government within the state.

The reliance on the courts and on judicial means for addressing core moral dilemmas, political controversies and public policy questions is arguably one of the most consequential phenomena of the late twentieth and early twentieth century government. Equipped with newly attained judicial review, national high courts worldwide have been frequently asked to resolve a range of issues, varying from the scope of expression and religious liberties, reproductive and privacy freedoms, equality rights, to public policies pertaining to criminal justice, education, labour, and environmental protection. The increasing political importance of courts has not only become more globally widespread than ever before but it has also extended its scope to become a manifold, multifaceted phenomenon that distends well beyond the now 'standard' concept of judge made policy-making.

The basic law of the Irish State is the Constitution of Ireland adopted by referendum in 1937 replacing the Constitution of the Irish Free State (1922). The Constitution is the canopy under which justice is administered and legal

rights enforced in courts established by law. The Constitution delineates a separation of powers among the organs of State, executive, legislative and judicial. It guarantees the judicial protection of fundamental rights and also due process in the administrative and judicial spheres. It may be invoked by individuals to challenge the constitutionality of laws passed by the Oireachtas and to seek redress for breach of constitutional rights. Subject to the Constitution the legal system is based on the common law tradition. (1)

The judiciary's role in the community is manifested not only in what judges do but also in the way that they do it. This is called the judicial style. There is an evident difference between the style of judges in civil law jurisdictions and the style of judges in common law traditions. In recent times there has been an insistence upon satisfactory accountability of all the institutions within the government, which needs to be reconciled with the principles of independence, has to be addressed and accepted. A lot of the public's money is invested in courts, and the people are entitled to expect that the work of individual judges is done efficiently, as well as fairly, deliver their judgements in a relatively prompt manner and will manage cases with due regard to consideration of economy.

To achieve the characteristics of a judiciary, developed democracies have relied on “the culture of the judiciary”. When judges enter office they swear to uphold the rights of all citizens and the constitution, self integrity, peer pressure, and public scrutiny combine to make judges, at least at the highest level, to abide by their oath. By setting these standards for promotion, they can help harbour the same behaviour in their future peers and at lower levels. The duty of fairness and the principles of natural justice have been

established by the courts through judicial review focus on the vital issue whether, in all circumstances, the procedure followed in a particular case was fair. The transparency and open process of decision-making that have been structured through judicial review are one of the safeguards in achieving an acceptable equilibrium between the country's need for security and the rights and freedoms of its citizens. A multi-dimensional approach is needed to successfully deal with this challenge. Judges will continue to rely upon the insights and wisdom of the legal community. The input from a variety of disciplines is however also essential. Community and government workers, academics, social scientists and policy makers can assist the judiciary in attaining more complete perspective. There is a need to strive for the intricate and complex balance which will foster the growth and development of rational and sound principles under the new legislation. Legislature also has to recognize that it cannot exert influence over the workings of the court and selection of its personnel since it is a party to many disputes between citizens and their representatives that the judiciary has to resolve. Legislature, for example, has to acknowledge that its purpose is to represent citizens and operate within the structures based on rules defined by the constitution. Representation does not mean unchallenged power. The judiciary protects the citizens should their duly elected representatives in the legislature choose to undertake such actions that violate constitutional rights of anyone in the society. The involvement of other branches of government in workings of the court should be as limited as is possible. In instances where any rule is deemed unsuitable constitution also delineates the process of amending the constitution.

The judiciary's role in formulating or applying policy is a subject that has associations extending well beyond judicial review of administrative decisions. When policy formation is thought of as being part of the judicial function it is important that it is comprehensible as to what is being said to be going on, and how the judicial method is related to it, the judicial role and the judicial capacity. While there is a development in common law, as a response to changing needs as well as appropriate pressure for rationalisation, there is an accountability for such development by judges to follow the wisdom of laws in the constitution and proposed change. They accomplish this within the propensities of their own discipline.

Another matter worth weighing might be the changing attitude of the legal profession, and others, towards the use of litigation as a technique for achieving political and social objectives. We have long been accustomed to the use of litigation as a weapon in corporate and commercial rivalry, but we are seeing an upsurge in what might be described as the politically and socially aggressive use of litigation. This has also resulted in a change in the character of the work coming before some courts, and has a significant effect on the way in which courts appear to the public to behave. (2)

As a democratic society, we have witnessed momentous changes in the relationship between individuals and the state. The judiciary possesses the knowledge and experience to make tremendous contributions to the maintenance and continuing evolution of our democratic society. The role of the courts as resolver of disputes, interpreter of the law and defender of the Constitution, requires that they be completely separate in authority and function from all other participants in the justice system.

## **Bibliography**

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