
JUDICIAL GLOBALISATION: JUDICIAL PROTECTION OF RIGHTS IN CHANGING ECONOMIC, SOCIAL, AND POLITICAL CONDITIONS

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ABSTRACT

Judicial globalization represents the increasing interconnectedness of judicial systems worldwide through cross-border legal dialogue, the adoption of international norms, and reliance on foreign precedents. This phenomenon holds immense significance in an era characterized by rapid economic, social, and political changes, necessitating the judiciary to adapt and safeguard fundamental rights in a globalized context. This study explores the concept of judicial globalization, emphasizing its role in protecting rights while navigating the challenges posed by evolving global dynamics. It examines how economic shifts, such as globalization of trade, demand judicial oversight to balance corporate interests and social justice. Social movements advocating human rights have reshaped judicial practices, while political volatility tests the judiciary's independence and ability to uphold democratic principles. Through comparative case studies from jurisdictions like the United States, European Union, and India, the paper highlights the diverse ways judiciaries engage with global legal norms. Despite challenges such as balancing local traditions with global standards and addressing legitimacy concerns of international bodies, judicial globalization offers significant opportunities. It enables global cooperation, strengthens human rights protection, and provides a judicial framework to tackle transnational issues like climate change. The findings underscore the judiciary's evolving role as a mediator between local sovereignty and global justice, offering recommendations to enhance its effectiveness in an interconnected world.

Keywords: Judicial globalization, human rights protection, cross-border legal dialogue, global legal norms, judiciary, international law, economic globalization, democratic principles.

Introduction

Adopting international legal principles, having cross-border judicial dialogue, and harmonising legal frameworks are all parts of judicial globalisation, which means that judicial systems around the world are becoming more connected and influential¹. Today, when economies, societies, and politics are all connected more than ever, the role of the judiciary in protecting rights is more important than ever. Judicial globalisation supports the rule of law, equality, and human rights all over the world, no matter the country's politics or economy. To deal with complicated issues like global warming, international trade disputes, digital privacy, and migration, we need to protect people's rights in a globalised society. Comparative law, international conventions, and past cases from other places all help courts around the world make decisions when countries face the same problems². This trend makes global law more consistent, which protects basic rights in a wide range of situations and improves domestic law.

The way the judiciary protects rights has changed because of things like economic liberalisation, fast technological progress, and shifting political paradigms. Globalisation of the economy has made companies more responsible and workers' rights stronger. Changes in society have also made the courts more important in fighting inequality and protecting minorities. When it comes to politics, the courts have to protect democracy from populism and authoritarianism. In light of changing political, social, and economic conditions, this study will look at judicial globalisation and protecting rights. It looked at how the court has dealt with international legal standards and how it helps keep the peace in a world that is always changing. It also made suggestions for how to use judicial globalisation to improve everyone's human rights.

The Concept of Judicial Globalisation

Judicial globalisation is when courts from different countries share case law and agree on what is fair for everyone. The idea is that international agreements, treaties, and comparative law set the rules for how national legal systems should work with each other. Judicial

¹ Jain, Piyush. "Globalisation and the New Legal Order." *Indian JL & Legal Rsch.* 3 (2021): 1.

² Kumar, Amit, and Patla Patil. "Impact of Globalisation on Law and Justice Delivery System." *Supremo Amicus* 24 (2021): 390.

globalisation is backed by legal pluralism and global constitutionalism.

There are different legal systems, and legal pluralism is okay with that. Global constitutionalism, on the other hand, wants justice and human rights for everyone³. All of these models stress how important it is for the law to change in order to deal with new global problems that arise from working together and sharing knowledge. Cross-border judicial dialogue is important for judicial globalisation because it lets courts use decisions from other places to make their own. In this way, legal reasoning at home gets better, new ideas come up, and international legal solidarity grows. Treaties and conventions like the UNFCCC and the Universal Declaration of Human Rights are looked at by courts all over the world when they make decisions. Courts often use international rules to make sure that domestic laws are interpreted in a way that is consistent with global obligations.

Real-life examples show how judicial globalisation is changing things. The Indian Supreme Court used international agreements to set rules against harassment at work in *Vishaka v. State of Rajasthan* (1997). To protect socioeconomic rights, the South African Constitutional Court has taken ideas from other places. Comparative law overturned laws against same-sex relationships in *Lawrence v. Texas* (2003), showing how it affects progressive US policy. Supranational courts, like the ECHR and ICC, are part of judicial globalisation. They make decisions that all member states must follow. In these institutions, global principles affect local legal outcomes. This combines national and international legal frameworks. Judicial globalisation settles disagreements between countries, encourages learning between courts, makes the law more consistent, and protects human rights. But it makes people worry about how to match international standards with local legal traditions, which means that using examples from other countries needs to be done in a smart way.

Judicial Protection of Rights in Changing Conditions

Economic Changes

Trade globalisation has changed how courts protect rights in complex economies. Global trade network integration and market liberalisation have made labour protections, intellectual

³ Balayan, Ellada. "The Impact of Globalisation on the Constitutional Regulation of Human Rights." *Brics law journal* 8.1 (2021): 63-85.

property rights, and corporate responsibility more important, forcing justice systems to adapt.

Courts must balance economic growth and social justice to protect fundamental rights. Globalisation affects corporate rights.

The judiciary should resolve MNC disputes and balance their rights with societal interests⁴. Trade agreements, environmental regulations, corporate taxes, and local law compliance are often decided by courts. *Union Carbide Corporation v. Union of India* (1989) and the Bhopal gas tragedy demonstrate that courts can hold corporations accountable in a globalised world. Labour law requires judicial intervention to protect workers' rights during economic changes. Outsourcing and contract work have become unstable due to globalisation. Such practices often violate workers' rights and job security. The courts have protected workers, guaranteed fair wages, and ended exploitation. The Indian Constitution requires courts to protect workers' dignity in minimum wage and unfair dismissal cases. Another factor is fair business practice oversight by the courts. The courts have protected consumers and small businesses from monopolies and price fixing. Free and fair trade and economic equity are promoted by judicial interpretation and enforcement of competition laws. International agreements can be used by courts to settle trade disputes because of judicial globalisation. The WTO framework and ways of resolving disputes have pushed domestic courts to uphold trade standards. This involvement of judges from different countries shows that the courts are playing a bigger part in protecting national interests and making sure that economic policies are in line with international standards.

The courts have to find a balance between economic growth and social justice. Economies that grow are important for a country's progress, but they also pollute, destroy neighbourhoods, and make income inequality worse. For the safety of the community, courts are handling changes and delays to infrastructure. India's National Green Tribunal (NGT) has made sure that economic growth doesn't violate human rights by finding a balance between growth and environmental sustainability. To sum up, the legal system is more important than ever in today's connected world to protect people's rights during economic changes. In this age of globalisation, courts figure out how to apply laws to settle disagreements and make

⁴ Kumar, Shivam, and Kumar Satyam. "Globalisation, Judges and New Trends of Constitutional Interpretation." *Issue 4 Int'l JL Mgmt. & Human.* 6 (2023): 2256.

sure that policies for fair development are put in place to support economic growth that is based on human rights.

Social Changes

Justice, equality, and respect for everyone have become more important in courts around the world because of the fight for human rights.

Many activists, regular people, and international groups have led these protests to draw attention to systemic wrongs and protect groups that are being mistreated. Human rights standards from around the world are built into national laws to make sure that everyone is treated fairly. International human rights conventions and past cases are becoming more and more important in court decisions because of these changes. Indian courts use the UDHR and ICCPR to figure out what the constitution means. Because of movements for LGBTQ+ rights around the world, *Naz Foundation v. Government of NCT of Delhi* (2009) made it less illegal to be gay. International law has been used by courts to protect women, children, and people with disabilities.

Because racism and social inequality are getting worse, the courts need to protect the rights of minorities. For the sake of protecting the rights of minorities and fair laws, courts have fought against majority rule⁵. The Indian Supreme Court threw out instant triple talaq in *Shayara Bano v. Union of India* (2017) to protect women from being abused by minority groups. The courts' focus on protecting constitutional rights like equal rights and not discriminating has shown that they will continue to stand up for groups that aren't well-represented. The courts have fought against unfair treatment of women, discrimination based on caste, and a lack of basic needs, and they have also looked out for groups that have been left out. Since these programs give historically under-represented groups more power, the courts have backed them. Examples include job and school reservations. A case from 1992 called *Indra Sawhney* shows how fair rules in the courts can help bring about social justice. The courts also care about making sure that everyone has access to fair housing, health care, and schools. The judiciary needs everyone to be able to use these important services so that rights theory and practice can be linked. As long as a family has money, the Right to

⁵ Gopan, Gopika S. "Impact of Globalization on Human Rights: An Overview." Issue 1 Indian JL & Legal Rsch. 4 (2022): 1.

Education Act says that every child has the right to go to elementary and secondary school. Indian courts have upheld this law. The courts are very adaptable because they can change with the times. The courts are better at protecting justice when they take human rights into account and fix unfair social problems. The courts are able to change society and enforce the law because they are adaptable.

Political Changes

It can be hard for the justice system to stay fair and democratic when laws change around the world. Democracy's ideas of fairness, justice, and not discriminating need to be backed up by judgement and the rule of law in a world where politics are unstable. It's important that courts are independent. In places with a lot of politics, the executive and legislative branches of government can make the judiciary less independent. These issues arise in places where politics play a role in picking judges, allocating funds, and making decisions. Political differences show that the courts are not always free in India and the US. One example is the fight over who should be a judge. It became clear during the Indian National Judicial Appointments Commission (NJAC) controversy how important it is to keep politics out of the courts. Courts have stayed impartial and truthful even though they have been tipped off and threatened because it is their constitutional duty to do justice without fear or favouritism.

When there is political unrest, the courts must protect democracy. The courts still protect democracy even when politicians break the law. When there is a crisis or an attempt to rig an election, the courts need to be involved for democracy to work. During the Emergency (1975–1977), the courts did a lot of checks and balances that changed the way Indian politics worked. In the 1973 case *Kesavananda Bharati v. State of Kerala*, it was said that democracy can't change the separation of powers, the rule of law, or secularism. Election fraud, corruption, and abuse of power are other things that the courts have dealt with. It's good for democracy to keep an eye on elections and hold the government accountable. The courts widened fundamental rights in the case of *Maneka Gandhi v. Union of India* (1978) to protect civil liberties from the government's political arbitrary actions and overreach. The freedom of the judiciary is shown by the fact that it can work with both authoritarianism and populism. The courts can fight authoritarianism and follow the rules for good government all over the world by using international rules and norms. International human rights conventions are being used by courts all over the world to challenge political laws that limit free speech,

assembly, and dissent. Finally, changes in politics may or may not be good for the courts. If courts stay fair and democratic, they can handle political storms and make constitutional government better. When the government isn't stable, their fairness helps democracy live on.

Comparative Case Studies

When it comes to judicial globalisation, different countries and regions have different views on transnational judicial bodies, international legal principles, and global legal norms. Investigations from the US, EU, India, and other places show how globalisation of the justice system is changing the way rights are protected and how complicated legal issues are handled.

United States

American courts haven't used international law very often in cases that involve human rights that get a lot of attention⁶. In *Roper v. Simmons* (2005), the US Supreme Court said that the death penalty for minors was against the Constitution. They did this by pointing to global trends and international agreements. Even though each country has its own laws, this case showed that international human rights standards can change how a court in a different country makes decisions. The Alien Tort Statute lets U.S. courts hear the case if someone breaks international law. The courts ruled in *Filártiga v. Peña-Irala* 1980 that human rights apply to everyone. This meant that people who were tortured elsewhere in the United States could sue for money. It's a big deal that these cases show the courts don't always follow international law.

European Union

Judges all over the world use the European Court of Justice (ECJ) to make sure that all EU member states follow the same rules when it comes to EU law. By interpreting and enforcing laws and treaties, the European Court of Justice (ECJ) has made it possible for courts around the world to work together and talk to each other. Direct effect was set up by the *Van Gend en Loos* case in 1963⁷. This means that EU law can be used in national courts. The ECJ said

⁶ Tatsiy, Vasyl Ya, and Oleg G. Danilyan. "The impact of globalization processes on the legal sphere." *Amazonia Investiga* 8.22 (2019): 580-586.

⁷ Muravyeva, Marianna. "Conservative jurisprudence and the Russian state." *Europe-Asia Studies* 69.8 (2017): 1145-1152.

in *Coast v. ENEL* (1964) that EU law is more important than national law. So, the ECJ's job as a bridge builder became even more important. The EU Charter of Fundamental Rights tells the European Court of Justice (ECJ) what decisions to make and how to make them. The ECJ protects people's human rights even though they live in countries with different political and legal systems.

India

When making decisions, the Indian judiciary does a great job of balancing international law with the needs of the country. This means that the decisions it makes are good for both politics and society in the country. Even though they haven't been officially signed, Indian courts have used international agreements and treaties. In the 1997 case *Vishaka v. State of Rajasthan*, the Supreme Court used the Convention on the Avoidance of All Forms of

Discrimination Against Women to make rules about sexual harassment at work. The case of *M.C. Mehta v. Union of India* shows how Indian courts use environmental law from around the world. As examples, the court used the precautionary principle and long-term growth. When the world changes quickly, the judiciary has to find a middle ground between international law and the needs of the constitution⁸. There are more international courts, such as the ICC and the WTO Dispute Resolution Mechanism. This means that the law is becoming more global in a more general sense. It has changed how people around the world are held responsible for war crimes, genocide, crimes against humanity, and other crimes because of the work of the ICC. Thomas Lubanga, a Congolese warlord, was found guilty by the ICC in a case that got a lot of attention and changed how courts work all over the world. One way that the World Trade Organisation helps settle trade disputes between countries is by giving people a place to talk about and figure out their issues. For example, the U.S.-EU Banana Dispute shows how international trade law and cross-border court systems can be used to balance economic interests.

Challenges of Judicial Globalization

Judicial globalisation gives global problems a place to be discussed, but it faces big problems that make it less useful. It is hard to bring regional legal systems up to par with international

⁸ Lechner, Frank J., and John Boli, eds. *The globalization reader*. John Wiley & Sons, 2020.

ones. Legal systems that are based on history, society, culture, or geography often go against international principles⁹. A lot of countries agree that universal human rights standards are important, but sometimes religious or cultural laws get in the way of them. Because of this, people need to be very careful when using their judgement to protect culturally important practices from universal standards unless those standards violate human rights. Because of globalisation of the law, courts must not break international rules. Courts that go too far based on global examples can hurt democracy and national sovereignty.

Judicial underreach, which means not following international rules, can slow down the progress of rights, especially when it comes to protecting the environment and equal rights for women and men. To promote both global justice and national law, courts must keep the balance. Some cultural and political groups are against global judicial practices because they think they bring in foreign values. Cultural groups may be afraid of losing their identity because of judicial globalisation, while politicians, especially those in authoritarian regimes, may be afraid of losing power. Different people have different ideas about whether or not countries with strict religious laws should have to follow international human rights standards. A great many people don't believe that international courts like the ICC are able to do their jobs. Some people worry that they have too much power to speak for everyone and get involved in other countries' business. Some people lose faith in these groups when they say they target certain areas unfairly or only follow international law in some situations.

Opportunities and Future Prospects

Judicial globalisation has some problems, but it also has a lot of opportunities to protect rights and make it easier for people to work together around the world. Courts from around the world can share new ideas and the best ways to do things more easily. Justices from various nations can talk to each other to make laws better and make sure that rules set by other countries are always followed. Many countries work together to fight terrorism and cybercrime. This is one way that the courts can help people all over the world. When problems like climate change and pandemics affect more than one country, legal globalisation is a new way to handle them. It is very important for courts to make sure that states do what

⁹ Nelken, David. "Using the concept of legal culture." *Legal Theory and the Social Sciences*. Routledge, 2017. 279-303.

they agree to do and understand what international treaties mean¹⁰. The Urgenda Foundation v. Netherlands case about climate change shows how courts can speed up global change by making sure people do what they say they will do for the environment. Laws in every country now include international standards, which makes it easier to protect human rights. Dealing with systemic problems like discrimination, refugee crises, and the unequal treatment of women is a good start. The courts use global human rights treaties to make sure that groups that aren't as well off are always protected in the same way.

Research Methodology

This study employs a qualitative research approach, utilizing secondary data from academic journals, case laws, international treaties, and judicial decisions to analyze the concept of judicial globalization. Comparative analysis of case studies from different jurisdictions highlights the judiciary's evolving role in protecting rights amidst global challenges.

Conclusion and Recommendations

There are many ways to protect basic rights in a world where politics, society, and the economy are always changing. One important way is through judicial globalisation. International law says that the best way to handle problems that affect people all over the world is to follow its rules. It is now possible to do this because of how legal systems are becoming more globalised. It can be used for a lot of different things, as shown by case studies that compare it to other things. This shows how flexible it is and what the pros and cons are. More and more, the courts are important because they link the legal systems of different countries. The better they protect justice, fairness, and human rights in a globalised world, the more they work together. You should not get involved in international affairs if you want to protect the sovereignty of your own country.

Recommendations for Balancing Global Judicial Integration with Local Sovereignty

1. Judges should know a lot about international law and how it affects cases in the US.
2. Make spots where judges from all over the world can meet, talk, and share what they

¹⁰ Banakar, Reza. "Law, rights and justice in late modern society: A tentative theoretical framework." Rights in context. Routledge, 2016. 19-38.

know.

3. To build trust, address concerns about whether global courts are legitimate and fair.
4. Take into consideration different cultures and laws to make sure that adopting global standards doesn't violate people's basic rights.

Globalisation of the law can help protect rights and promote justice in a world where everything is connected if we deal with its issues and seize its opportunities.