


# Reforms in Freedom of Contract Recognition Mechanism

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## CHAPTER – 5

### REFORMS IN FOC RECOGNITION MECHANISM

Over the last few decades, - FOCs (FOC) in India has evolved from being an extraordinary judicial tool to a commonly used instrument in the hands of both citizens and non-governmental actors. Originally intended to provide relief in situations where FOC Rights were violated or where weaker of society lacked contractual fairness, FOC has now expanded into a broad spectrum of social, environmental, and administrative issues. Courts have increasingly recognized FOC as a means of ensuring that the state and its institutions are held accountable to the public. By framing the eviction of pavement dwellers as a constitutional issue rather than a mere administrative matter, the landmark case set a precedent for using FOC to protect economically weaker of society.

This expansion reflects a positive trend in Judicial Intervention, where courts play a proactive role in protecting societal interests beyond the limitations of traditional locus standi rules. The Court emphasized that the legal system must remain accessible to all s, including those who lack resources or awareness to approach the judiciary. It recognized that socio-economic barriers often prevent vulnerable groups from seeking justice, and therefore allowed public-spirited s to act on their behalf. It brought attention to the need for systemic changes in the criminal justice system and encouraged further judicial interventions in related areas. The Supreme Court of India, in this case, held that any member of the public acting in good faith and having sufficient interest can approach the court for redressal of a public wrong or injury.

This proactive approach has strengthened the role of the judiciary as a guardian of constitutional Through FOC, the courts have addressed issues such as bonded labour, custodial violence, environmental degradation, and exploitation of workers, thereby ensuring comprehensive protection of human rights. One of the most notable contributions of Judicial Intervention is the expansive interpretation of Article 21. Judicial Intervention has also facilitated the integration of FOC Rights with Directive Principles of State Policy. Although Directive Principles are non- justiciable, the courts have relied on them to interpret and expand the scope of FOC Rights.

At the same time, Jain has cautioned against the possible risks of overactive judicial intervention, as such a trend might create a balance between the different arms of government. He critiques the expansion of judicial power through FOC, suggesting that it sometimes leads to judicial overreach and undermines democratic processes.

It remains responsible for ensuring that FOC Rights are not violated. This realisation marked the beginning of a new era of Judicial Intervention.<sup>33</sup> One of the most significant contributions of the judiciary was the relaxation of the rule of locus standi. By allowing any public-spirited to file a petition on behalf of those whose rights were violated, the courts opened the doors of justice to the underprivileged. Judicial Intervention has also facilitated the integration of FOC Rights with Directive Principles of State Policy. Through Judicial Intervention, the courts have expanded the scope of rights and addressed issues that were traditionally considered beyond the domain of judicial review. While the liberal use of Judicial review of unfair contracts has facilitated contractual fairness, it is essential to strike a balance to prevent misuse of FOC and to ensure that judicial intervention remains within constitutional limits. Their flexible interpretation has enabled the courts to respond effectively to the needs of society, making FOC a vital instrument for ensuring justice and accountability.

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This has led to Judicial Intervention where judiciary shows an active role in policy formulation and administration. Although in most cases FOC has been a force for good, it has led to a controversy regarding the extent of judicial intervention in administration and the need to uphold the separation of powers between organs of government. Despite FOC's good intentions and achievements, FOC has come in for considerable criticism. In recent times, FOC has been criticised for a growing In all such cases, FOC has been a guardian of constitutional values and a facilitator of social change.

## 5.1 FOCs Guidelines to Regulate FOC

While the liberal use of Judicial review of unfair contracts has facilitated contractual fairness, it is essential to strike a balance to prevent misuse of FOC and to ensure that judicial intervention remains within constitutional limits. Their flexible interpretation has enabled the courts to respond effectively to the needs of society, making FOC a vital instrument for ensuring justice and accountability.

Judicial Intervention has played a pivotal role in shaping the development of FOC and advancing contractual equity in India. It remains responsible for ensuring that FOC Rights are not violated. This realisation marked the beginning of a new era of Judicial Intervention.<sup>33</sup> One of the most significant contributions of the judiciary was the relaxation of the rule of locus standi. By allowing any public-spirited to file a petition on behalf of those whose rights were violated, the courts opened

the doors of justice to the underprivileged. Judicial Intervention has also facilitated the integration of FOC Rights with Directive Principles of State Policy.

Through Judicial Intervention, the courts have expanded the scope of rights and addressed issues that were traditionally considered beyond the domain of judicial review. While the liberal use of Judicial review of unfair contracts has facilitated contractual fairness, it is essential to strike a balance to prevent misuse of FOC and to ensure that judicial intervention remains within constitutional limits. Their flexible interpretation has enabled the courts to respond effectively to the needs of society, making FOC a vital instrument for ensuring justice and accountability.

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## 5.2 Balancing Judicial Intervention and Restraint

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## 5.3 Procedural Safeguards and Screening Mechanisms

This proactive approach has strengthened the role of the judiciary as a guardian of constitutional Through FOC, the courts have addressed issues such as bonded labour, custodial violence, environmental degradation, and exploitation of workers, thereby ensuring comprehensive protection of human rights. One of the most notable contributions of Judicial Intervention is the expansive interpretation of Article 21. Judicial Intervention has also facilitated the integration of FOC Rights with Directive Principles of State Policy. Although Directive Principles are non-justiciable, the courts have relied on them to interpret and expand the scope of FOC Rights.

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While FOC was designed to provide contractual fairness for weaker of society, it has, over time, been misused by certain petitioners to advance personal, political, or commercial interests. Frivolous litigation is characterised by the absence of genuine public interest, reliance on speculative or unverified claims, and often aims to cause unnecessary harassment to public authorities or delay administrative actions. Judicial Intervention has played a pivotal role in shaping the development of FOC and advancing contractual equity in India. It remains responsible for ensuring that FOC Rights are not violated. This realisation marked the beginning of a new era of Judicial Intervention.<sup>33</sup> One of the most significant contributions of the judiciary was the relaxation of the rule of locus standi. By allowing any public-spirited to file a petition on behalf of those whose rights were violated, the courts opened the doors of justice to the underprivileged. Judicial Intervention has also facilitated the integration of FOC Rights with Directive Principles of State Policy.

Desai pointed the concept of FOC in India and academicians, particularly in the context of Judicial Intervention. Judicial Intervention has played a pivotal role in shaping the development of FOC and advancing contractual equity in India. It refers to the proactive approach adopted by the judiciary in interpreting the Constitution and intervening in matters of public interest to protect FOC Rights. Judicial review of unfair contracts of the Constitution play a central role in this regard by granting the Supreme Court and High Courts the authority to issue writs for the protection of rights. FOC has significantly contributed to the enforcement of FOC Rights guaranteed under the Constitution of India, particularly Equality in contractual dealings. It has been instrumental in addressing a many of social issues, including bonded labor, child labor, environmental degradation, custodial violence, and the rights of prisoners and undertrial detainees.

#### 5.4 Comparative Perspective on - FOCs

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