

CRITICAL ANALYSIS OF JUDICIAL REVIEW AND JUDICIAL ACTIVISM IN INDIA

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ABSTRACT

For all democracies, the judiciary is the third and last pillar. Judiciary's role is to ensure that those who have been wronged are given a fair trial and, most crucially, to provide that remedy. Since people have developed novel approaches to committing crimes and exploiting legal loopholes, it is more important than ever that the judicial system provide swift justice to the victims of these offenses. However, there are situations in which the laws just aren't enough to provide victims with justice. Here's where things get interesting, and when judicial review and activism come to the rescue. This is a ground-breaking method utilized by the judicial system to bring justice to the wronged where no applicable laws exist or when those in place fall short of ensuring full redress. However, in its pursuit of justice, the judiciary often oversteps its bounds and intrudes into the domains of the legislative and the executive, a practice that violates the principle of separation of powers. This study makes an effort to analyze the methods used by Indian courts in this area.

Keywords: SC, HC, activism, independence, review, overreach.

INTRODUCTION

According to the saying "justice delayed is justice denied," it is essential for court to give justice when the law(s) are either inadequate, do not exist, or seem to be unfair in order to uphold the rule of law. This is when judicial review and judicial activism became relevant. Judicial review is one of the building blocks of a successful democracy. As the idea of judicial review developed to account for the changing demands of Indian society, the guiding principle of Indian law, which had been process established by law, gradually evolved into due process of law. This concept

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sets out a uniform criterion utilized to evaluate the constitutionality of a legislation or executive action and whether or not it was enacted in accordance with proper legal processes.⁴ The SC has the power to declare a statute unconstitutional if it goes against the spirit or letter of the Indian constitution, which is the country's highest law. Judicial review is not defined in the Indian Constitution, although many experts give clear explanations of what it means. The judiciary in India has the authority to monitor the other branches of government to make sure they are following the rules set out in the constitution and other laws. In the event that the clause below is ruled unlawful, it will be nullified. Through the practice of judicial review, our courts act as a check on executive overreach. “Judicial activism” is described as “the use of judicial authority” when the sitting judges decide issues outside of their purview in order to secure the full administration of justice. They may be interfering with the work of the government and legislative by doing this, but India doesn't have a strong separation of powers. Judicial activism is stepping beyond of the judiciary's predetermined bounds. It occurs when a presiding authority utilizes his or her intelligence to rule on a matter when there are either inadequate or no laws in place. Judicial activism is rather contentious since it involves the judiciary encroaching on the purview of the legislative and executive branch to provide justice that is disapproved of by both.. We call judicial review judicial activism when it seems that the judiciary is acting beyond its traditional role of interpreting laws.

JUDICIAL REVIEW/ACTIVISM IN INDIA

One of the pillars of our Constitution is the supremacy of the rule of law above all other concerns. The Indian Constitution guarantees citizens access to the courts for the purpose of reviewing government actions. A vital check on the authority of the legislative and the executive branch is provided by judicial review. The courts depend on judicial review to avoid abuses of authority by the administration and to assure equitable treatment. The Government of India Act was passed in response to

⁴□N.R.Madhava Menon, “Constitutional Institutions and the maintenance of Rule of Law”(Oxford University Press, 2008).

constitutional concerns without any kind of judicial scrutiny. A judicial review authority was inserted to the Constitution in 1950. The Constitution may be altered by Parliament, but never fundamentally. Parliament and the SC disagreed on whether or not to amend basic rights. In *Shankari Prasad v. UOI*⁵, the SC discussed these concerns. The Constitution had to be changed for the first time. It was decided that the Constitutional Amendment Act was illegal. Since Art 13 prohibits the introduction of legislation violating or abrogating fundamental rights, it was contended, any proposed constitutional amendment would have been a law and would have been subject to the same scrutiny and review as any other law. Parliament, the justification goes, is a "state" as defined in Art 12, and constitutional amendments are "law" as defined in Art 13(2).

While Art. 368 gives "power to amend the constitution" to the Parliament, the SC ruled in *Sajjan Singh v. Rajasthan*⁶ that it may utilize that authority to change any provision. A similar worry about constitutional modifications surfaced after *Sajjan Singh's* 1967 ruling in *Golak Nath v. State of Punjab*⁷. It was claimed that the first, fourth, and seventeenth amendments violated basic rights. The Court decided that "Art 245 r/w Entry 97 of List 1" provides Parliament the authority to revise the Constitution since it constitutes a "law" under Art 13(2). The substance of Art 368 is not changed. The act of doing so is known as amending legislation.

Five of the eleven judges properly decided the *Shankari Prasad*⁸ & *Sajjan Singh* case⁹ because common law, not a constitutional amendment, is referred to as "law" under Art 13(2). The procedure for modifying the constitution and the circumstances under which it may be amended are both covered under Art 368. In *Keshavananda Bharati v. State of Kerala*¹⁰, the SC considered whether the "24th, 25th, and 29th amendments" were constitutional. Hereby, Kerala's Land Reforms Act was challenged as being

⁵AIR 1951 S.C. 455.

⁶1965 SCR (1) 933.

⁷1967 SCR (2) 762.

⁸Supra note 2.

⁹Supra note 3.

¹⁰A.I.R. 1973 S.C. 1461.

ultra vires the Constitution. This amended version of the Kerala Act was inserted in the ninth schedule of the 29th Amendment Act, which took effect in 1971. Petitioner sought clarification on his constitutional amendment powers under Art 368. It is possible to change the Constitution's "Basic Structure," but not its "Basic Rights" (Art 368). This decision imposed new constraints on the power to amend the Constitution. It was established under the SC's Judicial Review doctrine.

It was also applied in *Indira Nehru Gandhi v. Raj Narayan*¹¹ to validate the then-election which the Allahabad HC had previously declared null and void. The SC ruled against the 39th Amendment's Section (4) of Art.329-A, which would have retrospectively recognised the election. By violating a cornerstone of democracy and the Constitution itself—the right to a fair election—they have undermined our democracy.

Constitutional provisions on Judicial Review/ Activism in India

Although the constitution does not explicitly provide the courts the authority to declare laws unconstitutional, each institution has been given precise boundaries that, if violated, would render the laws unconstitutional. The task of determining whether any constitutional restrictions have been violated falls to the court. These constitutional provisions aid judicial review:

- "The pre-constitutional legislation's judicial review" is established under Art 372(1).
- Any law that goes against the Fundamental Rights Part is void, as stated in Art 13.
- According to Art 32 and 226, the SC and HC should have the roles of protector and guarantor of fundamental freedoms.
- Arts 251 and 254 declare that where the laws of the union and a state clash, the law of the state shall control.
- According to Art 246 (3), the state legislature has exclusive control over the State List.

¹¹AIR 1975 SC 2299..

- According to Art 245, the legislature is obliged by the provisions of the Constitution."
- Under Articles 131 to 136, the SC has jurisdiction over disputes involving individuals, between individuals and the state, and between the states and the union. The Court may also be asked to interpret particular clauses of the Constitution, and its interpretation will be binding on all lower courts.

Judicial Activism: Pros and Cons

Here, the researcher will conduct a thorough review of judicial activism and analyze its benefits and drawbacks in India.¹²

A) Pros-

1. Government not responding- Governments often have a tendency to dismiss the complaints of the populace when there is not enough legislation or when there is no law. People who are in trouble will turn to the courts for answers to their issues. The public's trust and respect for the court will grow significantly if the judge in this case breaks free from his or her constraint and resolves the complaints of the people.

2. Judicial urge to participate – Judges have a good understanding of the status of our country. They get motivated to act after seeing how long individuals suffer as a consequence of ineffective or nonexistent legislation.

3. Constitutional powers- The courts have the jurisdiction to take suo - motu cognizance (Art 32) and provide the required decisions in order to give thorough justice. [Art 142]

4. Legislative vacuum- Before “Vishaka Guidelines,” the police would often pursue a case of “molestation and criminal intimidation” if a woman reported sexual harassment at work. Judges used their logical reasoning to bridge this legislative gap and uphold justice. They extend beyond their boundaries and, when necessary, into the purview of the legislative or administration to ensure that everyone obtains complete justice as well as that no one is denied it.

¹²□Priyanka Sinha. “A Comparative study of significance Of Judicial Review in United Kingdom, United States of America and India.”, IJHSSI 10(05)24-30 (2021).

5. Need of justice- In a time when victims and their families often have to pay a price, either in the form of a lengthy trial or because of a delay in the imposition of a punishment, it is crucial that the court provide fast justice to the victims and give them with the same sense of closure. For this reason, it is crucial for a judge to keep in mind that the interests of the person or party seeking justice come first.

B) Cons-¹³

1. Undemocratic – The judiciary's exhibition of judicial activism is undemocratic in nature. No one here has any say in who gets to sit on the High Court or the Supreme Court, so we can't control how the country's laws are made or how quickly the courts react to citizens' concerns. This is why we have a government that is chosen by the people and is held to account for the laws it passes.

2. Specialty- There are several state-related issues in which the court lacks expertise. such as in business, financial, GST, and military affairs. The High Court or the Supreme Court cannot engage in activism should a disagreement arise under corporate law.

3. Responsible- Who will be held accountable if a judge retires and anything unpleasant transpired upon retirement as a result of their activism? In the next election, we can hold the government accountable for its improper behavior or mismanagement of that situation, but can the people ensure that the departing judge is held accountable?

4. Enforceability- Who would lose respect if the judge issues an order and the legislative and executive do not abide by it? It's the legal system. The rule of law is under jeopardy. The public might find it unpleasant at times to offer instructions on everything, as was the case in December 2016 when the Supreme Court published guidelines prohibiting the sale of alcohol along state and national roadways.

5. Improper balance of power- Our nation does not closely adhere to the division of powers. In an effort to provide justice, the court often goes beyond what is necessary, which may not be acceptable to the legislative branch and the executive branch.

¹³Supra note 9.

Power struggles will result from this, and the state may eventually come to an end as a result.

Limit of activism

One thing is clear from examining the benefits and drawbacks of judicial activism: as long as the judiciary is upholding the rights of the people, it is okay; yet, if it oversteps its bounds to do so, it will throw the balance of power out of line. As was previously said, the judiciary is permitted to enter the domains of the legislative and executive branches to a limited extent. How will we establish that the intrusion is lawful and not excessive? The Supreme Court ordered in December 2016 that no liquor stores may be located within 500 meters of state and national roadways. This Supreme Court judgment received a lot of negative feedback. It demonstrates how activism is arbitrary since we may or may not agree with a judge or a court's activist stance. The same individuals who criticize activist judges also enjoy them. For this issue, the house is split. Because there is only one way to end this impasse—a balance of powers—they are left to their own devices. In order to prevent an imbalance of power, the three pillars of the state—the executive, legislature, and judiciary—have decided upon their respective boundaries. The aforementioned reality makes it very clear that rigorous separation of powers cannot be adhered to in a nation like India. We adhere to a flexible system of separation of powers that allows each of the three components to enter another's region as necessary for operation. In order to maintain the stability of the state and the balance of power, it is essential that the three parts of the state determine their own boundaries and range of intervention.¹⁴

It is permissible to criticize activism, but it is not acceptable to compromise the independence of the court. The court must guarantee that justice is served as well as interpret clear-cut legislation. We cannot sacrifice the judiciary's independence for that goal. The legislative and the administration may accept judicial activism to a limited extent, but if one or both of them interfere with how the judiciary operates,

¹⁴B NagarathnamReddy, "JUDICIAL ACTIVISM VS JUDICIAL OVERREACH IN INDIA", 7 GJRA 82 (2018).

their independence will be weakened. The judiciary's role and power must be kept distinct from the other two pillars of the state at all costs.

Cases of judicial activism in India

1. Christian Medical College v UOI¹⁵

In this case, the top court prohibited the institutions from holding their own medical admission exams and ruled that only NEET may be used to do so.

2. AOR Association v UOI¹⁶

In this case, the SC ruled that the NJAC Act was unconstitutional because it violated the judiciary's independence.

3. Sunil Batra v Delhi Administration¹⁷

In this case, the SC ruled that a prisoner's letter about the horrors perpetrated there would be recognized as a petition. The court cannot be prevented from defending civil freedoms by technicalities.

4. Sheela Barse v State of Maharashtra¹⁸

Here, the supreme court accepted a letter from a woman who had experienced abuse in a prison as a writ petition and gave instructions to the relevant state.

Suggestions & conclusion

Art 13(2) states that the state may not abridge or remove Constitutional rights, and any statute that does so is void to the extent of its inconsistency. Even without this part, judges may evaluate a measure based on a violation of vital rights. Judges sworn to preserve the Constitution can enforce basic rights. Anyone can petition the SC. The SC and HC have original and appellate legality authority (legislative or executive). Courts review the Indian Constitution. SCs oversee legislative, executive, and judicial actions. Basic structure protects constitutional infractions. Balance three branches of government. Judicial review prevents power abuse and preserves fairness. Judicial review tries to defend a litigant's stated right and give remedies by invalidating a void

¹⁵REFERENCE – (CIVIL) NO.98 OF 2012.

¹⁶(2016) 2 SCC (LS) 253.

¹⁷AIR 1579, 1980 SCR (2) 557.

¹⁸AIR 378, 1983 SCR (2) 337.

statute. Courts shouldn't enforce unconstitutional laws. The judiciary should check legislation's legality. In light of the problems inherent in judicial review, the framers of the Constitution incorporated safeguards to prevent judges from abusing their power and functioning as a "super legislature" or "permanent third chamber."

Every government step on judicial review advances India's legal and public knowledge. Executive branches seek legal advice to streamline decision-making. India's judicial structure and progress suggest the following. First, the courts analyse India's capitalist constitution, which is protected by law. Judicial review balances legislative and administrative limits, reflecting all of society. The Indian courts' judicial review strives to establish and expand its constitutional basis. Constitutional government requires judicial monitoring. Courts must analyse policy or programme laws, the target's discretion, the type and breadth of discretionary decisions that may influence beneficiaries' rights and interests, etc. The British colonial period and India's constitution created its judicial review system.

Judicial activism is a factor in how the executive and legislative branches operate. The distinction between judicial activism, judicial scrutiny, and excess is quite narrow. We all like activist judges because they always uphold the rule of law and ensure that no one is denied justice. The judge must be very cautious and meticulous when making a decision since, given how subjective the notion of activism is, a step that is considered as activism may equally be viewed as overreaching. Additionally, the three parts of the state should establish their own boundaries to prevent infiltration. For the state to operate effectively, the court and the three branches of government shouldn't revisit the extent of intervention. We all expect judges to provide us with justice regardless of the law's sufficiency or absence in a nation like India, where there are many cases pending at both the superior courts and the lower courts. Judicial activism is fine when it helps the party or individual who has been wronged or the underprivileged members of our society, but it shouldn't meddle with our nation's democratic system. If the judiciary uses the excuse that the executive, the legislature, or both failed to

carry out their responsibilities, forcing them to engage in activism, then by the same reasoning, every branch of the government must use the excuse that the other has failed to carry out their responsibilities to justify their intrusion. We need a balance of powers for the benefit of all individuals and our nation. In a democratic system like India, power is shared across the three departments of government, which guarantees that operations are streamlined. It is not held by a monarch or queen, an authoritarian administration, or the judiciary. The goal of activism is to gain the trust and respect of the general public.