

Judicial Overreach in India

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Abstract

For our democracy, the judiciary serves as a watchdog. It is the protector of human rights. It is critical for such a body to be involved in safeguarding citizens' rights. As society evolves it becomes more active by taking on situations involving children. In a suo moto action, a basic right has been violated. The primary goal of judicial activism is to protect the rights of people who are victims of injustice. Ensure that all people are treated with fairness and equality. Such choices should not, however, be made by the judiciary. Obstructing or interfering with the executive and legislative functions this intrusion is unwelcome. "Judicial overreach" is a term used to describe when a judge goes too far in a number of cases, judicial activism has played a role. Judicial overreach and the judiciary in their current state.

Keyword: Human rights, judicial overreach, judicial activism, judiciary, democracy

INTRODUCTION

India has divided the functions of drafting laws, enforcing laws, and interpreting laws into three separate institutions: the legislative, executive, and judiciary, all of which operate within their respective authorities. However, we know that such a distinction is not absolute, and the three organs are not segregated into separate compartments that are watertight. It is unavoidable for one organ to rely on the other. To prevent any encroachment, each organ has the authority to maintain checks and balances over the other. The judiciary has the authority to assess the Executive and Legislative branches of government to verify that they are acting within the bounds of the Constitution. It has the power to overturn any law.

The origins of judicial activism and its methods are not established by the constitution or any other authority. *Suo moto* (Latin for "on its own") and Public Interest Litigation are two ways the court handles cases. The Supreme Court needed to broaden its authority and issue instructions to the administration and legislature as office holders grew less representative of the people's wishes. *Suo moto* cases and PILs overturned the idea of *locus standi*, allowing the judiciary to hear public cases even if the injured person had not filed a formal complaint. When this approach goes too far, it becomes judicial overreach since it interferes with the executive and legislative powers.

STATEMENT OF PROBLEM

If there are numerous legal obstacles standing in the way of justice, the judiciary should preserve constitutional ideals, rights, and interests of citizens. The concept of judicial activism was born as a result of this. However, judicial overreach has intensified as the judiciary's activist role has grown.

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Its acceptance may jeopardise effective government. As a result of courts' overreach, tensions between the judiciary and the executive have risen. The goal of this study is to find appropriate solutions to the issue mentioned above.

RESEARCH GAP

The research papers listed above go into great detail regarding how "judicial overreach" violates the theory of separation of powers and has a negative influence on democracy's functioning, but they don't offer practical solutions. The question of how the judiciary should be restrained and how it should ensure that it does not breach the "line" is not answered in a realistic way.

RESEARCH QUESTIONS

- When does judicial activism take the form of judicial overreach?
- What are the concerns relating to judicial overreach?
- What can be done to prevent judicial overreach?

RESEARCH OBJECTIVE

- To critically examine the judiciary's overreach into legislative and executive concerns.
- Make recommendations for effective ways to restrict and prevent judicial overreach.

CONCEPT OF JUDICIAL ACTIVISM

It's inconceivable to conceive courts that aren't active. Rather than standing by and watching, the judiciary has always worked to protect citizens' rights and well-being. It is obligated to do so as a result of executive and legislative actions and inactions that deprive residents of basic freedoms such as the right to life, livelihood, sleep, and a clean environment, among others. Because of budgetary limits and social position, the judiciary must assume the role of activist and choose for suo moto action, or else the marginalised and vulnerable elements of society would not be adequately represented. These factors make it difficult for justice to be served. Regardless of these limitations, it is the court's responsibility to ensure that justice is affordable and accessible to all. It empowers judges to adopt their own interpretation in certain instances, rather than strictly following to the exact terms of the law.

HISTORY OF JUDICIAL ACTIVISM IN INDIA

In an 1893 Allahabad High Court case, a judge offered a dissenting decision, which was the first instance of judicial activism. The case featured a defendant who lacked the financial means to hire a lawyer. The court had to decide whether to decide the case solely on the basis of the papers he had submitted. A case can only be heard when someone speaks, according to the judge. As a result, he established the groundwork for judicial activism in India. During Indira Gandhi's rule in the late 1960s and early 1970s, the doctrine of judicial activism grew even more. The government's abolishment of Privy Purses and privileges granted to monarchs and princes of princely states, as well as the nationalisation of 14 banks, did not sit well with the judiciary, who found the law illegal. The court's confirmation of the quality of judicial review captures the heart of judicial activism. The court stated in *A.K Gopalan v. State of Madras* [1] that judicial review is inherent in the Constitution. Even if it is not present, a court has the ability to declare a legislative act unconstitutional if it breaches a basic right. While dealing with the constitutional legitimacy of the 17th amendment, the court in *Golaknath v. State of Punjab* [2] found that Parliament cannot change Part III of the constitution or take away any basic right. In the case of *Keshavananda Bharti v. State of Kerala* [3], the Supreme Court ruled that Parliament cannot change the basic structure's contents. The *Bhagalpur Blinding case* [4] concluded that under Article 21, the poor have the right to free legal aid and representation by a lawyer, and that the accused must appear in front of the magistrate within 24 hours. The court in *Balaji v. State of Mysore* [5] held that, while backward classes are entitled for protective discrimination, the right to equality and equal protection of the law must not be denied. The court concluded in the *Asian Games case* [6] that workers recruited on a temporary basis for construction services were entitled to protection under the relevant labour and industrial legislation and could seek implementation under article 32. These are only a handful of the examples that led to the emergence and growth of judicial activism in India.

WHY JUDICIAL ACTIVISM?

Failure of the Legislature and Executive in Discharging its Functions

Legislative power is completely vested in the legislature. However, due to rampant corruption, personal interests taking precedence over the exploitation of the masses, such a separation of authority between the three organs no longer holds water in today's environment. The legislative process has devolved into a majority rule rather than a rational process, and as a result, it fails to meet the goals of justice. A democracy loses citizens' faith and confidence when the legislature fails to implement appropriate legislation in light of the changing character of society and government agencies do not carry out their responsibilities honestly. It is only acceptable for the judiciary to play a constructive role in such extraordinary circumstances.

Pressure to Aid Citizens in Case of Fundamental Right Violation

When the government, its agencies, or any other third party abuses citizens' fundamental rights, judges may intervene to help them. When citizens' rights and interests are in jeopardy, they turn to the judiciary for assistance. The judiciary is constantly under pressure to give such assistance. On several occasions, the courts have promoted and begun PILs by lowering the need of locus standi, adopting an adversarial form of litigation, and assuming the role of an investigator, counsellor, and monitoring administration.

Failure of Legislature to fulfill all Societal Needs

Despite the fact that there are several laws covering a wide range of themes, there are still certain legal issues that remain unresolved. This is due to a lack of awareness about such concerns, as well as the legislature's lack of interest and disinterest. The court engages in judicial legislation when the legislature fails to enact legislation that is necessary to address the needs and desires of society.

Public Confidence in the Judiciary

The public's faith and confidence in the judiciary inspires the courts to go above and beyond their mandate and fight for their rights. Citizens trust the judiciary to protect their rights as the custodian of fundamental rights.

Role of Individual Players

Individuals and NGOs such as human rights activists, consumer rights organisations, environmental action organisations, women's rights organisations, civil rights activists, lawyer-based organisations, and so on are responsible for supporting judicial activism [7]. Individually, some judges have paved the way for judicial activism.

BUT ARE JUDGES OVERREACHING?

“The line between judicial activism and judicial overreach is a thin one...A takeover of the functions of another organ may become a case of over-reach”

-Dr.Manmohan Singh

The Supreme Court had taken over legislative and executive duties, according to the Prime Minister at the time. There have been numerous instances where the courts have arguably overstepped their bounds and ordered the executive to carry out its responsibilities. While this may be beneficial, it is contrary to the Constitution's order. Judicial action can be proactive in circumstances like labour policy, environmental and ecological issues, and so on, but when it intervenes in subjects like the government's financial policies, political affairs, or even legislative proceedings, it commits judicial overreach.

Judicial overreach occurs when judicial activism exceeds its scope and appropriates judicial adventurism. The following are examples of recent judicial overreach in India:

The National Anthem Case- Shyam Narayan Chouksey v. Union of India [8]:

The Supreme Court mandated that the National Anthem be played before a film begins, and that everyone in the audience stand up to demonstrate their respect. While the National Anthem is being played, the entry and exit doors should be closed, and the National Flag should be displayed on the screen. The court ignored the precedent-setting Bijoe Emanuel and Uphaar Tragedy cases, in which the court ruled that a cinema hall's doors should never be shut. It was in violation of the 1971 Prevention of Insults to National Honour Act, which states that no film, drama, or television programme may include the National Anthem as part of the programme.

Lodha Committee Report on the Board of Control for Cricket in India

The Lodha Panel was established by the Supreme Court after the BCCI was accused of corruption, match fixing, and betting. The panel backed the inclusion of the BCCI under the RTI, the legality of cricket betting, and the recommendation that ministers and government employees not hold office posts, one post per individual, and other recommendations. Because BCCI was classified under the Tamil Nadu Societies Act, got no government money, and was not regulated by the central or any state government, it was a case of judicial overreach.

The autonomy of sporting organisations must be protected. Interference from the outside is detrimental to their development. The court dismissed the fact that India had teams competing in the Ranji Trophy from Railways and Services because of the one-state-one-rule. This stringent geographical territory restriction eliminates Mumbai, Baroda, and Saurashtra, among others.

NJAC Bill 99th Constitutional Amendment

The most contentious instance of overreach has been the Supreme Court's decision to declare the 99th amendment and the National Judicial Appointment Commission Act 2014 unconstitutional and unlawful in order to replace the collegiate system. The government's request to appeal the case to a higher court was denied, although the Supreme Court accepted recommendations to improve the current collegiate system. The NJAC oversees judicial appointments and guarantees that they are made in an open and transparent manner. The commission that chooses judges is made up of an equal number of judges and non-judges, ensuring that power does not rest only with the judiciary or the political class.

Judicial Overreach Negatively Impacts a Government in the following ways***Violation of the doctrine of separation of powers***

A government's powers and functions should be distributed among three organs: the legislative, the executive, and the judiciary, with suitable checks and balances in place. However, judicial activism has allowed for the creation of judge-made legislation, which is an abuse of constitutional power.

Rule of Court is Detrimental

The rule of law is aided by judicial activism. However, "judicial populism" [9] occurs when a court goes too far. Judges are not supposed to make laws; rather, they are expected to determine their real meaning, which would otherwise result in chaos.

Lack of Accountability

The judiciary's expanded authority is a source of concern because it allows for power abuse. For a democracy to work, transparency and accountability are essential; the judiciary must likewise be transparent and accountable. Unfortunately, this is not the case, as it undermines the system of checks and balances.

CRITICAL ANALYSIS

When judicial activism is overt, it encroaches on the legislative and executive powers. The Supreme Court has ruled in several decisions that courts cannot issue a writ of mandamus to the

Legislature. Judicial activism is the source of the judiciary's legislative power. It cannot be used to cover legislative gaps or create rights and obligations that are not provided by law. "The judiciary is the least competent body to act as a legislative or administrative agency since it lacks the ability to conduct thorough investigations. It lacks the ability to monitor the consequences/effects of its directives and judgments, or to reverse them if they need to be modified or are deemed unworkable." 14 PILs' social dimension has diminished. It has been noticed that, in today's world, the court's intervention does not enforce the poor's rights, but rather corrects the actions/omissions of the executive, public authorities, or government entities.

The court has ordered the prohibition of black films in automobiles, the exclusion of tourists from particular regions of tiger reserves, the banning of firecrackers, the control of loudspeakers, and the interlinking of rivers, all of which obviously fall under the executive function. The Supreme Court has had no qualms about interfering with the country's military actions. The outcome of the case had a significant impact on the operations.

It violates the spirit of our constitution, as India adheres to the division of powers, and it causes tensions between the judiciary and the legislative. The legislature is depicted as a dormant entity. Even where there is no such breach, courts are more interested in engaging in public policy problems in the name of judicial activism or fundamental rights violations. Judicial overreach undermines the exact reason why the concept of judicial activism was created in the first place: to increase public trust in the court.

It is a waste of the court's time and just adds to the backlog of cases when that time could be better spent hearing significant concerns that affect the public good. The judge's partiality or selfish motives have a tendency to impact the decisions made. People's faith in the government's efficiency and honesty is eroded by the judiciary's repeated interventions.

"There is a narrow line between ordering the executive to do something and instructing the executive on how to do something," says the judge. There is a risk that courts will engage in the latter because, in a broad sense, such judgments should be left to the legislative and administration, and in a limited sense, the subject matter sometimes entails technical or economic considerations that are outside the judiciary's expertise". The policies of the government are continually scrutinised by the courts. The court kept an eye on the distribution of food grains to persons living in poverty.

In the case of the 2G licence, all public resources and assets were kept in trust and could only be sold at a public auction. The judiciary has entirely ignored the constitution's division of powers and has assumed the role of a watchdog over all other bodies of government. One decision becomes the typical finding in subsequent cases, resulting in overreach. It limits the legislature's ability to make laws. The judiciary's answer to overreach is that it is obligated to do so because the legislature and administration fail to fulfil their responsibilities.

By the same rationale, the political arms of government allege that the court has failed to satisfy public expectations in numerous areas and that it must be checked on a frequent basis. This debate might go on indefinitely. As a result, unless PILs are properly established and followed, they will intrude into the government's other divisions.

CONCLUSION

A proper judicial intervention is one that falls within the judicial review's allowed parameters. The judiciary has no jurisdiction over matters of government policy or politics that do not involve essential legal issues. When the government fails to fulfil its obligations, such as environmental degradation, sexual violence, educational reforms, and corruption, the judiciary might intervene to protect the citizen's interests by issuing a writ of mandamus to the responsible public body. However, there is a

fine line between judicial activism and overreach, which courts must observe. The impression of citizens is what defines activism as overreach.

As a result, it becomes more difficult to govern, giving courts even greater cause to exercise caution in suo moto cases. It is found that the judiciary was not established to address the government's faults. It is critical that the judiciary be fair, independent, and above all, constrained.

RECOMMENDATIONS

The judiciary must be conscious of the fine line that exists between judicial activism and overreach. Separation of powers doctrine should be scrupulously adhered to. The government should implement new techniques to hold the courts accountable and ensure openness. The legislative should strive to avoid leaving any gaps in the legislation, reducing the necessity for judicial scrutiny and intervention.

Above all, the court must attempt to exercise judicial restraint. The Supreme Court has underlined the significance of restraint in maintaining a balance between the three branches of government on several occasions. It's a sort of judicial interpretation that encourages judges to keep their power in check. It only allows them to overturn a legislation if it is completely unlawful. It asserts that the judiciary does not have the authority to make laws. It will only add to the organization's prominence and esteem. It recognises the other two organs' equality and limits the judiciary's influence over the other branches. It also protects the judiciary's independence and complements the theory of separation of powers. Because an active court cannot deal with instances containing legislative details, it must apply breaks to personal motives. Courts are not permitted to intervene in economic policy or government management. A Public Interest Litigation (PIL) cannot cover every topic of public concern. The judiciary can intervene if the government or its agencies fail to comply with the law or if people's fundamental rights are violated. When utilising their judicial review power, the judiciary must adhere to the principle of judicial self-restraint.

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