
GUARDIANS OR GOVERNORS? RETHINKING JUDICIAL BOUNDARIES IN INDIA

Pragya Singh, Student, BBA LL.B, OP Jindal Global University, Sonipat, Haryana.

ABSTRACT

Judicial activity in India is a key aspect of maintaining the Constitution as the supreme law of the land while also protecting people's basic rights. The judiciary has been involved when Parliament or the Executive has failed to adequately perform their responsibilities by creatively interpreting the Constitution broadly. The judiciary's proactive approach has addressed issues caused by structural injustice and the failure of the government to provide adequate services to its citizens; however, the judiciary's continued involvement has caused many people concern about where judicial authority ends and where institutional overreach begins. Often, people use the terms "judicial activity" and "judicial overreach" interchangeably even though they do not mean the same thing and depend on the circumstances surrounding the events in which they were used. This paper will look at the thin line between judicial activism and judicial overreach in Indian constitutional framework. It will critically evaluate recent events such as the NEET-UG paper leak and court interference in demolition drives to analyse the judiciary's involvement in a democracy. The article underscores the quantity of necessary and precautionary measures to ensure that law and policy (judicial actions) are founded on constitutional principles and institutional restraint, while refraining from using the doctrine of separation of powers in undue terms.

Key Words: - *Judicial Activism, Judicial Overreach, Indian constitution, Democracy, Structural Injustice, Precautionary measures*

INTRODUCTION

The evolution of Indian judiciary has taken place in parallel with the evolution of society and politics. From an originally reserved view of applying the law, it has now developed into a more proactive role in safeguarding the Constitution by acting to meet the demands of a changing society.¹ In the case of the Emergency (1975–1977), there was widespread criticism of the degree of deference shown by the judiciary during this period, especially in relation to the protection of fundamental rights.² In response, a movement began to take place within the courts to be more proactive and rights-oriented and to address the growing loss of public confidence in constitutional governance.³ A major indicator of this can be seen in how Public Interest Litigation became more widely used as the court began relaxing the traditional requirements for locus standi, thereby enabling the courts to adjudicate on many of the systemic injustices facing marginalised and disadvantaged communities. With PILs, the judiciary has created the institutional mechanism of accountability, enabling the courts to fill the gaps in the governance of the nation while also redefining the way in which the judiciary can intervene using the Constitution as its guide.

There are a lot of ongoing debates in today's time about judicial activism and overreach. We have seen that judicial activism is mainly praised for filling the gaps that the legislative or executive have left, whereas judicial overreach is treated as a sin and is widely criticized because it is seen as a threat to the doctrine of separation of power. There have been recent events like the NEET – UG paper leak controversy and the demolition orders that have been passed after the protest-related violence have once again given life to this debate.⁴ The developments around these issues raise significant constitutional issues of the acceptable bounds of judicial intervention and how courts can affect policy choices, while avoiding interference with democratic governance and the independence of the institution.

¹Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, 37 *American Journal of Comparative Law* 495 (1989).

²*ADM Jabalpur v. Shivkant Shukla* AIR 1976 SC 1207

³ Christophe Jaffrelot & Pratinav Anil, *Interpreting the Emergency*, 79 *Heidelberg Papers in South Asian and Comparative Politics* 1 (2021)

⁴Deepto Banerjee, *Supreme Court verdict on NEET-UG paper leak: Localised breach, govt committee to issue exam SOPs and other key takeaways here*, *Times of India* (Aug. 2, 2024).

UNDERSTANDING JUDICIAL ACTIVISM

The premise for the development of Judicial Activism (JA) in India has been due to social realities where the conventional legal mechanism has failed in the delivery of substantive Justice to many people.

It refers to the role of the judiciary in keeping guard of the rights that maintain constitutional order and ensuring justice. It mainly involves interpreting liberal laws, when there is absence of explicit statutory provisions even then invoking constitutional principles, giving directions to the legislative or the executive when they do no tact in a proper manner.

As stated, the main turning point in India for Judicial Activism was the Emergency period from 1975 – 1977, after which there was heavy criticism towards the judiciary for taking a passive stance. After this period the courts decided to take a more assertive approach towards the issue, the expanded the scope of Public Interest Litigation. One of the most prominent cases in this area is the Supreme Court judgement in *Vishaka v. State of Rajasthan*⁵, herein the court had put forward specific guidelines for the prevention of sexual harassment in workplaces, because such a law did not exist. It was essential for the judiciary to step in and protect the fundamental rights under Article 14,15 and 21⁶, while taking steps within the constitutional framework to fill the gaps left.

Judicial Activism has been justified by the judiciary based on the premise that the State is under an obligation to conduct itself fairly, justly, and in accordance with the Constitution.

JUDICIAL OVERREACH: A THIN LINE

This phenomenon occurs when the courts go beyond their responsibility of interpreting the laws and instead begin to administer, legislate and enter the functions of the other branches of the government. This interference can arise from good intentions like preventing executive excess or promoting a social cause, but in the long run this can shake the constitutional balance.

⁵AIR 1997 SC 3011

⁶The Constitution of India, arts. 14, 15, 21

It also creates a detrimental impact on the credibility of the judiciary. Courts, when assuming roles that necessitate constant oversight or specialized administrative expertise, create opportunities for the lack of compliance, disparate implementation, and the perception of judicial decisions being impractical or out of touch with the realities on the ground.

The courts also recognise that Judicial overreach should not be practice as it will blur the line of division between the organs of the government. This can be seen in the case *Divisional Manager, Aravali Golf Club v. Chander Haas*⁷, wherein the supreme court said that “courts must exercise judicial restraint and not encroach into the legislative or executive domain.” This overreach questions the legitimacy of the judiciary and then it is subject to criticism for overstepping.

Therefore, judicial overreach has the potential to upset the constitutional balance among the courts, create a lack of public confidence in the courts as neutral arbiters, and cast doubt on the ability of courts to perform their duties under the Constitution.

THE CONSTITUTIONAL FRAMEWORK: SEPARATION OF POWERS

There is not a proper or rigid enforcement of separation of powers doctrine in India, but the constitution has provided for a functional separation. The articles 50, 122-122A and others put forward an idea of an independent judiciary also there must be a system of checks and balances among all the organs of the government.

Although there will be areas where these powers overlap, the separation of the branches also provides a basis for protecting the individual scope of power and keeping the other branches of government within their respective areas of authority. The Supreme Court has consistently reiterated this principle in various rulings, In the case of *Indira Nehru Gandhi v. Raj Narain*⁸, in which it affirmed the right of the courts to review the constitutionality of the amendments to the Constitution and actions taken by the Executive, and that no legislative body may act against the most fundamental structure of the Constitution. Further, In the case *Kesavananda Bharati v. State of Kerala*⁹, it was held that the doctrine of separation of powers is a part of the basic structure of the constitution and the parliament is also not permitted to alter this doctrine. Thus, the judiciary

⁷2008 AIR SCW 406

⁸ AIR 1975 SC 1590

⁹AIR 1973 SC 1461

must keep in check the unconstitutional acts but also should not start acting as another government.

RECENT CASE STUDIES: ACTIVISM OR OVERREACH?

1. NEET-UG Paper Leak Controversy (2024–25)

The NEET-UG 2024 examination was clouded with significant allegations of paper leaks and many instances of malpractice. Petitions were filed in the Supreme Court seeking cancellation of the examination and to re-conduct it, so there was no violation of Articles 14 and 21 with regard to fair opportunity and violation of fairness and integrity.

In the case of *Vanshika Yadav v. Union of India*¹⁰, the Supreme Court of India upheld the principle of "judicial restraint," despite significant public outcry regarding the National Eligibility cum Entrance Test (NEET) Undergraduate (UG) 2024 examination. In making its decision to not order a cancellation of NEET-UG 2024, the Supreme Court emphasized the "principle of proportionality." Essentially, this meant weighing the effects of the localized breach of the NEET examination versus the potential negative repercussions for approximately 2.3 million students from having to take an exam again after the logistical and societal impact of a re-take were taken into consideration. It chose to allow the investigation to proceed within the ambit of the Centre and relevant authorities.

Had the Court cancelled the examination and directed that it be re-conducted, critics may have alleged that the Court traversed the policy domain. The Court was careful to hold the line of due process and allowed the institutional remedies to occur while observing judicial propriety.

2. Demolition Drives and Judicial Responses

In the last few years, many state governments have taken to demolishing alleged illegal constructions, targeting particularly those involved in protests or community violence.

¹⁰(2024) 10 SCC 641

Notable examples include Jahangirpuri (Delhi), Haldwani (Uttarakhand) and Prayagraj (Uttar Pradesh).¹¹

In Haldwani, approximately 4,000 families received eviction notices, alleging they were residing on land belonging to the Railways. The Uttarakhand High Court ordered the homes of the families demolished. The Supreme Court intervened and imposed a stay on the demolition order on the grounds of humanitarian issues and rehabilitation requirements.¹² The High Court relied on a technical ownership based on statute and municipal act. The Supreme Court provided a pioneer rights-based approach, based on Article 21. The judgment was lauded due to judicial activism that prevented arbitrary and large-scale displacement of hundreds of families.

The only criticism of this scenario is (or maybe the right word is "there are only misgivings") where the judiciary interrupted executive actions where the disruption or taking of action was legally justified but had the potential for abuse/encroachment or massive unlawful encroachment with public safety impunity. What happens when the judiciary intervenes too often on behalf of the executive - which in the long-run (wetland etc.) will have its own disregard for rule of law?

NEED FOR INSTITUTIONAL DIALOGUE, NOT DOMINANCE

In my opinion, India's constitutional democracy is best served when its three arms communicate constructively rather than go to the ultimate confrontation, which undermines constitutionalism. The tool of valid judicial activism is best applied when it keeps the executive honest, but not in a way that hobbles its ability to govern. Similarly, courts must act decisively when there is executive or legislative action that violates the constitutionally protected rights of individuals.

When courts begin subjecting temples to their supervision, regulating sports club governance, or prescribing police transfers, the erosion is of the distinct institutional roles called for in the constitution, not of constitutionalism as a rule. Better suited at this point would be institutional maturity where the branches leave each other alone to address functions with respect for the competencies of the others. The moral and institutional authority of the judiciary is not absolute

¹¹2024 SCC OnLine SC 3291

¹²Ankita Singh, "Haldwani: SC issues notice on railways' plea on demolition of land", *The Times of India*, Jan. 8, 2023

and lies in its respect of constitutional values through legitimate procedures. Restraint, in this sense, is not weakness, it is strength.

However, Judicial Activism is not to be treated as an unlimited power. The Judiciary has frequently noted that if/when it intervenes, it must be to correct or address a failure of constitutional morality or moral obligation and not due to personal or moral views of Justice rather than intentional use of the law. Therefore, it should be considered as a remedial and corrective mechanism for enforcing constitutional morality where the Legislative or Executive branches of Government have failed to act.

CONCLUSION

As the great debate about Judicial Activism v. Overreach is a pragmatic issue with implications for governance, democracy and the rule of law, Courts can and must act while defending constitutional rights or otherwise remedying injustices, as clearly courts also must respect the limits of their power and scope for authority.

Judiciary is responsible for protecting basic rights and ensuring compliance with the Constitution when actions taken by either the Legislative or the Executive, on behalf of the people they represent, are inadequate, arbitrary, or discriminatory. The exercise of Judicial authority is fraught with the potential for risk to the Judicial Branch as well: an overreaching or excessive use of Judicial power could result in a blurring of the lines between the three branches of government; the Functional independence of the other branches could deteriorate; and public confidence in the Judicial Branch could erode over time.

Judicial engagement may be needed in a country such as India, grappling with issues of governance, corruption, inequality and institutional dysfunction, but judicial legitimacy will be contingent on reflecting constitutional fidelity, rather than judicial adventurism. To draw the constitutional line is merely to strike a balance in the exercise of power, not to stifle the bravery of the judiciary, but to moderate its exercise of authority. Hence, Judicial action will be proper and effective in defending the principle of constitutional supremacy but should continue to be taken within a clearly defined constitutional framework to ensure a balance of power between the three branches of government.