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A Probe into the Judicial Competence and Independence: A Dainty Projection

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ABSTRACT

The rule of law is the foundation of our democracy, and that means we need to have an independent judiciary, judges who can make decisions regardless of the current winds that are blowing. The other arms of government, including the executive and legislative branches, must not impair the judiciary's capability to do justice. Judges must be enabled to carry out the tasks without fear of retaliation or prejudice. The principal goal of judicial independence is for judges to be free to decide a matter before them based on the law, without being affected by any other element. A French philosopher named Montesquieu proposed the notion of an independent state. He believed in the separation of powers doctrine, which holds that the three branches of the government – legislature, executive, and judiciary – have separate powers. His notion influenced the founding fathers of the American Constitution, who established an independent court in their country. Before 1701, judges in the United Kingdom served at the discretion of the monarch, and like any other royal servant, they may be fired by the king at any time. The Act of Settlement 1701 guaranteed judicial independence. Though there is no express provision in the Indian Constitution, the independence of the judiciary and the rule of law are fundamental features of the Constitution that cannot be undermined by constitutional amendments, as the Hon'ble Supreme Court explained in S.P. Gupta v Union of India . Irrespective of the context in which they are used, the terms independence and impartiality have varying meanings in general, both impartiality and independence are seen as safeguards for the objectivity and fairness of judicial processes, respectively. According to the UN Human Rights Committee, impartiality implies that judges must not hold any prejudices regarding the issue presented before them, and that they must not act in ways that favor the interests of one of the parties. By contrast, judicial autonomy protects the judiciary's execution of judicial tasks from intervention by governmental agencies or private individuals.

Keywords: *Rule of Law, judicial independence, impartiality, democracy, judicial impartiality.*

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I. INTRODUCTION

Judicial independence is the essential ingredient of an enthusiastic democratic structure. An unbiased and independent judiciary can stand the test of time for the protection of individual liberty, freedom and impose sanctions with no fear or favor. The Judiciary is the primary and the significant guardian of the Constitution of a State. It has been granted broad powers and responsibilities to overturn legislative, executive, and administrative decisions, decrees, and rules that impair the rule of law and people's individual rights.

In *Subhash Sharma v. Union of India*[3], the apex court made the subsequent observation regarding judicial independence, "For Rule of Law to Prevail, judicial independence is of prime necessity." Judicial Independence is guaranteed not only by the Constitution but also by the legislature, state conventions and standards. The Constitution is the basis on which the Judiciary's independence is founded. It is critical to recognize that, due to the state fragility, the judiciary's independence must be safeguarded against changes in the state's political, social and economic situation.

The Indian Constitution identifies a legislature as the central figure in enacting legislation to satisfy the requirements of society and of the judicial authorities as the adjudicator under the separation of powers system. It is an assumption that being the largest democracy and with a written Constitution, India has supremacy of the legislature and the judiciary. The Legislature is amending and repealing former laws and frequently introducing new ones. The Judiciary is also playing its part by affirming certain laws as unconstitutional. There is a virtual vacuum of misperception and volatility at all times due to this rivalry between the two vital organs of the government.

The impending question which looms over, is whether the courts should have an auxiliary power over the Legislature in the form of "Judicial Review", "Judicial Activism" and "Judicial Overreach". The Judiciary is filling the gaps of an enactment through interpretation and objective analysis. This is popularly known as "Judicial Legislation".

It is important to remember that the Indian Parliament represents the electorate's philosophy and will. The judiciary's declaration of an act ultra vires deprives Parliament of its authority.[4]

Because the Judiciary is appointed instead of elected by the people, taking away people's rights without their consent makes democracy suffocate.

II. THE IDEA OF SEPARATION OF POWERS AND JUDICIAL REVIEW IN INDIA

The idea of an independent judiciary founded on the concept of the separation of powers was developed by Montesquieu, a political philosopher. The Executives, Judiciary, and Legislative branches of the Government are all distinct from one another, this is the core

[3] 1991 AIR 631 1990 SCR Supl. (2) 433 1991 SCC Supl.

[4] (1997) 8 SCC (Jour)

notion of Separation of Power. The American Constitution is formulated on the principles of Separation of Powers as any barriers on the Independence of the Judiciary would create turmoil to the Individual rights and freedom of the People.

The Indian along with the American Judiciary has been given powers to declare the laws passed by the Legislature Ultra Vires or against the Public Policy. The United Kingdom does not grant these powers to their Judiciary. In the United Kingdom, The Concept of Judicial Independence does not exist. The American and the Indian Judiciaries have been given the authority of Judicial Review, which allows them to overturn laws that are unconstitutional or violate the Constitution's essential frameworks.

The Supreme Court in the State *of Tamil Nadu* v. *State of Kerala*[4] has concluded the following on the query of "Separation of Power" and stated that, "*Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law."* The division of powers between the three tiers of Government – the executive, the legislative and the judiciary – is also the consequence, as stated in Article 14 of the Constitution of India, of equality.

It is an agreed point of law that separation is vital for free government, but comprehensive separation would not only be unrealistic, but also disagreeable. Madison and Hamilton in Federalist Papers stated that, "Only by some blending or overlapping of powers can the self- interest of the departments, and especially the legislative, be checked."[5] The theory of checks and balances maintains an equality and ensures that neither branch turns out to be too influential.

Judicial review is a notion that exists within the postulate of Checks and Balances. The Doctrine analyses the operations of the Executive, Administrative, and Legislative departments of government to ensure that they comply with the Constitution's provisions. The Courts can use the power of Judicial Review to overturn statutory legislation that does not follow the constitution. The customary usage of the phrase "Constitutional Review" can be further correctly characterized, since there is also a lengthy practice of the judicial review of administrative agency activity, which requires no court to declare these acts unlawful, nor a written constitution in the country[6].

The notion of democracy and Parliamentary Supremacy (also known as Legislative

[5] Benjamin F. Wright, Jr „The Origins of the Separation of Powers in America; Economica, No. 40 (May, 1933), pp. 169-185; Wiley on behalf of The London School of Economics and Political Science and The Suntory and Toyota International Centres for Economics and Related Disciplines; https://www.jstor.org/stable/2548765 Accessed: 01-09-2021 11:34 UTC

[6] Nikhil Chakravartty, "Judicial Activism: Right or Wrong", *Mainstream*, Vol. 35 No.16, Perspective Publication Pvt. Ltd., New Delhi, 29 March 1997, pp. 3-4

Supremacy) may be used to explain the Doctrine of Judicial Review. The goal of Legislative Supremacy is for the Legislature to have more power over the other parts of government, such as the judiciary and the executive. The more dominant the legislature grows, the less the judiciary's independence becomes.

Some jurists believe that the unequal distribution of power amongst the branches is justified as the Legislature is the representative body elected by the will of people. Ronald Dworkin, an American Jurist, on Legislative Supremacy and Judiciaries Power to make laws stated that, *"Judges declare these laws unconstitutional even though the constitutional requirements they are said to violate are not specific and detailed or self-enforcing but are written in abstract language about who's actual meaning reasonable and reasonably trained people violently disagree. It is no wonder that this form of judicial review is widely thought to be undemocratic. Democracy means rule by the people and this seems to be ruled by the judges instead. In fact, there are two respects in which a constitution might seem undemocratic, and that quick summary catches only one of them. Judges on the highest courts are appointed rather than elected, and barring extraordinary misconduct they serve for life. So, a system that gives such judges great political power seems offensive to the principle that in democracy officials are chosen by and answerable to the people."* Therefore, as per the view of Ronald Dworkin the judiciary does not have powers to restrict the legislature. But it needs to be taken into consideration that the lack of judicial intervention in the legislative decisions would lead to unfair benefits for the lawmaking body.

The Apex Court has an extraordinary review system to measure the government's powers. The Supreme Court of India and the High Court of States have the power to review, as provided for in Articles 32 and 136 of the Indian Constitution, as well as Articles 226 and 227 of the Indian Constitution.

Hon'ble Justice Shah also commented that, "The legislature in this country has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the courts. The legislature may remove the defect, which is the cause for invalidating the law by the court by appropriate legislation if it has power over the subject matter and is competent to do so under the Constitution. The primary duty of the judiciary is to uphold the Constitution and the laws without fear or favor, without being biased by political ideology or economic theory. Interpretation should be in consonance with the constitutional provisions, which envisage a republican democracy."[7]

It is a persuasive case to be made that the Judiciary's power to review granted by the Indian Constitution to the courts is itself a mandate of the people. The Judicial Review theory is a necessary safeguard against

[7] *People's Union for Civil Liberties v. Union of India,* 2003 (3) SCALE 263

minority suppression by the majority, and the constitution ensures that the minority's rights are not violated.

III. JUDICIAL ACTIVISM AND JUDICIAL OVERREACH AS A COUNTERPART

The Indian Judiciary is evolving from a "Moderate" to a "Activist", and from a "Activist Role" to "Super Activist".[8] . The Supreme Court of India, as a deliberate extension of powers, has in the past six decades gone through various alterations in the conduct and approach on the factors of weakness and strength of the political organs. This intentional overreaching of power to practically make laws for the nations under the pretext of "activism" has given rise to the concept of "Judicial Overreach".

Undefined Fiction: Judicial Activism

The expression Judicial Activism is lucidly explained as a "judicial philosophy which motives the judges to depart from the strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistently expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in the legislative and executive matters".[9]

Under the Constitution of India, there is a great responsibility cast on the judges to adjudicate as per the change in needs of the society. Justice Bhagwati on Judicial Activism stated that, "Judicial activism is now a central feature of every political system that rests adjudicatory power in a free and independent judiciary."[10] Justice Kirby, reiterated Justice Bhagwati's opinion by interpreting Judicial Activism as, "Especially where there is a constitutional charter of rights and particularly in common law countries, judges have an inescapable function in developing the law."[11]

"Justice Bhagwati has taken pains in his judicial pronouncements and in his other writings, to further explain his views on what kind of judicial activism, how much of it, what manner, within which self-imposed limits, to what and with what tolerable accumulation of unintended results, should the judge adopt a proactive approach."[12] Therefore According to Justice Bhagwati, the concept of Judicial Activism can be interpreted in various forms.

Moreover, Justice Bhagwati believes that juristic and technical are the vital forms of Judicial Activism. An outstanding example of Judicial Activism is the doctrine of Basic Structure which was a fresh tenet formulated by the Supreme Court as it was not formally mentioned in the Constitution but was

[8] JUDICIAL ACTIVISM VIS-À-VIS, JUDICIAL OVERREACH; Accessed: http://shodhganga.inflibnet.ac.in/bitstream/10603/32340/11/12_chapter%206.pdf Accessed on 03.09.2021

[9] Upendra Baxi, *Courage, Craft & Contention* 7 (1985)

[10] P.N.Bhagwati: Judicial Activism and Public Interest Litigation, 23 *Columbia Journal of Transnational law* 1 (1985).

[11] Michael Kirby: *The role of Judges in Advocating Human Rights by referring to International Human Rights Norms*. A paper presented at Judicial Colloquium in Bangalore (1988).

[12] Justice P.N.Bhagwati,The Role of the Judiciary in Democratic Process- Balancing Activism and Justice Restraint in Developing Human Rights. Jurisprudence Vol. 5 (Fifth Judicial Colloquium on the Domestic Application of Human Rights Norms. (1992).

interpreted by the Apex Court. Another Example of the Supreme Court implementing judicial activism and developing constitution-nalism was by interpreting Article 368 of the Constitution in *Basic Structure Case*[13]. The Judgement protected the civil liberties of the Citizens of the county from the draconian, drastic laws passed by the majority ruling party.

The Need for Judicial Activism

There shall be various reasons for the need for Judicial Activism, and these reasons are not permanent but change from time to time. A Judge when compelled to act over his prescribed duty by interpreting the law for discharging his judicial role may constitute as the requirement or essentials.

Collapse of Ruling Government

Due to weak or failure to discharge functions by the executive and legislature, gives rise to downfall and breakdown of ruling government. Responsible Government is the trademark of an effective democratic system and constitutionalism and downfall may permit drastic steps. The Legislature, for whatever reason does not pass or formulate laws according to the chance in times leading to administrative failure. This leads to loss of confidence amongst the electorate and collapse of democracy. In these situations, the Judiciary takes an active role by adjudicating and providing guidelines for smooth functioning of the state.

Burden on Judiciary to Aid the Public

Through Public Interest Litigation or violation of fundamental rights of the individuals by the State or any other person, the Judiciary is tasked to aid the citizens by protecting their rights and liberties. The Individuals of a state expect the Judiciary to act on their behest which leads to Judicial Activism. Beginning with the *Ratlam Municipality case*[14] There has been an increase in the Cases filed on Public Interest for a variety of reasons[15].

- ***Legislative Vacuum***

Despite a large number of pre-constitutional and post-constitutional laws, there is a certain void regarding certain aspects of law passed by the legislature. This matter arises due to less exposure of the issue, absence of laws or unresponsive legislature. Therefore, when the legislature is incompetent to make laws, the judiciary has to step up and make laws to meet the standards of the society.

IV. JUDICIAL LAW MAKING IN INDIA – ACTIVISM

The Interpretation of the statutes and to close the vagueness in the laws, the Judiciary extends its role over the permissible limits. This constitutes Activism. The Supreme Court's activist approach has resulted in historic decisions on topics such as prisoner rights,[16]

[13] Keshavanand Bharti v. State of Kerala 1973 SCC 25.
[14] *Municipal Council* v. *Vardichan*, (1980) 4 SCC 162
[15] Justice M.N. Rao: *Random Reflections on Law and Allied Matters* 211-212.
[16] *Sunil Batra v. Delhi Administration* AIR 1980 SC 1759

speedy trial[17], environmental protection,[18] right to free legal aid,[19]handcuffing of prisoners,[20] and others. These cases fall under the ambit of Article 32 of the Indian Constitution which gives the Apex Court the ability to create laws owing to its broader duty and purpose due to its broader role and purpose.

In *Union of India v. Association for Democratic Reforms*[21] the court held as follows,

"*It is not possible for this court to give any directions for amending the Act or the statutory rules. It is for the Parliament to amend the Act and the Rules. It is also established law that no directions can be given, which would be contrary to the Act and the Rules. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.*"

The Hon'ble Supreme Court determined in *Joseph Shine v. Union of India*[22], that Section 497 of the Indian Penal Code,1860 which dealt with adultery, was unconstitutional. Because the rules prohibiting adultery infringed on Articles 21 and 14 of the Constitution of India, the Apex Court determined that they were unconstitutional.

V. JUDICIAL OVERREACHING INTO THE LEGISLATIVE SPHERE

Apposite Judicial interference is founded on the juristic principles evolved and Constitutional Interpretation. Judicial Activism should lead to betterment of the society but if the principle of activism is propelled by prejudice and bias it may lead to downfall of the constitution and the democratic principles the state is founded on. According to Prof. Sathe, "When populism prevails over legal requisites, the rule of law suffers and it in the long run adversely affects the legal culture."[23]

In *Mohini Jain v. State of Karnataka*[24], according to the Supreme Court, Article 21 of the Indian Constitution provides for the right to education as a Fundamental Right provided to individuals. The right to education is part of the right to life. The Supreme Court subsequently decided that just admission to primary school was the right to life in the *Unni Krishnan v State of Andhra Pradesh*[25]. In Mohini Jain's case the proposal was reduced by its unreal feasibility. This is a conventional example of the Supreme Court's judicial overreach by exceeding its domain. When the Supreme Court is taking action, it can't oversee its area and replace the Directive Principle with fundamental rights.

In *All India Judges Association v Union of India*[26], the Hon'ble Supreme Court directed the establishment of a body to provide consistency

[17] *Hussainara Khatoon v. home secretary, Bihar* (1980) 1 SCC 98.
[18] *The Ganga Water Pollution Case* (1988) SCC 41
[19] *D.C Works Ltd. v. Jai Narain* AIR 1957 SC 264
[20] *Premshankar Shukla v. Delhi Administration* AIR 1980 SC 1535.
[21] (2002) 5 SCC 294.
[22] W.P(Crl) No. 194 of 2017.
[23] S.P.Sathe, *Judicial Activism in India* 144 (2002).
[24] (1985) 3SCC 545.
[25] (1993) 1 SCC 645.
[26] AIR 1992 SC 165

in service of the members of the lower judiciary across the nation. This judgement was criticized because the Supreme Court issued orders to the legislature to make policy choices, which was seen as overreaching.

The Supreme Court has repeatedly ruled that a Writ of Mandamus cannot be issued for passing of a statute. The apex Court bench comprising of Justice DY Chandrachud, Justice AM Khanwilkar and Justice Dipak Mishra said "The writ of mandamus cannot be issued to the legislature to bring about an amendment in a legislation"[27] Legislative power is with the Legislature under the Constitution and Judiciary may not confer upon itself additional power on the garb of public policy. Judicial Activism should be within a permitted scope and cannot be a tool to quash legislation or to undermine the legislative role. Professor Wade suggested that Judicial Activism should be utilized cautiously by observing that, "*It is plain that the judiciary is the least competent to function as a legislative or the administrative agency. For one thing, courts lack the facilities to gather detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand, if courts have to rely on their own knowledge or research, it is bound to be selective and subjective.*"[28]

Due to the independence of Judiciary, the Judiciary has vast powers if not controlled may lead to catastrophic results such as Judicial overreach and the nullifying of the Legislature and its powers. The Judiciary is not a body which has been appointed by the people so it should not have power over the legislature to legislate laws. The mandate of the people if not followed may lead to destruction of the democracy.

VI. ROLE OF INDIAN JUDICIARY

Judiciary Supremacy Over Legislature

1. In Medical Council of India v. State of Kerala[29]

In this case, the question was whether in the instant case the State of Kerala has the power to pass the Kerala Professional Colleges (Regularization of Admission in Medical Colleges) Ordnance, 2017, which sought to annul the Supreme Court's judgments and decisions, therefore infringing on the judiciary's jurisdiction. The ordinance was promulgated to correct the enrollment of 180 students who were admitted unlawfully to Prestige Educational Trust's medical institution. The High Court of Kerala and the Supreme Court both found the admissions to be unlawful. The respondents claimed that the ordinance meant for admission to be based on a candidate's performance in National Eligibility cum Entrance Test (NEET), and that it was authorized to construct an ordinance

[27] Jain Mehal, Writ Of Mandamus Can"t Be Issued To Legislature To Amend Law: SC, https://www.livelaw.in/writ-mandamus-cant-issued-legislature-amend-law-sc/. Accessed on: 03.09.2021

[28] "*Judicial Activism and Constitutional Democracy in India"* commended by Professor Sir William Wade, Q.C.

[29] 2018 SCC Online SC 1467

to investigate whether candidates are suitable for admission based on their performance in the test. It was also asserted that students must not be used as sacrificial lambs. The Supreme Court of India stated *"ordinance by the State Government is clearly entrenching upon the field of judicial review and it was obviously misadventure resorted to. In our considered opinion it was not at all permissible to the state to pass an ordinance in the matter. Not only the judgment of the court is nullified and the arbitrariness committed in admission was glaring"*. It was further ruled that *"it was not a case where defect was sought to be removed from existing law and the ordinance is a blatant attempt of regularization of admissions made which were declared to be invalid not only by the High Court but also by this court"*.

The Court stated that not only is what the state government has done through regulations unlawful, in addition to extending institutions' illegality, arbitrariness, and failure to perform their legal mandate, which has been further affirmed by the Court. The idea of separation of powers contained in Article 50 has been violated. Given such behaviour of the Supreme Court, the day when every judgement can be nullified is not far off.

2. *P. Sambamurthy v. State of Andhra Pradesh* [30]

In the instant case, it was necessary to assess the legality of clause 5 of Article 371 D. This clause shall only apply if the Administrative Court has confirmed that order or has lapped 3 months after passing the order by the State Government. To be exact, the State administration has been empowered to amend or cancel the administrative tribunal's ruling. It was held by the Supreme Court that "*this power given to the state is violative of the rule of law which is clearly a basic and essential feature of the constitution".* It was additionally held by the court that "*it is through the judicial review conferred on an independent institutional authority such as the high court that the rule of law is maintained and every organ of the state is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the state government by overriding the decision given against it, it would sound like the death knell of the rule of law. The rule of law would cease to have any meaning because then it would be open to the state government to defy the law and yet to get away with it.".* The provision has been deemed unlawful.

3. S.R Bhagwat v. State of Mysore[31]

In the present case, the terms of the Mysore State Civil Services Ordinance 1 of 1997 were contested. The High Court of Karnataka promulgated an order declaring that the petitioner should be considered for promotion and with compensation if successfully promoted. He would be entitled to all of the privileges that come with it, including consideration for promotion. Following this judgement, the state passed an ordinance in which the advantages that were to be granted

[30] (1987) 1 SCC 362

[31] AIR 1996 SC 188

were sought to be taken away. The court found that "the state legislature's authority obviously encroaches onto the judicial area and attempts to overturn the binding judgement between the parties". As a result, the clauses have been deemed unconstitutional.

4. S.T Sadiq v. State of Kerala[32]

The lawsuits were brought in an attempt to challenge the Kerala Cashew Factory (Acquisition) Act's legality. This law gave state governments the authority to take over cashew industries in the public interest. The state government purchased 46 cashew processing plants. A petition was lodged before the Supreme Court and it was found null and void in the notice of acquisition. There has been an amending legislation to reverse the judgement of the court. A petition to appeal the amending legislation again was submitted to the Supreme Court of India. Furthermore, the court held in the decision that *"legislature cannot directly annul the judgment. The function of the legislation is making law and not declaring law. If liberty is given liberty to annul judgments of courts, the ghost of bills of attainder will revisit us to enable legislatures to pass legislative judgments on matters which are inter parties. Our constitution permits a legislature to make laws retrospectively which may alter the law as it stood when a decision was arrived at".* The court also said that the law might alter the basic premise of a judicial ruling.

Legislature Supremacy over Judiciary

1. Cheviti Venkana Yadav v. State of Telangana[33]

This SLP was filed in response to the High Court of Andhra Pradesh's judgement upholding the constitutional validity of the Andhra Pradesh (Agricultural Produce and Livestock Markets (Amendment) Act, 2015. The Hon'ble High Court ruled that the Telangana legislature had the jurisdiction to legislate with retroactive effect.

The High Court also ruled that "amended provisions do not usurp the judicial power and that the provisions are neither arbitrary or discriminatory". In a Special Leave Petition, it was ruled by the court that there *"is a demarcation between the legislative and judicial functions predicated on the theory of separation of powers. The legislation has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity."* It was subsequently ruled by the court that *"when a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse judicial dictum. The legislature cannot by way of an enactment, declare a decision of the court erroneous or a nullity but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify through an amendment, a defect in law noticed in the enactment and even highlighted in the judgment of the court."* Furthermore, the Court stated that,

[32] (2015) 4 SCC 400

[33] AIR 2016SC 4982.

if the plenary authority is used to bring a statute into compliance with the law's intent and to correct the rectify the flaw pointed out by the Court, it can have a mitigating effect, and that the purpose behind this correction is to override the court decision or invade the power of the judiciary. This is not the legal overruling by the parliamentary assembly.

2. State of Himachal Pradesh v. Narain Singh[34]

The only question before the Hon'ble Supreme Court in this case was whether the state may use its sovereign authority to make an amendment to a previous law while the court had already rendered a decision on the previous legislation. "Where there is a competent legislative provision that retroactively eliminates the substratum of basis of a decision, the aforementioned exercise is a permissible legislative exercise provided it does not exceed any other constitutional limitation," the court stated.

3. Goa Foundation v. State of Goa[35]

In this case Hon'ble Supreme Court of India held that *"the power to invalidate a legislative or executive acts lies with the court. A judicial pronouncement, either declaratory or conferring rights on the citizens cannot be set at naught by subsequent legislative act for that would amount to an encroachment on the judicial powers. However, the legislature would be competent to pass an amending or a validating act, if deemed fit, with retrospective effect removing the basis of the decision of the court."* The court also stated that while the effect of modification may appear to be an attempt to circumvent judicial rulings, this is only the case at first glance; a deeper examination would bestow legitimacy on such an activity as is legitimate since it is a frequent adjunct to legislative authority.

VII. CONCLUSION

The Scope of Judicial Activism under the Indian Constitution is legitimate until the judicial intervention is within the permitted ambit of the Judicial Review. There is a non-existential line delineating the inappropriate and appropriate intervention of the judiciary. This line can be crossed only when the Constitution expressly or impliedly permits. The different branches may work smoothly through the principle of checks and balances. In events of Governmental inactions or failures, the judiciary through Writs or directions may command performance of legal duties. However, there is a distinction between directing an authority to perform and judicial overreach by embracing the role of the authority and functioning on its behalf. Judicial Activism, if exercised blatantly without due regard may lead to seizing or commandeering the powers of the legislature or the executive, the two crucial organs of the Government. The Concept of Judicial Activism has developed through the interpretation of the Constitution. An argument which is against the concept of

[34] (2009) 13 SCC 165.
[35] (2016) 6 SCC 602.

Judicial Activism and may lead to its peril is as there is no law to the effect over the concept of judicial review, any law created and later on enforced by the same branch is clearly unconstitutional as there is so much power in the hands of a single branch. The thought that the Judiciary would be running the country is worrying.

The Judiciary and the Legislature have a tussle over the power and role when there is a gap between the text and purpose of the legislation. If this gap is not bridged by the legislature, the duty of the judiciary is to bridge the gap through guidelines or directions. These Guidelines or Directions should not vitiate the intent of the legislature. The Judiciary should act at the best interest of the people at large and protect the minority in the state wherever there are gaps in the legislation.

Judicial Review doctrine functions on the belief that it protects the rule of law, constitutionalism and the constitution. The Doctrine performs the role of a safety net when the interests of the society are in conflict. Judiciary has the role and responsibility to provide interpretations of legislation when there is ambiguity in public interest and public good. Only when there is absence of law, or due to a lacuna in the Statute the Judiciary may issue directions, this exercise of power is an act of Positive Activism. This act of the judiciary removes the gap and builds a bridge between the individuals and law. When the Judiciary performs the act of filling the gap it cannot be charged or challenged under Judicial Overreach. The act of judicial activism with a negative impact where the Judiciary is biased and ignores the law and statutory orders is judicial overreach. In the second judge's case, the Supreme Court ignored the provisions under Article 124 and replaced the procedure with Collegium System. This trend of the Supreme Court would amount to Judicial Overreach and is negative Activism. The method or tactic of the Judiciary should always be that of social welfare and maintain public good for the Judiciary to exercise the powers under the guise of Judicial Activism.

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