

Judicial Activism VIS-A-VIS Judicial Overreach: A Comparative Study

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Abstract

In India, the parliamentary system of government is used. There are three institutions of the state's governance in our country: the legislature, which is accountable for passing legislation, the executive branch, which is in charge of putting laws into effect, and the judicial system, which comprehends laws passed by the legislature and gives the executive branch guidance when it fails to do so. Even when a clear separation of authority is impracticable, the three branches should work together and collaborate. In contrast to the US, India does not rigorously adhere to the idea of a division of strengths. Thanks to a system of keeping each branch at its own place that has been established, the court has the power to invalidate any unconstitutional legislation that the legislature approves. There is no question that the judiciary's role changes from the traditional position into a more proactively participating role to accommodate the progressive culture. The court system tries to uphold citizen rights and restrict constitutional violations by others, but it occasionally goes beyond the bounds of the system by applying judicial reasoning and intellect, which is when "judicial activism" is introduced. The goal of the contemporary judicial philosophy of "judicial activism" is to ensure fair and proper justice for everybody. It is stated that if judges utilize this tool arbitrarily, it should be considered judicial overreach.

Key Words: Judicial Activism, Judicial Overreach, Judicial Restraint.

RESEARCH GAPS

"Judicial Activism" and "Judicial overreach" are such words that are nowhere propounded in the Constitution of India, even though they are such supplementing concepts which catches limelight wherever there is a discussion of "Power of Judiciary to enact Laws". Apparently, Judiciary does not have law making power but judges may lend a hand through Judicial Activism in law making process. But, when this involvement becomes extravagant and transforms into "Judicial Adventurism", it ultimately gatecrashes with the efficacious operation of the Legislature and executive.

Hence, the repercussion is Judicial overreach. There is a very subtle difference between the two concepts. Therefore, this research will be fruitful in comprehending the concepts of Judicial Activism and Judicial overreach with the help of comparison and how to curb the limits of Judicial Activism so as to prevent the overreach.

MATERIAL ANALYSIS METHODS

The exact procedure or methods used to locate, choose out, examine, and evaluate the data are known as the methodology of study.

The current study is doctrinal, non-empirical, describing, and interpretive; it is based on published works, most of which include legislative law that has been defined, numerous principles that have been created or proclaimed by honorable courts, and illustrious research papers and journals.

CONCEPT

“If the legislative and executive authorities are One Institution, there will be no freedom. There will not be freedom anyway if the Judiciary body is not separated from the legislative and executive authorities.”¹

– Montesquieu

The string separating advocacy initiated by the bench and excess is razor-thin; when activism crosses it and turns into exaggeration, it crosses the line into overreach of the performance of duty. Whether an activity is activism or excess depends on how the people perceive it. On the other side, the court has frequently argued that because of legislature and executive overreach, authorities must intervene and issue the orders.

At one point, it was believed that judicial activism was required to address the shortcomings of the legislative and the executive's wrongdoings. But it has now developed into a scenario where the principle of segregation of power, which ought to be regarded as a characteristic of the founding document fundamental framework, is under attack.

Sometimes judicial activism resulted in judicial adventurism and excess. The demarcation of the functions and duties, which is the most essential element of the federal government, is negatively impacted by instances of court overreach. The executive's confidence may suffer as a result of judicial overreach because the executive's role in formulating and enacting policy is more difficult. The cooperation between the administrative and judicial branches can occasionally suffer as a result of judicial overreach, which has a detrimental effect on the constitutional framework.

Illuminating a fine line among judicial activism and overreach; although judicial activism is seen favourably as an extension of the executive's shortcomings, overexertion into the executive's purview is seen adversely as an intrusion on the rule of law's ability to function effectively. The supreme significance of parliament in the creation of policies constitutes a component of basic structure, just as the independence of the judicial branch is, and the interference of the judicial branch into its domain is not warranted.

Activism may turn into overreach if the judiciary sees itself as the only guardian of the public interest, defines it in its own way, and tries to compel the legislative and the executive to carry out its interpretation. The judiciary's only responsibility is to interpret the legislation and determine whether it complies with the Constitution.

There are signs that the judiciary is abusing its power and encroaching more and more on the upper-crust sphere of the legislative and the administration, throwing off the delicate balance between the various institutions in the nation and leading to unhealthful asymmetry. We cannot allow for a scenario in which the government is ruled solely by judicial orders, rendering other democratic organs gradually ineffective. The distinction between judicial activism and judicial outreach cannot be drawn with absolute certainty; what one person may perceive as judicial activism may appear to another as judicial outreach. In order to minimise inefficiencies between the legislative and executive branches and to advance transparency and

¹ <https://lawessential.com/constitutionall-law/f/judiciary-is-crossing-its-limit-and-interfering-with-executive?blogcategory=Constitutional+Law>

responsibility, judicial activism aids to maintain both in control. New avenues have been opened for the facilitation of citizen welfare as a result of judicial activism in the form of litigation pertaining to the public interest.

JUDICIAL ACTIVISM AND JUDICIAL OVERREACH ARE DISTINGUISHED BY A FINE LINE THAT MUST BE OBSERVED

“Judicial Activism” should not become “Judicial Adventurism”

-Justice A.S. Anand²

Chief Justice A.S. Anand served as India's 29th Chief Justice of India. While explaining the fine line of contrast between “Judicial Activism” and “Judicial Overreach,” he issued a warning about the need for judges to exercise self-control and restraint when carrying out their judicial duties so that judicial activism does not turn into “judicial adventurism.”

The separation of responsibilities between the legislative, executive, and judicial branches is a principle upheld by the Indian Constitution. Judicial activism refers to the proactive standpoint that the court has taken in defending citizen rights and advancing justice in society.

The main cause of judicial activism has been the inaction of the administration and legislatures. Consequently, judicial activism occurs when the courts take an activist stance and pressure the appropriate authority to act.

Extreme court activism is known as judicial adventurism which eventually turns into Judicial overreach. It refers to a circumstance in which the judiciary joins the executive or legislative branches of government in addition to its own, upsetting the balance of powers.

The efficiency of the remaining two elements of the constitution likely to be compromised by frequent court alterations, some of which can border on judicial adventurism. Judiciary overreach happens when the court system starts meddling with how legislative proceedings and governance are carried out, so encroaching on the legislative and executive sectors. Activism in the judiciary is the use of the court system to advance and maintain socially beneficial principles.

The constitutional concept of the division of powers, which ought to be regarded as a fundamental element of our constitution, is put to question by judicial overreach. Instead of replacing administrative orders with judicial ones, the role of the judiciary ought to be to act in a manner that forces the authorities to act and to issue executive orders. After all, the judiciary as a governing body is not personally answerable to the individuals, in contrast to the other two departments of the constitution. The judiciary must exercise restraint and behave responsibly within the bounds of its constitutional powers due to this very absence of accountability. The judiciary should be aware of and cognizant of its limitations, just like all other organisations in a democracy. Judicial orders cannot govern our nation.

Justice J. S. Verma, a former Chief Justice of India, made the following observation:

“The judiciary has stepped in to investigate a strange car speeding down Tughlaq Road in Delhi, the allocation of a specific bungalow to a judge, the selection of a specific bungalow for the judges pool, monkeys running amok in colonies, stray cattle on the streets, the clearing of public restrooms, the imposition of congestion fees during peak travel times at airports with heavy traffic, etc. under threat of using the contempt power to ensure compliance with its orders. An extreme example is when the contempt power is abused to pressure railway officials into making reservations for trains.”

² <https://www.thehindu.com/news/national/judicial-activism-is-our-duty-against-legislative-adventurism-sc-judge-kurian-joseph/article7168036.ece>

INSTANCES OF JUDICIAL OVERREACH

The government's legislative arm, which believes that the judicial branch are overstepping their authority and have turned into an extra-constitutional legislating body, has consistently attacked the judiciary's position. They contend that the judiciary's role is for interpreting laws, not create them, and that in numerous instances, it has disregarded the legislative branch's power.

Our Indian judicial system is not anymore, a bystander. The judiciary sometimes steps in to take measure in the manner of judicial review when the legislatures and the executive branch fail to carry out their responsibilities. Democracy is not an exception to the rule that sometimes having too much of a good thing can be harmful. Judiciary activism, as a result, is a notion that was first introduced in the USA in 1947 and has been present in India since the Emergency period.

1. Censorship Case

The censoring of the movie Jolly LLB II³ is a well-known example of judicial overreach. The lawsuit, which was submitted as a writ petition, claimed that the movie mocked the court system and was therefore a provocation and an act of contempt. A three-person committee was established by the Bombay High Court to see the film and provide a report on it. Since the Board Of Film Certification already exists and has the authority to censor, this was seen as redundant. Four sequences were cut by the filmmakers based on the committee's findings. It was deemed to be against Article 19(2) because it placed limitations on the freedom of speech and expression.

2. Prohibiting Alcohol Case

The Supreme Court prohibited the sale of alcohol at retail establishments, restaurants and bars within 500 metres of any national or state highway in response to a PIL over traffic safety. No proof between the prohibition on drinking while driving with the number of fatalities was offered to the court. The state governments lost money as a result of this verdict, and jobs were also lost. Because it included an administrative issue that required executive understanding, the case was viewed as an overreach.⁴

3. NJAC Appointment Case

The National Judicial Appointment Commission (NJAC)⁵ was a body that was put forward to substitute the current collegium system and make appointments of Chief Justices, Supreme Court judges, and High Court judges in a more accountable and transparent way. It was passed by both the houses of the Parliament and received the assent of the President. Also, in 2014 a commission was established under 99th Amendment.

It provided that following people will be member of NJAC:

- The Law Minister
- Chief Justice of India and the 2 senior-most judges of the Apex Court
- A group made up of the Prime Minister, the Chief Justice of India, and the majority leader of the main opposition party would choose two distinguished individuals.

The NJAC would be responsible for appointments, transfer and making recommendations. Prior to NJAC, collegium system was followed for the same purpose. The difference between the Collegium system and NJAC was so, that collegium system did not involve any legislative member. The Chief Justice of India along with the Apex Court collegium must first accept the names proposed by the High Court collegium before they are forwarded to the government. Hence, this lacked transparency in the system.

³ <https://www.livelaw-in.elibraryhnl.com/remotexts.in/bombay-hc-seeks-reply-producers-jolly-llb-2-advocates-petition/>

⁴ State of T.N V. K. Balu and Anr. 2016 SCC OnLine SC 1487

⁵ Supreme Court Advocate on Record V. Union of India (2016) 5 SCC 1

4. Banning of Fire Crackers on Diwali

In the matter of *Arjun Gopal V. UOI*⁶, to defend the right to an environment free from pollution, the Supreme Court outlawed extremely polluting firecrackers in 2017. In 2018, the supreme court ruled that only "green crackers" would be permitted, outlawing the manufacture and sale of all other types of crackers except "green crackers" with reduced sugar content. A week before Diwali in 2020, seven states outlawed the purchase and use of firecrackers.

The Government of Delhi state (through the Delhi Pollution Control Committee) passed an order of imposing a total ban on the sale and setting off firecrackers in the nation's capital line 2020, while numerous states permitted green crackers for a duration of two hours on Diwali celebrations.

But the former Vice-President of India M. Venkaiah Naidu, criticised the decision of Supreme Court. Such judicial intervention amounts to Judicial Overreach. Naidu reminded the conference that the Constitution has "*demarcated clear domains for each of these three organs on the lines of separation of powers*" and said "*harmony lies in each organ doing its job without interfering with that of the others.*"

Mr. Naidu appreciated that the Judicial organ have provided numerous "*far-reaching verdicts in furtherance of socio-economic objectives*" apart from their correctional interventions. "*But occasionally, concerns have been raised as to whether they were entering the domains of the legislative and the executive wings,*" he said.

JUDICIAL OVERREACH IN THE MATTER OF SPORTS

In the matter of BCCI case, the Supreme Court established the Lodha Committee in response to claims of match-fixing, corruption, and betting scandals in Indian cricket. To restore law and order to the BCCI and the game of cricket, the committee was established. It included judicial overreach because:

- The Tamil Nadu Societies Act lists and governs the BCCI. Furthermore, it is a trust and was not under the supervision of the federal or state governments. On the basis of their bye-laws, the BCCI officials were chosen.
- Therefore, the Lodha committee lacked the right to suggest anything. The BCCI may have been ordered by the court to operate in accordance with the Societies Act's rules.
- The court has no business controlling or dictating how a sporting organisation should be operated. Institutional self-rule should be recognised. The developments were not improved by outside interference or violations of national sovereignty. If they had broken the rules, they would have been dismissed according to the established procedure.
- The court had disregarded Indian cricket's history when it adopted the one state, one vote system, allowing teams from Railways and Services to compete in the Ranji Trophy. They now hold the position of associate members without voting privileges.

In the latest judgement of Supreme court in the matter of *Anoop Baranwal V. UOI*⁷, '*A group of petitions calling for change in the selection of members of the Election Commission of India were being heard by a Constitution Bench made up of Justices KM Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy, and CT Ravikumar. Any method that aims to enhance the election procedure before this Court must be considered.*'

⁶ 2017 SCC Online SC 1203

⁷ 2023 SCC Online SC 216

COMPARATIVE ANALYSIS OF NJAC AND ANOOP BARANWAL JUDGEMENT

What is the current scenario?

The Indian Constitution's Article 324 declares the Election Commission to be a separate, uninfluenced entity with the power to conduct elections.

The commission was created on January 25, 1950, in accordance with the law, and every January 25, it is recognised as National Voters' Day. The Chief Election Commissioner, along with the other two Election Commissioners, oversees the commission, which oversees the votes for the Lok Sabha, Rajya Sabha, and Legislative Assemblies. The Indian President appoints the top election commissioner for a six-year term. The Union Council of Ministers, which is presided over by the Prime Minister of India, advises the President when making appointments for CECs and ECs because the constitution as it stands currently does not specify a particular legislative procedure.

What is the reform sought by the court?

The Chief Election Commissioner and other election commissioners have been appointed by the panel which made according to a majority decision given by the Apex Court of India in the matter of Anoop Baranwal. According to the Supreme Court's ruling, a powerful panel made up of the nation's Prime Minister, the head of the Opposition in the Lok Sabha, and the Chief Justice of India will now select the commissioners.

Hence, this is the irony and this the reason that the citizens are criticising the judgement of Supreme court as it amounts to Judicial overreach. It is claimed by the judiciary that it had to intervene to eliminate the "constitutional vacuum" because the Parliament did not pass a legislation on this subject. The bigger issue of the demarcation of powers and whether the judiciary is abusing its authority by trying to close this legal loophole follows from here.

If we compare the matter of NJAC judgement with the matter of *Anoop Baranwal (supra)*, the irony is that the court did not allow the Legislative arm to intervene with the Judicial appointments of Judges and made the collegium system operative by declaring the NJAC as unconstitutional and void on the ground that it infringes the separation of power which is the part of Basic structure of the constitution.

On the other side, in the matter of *Anoop Baranwal (supra)* the judgement is criticized on the ground that now the Judiciary is trying to encroach in the sphere of legislature which is also violation of the principle of Separation. If Judicial branch condemn interference by the Legislative branch, then, how visa-versa is defensible. This is also a violation of the "Doctrine of Basic structure." It is still possible to argue for the fairness of such a group by supporting the inclusion of opposition leaders. But there is absolutely no justification for the judiciary's existence, leading to the use of the pejorative phrase "judicial overreach."

The *Venkatarama Devaru V. State of Mysore*⁸ People who believe that the role of the court is to interpret laws, not religion or religious scriptures, were of the opinion that the provided case is an example of judicial outreach. Untouchability was deemed illegal in the case because it violates Article 17 of the Indian constitution, but the court also read Hindu texts to say that untouchability was not a fundamental aspect of Hinduism. Untouchability should have been declared illegal based solely on the fact that it breaches Articles 14 and 17 of the Indian constitution, it was thought, without the need to interpret the Hindu texts.

⁸ 1958 AIR 255

MISUSE OF THE LUXURY PROVIDED TO THE JUDICIAL ORGAN OF THE GOVERNMENT

If we look at the intention of introducing the PIL based jurisprudence which is cornerstone for judicial Activism in India which was initiated by the visionary judges of our country i.e., Justice Bhagwati and Justice Krishna Iyer. This movement was started against the tyranny of the Congress government ideology which a socialist ideology which lacks the concerns of the average citizens of the country. The Congress government of that time was heavily corrupted machinery that reflected the central bureaucracy which consequently compelled the Judicial organ of the government to stand for the rights of the citizen through Judicial Activism. So, when one pillar of the Democracy failed in discharging its function, the other pillar took the function of the other.

Hence, the Doctrine of necessity has always played an important role in the Constitution development. Collegium system is a very good example of the same. The need of that time has now given a special power to the judiciary, which is now termed as Judicial overreach which is heavily criticised and is also a very strong ground for violation of democracy in India. Judiciary's intervention in the matters that are purely legislative or executive in nature is obviously an infringement of the spirit of democracy.

The excuse frequently used for judicial intrusion into the purview of the administration or legislature is that those two bodies are not performing their duties effectively. Even if this is the case, the judges can also be accused of the same thing because there are cases that have been lingering in courts for fifty years. The court stringently pointed out that people are losing the faith over judiciary due to the unexplained delay in disposing off the matters.⁹

It is against the essence of the principle of the division of duties, which explicitly separates the roles of all three branches of state and is the cornerstone of a democratic country like India, when the court system surpasses or exceeds its authority and takes activity on matters that fall under the purview of the legislative and executive as provided by the Indian constitution. This hinders the proper operation of the statutory as well as the executive. Judicial overreach is the term for when the court interferes excessively or needlessly with legislative or executive powers.

ABUSE OF THE POWER OF CONTEMPT PROVIDED TO THE HIGHER JUDICIARY

Higher courts frequently abuse their contempt authority and do so in an uncontrolled manner. The contempt authority has been abused more often than it has been used. According to seasoned writer Kuldip Nayar, "*the unpalatable truth is that the judiciary has been struck with its own image of authority and truth for some years.*"¹⁰

The executive, legislative, and judicial branches of government are collectively responsible for the overall administration of our republic. In a society like India, where democracy is followed supremely like India, the constitution is the supreme, and where the law demands that all governmental bodies uphold constitutional principles.

BALANCING THE ORGANS- WORKING WITHIN THE "LAKSHMAN REKHA"

"Laxman Rekha drawn by the Constitution is sacrosanct"

-CJI N.V. Ramana¹¹

⁹ Rajendra Singh V. Prem Mai (2007) 11 SC SCC 37

¹⁰ <https://www.legalservicesindia.com/article/2216/Kuldip-Nayar-V.-Union-of-India-AIR-2006-SC-3127.html>

¹¹ <https://times.of.india.indiatimes.com/india/law-minister-has-no-authority-to-draw-any-arbitrary-lakshman-rekha-chidambaram/articleshow/91508373.cms>

While stating that "*Laxman Rekha drawn by the Constitution is sacrosanct*," Chief Justice of India N.V. Ramana stated on November 26, 2021 that the common intellect of the people is that shielding justice is the task and on the shoulders of the judicial arm individually which is a mistaken view as both the executive arm and the legislative arm, being the warehouses of constitutional and governmental trust, are uniformly burdened with the competence of ensuring complete justice. Such restricted judicial interventions are intended to "*nudge the executive, not to usurp its role*,"

Upholding the state's dedication to securing justice is the responsibility of all three of its organs. The three bodies serve as constitutional trust keepers. Even though the judiciary is the "*guardian of the Constitution*," the executive and legislative must collaborate with the judiciary to ensure full justice as intended by the Constitution.

To avoid disputes among governing bodies of democracy, the segregation of Powers section was added into the text of the COI. The administrative and judicial branches share some authority, as is well known. As an illustration, the CJ of the High Court will be chosen by the President, who represents the executive branch, following dialogue with the CJI, who represents the judicial branch, and the governor of the state that is concerned.

If the executive and judicial branches work together, adhere to their "Lakshman Rekha," and maintain a stronger bond rather than viewing each other as the adversary.

To ensure that all three of a state's organs operate smoothly, the Constitution's drafters included the clause stating that functional autonomy must be handled. The proper distribution of power must be ensured so that each branch of government—executive, judicial, and legislative—can operate independently without crossing any boundaries established by the Indian Constitution. All three institutions ought to function complying with the Constitution, which is the highest standard, and have mutually reinforcing control over the power.

Late Shri Arun Jaitley also mentioned his concern on the adventurism of the Judiciary by saying "*Judiciary should not take decisions which fall in the domain of the executive, Judicial review is legitimate domain of judiciary but then the Lakshman rekha has to be drawn by all the institutions themselves*"¹²

The differentiation among "judicial advocacy" & "judicial intrusion" should be acknowledged for a democracy based on constitutionality to function correctly, with the segregation of powers serving as its fundamental precept and the precedence of the constitution acting as the cornerstone of its design. One egregious instance of overreach by judiciary is the police reform matter. The arrangement of an interim speaker and directions to the citizens of the Jharkhand Assembly from the Supreme Court. Regulations targeting the avoidance of discrimination on the part of women in employment, the creation of a strong commission to regulate parking rates, the usage of helmets, and garage traffic were all ordered by the court in *Vishakha's case*.

SUGGESTIONS

- **Establishing Judicial Committees:** To examine issues relating to judicial overreach, committees should be created including retired Supreme Court justices, eminent jurists, officials of the legislative and executive branches of government, and members of the judiciary.

¹² <https://indianexpress.com/article/india/india-news-india/njac-sc-verdict-democracy-cannot-be-tyranny-of-the-unelected-says-arun-jaitley/>

It is to promote openness in problem-solving that representatives of the legislative and executive branches of the government be included. The system of checks and balances is a key component of democracy; if it is disrupted, the nation may eventually descend into tyranny or arbitrary rule.

- **Review is essential-** Just creating the committee is insufficient; the implementation and execution of the committee's recommendations are crucial. To limit judicial overreach, the Audit system is important. To limit judicial overreach, meetings should be held every quarter or every six months, as necessary. Even while India largely adheres to the idea of separation of powers, this does not mean that any one branch of the government can infringe on the authority of the other. Although judicial activism is desirable, judicial interference in other areas should be discouraged.
- **Overreach should always be seen negatively** - Since passing laws is a time- and money-consuming procedure, and since the legislature is unable to pass legislation on every issue, the judiciary is given the chance to handle cases where the law is either unavailable or unclear. Therefore, the legislature should accept any recommendations or suggestions made by the judicial branch of the government that fall under the umbrella of the practise of judicial restraint and should also investigate whether it would be necessary to enact legislation on that specific topic.
- **Coordination between the Organs is essential-** Even though India does not have a fully decentralised government, the system of checks and balances encourages harmony between the various departments. In order to maintain openness, the three branches of government should coordinate closely.
- **Judicial Restraint practise** – As previously said, judicial restraint is urgently needed. Judicial restraint is the reverse of judicial activism. Judges are expected to exercise the constrained activism by judicial system, which limits how much power they exercise. Because courts should interpret the law rather than make policy decisions, judicial restraint is advised. When interpreting a law, it may be used as a guide by precedents and by adhering to the goals of the constitution's writers.

CONCLUSION

Judicial overreach is the term for judicial adventurism, which happens when judicial activism goes too far. While some aspects of fiscal policy may be viewed as judicial overreach, judicial activism on problems related to labour policy and the environment and ecology may be viewed as positive. Judicial overreach has an adverse effect on the constitutionally mandated separation of powers. While judicial advocacy is seen as a useful complement to the executive's lacuna and loopholes, overstepping its bounds is seen as a threat to democracy's smooth functioning. The essential structure incorporates the legislative branch's precedence in policymaking together with the judiciary's independence. In this case, interference by the courts with the legislative branch's power is intolerable. It is difficult to control because any activity's classification as activism or excess rests only on the population's viewpoint. The fragile equilibrium between the many institutions of this democratic nation is becoming more and more unbalanced as judicial adventurism encroaches on their own territory. Even if judicial review is a valid area of the court, a limit or barrier needs to be established. It shouldn't develop into a super executive that wants to put laws into effect and a super lawmaker that creates legislation.

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