
POSITION OF JUDICIAL REVIEW IN INDIA: A PROSPECTIVE AND RETROSPECTIVE ANALYSIS OF JUDICIAL ACTIVISM

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ABSTRACT

The judiciary is the ultimate defender of the constitution. It is the body that acts as a watchdog over the legislative and executive branches of the government, continuously ensuring that they operate within the bounds of the Indian Constitution. If any organ crosses that limit, the judiciary will restore it. India is a constitutional democracy with a strong focus on constitutionalism. The spirit of which safeguards the constitution and peoples' rights from any arbitrary acts of legislature and executive and for the same the judiciary has embarked on the arduous job of a constitutional watchdog. Progressively, the concept of judicial review developed and it also contributed in keeping an eye on the Judiciary itself. The feature of questioning the judges, courts and its judgments provided the people of the country with a freedom that they initially interpreted to be within the boundaries of judiciary. The only difference is that normal political engagement cuts the wings of the court and prevents them from acting independently. The tension between the court and the executive is not a new phenomenon in India. This paper examines various landmark cases and recent decisions pronounced by the Hon'ble Supreme Court and High Courts and focuses on the following aspects to discuss in detail the origin and evolution of judicial review, as well as the features, criticisms, its application in prospective times, judicial restraints and justification of judicial review in India.

Keywords: Judicial Review, Judiciary, Executive, Legislature, Constitutionalism, Judicial restraint, Constitutional watchdog.

INTRODUCTION

DEFINITION:

Judicial review is a type of judicial procedure, typically used in administrative courts, in which a judge examines the legitimacy of a decision or action. The judicial review is concerned with whether the law was appropriately implemented and the proper processes were followed. Judicial review is a judicial practice in which a judge examines the validity of a public body's decision or action. In other words, judicial review is a challenge to the manner in which a judgement is made rather than a challenge to the rights and mistakes of the conclusions reached.

The judiciary has the right to strike down any law approved by the parliament if it interferes with the Indian Constitution and mainly the fundamental rights granted to the citizens, which are an integral part of the Indian constitution Any law made by the legislature that contradicts the constitution might be found unlawful by the court According to Article 13(2)¹ of the Indian Constitution, any legislation passed by Parliament that limit the rights of the people under Article 3² of the Constitution is null and invalid from the start.

RESEARCH OBJECTIVES:

1. To analyse the frequency by which the power of judicial review exercised through judicial activism of the courts has fluctuated and how parliament's intervention has put a restraint on the judiciary and has made laws and amendments to increase their law-making power and decrease judiciary's intervention.
2. To discuss in detail the Judicial activism with various case laws.
3. Explain the process of Judicial review in India, its features, types and criticisms with various judicial pronouncements.

ORIGIN AND EVOLUTION OF JUDICIAL REVIEW:

In the Dr Bonham case, the term "judicial review" was first used in the courts. The facts of this case are; Dr Bonham was forbidden from practising in London by the Royal College of

¹ The Constitution of India , 1950, Art. 13(2).

² The Constitution of India , 1950, Art. 3.

Physicians because he lacked a licence. The case is also notable for violating natural justice principles due to its monetary bias. The monarch and the college will split the money because Dr Bonham was penalized for being undocumented. It was held that executive actions contrary to fundamental rights are void.

Following that, in 1803's *Marbury v Madison*³, the word "judicial review" was defined.

The United States Supreme Court established the doctrine of judicial review for the first time. The constitution of the United States did not originally have an express provision for judicial review, but it was assumed by the Supreme Court of the United States in the landmark decision of *Marbury versus Madison*. According to Chief Justice Marshall, "The constitution is either superior paramount law, unchangeable by ordinary means, or it is on a par with ordinary legislative acts, alterable when the legislature so desires."

In India, the power of judicial review existed even before the enactment of the Indian constitution. The Government of India Act, of 1935⁴, enacted by the British Parliament, established the Federal System in India. The Central and State legislatures were given plenary powers in their respective sectors under this statute. They were unrivalled in their respective domains. The authority of judicial review was not expressly granted in the Constitution, but because the Constitution was federal, the Federal court was implicitly entrusted with the responsibility of interpreting the Constitution and determining the legality of legislative acts.

Before the Indian Republic was created, constitutional philosophers in India believed that the constitution of free India should contain provisions for a supreme court with judicial review authority.

Article 13⁵ of the Indian Constitution explicitly provides the authority of judicial review. Article 13 of the Indian Constitution prohibits legislatures from passing legislation that "may deprive or abridge the fundamental rights" provided by the Constitution. Any law is considered void if it is "incompatible with or in violation of fundamental rights."

Article 13 provides the constitutional basis for judicial review by granting the Supreme Court and the High Courts the authority to interpret pre-constitutional legislation and determine

³ *Marbury v. Madison*, 5 U.S. 137 (1803)

⁴ The Government of India Act, 1935

⁵ The Constitution of India, 1950, Art. 13

whether they are consistent with the ideals and principles of our current constitution. However, they must be constitutionally consistent; otherwise, any departure renders them null and invalid.

FEATURES OF JUDICIAL REVIEW IN INDIA:

1. Power of judicial review can be exercised by both the Supreme Court and High Courts: Power of judicial review is granted to both the Hon'ble Supreme Court of India and High courts across the country under Article 32 and 226 of the constitution of India, respectively.
2. In addition, under Article 32, a person can approach the Supreme Court for any infringement of a fundamental right. and under Article 226 any person can move to high courts for infringement of their fundamental rights or legal and constitutional rights as well. However, the Supreme Court has the final authority to interpret the Constitution, and its rulings are binding across the country.
3. Judicial Review of both state and central laws: Laws enacted by the central governments and state legislatures, both are subject to judicial review. any laws, orders, bye-laws, ordinances, and constitutional changes, as well as any other notifications, are subject to judicial scrutiny under Article 13(3)⁶ of the Indian Constitution.
4. One of the features of judicial review by courts is that The Supreme Court cannot seek judicial review on its own. It can only be employed when an issue of law or regulation is brought before the Hon'ble Court.
5. Principle of Procedure established by law : Article 21⁷ of the Indian Constitution which talks about the right to life and liberty states that a person can't be denied of their right to life and personal liberty except by "Procedure established by law." The law must pass the constitutionality test before it can be passed into law. On the contrary, the court has the authority to declare it null and invalid if it may deem fit accordingly.

There is no obvious and explicit provision in the Constitution granting the courts the authority to invalidate laws, but the Constitution imposes specified limits on each of the organs, the

⁶ The Constitution of India , 1950, Art. 13(3).

⁷ The Constitution of India , 1950, Art. 21.

violation of which renders the legislation unlawful.

PROVISIONS RELEVANT TO JUDICIAL REVIEW IN THE INDIAN CONSTITUTION:

Some sections in the constitution that assist the judicial review process are as follows:

1. Article 372 (1)⁸ establishes the judicial review of pre-constitutional legislation.
2. Article 13⁹ stipulates that any law that violates any of the articles of the section of Fundamental Rights is null and invalid.
3. Articles 32¹⁰ and 226¹¹ provide the Supreme and High Courts with the functions of guardian and guarantee of basic rights.
4. Article 50¹²: separation of power: it separates judiciary and executive, that their functions should be separated and should not interfere with each other functions
5. Articles 251¹³ and 254¹⁴ states that if there is a conflict between union and state laws, the state law takes precedence.
6. Article 246 (3)¹⁵ guarantees the state legislature's sole authority over matters related to the State List.
7. Article 245¹⁶, the powers of both the Parliament and the state legislatures are subject to the limitations of the Constitution.
8. Articles 131-136¹⁷ entrust the court with the power to adjudicate disputes between individuals, individuals and states, and states and the union; however, the court may be required

⁸ The Constitution of India , 1950, Art. 372(1).

⁹ The Constitution of India , 1950, Art. 13

¹⁰ The Constitution of India , 1950, Art.32.

¹¹ The Constitution of India , 1950, Art. 226

¹² The Constitution of India , 1950, Art. 50

¹³ The Constitution of India , 1950, Art. 251

¹⁴ The Constitution of India , 1950, Art. 254

¹⁵ The Constitution of India , 1950, Art. 246(3)

¹⁶ The Constitution of India , 1950, Art. 245

¹⁷ The Constitution of India , 1950, Art. 131

to interpret the provisions of the constitution, and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.

9. Article 137¹⁸ empowers the Supreme Court to examine any judgement or order it issues. Only if there are flaws on the record may an order in a criminal case be reviewed and overturned.

RELEVANT CASE LAWS CONTRIBUTING TO THE EVOLUTION OF THE JUDICIAL REVIEW IN INDIA:

As a result, laws that violate or limit basic rights may be knocked down.

As ultra vires or invalid by the courts using their judicial review jurisdiction under Art 13 (2). In "*A.K. Gopalan vs. the State of Madras*,¹⁹" Chief Justice Kania stated that it was only with extreme prudence did the creators of our constitution include the exact provisions in Art 13. The constitution is paramount in India, and all statutory laws must be in accordance with the constitutional requirements. It is up to the judiciary to determine if any legislation is valid or not.

The essential subjects of judicial review under India's constitution are as follows:

1. Violation of basic rights;
2. Violation of several other constitutional constraints enshrined in the constitution
3. Enactment of a legislative act in contravention of constitutional provisions for power distribution;
4. Delegation of vital legislative power by the legislature to the executive or any other body; and
5. Violation of implied limitations and restrictions.

Article 13 (1) talks about pre-constitutional laws it says that any pre-constitutional law which is contrary to the fundamental rights will be void. In *Keshav Madhav Menon v. State of*

¹⁸ The Constitution of India, 1950, Art. 137

¹⁹ A.K.Gopalan vs. the State of Madras AIR 1950 SC 27

*Bombay*²⁰ a person was charged under a pre-constitutional law; the case continued and meanwhile, the constitution was formed and came into effect. It was held that Article 13 doesn't have a retrospective effect 'if the law changed later, then the person will be charged under existing law, even though the fundamental rights were violated but the law and case both are pre-constitutional eras so new constitution won't apply'

The power of judicial review has also been exercised by the courts in the matter of personal laws and essential religious practices. In the case of *State of Bombay v. Narsu Appa Mali*²¹ the question of law was regarding personal laws - "whether they are included under the ambit of definition of law given under article 13(3).

In the present scenario, the prospective contemporary world, recent cases like the Shabrimala temple case, and the triple talaq case, the judiciary has started intervening in religious matters. Court said that only in the matters of religious essential practices will not be intervened by the judiciary but in other matters judiciary and state can intervene. So the current situation is if there is a judicial review for a matter of personal laws or the question of law before the court is in relation with personal laws, the question that will be asked will be - is the matter is of essential religious practice or not?

RELEVANT CASE LAWS CONTRIBUTING TO THE EVOLUTION OF THE JUDICIAL REVIEW IN INDIA:

In the case of *Shankari Prasad vs. Union of India*²², "the First Amendment was challenged on the grounds that it abridged fundamental freedom. The argument was founded on the notion that Article 13(3) requires the law to contain the constitutional amendment law. The Supreme Court rejected the argument, ruling that the term "law" in Article 13 must be interpreted to imply "rules or regulations made in exercise of constitutional power," and so Art 13(3) did not apply to revisions made under Article 13.

*Sajjan Singh v. State of Rajasthan*²³, the legality of the constitution, 17th Amendment Act 1964²⁴, was once again called into question. The Court upheld the stance established in the

²⁰ Keshav madhav menon v State of Bombay, 1951 AIR 128

²¹ State of Bombay v. Narsu Appa Mali, AIR 1952 BOM 84.

²² Shankari Prasad v. Union of India, AIR 1951, SC 455, at page 458

²³ Sajjan Singh v. State of Rajasthan, IR 1965 SC 845

²⁴ Constitutional amendment act, 1964, No. 17th, Acts of Parliament, 1964.

Shankari Prasad case, holding that constitutional revisions enacted under Art 368 are not subject to judicial scrutiny.

This amendment was challenged again in "*Golaknath vs. the State of Punjab*"²⁵, and the Supreme Court, via Justice Subba Rao, ruled that "the power of parliament to amend the constitution is derived from Article 245 read with entry 97 of List 1st of the constitution, not from Article 368." Article 368 simply specifies the method for amending the Constitution. - Amendment is a legislative procedure. An amendment is a law within the definition of Art 13(3), which includes all types of laws, including statutory and constitutional law, and so a constitutional amendment that violates Art 13 shall be deemed void.

To address the issues raised by the Supreme Court's judgement in Golaknath's case, parliament passed the 24th Amendment Act in 1971²⁶.

In *Keshvananda Baharti's* case, the Supreme Court was asked to assess the constitutionality of the 24th, 25th, and 29th Amendments. The Supreme Court triumphed by exerting its institutional position in constitutional powers vis-à-vis parliament and enhancing its judicial review powers through the Basic Feature Doctrine. Since then, the notion of fundamental features has formed the backbone of constitutional interpretation in India.

The Supreme Court's decision in *ADM Jabalpur versus Shivakant Shukla*²⁷ was starkly different.

During the Emergency, opposition leaders were imprisoned and fundamental rights were curtailed. Surprising rulings by the country's twelve high courts, the Supreme Court held that during the Proclamation of Emergency under Article 352 of the Constitution, a court was powerless to protect an individual from state action, even if such action was illegal and resulted in complete deprivation of the right to life and liberty.

In, *Minnerva Mills Ltd vs Union of India*²⁸,, the Supreme Court overturned Article 368 clauses

²⁵ Golaknath v. State of Punjab, AIR 1967 SC 1643.

²⁶ Constitutional amendment act, 1971, No. 24th, Acts of Parliament, 1971

²⁷ ADM Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207

²⁸ Minnerva Mills v. Union of India, AIR 1980 SC 1789

(4²⁹) and (5)³⁰, which were added by the 42nd Amendment³¹, on the grounds that they were unconstitutional.

A fundamental component of the Constitution's basic construction. Limited amending power is a fundamental component of the constitution; nevertheless, because these sections abolished all constraints on amending power and so bestowed an unlimited amending authority, they are destructive of the fundamental characteristic of the constitution.

SP. Sampat Kumar v Union of India³² and ***L. Chandra Kumar v Union of India***³³ followed. The constitutional legitimacy of Art 323(A)³⁴ and the provisions of the Administrative Tribunals Act 1985³⁵ that excluded the High Court's jurisdiction under Art 226³⁶ and 227³⁷ were in dispute. The Supreme Court ruled that the authority of judicial review of legislative action is reserved for the High Courts under Article 226 and the Supreme Court under Article 32 of the Constitution.

Supreme Court Advocates on Record Association vs Union of India³⁸

The National Judicial Appointments Commission Act was challenged on the grounds that it violates judicial independence by establishing a system in which the Chief Justice no longer has primacy in judicial appointments and the judiciary does not have majority control over the NJAC in a system in which the political influence of the executive and parliament is dominant. It also gives the parliament the authority to adjust and alter judge selection criteria and procedures, which is a breach of judicial independence, separation of powers, and the Rule of Law.

Supreme Court of India in P. U. C.L. & others v. U O. P³⁹

The Supreme Court of India examined that the court would not intervene in a political or policy

²⁹ The Constitution of India , 1950, Art.368(4).

³⁰ The Constitution of India , 1950, Art.368(5).

³¹ Constitutional amendment act, 1976, No. 42nd , Acts of Parliament, 1976

³²P. Sampat Kumar v Union of India, IR 1987 SC 386

³³L.Chandra Kumar v Union of India ,AIR 1997 SC 1125

³⁴ The Constitution of India , 1950, Art.323(A)

³⁵ Administrative tribunals act, 1985

³⁶ The Constitution of India , 1950, Art.226

³⁷ The Constitution of India , 1950, Art.227

³⁸ Supreme Court Advocates on Record Association vs Union of India Writ Petition (Civi) **No.13** of 2015

³⁹ Writ Petition (civil) 515 of 2002, decided on 13.03.2003

topic unless it is necessary for judicial review. However, the court can only intervene on limited grounds. The court further held that the government must be bound by all available options in order to avert violence within the framework of the Indian Constitution.

***Shayara Bano vs Union of India*⁴⁰**

In this case, the Supreme Court of India ruled that triple talaq is a unilateral authority granted to the husband to divorce his wife that appears arbitrary; hence, triple talaq is unconstitutional and violates basic rights. Justice Nariman advanced the Doctrine of Manifest Arbitration and concluded that triple talaq violates Article 14⁴¹ of the Indian Constitution.

***In Joseph Shine vs Union of India*⁴²**

It was determined that Section 497⁴³ of the Indian Penal Code is unconstitutional. Similarly, in Navjot Singh Johar versus Union of India, the constitutional validity of Section 377⁴⁴ was challenged before the Supreme Court of India on the grounds that it infringes basic rights. "I am not bound by societal morality; I am bound by constitutional morality, and if the constitution protects the interests of a single citizen of India, I am bound to protect it," Justice Chandrachud said. As a result, Section 377 of the I.P.C. was declared unconstitutional and decriminalized.

***Anuradha Bhasin vs Union of India*⁴⁵**

The Supreme Court ordered the Union Territory of Jammu and Kashmir to review all orders suspending internet services immediately, and any measures that are not in conformity with the law must be overturned. The Supreme Court ruled that the freedom of speech and expression, as well as the freedom to practise any profession or carry on any trade, business, or occupation, enjoy constitutional protection under Art 19(1)(a)⁴⁶ and Art 19(1)(b)⁴⁷. Restriction of such fundamental rights shall be consistent with the mandate under Articles 19(2) and 19(6) of the

⁴⁰ W.P.No. 118 of 2016

⁴¹ The Constitution of India , 1950, Art.14

⁴² WP (CrL) No.194/2017, decided on 05.01.2018.

⁴³ Indian Penal code, §497, 1862

⁴⁴ Indian Penal code, §377, 1862

⁴⁵ 2020 online SC 25.

⁴⁶ The Constitution of India , 1950, Art 19(1)(a)

⁴⁷ The Constitution of India , 1950, Art 19(1)(b)

Constitution, including the Proportionality test.

NEED OF THE RELEVANCE OF JUDICIAL REVIEW AND JUDICIAL ACTIVISM:

The doctrine of judicial review is the imposition of judicial restriction on the government's legislative, executive, and judicial acts. It has attained the character of permanency as a result of court rulings made from 1973 to the present. Thus, Judicial Review is the fundamental structure of the Indian constitution, and any attempt to undermine or harm the fundamental structure is unlawful.

The Constitution's supremacy must be maintained. It is critical for preventing the legislature and government from abusing their powers. It safeguards citizens' rights. It keeps the government budget in balance. It is critical for ensuring the judiciary's independence. It prohibits executive tyranny. Some of the main reasons why judicial review is required in India are as follows:

Basic rights protection: The Indian Constitution protects its inhabitants' basic rights such as the right to equality, freedom of expression, and the right to life and liberty. Judicial review contributes to the protection of human rights by permitting the judiciary to overturn any law or government action that is determined to be in violation of these rights.

Ensure separation of powers: Judicial review is a critical component of a democratic system of checks and balances. Allowing the court to evaluate the activities of the legislative and executive branches aids in ensuring that no one branch of government gets overly strong.

Maintaining the rule of law: The rule of law principle demands that all acts taken by the government be in accordance with the Constitution and other laws. Judicial review guarantees that the government is held accountable for any conduct determined to be unlawful.

Protecting people against administrative excesses: Judicial review offers a means for citizens to contest government decisions, particularly where the executive branch has exceeded its jurisdiction or acted arbitrarily or capriciously.

Overall, judicial review is an important part of the Indian Constitution since it serves to guarantee that the government is held responsible for its acts and that individuals' rights are maintained.

CRITICAL ANALYSIS AND RESEARCH OF JUDICIAL REVIEW AND HOW JUDICIAL ACTIVISM HAS EVOLVED:

Judicial activism is an ever-evolving means of altering judicial perspectives in a changing society. Judicial Activism refers to the procedure through which the court steps into the shoes of the legislative and creates new rules and regulations that the legislature should have done sooner. Arthur Schlesinger.

In a January 1947 Fortune magazine article titled "The Supreme Court: 1947," coined the phrase "judicial activism." ⁴ According to Supreme Court Justice J.S. Verma, "the true meaning of Judicial Activism appears to be the role of the judiciary in interpreting existing laws according to the needs of the times and filling in the gaps."

Judicial activism is driven by two theories: (i) the Theory of Vacuum Filling and (ii) the Theory of Social Want.

EVOLUTION OF GENESIS OF JUDICIAL ACTIVISM IN INDIA:

1. 1950-1970: This is the period of the conventional judiciary in which the judiciary primarily concentrates on determining the constitutionality of legislation and is connected with a narrow functional realm.
2. 1970-2000: This is the period of judicial activism, which continues beyond the year 2000. During this stage, the judiciary issues a number of significant decisions. After the Emergency was lifted in 1977, the Supreme Court's aggressive tendency became clear. It is the active approach that has led to the inference of several rights critical to the welfare of individuals from Article 21 of the Indian Constitution, which deals with the protection of life and personal liberty.

It is notable in the following area:

- I. **Child Welfare:** The judgments in *M C. Mehta v. State of Tamil Nadu*⁴⁸, *Lakshmi Kant Pandey v. Union of Indians*⁴⁹, *Sheela Barse v. Union of India*⁵⁰, etc., they have been

⁴⁸ AIR 1999 SC 41.

⁴⁹ AIR 1984 SC 469

⁵⁰ AIR 1986 SC 1773

delivered in favour of child welfare.

II. Prisoners' protection: *Joginder Kumar v. State of U.P*⁵¹

III. Protection of the environment: *Subhash Kumar v. State of Bihar*⁵² - this case law recognised the right to live in a pollution-free environment

IV. Right to privacy: *People's Union for Civil Liberties v. Union of India*⁵³, *Rajagopal v. State of Tamil Nadu*⁵⁴, *State of Maharashtra v. Madhukar Narayan Mandikar*⁵⁵

V. Enforcement of public duty: *Vineet Narain v. Union of India*⁵⁶ so as to compel the law-enforcing agencies to perform their duties.

VI. Human Dignity: Right to live with human dignity was recognized in *Fancis Coralie v. Administration Delhi*⁵⁷ and reiterated in *Bandhua Mukti Morchav. Union of India*⁵⁸, *Chameli Singh v. State of UP*⁵⁹, etc.

VII. Woman Welfare: Guidelines for Sexual harassment of women at workplace - *vishakha guidelines* - "*Vishaka v. State of Rajasthan*⁶⁰-" also in relation to the trial of a rape case in *Bodhisattwa Gautam. Subhra Chakraborty*⁶¹. In *Gaurav Jain v. Union of India*⁶²s, several directions were issued for the rescue and rehabilitation of child prostitutes and children of fallen women.

VIII. Bonded Labour: *Bandhua Mukti Morchav. Union of India* , *People's Union for Democratic Rights v. Union of India*⁶³ , *Neerja Chaudhary v. State of M P*⁶⁴ etc., are the cases decided on the issue in welfare of the bonded labourer.

⁵¹ AIR 1994 SC 1349.

⁵² AIR 1991 SC 420

⁵³ AIR 1997 SC 568.

⁵⁴ AIR 1995 SC 264.

⁵⁵ AIR 1991 SC 420.

⁵⁶ AIR 1998 SC 889.

⁵⁷ AIR 1981 SC 746.

⁵⁸ AIR 1984 SC 802.

⁵⁹ AIR 1996 SC 1051

⁶⁰ AIR 1997 SC 3011.

⁶¹ AIR 1996 SC 922.

⁶² AIR 1997 SC 3021

⁶³ AIR 1982 SC 1473

⁶⁴ AIR 1982 SC 1099.

From 2000 until the present, there has been a period of judicial activism, as well as instances of overreaching by the courts. In this stage, due to a variety of circumstances such as globalisation and the intricacies of laws in the context of globalization, Growing public awareness, the role of the media and civil society groups, growing environmental concerns, an increase in the number of PILs, and issues related to executives and legislators.

a) Tainted Legislators - *In Lily Thomas v. Union of India*⁶⁵ and *Public Interest Foundation v. Union of India*⁶⁶, the Supreme Court ruled that section 8(4) of the Representation of the People Act, 1951 is unconstitutional because it violates Articles 102(1)(e) and 191(1)(e).

b) Decision on Section 377 of the Indian Penal Code - *In Navtej Singh Johar v. Union of Indians*⁶⁷, a five-judge Constitution Bench of the Supreme Court declared Section 377 of the Indian Penal Code unconstitutional insofar as it criminalises consensual penile non-vaginal intercourse between adults in private.

c) In *Joseph Shine v. Union of India*⁷⁶, a five-judge Constitution Bench of the Supreme Court found section 497 of the Indian Penal Code illegal for violating articles 14, 15(1), and 21 of the Constitution. The decision is considered momentous since section 497 is based on the idea that a woman is the property of her husband and consequently violates her position and dignity.

d) Euthanasia Decision - In *Common Cause (A Registered Society) v. Union of India*⁶⁸, the Supreme Court declared the right to die with dignity to be a Fundamental Right under Article 21 and permitted passive euthanasia and living will.

e) In *Shakti Vahini v. Union of India*⁶⁹, the Supreme Court supported the decision of consenting adults to love and marriage as a Fundamental Right and stated that agreement of family, clan, or community is not required if an adult couple choose to marry. The Court provided a series of recommendations to protect young couples who face repercussions for

⁶⁵ Supreme Court July 10, 2013 at para 20; available at <https://indiankanoon.org/doc/63158859> (last visited on May 30, 2019)

⁶⁶ Supreme Court September 25, 2018 para 118; available at <http://www.livelaw.in/breaking-candidates-cannot-be-disqualified-on-framing-of-charges-in-criminal-case/>, accessed on 20.03.2021.

⁶⁷ WP (CrL) No. 76/2016 decided on 6 th September, 2018

⁶⁸ (2018) 5 SCC 1

⁶⁹ (2018) 7 SCC 192

marrying outside their caste or religion. This decision is significant because, in several Indian states, couples of the same clan but of different castes or religions who loved or married one another were tortured or killed for the sake of family honour.

f) The Supreme Court's decision to make the National Eligibility-cum-Entrance criteria (NEET) the sole criteria for admission to medical and dentistry programmes has caused a great deal of consternation. In a PIL lawsuit, the Supreme Court directed the Union government and state governments to develop new drought-resistance policies

g) According to Lodha Committee suggestion 1, the Supreme Court is attempting to restructure the Board of Control for Cricket in India (BCCI). It is incredible given that the BCCI is a private organization. The BCCI constitution is based on the Tamil Nadu Societies Registration Act, and the Supreme Court cannot change the bylaws.

h) In addition, the Supreme Court has ordered the union government to establish a National Disaster Mitigation Fund within three months. The Supreme Court instructs the government to form a bad loans panel: it is debatable if the supreme court has the jurisdiction to dictate how banks would recover their debts or even write-offs. However, the Supreme Court has directed the government to form a committee to investigate poor loans and massive write-offs by public sector banks. This is even though the Reserve Bank (RBI) counsel stated that systems for the majority of the concerns mentioned are already in place.

i) Even though the doctrine of Public Interest Litigation (hereinafter referred to as "PIL") is the consequence of judicial activism, it emerges as an effective mechanism for the higher judiciary to accept judicial activism. It was introduced in Bangladesh as a result of the case *Kazi Moklesur Rahman v. Bangladesh* 83 (hereinafter referred to as the "Berubari Case"), in which the notion of locus standi was questioned, and it was subsequently decided in the case of *Dr Mohiuddin Farooque v. Bangladesh & others*. PIL appears to denote a legal action to indemnify the common interest or to protect against civic grievance in which individuals have an interest and their legal rights are violated.⁸⁵ Because PIL permits anybody to use the judicial process even if they are not truly aggrieved, it should be seen as a tool for the public to engage in judicial review of administrative action. ⁶ Even though the court can hear a PIL petition on its own initiative and through judicial activism.

Advantages of Judicial activism: Judicial Activism establishes a system of checks and

balances for the other branches of government. It emphasises the need for solution-based innovation. When the law fails to strike a balance, it permits judges to utilize their discretion. It instils faith in judges and sheds light on the difficulties. It merely empowers judges to do what they think is appropriate within rationalized bounds. As a result, the faith in the legal system and its decisions is evident. It assists the judiciary in keeping a check on the government's abuse of authority when it interferes with and affects residents. It aids in the resolution of difficulties where the legislature becomes stalled in making decisions.

Criticism of Judicial Activism: The judiciary frequently combines personal prejudice and opinions with the law in the guise of judicial activism. with judicial activism, the notion of separation of powers between the three branches of government is put to the test. In the guise of activity, the court frequently intervenes in administrative domains and engages in judicial adventurism/overreach.

Judicial restraint:

Judicial restraint is an interpretive theory for the judiciary. It is an idea that judges should restrict their authority by not influencing decisions or procedures with their personal preferences and viewpoints, but rather by the constitutional and legislative requirements. It proposes that judges should be cautious in overturning legislation unless and unless they are unconstitutional. Judicial restraint advocates believe that because judges lack policy making authority, they must rely on legislative purpose, stare decisis, and rigorous application of judicial interpretation.

Judicial constraint is any limitation on the act of the judiciary stated or inferred by the Constitution or any statute. The limitations apply to: 1. political questions, 2. legislative powers, and 3. administrative discretionary authority.

The court concluded in *ADM Jabalpur v. Shivkant Shukla* that basic rights are suspended during the Emergency and so the writ of Habeas Corpus is not maintainable. In *State of U.P. v. Jeet Singh Bisht*, J. Katju stated that the judiciary must exercise restraint and refrain from interfering with the legislative and executive branches. Judicial restraint safeguards the independence of the judiciary.

If not properly targeted, judicial activism can become an unguided missile. Article 142 states,

"In the exercise of its jurisdiction, the Supreme Court may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it..."

In a number of cases, such as *State of Tamil Nadu v. K. Balu* - banning of liquor shops within 500 metres of National highways - resulting in a lack of employment for many, coal block allocation case - coal blocks granted since 1993 were cancelled in 2014 with a penalty of Rs, 295 per tonne of coal mined without granting the right of audi alteram partem, banning of cracker bursting Subhash Kashinath Mahajan - modification to the SC/ST Act, *K. Puttuswamy v. UO*⁷⁰, including the right to privacy under Article 21, and other cases, the Supreme Court has abused its jurisdiction under Article 142. We find that such activism has failed to respect other organs of government and has led to arbitrary rulings by the court.

(A) Demolition of the Babri Masjid

A two-judge bench issued an order in this matter, overturning a three-judge bench ruling of the Supreme Court. After the judgement of the bigger bench was presented, the court, using Article 142, mandated another retrial, which was moved from Raebareli to Lucknow due to the case's protracted pendency of 25 years. The judgement substituted the law rather than supplementing it, which is the fundamental essence of the decision.

The Supreme Court has asked the court to limit judicial activism because it disrupts the balance of the organs. Because the constitution does not state that if other organs fail, the judiciary will bear the crown and act on their behalf, it is critical that the organ that is failing to carry out its obligations be handled. Judicial Restraint has been used to prevent the creation of a judge-led administration. However, judicial restraint does not imply dereliction of duty. The Judicial mechanism has been given powers to guarantee that the legislative and executive act within the limits stipulated in the Constitution. Its purpose is to prevent one person from ruling over others.

*Kihota Holohan v. Zachillu and Others*⁷¹ - The Supreme Court was urged to consider the constitutionality of the 1952 Amendment Act. The court did not rule on the legality of restrictions restricting legislators' freedom. The court determined that the concerns were

⁷⁰ (2017) 10 SC 1.

⁷¹ AIR 1993 SC 412.

insufficient to render the amendment unlawful.

Rajasthan State v. Union of India- The petition was denied by the court because it concerned a political issue.

S.R.Bommai v. Union of India⁷² - The exercise of power under Art. 356 which contained a political component was called into doubt. Being involved would imply engaging in political domination, which the court must avoid.

Almitra H. Patel v. Union of India⁷³

On the subject of whether directions should be made to municipal corporations on how to make Delhi clean, the court stated that it could only direct the municipal authorities to carry out the tasks prescribed by law.

Article 142 was incorporated into the preceding judgments with the intention of benefiting a large segment of the population and even the nation as a whole, but the Supreme Court took this article too seriously, resulting in judicial activism, and it is now time to include checks and balances in those unlimited powers provided under this Article.

Though Article 142 and judicial review have been put to many good ends, other decisions, such as ruling the National Judicial Appointments Commission unlawful for attempting to place constraints on judicial powers, illustrate the need for more judicial restraint when employing judicial review.

Keeping 'independence': The judiciary is expected to maintain its essential adherence to the law and the Constitution, that is, to the language of legal instruments and legal interpretation, as well as to the body of judicial precedents. Despite the fact that the court and the government have a two-way connection, the judiciary must preserve its moral and intellectual independence.

CRITICISM OF JUDICIAL REVIEW; CRITICISM OF SUPREME COURT NOT BEING ABLE TO WORK WITHIN THE BOUNDARIES OF CONSTITUTION:

⁷²1994 (3) SCC 2734

⁷³ 1998) 2 SCC 416.

It has frequently been observed that the Indian Supreme Court has assumed the role of the Legislature through its activism; the criticism is that it has not only performed the circumscribed role of a lawgiver, but has also assumed the role of a plenary lawmaking body, such as the Legislature. Many supporters of judicial restraint have argued that some remedies devised by the Supreme Court, such as the 'continuous mandamus,' demonstrate the judiciary's failure to observe judicial restraint, which is undesirable because it is a failure to respect other co-equal branches of government.

It is true that our Constitution establishes three co-equal branches of government. No democracy or constitution grants the court unlimited power. Any attempt by the judiciary to rewrite the Constitution should be considered unconstitutional. A judicial act motivated only by aims other than those contained in the Constitution must be regarded constitutionally unlawful, and such an act must be curtailed in its early stages.

The fundamental question thus becomes whether the Supreme Court has adhered to the idea of separation of powers while embracing judicial activism. The answer must be an unequivocal affirmative. The Supreme Court has consistently followed the Constitution. It has bravely carried out its principal role of preserving constitutional ideals. It is the Court's constitutionally required obligation to enforce the law, not for trivial infractions, but for those that have serious ramifications for the public at large. Despite being motivated by the constitutional goal of socioeconomic fairness, the Court has been very circumspect in its activity.

Only where both the legislature and the executive have failed to produce law in an area has the Court determined that it is the judiciary's obligation to interfere, and only until the Parliament enacts suitable legislation covering the subject. The Court has endured the test of time because it is pragmatic and sensible and an excellent example of an active judiciary in a democratic setting. ⁹³Thus, the aforementioned examples clearly show that Indian courts have not violated the required constitution, but rather have merely provided specific directives. Some of them are admittedly legislative in character, but they have only been issued to fill the current void until the legislature enacts specific legislation.

LITERATURE REVIEW

Sr. No.	NAME OF LITERATURE	AUTHOR	REMARK
1	Judicial Review : Meaning, Scope and Applicability in India	Preeti Birla	This research paper has all the factual matrices and all the history about judicial review where it started and how Indian Judiciary and parliament adopted it, it talks about all the constitutional provisions relevant to judicial review. It is a good research paper for reference to facts but it fails to recognize or analyze the contemporary usage of judicial review in the current scenario. It fails to mention many aspects like criticism, the way forward for judicial review, and etc. Overall the research gap is related to the comprehensiveness of article
2	Judicial Review in India and Constitution	Rahul Shamota	This research paper analyzes all the landmark case laws, the Indian scenario, Indian constitutional provisions relevant to judicial review and also the amendments that were made by the parliament in their favour to suppress the power of judicial review of the judiciary and it explains all the relevant and important development in this field with a proper timeline and concludes the article with explaining the importance of judicial review for the constitutional and

			political future of the country. But this article fails to criticize the whole idea of judicial review and doesn't clear its research objectives, which overall gives the whole article a factual read and just a gist of the author's thought being actually expressed while concluding it.
3	A critical analysis of Judicial Review, Judicial Activism, and Judicial Restraint in India	S. Tharani	This research paper talks about the origin and evolution of Judicial Review, and the process of judicial review followed in Germany and Bangladesh and further discusses about the features, types, criticisms and justification of judicial review in India by way of examining various landmark cases and recent decisions pronounced by the Hon'ble Supreme Court and High Court's. The paper also discusses about the Judicial Activism from an Indian perspective. The paper contends that judicial activism has done positive justice but the judiciary has to take care of the sanctity of the Constitution. This article is a 360-degree view of the domain of judicial review, which has every positive, negative, criticizing, important and futuristic, retrospective and plenty of factual databases to back all of the paper.

4	A comparative analysis of doctrine of judicial review in India and the U.S.A.	Prema Kurapati	This paper undertakes the Comparative analysis of Judicial Review operating in the USA and India. The Author also describes the origin and source of Judicial Review operating in the two countries. This paper offers a comprehensive picture of the similarities and differences between the two States. The Author has undertaken the analysis on five parameters namely Judicial Review of Legislative Actions, Judicial Review of Executive or Administrative Actions , Judicial Review of Judicial Actions, Judicial Review of Constitutional Amendments and Limitations on the Power of Judicial Review. The author has come to the conclusion that the scope of judicial review is wider in the USA as compared to India.
5	Political and executive dominance on judicial review : the current conflicts in India	Shrishti Dutta and Devika Kishore	The paper analyse the current conflicts in India concerning the dominating nature of the executive. The paper tries to reflect on the above ideas with contesting and supportive arguments and will try to highlight the importance of judicial review in India as well as compare the status of judicial review in the UK and India. It mentions some of the landmark case laws in the field of

			evolution of judicial review in India. The study further tries to argue upon that how the executive dominates the judiciary in instances The study further provides suggestions as to how the situation can be upgraded and the essence of our Constitution can be preserved.
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CONCLUSION

Given the preceding debate, the criticism that the judiciary has overstepped its bounds is justified. Only when both the legislature and the executive fail to create law has the Court determined that it is the judiciary's obligation to interfere, and only until the legislature fails to give law. Judiciary enacts appropriate legislation regarding the subject. When considering whether to conduct legislative or executive powers, the Court must use extreme caution. However, judges frequently do not use judicial restraint when determining issues that are political or affect greater public feelings. The judiciary cannot assume the functions of another organ.

Judicial activism is a necessary component of a functioning democracy. It is critical to ensure that unheard voices are not smothered by more powerful voices. However, such activity should be used only in rare instances when the interests of the country or the impoverished or weaker elements of society might be jeopardized in the absence of judicial intervention. It inspires hope that justice is not far away.

Keeping 'independence': The judiciary is supposed to keep its fundamental allegiance to the law and the Constitution, that is, to the language of legal instruments and legal interpretation, as well as to the body of judicial precedents. Though there is a two-way relationship between the judiciary and the administration, the judiciary should maintain its moral and intellectual independence.

Furthermore, the judiciary should firmly adhere to the principle of 'de minimus non curat lex' ("law is not concerned with small things") so that insignificant concerns are dealt with at the outset and the fine line is maintained. The narrow line must be resolved and handled, with the

judiciary attempting not to enter the lanes of other government departments and limiting itself to activism rather than adventurism.

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