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Judicial Overreach: Just Because its Judiciary is it Just?

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ABSTRACT

The Legislative arm of India's government has been particularly vocal in its criticism of the judiciary, arguing that the courts have overstepped their bounds in their interpretation of the law and have now evolved into an additional constitutional legislative body. Judicial overreach has been used to describe this. a few instances According to a decision by the Supreme Court, operators with revoked 2G licences must stop operating . Karnataka and Goa have both outlawed the mining of iron ore. The Gujarat High Court has mandated that all newly registered automobiles in the state must be CNG-powered. At a toll booth in Gurgaon, the Chandigarh High Court is assessing what tolls should be levied. According to some, the courts now perform duties that were formerly reserved for the legislative, the government, and the judiciary as outlined in the Constitution.

The charge of overreach is based on the premise that the judiciary in India has exceeded its constitutionally mandated authority limit, with the Indian Supreme Court being the primary perpetrator. The division of powers between the administration, legislature, and judiciary, in conjunction with supervision, is that constitutionally defined boundary, according to the opponents. For instance, the current Loksabha speaker is acknowledged to be exerting unceasing effort "staunchly seeking citizen support for safeguarding the separation of powers contained in our constitution and which defines its core structure. " As "glaring examples of divergence from the explicitly specified constitutional framework of separation of powers," he noted two recent Supreme Court decisions in two different situations. This critique includes the fact that the Indian legislature holds "a significantly higher position" among the other branches of the government since it is elected to express the sovereign will of the people, the speaker claims.

According to Lord Acton, unlimited power corrupts utterly. Power tends to be corrupting. The independence of the judiciary is emphasised in the Indian Constitution. To ensure that the laws made for the people are constitutional, the courts in the nation have been given unique authority. The judiciary has been given the authority and obligation to interpret the terms of the constitution, which is a revolutionary document.

Several legal experts, attorneys, and judges themselves have criticised the Indian court in recent years for taking excessively aggressive positions and overreaching.

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I. INTRODUCTION

Judges have interpreted the right to equality to include reasonableness or the absence of arbitrariness, introducing a standard of judicial review that, in their words, "neither the founders of the constitution nor the plain text of Article 14" had in mind. The judges' introduction of substantive due process into the words "procedure established by law" in Article 21—which the constitution's founders specifically rejected—is another objection. The detractors claim that courts also question parliament under the pretence of interpreting common laws that it has passed. The claim is that judges have created additional basic rights, such as rights to livelihood and shelter, by interpreting the negative right under Article 21 to not be deprived of life as a positive right to life and by redefining "life" to include the right to live with dignity. Education, personal privacy, access to legal counsel, a healthy environment free of pollution, and the freedom of women from sexual harassment at work are just a few.

(A) The Scope of Judicial Review

The Indian Constitution provides for judicial review under Articles 226 for the High Court and 32 for the Supreme Court.

According to the Supreme Court, judicial review is an essential component of the Indian Constitution. Because of this, Parliament's authority to amend or otherwise modify the law has been totally excluded from the right of the courts to conduct judicial review, which is not subject to change. The legislature has been given a command from the judiciary to keep its hands off. But for a nation to advance, its legislative, judicial, and executive branches must all cooperate without interfering with one another.³

II. JUDICIAL ACTIVISM VS JUDICIAL OVERREACH

People frequently use these two terms interchangeably, but it's important to realise that they have different meanings. It can be difficult to distinguish between judicial activism and judicial overreach because when activism goes too far and starts to resemble judicial adventurism, it becomes judicial overreach.⁴ The perspective of the people will determine whether the activity is considered activism or excess. Nonetheless, the judiciary has consistently argued that they must intervene and issue the orders because of legislative and executive overreach.⁵

In India, judicial activism refers to the power of the Supreme Court and the high courts to

³ Jain, N., 2010. Judicial Power: From Judicial Review to Judicial Overreach. *Indian Journal of Public Administration*, 56(2), pp.331-342.

⁴ Sathe, S.P., 2001. Judicial Activism: The Indian Experience. *Wash. UJL & Pol'y*, 6, p.29.

⁵ Jaswal, N. and Singh, L., 2017. Judicial activism in India. *Bharati Law Review*, 3, pp.1-11.

declare legislation unconstitutional and invalid if they violate human rights or if they conflict with one or more provisions of the constitution, rather than the subordinate courts.⁶

The system is set up to function in a way that the improper actions of one wing, and vice versa, are corrected by the other. The goal of judicial review should not be to dispute legislative or executive decisions since it is anticipated that the opposition will do so in a functioning democracy. Judicial activism is merely an intermediary component of judicial review. Whereas the goal of the judicial system is to assess legislative and executive activities and determine whether they adhere to the terms of the Indian Constitution.

In India, examples of judicial activism and inventiveness include:

In *Vishakha v. State of Rajasthan*⁷, the court established the rules for safeguarding women from sexual harassment at work.

In *Maneka Gandhi v. Union of India*, the court attempted to define "procedure established by law" by substituting the phrase "due process of law." According to Article 21 of the Constitution, the legal requirement must be reasonable, just, and fair to both parties.⁸

In *Olga Telis & Ors. v. Bombay Municipal Corporation*, the court determined that the right to employment and housing are included in Article 21's core provisions, which grant the right to life.⁹

Judicial overreach is the term for excessive judicial interference with the legislative and executive branches.

A written Constitution like ours, which gives courts the power to strike down laws made by Parliament and state legislatures, is said to be undemocratic and in violation of the rules established by our forefathers.¹⁰ This is in reference to the judicial activism in India, which is said to allow un-elected judges to thwart the will of the people expressed through their elected representatives. Overreach is when judges start to cross the line between the two branches of government in favour of judicial activism.¹¹

III. NJAC, TRANSPARENCY AND JUDICIARY

The Ninety-ninth Constitutional Amendment Act of 2014 was enacted by the Parliament in an

⁶ Sathe, S.P., 2001. Judicial Activism: The Indian Experience. *Wash. UJL & Pol'y*, 6, p.29.

⁷ *Vishakha v. State of Rajasthan*, (1997) 6 SCC 241

⁸ *Maneka Gandhi v. Union of India* AIR 1978 SC 597; (1978) 1 SCC 248

⁹ *Olga Telis & Ors. v. Bombay Municipal Corporation* 1985 SCC (3) 545

¹⁰ Jain, N., 2010. Judicial Power: From Judicial Review to Judicial Overreach. *Indian Journal of Public Administration*, 56(2), pp.331-342.

¹¹ Singh, M., 2021. Judicial Overreach in India: The Current Scenario. *Issue 6 Int'l JL Mgmt. & Human.*, 4, p.1329.

effort to address the system's opacity. To reduce inbreeding and increase openness, the Act sought to replace the current collegiums structure and create a National Judicial Appointments Commission.

The Act was found illegal and the NJAC was dismissed by a five-judge constitutional bench chaired by Justice J.S. Khehar. The court ruled that creating the NJAC would give politicians unneeded power and clearly interfere with the judiciary's jurisdiction. Senior Attorney Harish Salve disagreed with the ruling. According to him, the Supreme Court is sending a signal that they hold the power.¹²

In the words of attorney general, Mukul Rohatgi. It is a misguided decision that disregarded the people's desire for transparency in judicial selections as well as the united wishes of the Parliament, half of the state legislatures, Some other well-known people, including senior attorney KTS Tulsi, opposed the decision and voiced disappointment in it. Using the final authority granted to them by the Indian Constitution, the Supreme Court used the Act that had the support of both houses and more than 20 state legislatures to be repealed.¹³

The collegium system is viewed by numerous senior judges and attorneys as a failed endeavour and is not beneficial to the country, hence this court judgement is seen as an instance of judicial overreach. No other significant power in the world employs a similar judicial appointment or transfer procedure. Judges do have such unrestrained power as is granted to the judges in India, even in the most liberal nations throughout the world.¹⁴

Law Minister D.V. Sadananda Gowda expressed dismay with the verdict because, in his opinion, the Act had the complete support of the Indian populace. The separation of powers between the legislative, executive, and judicial branches is outlined in the Indian Constitution. Each wing should continue to operate within its purview. Both judges and non-judges make up the NJAC. The creation of NJAC would have assured that the power was not solely in the hands of the legislative or the judiciary. When making judicial nominations, the representatives chosen by India's inhabitants themselves should be respected and in a position of authority alongside the judges.¹⁵

¹² Sengupta, A. ed., 2017. *Appointment of judges to the Supreme Court of India: Transparency, accountability, and independence*. Oxford University Press.

¹³ Kaler, S., *Judicial Independence and Collegium System of India*.

¹⁴ Sengupta, A. ed., 2017. *Appointment of judges to the Supreme Court of India: Transparency, accountability, and independence*. Oxford University Press.

¹⁵ Pattnaik, A., 2021. *A Critical Analysis of the Selection and Appointment of Judges of the Higher Judiciary in India with Special Reference to NJAC and Collegium System*.

(A) When the Judiciary assumed peoples or Gods voice perhaps with Social reform and freedom of religion

The freedom of conscience and the free practise, professing, and spread of religion are both included in Article 25 of the Indian Constitution, with 25(2)(b) serving as an exception to the general rule. Nothing in this article shall interfere with the operation of any existing law or prevent the State from enacting any law providing for social welfare and reform or the opening of Hindu religious institutions of a public nature to all classes and sections of Hindus, according to Article 25(2)(b)[18].¹⁶

The aforementioned two clauses have frequently been perceived as conflicting with one another, with people arguing for religious freedom while courts continue to issue rulings that serve as social reform laws. Judges have a responsibility to strike a balance between societal fairness and individual religious freedom. In a nation like India, state intervention is necessary to some level. Nonetheless, there are situations when courts overstep their bounds and operate in an inappropriate manner.

One such case is the Supreme Court's adoption of the ERP Test. Fundamentally Religious Practices is what ERP stands for. The court initially declared that Article 25 covered and safeguarded from state interference all religious practises that were fundamentally religious. Only religious organisations themselves had the authority to decide categorically which rights were crucial. Only where such practises threatened social welfare, public order, or were in violation of a basic constitutional mandate could the state step in.¹⁷ The court ruled in *Ratilal v. State of Bombay*¹⁸ that only economic, commercial, or religious actions are subject to state regulation.

The only religious practises currently protected by the Constitution are those that are fundamental to religion and have a fundamental importance, according to the ERP test.¹⁹ Fundamental religious practises now fall under the purview of Article 25, as modifying them would change the religion's basic nature. Notwithstanding the fact that the Constitution does not state any such prerequisite, the courts have applied the law in a way that is not consistent with rational interpretation.

The authority to decide which activities are fundamental to a religion has been assumed by

¹⁶ Article 25(2)(b)[18] Constitution of India

¹⁷ Siddiqui, N., 2020. On crossroads with Constitutional Morality: The (Un) tamed ERP test. Available at SSRN 3674829.

¹⁸ *Ratilal v. State of Bombay* AIR 1954 SC 388

¹⁹ Siddiqui, N., 2020. On crossroads with Constitutional Morality: The (Un) tamed ERP test. Available at SSRN 3674829.

courts. By conducting the interpretation of religious texts and establishing new criteria for determining the necessity of religion, they have further increased the scope of the authority they have given themselves. Courts undercut religious freedom in general and secularism as a whole by taking such irrational measures.

The Allahabad High Court used the terms "important to religion" and "basically religious" in *Ram Prasad Seth v. State of Uttar Pradesh* in a way that left religion subject to the inspection and interpretation of the courts. Since then, judicial overreach has been demonstrated in several situations.²⁰

Reading and interpreting the law is the business of the courts, not of the church. The case of *Adhitayan v. Travancore Devasam Board* serves as an illustration of this. The court ruled that it was against Article 17 of the Indian Constitution to only designate temple priests of Brahmin descent. In this instance, the court correctly applied the law to a behaviour rather than attempting to infer its meaning from the religious texts.²¹

Similar to this, the Shah Bano case may have been decided by the courts based on the Criminal Process Code's sections. Instead, the court continued to interpret the Quran and examined verse 241 of the holy book. Judge Chandrachud, a secular jurist rather than a certified Islamic scholar, determined this case. He created an understanding of fundamental Islamic concepts while receiving training in secular law.²²

The petitioners were Satsangis in *Sastri Yagnapurushadji & Ors. V. Muldas Bhudardas Vaishya*. They asserted their non-Hindu identity. They claimed that the rules and regulations of the temple did not apply to them because they were specifically intended for Hindus. The court did its own analysis of the Hindu texts and immediately recognised all Satsangis as Hindus. Additionally, it was decided that the petitioners' founder Swami Narayan's teachings were incorrect and superstitious, making the principles they professed to uphold useless.²³

Courts are ill-equipped to educate individuals about their own religion because they lack theological training. The court in *Nikhil Soni v. Government of India* prohibited santhara since it was not a fundamental component of or a necessary religious practise. They claimed that Article 25(2) made the prohibition of santhara legal (b). The courts have been accused of interfering with religious customs by placing pointless limits on holidays. Over the years, there have been a number of demonstrations against limitations on Dahi Handi, Ganesh Visarjan,

²⁰ Ram Prasad Seth v. State of Uttar Pradesh, AIR 1961 ALL 334

²¹ Adhitayan v. Travancore Devasam Board AIR 1996 Ker 169

²² Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

²³ Sastri Yagnapurushadji & Ors. V. Muldas Bhudardas Vaishya, 1966 AIR 1119.

Moharram, the use of fireworks during Diwali, etc.²⁴

**(B) Steps of Judiciary bridging the Gap and Differentiation between the 3 Branches :
But is this constitutionally and Democratically right ?**

In the case of *Shyam Narayan Chouksey v. Union of India*,²⁵ the Supreme Court issued its ruling in December 2016, which mandates that:

Before a feature film begins, the National Anthem must be played in all Indian movie theatres.

The National Anthem will be played, and everyone in the room is required to stand.

Prior to the National Anthem being performed or sung in the cinema hall, the entry and exit doors must stay shut so that nobody can cause a disturbance.

After the playing or singing of the national anthem, the doors can be opened.

As the National Anthem is playing in the hall, the National Flag should be visible on the screen.²⁶

Neglected the Bijoe Emmanuel Case: In the order, the court neglected to mention the important ruling in the Bijoe Emmanuel case. This situation. In this instance, three kids from Kerala were expelled from school for refusing to sing the national anthem since their religion forbade them from participating in any ceremonies other than praying to Jehovah.²⁷ The court had determined that no one is required by law to sing the national anthem and had ordered the school to return three expelled students. The court has disregarded circumstances in which persons may be unable to stand up for mental, physical, or religious reasons because they may knowingly believe that their religious beliefs forbid them from doing so.²⁸

Ignored the *Association of Victims of Uphaar Fire Tragedy v Union of India*. The Supreme Court disregarded its own earlier ruling in the Uphaar tragedy case, where the court had held that under no circumstances should the doors in a cinema be shut from the outside. In deciding that entry and exit doors be closed while playing the National Anthem.²⁹

Beyond the Prevention of Insults to National Honour Act of 1971 - The direction goes beyond the prohibitions of the Prevention of Insults to National Honour Act of 1971, which prohibits

²⁴ *Nikhil Soni v. Government of India* MANU/RH/1345/2015

²⁵ *Shyam Narayan Chouksey v. Union of India*, Writ Petition (Civil) No. 855 of 2016

²⁶ Nagpal, R., 2021. *Shyam Narayan Chouksey v Union of India* (2018): The National Anthem Case. *Jus Corpus LJ*, 2, p.37.

²⁷ 1987 AIR 748

²⁸ Nagpal, R., 2021. *Shyam Narayan Chouksey v Union of India* (2018): The National Anthem Case. *Jus Corpus LJ*, 2, p.37.

²⁹ II (2003) ACC 114, 2003 ACJ 1631, 2003 IIIAD Delhi 321, 104 (2003) DLT 234, 2003 (68) DRJ 128, 2003 RLR 333

the inclusion of the National Anthem in any kind of movie, play, or television programme.

(C) The Jolly LLB 2 Case

After the Central Board for Film Certification (CBFC) certified the film Jolly LLB 2, a petition was filed alleging that the film had violated Section 5B of the Cinematograph Act of 1952, which prohibits the certification of films that contain defamation or contempt of court. The petition was accepted by the Bombay High Court, and a committee was formed to submit a report. Additionally, the Court grants Committee authority to make the adjustments. Following the committee's recommendations, the Court mandated that four movie scenes be deleted, and it also instructed the CBFC to recertify the picture. According to the Court's justification, this was disparaging of the legal profession.

Unnecessary Interference - The Cinematograph Act of 1952, which deals with the provisions relating to the certification of films, is very clear in stating that only the Board of Film Certification has the authority to censor movies and suggests the cuts, with an appeal lying to an Appellate Tribunal. Additionally, under the Act, the Government is also granted revisionary powers. The Cinematograph Act prohibits the courts from approving, revoking, or refusing to certify motion pictures.³⁰

The Bombay High Court's decision to form a committee was illegal and without authority, and the committee was therefore unconstitutional. A number of Supreme Court decisions that make it plain that films must be viewed in their whole contradict the finding of contempt based solely on the trailer. In fact, the Delhi High Court rejected the Petition against Jolly LLB 1 for precisely this reason. The Committee serves as a completely new censor board, rendering the statutory Board itself null and void.

Order contradicting the Delhi High Court's ruling - Jolly LLB 1 had legal issues in 2013. The Delhi High Court received a Petition asking it to order the Film Certification Board to revoke the licence. The court dismissed the PIL in this instance because it had no information of "public interest" and because it was filed only on the basis of trailers. If you don't like it, don't watch it, Judge Lodha famously said in dismissing a second petition to the Supreme Court.

(D) Telecom licences were revoked in the 2G case

The Supreme Court ruled that 122 telecom licences and the spectrum allotted to eight companies must be revoked after the CBI filed a formal complaint against Department of Telecom employees in the 2G scam case. The Supreme Court ruled that there were problems with the

³⁰ The Cinematograph Act of 1952

allocation method. The government was further instructed to only distribute national resources through auction.³¹

IV. JUDICIAL OVERREACH IN ACTION

Inflation of Non-Performing Assets In part, the court's decision to revoke the licences is to blame for the rise in non-performing assets (NPAs). Judges neglected to take the economics into account. As a result, the telecom industry is still feeling the impact of the ruling. While bank loan defaults have soared, public sector banks' balance sheets have also suffered.

ignored the function of the legislative and executive branches - The court in this case overstepped its authority, which had a significant negative influence on the economy. The legislative and executive branches of a nation alone are responsible for making economic decisions. Banks are reluctant to extend credit to businesses that are already significantly indebted and whose returns on investment were insufficient to pay off their loans.³²

ignored the consequences: The industry owes almost Rs. 5 lakh crore in debt. Sistema, Telenor, and Etisalat have left. The merger of Vodafone and Idea is planned. Reliance is in serious difficulties and cannot avoid leaving.³³

(A) Lodha Committee, BCCI Reforms and Judicial empowerment

After claims of corruption, match-fixing, and betting scandals in Indian cricket, the Supreme Court established the Lodha Panel. In an effort to restore law and order to the BCCI and the game of cricket, the committee was established. The reforms and changes proposed were meant to address the year-old elite BCCI setup that controlled both the national and state levels of Indian cricket.³⁴

The committee's main suggestions are:

- BCCI ought to be included in RTI.
- Legalizing cricket betting is a good idea.
- The holding of office for more than two consecutive terms should be prohibited.

³¹ Malhotra, S., 2013. Cancellation of telecom licenses in the 2G case: Claim for indirect expropriation?. *NUJS L. Rev.*, 6, p.335.

³² Bhardwaj, S.S. and Rani, M., 2012. An assessment of impact of supreme court's 2G verdict. *Asian Journal of Research in Social Sciences and Humanities*, 2(4), pp.1-7.

³³ Acharya, G., 2012. India: Case Study on the Supreme Court Ruling on the 2G Spectrum Scam. Available at SSRN 2048719.

³⁴ UGRA, S., 2016. The Third Umpire: Lodha Committee Report on Indian Cricket. *Economic and Political Weekly*, pp.10-12.

- Ministers or government employees shouldn't have any positions of authority within the BCCI.
- Each person, there can only be one post.
- Only the state-representative cricket organisations should be eligible for full membership and voting in the BCCI.
- All India Universities, the Railway Sports Promotion Board, and other board members should be given the status of associate members without voting rights.³⁵

The Tamil Nadu Societies Act governs the BCCI, which is registered and without authority under the Lodha Committee. Also, it does not accept funding from the government and is not under the supervision of either the federal or any state governments. According to the BCCI's bylaws, the president, secretary, and other office holders are chosen. Thus, the Lodha committee lacks the power to suggest anything. The BCCI may have been ordered by the court to operate in conformity with the Societies Act's rules.³⁶

It is not the role of the court to manage sports organisations or to dictate how they ought to be managed. It is important to respect the institutions' independence. Sports benefit most when organisations that monitor these activities are granted autonomy. The advancement of these places will not be aided by outside interference or violations of their autonomy. The appropriate prescribed procedure should be followed to remove them if they have broken the rules or otherwise demonstrated that they are unsuited for their posts.³⁷

V. CONCLUSION

The perception of judicial overreach is frequently a factor. It respects the judicial integrity of the court when it rules in a party's favour. On the other hand, the opposing viewpoint criticises the choice. Overreach is a phrase that is derogatorily used, especially by the government. Yet this isn't always the case. The courts in India have the authority to overturn laws passed by the legislature thanks to the Indian Constitution. It serves as the last arbiter in certain cases. As a result, it is expected to respect the independence of the three wings and stay within the scope of the authority granted to it.

The judiciary's independence is a prerequisite for a country's development. The courts must,

³⁵ Lodha Committee Report

³⁶ Pargaonkar, R., 2021. Sports Governing Bodies & the Role of Judicial Review: The Power Struggle and Procedural Ambiguity in India. *Glob. Sports Pol'y Rev.*, 2, p.1.

³⁷ Pargaonkar, R., 2021. Sports Governing Bodies & the Role of Judicial Review: The Power Struggle and Procedural Ambiguity in India. *Glob. Sports Pol'y Rev.*, 2, p.1.

however, make decisions while abiding by the authority given to them by the Indian Constitution and carrying out the duties entrusted to them.

Although democracy is based on the division of powers among the organs, it violates the spirit of the constitution.

It leads to tension between the judicial and legislative systems. And the message which is transmitted with these choices among the people is of legislative inactivity. Judicial overreach undermines public confidence in the court even when it contributes to its growth. It looks to be an instance of "tyranny of the unelected" in a democracy where elected officials are in charge.

It lessens public faith in institutions, which could be harmful to democracy. It is a waste of judicial time that could be better spent hearing crucial cases involving the public's interest that are currently before the court.³⁸

³⁸ Shukla, S., 2018. Judicial Overreach: The Role of the Judiciary in Contemporary India. *Anish Kumar Verma*, p.25.