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ANARCHY OR GUARDIANSHIP THE ROLE OF JUDICIAL ACTIVISM AND
JUDICIAL REVIEW IN INDIA

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ABSTRACT .

Judicial activism and judicial review are two significant concepts in the Indian legal system that shape the balance of power between the judiciary and the legislature/executive.

Judicial Activism refers to the proactive role played by the judiciary in interpreting laws and the Constitution in a manner that promotes justice and protects fundamental rights, even beyond the strict letter of the law. This activism often involves the judiciary stepping in to fill gaps, challenge unconstitutional practices, or address issues where other branches of government may fail to act. Indian courts, especially the Supreme Court, have often invoked judicial activism in landmark cases such as **Kesavananda Bharati v. State of Kerala (1973)** and **Maneka Gandhi v. Union of India (1978)**, advancing civil liberties and human rights.

Judicial Review, on the other hand, refers to the power of courts to examine the constitutionality of legislative and executive actions. It acts as a check on the exercise of power by other branches of government, ensuring that laws and executive orders conform to the Constitution. The power of judicial review is enshrined under **Article 13 of the Indian Constitution**, which allows courts to declare any law that is inconsistent with the Constitution as void. The landmark case of *Marbury v. Madison* influenced judicial review in India, though it developed its distinct character in Indian jurisprudence.

Together, judicial activism and judicial review ensure that laws and government actions are in alignment with the principles of the Constitution, safeguarding democratic governance and fundamental rights. However, the debate surrounding the limits and potential overreach of

judicial activism continues to be a matter of concern, balancing judicial independence and the separation

1. INTRODUCTION

The Indian judicial system, consisting of judicial activism and judicial review is based on a constructive leadership system. In this system, the Indian Constitution is the supreme legal document, the apex court in India's judicial branch, high courts at the state level; and district courts at the lowest level possible for each district or a combination of a few municipalities in each state, depending on the population.

(a) judicial activism

Judicial activism began in the United States in 1947, and it was first seen in India in 1973 when the Allahabad High Court refused former Prime Minister Indira Gandhi's candidacy. The judiciary takes active participation in enforcing social justice through judicial activism. Judicial activism occurs when the Parliament respects citizens' rights while also preserving the country's constitutional and legal systems.

Judicial activism, akin to judicial review traces its origins to the united state ...

In India the doctrine of judicial activism emerged in the mid 1970s championed by Judges such as V.R Krishna Iyer, Justice P.N Bhagwati, Justice O Chinappa Reddy and Justice D.A Desai.

This concept embodied...

(B) Judicial review

Judicial review is a foundational concept in the field of constitutional law. It refers to the authority of a court, typically a constitutional or supreme court, to examine the constitutionality of laws, executive actions and government policies.

The primary purpose of judicial review is to ensure that these laws and actions align with the principles and rights enshrined in the constitution. It serves as a mechanism for upholding the rule of law, protecting individual rights and preserving the integrity of the constitutional framework of a nation.

Judicial review is a fundamental legal principle that empowers courts to assess the constitutionality and legality of actions taken by the government, including laws, executive orders, and administrative decisions. By exercising judicial review, courts can invalidate laws or actions that contradict the Constitution or exceed the powers granted to government entities. This process ensures that no branch of government becomes too powerful and that individual rights are protected. Originating from landmark cases such as *Marbury v. Madison* in the United States, judicial review plays a crucial role in maintaining the balance of power and safeguarding democratic principles.

2.HISTORICAL BACKGROUND OF SOCIAL JUSTICE

Judicial activism and judicial review are legal concepts that have played significant roles in the evolution of constitutional law, particularly in common law jurisdictions like the United States. Here's a brief historical overview of both concepts:

(A)Judicial Review

Judicial review refers to the power of courts to examine the constitutionality of legislative and executive actions. The concept emerged in the early 19th century, most famously through the landmark U.S. Supreme Court case *Marbury v. Madison* (1803). Chief Justice John Marshall's opinion in this case established the judiciary's role in reviewing laws and actions of the government, affirming that the courts had the authority to declare laws unconstitutional.

Before *Marbury v. Madison*, the idea that courts could invalidate laws was not clearly established. The case solidified judicial review as a cornerstone of the American system of government, ensuring a balance of power between the three branches of government.

(B)Judicial Activism

Judicial activism refers to the idea that judges, particularly in constitutional cases, should not merely interpret the law as written, but also take an active role in shaping public policy, often by extending the application of constitutional principles. Judicial activism often occurs when judges strike down laws or government actions that they believe violate constitutional rights, even if such interpretations go beyond traditional or original understandings of the Constitution.

The roots of judicial activism are debated, but a notable example is the Warren Court (1953-1969), under Chief Justice Earl Warren, which was characterized by progressive rulings that expanded civil rights, civil liberties, and the protection of individual rights. Landmark decisions like *Brown v. Board of Education* (1954), which declared racial segregation in public schools unconstitutional, and *Gideon v. Wainwright* (1963), which guaranteed the right to counsel for criminal defendants, are examples where the Court exercised judicial activism in shaping American society.

Summary

Judicial review was established by *Marbury V.Madison* in 1803 , giving courts the authority to interpret the Constitution and invalidate unconstitutional laws.

Judicial activism became prominent in the 20th century, particularly under the Warren Court, where the judiciary actively influenced public policy, especially in areas of civil rights.

3.Key Characteristics

(A)Judicial Activism

(i) Policy oriented :- Oriented Judicial activism is policy-oriented, focusing on achieving just and equitable outcomes, often in the absence of clear legal precedents or textual support. Judges may use their interpretation of the law to promote societal change.

(II) Expansive Interpretation: Judges engaging in judicial activism are more likely to interpret legal texts broadly and flexibly to achieve their desired goals. This can result in creative and expansive interpretations of the law.

(iii) Personal Beliefs and Values : Judicial activism often involves judges bringing their personal beliefs and values into their decision-making process. They may use their own moral compass to guide their decisions.

(iv) Addressing Societal Issues : Judicial activism is commonly associated with addressing pressing societal issues, such as civil rights, social justice and individual liberties. It allows judges to respond to evolving social and political contexts.

(v) Controversy and Debate: Judicial activism frequently generates controversy and debate. Critics argue that it can blur the separation of powers and that judges may exceed their constitutional role by engaging in policy-making.

Judicial REVIEW

(I) Constitutional Adjudication :- Judicial review is rooted in the principles of constitutional adjudication. Courts assess the constitutionality of legal and governmental matters, with a focus on whether they conform to the constitutional text and its underlying principles.

(II) Legal Precedents : The process of judicial review heavily relies on established legal precedents, including previous court decisions, interpretations of the constitution and established legal principles. Judges apply these precedents to determine the constitutionality of the matter at hand.

(III)Objective Interpretation : Judicial review is typically characterised by an objective and text-based interpretation of the constitution. Judges aim to apply the law as it is written in the constitution, ensuring that the rights and principles enshrined therein are protected.

(IV)Check on Government Powers :- One of the primary functions of judicial review is to serve as a check on government powers. It prevents the legislative and branches from overstepping their authority and ensures that their actions adhere to constitutional limits.

(V)Preservation of Constitutional Framework: By reviewing and, when necessary, striking down unconstitutional laws or actions, judicial review helps maintain the constitutional framework of a Nation, preserving the balance of powers among the branches of government.

4. Role of Judicial Activism and Judicial review in our India

In India, judicial activism and judicial review play pivotal roles in ensuring the protection of fundamental rights and maintaining the rule of law.

(A)Judicial Review:

Judicial review refers to the power of the judiciary to examine and determine the constitutionality of legislative and executive actions. In India, this power is derived from the Constitution, specifically Article 13, which ensures that laws inconsistent with the Constitution are void. The Supreme Court and High Courts have the authority to strike down laws or executive orders that violate constitutional principles. Judicial review acts as a safeguard against any potential abuse of power and protects citizens' rights against arbitrary state actions.

(B) Judicial Activism:

Judicial activism refers to a proactive role played by the judiciary in protecting rights and ensuring justice, often by interpreting the law in a broader, more expansive manner. In India, this concept emerged particularly after the 1970s, with landmark judgments like *Maneka Gandhi v. Union of India* (1978), where the Supreme Court expanded the scope of Article 21 (Right to Life and Personal Liberty) to include various socio-economic rights. Judicial activism is often invoked when the legislature or executive fails to address issues of public concern or when fundamental rights are violated

Role in India:

(i)Protection of Fundamental Rights: Judicial activism has been crucial in expanding the scope of fundamental rights, ensuring they adapt to the changing needs of society.

(ii)Social Justice: The judiciary, through judicial activism, has promoted social justice by ruling in favor of marginalized groups and expanding the interpretation of constitutional provisions to address issues like poverty, environmental protection, and gender equality.

(iii)Check on Government Power: Judicial review ensures that neither the legislature nor the executive exceeds its powers, maintaining the balance of the separation of powers.

(iv) Evolving Legal Interpretation: Judicial activism allows the courts to address new challenges that the framers of the Constitution could not have anticipated, such as issues arising from technological advancements, environmental concerns, and economic reforms.

While judicial activism has enhanced the judiciary's role in protecting rights and promoting justice, critics argue that it may sometimes overstep the boundaries of judicial power, encroaching on the roles of the legislature and executive. Nonetheless, both judicial activism and judicial review are essential elements in India's democratic framework, providing mechanisms for accountability and the protection of the Constitution.

5 . CONSTITUTIONAL POWER OF THE SUPREME COURT JUDICIALAND HIGHT COURTS IN INDIA

Judicial activism happens when the courts have power to review the state action. Article 13 read With Article 32 and 226 of the Indian constitution gives the power of judicial review to the higher judiciary to declare, any legislative , execution or administration action, void if it is in contravention with the constitution.

- This power of judicial review is a basic structure of the Indian constitution which means that it can not be extinguished.
- Article 32 confers power of the supreme court to issue any order or writ for the enforcement of any of the fundamental rights.
- Article 226 of the Indian constitution gives power of the high courts to issue any appropriate order or writ for the enforcement of fundamental right and other legal rights.

- Hence, the jurisdiction of high court under article 226 seems wider than the jurisdiction of supreme court under article 32.
- Moreover, the supreme court is vested with the power to grant special leave to appeal from any judgment, decree, determination, sentence , or order in any case or matter, as per article 136 of the Indian constitution . This provision confers special authority upon the supreme court.
- Curative petition has been introduced by the higher judiciary with the aim of preventing the abuse of due process and rectifying significant miscarriages of justice.
- Article 142 of the Indian constitution stand out as one of the most crucial constitutional provisions, granting exceptional authority to the supreme court. This provisions empowers the supreme court issue appropriate decrees or order to ensure complete justice in any ongoing matter before it. consequently, article 142 has been instrumental in enabling judicial legislation in india. Article 142 of the Indian constitution has been constructively in various instances, including
 - o Cleansing of the Taj mahal: the supreme court utilized article 142 to address the issue of the Taj mahal's marbles yellowing due to sulfur fumes from surrounding industries.
 - o Protection of Undertrial Rights : article 142 was invoked to safeguard yhe right of undertrial prisoners who were languishing in jails without trail.

PUBLIC INTEREST LITIGATION [PIL]

Public interest litigation (PIL) is intricately tied to the concept of judicial activism, particularly within the Indian legal system. The surge of Public Interest Litigation (PIL) can be largely attributed to the proactive stance of the Supreme Court through judicial activism. While the PIL shares similarities with the American model designed to offer legal representation underrepresented groups , it's evolution in india is primarily attributed to the proactive stance of

the judiciary, notably spearheaded by Justice V.R Krishna Iyer and justice P.N Bhagwati in the SP Gupta case where the concept of locus standing was relaxed and liberal view was taken in this regard.

Public Interest Litigation (PIL) is known by various names such as Social Action litigation (SAL), Social Interest Litigation (SIL), and Class Action Litigation (CAL). It allows any concerned citizens or social organization to approach the court for the protection and enforcement of the rights of individuals or groups who may not be able to seek legal remedies themselves due to factor like poverty ,ignorance ,or social and economic disadvantage

The Supreme Court has defined PIL as " A legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected

6. How judicial activism strengthens Indian Democracy

(i) Advancement of progressive social policies: -

Judicial activism allows judges to support progressive social policies, as seen in cases like Sabarimala judgement, contributing to social engineering.

(ii) Ensuring Social Justice and freedom: - By intervening to protect the rights of citizens and provide social justice to the marginalized, judicial activism promotes a more equitable society .

e.g. Hussainara khaton case : over 40,000 undertrials were released from jail .

(iii) Filling legislative Vacuum : judicial activism addresses gaps in legislation, like in the case of the Visakha guidelines, ensuring that the law meets evolving social needs.

(iv) Checks on legislative and executive actions: By enforcing constitutional limits, judicial activism prevents legislative overreach and executive abuse of power

(v) Safeguarding Constitutional offices amd institutions: - It ensures that constitutional offices and institutions remain independent and not manipulated for authoritarian purpose.

E.g. The fourth judge case declared the National appointments commission (NJAC) unconstitutional as it posed a threat to the independence of the judiciary .

(vi) Protection and expansion of individual Rights: It helps in safeguarding and expanding individual rights such as the right to live with dignity

E.g. Recognition of privacy such as a fundamental rights in KS Puttaswamy judgment

(vi)Upholding citizen confidence in the constitution: Judicial activism restores and maintains citizens confidence in the constitution and judicial organs , especially full when the legislature and executive fail in their duties.

(vii) Addressing Political Inaction: It helps in addressing political inertia and fear of taking difficult decisions, thereby filling political gaps and promoting and good governance.

E.g. Abolition of instantaneous TRIPAL TALAQ

Some main case laws of judicial activism or judicial review

1. Kesavananda Bharati v. State of Kerala (1973):

Established the "basic structure" doctrine, which means that Parliament cannot alter the basic structure of the Constitution.

2. Maneka Gandhi v. Union of India (1978):

Expanded the interpretation of the right to personal liberty under Article 21, making it more inclusive.

3. Minerva Mills v. Union of India (1980):

Reaffirmed the "basic structure" doctrine and held that the harmony between fundamental rights and directive principles is essential.

4. Vishaka v. State of Rajasthan (1997):

The court issued guidelines to prevent sexual harassment at the workplace, showing judicial activism in safeguarding rights not explicitly detailed in the Constitution.

5. I.R. Coelho v. State of Tamil Nadu (2007):

The Supreme Court ruled that laws that amend the Constitution must be consistent with the basic structure doctrine, reinforcing judicial oversight over legislative amendments.

6. Lilly Thomas v. Union of India (2000):

Judicial intervention to strike down laws that hindered the disqualification of a legislator found guilty of serious offenses, thereby emphasizing the importance of maintaining constitutional values.

7. L. Chandra Kumar v. Union of India (1997):

The Supreme Court held that judicial review is a part of the basic structure of the Constitution. It ruled that the power of judicial review cannot be ousted or diluted by any law, thus reinforcing the judiciary's role in safeguarding the Constitution.

8. Bachchan Singh v. State of Punjab (1980):

The Court upheld the constitutional validity of the death penalty but also emphasized the role of judicial review in ensuring that death penalty cases comply with constitutional safeguards and are applied fairly.

9. Kihoto Hollohan v. Zachillhu (1992):

This case affirmed the judiciary's power to review the constitutional validity of the Tenth Schedule (anti-defection law) and the application of its provisions, particularly in the context of legislative disqualifications.

10. Maneka Gandhi v. Union of India (1978):

This case expanded the scope of judicial review by interpreting Article 21 (right to life and personal liberty) to include the right to travel abroad, and holding that any law that restricts such rights must pass the test of "due process of law."

Conclusion

In conclusion, judicial activism and judicial review are fundamental components of India's legal and constitutional framework. Judicial review ensures that all laws and government actions are in line with the Constitution, providing a safeguard against any unconstitutional practices. It serves as a powerful check on the legislature and executive, ensuring that they do not exceed their authority.

On the other hand, judicial activism empowers the judiciary to proactively protect citizens' rights and address gaps in legislation, especially in cases where the government fails to act. It has played a crucial role in expanding the scope of fundamental rights and promoting social justice in India.

Together, judicial review and judicial activism ensure the protection of constitutional values, the rule of law, and individual rights, contributing to the overall stability and fairness of the democratic system in India. However, while they are essential, it is important to maintain a balance to prevent judicial overreach and preserve the separation of powers between the judiciary, legislature, and executive