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An Analytical Study of Judicial Activism with special reference to Article 19 of the Constitution of India

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ABSTRACT

Judicial activism is the practice of using the courts authority to examine state actions. According to article 32 and article 226 of the Indian constitution, the higher judiciary has the power to consider any legislative, executive, or administrative actions as unconstitutional and void if it does so, judicial activism sets out of balances and control the other branches of the government. It accentuates required innovation by way of a solution. In cases where the law fails to establish a balance, judicial activism allows judges to use their personal judgement. In Judicial activism, the judges are required to use their power to correct any injustice especially when the other constitutional bodies are not acting. Judicial restraint is limiting the powers of the judges to strike down a law. The apex court began to examine the judicial and structural views of the constitution in the 1970's. the first time the Indian judiciary showed instances of judicial activism was in the case of Keshavananda Bharti v. State of Kerala. It is a case that took place right before the declaration of the emergency. Judicial activism works in a manner such that the courts, subsequent to listening to both the sides, advance from their traditional position of decisiveness to the place of legislature and develop new legislation, new policies, and new rules. The first crucial case performing to judicial intervention through social action litigation was the Bihar courts "Hussain Khatoon v. State of Bihar" case.

Taking a look at the after emergency legal action, it is evident that the supreme court has excelled and transcended legal positivism. It is time and again considered that the commencement of judicial activism is attributed to the development of public litigation and accompanying modernization of the "Locus Standi" rule.

Keywords: *Judicial, Activism, Judges, Constitution, Article, Legal.*

I. INTRODUCTION

The judiciary plays an important role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in upholding the rights of citizens and reserving the constitutional and legal system of the country is known as judicial activism. This entails,

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sometimes overstepping into the territories of the executive. Candidates should know the judicial overreach is an aggravated version of judicial activism. Judicial activism has also faced criticism several times. In the name of judicial activism, the judiciary often mixes personal bias and opinions with the law. Another criticism is that the theory of separation of powers between the three arms of the state goes for a toss with judicial adventurism/ overreach. In many cases, no fundamental rights of any group are involved. The legislature fails to make the necessary legislation to suit the changing times and governmental agencies fail miserably to perform their administrative functions sincerely, when erosion of the confidence of the citizens in the constitutional values and democracy. In such a scenario, the judiciary steps into the areas usually earmarked for the legislature and executive and the result is the judicial legislation and a government by judiciary. In case the fundamental rights of the people are trampled by the government or any other third party, the judges may take upon themselves the task of aiding the ameliorating conditions of the citizens.² The greatest asset and the strongest weapon in the armoury of the judiciary is the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even-handed justice and keep the scales in balance in any dispute. One of the most famous examples of judicial activism in India is the case of *Kesavananda Bharati v. State of Kerala (1973)*.³

It is an effective tool for upholding citizens rights and implementing constitutional principles when the executive and legislative fails to do so. Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed. The Indian judiciary has been considered as the guardian and protector of the Indian constitution. There are provisions in the constitution itself for the judiciary to adopt a proactive role. Article 13 read with articles 32⁴ and 226⁵ of the constitution provides the power of judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the constitution. This can also be understood by looking at the case of *Francis Coralie v. Union Territory of Delhi*⁶ wherein the court interpreted the word 'life' in Article 21⁷ (Right to Life) and said it is not restricted to mere existence, but it also includes the right to live with human dignity and have the basic necessities which include adequate nutrition, clothing, shelter, freedom to move

² N V Shukla- The constitution of India- thirteenth edition-with 20th supplement

³ *Kesavananda Bharati v. State of Kerala (1973)*-4SCC225; AIR 1973 SC 1461

⁴ Article 32 of the Indian constitution-supreme court-High court

⁵ Article 226 of the Indian constitution

⁶ *Francis Coralie v. Union Territory of Delhi*-1981 AIR 746, 1981 SCR(2) 516

⁷ Dr. V.Y. Dhupdale-Indian constitution law-The New Challenges-Article 21 Pg. No 119, 120, 126, 127, 128, 129, 130.

etc..⁸

II. HISTORICAL BACKGROUND OF JUDICIAL ACTIVISM

(A) USA-

Judicial activism is a concept that originated in the US in 1947. It has been seen in India since the emergency days. Judiciary and judicial activism are important topics to be understood. In the United States, judicial activism is usually used to indicate that the speaker thinks judges have gone beyond their proper roles in enforcing the constitution and have decided a case based on their policy references. However, there is little agreement as to which decisions fit this description. The judicial review principle was established in 1610 by Justice Edward Coke. In the Thomas Bonham v. College of Physicians case (1610),⁹ he made the decision that any law passed by parliament that is against common law or reason can be reviewed and, correspondingly, judicial activism was supported by Sir Henry Hobart, who succeeded Sir Edward Coke as chief justice of the court of common pleas in 1615. The first significant case involving the idea of judicial review was *Madbury v. Madison* (1803),¹⁰ in which the supreme court explicitly declared certain provisions of the judiciary act of 1801 unconstitutional.

(B) India-

Judicial activism in India means that supreme court and the high court have the power to rule those laws that contradict or are incompatible with one or more constitutional provisions that are unconstitutional and invalid. The inferior courts lack access to this function. Judicial activism is related to the protection of fundamental rights as it involves the judiciary taking an active role in protecting and expanding the scope of these rights. This has played an important role in upholding the rule of law and promoting individual liberties in India. In judicial activism, the judges are required to use their power to correct any injustice especially when the other constitutional bodies are not acting. Judicial restraint is limiting the power of the judges to strike down a law. In the case of *Common Cause, a registered society v. Union of India and others*,¹¹ the petitioners filed a writ petition against Captain Satish Sharma (who was at that time the Union Minister of Petroleum and Natural Gas) for his corrupt practices.

(C) Meaning-

⁸ <https://blog.ipleaders.in/judicial-activism/#:~:text=judicial%20activism%20is%20the%20practice,void%20if%20it%20does%20so>
Last visited on 23/06/2024

⁹ *Thomas Bonham v. College of Physicians*-8 Co. Rep. 10777 Eng. Reg.638

¹⁰ *Madbury v. Madison* (1803)-5 US (1 Cranch) 137 (1803)

¹¹ *Common Cause, a registered society v. Union of India & others*- AIR 2018 SC (CIV) 1683

Judicial activism refers to the phenomenon of the courts dealing with those issues which they have traditionally not touched or which were not in the contemplation of the founding fathers.... It is a state of mind, the origin of which lies in the 'inactivism' of other two wings of the government.¹²

Judicial activism means that instead of judicial restraint, the supreme court become activist and compel the authority to act and sometimes also direct the government and government policies and also administration. It is a way through which justice is provided to the disadvantaged and aggrieved citizens.¹³

The Black's law dictionary defines judicial activism as "judicial philosophy which motivates judges to depart from the traditional precedents in favour of progressive and new social policies."¹⁴

(D) Scope-

The scope of judicial activism is so broad that no precise definition exists. It does not have a statutory definition because each jurist or scholar defines it differently. Supporters of judicial activism claim it to be a proper form of judicial review. In contrast, Thomas Jefferson refers to it as the 'despotic power' of federal judges. according to V.D. Kul Shrestha, judicial activism occurs when the judiciary is charged with actually participating in the law-making process and subsequently emerges as significant player in the legal system.¹⁵

In contemporary definite terms, judicial activism is frequently seen as a way to correct executive faults by using democratic power within the limits of the constitution. It is said that judicial activism empowers judges to act as individual policymakers and independent trustees on behalf of the citizens of the country, in addition to their traditional role. In general, judicial activism refers to the judiciary proactive role in correcting errors made by the executive or legislative branches to ensure the efficient co-ordination of all three crucial pillars. Judicial activism refers to the practice of judges making ruling based on their policy views rather than their honest interpretation of the current law. Judicial activism is usually contrasted with the concept of judicial restraint, which is characterised by a focus on stare decisis and a reluctance to reinterpret the law. Judicial activism is often maligned by judges and political pundits. On both ends of the political spectrum, accusations of judicial activism are common place. The modern trend of judicial activism began in 1973 when the Allahabad High Court rejected, he candidature

¹² S.P. Sathe-second edition-judicial activism

¹³ Indian journal of political science-vol.69, no.1(Jan-Mar, 2008), pp.113

¹⁴ 11 Black's law dictionary-Pg. no 983 & 984

¹⁵ Mamta Devi-the role of judicial activism in shaping constitutional law of India- Pg. No 1&2

of Indira Gandhi in *State of Uttar Pradesh v. Raj Narain*.¹⁶ The introduction of public interest litigation by Justice V. R. Krishna Iyer further expanded its scope. Judicial activism provides a system to balance and control the different branches of the government. It fulfils the requirement of innovation by providing ways of solution. If in case the law is failed to maintain a balance it grants permission to use their personal judgement. In India, the scope of judicial review is quite broad and encompasses various aspects of constitutional law and governance. It is important to maintain the supremacy of the constitution and examine if there is a chance of misuse of power by the executive and legislature. Judicial activism provides a system to balance and control the different branches of the government. It fulfils the requirement of innovation by providing ways of solutions.¹⁷

III. JUDICIAL REVIEW UNDER INDIAN CONSTITUTION

(A) Judicial Review

Judicial review is the process of examining the constitutionality of any law passed by the parliament. If the law passed is found to be violating or infringing the provisions of the Indian constitution, then either the High courts or the supreme court of India can declare them as void thereby not allowing them to be enforceable. John Marshall, an American politician and lawyer, had created the concept of judicial review.¹⁸ In India, the principle of the rule of law is followed and the Indian constitution is considered to be the supreme law of the land. Laws made are to be in consonance and not in abeyance of it, for the latter gets nullified ipso facto.¹⁹ Although one cannot find any express mentioning of the term ‘judicial review’ in the Indian Constitution, there are several provisions of the constitution that makes a reference or hints on the concept. The two significant functions of judicial review are-

- Legitimation of the government actions
- Safeguarding the constitution from being encroached upon by the government.

(B) Importance of judicial review

Judicial review is necessary because it protects the fundamental rights of the citizens and the residents that have been laid down under Part III of the Indian constitution thereby maintaining the supremacy of the constitution and restricting the legislature and the executive from misusing

¹⁶ *Uttar Pradesh v. Raj Narain*-1975 (AIR 865, 1975 SCR (3) 333

¹⁷ <https://www.slideshare.net/slideshow/judicial-reviews-and-judicial-activismpptx/256012554>

Last visited on 23-06-2024

¹⁸ V. N. Shukla's- constitution of India- thirteenth Edition with 20th supplement Pg. No 341, 648 to 725

¹⁹ Dr V.Y_Dhupdale-Indian constitution law- The new challenges- 189, 190, 191, 192, 193, 194 & 195

their vested powers.²⁰ Judiciary's power to examine executive actions and legislative enactments is what judicial review is inclusive of. The importance of judicial review are-

- Practising judicial review helps in distributing the power between the Union and the states.
- It ensures that the judiciary is independent as it works independently thereby also clearly defines the functions of every organ of the government.
- It protects the fundamental rights of the citizens guaranteed by the Indian constitution.

(C) Elements of judicial review

Both the supreme court and the high courts have the power to exercise this judicial review under Article 32 and 226 respectively. While Article 32 provides that a person can approach the supreme court for any violation or infringement of his or her fundamental rights.²¹ Article 226 clearly states that a person can approach high court on similar grounds. Judicial review can be done over laws formulated by both the state and the centre.²² in the Golaknath v. Union of India case²³, supreme court for the first time used the power of judicial review. The court, thus, stated that any amendments that violated the provisions of Article 13 would be void.²⁴

Article 32 of the Indian Constitution-

Article 32 of the Indian Constitution guarantees individuals the right to constitutional remedy, by means of which they can approach the supreme court of India, in order to seek justice, in case where they have been deprived of their guaranteed fundamental rights. The Apex court is vested with the power to order directions that will aid in enforcing the deprived rights thereby restoring them as well. Article 32 of the Indian constitution is therefore also recognised as the protector and guarantor of fundamental rights. It is ideal to note that the Indian constitution provides for 5 types of writs that can be issued by the courts as a consequence of a petition filed under Article 32.²⁵ They are the writ of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition. The constitutional remedies provide the citizens with equipped means of restoring their infringed rights. It is ideal to note that the writ jurisdiction that the constitution confers, comes with prerogative powers and although discretionary, are unbounded in its limits. On the basis of the same, it is clear that the constitutional system does not entertain the presence

²⁰ <https://blog.iplayers.in/judicial-review-under-the-indian-constitution>
Last visited on 17/07/2024

²¹ Article 226 of the Indian constitution

²² Article 32 of the Indian constitution

²³ AIR 1643, 1967 SCR (2) 762

²⁴ Article 13 of the Indian constitution

²⁵ Article 32 of the Indian constitution

of arbitrary powers. Therefore, whatever decision is taken by the Apex court when approached by Article 32, the same must be based on sound reasoning. In the case of *ADM Jabalpur v. Shivkant Shukla* known for the “Habeas Corpus” case.²⁶ It is a landmark judgement in which it was held that writ of Habeas Corpus cannot be suspended even at the time of an emergency.

Article 226 of the Indian Constitution-

The specialty of Article 226 when compared with Article 32 is that while the latter solely deals with fundamental rights violation, the former can also deal with questions of law alongside fundamental rights. Although exercising its vested power under Article 226 is discretionary for the high courts, such discretion deserves sound judicial reasoning. It is also necessary to note that while high courts exercise their power under the discussed provisions, the court is duty-bound to take into consideration that the petitioner who approached them, had no alternative remedy to resort to other than the one provided under Article 226.²⁷

The Rajasthan High Court has rightfully observed that the power of judicial review that has been vested upon High Courts, under Article 226 of the Indian Constitution, is to be considered as one of the fundamental features of such constitution and no legislation can have room for overriding such vested jurisdiction from the High courts while deciding the case of *LNJ Power Ventures Ltd. v. Rajasthan Electricity Regulatory Commission and others* (2022).²⁸

(D) Functions of Judicial review-

The main function of judicial review is to explain the laws made by the legislature. The judicial review ensures that the law that is passed is not violating the provision of the Indian Constitution. It reviews the law which had been passed by the legislative and executive wings of the government. Judicial review also delivers justice to all citizens of a country and therefore can be termed as the guardian of the constitution.²⁹

(E) Grounds for Judicial Review-

The grounds of judicial review are-

- **Jurisdictional Error-** It actually happens when a complaint has wrongfully been addressed by the court. The court has no authority to do so. This error can be addressed by issuing a “writ of Certiorari”.

²⁶ AIR 1976 SC 1207

²⁷ Article 226 of the Indian Constitution

²⁸ WP No. 7312/2019

²⁹ <https://lawboomi.com/the-concept-of-judicial-review-under-the-constitution-of-india>

Last visited on 1/07/2024

- Irrationality- it is also known as “Wednesbury unreasonableness.” In this, no decision maker comes to the same decision. They fail to consider relevant matters.
- Procedural Impropriety- It is a failure to comply with the laid down procedures. It actually consists of two areas, namely, failure to observe the rules and to observe the fundamental rule of justice.³⁰

(F) Types of Judicial Review-

Judicial reviews are of three types, namely-

- 1) Legislative decision- Judicial review for legislative decisions means that whatever law is passed by the legislative organ of the government, the same must follow the provisions of the constitution. It should not disrespect or disobey any provisions of the constitution. Article 251³¹ and 254³² provide that in case of conflict between the central law and the state law, the central prevails over the state law and the state law shall be void.
- 2) Administrative decision- Judicial review for administrative decisions means that the court has the power to review an action of legislature and executive. If their actions are found to be in violation of any of the provisions of the constitution, then they will be declared as void. Therefore, their actions should follow the provisions of the constitution.
- 3) Judicial decision- Judicial review of judicial decisions signifies higher courts overseeing the decision passed by the lower courts without intervening in their functionality. The same is required for the efficient functioning of the Indian judiciary. The law declared by the supreme court becomes binding on all courts within India and also by the union and the state governments per article 142, it is the duty of the president to enforce the decrees (order or mandate) of the supreme court.³³

(G) Procedure for Judicial Review in India-

The phrase “procedure established by law”, as provided under Article 21 of the Indian constitution,³⁴ serves as the governing principle for the concept of judicial review. This principle actually means that the law which has been enacted by the legislature is valid or has a legal effect only when the correct procedure is followed. There is a test of constitutionality that the

³⁰ <https://blog.iplayers.in/judicial-review-under-the-indian-constitution>
Last visited 16/07/2024

³¹ Article 251 of the Indian constitution

³² Article 254 of the Indian Constitution

³³ Article 142 of the Indian Constitution

³⁴ Article 21 of the Indian constitution

law has to pass and if the law passes that test only can it be an enforceable law.³⁵

(H) Limitations of Judicial Review-

Judicial review is only limited to higher courts like the supreme court and high court, not to the lower courts. Judicial review can neither interrupt any political questions nor any policy matters. Judicial review just reviews the law that had been made. It does not make or implement the laws as this power is vested with other organs of the government. It also limits the functioning of the government.³⁶

What is the current scenario of judicial review in India?

The present series of cases that are approaching before the Indian courts, where they are being asked to exercise the power of judicial review, have seen a trend in the courts to step back from the same, owing to avoidance of judicial encroachment. The Himachal Pradesh high court while deciding the case of *Santosh Nanta v. State of H. P & others* (2023),³⁷ has observed that judicial review if exercised in overlooking any decision that is made by expert domains of a selection committee for a reasoned selection process to be carried out, would be considered to be tantamount to treading on a thin sheet of ice and therefore, judicial interference should be avoided.

Further, the Andhra Pradesh high court, while deciding the case of *Nallacheruvu Obulesu v. State of Andhra Pradesh & others* (2023),³⁸ has observed that courts power to exercise judicial review in cases of dispute originating from tender invitation conditions, stands limited. This is because, the terms and conditions of the tender are directed by the government, who after bearing a mindful nature and reasoned decision while prescribing the same. The authority who calls for tender is considered to be the appropriate judge in the same, and questioning his decision is ipso facto unrequired interference in his functioning by the court. Thus, it is not for courts to conclude as to whether the conditions that the tender carries are good or bad.

IV. FUNDAMENTAL RIGHTS UNDER INDIAN CONSTITUTION

(A) Fundamental Rights-

The Indian Constitution, 1950 contains certain provisions which guarantee the basic human rights of all the citizens of India. There are six fundamental rights and they are immune from

³⁵ <https://ebooks.inflibnet.ac.in/lawp02/chapter/judicial-review>

Last visited 16/07/2024

³⁶ <https://blog.ipleaders.in/judicial-review-under-the-indian-constitution>

Last visited on 17/07/2024

³⁷ CWPOA NO.450/2019

³⁸ WP NO.7985/2023

any kind of discrimination based on religion, race, gender etc. These rights can be invoked by individuals if there is any violation of them. Fundamental rights are included in Part-III of the Indian Constitution, it is also known as the ‘Magna Carta’ of the Indian Constitution. Through this article, we will find out more about the fundamental rights enshrined in the Indian Constitution Schedule of Fundamental Rights.³⁹

There are six fundamental rights enshrined in the Indian Constitution, they are as follows-

- Right to equality (Article 14-18)
- Right to freedom (Article 19-22)
- Right against exploitation (Article 23-24)
- Right to freedom of religion (Article 25-28)
- Cultural and educational rights (Article 29-30)
- Right to constitutional remedies (Article 32)⁴⁰

It is pertinent to note that the right to property was one of the fundamental rights in the constitution. However, the right to property was extracted from the schedule of fundamental rights by the 44th constitutional amendment act, 1978. Being under the scope of fundamental rights, the right to property was acting as an obstacle in achieving the goal of property distribution, equality and socialism. Thus, at present, the right to property is a legal right under Article 300A and not a fundamental right.⁴¹

Salient features of fundamental rights-

The following are a few features of the Fundamental rights enshrined in the Constitution of India-

- The Indian constitution guarantees and protects fundamental rights.
- The parliament has the power and authority to restrict the fundamental rights on reasonable grounds, however, such restrictions can only be made for a fixed period of time.⁴² The grounds based on which the fundamental rights are restricted by the parliament will be reviewed by the judiciary for reasonability. Therefore, fundamental rights are neither absolute nor sacrosanct.

³⁹ V. N. Shukla's constitution of India- Thirteenth edition-with 20th supplement- Pg. No- 24 to 40

⁴⁰ Sai Gayatri-<https://blog.ipleaders.in/fundamental-right-under-the-indian-constitution-a-comprehensive-guide-with-case-laws/#:~:text=There%20are%20six%20fundamental%20rig>

⁴¹ Article 300A of the Indian constitution

⁴² Dr. V. Y. Dhupdale-indian constitution law- The new challenges-1st edition-2024- Pg. No 93 to 116

- Fundamental rights can be suspended in the cases of national emergencies however, the rights guaranteed under Articles 20⁴³ and 21⁴⁴ will still be applicable. In the case of military rule, fundamental rights can be restricted in any area within the Indian territory.
- The constitution of India enables an individual to move directly to the supreme court of India for the enforcement of their fundamental right in case they are violated or restricted. The fundamental rights are thus justiciable.

(B) Importance of Fundamental Rights-

Fundamental rights act as the foundation that upholds the democratic system and secularism in India. They establish the essential conditions for an individual's material and moral protection ensuring social justice and equality. They also defend the rights of minorities and other weaker sections of society. Fundamental rights also ensure individual liberty. These rights establish the rule of law thereby keeping a check on the absoluteness of the governments' authority.

(C) Amend ability of fundamental rights-

The supreme court in the case of *Kesavananda Bharati*, (1974)⁴⁵ that the parliament can amend any part of the constitution including all the fundamental rights subject to the 'Doctrine of Basic Structure' of the constitution.

The supreme court has neither specifically defined as to what entails the basic structure nor did it mention any exhaustive list regarding the concerns of the basic structure of the constitution. The Apex court however stated that only additions can be made to the basic structure and no deletions will be allowed to be made. The supreme court in a catena of judgements has held that the following provisions are a part of the basic structure of the constitution-

- Sovereignty of India
- Democracy
- Secularism
- Republic
- Free and fair elections
- Judicial review, etc.⁴⁶

⁴³ Article 20 of the constitution

⁴⁴ Article 21 of the constitution

⁴⁵ WP (CIVIL) 135/1970

⁴⁶ M. P. Jain- constitution law-8th edition- Pg. No- 35 to 42

(D) Right to Equality

Article 14- Equality before the law

- Article 14 considers all individuals the same in the eyes of the law.
- This article states that all citizens of India must be treated equally before the law.
- The said article further states that the law protects everybody equally
- Under similar circumstances, the law must treat people in the same manner.⁴⁷

Article 15- Prohibition of discrimination

This provision of the Indian constitution prohibits discrimination of any kind. Based on the grounds of religion, race, place of birth, caste, gender, if any citizen is subjected to any disability, restrictions, liability, or condition with regard to-

- Public places access
- Use of public properties such as tanks, ghats, well, etc that are maintained by the state or that are intended for the use of general public.
- The forementioned article also states that special provisions can be created for women, children, and the backward classes notwithstanding this article.⁴⁸

Article 16- Equal opportunity in case of public employment

- This constitutional provisions provides, equal employment opportunities in state service for all citizens.
- In the case of public employment, no citizen must be discriminated against or appointed based on the grounds of religion, caste, race, gender, place etc.
- Exceptions to the said article can be made for providing special provisions for the backward classes.⁴⁹

Article 17- Abolition of Untouchability

- The aforesaid article strictly prohibits the practice of untouchability.
- By virtue of this article, untouchability has been abolished in all forms.
- In case any disability or dispute arises due to untouchability then it is considered an

⁴⁷ Gayatri-<https://blog.ipleaders.n/fundamental-rights-under-the-inian-constitution-a-comprehensive-guide-with-case-laws/#:~:text=There%20are%20six%20fundamental%20rig>

⁴⁸ <https://knowindia.india.gov.in/profile/fundamental-rights.php#:~:text=article%2012%20to%2035%20contained,opportunity%20in%20matters%20of%20employment>

⁴⁹ <https://www.drishtias.com/printpdf/fundamenal-rights-part-1>

offence.⁵⁰

Article 18- Abolition of titles

- The said article abolishes titles. It states that the state shall not confer any titles. However, those titles which are academic or military in nature shall be allowed.
- The said article further prohibits the citizens of India from accepting any kind of titles from a foreign country. The titles that were awarded by the British government such as Rai Bahadur, Khan Bahadur are also abolished by virtue of this article.
- Awards such as Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra shall not be considered under this category.⁵¹

(E) Right to freedom-

The following articles of the constitution deal with the fundamental right to freedom.

Article 19-

Article 19 guarantees the following six freedoms.⁵² They are as follows-

Article 19(1)(a) – Freedom of speech and expression

This provision guarantees freedom of speech and expression to every citizen of India. However, the law may impose restrictions on the scope of this freedom considering the interests of the integrity, security and sovereignty of the country. The exceptions further include- friendly relations with foreign nations, maintaining public order, regarding the incitement to an offence, defamation or contempt of court.⁵³

Article 19(1)(b)- Freedom to assemble

This provision guarantees each individual the freedom to assemble peacefully without arms. However, reasonable restrictions may be imposed considering the interest of the sovereignty and integrity of the country and to maintain public order.⁵⁴

Article 19(1)(c)- Freedom to form associations or unions or cooperative societies

This provision allows the citizen of India to form associations, unions or cooperative societies but with certain exceptions considering the integrity and security of the country and the

⁵⁰ <https://byjus.com/free-ias-prep/fundamental-rights/>

⁵¹ <https://www.constitutionofindia.net/articles/article-18-abolition-of-titles/>

⁵² Article 19 of the Indian constitution

⁵³ Article 19(1)(a) of the Indian constitution

⁵⁴ Article 19(1)(b) of the Indian constitution

maintenance of the public order.⁵⁵

Article 19(1)(d)- Freedom to move freely

This provision states that the citizens of India can move freely throughout the territory of India. However, this freedom may be restricted on the grounds of security, public order or for safeguarding the interest of the scheduled tribes.⁵⁶

Article 19(1)(e)- Freedom of residence

This provision states that all the citizens of India have the right to reside in any part of the country. However, this freedom may be restricted on the grounds of security, public order or for safeguarding the interest of the scheduled tribes.⁵⁷

Article 19(1)(g)- Freedom of Profession

This provision states that all citizens have the right to carry on any trade or profession or occupation, provided that such trade or profession or occupation is not illegal or immoral. Also, the law does not prohibit the state from making laws related to technical or professional qualifications that are required for practising the occupations or trade.⁵⁸

Suggestions-

- Judicial activism is a very important tool of the judiciary, it plays a massive role in Indian judicial system.
- Create to strengthening Fundamental Rights and the Broad interpretation of the constitution.
- Creative statutory interpretation and Review of laws and legislative inaction.
- Promoting Judicial Accountability and Transparency and Expansion of constitutional rights.
- Judicial review and striking down laws.
- Addressing Socio- Economic Inequalities and Policy-based reasoning.
- Monitoring and Enforcing Public interest litigation (PIL) Outcomes.
- Reforming Criminal Justice System.

⁵⁵ Article 19(1)(c) of the Indian constitution

⁵⁶ Article 19(1)(d) of the Indian constitution

⁵⁷ Article 19(1)(e) of the Indian constitution

⁵⁸ Article 19(1)(g) of the Indian constitution

V. CONCLUSION

Judicial activism in India has played a pivotal role in shaping the national legal and political landscape, acting as a guardian of constitutional values and fundamental rights. Judicial activism can be considered an effective tool for upholding the right of citizens and making the principle of the constitution when the executive and legislature fails in doing that. Therefore, supremacy of law and judicial activism is helping the system in doing so. If the judiciary interferes a lot in the working of other organs of the government and tries to overreach the constitutional powers then this concept of judicial activism loses its importance and essence. However, while judicial activism is essential for upholding justice, it is equally importance to maintain a delicate balance between judicial intervention and the principle of separation of powers. The judiciary is a crucial component of Indian democracy and plays a far larger role than simply reading the law. In conclusion, the judicial review is an essential feature of the Indian constitution that ensures that the laws passed by the legislature and the actions of the executive are in line with the constitution.
