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Understanding the Nexus between Judicial Activism and Overreach Whilst Contemplating the Need for Judicial Restraint

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ABSTRACT

The judicial system in India follows the Constitution of India as the lex terrae. The system is built on a constructive machinery of judicial activism, judicial overreach and judicial restraint. Nevertheless, there is no standard interpretation of their structure or working mechanisms. Thus, leading to indifferences and debates about the interpretation of the law and exercise of judicial powers. When separation of powers is considered to be a foundational aspect of India it is pertinent to note that the legislative, judiciary and executive are interdependent on each other. In light of this, more scope for the judiciary to exercise a colourable legislation is a concern to the basic principles of rule of law of the nation. The implications are to be equally recognized amidst the positive attributes of judicial activism. Extreme activism and regular restrictions can also affect the justice to be rightly delivered. In this regard, the significance of this subject is of perennial in nature to establish a balance in the judiciary and it has to be dealt accordingly understanding the crux of the issue and with due regard to prospective scenarios to the decision.

Keywords: *Adventurism, Basic Structure Doctrine, Overreach, Restraint, Suo motto.*

I. INTRODUCTION

The judiciary in a democratic nation has a prime role in interpreting the law and upholding the justice in that nation. The role of judiciary expands widely to areas of protecting the human rights, upholding the rule of law and ensuring that the justice prevails. In the due course of this duty, two major functional themes of the judiciary unfold. The first one is considered to be a proactive approach by the bench in resolving and settling the issues which appreciates the judiciary to take part in the law-making process. Meanwhile, jurists who support this practice, opine it as a form of judicial review which is indeed necessary to prevent injustice whilst the others call it an aggressive courting system. Nevertheless, the term given to this practice is

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positively viewed as *Judicial Activism* and negatively as *Judicial Overreach*.[3] The second theme is a practice of restriction from engaging into broad judicial jurisdictions and redefining the limits of the powers that are to be exercise by the judges. This restriction of judges is to ensure that the sanctity of separation of branches is maintained. This is termed as Judicial Restraint and is considered to be an essential braking system to negate any kind of judicial adventurism which is a phenomenon that occurs when judicial activism goes haywire.[4]

II. EVOLUTION OF JUDICIAL ACTIVISM

The concept of judicial activism is referred at various instances and by various members of legal fraternity but the term was first coined for the first time by **Arthur Schlesinger Jr.** in his article *"The Supreme Court: 1947"* published in Fortune magazine in 1947.[5] The term judicial activism struck different notes on the minds of different people. The most suitable argument favouring the judicial activism is the judiciary's attempt to interfere and prevent the prevailing injustice where a remedy under legislative framework is lacking. This is done either by formulating a policy and deciding upon social and political matters. The efflux in ***Public Interest Litigation*** supported during the reign of **Justice P.N. Bhagwati and Justice V.R. Krishna Iyer** is considered to be a significant reason as he had an imperative role in encouraging the public interest litigation which subsequently expanded the judicial activism. Justice had to reach the marginalized and disadvantaged groups and achieving this certainly required an authoritative approach and interference.[6] Notable scenarios in this regard are the guidelines passed by the Court to end the bonded labour system and cause relief to the conditions of bonded labourers.[7] Further the renowned environmental activist M C Mehta has instituted several public interest litigations which have resulted in the strict adherence of the proposals formulated by the Court to bring about environmental reforms in the interest of protecting the climate change and rights of indigenous people.[8]

The judiciary takes up the obligation to resolve the issue which either results in a positive outcome or welcomes criticism. In the United States of America, pro judicial activism is very much retraced through the case of **Marbury v. Madison** wherein the foundational stone for

[3] The term" judicial activism" was coined for the first time by Arthur Schlesinger Jr. in his article "The Supreme Court: 1947" published in Fortune magazine in 1947.

[4] Prerna Sharma -, *Judicial Activism VIS-A-VIS Judicial Overreach: A Comparative Study*, 5 IJFMR 3024 (2023), https://www.ijfmr.com/research-paper.php?id=3024

[5] Fortune, v. 35, no. 1, January, 1947

[6] P. N. Bhagwati, Judicial Activism and Public Interest Litigation, 23 COLUM. J. TRANSNAT'l L. 561 (1985).

[7] Bandhua Mukti Morcha v. Union of India

[8] M.C. Mehta v. Union of India,

judicial review was laid by Chief Justice John Marshall. This enabled a power to U.S. Supreme Courts to rule violating laws as unconstitutional.[9] Similarly, the political tensions involving the fundamental rights of the people was instigated the scenario of judicial activism in India. The landmark case of **Kesavananda Bharati v. State of Kerala** can be considered as a beginning of judicial interference meet the ends of justice.[10] The Supreme Court of India formulated the Basic Structure Doctrine which paved for the empowerment of judiciary to restrict any legislative overreach that would jeopardise the fundamental rights enshrined in the Constitution of India. This indeed was a redemptive measure to its own *narrow interpretative judgment* in **A.K Gopalan vs State of Madras**.[11]

The interplay between liberal and literal interpretation of the law had a great impact before and after the period of emergency. The interpretation of law especially with regards to the fundamental rights grew broader and inclusive. The right to life and personal liberty guaranteed under Article 21 of the Constitution is a clinical example wherein, the court established that any procedure should be subjected to the test of reasonableness and therefore the procedure established by law should be *"fair, just and reasonable".*[12] Further, the in the landmark case of **Olga Tellis v. Bombay Municipal Corporation**, the Supreme Court ensure social justice by expanding the purview of Article 21 to include ***Right to Livelihood.***[13] This judgment protected the socio-economic rights of deprived people and emphasised the right to dignified existence. Eventually the freedom of press is another pillar which stood strong by the support of judicial activism. On the contemporary, the Supreme Court's decision on striking down of Section 377 from the erstwhile Indian penal Code, 1872 and decriminalising Homosexuality is considered to be a landmark approach of judicial activism amidst modern laws and existing traditional society.[14] It is understood that**, *"judicial activism is the characteristic of the judge rather than of the judiciary".***[15] This aspect is much visible by the ***Suo motto*** **cognizance** wherein judges ensure justice by taking up a small letter to account for wider relief which certainly has proven to transform the courts of law into courts of justice. Hence, the notion of judicial activism engrained in the philosophy of legal jurisprudence has a distinct recognition for its quality to promote righteousness and recommend solutions by extending the hands in the realm of law

[9] 5 U.S. 137 (1803)
[10] [1973] Supp. (1) S.C.R. 1
[11] AIR 1950 SC 27
[12] Maneka Gandhi v. Union of India, AIR 1978 SC 597
[13] AIR 1986 SC 180,
[14] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321
[15] Judicial Power: From Judicial Review to Judicial Overreach, Nilanjana Jain, Indian Journal of Public Administration Vol. L Vi. No. 2. April-June 2010

 [ISSN 2581-5369]

making and policy drafting whenever there is a necessity to curb the injustice.

III. JUDICIAL OVERREACH: ANALYSIS AND IMPLICATIONS:

"The line between judicial activism and judicial overreach is a thin one...A takeover of the functions of another organ may become a case of over-reach" ***- Dr. Manmohan Singh***

Judicial Activism has often reasoned its validity as an extension of **Doctrine of Judicial Review**. Judicial Review is one of the cornerstones in the principles of judicial mechanism as it enables powers to the judges to revisit and overrule any previous issue that has been wrongly interpreted or decided which can include legislative action, judicial decisions and administrative actions. However, the usage of this power has been criticised over the time for its nature of unravelling an unfortunate situation of ***Judicial Overreach*** in the guise of upholding justice. In light of this, the emergence of term 'equity law' came into existence when judges end up interpreting vague laws and or even make new ones in the absence of proper precedents to resolve the existing issue. Nevertheless, the distinction between both judicial review and overreach is very close and it often gets unnoticed during the practice. Due to this there is constant concern from the legislature over the pro-active measures being take up by the judiciary which threatens the dilution of separation of powers. One of the debated cases of judicial overreach is the Striking down of ***NJAC Bill and the 99th Amendment*** of the Constitution.[16] The Supreme Court declare the bill to be unconstitutional as an attempt to replace the collegium system. This indeed preserved the power of judiciary to appoint the judges and restricted a more transparent mechanism.[17] Similarly the stance taken by the Supreme Court in the National Anthem Case is considered to be contentious amongst various groups of publics.[18] The mandatory display of National Anthem in movie screenings ignored the court's previous ruling in the case of **Bijoe Emmanuel,** where the religious rights under Article 25 were reaffirmed. and was held that not singing national anthem when it is recited would not constitute an offence.[19] The case where the Supreme Court constituted a Committee of Administrators and took over the administration of All India Football Federation is a critical aspect of third-party interference. This indeed led to an inception of inquisitorial mechanism deviating from customary adversarial practices of judiciary violating the doctrine of separation of powers.

[16] Supreme Court Advocates-on-record Association and Anr. v. Union of India, AIR 1994 SC 268

[17] Sarthak Kapoor, *"Judicial Overreach in India"* | *Journal of Constitutional Law and Jurisprudence* (2024), https://lawjournals.celnet.in/index.php/Jolj/literature/view/967

[18] Shyam Narayan Chouksey v. Union of India, (2017) 1 SCC 42

[19] AIR 1987 SC 748

Another important circumstance is pertaining to the judiciary intervention in the reservation system. Considered to be an age-old tussle between legislature and judiciary, the recent judgment in the case of **State of Punjab & Ors vs. Davinder Singh & Ors** stirred the intensified controversy.[20] The judiciary enabled the sub-classification within the reserved category of SC which is considered to become a potential miscarriage of legislature's intent of bringing in the reservations. ***The extension of creamy layer to the SCs*** under the purview of sociological action has been done with many underlying conditions of systemic disadvantages and enduring social discrimination that still subsist to these communities.[21] Amidst lack of any caste census and provided the major transformation of Indian economic landscape, judiciary directing such an impactful decision is deemed to be considered as a deviation from the intent of Constitution and a tendency towards adventurism.

The implications of judicial overreach can be serious and can persist for a longer duration. The organs in our democratic nation are built on the lines of spirit of the Constitution and judicial overreach will attack on that very foundational aspect on which it stands. In the case of ***Ram Jawaya Kapur v. State of Punjab***, it was expressly stated that "*The Constitution has recognised the doctrine of separation of power in its absolute rigidity and the functions of different parts and branches of the government have been sufficiently differentiated and does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another."*[22] The notion judiciary making the law would be taking assuming the legislative power and demoralizing the objective of public institution. For instance, the judiciary's intervention in the Censorship and Certification of Films is concerning as it would disregard the faith of public in the CBFC. The intruding nature of judiciary although justified in parts for doing complete justice under Article 142 of the Constitution, it cannot be considered as valid day-to-day decision making which would result in the tyranny of unelected judges practicing administrative actions.[23] The extremity of rule of law is considered to be "judicial populism" and it has to be avoided when it is detrimental and would certainly lack accountability in the future.[24]

[20] 2024 SCC OnLine SC 1860

[21] Benarji Chakka Kumar Surendra, Creamy Layer and Judicial Overreach: Without Caste Census, Social Justice Is a Dream, The News Minute (2024), https://www.thenewsminute.com/news/creamy-layer-and-judicial-overreach-without-caste-census-social-justice-is-a-dream

[22] AIR 1955 SC 549.

[23] Ayushi Pandey, How Judicial Activism and Judicial Overreach Are Interrelated Yet Very Different, Reflections. LIVE, https://reflections.live/literatures/478/how-judicial-activism-and-judicial-overreach-are-interrelated-yet-very-different-3918-l06jcvhz.html

[24] S. P. Sathe, Judicial Activism: "The Indian Experience"

IV. JUDICIAL RESTRAINT AS A COUNTERBALANCE

Checks and Balance are always important in any field to maintain the equilibrium and prevent saturation points that cause disruption of operations. Similarly, to establish a common ground between judicial activism and judicial overreach, the common line is drawn under the name of **judicial restraint**. The Court understanding the intricacies of judicial overreach has refrained from acting on several decisions which otherwise would have been termed as *judicial adventurism*. The practice of restraint enables the Court to stay on its feet and observe the problem to attain a reasonable solution that is ought not to be initially provided by the court in the first instance. This promotes the harmonious construction of separation of powers, balances the powers distributed among the organs of the country and limits the burden on the courts to take cognizance of every one of matter in the public eye. On the same note, in the landmark **Ram Janmabhoomi – Babri Masjid Case**, the Supreme Court of India refrained from making any provocative or dramatic statements rather kept its focus only upon the historical and archaeological findings.[25] The Court believed that in a nation where religion is a sensitive issue, such an age-old issue has to be also dealt in a sensible and reasonable manner without any immediate tendency to resolve matters overnight. Therefore, it is essential for the judges to keep away from the policy formulation even though there lies an innovative tool in the palm of their hands. This certainly will preserve the sanctity and eliminates any peril to the credibility to the judicial process.[26] There is always an obligation to maintain the institutional integrity and judicial restraint helps in achieving the self-regulatory practices while current trends and issues are very much susceptible to the dilution of doctrine of separation of powers. In the case of **Indian Medical Association vs. Union of India**, the court believed that it is the duty of executive and legislative to formulate policies and the courts shall remain considered only about the legal issues that might arise from those policies or regulations framed by the legislature.[27]

Exercise of judicial restraint represents the characteristic of wisdom and adds a good reputation to the to the judiciary. Legal limitation can be visibly seen in the Constitution of India through the unending debate between **Fundamental Rights and Directive Principles of State Policy**. This showcases the matters that are segregated exclusively for legislative purposes and are not justiciable. It is true that "*judicial free speech should be subject to 'minimal impairment' and*

[25] M Siddiq (D) Thru Lrs vs Mahant Suresh Das & Ors, AIRONLINE 2019 SC 1420
[26] Agarwal, Anurag K. "Judicial Legislation and Judicial Restraint." Economic and Political Weekly, January 1-7, 2011, Vol. 46, No. 1, pp. 22-24.
[27] AIR 2011 SC 2365

 [ISSN 2581-5369]

restraint should be exercised 'for the most part in relatively light and informal manner".[28] In the case of **Almitra H. Patel Vs Union of India**, when a matter regarding the guidelines to promote the cleanliness for the personnel of the Delhi Municipal Corporation was put forward before the Supreme Court, the judges refrained from any resolution and suggested that no guidance is necessary for experts and the court is in no obligation to imply additional standards.[29] In a famous case law, Justice Frankfurter said that the *"Courts are not agent bodies. They are not intended to be a decent reflex of a just society. Their basic quality is separation, established on autonomy. History shows that the autonomy of the legal is endangered when Courts wind up noticeably entangled in the interests of the day, and accept essential accountability in picking between contending political, financial, and social weights"*.[30] Therefore, judicial restraint is certainly an effective mechanism that counterbalances the situation leading to judicial activism or overreach, preserving the mantle of judiciary's purpose and limiting the excess jurisdiction that is exceptional and is justified only when it paves for a great cause without any adverse repercussions.

V. THE FINE LINE - NEXUS BETWEEN ACTIVISM AND OVERREACH

The nexus between judicial activism and overreach is established on the grounds of intention of the judiciary to fill in the lacunas in the system which sometime is allowed but otherwise mostly prohibited in the eyes of democratic system. Amidst any established limitation, if a judiciary body transgresses its constitutional mandate, it invites a negative connotation for its practice. Nevertheless, the importance of public welfare and doctrine of necessity often defends judiciary in holding proactive measures. Therefore, both the concepts are intertwined and the proportionality of intervention determines which is which. In the case of **Brown v. Board of Education**, the US Supreme Court marked a watershed moment by taking a stand against racial segregation of children in educational institutions.[31] The case is considered to be a landmark case of judicial activism as it enriched social change amidst evolving realities.[32] The court undertook the responsibility to demonstrate the true essence of constitutional principles and interpreted the rights in a broader sense. The Court strictly opined that the legislature has failed to resolve this critical scenario and the fundamental rights violation in the case puts the civil

[28] Upendra Baxi, Journal of the Indian Law Institute, April-June 2002, Vol. 44, No. 2 (April June 2002), pp. 279-285

[29] AIR 2000 SC 1256

[30] Dennis vs. U.S., 341 U.S. 494 (1951)

[31] 347 U.S. 483 (1954)

[32] Subhash Kumar. (2024). Judicial Activism vs. Judicial Restraint: Balancing the Role of the Courts in a Democratic Society. *Indian Journal of Law*, *2*(2), 5–8.

liberty in danger. The court successfully eliminated the evil practice of "separate but equal doctrine" and drew attention of various critiques.

On the other hand, the case of **Roe vs Wade** was classified as a classic judgment for '*effectively legislating from the bench*'.[33] the U.S Supreme Court interpreted the woman's rights and extended the scope of right to privacy to include choice to have an abortion. This brought in several backlash as the decision arouse without any substantial law and the judges were condemned for interfering with the legislative framework amidst the already existing laws that were against abortions. In light of this it is imperative to view the circumstance in which the court carries its judicial powers to amend the matters at its jurisdiction. If the consequence is having an impact on elected representatives, accountability concerns and separation of powers, it is understood that the court has overstepped its jurisdiction and the practice of adventurism is depicted. However, if the cause is towards protection of rights, effect on social change, environmental concerns or minority rights, it can be considered as judicial activism as it has the scope for progressive legal interpretations and standard precedents to set forth a better nation.[34]

VI. CONCLUSION

The judiciary in India has evolved into a great landscape over a period of 75 years and it has seen a plethora of complex cases and delivered several landmark judgments that has shaped our nation. India is now witnessing a paradigm shift in various arenas including the powers of judiciary and its essence of independency against political influence. The question lies in how far does the role of active judiciary can be legitimately encouraged and at what point it becomes invariable and be considered as forcibly adjudicated. Judiciary is indeed is an elixir to fight the injustice in the society but it cannot be considered as a panacea for legislative or executive functions, as its role is confined to interpreting and upholding the law, not creating or enforcing it. The situation when judicial activism becomes excess and common, it threatens the public perception of administrative functionalism and brings in unnecessary perils to the institution of judiciary. Nevertheless, it cannot be denied of the fact that most of the judicial activism is a result of inactivism of other wings of the state. Thus, "the courts of justice can never remain idle and observe the callousness and apathy of executive class". It becomes necessary to the judges to acknowledge the prospects of their decision and how it could take shape of judicial overreach. A judge has to restrain thyself before admitting a case that has all the qualities to seek remedies from other branches of government. Only if any such issue is unconventional and

[33] 410 U.S. 113 (1973)

[34] Sepaha, Priya & Tiwari, Priyamvada & Pandey, Ms. (2024). Boundaries And Changing Perspectives on Judicial Activism in India: A Critical Legal Analysis. Volume 22. 829-842.

requires judicial interpretation, it shall be rightly taken cognizance by the judges to ascertain the legislature's intent by adopting liberal interpretation. Even though many argue that it is important to strike the right balance between judicial activism and restraint, it is essential to examine the circumstances of judicial overreach under the dual lenses of eclipsing role of legislature or executive and being the only beacon of hope to persuade justice.

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