



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**



### **Megha Middha**

*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **JUDICIAL ACTIVISM AND OVERREACH**

AUTHORED BY - YOGYA SHARMA

Advocate Supreme Court of India

## **ABSTRACT**

The courts play an important role in preserving the equilibrium of power among all branches of government. Governments look to the judges to interpret the laws, and citizens look to them to safeguard their rights.

The conventional role of the court is undeniably getting altered into a more active participation role in order to cope with the changing community and culture. In order for justice to be equitable and impartial, and for the Judiciary to be capable of keeping a check on the other two institutions in situations of constitutional infractions, it must be independent and above all executive involvement.

Since about the 1990s, the Courts in India have intervened more frequently in a variety of cases spanning from government misconduct to parliamentary issues to policy and political issues, causing continual conflict in between the 3 institutions. Today's courts are not passive, with the mentality of simply overturning a statute or preventing anything from happening. Instead, the new approach entails delivering orders, affirmative action cases, and decrees ordering corrective measures. Judicial activism is when the court intervenes in the legislative and executive branches of government. In India, judicial activism has grown in recent years, gaining acceptability among the Indian people.

The failure of the executive and legislative branches to act has sparked judicial activism. As a result, when the courts become activists and push the necessary authorities to act, judicial activism is triggered. As a result, India's legislative process has taken on new dimensions.

The judiciary's frequent interventions, which occasionally verge on judicial adventurism, tend to undermine the other two parts of the constitution's functioning.

Understanding the distinction between judicial activism and judicial overreach is important for the smooth operation of a democracy that emphasises division of powers and the superiority of the constitution as our nation's foundation.

The paper shall include differences between the concepts of Judicial Activism and Judicial Overreach along with case laws to provide clarification. The paper shall also discuss how both the concepts have affected the nation and its policies for better or for worse.

## **INTRODUCTION**

India is a democratic country with three branches of government: the legislative, the executive, and the judiciary. From time to time, each part of the democratic system performs a range of duties, all while keeping the public and societal interests in mind. The legislative authority enacts the broad norms of society in the form of legislation, representing and proposing the State's will. The executive then has the job of enforcing such laws and directives, ensuring that they are adhered to by all parties and that no breaches occur. Among the three branches of government, the judiciary is the most important, with powers derived from the Indian constitution to act as a watchdog for the proper functioning of our democracy. In the absence of responsible functioning of other organs, such a significant Organ must be active or demonstrate activism anytime it is required. Researchers realize that such a division isn't exact, and that the different organs aren't separated by a waterproof barrier.

It is unavoidable for one organ to rely on the other. To avoid any invasion, each unit has the ability to maintain safeguards over the other. The judiciary has the authority to evaluate the Executive and Legislative branches of government to verify that they are acting within the bounds of the Constitution. According to Articles 13, 21, 32, 226 and 227 of the Indian Constitution, it has the power to overturn any legislation passed by the legislature if it breaches any constitutional requirement, and it may also overturn any executive action if it is determined to be unlawful and discriminatory. Article 142 expands the Supreme Court's power by granting it exceptional authority to issue any order or decree necessary to deliver "proper justice" in any case before it. A developing and maturing democracy allows for new and innovative ways to achieve the status of just society. Public Interest Litigation, novel constitutional interpretations, and progressive verdicts, to name a few, are some of the routes encouraged by the court to improve our country's democratic ideals. It was suggested that the judiciary should establish its own 'Lakshman Rekha

(inviolable border)' and refrain from making judgments that are within the executive's jurisdiction, emphasising the growing rift between the judiciary and the executive over the courts' perceived overreach.<sup>1</sup>

From the Gopalan Case in the 1950s to the current Environment-friendly judicial activism judgments, the judiciary has taken a proactive role in reminding the legislature and government of their obligations. True, there have been occasions where judicial activism has devolved into judicial overreach, infringing into other Organs' jurisdictions.<sup>2</sup>

The origins of the notion of judicial activism in India may be traced back to the early mid-1970s or early 1970s, when Mrs Indira Gandhi, an outstanding lawyer and legal icon, was Prime Minister of India and Mohan Kumaramangalam was Union Minister. Only when late Mrs Gandhi tried to implement her slogan "garibi hatao" (remove poverty) by abolishing Privy Purses and privileges given to the erstwhile rajas and princes of the princely states of from before independence of India, and nationalising the 14 major banks to better serve the poorer sections of society, a traditionalist judiciary didn't take too kindly and quashed the relevant legislation. Gandhi saw the Supreme Court of India's decision in the Privy Purse abolition and bank nationalisation proceedings as judicial overreach, and her response was forceful and clear. The most senior Supreme Court justices who participated in the majority verdict in the aforementioned instances are thought to have been passed up for nomination to the office of Chief Justice of India on Mr Kumaramangalam's suggestion. The dissenting judge, Mr A N Ray, who was fourth in order of seniority, was appointed, and the three senior justices resigned as a result (Justices Hegde, Shelat and Grover). This was the beginning of the notion of judicial activism, which was born out of the conflict between the legislature and the judiciary.

It is past time for the judiciary to examine its own course of activity to ensure that it is progressive and does not cross the line into authoritarianism.

The Hon'ble Courts of India have used their power and authority and engaged in judicial activism on several occasions in order to improve society's situation. The judiciary has recently issued numerous landmark judgements addressing unjust imprisonment, environmental issues,

---

<sup>1</sup> Khosla, S. (2013). Human Rights and Judicial Activism in India. GUIDELINES TO CONTRIBUTORS, 154.

<sup>2</sup> Shukla, S. (2018). Judicial Overreach: The Role of the Judiciary in Contemporary India. Anish Kumar Verma, 25.

children's and women's rights, minority affairs, health-related challenges, and human rights breaches, all of which have assisted in the birth and expansion of judicial activism.

When the court exceeds its authority, it risks interfering with the legislative and executive branches of government's functions. Although it has resulted in advantageous results in most of the cases, the disadvantages of Judicial Over-reach on the society as well as on the other branches of the Government shall be discussed in this paper along with solutions to the issue.

## **JUDICIAL ACTIVISM AND THE SOCIO LEGAL STRUCTURE**

Judicial activism is the process through which the judiciary fills the shoes of the legislature and proposes new rules and regulations that the legislature should have enacted earlier. Judicial Activism is defined as a strict, objective, and unbiased examination of the laws enacted by the legislature and the suggestion of modifications to make them more legally compliant and equitable.

The failure of the executive and legislative branches to act has sparked judicial activism. It has also arisen as a result of concerns that the legislature and government have failed to deliver on their promises. Third, it happens as a result of the system's overall ineffectiveness and inactivity. Judicial activism has resulted from violations of core human rights. Judicial activism has grown in importance as a result of the misuse and abuse of various constitutional provisions. New challenges emerge, such as cyberspace privacy, the right to life, environmental concerns, increasing pollution, and when the government fails to fulfil its obligations.

Judges such as V R Krishna Iyer, P N Bhagwati, Chinnappa Reddy, and DA Desai were proponents of judicial activism. The emergence of public interest litigation and the resulting relaxation of the locus standi rule is frequently claimed to be the source of judicial activism. PIL was created with the noble goal of uplifting the oppressed, underprivileged, and destitute by providing justice for them by easing the strictures of locus standi.<sup>3</sup> The Supreme Court first took up a PIL case in 1979 in **Hussainara Khatoon v State of Bihar**<sup>4</sup> on behalf of convicts awaiting trial who had been held in jails for durations beyond than the maximum penalty permitted for the

---

<sup>3</sup> Gauri, V. (2009). Public interest litigation in India: overreaching or underachieving? World Bank Policy Research Working Paper, (5109).

<sup>4</sup> SC 1979 AIR 1369

charges in question. In this case, the court made orders guaranteeing that the convicts receive proper assistance. In **Sunil Batra v Delhi Administration** (1980)<sup>5</sup> and **Sheela Barse v Union of India** (1983), the court issued important directives for the protection of accused and convicts (male and female), including improved jail accommodations, segregated lock-ups for female inmates, and so on.

The Supreme Court has issued rulings directing the most sophisticated interlinking river engineering in India.<sup>6</sup> The court has issued an injunction prohibiting the use of black film on vehicle screens.<sup>7</sup> The Court has taken cognizance and censured the Delhi Administration for forcefully evicting Baba Ramdev from the Ram Lila grounds.<sup>8</sup> Tourists are not allowed in the main region of tiger reserves, as per the orders of the court. All of the Court's management manoeuvrings are based on the questionable jurisdictional premise of upholding basic rights under Article 32 of the Constitution. In truth, no individual's fundamental rights or legal concerns are implicated in such instances. The Court is merely being moved for the purpose of better administration and management, not to perform any judicial functions.

## REASONS FOR JUDICIAL ACTIVISM

- Inability of the legislative and executive to carry out their duties  
Legislative authority is exclusively placed in the legislature. Yet, due to widespread corruption, personal interests taking precedence over the oppression of the public, such a division of authority between the three institutions no longer holds weight in today's situation. The parliamentary branch has devolved into a majority rule rather than a rational procedure, failing to meet the goals of justice. A democracy loses voters' faith and confidence when the legislature fails to pass appropriate legislation in light of the changing character of society and government agencies do not carry out their responsibilities honestly. It is only appropriate for the judiciary to play a constructive role in such unusual circumstances.
- In the event of a breach of a citizen's fundamental rights, there will be pressure to assist them.  
When the administration, its institutions, or any other related parties infringes citizens' basic rights, courts may intervene to help them. Whenever people' rights and interests are in

---

<sup>5</sup> (1978) 4 SCC 409

<sup>6</sup> Jain, A. G., & Rosencranz, A. (2014). The Indian Supreme Court Promotes Interlinking of India's Rivers: Judicial Overreach. *Envtl. L. Rep. News & Analysis*, 44, 10348.

<sup>7</sup> Avishek Goenka vs. Union of India, (2012) 5 SCC 321

<sup>8</sup> In Re: Ramlila Maidan Incident (2012) 5 SCC 1, 2012 AIR SCW 3660

jeopardy, they turn to the courts for assistance.<sup>9</sup> The judge is constantly under pressure to offer such assistance. On several occasions, the judges have promoted and launched PILs by loosening the need of locus standi, adopting an adversarial style of litigation, and assuming the capacity of an investigator, counsellor, and supervised administration.<sup>10</sup>

- The legislature's inability to meet all of society's demands

Regardless of the fact that there are several laws on diverse themes, there are certain legal issues that have yet to be addressed. This is attributable to a shortage of awareness of such concerns, as well as the legislation's disinterest and apathy. The court engages in judicial legislation when the parliament refuses to pass a law that is necessary to fulfil the needs and desires of community.

- The community's trust in the judicial system is at an all-time high.

The majority's trust and belief in the judicial system inspires the judges to act above and beyond their mandate and then go to great lengths to protect their freedoms. Citizens naturally trust the courts to protect their welfare as the protector of basic rights.

- Multiple Members' Roles

Individuals and non-governmental organisations (NGOs) including such human rights activists, consumer rights organisations, ecological advocacy organisations, women's rights organisations, civil rights activists, and litigation organisations are all accountable for fostering judicial activism.<sup>11</sup> Several judges have paved the way for judicial activism on their own.

## INSTANCES OF JUDICIAL ACTIVISM

In an 1893 Allahabad High Court ruling, a judge gave a dissenting decision, which was the first instance of judicial activism. The case concerned a defendant who lacked the financial means to hire a lawyer. The court had to determine whether to decide the case solely on the basis of the materials he had presented. A case could only be reviewed when someone speaks, according to the court. As a result, he laid the groundwork for judicial activism in India. Under Indira Gandhi's government in the late 1960s and early 1970s, the notion of judicial activism grew yet further. The administration's complete abolition of Privy Purses and rights granted to monarchs and rulers

---

<sup>9</sup> Ahmed, H. (2016). 'The concept of Public Interest Litigation lies at the root of judicial activism in India. 'Elaborate with suitable examples.

<sup>10</sup> Satapathy, A., & Satapathy, S. Judicial Overreach Under The Garb Of Judicial Activism: Where Did We Go Wrong?.

<sup>11</sup> Upendra Baxi, —The Avatars of Indian Judicial Activism: Explorations in the Geographies of (in) Justice in S.K.Verma and Kusum, Fifty Years of Supreme Court of India – Its Grasp and Reach 173 (2000).

of princely states, as well as the nationalisation of 14 banks, did not sit well with the judges, who deemed the act illegal. The court's endorsement of the integrity of judicial review captures the heart of judicial activism. The court stated in **A.K Gopalan v. State of Madras**<sup>12</sup> that judicial review is embedded in the Constitution. Even if it is not present, a judiciary has the jurisdiction to proclaim a legislation unlawful if it infringes a constitutional right. While dealing with the constitutional legitimacy of the 17th amendment, the court in **Golaknath v. State of Punjab**<sup>13</sup> concluded that Parliament cannot modify Part III of the constitution or take away any basic right. In the case of **Keshavananda Bharti v. State of Kerala**,<sup>14</sup> the Supreme Court ruled that Legislature cannot fundamentally alter the basic structure of the Constitution. The **Bhagalpur Blinding case**<sup>15</sup> found that under the purview of Article 21, the disadvantaged have the right to free legal assistance and representation by a counsel, and that the offender must be brought before the judge within 24 hours. The court in **Balaji v. State of Mysore**<sup>16</sup> held that, while disadvantaged classes are entitled to protective discrimination, they must not be denied the right to equality and equal protection under the law. The court ruled in the **Asian Games case**<sup>17</sup> that employees engaged on a temporary basis for building projects were entitled to protection under the applicable labour and industrial legislation and may claim enforcement under article 32.

### **JUDICIAL OVER-REACH**

The term "judicial overreach" is used when the court appears to have overstepped its bounds, resulting in a significant breach of the idea of separation of powers. Judicial adventurism is another term for it. Judicial Overreach is a type of judicial activism in which the courts make arbitrary, unjustified, and frequent incursions into the legislative realm, typically with the goal of upsetting the balance of powers between the executive, legislature, and judiciary. This is a situation in which the legislature's function is encroached upon by the judiciary by passing legislation.

The distinction between judicial activism and overreach is razor-thin. Simply put, judicial overreach occurs when judicial activism exceeds its bounds and becomes judicial adventurism. When the court exceeds its authority, it risks interfering with the legislative and executive

---

<sup>12</sup> A.K Gopalan v. State of Madras 1950 AIR 27

<sup>13</sup> Golaknath v. State of Punjab 1967 AIR 1643

<sup>14</sup> Keshavananda Bharti v. State of Kerala AIR 1973 SC 1461

<sup>15</sup> Bhagalpur Blinding case 1982 AIR 1008

<sup>16</sup> Balaji v. State of Mysore 1963 AIR 649

<sup>17</sup> Asian Games case 1982 AIR 1473

branches of government's functions.<sup>18</sup>

At one-point, judicial activism was seen to be required to remedy the legislature's failures and the executive's crimes. However, now it has progressed to the point where the concept of division of powers, which should be regarded a component of the Constitution's basic construction, is being questioned. Judicial activism has periodically resulted in judicial and adventurism. Judicial overreach has a detrimental influence on the constitutional foundation, which is separation of powers.<sup>19</sup>

Mostly because of judicial overreach, the executive and judiciary's coordination is occasionally harmed, which has a detrimental influence on the constitutional system. The primacy of the legislative in policymaking is part of basic structure, just as the judiciary's independence is, and interference by the courts in their realm is not justified.

*“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<sup>20</sup>*

The Supreme Court, which had taken over legislative and executive responsibilities, was accused of judicial overreach by the then Prime Minister. There have been several occasions in which the courts have clearly overstepped their bounds and ordered the administration to carry out its responsibilities. While that might be beneficial, it's indeed contrary to the Constitution's structure. Judicial conduct can indeed be proactive in situations like labour policy, environmental and ecological issues,<sup>21</sup> and so on, but when it intervenes in subjects like the government's economic plans, international diplomacy, or even legislative procedures, it exhibits judicial overreach.

## **INSTANCES OF JUDICIAL OVER-REACH**

- Shyam Narayan Chouksey v. Union of India: The National Anthem Case<sup>22</sup>

The Supreme Court mandated that the National Anthem be played just before movie begins, and that everyone in the audience stand up to demonstrate due respect. Whilst the National

---

<sup>18</sup> Rahman, M. M., & Badhon, R. Z. (2018). A Critical Analysis on Judicial Activism and Overreach.

<sup>19</sup> Jain, N. (2010). Judicial Power: From Judicial Review to Judicial Overreach. Indian Journal of Public Administration, 56(2), 331-342.

<sup>20</sup> Speaking at the Conference of Chief Ministers and Chief Justices held in New Delhi in Apr 08, 2007.

<sup>21</sup> Bhasin, K. (2018). Environmental Governance in India: An inefficient outcome due to lack of “specialized” and strong institution?.

<sup>22</sup> Shyam Narayan Chouksey v. Union of India (2017) 1 SCC 42

Anthem is being broadcast, the entrances and exits should be shut, and the National Flag must be shown on the screen. The judges ignored the precedent-setting Bijoe Emanuel and Uphaar Tragedy cases, in which the court ruled that a movie hall's doors should never be shut. It was in violation of the 1971 Prevention of Insults to National Honour Act, which states that no movie, drama, or television programme may include the National Anthem as part of the programme.

- **Lodha Committee Report on the Board of Control for Cricket in India**

The Lodha Panel was established by the Supreme Court after the BCCI was accused of bribery, match-fixing, and gambling. The panel agreed that BCCI should be included in the RTI, that cricket betting must be legalised, and that ministers and government employees must not hold multiple office positions (one post per person, etc.). It was an instance of judicial overreach because the Lodha community lacked power since BCCI was registered under the Tamil Nadu Societies Act, had no state financing, and was not under the supervision of the federal or state governments. The autonomy of sporting organisations must be maintained. Interference from the outside is detrimental to their growth. The court overlooked the fact that India had teams competing in the Ranji Trophy from Railways and Services because of the one-state-one-rule. This severe geographical region restriction eliminates Mumbai, Baroda, and Saurashtra, among others.

- **NJAC Bill 99th Constitutional Amendment**

The most contentious instance of overreach is the Supreme Court's decision to proclaim the 99th Amendment and the National Judicial Appointment Commission Act 2014 illegal and invalid in order to replace the collegiate system. The administration's request to challenge the matter to a higher court was denied, but the Apex court encouraged proposals to enhance the existing collegiate structure. The NJAC guarantees that court appointments are made in a transparent manner. The panel that selects judges is made up of an equal number of judges and non-judges, ensuring that authority does not rest only with the judiciary or the political elite.

## **IMPACT OF JUDICIAL OVER-REACH**

- The idea of separation of powers has been violated.

An administration's powers and responsibilities must be shared among three organs: the legislative, the administrative, and the judicial system, with adequate checks and balances in place. However, judicial activism has allowed for the creation of judge-made legislation, which

is a violation of constitutional power.

- Detrimental to the Rule of Law

Judicial activism does help to ensure that the rule of law is followed. When a court goes too far, it is referred to as "judicial populism".<sup>23</sup> Judiciary is not meant to make laws; instead, they must determine their actual meaning, or else chaos will ensue.

- Accountability is lacking.

The court's expanded authority is a source of worry since it allows for abuse of authority. For a democracy to function, transparency and accountability are essential; the judiciary must likewise be fair and responsible. Nevertheless, that's not the reality, since it undermines the balance of power.

## CONCLUSION

In India, the judicial branch seems to have a tendency to stray from its legal bounds, leading to judicial experimentation which is not necessarily lawful. There seem to be signs that the courts are overstepping its boundaries and entering further and further into the exclusive domains of the legislative and the executive, causing an undesirable imbalance in the nation's sensitive institutional balance.

The judicial system, like other democratic institutions, ought to be responsible and aware of its own limitations. The government should establish new measures to make the judiciary answerable in order to maintain openness, and the judiciary must attempt to exercise judicial restraint. It only allows judges to overturn a legislation if it is absolutely unlawful. It asserts that the court does not have the authority to make laws. It recognises the other two institutions' equivalence and limits the court's influence over the other branches. This also protects the judiciary's integrity and reinforces the idea of division of powers.

A proper judicial involvement is one that falls within the judicial review's authorised parameters. The court has no jurisdiction over matters of federal policy or administration that do not involve basic legal concerns.

When the state fails to fulfil its obligations, like degradation of the environment, sexual violence,

---

<sup>23</sup> S. P. Sathe, *Judicial Activism: The Indian Experience* (2001) 6 *Washington University Journal of Law & Policy* 29.

educational reforms, and corruption, the courts might intervene to protect the citizen's rights by issuing a writ of mandamus to the responsible public body. Nonetheless, there is a fine line between judicial activism and overreach, which judges should observe. It's indeed critical that the court remain fair, impartial, and above all, constrained. A thorough and integrated strategy focused on strengthening legal facilities and eliminating lack of discipline could enhance the quality and efficiency of the conventional legal system.

## **BIBLIOGRAPHY**

### *Articles*

- Ahmed, H. (2016). 'The concept of Public Interest Litigation lies at the root of judicial activism in India.' Elaborate with suitable examples.
- B Nagarathnam Reddy, Judicial Activism vs Judicial Overreach in India, 7(1) GJRA – Global Journal for Research Analysis 82 (2018).
- Bhasin, K. (2018). Environmental Governance in India: An inefficient outcome due to lack of “specialized” and strong institution?.
- Gauri, V. (2009). Public interest litigation in India: overreaching or underachieving?. World Bank Policy Research Working Paper, (5109).
- Jain, A. G., & Rosencranz, A. (2014). The Indian Supreme Court Promotes Interlinking of India's Rivers: Judicial Overreach. *Envtl. L. Rep. News & Analysis*, 44, 10348.
- Jain, N. (2010). Judicial Power: From Judicial Review to Judicial Overreach. *Indian Journal of Public Administration*, 56(2), 331-342.
- Jain, N. (2010). Judicial Power: From Judicial Review to Judicial Overreach. *Indian Journal of Public Administration*, 56(2), 331-342.
- Md. Mostafizur Rahman & Roshna Zahan Badhon, A Critical Analysis on Judicial Activism and Overreach, 23(8)(3) *IOSR Journal of Humanities and Social Science* 45 (2018).
- R Shunmugasundaram, Judicial activism and overreach in India, 72 *Amicus Curiae – Journal of the Society for Advanced Legal Studies* 22, 22 (2007).
- Rahman, M. M., & Badhon, R. Z. (2018). A Critical Analysis on Judicial Activism and Overreach.
- Satapathy, A., & Satapathy, S. JUDICIAL OVERREACH UNDER THE GARB OF JUDICIAL ACTIVISM: WHERE DID WE GO WRONG?.
- Sateh, S. P. (2002). Judicial activism in India: Transgressing borders and enforcing limits.

- Shukla, S. (2018). Judicial Overreach: The Role of the Judiciary in Contemporary India. Anish Kumar Verma, 25.
- Shunmugasundaram, R. (2007). Judicial activism and overreach in India. *Amicus Curiae*, 2007(72), 22-28.
- Swati Sharma, Rahul Rishi & M. S. Ananth, Judicial Activism in India: Whether more Populist or Less Legal?, 1(1) *Indian Journal of Constitutional & Administrative Law* 11 (2017).

***Books***

- Khosla, S. (2013). Human Rights and Judicial Activism in India. *GUIDELINES TO CONTRIBUTORS*, 154.
- Upendra Baxi, —The Avatars of Indian Judicial Activism: Explorations in the Geographies of (in) Justice in S.K.Verma and Kusum, *Fifty Years of Supreme Court of India – Its Grasp and Reach* 173 (2000).

