



**KARMANYE VADHIKARASTE MA
PHALESHU KADA CHANA –
JUDICIAL REVIEW VERSUS
JUDICIAL ACTIVISM VS JUDICIAL
OVERREACH**

By Deeksha Kathayat

From DR. D.Y. Patil College Of Law, Nerul

Just imagine one day you wake up and find that a law is passed that you can no more send or make any memes on anybody and you will be punished harshly if you make any meme criticizing government. Yes! For many it will be devastating law ever passed in the history of mankind. If you look and think about this seriously you will realize that most of the things rather I should say rights which we exercise casually in our day to day life are those rights which are not only our birth right but are also as I would like to say “protected rights”. These rights though are guaranteed to us by our constitution but it is the judiciary that has protected these rights being curtailed by the legislators or the executives.

Well the above example would sound funny or childish to some but then there was actually one incident took place where two young girls were arrested for expressing their view on internet. It was the Supreme court that came to the rescue against the arbitrary law and passed a judgment striking section 66A of Information technology act, 2000 which provides power to arrest a person for posting allegedly "offensive" content on websites. The court said, Section 66A is violative of Article 19(1)(a), not saved by Article 19(2), hence unconstitutional.

This power or rather I should say super power which judiciary exercises wherein it can review the validity of the law passed by the legislature is called **JUDICIAL REVIEW**.

Judicial Review

The power of judicial review exercised by Judiciary is a constitutional power under article 13. The power of judicial review is evoked to protect and enforce the fundamental rights guaranteed in Part III of the Constitution. There are several examples to cite where the court has exercised the power of Judicial review. Such as the case of legality of the order of the Speaker of the Uttarakhand Assembly dismissing nine legislators for cross-voting which was dealt by the SC and the Uttarakhand High Court. Even in the landmark judgment **Keshvananda Bharati Case**, the **Judicial review** was held to be the basic structure of the Indian Constitution. Justice PN Bhagwati, relying on **Minerva Mills Ltd (1980)** declared that it was well settled that **Judicial review** forms the basic structure of our Indian Constitution.

However, there is one more point to be taken into account that **Judicial Review is not automatic**. The Supreme Court cannot not use the power of judicial review of its own. It can use it only when any law or rule is specifically challenged before it or when during the course of hearing a case the validity of any law is challenged before it.

JUDICIAL ACTIVISM

The power of judicial review may have limitations which will hinder the justice delivery but yet again there are some other ways through which judiciary can play more active role. The most used techniques are PIL (PUBLIC INTEREST LITIGATION), Suo moto cases etc. the use of these techniques for dispensation of social justice is called **JUDICIAL ACTIVISM**. Emergence of the Public Interest Litigation (PIL), have allowed the Judiciary to intervene in many public issues, even when there is no complaint from the concerned party.



Although the earlier exercise of Judicial Activism was connected with enforcing Fundamental Rights, nowadays, Judiciary has started interfering in the governance related issues as well.

Some of the remarkable instances of judicial activism are - Invention of the basic structure doctrine by which Supreme Court further extended the scope of Judicial Review, introduction of collegium system, institutionalization of PIL, banning smoking in public places based on PIL, the order by Supreme Court in 2001 to provide mid-day meals to schoolchildren and many more.

Judicial over reach

The role of judiciary is always in question majorly by legislative authorities who have always alleged judiciary in over stepping their powers and have in the name of judicial activism have crossed their limits. There is very thin line between the two and when judiciary crosses its limit and indulge themselves into judicial adventurism that's what is known as judicial over reach.

The problem of judicial over reach can only be controlled by making judiciary accountable. they must be made accountable not only in respect of their personal conduct and integrity, but also in regard to the judicial verdicts that they deliver.

But if we introspect properly what can be concluded is that what may be judicial over reach for some group of persons it may be a case of judicial activism or judicial review for others. Calling a judicial decision an act of judicial overreach or review or activism is purely subjective.

For instance, in the Supreme Court, ruling on a PIL which was about road safety, has banned the sale of liquor at retail outlets, as also in hotels, restaurants, and bars, that are

within 500m of any national or state highway. It was looked as an act of judicial over reach by some people and the legislature and was considered as an unnecessary interference on the part of judiciary affecting the revenue and also leading to loss of employment. But to many it was a remarkable judgment for the public interest.

Also, the national anthem case The Supreme Court on December 2016, passed its judgment in the case of **Shyam Narayan Chouksey v. Union of India**, which makes it mandatory, that all the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem. Many pseudo liberals were offended by this decision and called this an act of over reach. But to many this was a great judgment as standing for the national anthem is the least, we can do to show our respect for our and country and for the brave hearts who have sacrificed their life guarding and

Conclusion

The debate is ongoing and never-ending judiciary was, is and will be criticized for being very pro- active but as it is written in Bhagawad Gita "**Karmanye Vadhikaraste Ma Phaleshu Kada Chana**" where lord Krishna explains Arjun to perform his duties despite all obstacles and criticism because that was what his dharm (duty) is. So also, the saying applies in this case to judiciary also because no matter what the judiciary performs its duties sincerely despite facing lots of criticism because doing justice is its only dharm.
