

Analysis of Judicial Activism in an Overall Expansion of Judicial Review, Due Process of Law & Rule of Law in India

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ABSTRACT:

The inception of Judicial Review, Due Process of Law and most importantly the wider Principle of Rule of Law is one of the greatest legal weapon to curb the civil and social menaces of our society and also simultaneously plays a pivotal role in developing the sound structure of the country's democracy by preventing the gross form of arbitrary actions and illegal biasness done by the administrative authorities which ruins the basic objective of the Preamble that focuses on promoting equality, justice, and social welfare of the individuals. The below mentioned points are some of the conclusive evidences cum assertions which mentions about the important presence of Judicial Review under Article 13 of the Indian Constitution and the fair adjudication of justice through the good ends of Indian Judiciary whose major function is to protect and become the real custodian of the fundamental rights of the citizens and along with it to promote the due concept of Due Process of Law and Rule of Law.

Undoubtedly, there seems to be the due importance of Judicial Review in overall promotion and development of Good Governance of the Indian Democracy. Under this Research Article, the Researcher will tend to do analysis of how the Judicial Activism has flourished the expansion and wide legal facet of Judicial Review, Due Process of Law and Rule of Law in India.

KEYWORDS: (Indian Constitution, Judicial Review, Due Process, Judicial Activism, Rule of Law, Article 13)

INTRODUCTION OF JUDICIAL ACTIVISM & JUDICIAL PRONOUNCEMENTS:

The Judicial Activism³ seems to be the shield for the citizens of India as it protects the fundamental rights of the citizens in the most comprehensive and best manner by checking and restraining the illicit intentions of executives, public administrations and the Government. The principle of Judicial Activism revolves around the Hon'ble Supreme Court and Hon'ble High Courts of India as to give them a due and justified power which is further given by the Indian Constitution to curb the social and other menaces which are being faced by the citizens of India in form of gross exploitations of their legal rights and interests.

Moreover, the principle of Judicial Activism is the legal interception in between the workings of Government and Public Administrations in order to check whether they are actually working for the public

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³<https://blog.ipleaders.in/judicial-activism/>, *Judicial Activism*.

benefits or not or whether they are exercising any sort of arbitrary actions or unreasonable forms of discretion which is violating the norms of the Indian Constitution. Whenever the assertions of Judicial Activism being made or formulated before the public at large, then the common legal presumption comes in our mind that the Justice plays a vital and important role in reducing the pendency of the cases before the Hon'ble Courts in India and simultaneously it leads to maximization of protection of legal interests of the citizens of India.

There seems to be the other important presumption that 'Justice not only means to be done, but clearly ought to be done⁴', so that the satisfaction and hope of the mass public living within our Indian Society shall be satisfied and served duly and properly by the Quasi-Judicial Bodies, Judicial Bodies and also by the Administrative Authorities or the Executives. The broad features of Judicial Activism and how they are playing a most pivotal role in positively shaping the Good Governance, Rule of Law and the Judicial Review are mentioned below.

1. The Hon'ble Courts in India through the efforts of Judicial Activism checks both the legislative and executive actions so that to confirm that they are complying⁵ with the Constitutional Objectives and are hence, not violating or doing misuse of laws. The legal powers always come up with the due legal duties which here, the executives and the legislature both have to follow.
2. The Judicial Activism authorizes the Hon'ble Courts in India to do a proper vigilance and simultaneously checking out the State's actions⁶ per se as it is the inherent power of the Hon'ble Court which makes them duly empowered to become the custodian of fundamental rights and other inalienable rights of the citizens of India.
3. The another important feature of Judicial Activism⁷ is to control the unauthorized activities of the Government which shall if not duly controlled or prohibited will cause the citizens of Indian or the public at large to compromise with their substantial legal rights and the repercussion shall be very pathetic as the sentiments of the Indian Constitution will hurt and there shall be the gross Miscarriage and Maladministration of Justice.
4. The positive actions of Judicial Activism⁸ support the due protection of human rights of the citizens of India as they prevent and minimizes the State's unreasonable, illicit and unethical actions which might can cause the greatest loss of their fundamental rights and also it destroys and dilutes their scope of legal protection which they have a due hope from the Indian Judiciary.
5. The Judicial Activism and Judicial Review goes hand in hand as they both are meant and formulated for protecting the Constitution's objectives, i.e., equality, liberty and fraternity and also accountable for promoting social justice, political justice and economical justice per se.

In the case of **Maneka Gandhi v. Union of India**⁹, the Hon'ble Supreme Court held that for the first time that whenever the Hon'ble Court enforces the rights and personal liberties of the citizens of India in case of their deprivation by the State's actions as mandated under the legal facet of Article 21 of the Indian Constitution i.e., Right to Life and Personal Liberty, then the concept of Procedure Established by Law must be synonymously used and interpreted with the concept of Due Process of Law and this shall be the actual fulfilment of Rule of Law.

⁴Ibid.

⁵<https://blog.ipleaders.in/judicial-activism/>, *Introduction of Judicial Activism*.

⁶Ibid.

⁷Supra Note 164.

⁸<https://blog.ipleaders.in/judicial-activism/>, *Introduction of Judicial Activism*.

⁹AIR 1978 SC 597; (1978) 1 SCC 248.

The Hon'ble Supreme Court also simultaneously held that, that according to the mandate of Due Process of Law, the Judiciary checks the law that whether it is fairly made or it might have some errors in law and also if such legal provisions by any of the means deprives the fundamental rights, inalienable rights and other substantial rights of the citizens, then the Hon'ble Supreme Court is having the authorized power to declare such legal provisions null and void or shall treat such legal provisions void ab initio.

In the **leading case¹⁰ decided by the Hon'ble Supreme Court**, the Hon'ble Court held that under the legal facet of Judicial Activism, there comes the Doctrine of Prospective Overruling, which means that once the judgement pronounced in any specific case, then it shall have a future impact only but no such impact shall be made in the previous judgements pronounced by the Hon'ble Courts in India. The rationale is simple as they only have a prospective effect and no retrospective effect or impact shall be held to any previous decisions made by the Hon'ble Courts.

In the **leading case decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the due process of law and the due procedures have been duly exercised by the Hon'ble Court by issuing the Constitutional Writ of Habeas Corpus to the Police Authorities who have illegally arrested and detained the detainee for no due reasons and due to such unethical and unconstitutional act of Police Authorities who are made for protecting and preventing the law and order has exercised the ultra-vires power to disobey and contravene the Right of Personal Liberty of an individual under the legal facet of Article 21 of the Indian Constitution. The Hon'ble Court exercised its due conduct to finally direct the Police Authorities to release them on an immediate basis.

In the **leading case decided by the Hon'ble Supreme Court**, the Hon'ble Court held that, the public at large must be the paramount consideration for the State and Public Administrations and they therefore, need to secure their legal interests and give them a fair legal protection from anti-social activities and also they need to maintain a harmonized relation without any hurdles or inconsistencies. The Hon'ble Court also held that the role of public administration in handling and treating a public at large decides the due basis and positive construction of effective Rule of Law and Due Process of Law in such respective State Government. The Due Process of Law and the sound Rule of Law are the basic pre-requisites of Good Governance and Effective Government.

PROMOTION AND DEVELOPMENT OF RULE OF LAW, JUDICIAL REVIEW AND DUE PROCESS OF LAW IN INDIA: A LEGAL ENDEAVOUR FOR ENFORCEMENT OF LEGAL RIGHTS

The wholesome and sustainable result pertaining to the sound democracy, sound Rule of Law, and fair adjudication of justice is only possible when the entire three organs of the Government work collectively in a due process and by following the due procedures mandated by the Indian Constitution. The substantial rights are of paramount importance and it must be duly nurtured by the Government so that in any form their welfare and sustainability do not get hamper or disturbed. The Principle of Rule of Law¹¹ helps in the foundation of the Indian Constitution and by supporting and fulfilling the real time objectives of the Preamble and thus, it plays a crucial role in administering and adjudicating the legal rights and interests of the citizens of the India in its most effective sense. The below mentioned are the leading case laws or the active judicial pronouncement which is indeed important for promoting and developing the sound

¹⁰<https://blog.ipleaders.in/judicial-activism/>, *Doctrine of Prospective Overruling*.

¹¹https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf, *Role of Judiciary in Good Governance*.

doctrine of Rule of Law in India.

In the **leading case**¹² **decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the Judicial Review is not just the effective shield but it is the legal custodian for the due protection of fundamental rights, human rights and other inalienable rights of the citizens and simultaneously rendered to be as the protector of Indian Constitution and its laws respectively. The Hon'ble Court also held that, without the due presence and vigilance of Indian Judiciary, the essence and objective of due process of law shall be incomplete.

In the **leading case**¹³ **decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the effective and legitimate democratic government or the role of due democratic government in our Indian Constitution is very important and crucial as it limits the unauthorized power of the Government and puts a due checks and balances against their unconstitutional powers and authorities. Indian Constitution is having with the due presence of Independent Judiciary which administers and adjudicates the legal complexities and legal grievances of the public at large and act according to the due demand and necessity of the situation. The Indian Judiciary plays the wider scope and role in preventing the gross exploitations of Natural Justice.

In the **leading case**¹⁴ **decided by the Hon'ble Supreme Court**, the Hon'ble Court held that, the role of Indian Judiciary is pivotal in managing and tackling the due public administration and promoting it to a sound public governance by solving and harmonizing the legal disputes between the Government and the Individuals per se in a fair and equitable manner which is the need of an hour for developing the effective Rule of Law.

In the **leading case**¹⁵ **decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the role of Judicial Activism helps in strengthening the democracy and its structure and along with that it paved the way for the wider scope of adopting and developing legal precedents for the future cases when comes on the same cause of actions. The Judicial Activism hence, not at all violates the principle of Separation of Power but it rather integrates the sound relations between the Public Administrations and Individuals which ultimately lead to sound and legitimate regulations of Rule of Law.

In the **leading case**¹⁶ **decided by the Hon'ble Supreme Court of India**, the Hon'ble Court mandated that the Judicial Activism is responsible for the due interpretation of the Constitution's provisions as in accordance to the changing needs of the situation and laws especially. The rationale behind this assertion is when some new challenges comes before the Hon'ble Courts then with the help of Judicial Activism, the Hon'ble Courts shall able to re-think, re-shape and re-define the retrospective provisions made by the Legislature and also in most cases utilizes the concept of Legal Precedents which is also known as the Source of Law in Legal Jurisprudence.

In the **leading case decided by the Hon'ble High Court of Kerala**, the Hon'ble Court held that the role of Judicial Review and Judicial Activism has its equal functions i.e., to build the effective legal dimensions for the overall protection of fundamental rights of the citizens and to protect the supremacy and constitutionality of the laws. Moreover, they are obliged to preserve the dignity, equality and social welfare of the citizens of India by giving them on time justice without any delay to prevent the unauthorized and unfair actions of the Executives and Legislature.

¹²Ibid.

¹³Supra Note 170.

¹⁴https://highcourthd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf, *Role of Judiciary in Good Governance*.

¹⁵<https://vajiramandravi.com/quest-upsc-notes/judicial-activism-and-overreach/>, *Judicial Activism and Overreach*.

¹⁶Ibid.

In the **leading case decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the judges while giving the decision must consider the parameters of Rule of Law and the decisions they made either against or in favour of the respondent or petitioner must be based on certain reasons and under the Principle of Natural Justice it is called as Reasoned Decisions which is the appropriate element of Rule of Law and the Hon'ble Jurists also need to maintain and preserve the culture of Natural Justice and shall not become partial and unfair while dispensing the judicial pronouncements.

In the **leading case¹⁷ decided by the Hon'ble Supreme Court**, the Hon'ble Court held that when the actions of administrative authorities, executives, public administrations and State Government result into unfair and unconstitutional laws and the Hon'ble Court is duly satisfied that the laws made by them are against the fundamental rights of the citizens, then the Hon'ble Supreme Court and High Court is vested with the due authority to struck down and declare such laws null and void by exercising the legal weapon of Judicial Review under Article 13 of the Indian Constitution.

In the case of **L. Chandra Kumar v. Union of India¹⁸**, the Hon'ble Supreme Court held that the Judicial Review and Judicial Activism both are rendered legally as to be the basic structure of the Indian Constitution and it shall not be destroyed and discarded. The Government need to abide by the fair principles of Rule of Law and whatever legal implementations shall about to be done and implemented by them must adhered with the fair and due procedures of law which is established by the Legislature without showing a disobedience to it.

In the **leading case¹⁹ decided by the Hon'ble Supreme Court**, the Hon'ble Supreme Court held that the Hon'ble High Court is having the inherent power under Article 226 of the Indian Constitution to issue different kinds of Constitutional Writs for the due enforcement of the fundamental rights of the citizens in form of Issuance of Writ of Habeas Corpus, Writ of Mandamus, Writ of Quo-Warranto, Writ of Prohibition and Writ of Certiorari.

These constitutional writs are very important and are effective in nature as it protects citizen's Right to Life and Personal Liberty under Article 21 of the Indian Constitution.

In the **leading case²⁰ decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the Judicial Activism is the due principle of re-interpretations of laws done by the Hon'ble Judges and simultaneously finding out the errors or the procedural errors made or committed by the Executives in enabling the legal statutes and their provisions. The Hon'ble Court is having due rationale or core objective behind all these efforts to protect the supremacy of the Indian Constitution and to preserve the rich culture of Indian Democracy.

In the case of **Rupa Ashok Hurra v. Ashok Hurra²¹**, the Hon'ble Supreme Court held that Article 136 of the Indian Constitution is no doubt act as the real custodian of fundamental rights of the citizens and also for the due protection of justice and preventing miscarriage of justice, but Article 136 shall not be claimed by the party as a right but rather it shall be the due discretion of the Hon'ble Supreme Court to

¹⁷<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>, *Judicial Activism in India*.

¹⁸<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>, *Judicial Activism in India*, (1997) 3 S.C.C. 261.

¹⁹Supra Note 176.

²⁰<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>, *Judicial Activism in India*.

²¹<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>, *Judicial Activism in India*, (2002) 4 S.C.C. 388.

decide that whether from filing such petition under the legal facet of Article 136, the legal rights and interests of the citizens are in danger and if the Hon'ble Court not enforces the same, then it shall be a gross miscarriage of justice.

In the case of **Vineet Narain v. Union of India**²², the Hon'ble Court held that the Article 32 of the Indian Constitution is indeed very important to implement the Rule of Law as in cases where the Legislature has not made the due laws or any legal regulations, then the Judiciary must exercise the power of Judicial Review under Article 13 of the Indian Constitution to promote and interpret the due process of law and also can develop and make the judicial interpretation in order to form opinions for the law.

In the **leading case**²³ **decided by the Hon'ble Supreme Court**, the Hon'ble Court liberally interpreted the domain of Article 21 of the Indian Constitution which is Right to Life and Personal Liberty which shall be applicable to protect and secure the Prison's Right to be treated on a Humane Grounds, Right to Human Rights and Right to have their Fundamental Rights and other substantial rights of them. The Hon'ble Court has established the principle of Fundamental Right Jurisprudence for the Prisoners who are sentencing behind the bars and the Police and Jail Authorities are obliged to comply with the Due Procedures of Law pertaining to providing and facilitating the Prisoners with their adequate legal rights and simultaneously nurturing and preserving their legal interests without doing or performing any disobedience to the law.

In the **leading case**²⁴ **decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the Judiciary should have equal respect for the other two organs of the Government i.e., the Legislature and the Executive. In India, there has been the due clarity that the principle of Separation of Power do not work in the strict sense, although the checks and balances system is being thoroughly maintained and regulated by the Hon'ble Courts in India, but at the same time the Judiciary must keep in their mind that it should be in excess as if the essential law making functions or procedures are only regulated and interpreted by the Indian Judiciary as it will form the imbalance between the different organs of the Government.

In the **leading case**²⁵ **decided by the Hon'ble Supreme Court**, the Hon'ble Supreme Court held that the establishment and introduction of PIL (Public Interest Litigation) has framed a new way for the development and promotion of the concept of Judicial Review in India as due to the high enforcement of PIL in the Hon'ble Courts, the citizens and the other corporations are able to invoke the due jurisdiction of the Hon'ble Supreme Court under Article 32 of the Indian Constitution and Hon'ble High Court under the legal facet of Article 226 of the Indian Constitution for their legal adjudication.

In the **leading case decided by the Hon'ble Supreme Court**, the Hon'ble Court showed an importance of PIL (Public Interest Litigation) that how it changed the legal dimensions in our Indian Democracy and undoubtedly the Indian Judiciary has reshaped the formation of PIL through the endeavour of Judicial Review under Article 13 of the Indian Constitution which has mainly nurtured and promoted the social justice, social welfare, protection of civil rights and fundamental rights of the citizens of India.

In the **leading case decided by the Hon'ble Supreme Court**, the Hon'ble Court held that the Indian Judiciary by exercising its due power of Judicial Review under Article 13 of the Indian Constitution not only saves the dignity of our Indian Constitution but at the same time protects and nurtures the statutory,

²²<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>, *Judicial Activism in India*, A.I.R. 1998 S.C. 889.

²³<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>, *Judicial Activism in India*.

²⁴<https://docs.manupatra.in/newsline/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>.

²⁵Ibid.

constitutional and legal rights of the citizens by preventing the State Government and the Executives irrational and arbitrary actions.

CONCLUSION:

India is a country of democratic and socialistic pattern where for every single dispute we have different levels of Hon'ble Courts to dispensed with or to pronounced with sound and impartial judgements and also shall consider while delivering the judgement that it must not curtail any citizen's legal rights, fundamental rights, human rights, constitutional rights and legal rights per se. The procedure and processes of Indian Criminal Justice System especially during the time of judgement in India works on the equitable principles of sound justice, natural justice, fair administration of justice without any arbitrary practices, principle of justice, equity and good conscience, laws of precedent, custom as a source of law, paramount social, cultural and economic welfare of the Indian citizens. The process of judicial review is very paramount and understands the true needs of the citizens living within an Indian Subcontinent.

The Rule of Law is the most important and comprehensive tool and legal mechanism for the due protection and preservation of Magna Carta mandated in Part III of our Indian Constitution i.e., Fundamental Rights which are enforceable in nature in case gets violated or curtailed either my illicit intentions or malpractices or any sort of arbitrary actions performed or exercised by either Administrative Authorities or State. The Constitution is very much broader and has laid different mechanisms so that the Principle of Rule of Law shall be complied effectively by every State Agencies and Administrative Authorities per se in further order to form and maintain good governance system in India. The Judicial Review is not only the mechanism of quick and expeditious remedy given to the aggrieved when their fundamental rights are violated by the State actions or an unreasonable action of executives while deciding any merit of the case but also a safeguard mechanism or the real custodian of other civil liberties of an individual living within the Indian Society and the vigilant whistleblower for validating and checking the undue and unreasonable arbitrary actions of legislature and executives.

The framework and scope of Judicial Review has been interpreted effectively and strongly from one judicial pronouncements to other and if Indian Democracy needs to be stable and effective pertaining to the greatest public facilitations, larger public interest, greatest transparency and accountability in laws, then the development of Judicial Review along with the due expansion of Rule of Law and Due Process of Law is highly indispensable.

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