

Constitutional Rights and Judicial Administration

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ABSTRACT

The Constitution of India is without any doubt the supreme law of India. Part III of the Indian Constitution contains Article 12 - Article 35 that addresses fundamental rights. Particularly, Article 32, or "Right to Constitutional Remedies," is a fundamental right that grants extremely broad authority to petition the Supreme Court for a violation of any fundamental right by the government, institutions, or people. This article takes a critical look at the Right to Constitutional Remedies and how, in Dr. Babasaheb Bhimrao Ambedkar's opinion, it triumphed over other rights to become the most significant fundamental right that someone can possess. He stated that without this Article, "the Constitution will be nullity."

Chapter 1 of the research paper is dedicated towards the introduction concept of constitutional remedies. Chapter II of this research paper briefly discusses about the meaning, evolution and origin of constitutional remedies. It also discussed about the historical background of writs, the meaning and various kinds of writs along with different case laws. Chapter III of the dissertation briefly discusses about the relevance of writs with reference to constitutional remedies in today's time. Chapter IV of the dissertation discusses about the meaning of Judicial Activism and judicial activism in India through constitutional remedies. Chapter V of the dissertation is wholly dedicated towards the conclusion and suggestions of the dissertation and bibliography.

INTRODUCTION

In a democratic country like India, it is crucial for the citizens to have fundamental rights. In Indian context, these rights which are fundamental for human existence are mentioned in Part III of the Indian constitution. This chapter is referred to as the Indian Magna Carta. Fundamental rights are necessary to defend people's rights and liberties. These rights are a great tool to ensure equality among the citizens. The Indian constitution grants six fundamental rights to the people of India .

Fundamental rights consists of the right to equality, right to freedom, right against exploitation, cultural and educational rights & right to freedom of religion. Enumeration of fundamental rights in Indian constitution prominently works towards the establishment of a welfare society. It is an undeniable fact that the execution of fundamental / basic rights would be nothing but a mere declaration. Therefore, the drafters of the Indian grundnorm have sincerely incorporated an effective remedy that would work efficiently towards the protection and enforcement of fundamental rights.

Article 32 of the grundnorm of India guarantees the use of constitutional remedies in which every person have been given the right to approach the Apex Court of India if their fundamental rights gets infringed and they want their basic rights to be protected. Art. 226 of the Indian grundnorm grants the right to the citizens to move to the H.C. for the protection of their fundamental (basic rights). In order to achieve the remedies for the infringement of rights guaranteed through Part III of the Indian constitution the means

provided by the constitution is through writs. There are mainly five different writs that are available under constitutional remedies- habeas corpus, mandamus, certiorari, prohibition & quo-warranto.

In the words of B.R. Ambedkar, "If I was asked to name any particular article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other article except this one (Article 32). It is the very soul of the Constitution and the very heart of it."

Any basic right that cannot be enforced by a system is useless. The only thing that keeps the right alive is the remedy. There is a saying that says that absence of remedy leads to the absence of citizens' rights. Therefore, Art. 32 is seen as a powerful tool for upholding fundamental rights. Art. 32 is both a Fundamental / basic right and a remedy for other Fundamental Rights. These Articles provided by the Indian grundnorm makes the survival of human beings in the country easy by removing the ways of exploitation.

Judicial Activism Vis-À-Vis Constitutional Remedies

Introduction to Judicial Activism

In the situation of lawlessness or ambiguous rules, courts are anxious to find an acceptable remedy for the wronged by creating a fresh law to resolve the conflicting issues. This is what the term "judicial activism" denotes. The Apex Court's review power provided through Article 32 and H.C(s) review power provided through Article 226 of the Constitution, notably in Public Interest Litigation, can be used to illustrate the judicial activism in India.

In the past, there were two different types of courts in England: Equity courts (also known as the Court of Chancery) and Common Law Courts. Cases were decided by Equity Courts using the principles of equity, which include justice, equity, and good conscience. When making judicial declarations, judges in common law courts frequently relied their decisions on common law, or the rules and principles that they had developed. Consequently, the common law is additionally referred to as "Judge- made law": The new laws on torts were significantly influenced by the Equity and Chancery courts. English common law was first established, and it later expanded to other British colonies, including India. Nearly all legislations in India have their roots in English common law.

The Courts of Equity or the Courts of Chancery took the opportunity to create new rules because there were no existing regulations for relief in certain situations and predictive approach. 'Judicial Activism' was used to describe the courts of the time which created these new rules to resolve the conflicting opinions that had developed in a number of instances. The Judicature Act, 1875, which was passed, combined the equity court and common law courts.

The judicial activism is application of judicial power to explain and execute whatever is appropriate for the state/nation in particular and people at large. The Apex Court has excelled as a sincere advocate of justice in the truest meaning of the word despite its constitutional restraint. The seven-letter term 'JUSTICE' is one of the most divisive in the English language. The fact that the phrase is used by everyone on the planet means that it varies with different tongues without a doubt. In order to provide positive justice, judicial activism has impacted practically every element of Indian life, going above and beyond what is required by the law. Judiciary must remember the only thing is to not go beyond the limits that are set by the sacred, which is the Constitution, in its efforts to do justice to the ordinary man. Judiciary actions that are thought to be motivated by personal or political goals rather than by the strictures of the law are referred to as "judicial activism." The issues of constitutional interpretation, statute construction, and power separation are all strongly related to the topic of judicial activism.

Black's Law Dictionary has defined judicial-activism as a methodology of judicial decision making that allows justices' to let their individual viewpoints about, among other things, policy issues colour their decisions. Judicial-activism refers to the judiciary's proactive role in advancing justice. Judicial activism, broadly defined, is the judiciary's acceptance of an active role. For instance, Ronald Dworkin disagrees with a literal construction of the constitution because it restricts constitutional rights to the ones that were acknowledged by a certain group of people at a specific point in history.

Professor Upendra Baxi claims that the phrase "judicial activism" has inscriptive meanings. To various people, it carries different meanings. Others have decried the term, explaining it as judicial radicalism, judicial terrorism, violation into the purview of other State organs, negating the spirit of the Constitution, etc. Although a few people have praised the phrase by calling it judicial creativity, judicial movement, bringing about change in the area of human rights and social development/welfare through enforcement of public duties, etc.

Judiciaries have the right to invalidate any legislation or overturn any precedent if it violates the Constitution because judicial activism entails going beyond the usual restrictions placed on jurists and the Constitution. Therefore, a decision that deviates from court precedent or the majority view is not necessarily an act of judicial activism until it becomes active. Justice J.S. Verma defined judicial activism as the proactive practise of enforcing the rule of law, which is necessary to maintain a functioning democracy.

In a contemporary democratic system, judicial activism ought to be viewed as a tool to enforce constitutional restraints on legislative adventurism and presidential despotism. In other words, judicial activism doesn't become involved until both the legislature and the executive either fall short of their obligations or try to dodge them. In a nutshell, judicial activism should be seen as a form of damage control, making it simply a passing phase. In recent years, the court has begun to meddle in matters that are constitutionally the purview of the other departments of government. When government appears to be carried out through Mandamus, concerns regarding judicial activism arises.

The legislative branch and the executive branch cooperate fully in accordance with the Indian grundnorm. However, for the judiciary to be genuinely outstanding, it must possess a significant degree of independence. But without a constitutional code of behaviour and accountability, independence may turn hazardous and undemocratic; without them, the robes might come off as disdainful.

Judicial activism is based on the notion that the apex court and other judges are free to interpret the Constitution and laws in novel ways to suit their own ideas about what modern society requires. Judicial activism holds that judges take on responsibilities beyond their conventional function as interpreters of the law and the Constitution, such as acting in the capacity of independent lawmakers or independent "trustees" on the behalf of public. Judicial restraint is the antithesis of the idea of judicial activism.

The failure of the legislative and executive branches of government to establish "Good governance" makes judicial activism crucial, as they say. Providing justice to an estimated population of more than a billion people sounds difficult, and it never will be an easy thing to do. However, in a nation like India, it gets more and more challenging. The three pillars of Indian democracy are the Executive, the Legislature, and the Judiciary. However, judicial activism didn't really take off until the past few years.

Former C.J.I. A.M. Ahmadi once stated that there has been an increasing feeling of popular dissatisfaction with the democratic process as the representation of the people's will by Parliament members has declined in recent years. Due to this, the Supreme Court occasionally has to give the executive branch unconventional instructions in order to broaden its purview.

Whether the ruling has any historical, constitutional or other justifications, judicial-activism is sometimes criticised as a misuse of the judicial power that replaces existing laws or adds more legal ambiguity than is important. It is possible to think of judicial activism as legislating from the bench. Some others have even gone so far as to label it judicial dictatorship. This suggests that a judge is making a decision based on their own political beliefs or feelings. Soli J. Sorabjee, a former Attorney General of India, stated that judicial activism has aided in the defence of fundamental human rights and that the judiciary is essential to the safeguarding of the rights of the minorities in a pluralist society.

Although judicial activism may seem complicated to the uninitiated, it is actually rather simple to understand when explained simply. In short, it is a practise that judges engage in that has no bearing on the rule of law; rather, it serves to undermine it. It is a process where the judge makes his or her final judgement after considering all of the relevant emotions. It occasionally works in our benefit to prevent us from making the wrong choice, but it can also go awry. In other words, it is simple to define judicial activism 107 as the act of a jury exceeding the bounds of the law. When we discuss judicial activism in India, a few extremely significant cases always come up. Jessica Lal Murder case and the Bhopal Gas Tragedy are among the top two. The former one was a clear-cut case for everyone. The good fought to prevail against money and force. It was through judicial activism only that the justice was served to the family of the victim. Justice Prafullachandra Natwarlal Bhagwati, also known as the father of PIL and Justice V.R.K. Iyer are the two most well-known individuals in the B.C.I., who are famous and are most closely associated with work of judicial-activism.

In India, judicial activism was given a significant boost in the 1980s by two noteworthy changes to the Indian legal system. The country's existing environmental laws were expanded, and India's legal system started to actively engage in public interest litigation. These two changes increased the ability of individuals and public interest organisations to bring legal action against businesses or individuals who disregard environmental standards.

Judicial Activism in India

Indian Apex Court is the highest court of the country. The Apex Court of India has broad authority under the Indian grundnorm. Additionally, it gives Apex Court the authority to execute its rulings and orders as well as, to a certain extent, the authority to enact new laws.

Judicial review authority is also granted to the High Courts of India. In India, judicial activism has plenty of room to flourish thanks to the conferral of such broad jurisdiction and broad powers.

The Indian Apex Court has the power to order writs and orders under Article 32 of the Indian grundnorm. According to Article 226 of the Constitution of India, the High Court is given comparable power.

Both the Indian Apex Court and the H.C(s) have the power to issue these types of writs for the purpose of safeguarding basic rights along with any other reason, as it may think fit. The Constitution does not include a definition for the phrases in the nature of or for any other purpose. As a result, the Apex Court is released from a strict interpretation of these provisions.

Therefore, under Articles 32 & 226 of the Indian grundnorm, judicial-activism is inherent.

Indian Apex Court made it obvious in one of its first judgements in *T.C. Basappa v. T. Nagappa* that the reach of the writs in the Indian Constitution is broader than that of the right to writs in England. That given the explicit laws enacted under the grundnorm, the judiciary is not compelled to take the earlier history or the particular procedural information found in these writs in England or to be influenced by any disagreement or change in opinion stated by English Judges in particular circumstances. The Supreme

Court has broadened the range of the writs that fall under its purview by applying a liberal application of Article 32 & Article 226.

The writ, mandamus is a new application of the Apex Court's ability to enact laws under Article 32. The Supreme Court issued a writ of mandamus in *Vineet Narain v. Union of India* to make sure that government organisations like the CBI and the tax authorities carry out their mandates. The CBI violated their duty and legal obligations by failing to look into the incident that resulted from the seizure of the diaries of the Jain and by failing to bring charges against anyone connected to the Hawala transactions.

According to an individual's own beliefs, the meaning of judicial activism can vary in extent, just like the idea itself. While another perspective sees judicial activism as simply the court or judges using the judicial review powers granted to them by Articles 32 and 226 of the Indian grundnorm. Another argument is that the court deviates from its conventional role as an unbiased arbiter depending on its understanding of the law and permits its own biases and beliefs to influence how it renders its decision. The latter position has been adopted by Black's Law Dictionary, which describes it as occurring when judges permit, among other things, their personal opinions on policy matters to influence their judgements.

The legality of Uttar Pradesh Police Regulations's Chapter 20 and the powers granted to police authorities by the regulations were contested in *Kharak Singh v. St. of U.P.* on the grounds that they infringe upon the rights provided for citizens through Articles 19(1)(d) and 21 of the Indian grundnorm. He had police officers enter his home and yell at his entrance, disturbing him up during the process, based on the claims made against him. They had repeatedly forced him to go together with the police to the station and placed restrictions on his ability to leave the city. The judges succeeded in interpreting relationship between articles 19 and 21 of the Indian Constitution by stating the following points-

If an individual's fundamental right under Article 21 is breached, the State may rely on a statute to defend the infringement, but it should not be a comprehensive response until the law in question passes the test set forth in Article 19(2) as well as the features covered under Art.19(1) of the Indian grundnorm. In other words, the State must demonstrate that neither of the fundamental rights is violated by demonstrating that a law exists and that it constitutes a reasonable restriction as defined by Article 19(2) of the Indian Constitution. However, as there is admittedly no such statute, and is not any such defence available in this petition.

Kharak Singh, the petitioner, could therefore claim that the State had violated both his Article 19(1)(d) and Article 21 fundamental rights. Thus, *Kharak Singh* (the petitioner) possesses the right to obtain a writ of mandamus ordering the respondent State of Uttar Pradesh to stop visiting his home on the basis of these considerations.

In this case, the majority established a constrictive definition of liberty which solely applied to overt restrictions on the right to free movement and refused to acknowledge the privacy rights. But in *Satwant Singh Sawhney v. Assistant Passport Officer* this theory—which was the minority verdict of J. Subba Rao—became the ruling of the majority. Manufacturer, importer, and exporter *Satwant Singh*, the petitioner, was asked to give up his passport on the grounds that he might flee India to avoid going to court. The Court was able to create an overwhelming majority and precedent that is enforceable in the field of personal liberty for the first time by building and relying on international precedents relating to substantive due process. In addition, Chief Justice Subba Rao determined that the phrase "personal liberty" in India falls within the same umbrella as the phrase "liberty" has in the 5th Amendment made in the U.S. Constitution using a mix of American precedents and *Kharak Singh* decisions, the court acknowledged that a legal process might be used to restrict someone's right to life and liberty. The government's order

regarding the petitioner to turn in his passports was, however, revoked. The Passport Act, 1967 was passed by the parliament shortly after the Satwant Singh verdict to provide rules for the issuance, suspension, impoundment, and revocation of passports—issues for which there had not previously been any legislation.

Due to the Emergency's massive violations of people's fundamental rights, India's democratic system was badly rocked after it ended. In addition to the government's flagrant dishonesty and its highest court in the land's weakened state, the public were resentful. By ruling in *Maneka Gandhi v. U.O.I.*, the Supreme Court maintained public confidence in the legal system. The three key decisions marked a significant shift in the judiciary's way of thinking and paved the way for the introduction of judicial activism.

A petition was submitted to the Apex Court in *Hussainara Khatoon v. St. of Bihar* (1979) in reaction to news articles describing the conditions around prisoners in prison. For the offence they were being held for, some of the prisoners had served a longer sentence than was allowed. Years passed as the cases were languishing before an overloaded court system, and the defendants were unable to post bail because they lacked the funds to serve as bonds and sureties. The petition was accepted as a writ of habeas corpus. Justice Bhagwati and rest of the judges on the bench ordered that they be released on personal bonds if the defendants were failing to raise the necessary bail amount.

Judicial activism empowers judges to render judgements in favour of novel and forward thinking social initiatives, which aids the act of social engineering. In a modern democratic society, judicial activism serves as a check and balance on legislative arrogance and presidential oppression by maintaining constitutional restrictions. It also supports the development and defence of individual rights.

In order to safeguard working women from sexual harassment until appropriate law is passed, the Apex Court of India has established extensive rules. In the landmark judgement through case of *Vishaka v. State of Rajasthan*, the Apex Court observed that it is the responsibility of the employer or other party in charge (of the organization) to stop sexual assault on female employees in the workplace and other institutions, whether they are private or public. Regarding a writ petition submitted by Vishakha, a non-governmental organisation working to promote "gender equality," via a PIL, requesting enforcement of the basic rights of female employees under Articles 14, 19, and 21 of the Indian grundnorm, the Court's decision was handed down by chief justice J.S. Verma, in place of Sujata V. Manohar and B.N. Kripal, JJ. Vishakha is a non-governmental organization that works for "gender equality". The horrific gang- rape of a Rajasthani social activist served as tthe immediate impetus for the initiation of this writ suit.

Employers were ordered by the court to provide a process via which working women might voice their objections. In making its decision, the Court used international conventions and standards to which India is a signatory, ruling that in the lack of domestic legislation on the subject, they can be used to interpret the constitutional provisions guaranteeing "gender equality" included in Articles 14, Art. 19 and Art.21. The Court ruled that it had the authority under Art.32 to establish such rules for the sound enforcement of working women's fundamental & basic rights at their places of employment and said that these rules would be recognized as the law that the Apex Court had declared in accordance with Article 141 of the Indian grundnorm.

In *Chiranjit Kaur v. U.O.I* case, the plaintiff's husband, an Army major, passed away inexplicably while on duty. Regarding the reason behind his death, no adequate inquiry was conducted. The officials involved handled his case with utmost carelessness and unscrupulous indifference. It was determined that, in accordance with the applicable rules, the widow of the deceased and her kids who were minors were entitled to a compensation of Rs. 6 lakhs along with the allowance for kids and the special family pension.

In *Kewal Pati v. State of Uttar Pradesh* case, the spouse of a convict was the petitioner. Convict was murdered in jail by the other accused who was serving his sentence under Section 302 of the I.P.C., was granted compensation by the court.

According to the ruling, the man's life was unlawfully taken as a result of the murder while he was in custody. In *Rudal Shah v. State of Bihar*, the petitioner was sentenced to 14 years in prison due to negligent behaviour of the State officials, and the court compensated him with rupees thirty thousand. Similar to this, compensation of Rs. 50,000 was given to the petitioner in *Bhim Singh v. State of Jammu & Kashmir* for the breach of his constitutional right. According to the court's decision in *SP Gupta v. Union of India* (1982), anyone with substantial interest and a serious intention may petition the court on behalf of a citizen who is in a disadvantaged situation. They contended that because procedures are only the aids of justice and shouldn't be disregarded for purely technical grounds, the court would view the letters as requests for writ and act appropriately.

It was determined in *Bandhua Mukti Morcha v. Union of India*²⁷ that the clauses giving the Apex Court the authority to enforce basic rights in the broadest sense possible reflect the concern of the drafting committee of the constitution to not to permit any procedural details that might lead to obstruction in enforcing fundamental (basic) rights. In procedures under Art. 32 of the Constitution for enforcing the basic rights, an adversarial procedure is not at all required to be followed. No other provision of the Constitution, including Art. 32(2), contains this kind of compulsion.

Public interest lawsuits to uphold basic rights are heavily included into Article 32.

The Court requested the Commissioners of Police of various metropolitan cities to provide status updates on measures taken against cigarette producers who violated the advertising code after hearing the Public Interest Litigation that was filed by a Congress leader Mr. Murli Deora in Maharashtra. Hospitals, health facilities, government offices, public transportation, including railroads, courts, educational institutions, libraries, and auditoriums are all subject to the prohibition on smoking in public places.

In *Sunil Batra v. Delhi Administration* case, it was decided that the habeas corpus writ could be used to protect the prisoners from cruel and inhumane treatment in addition to freeing them from unlawful detention. The habeas corpus writ receives a diverse life and practical utility from the dynamic role of legal remedies as a bulwark of liberty even inside prisons.

The Indian Apex Court's role in educating the Central Investigating officials to carry out their legal responsibilities in the numerous scams cases and if different judgements ranging from the need for a uniform civil code, ensuring the safeguarding historical places like the Taj Mahal, keeping major cities cleaner and more proper sanitation facilities, ordering the eliminating encroachments, directing interim compensation to victims of rape, ensuring safety of women from sexual harassment at workplaces, etc.

CONCLUSION

The aforementioned research has demonstrated the significance of the constitutional remedies set forth in Articles 32, and 226 of the Constitution in relation to the decisions of administrative tribunals endowed with final adjudication powers. The grundnorm provides prerogative power of the jurisdiction by writ enables judicial review of unquestionably discretionary administrative actions that have no fixed parameters. But the discretion must be exercised in accordance with accepted legal norms. In this respect, it is crucial to emphasise that the rule of law which is first and foremost the absence of arbitrary authority, is the cornerstone of the entire constitutional system. A system that supports the rule of law should be based on clearly defined boundaries when granting discretion to the executive powers. Article 32 mentions

the right to remedies under the constitution. So, anyone who believes their fundamental rights have been violated can file a complaint with the State H.C(s) and the Apex Court. According to the aforementioned details, constitutional remedies are likewise a fundamental right. Also, an application pursuant Of Article 32 cannot be rejected by any jurisdiction. A key component of constitutional remedies is writs. One of the most significant powers granted to the High Courts and the Apex Court under Articles 226 and 32, respectively, is the ability to grant writs. By offering a quicker remedy, writs defend citizens' rights and promote democracy's guiding ideals by delivering swift justice. The significance of writs should not be undervalued, and since the courts have been granted so broad authority to exercise this power, it is imperative that they exercise it wisely. Since fundamental rights cannot be granted without a viable means of enforcement in the event that they are violated, the power given to the Apex Court of India through Article 32 is a crucial component of the Indian Constitution's core framework. However, Article 139 allows Parliament to provide the Supreme Court such authority. However, under Article 226 the High Court's authority in issuing writs is not permitted to be in contravention of the Supreme Court. To put it another way, a decision made in accordance with Article 32 will take precedence over any earlier decisions made by the High Court. Constitution being the sovereign proves that no one is supreme than it. Even the justices of the Apex court must abide by the law, and they are bound by decisions that have been made by the court and made the subject of writ petitions. The constitutional remedies that are provided as a result act as a check and protect the legitimacy of governmental operations. In our country, the judiciary or rule of law is supreme. Scrutiny by the Court of administrative activities is possible through writ jurisdictions. Legal authorities constantly monitor administrative actions to make sure they comply with the law. Hence, the writ jurisdictions act as judicial limitations on choices regarding public policy decisions that are unreasonable, unfair, and against the interests of the general public. Hence, it is obvious that the judiciary has broad authority to regulate administrative procedures when they violate citizens' fundamental rights or whenever they violate the spirit of our nation's founding document, the Indian Constitution. It makes sure that our democratic system's three institutions are properly checked and balanced while also upholding the “rule of law”. Our Constitutional provisions remain in line with the idea of writs to prevent the suppression of rights enjoyed by citizens by arbitrary administrative or legal measures.