

# STUDY ON THE CONCEPT OF JUDICIAL REVIEW. A STUDY WITH SPECIAL REFERENCE TO JUDICIAL ACTIVISM

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A PRESENTATION BY:  
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III SEMESTER

# THE JUDICIARY IN FEDERAL SYSTEM

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- Essence of federation: division of powers between the national government and the State governments.
- possibility of dispute between the Centre and State government.
- more than any other organ of the government that interprets the constitutional document

# Supreme Court – The Guardian of the Constitution

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- In a country with a written Constitution, courts have the additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and keeping all authorities within the constitutional framework.
- There must be an independent and impartial authority to divide disputes between the Centre and the States or the States inter se. This function has been entrusted to the Supreme Court. It is the final interpreter and the guardian of the Constitution.

# JUDICIAL REVIEW

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- Judicial Review is the power of the Courts to determine the constitutionality of Legislative act in a case instituted by aggrieved person.
- It is the power of the Court to declare a legislative Act void on the grounds of unconstitutionality.
- Edward S. Corwin also says that Judicial Review is the power and duty of the courts to disallow all legislative or executive acts of either the central or the State governments, which in the Court's opinion transgresses the Constitution



# Emergence of Judicial Review in India

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- The Constitution makers of India very wisely incorporated in the Constitution itself, the provisions of Judicial Review so as to maintain the balance of federalism, to protect the fundamental rights guaranteed to the citizens and to afford a useful weapon for equality, liberty and freedom.
- “Judicial Review has constitutional system and a power has been vested in the High Court and the Supreme Court to decide about the constitutional validity of the provision of the statutes”-Patanjali Sastri, J., in State of Madras v. V.G. Rao (1952) SCR 597

## WHAT CAN COME UNDER THE HEAD OF JUDICIAL REVIEW

- (1) There is a presumption in favour of constitutionality
- (2) Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid, and the other void, the former must be preferred and the validity of the law upheld.
- (3) The court will not decide constitutional questions of a case is capable of being decided on other grounds.

# WHAT CAN COME UNDER THE HEAD OF JUDICIAL REVIEW- II

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- (4) The court will not decide a larger constitutional question than is required by the case before it.
- (5) The court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.
- (6) Ordinarily, courts should not pronounce on the validity of an Act or part of an Act, which has not been brought into force, because till then the question of validity would be merely academic.



# GROWING DIMENSIONS OF JUDICIAL REVIEW

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- **firstly**, to ensure fairness in administrative action,
- **secondly** to protect the constitutionally guaranteed fundamental rights of citizens and
- **thirdly** to rule on questions of legislative competence between the centre and the states.
- The power of the Supreme Court of India to enforce these fundamental rights is derived from Article 32 of the Constitution. It gives citizens the right to directly approach the Supreme Court for seeking remedies against the violation of these fundamental rights.





## JUDICIAL ACTIVISM

- Born in 1804 when Chief Justice Marshall, decided Marbury v. Madison.
- Implies going beyond the normal constraints applied to jurists .
- Gives jurists the right to strike down any legislation or rule against the precedent if it goes against the Constitution
- “ the active process of implementation of the rule of law, essential for the preservation of a functional democracy”

# Activism versus Restraint.

## Restraint.

- Definition of Restraint – judges will not take an active role, and will in most cases defer to another branch.
- Restrainers, in most cases, will only play an active role if there is a “clear” violation of the Constitution.

## Activism

- Many scholars believe that judges have a responsibility to be somewhat judicially active.
- Belief that judges have the responsibility to uphold not only the constitution, but also the rights of men.

# JUDICIAL ACTIVISM IN INDIAN APPROACH

- View that the Supreme Court and other judges can and should creatively (re)interpret the texts of the Constitution. Judges assume a role as independent policy makers.
- Go beyond their traditional role as interpreters of the Constitution and laws.
- Failure on part of the legislative and executive wings of the Government to provide 'good governance' makes judicial activism an imperative.



## JUDICIAL ACTIVISM IN INDIAN APPROACH (Cond...)

- The Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court and High Court under Art. 32 and 226 of the Constitution particularly in public interest litigation cases.
- For instance, the principle of "absolute liability" was propounded in Oleum Gas Leak case.
- Golak Nath case is an example of judicial activism.
- Kesavananda Bharati, the SC agreed that Art 368 can be used for Amendment but that cannot affect the FR of citizens.

Well accepted reasons which compel a court or a judge to be active while discharging the judicial functions..

- Near Collapse of responsible government.
- Pressure on judiciary to step in aid.
- Judicial enthusiasm to participate in social reform and change.
- Legislative vacuum left open.
- The constitutional scheme.
- Authority to make final declaration as to validity of a law.
- Role of Judiciary as guardian of fundamental rights.
- Public confidence in the judiciary etc.

JUDICIAL  
REVIEW  
WITH THE  
CONCEPT OF  
JUDICIAL  
ACTIVISM IN  
INDIA

- PIL jurisdiction began haltingly with little idea of its potential when the Supreme Court, in 1979, entertained complaints by social activists drawing the attention of the Court to the conditions of certain sections of society or institutions which were deprived of their basic rights.



JUDICIAL  
REVIEW WITH  
THE  
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ACTIVISM IN  
INDIA  
(Contd..)

- Justice P.N. Bhagwati, stated the purpose of PIL as it originated. He emphasised that PIL “a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation.”

# Contribution of judicial activism

- The great contribution of judicial activism in India has been to provide a safety valve in a democracy and a hope that justice is not beyond reach.
- Judicial activism has added much needed oxygen to a gigantic democratic experiment in India by the alchemy of judico-photosynthesis.

# Keshavana nda Bharati case

- The first time a court held that a constitutional amendment duly passed by the legislature was invalid as damaging or destroying its basic structure.
- This was a gigantic innovative judicial leap unknown to any legal system. The masterstroke was that the judgment could not be annulled by any amendment to be made by Parliament because the basic structure doctrine was vague and amorphous.



## Jain Hawala Case, (1998) 1 SCC 226

- Chief Justice Verma and Justices Bharucha and Sen took up the case of terrorist funding linked to political corruption through the 'hawala' route in the Vineet Narain Case (Jain hawala Case).
- A cover-up by the Central Bureau of Investigation to protect its political masters was exposed and the court monitored the investigation upholding the principle "Be you ever so high the law is above you."

## Other examples

- The courts have issued directions in public interest litigation (PIL) covering a wide spectrum such as
  1. road safety, pollution
  2. illegal structures in VIP zones
  3. monkey menace
  4. dog menace
  5. unpaid dues by former and serving legislators
  6. nursery admissions and admissions in institutions of higher learning.

## CONCLUSION

- The judiciary has shed its pro-status-quo approach and taken upon itself the duty to enforce the basic rights of the poor and vulnerable sections of society, by pro-gressive interpretation and positive action
- The Supreme Court's pivotal role in making up for the lethargy of the Legislature and the inefficiency of the Executive is commendable. But the law can be dehumanized, thus the weapon of judicial activism must be used carefully.



THANKS  
FOR  
LISTENING