JUDICIAL OVERREACH UNDER THE GARB OF JUDICIAL ACTIVISM: WHERE DID WE GO WRONG?

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Abstract

In the democracies across the world, the judiciary has assumed the onerous role of a watchdog of the Constitution. In the stride to the creation of a welfare state and safeguarding the intrinsic fundamental rights of the citizens, the scope of judicial exercise as under the constitution has embraced an all-pervasive role. While the judiciary has achieved laudable milestones with the introduction of Public Interest Litigation (PIL) and the negation of the *locus standi* requirement in matters of public interest, the liberal approach adopted by the courts has led to heightened levels of judicial intervention which exceeds the limits of judicial activism. Judicial overreach has become a concern in the light of the encroachment upon the powers of the legislature and the executive. This paper tries to evaluate the constitutional mandate in the context of the current exercise of judicial powers. The paper tries to draw the line between judicial activism and judicial overreach by resorting to the jurisprudential principles which have caused the evolution of state as well as the judiciary. The paper further draws a comparative analysis of the extent of judicial powers across different jurisdiction to infer upon the level of allowable judicial intervention in India.

Keywords: Judicial Activism, Judicial Overreach, Judicial Review, Public Interest Litigation

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Introduction

The concept of society and state emanated from the underlying need of being regulated in pursuance of a communal equilibrium. The need for regulation inevitably follows from the urge of being organised and embracing uniformity. The transcendental expositions of the natural law jurists, Austin's axiomatic approach of positive law and the benign adaptation of the principle of utilitarianism- the legal thinkers have brought to the fore the existence of regulation in society with amenable variations to ensure the welfare of the state. Jurisprudence draws upon the concept of evolution of law- a law inclusive of all its facets which have evolved under the present system as the major premise of sanction and regulation left to be administered by the courts of justice. The evolution of law is therefore a necessary counterbalance for the needs of the society in the context of the inconspicuous dynamism.

History is the sole witness to the fact that since the inception of society, personnel exhibiting administrative and judicial expertise have been the patrons of the kings. Such personnel have enjoyed a position of privilege on account of the vitality of their functions. They not only undertook the onerous task of administrating justice but also endeavoured to ensure the cohesiveness of the society. Such cohesion in turn led to sophisticated system being put in place in lieu of an organised administration. However, the law, as perceived then, was inextricably linked with religion. The detachment from religion paved way to the absolute immunity being attached to the authority of the state. The need for an independent body with appropriate authority commenced with the proposition of the rule of law which eventually led to the establishment of courts. In legal parlance, it marked the beginning of judicial system, principally developed as the organ independent in function and unbiased in adjudication. Since then, the powers of the judiciary have embraced an extensive scope to address the immediate needs to the society which were beyond the purview of the statute books. Such powers not being capable of being attributed a generic definition has raised many ethical and social questions.

The law of the land as envisaged under the Constitution of India ensures the sanctity of the courts by vesting them with the role of a watchdog. The theory of separation of powers has somewhat been blurred by vesting with the judiciary the powers to scrutinise the actions of both the executive and the legislature. Such powers have been justified in the light of the need to address the supervening need of meeting the ends of justice and safeguarding public

interest. The chain of such powers emanates from the powers of judicial review, follows through the proactive exercise under judicial activism and attains a more debatable form of judicial over-reach. Such transgression has been brought probe in the context of the underlying principles of equity, public administration and ethics.

Literature Review: The Evolution of Judicial Powers in India

The constitutional mandate of Judicial Review was deemed necessary in the context of enforcement of group and individual rights as under the constitution. Such review over administrative action has also been provided in order to demarcate the area of functioning of both the state and central governments within the federal structure. The role of a supervisory as envisaged hereunder draws upon the principles of proportionality, reasonableness and principles of natural justice.[3] The scope of such judicial review is three fold: first, to ensure fairness in state action; second, to uphold the quintessential fundamental principles and third, to adumbrate the legislative scope of powers in the federal structure.

The bloom in Public Interest Litigation (PIL) has taken Judicial Review on a different pedestal which made the lee-way for judicial activism by virtue of the courts taking *suo-moto* cognizance of matters in greater public interest. The expansion of such right is in consonance with the advent of liberalism in the pursuit to preserve individual rights and dignity *en-route* to the attainment of collective welfare. The plethora of instances of PIL have finally led to the judiciary being attributed a positive role to assist the cause of justice. This paradigm shift has resulted from the courts reserving to themselves the aspirational role of enforcing and being in consensus with the illustrative directive principles as enumerated under the Constitution of India. The socio-economic movement through PIL draws its rudiments from '*actio popularis'* under the Roman Jurisprudence.[4] The idea envisaged here is to extend the access of courts to the individuals in the matters of public wrongs. This proposition has been particularly popular as a facet of democracy by providing the leverage in favour of the supervening public policy.

[3] National Judicial Academy, *Judicial Activism under the Indian Constitution*, Nov. 05, 2015, http://nja.nic.in/P-950_Reading_Material_5-NOV-15/1.judicial_activism%20balakrishnan.pdf last accessed on 17th November, 2017 at 11.46 hrs

[4] *Judicial System in India and Judicial Activism*, http://shodhganga.inflibnet.ac.in/bitstream/10603/40644/9/13_chapter4.pdf Last accessed on 17th November, 2017 at 12.34 hrs

The credibility and the validity attached to the office of judiciary was adequately summarised by K. Subba Rao as:[5]

- To keep rolling the wheel of federation with balance
- To achieve equilibrium of both fundamental rights and social justice
- To supervise the administrative tribunals and cause the formation of adequate forums incidental to such administration of justice

At this juncture it is noteworthy to cite Roscoe Pound's theory of social change which states that law in turn facilitates social change by contravening the social issues strategically in the long run. Such a proposition is in consonance with the consideration that the constitutional values are more than mere empirical methods as provided for. Judicial Review coupled with substantial standards being tagged as judicial activism has been perceived as a measure towards entrenchment of constitutional rights.[6] Such fortification derives further backing from Dicey's distinction between law and convention which does not impair their validity but renders such conventions subservient to the codified laws only to the extent of imparting practical relevance. However the prescription of such norms by the judiciary is not devoid of the speculation of poor enforcement.

Furthermore, the infrequent enforcement through judicial activism has gone overboard and attained the features of what has come to be termed as judicial overreach.

Interpretation of Judicial Powers by the Courts

The judiciary has cautiously marked its domain while exercising judicial review since the day of its Constitution post India's independence. It was settled that sound judicial application of mind was sought to be independent of the emotional appeal involved in a case.[7] This ensures the prominence of legal jurisprudence is not staggered. The courts have in the past closed their hands in the matters of policy decision as it did not confirm with the facets of judicial principles.[8] It was thus settled that it is not open to the courts to enquire into such matters of policy decisions on the points of merit when the same is decided within the scope of the legislative and executive powers, intrinsic to the domain of administration, as distinguished

[5] *Ibid.*
[6] TRS Allan, *Constitutional Rights and Judicial Review*, Jul. 20, 2017, http://www.tandfonline.com/doi/full/10.1080/20403313.2017.1331634 Last accessed on 17th November, 2017 at 12.24 hrs
[7] *Bandhua Mukti Morcha* v *Union of India*, (1984) 1 SCC 161
[8] *BALCO* v *Union of India*, (2002) 2 SCC 333

from adjudication. However such rigidity of judicial powers did not only impair the confidence of people vested with the judiciary to meet the ends of justice but also reflected the handicapped nature of judiciary in addressing the failure of the democratic organs in the discharge of their functions under the Constitution of India.

Judicial Activism was embraced by the courts in the context of the theory of vacuum filling and the theory of social want.[9] While the former calls for action in the need to account for the inaction of the state, the latter prioritizes the need to affect societal transformation by gaining the trust of the public, who are the sources of all powers in a democracy. The provision for directive principles under the Indian Constitution with the prescription that the government shall strive makes them more than obligatory. The positive duty cast upon the Government needed to be checked and addressed. While it begun with the broader implications under Art. 21 of the Constitution[10], judicial activism has now touched upon every aspect of public policy as a matter of right. Directive Principles and Fundamental Rights go together in the social revolution of the establishment of a welfare state.[11]

During the glorious reign of Justice P.N Bhagwati as the Chief Justice of India, the country embarked upon the introduction of the concept of Public Interest Litigation in India, which till date remains the most laudable achievement of the Indian Judiciary. He took judicial interpretation to a different level while interpreting that life as under the Constitution means not only physical existence.[12] He pioneered the cause of human rights protection by bringing to the fore the need for the courts to address the denial of basic human rights to the large masses in the country.[13] Justice P.N Bhagwati not only initiated the beginning of the Public Interest Litigation era but it also culled out the need for a *locus standi* for bringing actions on the basis of fundamental rights. Considering the magnanimity of the onus vested with the state, the courts realised the need the do away with requirement of locus standi in the light of facilitating justice. Forwarding his concept of justice, he by his dissenting judgement in the case of Minerva Mills put forth the need to read the fundamental rights in concurrence with the directive principles and not either of them in isolation.[14] His contributions towards the

[9] *Supra note 02*
[10] See *Maneka Gandhi* v *Union of India*, AIR 1978 SC 597
[11] *Kesavananda Bharti* v *State of Kerala*, (1973) 4 SCC 225
[12] *Maneka Gandhi* v *Union of India*, AIR 1978 SC 597
[13] *S.P Gupta* v *Union of India*, AIR 1982 SC 149
[14] *Minerva Mills* v *Union of India*, (1980) 3 SCC 625

interpretation of human rights as a transcendental part of fundamental rights have opened up the vistas for judicial activism in India.

Judicial Activism v Judicial Overreach: Balancing Needs or Extraneous Considerations?

Judicial Activism in the Indian context developed as an inevitable recourses to the inherent shortcomings of the functional democracy in India. This proactive approach got streamlined by virtue of the residuary and extra-ordinary powers vested with the judiciary to not only supervise the implementation of the laws but also to render its advisory opinion on the matters of legislative importance. Such reservation of powers, on the face of it does not substantiate the theory of separation of powers. The indistinctiveness of such powers being adequately interpreted led to some notorious instances of cases purely of political nature being referred to the judiciary for an opinion. When the judiciary was established as a separate organ to watch over the implication of law and interpret the constitution, it was not the intention to politicise the judiciary by requiring it to determine such matters of political relevance. This lacuna of the system was exposed when the *Babri Masjid* case was referred to the Supreme Court for its opinion on whether a temple existed on the disputed land. The Supreme Court commendably handled the issue by dismissing the question as being irrelevant, superfluous and not needing a determination.[15]

The thin line between judicial activism and judicial overreach is transgressed when the judiciary intrudes into the domain of legislature and executive. Such overreach results primarily from judicial romanticism- a phenomenon motivated by the human habit of looking up to the court for resolution of all the problems.[16] The judiciary over-burdened with the flawed expectations of the public is often clouded with the ambivalent question of judicial activism as distinct from judicial over-reach.

Earlier this year, legal protection was accorded to the rivers Ganga and Yamuna following the foot-steps of such recognition at par with human rights being granted to Te Awa Tupua River in New Zealand. A vital distinction which was however overlooked was that in the latter case the decision was made by the New Zealand Government while in India, the

[15] *Special Reference No. 1 of 1993* v *Ram Janmabhumi- Babri Masjid*, (1993) 1 SCC 642

[16] Ramesh Thakur, *Judicial Activism, Romanticism and Overreach,* The Hindu, (Mar. 04, 2008), http://www.thehindu.com/todays-paper/tp-opinion/Judicial-activism-romanticism-amp-overreach/article15177963.ece Last accessed on 17th November, 2017 at 17.07 hrs

Uttarakhand High Court assumed this role.[17] Some other instances in this regard include the Supreme Court's ban on liquor outlets in proximity of the state and national highways.[18] While opining that such was the need of the hour in order to rule out the danger and risks associated to the lives of people as a result of drunken driving, what was still left unanswered was the subsequent move of exclude licensed establishments within municipal areas. The Supreme Court not only failed to appreciate that such ruling interfered with the scope of town-planning as vested with the State Governments, but also to justify the decision on the grounds of public policy without annexing an appropriate description for the exclusion provided therein.[19] The Supreme Court's decision with respect to the expenditures in relation to the test matches and T20 series was more in the nature of a policy decision which cannot be justified by the countervailing need of the society by any reason.[20] While the SC's move to appoint an oversight committee for the supervision of the Medical Council of India was a welcome move in the light of the fiasco of the executive in meeting the dictated standards, however the continued intervention in the matter in the light of the order requiring the committee to be replaced by 5 doctors as recommended by the Supreme Court raises grave questions over the expanding scope of judicial intervention.[21] The theory of vacuum filling has been applied to an abstract concept which now knows no end as the Judiciary has assumed an omniscient role to itself. Some other inconceivable interventions that have opened up the heightened debates include the Uttarakhand chain of events including the floor test being conducted under the supervision of the Supreme Court and also the Presidential Rule being revokes so as to conduct the floor test.[22] The matters of political instability have been dealt by the court since time immemorial, but the assumption of duties of the President in order to mete out the needs of such political insurgency presents the volatile nature of the Indian democracy.

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[17] Anil Dharkeri, *CJI as CFO? The Case for Judicial Overreach is Weak,* The Times of India, (Apr. 16, 2017), https://timesofindia.indiatimes.com/home/sunday-times/cji-as-cfo-the-case-for-judicial-overreach-is-weak/articleshow/58196195.cms Last accessed on 17th November 2017 at 22.46 hrs

[18] *State of Tamil Nadu* v *K Ballu*, 2016 SCC Online SC 1487

[19] *Arrive Safe Society of Chandigarh* v *The Union Territory of Chandigarh & Ors*., SLP (Civil) No. 10243 of 2017 decided on 29th March 2017

[20] Press Trust of India, *Supreme Court allows BCCI to incur Rs. 1.33 Crore Expenses for India-England Tests,* The Indian Express, (Dec. 07, 2016), http://indianexpress.com/article/sports/cricket/supreme-court-allows-bcci-to-incur-rs-1-33-crore-expenses-for-india-england-tests-4415441/ Last accessed on 17th November, 2017 at 18.47 hrs

[21] Press Trust of India, *SC Allows Centre to Replace Medical Council of India Oversight Committee,* The Indian Express, (Jul. 18, 2017), http://indianexpress.com/article/india/sc-allows-centre-to-replace-medical-coucil-of-india-oversight-committee-4756181/ Last accessed on 17th November, 2017 at 19.42 hrs

[22] *Supra note 15*

Another controversial exercise of judicial powers was evinced by the Supreme Court's decision scrapping of the constitution of the National Judicial Appointment Commission over the scepticism that the inclusion of Law Minister was likely to skew the process by reason of political interference.[23] However extending the same rationale to other organs of the government would also render the opinion of the Prime Minister in the matters of appointment of the President, Vice-President should also be faltered. It is beyond the reasonable conception as to why such inclusion would ensure enough checks and balance in once case and would violate the pseudo-separation of powers on the other hand. Furthermore, if the principle of natural justice, *'nemo judex in sua causa'* were to be analysed, the Judicial Courts should not be having the power to decide a matter relating to their interests and cause.[24] There is no reasonable explanation that can be accorded to the requirement of unbiased and impartiality being treated subservient in the matters of national importance. At the least, the system should have been allowed to be implemented subject to rigorous checks on procedure rather than being dismissed at its inception.

Analysis

Panoramic reflection on United States' milieu

The landscape of judicial activism today is heftily influenced from United States and a paradigm shift in the judicial perspective despite dearth of constitutional buttressing is remarkable. The evolution is accredited to Arthur Schlesinger Jr. who coined the term 'judicial activism' in 1947 and was pioneering the study on American Liberalism in 20th century.[25]

The dawn for judicial activism cracked in the United States with plethora of the case especially with *Roe v. Wade*[26] which made a breakthrough development in abortion laws with the US Supreme Court upholding abortion rights for woman. The case saw judicial activism emerging amidst the divide between the orthodox Catholic beliefs and fundamentalist

[23] *Supreme Court Advocates-on-Record Association & Ors* v *Union of India*, WP (Civil) No. 13 of 2015 decided on 16th October 2016

[24] *Rule against Bias and its Types*, http://shodhganga.inflibnet.ac.in/bitstream/10603/40127/8/08_chapter%203.pdf last accessed on 17th November, 2017 at 19.33 hrs

[25] https://legaldictionary.net/judicial-activism/ Last accessed on 17-11-17 13:19

[26] 410 U.S. 113 (1973)

religious views of aborting the unborn child being equivalent to causing a cold blooded murder and the woman's 'right to choose' with reference to her health and privacy.

Another landmark judgment was the *Brown v. Board of Education*[27] where a group of parents on behalf of their children filed a law suit against the racial segregation policy of Board of Education of Kansas. The district operated separate schools for white and black and the racial segregation led to a stooping level of amenities, accommodation and treatment to black children. The US Supreme Court held the segregation policy as deleterious and struck down it as unconstitutional thus, marking a drift in the racial fabric shrouding the society.

On the other hand, there has been discernible impact in the realm of judicial overreach in United States. Often the fine line is transgressed and leads to impinging upon the limits judiciary has. The recent judgment by a federal district court judge's restraining order upon the Executive order by Donald Trump causing travel ban on immigrants from six Muslim majority countries such as Libya, Syria and few more.[28]

Japanese Judicial Niche

The Japanese scenario is viewed from the lens of confluence between the Supreme Court, the Diet, the Cabinet, the bureaucracy and the policymakers of local governments. The judicial activism arena in Japan has been championed with three kinds; firstly, various courts exhibiting pro-activeness regardless of whether the governmental action is being termed as constitutional or not; secondly, court changes its own precedents and alters the public policies and finally, both the policy makers and the judiciary change their respective policies and decisions with respect to a specific subject matter.[29]

In *Sato v. Japan*,[30] the Diet abolished absentee voting for physically handicapped persons as the system had allegedly been abused and needed to be reformed. As a consequence, the handicapped persons faced ordeals in voting and about 1 million handicapped persons lost voting opportunity. The Sapporo District Court termed the legislative policy as

[27] 347 U.S. 483 (1954)
[28] Zeke J Miller, *Trump blasts 'Unprecedented Judicial Overreach by Courts blocking travel ban'* http://time.com/4703198/travel-ban-donald-trump-judicial-overreach/ Last accessed on 17th November 2017 at 13:32 hrs
[29] Hiroshi Itoh, *Judicial Review and Judicial Activism in Japan,* https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4032&context=lcp Last accessed on 17th November 2017 at 13:45 hrs
[30] 888 Hanrei Jiho 27 (Sapporo H. Ct., May 24, 1978)

unconstitutional as it encroached and engulfed constitutional right of voting of the handicapped persons.

In light of judicial overreach, presently, Japanese premier Shinzo Abe passed a collective 11 bills from its Upper House of Japanese Diet which is termed as security bills vesting immense rights with Japanese Military with reference to collective self-defence.[31] Legal scholars and judiciary has dissented the decision which comes as a predicament to the execution of such legislation thus, marking a judicial overreach if implemented so.

United Kingdom's Perspective

The UK Supreme Court today drifting from the common law regime has prima facie adopted four facets to judicial activism such as departing from precedents, interpreting legislation in unanticipated ways, defying the government's economic, social, foreign or political policies and reasserting the common law.[32] A plethora of cases depict judicial activism in UK such as the medical negligence case of *Montgomery v. Lanarkshire Health Board*,[33] the Supreme Court struck down the test of whether a doctor's omission of duty to inform the patient about complication depends on the loss caused was struck down and the Court stated that today the doctor's bear a greater onus to inform the patient about every detail involved in the medical operation.

However, often the decision could amid a wrong turn of events turn out to be fallacious as it seeks to transgress the judicial extent. In R *(Chester) v. Secretary of State for Justice*[34], the UK Supreme Court dismissed the appeal by two life-sentence prisoners and made out a decision incompatible with the EU and ECHR principles. It is often perceived that the judiciary adopts a timid or a draconian stance in politically sensitive issue.

Inference

Juxtaposing the prevalent scenario in India and in foreign domicile, the fine line between judicial activism and judicial overreach is often misconstrued and the impact only defines under what head the judgment of the judiciary will fall. The times when along with judicial

[31] Arindrajit Basu, *Working the basic structure : Lessons the Japanese judiciary can imbibe from the Indian Supreme Court*, https://silpnujs.wordpress.com/2015/12/01/working-the-basic-structure-lessons-the-japanese-judiciary-can-imbibe-from-the-indian-supreme-court/ Last accessed on 17th November 2017 at 14:12 hrs

[32] B. Dickson, *Activism and Restraint within UK Supreme Court*, (2015) 21 (1) EJoCLI http://webjcli.org/article/view/399/515 Last accessed on 17th November 2017 at 14:26 hrs

[33] [2015] UKSC 11

[34] [2013] UKSC 63

mind the judicial conscience is applied, judicial activism takes a stand and when judiciary goes on adventurism and ventures into arena of other organs of government, it is termed as judicial overreach. A major reason for the perceptible violation of the fine line is lack of constitutional or legislative demarcation segregating the grounds for action and difference in the judicial philosophies of the judges. The canons of judiciary need to be explicitly stated and adhered to with a view to avoid a complicated juncture of encroachment upon constitutional principles and independence of other instruments of government.

Jurisprudential Analysis

The basic structure of the constitution which was once sought to be preserved with all sanctity under the Constitution of India now stands faltered in the context of judicial overreach. Such uninhibited transgression of judicial powers shall cause miscarriage of justice which cannot be construed in the light of any administrative jurisprudence. The rule of law which lies at the roots of the foundation of the contemporary institutional framework has been permeated by virtue of the all-pervasive nature of judicial powers. The supremacy of the law as envisaged under the rule of law has been misconstrued unreasonably to subvert the principles of democracy. The political morality which is the grundnorm for a democracy as proposed by Joseph Raz is skewed along the lines of irrational accrual of powers.[35] Professor Strauss elucidated the onerous duty of the courts for intelligibility and integrity pertaining to law. However, under the garb of its manifested powers, the judiciary has extended its reasoning beyond the borders of legality to delve into factual matters.[36]

Dicey's proposition of judge-made law being ancillary to the statutory law also seems to be blurred when the Judiciary seeks to assume the role of policy-maker determining the scope of legislative and executive exercise. The defence of the nature of judicial intervention been dictated by the existence of gaps in the functioning of state is nothing but far-fetched in the light of such illusionary role being played undermining the integrity of the State. Judicial Activism begun with the noble objective of relaxing the onerous duty placed with the state to address the needs of the society by providing the public with the leverage of approaching the courts for justice.

[35] Joseph Raz, *The Rule of Law and its Virtue*, The Authority of Law: Essays on Law and Morality, (2nd Ed., 2009) Pg 210-11

[36] Kevin M Stack, *An Administrative Jurisprudence: The Rule of Law in the Administrative State*, 115 Columbia Law Review 1985 (2015), Pg 2018

The Judiciary consequent to the Judicial Romanticism has been crushed under the plethora of cases seeking resolution relating to every trivial aspect of the democratic functioning. Austin's normative approach requiring law to be enacted seems to be the best measure in the light of the extensive utilitarianism principle that has been saturated to a level of miscarriage of justice in the name of common good. The needs of the contemporary society need a balance of legal positivism and legal realism; a disproportion can topple down the system of governance *in toto.* While the laws need to address the social dynamism but the certainty and uniformity of laws can be achieved through consolidation of laws.[37]

The principles of natural justice retained in the axiomatic approach under natural law jurisprudence pioneers the principles of fairness, justice and good-conscience which forms the framework for jurisprudence across the globe is absolute in nature.[38] Contravening such basic rudiments which have been retained across all schools of law not is not only extortionate but also unreasonable to every known tenet of public policy and the concept of welfare states.

Conclusion

The conceptualization of judicial activism was pioneered by Justice P.N. Bhagwati and the ripples that emerged from the institutionalization of Public Interest Litigation brought a sea change in the social fabric of India. Judicial activism is a phenomenon rather than a codified legal provision and the credence is due to the legendary Justice P.N. Bhagwati who paved way for judicially addressing the social issues and restoring faith of masses in judiciary.

However, today from the perusal of Indian and international scenario, judicial activism often transforms into judicial overreach and the reasons though many remains latent due to the fine divide between them. Often the inefficacy of other organs of the government stoops low and judicial interception becomes a necessity and at times takes an unfavourable turn impinging the basic structure and blurs the doctrine of separation of powers.

Often in India, the transgression of judicial action is attributed on religious lines as judiciary ventures into religious susceptibilities and causes havoc. The Kerala High Court's ban on

[37] *Legal Positivism,* https://plato.stanford.edu/entries/legal-positivism/ Last accessed on 17th November, 2017 at 21.50 hrs

[38] Laksheyendar Kumar, *Natural Law- Its Meaning and Definition,* Jan. 26, 2011, http://www.legalservicesindia.com/article/article/natural-law-519-1.html Last accessed 17th November, 2017 at 22.01 hrs

entry of women into Sabarimala temple, the Bombay High Court's beef ban are some of the highlights and a recent brilliant example is the Supreme Court's ban on the crackers in Delhi NCR was perceived as a judicial overreach amongst the citizens. Although, the environmental concerns certainly are legit and it has become imperative for adopting a staunch stance of any sort to save the periled circumstances but it was discerned as a target to a specific community as Diwali marks only a day celebration and curtailing that is hurting the religious gaiety and celebrations. Such judgments highlight the conjectures that entangle the fine line between activism and overreach. The most balanced judgment observed in the realm of religious sentiments is the Ayodhya verdict where the Apex Court has reserved its verdict with an objective to prevent any plausible uproar and violence between the communities.

A major responsibility arises on the organs of the government at all three levels to devise explicitly accurate and socially adaptable policies which would inhibit the judicial interception. Furthermore, the judiciary should strictly adhere to '*de minimus non curat lex*' so that trivial matters are disposed off at the initial level and the fine line remains maintained. The fine line needs to be reconciled and addressed with the judiciary endeavouring to not enter the lanes of other organs of the government and restricting itself to the activism and not adventurism.

Recommendations

- Evolving a constitutional provision aiming at segregation of judicial activism and overreach.
- Endeavouring to maintain parity on a specific subject-matter by judiciary and executive.
- Judiciary ought to be cautious in its approach and inhibiting itself from transgressing the fine divide.
- Evolving a mechanism within each organ to check enforcement and permitting judiciary only to intercept in case of dispute with due respect to the independence of judiciary.
- Identifying the plausible arenas where there can be unison and division of thoughts such as environmental, social, economic and political policies.
- There ought to be strict application of mind specific to questions of law and not on questions on facts.

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