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RESEARCH ARTICLE

JUDICIAL ACTIVISM AND OVERREACH IN INDIA

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Abstract

The researcher has worked on the Judicial Activism & overreach in India, This new epitope is exploring Indian Judiciary, Judicial Review, Art.32 and 226 of constitution, PIL, Substantive due process and Art.21 of the Indian constitution, Legislation by the Judicial Activism to overreach.

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Introduction:-

Courts have frequently performed a useful and remedial function in a variety of circumstances, gaining them public's appreciation for their services. It is crucial to understand that there is a narrow line between judicial activism, which may be advantageous, and judicial overreach, which could result in them surpassing their rightful position and power.

Prime Minister Dr. Manmohan Singh addressed a gathering of Chief Ministers and Chief Justices of the High Court in New Delhi in April 2007 and drew attention to the ongoing discussions and debates in India over the topic of judicial accountability. The Prime Minister's remarks revealed a rising feeling of popular unhappiness with how the executive and legislative arms of government are conducting themselves. People believed that these branches were having difficulty providing effective governance and were working hard to fulfil the complicated requirements of the country today.

The statement's context implied that there were doubts about the government's efficacy and responsiveness in resolving the country's many problems. Significant discussion took place in a number of places on the implications of the judiciary's lack of accountability on overall governance.

In order to create a strong system that meets the demands of the populace and preserves the fundamentals of justice and governance, the Prime Minister's remarks highlighted the significance of striking a balance between the duties and tasks of the several parts of government, including the judiciary. Key participants had a forum to debate these important issues and look at ways to improve how the government apparatus functions as a whole during the conference.

This article seeks to clarify circumstances that may have contributed to the Prime Minister's change of viewpoint. Mr. T R Andhyarjuna, a renowned constitutional attorney and former Solicitor General of India, stated that while the Indian higher judiciary holds a significant position globally and enjoys a strong reputation, there have been shortcomings in terms of accountability mechanisms, particularly concerning the discipline of judges in superior

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courts and the representative nature of the courts. These problems have not been in line with the standing and authority of the judiciary. In 2003, Mr. Andhyarjuna published a paper titled "Judicial Accountability India's Methods and Experience" in which he expressed his opinions.

Judicial Review

Judicial review is permitted by the Indian Constitution under Articles 32 (Supreme Court) and 226 (High Court). Judicial review is now firmly established by the Supreme Court as a key element of the constitution. This implies that the Parliament cannot change or limit the ability of courts to perform judicial review through amendments. In essence, the judiciary has asserted its right to assess and carefully examine the activities of the executive and legislative branches to make sure they are in compliance with the Constitution and announced its independence from legislative intervention.

Judicial review is the process through which higher courts examine and perhaps modify the judgements rendered by subordinate courts. Despite being commonly recognised and less contentious when it comes to court activities, judicial review of executive or legislative actions raises more questions. As opposed to reviews of presidential orders or legislative measures, lower court orders are often overturned, amended, or changed more frequently in practise. The opposition to judicial scrutiny of executive and legislative activities is stronger and more loud, nevertheless.

In accordance with our constitution, it is solely the judiciary's job and prerogative to determine whether a provision of law or administrative action is constitutional. The higher courts have the authority to declare a law to be unconstitutional and to reject executive decisions that do not follow the Constitution. The purpose of these judicial review privileges is not to elevate the court above other constitutionally recognised bodies of government. As a substitute, they help to provide a system of checks and balances between the legislative, executive, and judicial branches.

The system makes guarantee that any branch that violates the constitution may be remedied by the others. The goal of judicial review is not to criticise legislative or executive acts because, in a democratic system, the opposition serves this function. The judiciary's job is to determine whether executive and legislative acts adhere to the values outlined in the Indian Constitution. By fulfilling this function, the judiciary ensures that all executive and legislative arms of government uphold the integrity and fundamental values of the constitution.

Former Chief Justice of India and Chairperson of the Human Rights Commission of India, Justice Dr. A S Anand, discussed the need for prudence while discussing judicial activism and review in his talk.

The legislative, executive, and judicial branches of government are each separate and equally important in our country. The Constitution, which is regarded as the top law of the nation, applies to each and every one of them. All members of these branches, including judges, elected officials, and ministers, swear an oath to support the Constitution in all matters. It does not lessen the duty of the legislative or the executive branch to uphold the Constitution when we refer to the court as its protector. Each branch is essential to the growth and prosperity of the nation. To progress the country's development and safeguard the ideals set forth in the Constitution, it is crucial that all three branches function harmoniously together. The efficient operation of the government and the general growth of the country depend on this collaboration and coordination between the branches. The court ruling has the power to uphold or invalidate a legislative or executive decision. The court's job is not to evaluate the effectiveness or wisdom of legislative measures, nevertheless. Instead, it looks to see if the Constitution's clauses are being followed by the legislation or executive action. The legality of the legislation may also be examined as part of this review.

When the court invalidates an executive order, it does not do so out of hostility or a desire to show off. Instead, it does this in order to protect the integrity of the law and fulfil its constitutional obligations. In all of these situations, the court serves as a judicial sentinel, guarding the values and principles embodied in the Constitution and making sure that all actions taken by the various institutions of government are in accordance with the highest law of the nation.

Judicial Activism

Modern courts are moving away from their traditional passive position, when their only function was to merely overturn legislation or forbid particular behaviours. The new strategy entails adopting proactive measures, announcing instructions and decrees that specify corrective activities to effectively address problems.

According to the average Indian citizen, both the legislative and the administration have notably failed to meet their obligations to the general people. The activities of the government and lawmakers are thoroughly scrutinised and the public hold them accountable. Because these officials are so close to the public, there are high expectations, and any variation from anticipated behaviour is met with harsh condemnation.

Many residents feel obligated to seek redress of their problems through the judiciary due to the administration's apparent disinterest and lack of performance. As a result, the Indian court has taken an assertive stance, acquiring enormous popular legitimacy. However, the judiciary's aggressive posture can cause tensions and confrontations with the other departments of government, which is normal and, to some extent, considered good for the running of a democratic society.

In India, judicial activism has taken on a more sympathetic tone, particularly with the advent of public interest litigation (PIL), which has made justice more accessible and remedy more attainable for disadvantaged groups and people. The courts have taken a liberal approach, recognising even postal letters or postcards as ways of initiating prerogative writs, ignoring technicalities to ensure justice reaches people in need.

The Indian Supreme Court has broadened the idea of locus standi, allowing concerned people to bring public matters before the court. This has resulted in a significant surge of PIL actions since 1977. The events that happened during the emergency rule between 1975 and 1977 are principally responsible for the growth of PIL. Notably, there is a clear difference in judicial practise prior to and after the emergency rule, reflecting changing times and people's expectations.

This shift in judicial strategy reflects a willingness to adapt to society's changing demands and a commitment to making the justice system more inclusive and concerned with people's well-being. Despite several recorded incidents of abuses of fundamental human rights during the emergency period, the courts remained cautious.

The Supreme Court concluded in *ADM Jabalpur Shukla* (1976) 2 SCC 521 that a person held under preventive custody during the emergency lacked the common law right to seek release from an unconstitutional and arbitrary detention order, even though it was issued without legal authority. The court supported its ruling by declaring that under the emergency, the fundamental rights granted by the constitution were suspended. However, the judicial perspective changed significantly when the emergency rule expired.

The Judiciary is Not A Despotic Branch Of The State

Despite extending its role in public administration and government policy choices, the Supreme Court of India is aware of its limits and restraints. The Court emphasised in the case of *P Ramachandran Rao v State of Karnataka*, published in (2002) 4 SCC 578, that it does not regard itself as an imperium in imperio or function as an authoritarian power inside the State.

The Indian Constitution does not anticipate a rigid division of powers among the three departments of government. Instead, it precisely outlines the functions of each branch, with the goal of ensuring that they perform within their allotted boundaries as defined in the constitution. The Supreme Court of India examined these concepts in its decision in *State of Kerala v/s A Lakshmi Kutty*, reported in (1986) 4 SCC 632.

The Court emphasised in this decision that judges have a specific obligation to avoid an unduly active attitude and to abstain from intruding into realms designated for the other two institutions of government. This emphasises the significance of striking a delicate balance and adhering to clearly defined boundaries in order to safeguard constitutional government principles.

Judges must refrain from intervening in areas reserved by the constitution for the legislative and the government. They are unable to serve as lawmakers because they lack the mandate of the people as well as the practical expertise required to understand society's different requirements. Similarly, they are not entitled to take on administrative

tasks since the operation of the government is not supposed to be controlled by judges, as the founders of our constitution intended.

The judiciary frequently makes modest adjustments while interpreting constitutional provisions without openly expressing so. As a result, certain of the judges' personal beliefs may become legal principles and constitutional values. This process of interpretation may result in the evolution of the law and its implementation in response to changing societal requirements, but it must be carried out with caution in order to preserve the separation of powers and the intent of the constitution's authors.

A recent ruling made by the Supreme Court of India, which required the destruction and closure of all commercial premises functioning in residential neighbourhoods of Delhi, is an illustrative illustration of the aforementioned issue. Despite the Delhi government's attempt to legitimise unlawful structures through the passage of a Bill, the Supreme Court maintained its position that all such enterprises should be closed down.

The Delhi Municipal Corporation was hesitant to proceed with the sealing effort because it was concerned about public reaction. The Supreme Court, on the other hand, stood fast in its ruling, leaving the local authorities with little alternative but to implement the order. The sealing campaign caused protests and violence, and the ruling Congress Party, which was in office at the time, suffered election losses in municipal councillor seats.

Despite discussions over the economic, social, and psychological consequences of the sealing campaign, the court stayed steadfast in its decision. The case exemplifies how judicial judgements can have far-reaching ramifications for public mood and political results, even when competing views about the potential consequences of such measures are advanced.

The Supreme Court of India is keenly aware of its bounds and, as a result, shows discretion and caution when entering on areas solely reserved for the legislative and the government. In the matter of P Ramachandra Rao, a seven-judge Supreme Court panel ruled as follows:

The fundamental responsibility of the judiciary is to interpret the law, giving clarification on principles and rules within the realm left open and unresolved by legislation. However, it must avoid infringing on the legislative domain, which is rightly reserved for the legislature. It is not difficult to distinguish legitimate legislation through judicial instructions from the making of laws, which is only the prerogative of the legislature.

The Supreme Court reached a significant judgement in the case of Keshavananda Bharati (1973), declaring that a constitutional amendment, even though properly voted by the legislature, might be unconstitutional if it destroyed the core framework of the constitution. This judicial leap was unique in the history of any legal system. The court's decision ensured the constitution's supremacy and lasting character, rendering the essential provisions of the constitution immune to parliamentary intervention.

However, some opponents claim that the decision lacks an extensive explanation of what these fundamental characteristics are, this has raised fears that the judiciary may be able to increase its jurisdiction without clear constraints, perhaps arbitrarily extending its scope.

Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, has emerged as one of the most powerful and active articles in the Indian courts' arsenal. The judiciary has interpreted and broadened Article 21 to include a wide variety of rights not expressly stated in the constitution. This has resulted in the acknowledgment of a completely new set of rights for all persons in the country that defend and safeguard the fundamental ideals of life and liberty.

Substantive Due Process And Article 21.

In the historic decision of Maneka Gandhi v Union of India, the Supreme Court of India fundamentally revised the scope of Article 21 of the Constitution. This seminal decision established a remarkable precedent for the gradual emergence of ideas like reasonableness and justice in later legal interpretations.

Maneka Gandhi's passport was detained, and she was served with the required notification under Indian law. The Supreme Court's decision in this case resulted in a paradigm change, emphasising the critical necessity of preserving

individual rights and ensuring that any constraints on human liberty comply to rationality and fairness criteria. This momentous ruling represented a watershed moment in Indian jurisprudence, having far-reaching repercussions for the country's fundamental rights.

When Maneka Gandhi's passport was detained, she claimed that the method stated in the Indian Passport Act was unconstitutional. In its decision, the Supreme Court acknowledged that the idea of "life" in Article 21 of the Constitution extends beyond mere physical existence and incorporates all related freedoms and privileges.

For the first time, the Supreme Court emphasised that having a mechanism in place for depriving someone of their life or liberty is insufficient; such procedure must also be fair and reasonable. This significant case established the notion of substantive due process, despite the fact that, unlike the American Constitution, the phrase is not officially contained in the Indian Constitution. The Maneka Gandhi decision represented a fundamental shift in Indian jurisprudence, emphasising the need of protecting not just procedural rights but also substantive rights in order to guarantee that individual liberties are preserved under the law.

The concept of substantive due process was incorporated into Article 21 by the landmark ruling in the Maneka Gandhi case. The Supreme Court held that it has the jurisdiction under Article 21 not only to analyse the fairness and justice of the processes provided by a law, but also to assess the rationality of the statute itself.

In other words, the court has the authority to analyse not only the procedural features of a law that affects life and personal liberty, but also the substance of the legislation to ensure it is reasonable and in accordance with constitutional principles. This landmark judicial decision broadened the reach of Article 21, allowing the court to protect both procedural and substantive rights, so more effectively protecting individual liberty.

Legislation By The Judiciary

The Supreme Court of India has taken a significant step in addressing the issue of sexual harassment of women in the workplace, emphasising that every instance of such misconduct constitutes a violation of fundamental rights, including Gender Equality, as well as the Right to Life and Liberty.

The Supreme Court voiced its concern in the case of *Vishaka v State of Rajasthan*, published in (1997) 6 SCC 241, on the lack of comprehensive legislation addressing the issue of sexual harassment of women in the workplace. As a result, in the lack of such approved regulations, the Court took the initiative to set rules and norms that must be rigorously followed. The goal was to ensure the effective implementation of the basic human right to gender equality, as well as protection against sexual harassment and abuse, particularly in the workplace. The Court exercised its jurisdiction under Article 32 to protect basic rights, emphasising that these instructions would have legal weight under Article 141 of the Indian Constitution.

This issue is a classic illustration of judicial legislation and legislative invasion. Despite this, the conclusion is beneficial to the people. When the legislature fails to act, the public accepts and supports the intervention of the court. However, the legislature has not taken the initiative to create comprehensive laws addressing the issue of sexual harassment of women in the workplace, despite the fact that it has been a decade since the Supreme Court's verdict.

History Of Judicial Activism In India

Ideological confrontations between the administrative and legislative branches on one side and the judiciary on the other frequently develop in both the United States of America and the United Kingdom, driven by genuine concerns for the welfare of the people. These conflicts can arise when a conservative administration or legislature battles with a progressive judiciary, or when a progressive legislature encounters opposition from a conservative court. This dynamic gives rise to concepts such as judicial activism or judicial overreach, which refer to instances in which the judiciary takes a more active role in shaping policies or interpreting laws, as opposed to executive actions that go beyond legal boundaries, often motivated by zeal for particular agendas.

The notion of judicial activism in India began to take shape in the late 1960s or early 1970s, during the reign of Prime Minister Mrs. Indira Gandhi and the presence of eminent lawyer and legal expert Mohan Kumaramangalam as Union Minister. Mrs. Gandhi's goal at the time was to establish progressive socialistic policies that reflected her motto "garibi hatao" (eliminate poverty). Her actions included removing the Privy Purses and privileges accorded to

erstwhile rulers of princely states in pre-independence India, as well as nationalising 14 major banks to better serve the needs of the poorest parts of society.

However, the judiciary, which was conservative at the time, did not approve these measures and deemed the relevant laws invalid. This predicament resembled what President Franklin D. Roosevelt experienced during the Great Depression in the United States, when his New Deal legislation was met with hostility from the court. Similarly, Mrs. Gandhi encountered opposition from the conservative court in India to her progressive measures.

Mrs. Gandhi saw the Supreme Court of India's decision in the instances regarding the elimination of Privy Purses and bank nationalisation as an example of judicial overreach, to which she responded strongly and forcefully. It is thought that, on Mr. Kumaramangalam's suggestion, the conservative and most senior justices who constituted the majority in those decisions were passed up for the position of Chief Justice of India.

Instead, the opposing judge, Mr. A. N. Ray, who was fourth in seniority, was named Chief Justice, forcing the three senior justices (Justices Hegde, Shelat, and Grover) to retire. Because of the conflict between the administration and the court, this incident marked the birth of the doctrine of judicial activism. The episode highlighted the power struggle between the two arms of government and had a significant influence on the history of judicial activism in India.

The Pil Regime: A Heyday Of Judicial Activism

Judges such as VR Krishna Iyer, P N Bhagwati, Chinnappa Reddy, and D A Desai are well-known supporters of judicial activism, having issued several judgements that protect people's basic rights. The origins of judicial activism may be traced back to the growth of public interest litigation (PIL) and the consequent liberalisation of the locus standi rule.

PIL was created with the intention of empowering and providing justice to the downtrodden, destitute, and needy by lowering the severe standards of legal standing. The notion gained notoriety in the case of *Hussainara Khatoon v State of Bihar* (1979), when the Supreme Court heard a PIL on behalf of inmates awaiting trial who had been imprisoned for durations longer than the maximum authorised sentence for their offences. The court issued directives in this historic case to grant adequate remedy to these convicts.

Following this breakthrough, the PIL movement gained traction, resulting in landmark cases such as *Sunil Batra v Delhi Administration* (1980) and *Sheela Barse v Union of India* (1983). In these cases, the court issued critical orders to ensure the safety and security of both accused and convicted persons, male and female, including upgrading prison facilities and constructing separate lock-ups for female prisoners, among other things.

These examples highlight the transformational power of PIL in addressing issues affecting the weak and marginalised segments of society, establishing a precedent for judicial activism in protecting basic rights and promoting social justice.

Judicial Activism And Environmental Jurisprudence

The effect of public interest litigation (PIL) cases and the judiciary's proactive approach may be linked to the progressive development of concepts and doctrines in environmental law. Notably, the Supreme Court played a critical role in establishing environmental legislation in the *Oleum gas leak case*.

The court established the idea of absolute responsibility in this decision, which holds hazardous and intrinsically risky enterprises liable for any injury caused by their actions. This philosophy set a higher degree of accountability for enterprises working with hazardous chemicals, emphasising their need to protect the environment and the population.

Furthermore, the Supreme Court increased the extent of its authority under Article 32 of the constitution by issuing directives in the *Oleum gas leak case*. These instructions meant that the court may intervene and take necessary measures to protect environmental interests, even if formal legislation was missing. Overall, the combination of PIL cases and the activist style of the court has greatly contributed to the development of environmental jurisprudence, providing stronger environmental protection and supporting sustainable practises in India.

Since the Rural Litigation Kendra case, the Indian court has aggressively advocated for and included in its environmental jurisprudence notions such as "sustainable development" and the "polluter pays" principle. Furthermore, the court drew influence from a variety of international documents, including the Stockholm Declaration, Rio Declaration, Kyoto Protocol, Biodiversity Convention, and United Nations Environmental Programmes.

The court established its commitment to respecting the rights of impacted people when pursuing development initiatives such as dam construction in the Narmada Bachao Andolan case. It provided directives to guarantee that dam building did not have a negative impact on people's livelihoods, shelter, and houses. The court ordered that state governments prioritise the rehabilitation of displaced people before moving forward with such initiatives.

The judiciary has played a critical role in furthering public welfare over the years. It has stepped in to handle concerns such as incarceration fatalities, prisoners' rights, bonded labour abolition, workers' rights, imposing absolute accountability on hazardous industries, improving mental health facility conditions, and regulating pollution. The courts have broadened the definition of the "right to life" to include a greater variety of social and environmental challenges, therefore advancing the protection of basic rights and promoting public welfare.

Trespassing The Boundaries Transformation From Activism To Overreach

In all of the preceding cases, the judiciary has rightly demanded that the government meet its constitutional and legal responsibilities. This method is necessary and helpful because it guarantees that the executive performs its obligations in accordance with the constitution and laws. However, maintaining a delicate balance in the functioning of the three organs of government: the judiciary, executive, and legislative is critical.

While proactive judicial behavior in labor policy and environmental concerns is seen positively, excessive court engagement in fiscal policy, political affairs, and the internal workings of the legislature is regarded as judicial overreach. Such actions may jeopardize the operation of the two other branches of the constitution, which are meant to work independently.

The judiciary's mission is to interpret the law, maintain constitutional values, and provide justice, but it should avoid assuming the executive and legislative functions and responsibilities. Overreaching measures may jeopardize the constitutionally mandated separation of powers and jeopardize the checks and balances required for a functioning democratic society. Maintaining the integrity and efficacy of the constitutional system requires striking a balance between judicial involvements and preserving the sovereignty of other branches.

The function of the court, according to the eminent Justice J S Verma, should be restricted to ensuring that authorized officials complete their tasks when they fail to act effectively. Taking over tasks delegated to other bodies of government is not the job of the court. Judicial activism is permissible when it is within the scope of lawful judicial scrutiny. It should, however, never be arbitrary or dictatorial in character.

Recognizing the difference between "judicial activism" and "judicial overreach" is critical for a constitutional democracy to function effectively. This system's primary element is the division of powers, with the constitution acting as its basis. The judiciary establishes a healthy balance among the organs of government and the supremacy of the constitution, which constitutes the basic foundation of the democratic framework, by comprehending and defending this difference.

The police reforms case, the sealing of unauthorized commercial activities in Delhi, and the destruction of unauthorized structures in Chennai are all examples of judicial overreach when the judiciary exceeded its proper power. Furthermore, the Supreme Court's decision in *S R. Bommai v Union of India* (1994), which stated that the Presidential Proclamation dissolving a State Legislative Assembly is subject to judicial review, as well as the court's power to reinstate the dismissed State Government if the proclamation is struck down, exemplifies judicial overreach.

Other examples include the Court's orders to videotape sessions in the Jharkhand Assembly, as well as its participation in choosing a temporary speaker and calling a special session. Other examples of judicial overreach include the Governor's declaration of the dissolution of the Bihar Assembly as unconstitutional, the establishment of the central empowered committee (CFC) with quasi-judicial powers, and judicial legislation in the Vishakha case

related to sexual harassment prevention in the workplace. Furthermore, the judiciary's meddling in topics like as parking fees, helmet use, traffic laws, and educational policy, as witnessed in the TMA Pai Foundation and Islamic Academy cases, is an example of such overreach. These incidents emphasize the need of preserving a balance between the judiciary's and other arms of government's powers within the framework of a constitutional democracy.

The recent Gujarat fake encounter case, in which the court chose to monitor the inquiry and took the function of the investigative agency rather than referring the issue to the CBI, is a clear example of breaching the constitutional barrier, also known as the "mythological Lakshman Rekha."

Judicial Restraint: Need Of The Hour

The Supreme Court has emphasized the need of judicial restraint in maintaining the delicate balance of power among the many institutions of government in a democratic society. In the case of *Minor Priyadarshini* (2005 (3) CTC 449), Justice Markandey Katju articulated this idea clearly.

Each arm of government—the legislative, the administration, and the judiciary—has different functions and responsibilities, according to the Constitution. To maintain the delicate constitutional balance, these organs must resist from invading one other's territories and stay inside their designated borders. The court, in particular, should be restrained and avoid the temptation to serve as a super legislative. Such constraint not only maintains the equality of the three branches, but also protects the judiciary's independence.

The court reinforces the concept of separation of powers and maintains its own credibility and reputation by not interfering in the activities of the other branches. Judicial restraint is inextricably linked to the preservation of an independent judiciary, since judges should not act like legislators or administrators, which would muddy the distinctions between their functions. To safeguard the key ideals of an independent judiciary and the separation of powers, judges must display restraint and refrain from exceeding their authority.

The Supreme Court's constitution panel acknowledged the power of the legislature to dismiss its members in the recent "cash for query" case (*Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, 2007). The court confirmed that the legislature has exclusive jurisdiction over managing and regulating its own processes and other concerns, and that it has supremacy within its own sphere of influence.

While handling a Public Interest Litigation (PIL) that contested an executive order relating to the distribution of free color television sets to qualified households in Tamil Nadu State, the Madras High Court made an order in a separate matter.

The programme seeks to improve the underprivileged, needy, and poorer segments of society while promoting social justice and understanding of current events. It is intended to improve their lives in some way. The government should be given a lot of latitude when it comes to using tax dollars for such great causes. Under the guise of judicial review, courts should avoid from interfering with any aspect of government acts, particularly those involving the economy. In a piece that appeared in *The Hindu* on June 26, 2007, this idea was presented.

Lack Of Accountability.

Concerns about the health of a healthy democracy are raised by the judiciary's unduly strong attitude. The judiciary does not have the same amount of accountability to the people as the legislative and the government. The highest court intervenes to examine and correct the legislature if it exceeds constitutional bounds or behaves arbitrarily, despite the fact that the executive's actions can be reviewed by the judiciary in instances of social, economic, or political injustice or when they diverge from the provisions of the law and the constitution.

The only way to remedy the problem, though, is with a larger Bench or a constitutional reform when the judiciary itself oversteps its bounds. Currently, the constitution allows for the removal of judges through the extremely difficult procedure of impeachment. The judges must exercise care and prudence because of this lack of accountability.

The need of this restraint was recently emphasized by a renowned jurist and politician, the late Chief Justice Ismail Mohamed of South Africa. His statements emphasized how crucial it is to keep the judiciary's independence and power ratio intact.

The integrity and judicial temperament of the judges, their intellectual and emotional capacities applied during the adjudication process, their displayed personal character traits, and the limits they set for the exercise of judicial authority are what ultimately determine the independence of the judiciary and the public's trust in it. The possibility for misuse of judicial authority must be understood, just as it is with legislative and executive power. However, there is a key distinction: whereas an independent judiciary can review and control the misuse of legislative or executive authority, there is no equivalently effective constitutional mechanism to monitor the misuse of judicial power.

The judges' characteristics and dedication to rendering fair and unbiased decisions are essentially what determine the judiciary's legitimacy and respect. Although the judiciary is supposed to be a separate part of government, it is ultimately up to the judges who use its authority to maintain its integrity. Because there are fewer checks and balances for the abuse of judicial authority than there are for the other branches of government, preserving public confidence in the legal system depends much more on the character traits and moral principles of judges.

Therefore, it is crucial for all judges to be fully conscious of the fact that along with their vast judicial authority also comes a heavy duty. This duty becomes even more importance when judges are protected by the constitution, operating in a vacuum of jurisprudential authority with no constitutional check on their mistakes or conduct.

Given the significant effects that judges' judgments may have on both people and society as a whole, the statement emphasizes the necessity for judges to utilize their authority with great care and attention. Judges must be self-aware and accountable to respect the values of justice and fairness in their decisions in the absence of external monitoring. This knowledge emphasizes how important judicial ethics, honesty, and restraint are to maintaining the judiciary's legitimacy and dependability.

Abuse Of Power Of Contempt

Higher courts have repeatedly used the contempt authority excessively and without the requisite control. Its proper application has been overshadowed by instances of abuse. The unsettling truth, according to seasoned journalist Kuldip Nayar, is that the court has recently been concerned with its own idea of power and infallibility.

Three crucial branches—the presidency, the legislative, and the judiciary—are responsible for running our republic. Being a democratic republic, India maintains the supremacy of the constitution, and the rule of law premise requires that all levels of government adhere to the principles and structure outlined in the constitution. The state's organs will work harmoniously as a result, each contributing to the country's democratic government.

Conclusion:-

An actual worry exists, according to Mr. Dipankar P Gupta, a former Solicitor General of India, that the judiciary's aggressiveness can unintentionally inspire a more active approach by the government. Currently, the executive usually lets the courts handle unfavorable rulings. An unfavorable scenario might arise if the judiciary relies too heavily on its own authority in administrative affairs.

Mr. Gupta recommends an alternative strategy to deal with this problem. The function of the court should be to push the authorities to take proper executive measures by holding them accountable, not to replace administrative directives with judicial ones. In doing so, the court should instruct the relevant authorities on how to properly discharge their duties before ordering them to do so.

The Supreme Court also highlighted the need of upholding the Constitution's provision for the separation of powers. The judiciary must not take over the functions of the executive or legislative branches, it was emphasized. Instead, to preserve a healthy balance between the three departments of government, the court should be aware of its limitations and constraints.

These insights from the lecture, which was given on July 4, 2007, at the Institute of Advanced Legal Studies, emphasize the necessity for a cautious approach to protect the independence of the court and the constitution's division of powers.