



# JUDICIAL REVIEW: AN UNBRIDLED POWER AHEAD OF CONSTITUTION

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**Abstract :** Law is a vital element of the modern society. In modern era people focus more on contracts with government rather than knowing their rights. Maintaining the balance of power on different elements that government control judicial review was adopted. Judicial review is described as a process which a court can declare void to any law which goes against the constitution. This feature was adopted from United States Constitution.

The three organs of government that exist in India are Legislature, Executive and Judiciary. Legislature has the function of law making, executive looks after implementation part of laws and both these organs are checked by the judiciary. Judiciary also checks if laws made are ultra vires to Constitution of India or not. Separation of power feature makes these organs work in their limits. Even after this the power are been overreach by the judiciary.

The paper is going to cover the concept of the judicial review and how it is been overreached by the courts. For the better understanding of the topic the paper also have literature review. The paper describes what does judicial review means, what is its history, how is it been overreached, what is the concept of constitutionalism, judicial activism everything is been discussed. The case laws and the judgments are been also mentioned in the paper for justifying the concepts. The paper at the end has a conclusion which contains the brief of the complete paper and the solutions that are been needed.

**IndexTerms** - Judicial Review, Judicial Activism, Judicial Overreach, Constitutionalism, Separation of power, Legislature, Executive and Judicial

## CHAPTER –I

### INTRODUCTION

#### CONSTITUTIONALISM

As we go for detailed insights of constitutionalism it is first necessary to understand the term constitutionalism. Constitutionalism is all about the idea that government should have access to limited powers only and their authority should also depend on how these limits are utilized. If we try to understand the term constitution through the ancient times it had the status equivalent to that of the fundamental law and meant that the government has to follow it not legally but morally and politically. As the time changed the pressure increased of enforcing the constitution on government and the main idea was to bring the government within the purview of constitution. This gave birth to the idea or term known as limited government which means government which is bounded by the constitution. This is the primary reason for meaning of fundamental law is tweaked significantly in modern era. Along with the description of hierarchy of laws that exist it also expressed how the constitution adapted and evolved with time.

#### Constitutionalism in modern context

This paragraph will discuss how reflexive constitutionalism is when it comes to modern era. In **Marbury v Madison**<sup>1</sup> case, it was the first instance where the issue was raised and judicial review started evolving from the radical judgement that was given in the case. Judicial review's concept was to give judiciary more freedom by extending its authority in legislature's territory. The primary reason was to uphold the constitution and so that issues can be resolved by interpretation and get used to the constant change that comes with time. One of the great thing about Marshall's work was that it helped constitution in transforming to a new positive law and also helped judiciary realize their duty after which the judicial review process which determines its meaning and enforces provisions started to happen. A writ of mandamus was filed by one of the judges Marbury who approached the Supreme Court. The plea was rejected by the court and also order of the legislature was opposed. This led to the development of the doctrine of judicial law by Supreme Court. Judicial review was a very important tool which was evolved continuously by the courts as they were practicing reflexive constitutionalism.

#### JUDICIAL REVIEW

Law is a vital element of the modern society. In modern era people focus more on contracts with government rather than knowing their rights. In return they get protection from the government. This was called Social Contract Theory that was given by Hobbes. This phase is very dangerous as the law with no justice is arbitrary and also can be misused by people. Therefore for maintaining balance of power on different elements that government control judicial review was adopted. Judicial review is described as a process which a court can declare void to any law which goes against the constitution. This feature was adopted from United States Constitution. Though taken from United States there were lot of issues which were needed to be fixed and took time. Judiciary played a vital role in this. Judicial reviews can be of anything be it legislative actions, constitutional amendments or laws made by the legislature.

The three organs of government that exist in india are Legislature, Executive and Judiciary. Legislature has the function of law making, executive looks after implementation part of laws and both these organs are checked by the judiciary. Judiciary also checks if laws made are ultra vires to Constitution of India or not. Separation of power feature makes these organs work in their limits. In Indian constitution, article 50 is based on Separation of power.

<sup>1</sup> Marbury V. Madison, 5 U.S. 137 (1803)

## History of judicial review

In Dr Bonham Case, judicial review was used very early during the case. The case was about forbidding Dr Bonham to practice in London as he was not having license for the same. The case was registered by Royal college of physicians. The case was also about biasness as it violated the principals of Natural justice. Dr Bonham was fined for this act as he was practicing without license. The amount collected through the fine would be given equally to the college and the king.

The concept was adopted from USA but it has not been followed strictly elsewhere. American constitution gave birth to Judicial review. If any law obstructs the constitution of India then judiciary has the right to set aside that law passed by the parliament. Any law which contravenes the constitution can be made null and void. Judiciary has this right to make any law null and void that is passed by the legislature. Article 13(2) states that any law which obstructs the right give to people of india and is made by parliament under part 3 of the constitution will be void-ab-initio. Interpretation of the constitution of india to the full extent is in the hands of judiciary. This is the reason why judiciary is the protector of the Constitution of india. Judicial review's power has been mentioned in many articles like 13,32,131-136,143,226,145,246,251,254 and 372.

Some article also talks about how judicial review used to function before the constitution of India came into existence. Article 372(1) is about judicial review in pre-constitutional laws.

Article 13(2) talks about making any law null and void by the court after commencement of the constitution that is made by the parliament. The two courts i.e. The Supreme Court and High Court are considered as the guarantors of the constitution. Under article 32 or Article 226 gives the right to a person to approach the court if their fundamental rights are violated. Article 251 and 254 talks about who has more power between union and state law. <sup>2</sup>

## CASE LAWS

### SHANKARI PRASAD V. UNION OF INDIA (AIR 1952 SC 458)

In the case above the constitutional validity of the first amendment act 1951 was been challenged by the Zamindars on the basis that is is violating the fundamental rights and also the article 13(2) of Constitution of India and also said that Articles 31 is unconstitutional. The court in this case said that if any amendment was made under Article 368 is not considered to be a law under the article 13. Hence the first amendment act is considered to be valid constitutionally.

The Article 31(2)(A) was been added through the fourth amendment act which said that there will be no compensation unless the ownership of the property get transferred either to the state or any state corporation. The compensation that is not been fixed by the law it was stated that it will be considered to be non justiciable.

In 1964 came the 17<sup>th</sup> Amendment which was having the effect of retrospect. The article 31A(2)(a)(iii) was been added and also said that the estate may include land for the agriculture purpose or even for the purpose of ancillary which included the forest lands and also the waste lands. <sup>3</sup>

### SAJJAN SINGH V. STATE OF RAJASTHAN (AIR 1965 SC 845)

In the case above the 17<sup>th</sup> Amendment Act's constitutional validity was been challenged. The contention was been rejected by the hon'ble court in the ratio of 3:2 and the doctrine of pith and substance was been applied and was said the power to amend 13(2) was given by the Article 368. The judgment that was been made in the case of Shaskari Prasad was been upheld. <sup>4</sup>

<sup>2</sup> Lavanya Kaushik, The place of judicial review in Indian Constitution and its history, Mondaq(Aug 6<sup>th</sup>, 2020)

<sup>3</sup> Shankari Prasad V. Union of India AIR 1952 SC 458

<sup>4</sup> Sajjan Singh V. State of Rajasthan, AIR 1965 SC 845.

**I.C. GOLAK NATH & ORS V. STATE OF PUNJAB (AIR 1967 SC 1643)**

In the case above the 17<sup>th</sup> Amendment Act 1964 validity was been challenged once again and was been referring to a bigger bench of 11 judges. The judgment earlier was been overruled by the ration of 6:5 in the case law of Shankari Prasad and Sajjan Singh and said that under Article 13 the word law will also include the amendment under the Article 368.

CJI Subba Rao said that Article 368 is been providing for the procedure only and does not have any power to amend. As the power is been derived from Article 248 that is the Residuary power which is a normal law hence Article 13 test will apply.

After the landmark case the 24<sup>th</sup> amendment 1971 neutralized the effect of the case of Golaknath. Article 3(4) was added which held that all the amendments that are been made under Article 368 will not be considered as law under Article 13. The marginal cost was also been changed of the Article 368 to the power of parliament and also for the procedure to amend the constitution.

Then came 25<sup>th</sup> Amendment 1971 in which the word compensation was changed in Article 31(2) to amount for the removal of the obligation that bounds the government to provide with the compensation. Also the Article 31C was been added to the constitution which also stated the Article 14, 19, 31 will not be applying to law that is been enacted to the policy under Article 39(b) and (c) of DPSP. <sup>5</sup>

**KESAVANANDA BHARTI V. STATE OF KERALA AIR 1973 SC 1461**

In the case above the 24<sup>th</sup> & 25<sup>th</sup> Amendment Act 1971 was been challenged. The bench of 13 judges were been constituted. The ratio was 7:6 and was said that:

For the amendment of the constitution the power is been found in Article 368. It is not believable that it is lying in the power of residuary. There is a huge different between the law that is ordinary and that is constitutional amendment. The basic structure cannot be amended by the Parliament. It was held that the replacement cannot of the compensation cannot be done with the amount. Article 31(c)(i) was been valid but Article 31 (c) was been declared invalid. <sup>6</sup>

**INDIRA GANDHI V. RAJ NARAIN (AIR 1975 SC 865)**

In the case above the 39<sup>th</sup> amendment clause 4 was been challenged as a bar is been kept for the Prime Minister and speaker for the challenge of election. Hence in this case it was been struck down and was considered to be unconstitutional. <sup>7</sup>

**MINERVA MILLS V. UNION OF INDIA (AIR 1980 SC 1789)**

In the case above the concept of Judicial review was been added in the last of the basic structure of the constitution also brings along the balance between the Directive Principles and the Fundamental Rights. <sup>8</sup>

<sup>5</sup> I.C. Golak Nath & Ors V. State of Punjab AIR 1967 SC 1643

<sup>6</sup> Keshvananda Bharti V. State of Kerala, AIR 1973 SC 1461

<sup>7</sup> Indira Gandhi V. Raj Narain AIR 1975 SC 865

<sup>8</sup> Minerva Mills V. Union Of India AIR 1980 SC 1789

**I.R. COELHO V. STATE OF TAMIL NADU (AIR 2008 SC 861)**

In this case it was said that if an act is been inserted in the Schedule 9 so it can be scrutinized judicially but it can only be done to the enactments that were been added after the 24<sup>th</sup> April 1973 <sup>910</sup>

**CHAPTER –II**  
**LITERATURE REVIEW**

**BOOK-1****INDIAN CONSTITUTION AND JUDICIAL REVIEW****BY- B.P. PANDEY**

The main aim of the book is to make exposition and also for brining the facts into a sharp way. It includes that how in past the constitution was put to work and how the government work for the power of the politics and how distorted its own aggrandizement. The erroneous view is also taken by the judiciary principles of the quintessential of the constitution. The different cases are been discussed for the same and also the official views acquiescence are been subscribed. <sup>11</sup>

**BOOK-2****JUDICIAL REVIEW****BY- JUS. P.S. NARAYANA & PROF. V.R.C. KRISHNAIAH**

The book has many important chapters which explains the concept of judiciary, what are its limitations. How can the constitutional provisions be interpreted. What are the laws that are been declared by the SC and are all binding on the courts. What does the principle of Natural Justice mean and how does it work. A detailed explanation of all the writs is been provided in the book i.e. Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo warranto. This book also covers the concept of Public Interest Litigation. The book has all the important concepts and detailed study about all the topics. <sup>12</sup>

**BOOK-3****JUDICIAL POWER AND JUDICIAL REVIEW****BY- ANIRUDH PRASAD**

The indepth study is done by the author from the origin of the common law to comparing it with the concepts that are available in other countries. The analysis is done of the concepts of UK, US, France, India etc. The procedure of the judicial review is different in different countries and even different in different states. This is been explained by the author in the best way possible. The work of the author is divided in 9 major parts some of them were the origin of the judicial review in UK and US. Model and theories of the same and the book also covered the administrative actions of the judicial review in India, legislative judicial review of India, its limitations and also in dept analysis. <sup>13</sup>

<sup>9</sup> I.R. Coelho V. State of Tamil Nadu AIR 2008 SC 861

<sup>10</sup> Dignath Raj Sehgal, Judicial Review, ILS (Dec 6<sup>th</sup>, 2020)

<sup>11</sup> B.P. PANDEY, INDIAN CONSTITUTION AND JUDICIAL REVIEW, NEW ROYAL BOOK(June, 2004)

<sup>12</sup> JUS. P.S. NARAYANA & PROF. V.R.C. KRISHNAIAH, JUDICIAL REVIEW, ASIA LAW HOUSE( 2<sup>nd</sup> ed. 2004)

<sup>13</sup> ANIRUDH PRASAD, JUDICIAL POWER AND JUDICIAL REVIEW, EBC(1<sup>st</sup> ed. 2012)



**BOOK-4****THE CONSTITUTION OF INDIA****BY- P.M. BAKSHI**

The subject has an indispensable tool for reference that is the Constitution of India. In the 17<sup>th</sup> edition of this book it has a very wise commentary done on the constitution of India and also is providing an up to date developments of the legislative and all the essential judicial pronouncements. It also incorporates all the amendments that are been made in the constitution and the recent one is the one hundred and fourth amendment act 2019. The book has an special feature that after every article there is a short note which was written in very easy form for the better understanding of the reader. <sup>14</sup>

**BOOK-5****INTRODUCTION TO CONSTITUTION OF INDIA****BY- DD BASU**

This book is the introduction to the Constitution of India is a commendable work, which fulfills the need to everyone who wants to study the origin of the Constitution. The edition has the recent amendment that is 104<sup>th</sup> constitutional amendment acts and all the important judgments of the Supreme Court. The main features of the books is that it is a systematic exposition of the documents which are been arranged under chapters that are logical. As it starts from the very basic it helps to understand the concepts very clearly. The constitutional history since the government of India act 1858 to the present is been all explained and covered in this book. It contains all the changes that are been made in the constitution up to 104<sup>th</sup> amendment act. It also has all the essential judgments and case laws of the High Courts and the Supreme Courts. <sup>15</sup>

**ARTICLE-1****JUDICIAL ACTIVISM V. JUDICIAL REACH IN INDIA****BY- B NAGARATHAM REDDY**

This articles talk about the meaning of the word Judicial Activism. It is a process of the judicial outlook in the current society. It also explains what is the Manifestation of the judicial activism, what are its significance like if the legislative and executive fails to act then the judiciary can take the charges. The instances that happened recently due to this are also been explained. It also discusses how Judicial Activism evolved with time in India but after all this the power is still been misused a lot many times and the judiciary overreaches its power. Judicial Overreach is basically when the Judicial activism crosses the limits where the judiciary makes decision that are arbitrary, unreasonable. The article further discussed the characteristics of Judicial Overreach, what are the manifestations of Judicial Overreach the article also covered the advantages and disadvantages of the judicial activism. <sup>16</sup>

**ARTICLE -2****MYTH OF JUDICIAL OVERREACH****BY- SIDARTH SHARMA**

The question on judicial activism is in a limelight with the two judges of Supreme Court who are doing observation on the judiciary's overreach. The articles actually studies the veracity of the observation that are been made and discuss about the same in the articles explaining what are the pros and cons of it. <sup>17</sup>

<sup>14</sup> P.M. BAKSHI, THE CONSTITUTION OF INDIA, UNIVERSAL LEXISNEXIS(17<sup>th</sup> ed. 2020)

<sup>15</sup> IDD BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA, LEXISNEXIS( 25<sup>th</sup> ed.2021)

<sup>16</sup> B Nagarathnam, Judicial Activism V. Judicial Overreach in India, WWJ, Jan 2018

<sup>17</sup> Sidharth Sharma, Myth of Judicial Overreach, JSTOR, EPW Vol 43 (March 14<sup>th</sup> 2008)

**CHAPTER-III****ANALYSIS****JUDICIAL ACTIVISM AND JUDICIAL OVERREACH**

The Judiciary's role has been under attacked mainly from the branch of legislative which actually means that the powers are been crossed by the courts and they are becoming a lawmaking body which is extra constitutional. It is been argued that judiciary's job is for the interpretation of laws and not for making it and also the legislative authorities are been overlooked by the judiciary in many of the cases.

A lot of the times the term Judicial Activism and Judicial overreach are understood by the people as the same but their a thin line between both of them when the limit is been crossed by the judicial activism and it becomes judicial adventurism and then takes the formation of the Judicial overreach. It is on the individual's perception that the action is considered to be a overreach or a activism. The argument of the judiciary is always that due to the underreach of legislative and executive the judiciary have to come in and give the directions.<sup>18</sup>

**SOME CASES OF JUDICIAL OVERREACH****1. IMPOSITION OF PATRIOTISM IN THE CASE OF NATIONAL ANTHEM**

In the case law of Shyam Naryan Chouskey v Union of India<sup>19</sup> which made compulsory for all the cinema halls to play national anthem in India before a movies starts. All the people who are present are obliged to stand and show up respect for the same. The door of the cinema hall can be opened only after the national anthem is done so that there is no disturbance in between and also that the national flag must be displayed at the time when national anthem is playing.

**OVERREACH:**

In this case the Bijoe Emmanuel is been neglected, in this case children were been suspended from the scholl as they were no singing national anthem as the religion they belong to did not support it hence it was then said that nobody can force anyone to sing the national anthem and the school was asked to take the children back.

In the case of Uphaar tragedy it was stated that at no cost the doors of the cinema hall must be shut but according to the ruling of national anthem case it was held that the door should be shoot so in this the SC ignores the judgment given by them in the case of Uphaar tragedy.

Goes against the Prevention of Insults Honour Act 1971 which said that National anthem cannot be a part of any drama, film or shows etc.

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**2. PROACTIVE CENSORSHIIN IN JOLLY LLB 2 CASE**

In the case after the movie Jolly LLB 2 was been certified by the central board of film certification, a petition claimed that the movie was violation Section 5B of cinematograph act 1952 that is dealing with preventing of the films that are been involved with the defamation and also with the contempt of court. The petition was been admitted by the Bombay HC and a committee was been appointed for the same. The committee was also given the power by the court that they can make the suggest the changes if needed. The court then gave the order to cut 4 scenes which were been recommended by the committee. The reasoning that court gave was that it was defamatory to the profession of lawyers.

**OVERREACH:**

In this case the court unnecessarily interfered as the cinematograph act 1952 deals with the provisions that are related to the films certification and it is clearly showed that power to censor the film is only with the board of this committee and the cuts that are been suggested is done after the appeal is been led to the appellate tribunal and under this act the courts have no power to modify or certify or refuse the films certification.

<sup>18</sup> Vijaysai Reddy V, *Judicial overreach and Restrains on freedom of press*, NIE 14<sup>th</sup> Dec, 2020

<sup>19</sup> Shyam Narayan Chouskey V. Union of India 2017 SCC SC 129

<sup>20</sup> Rajeev Dhawan, *National Anthem in Cinema Halls is enforced patriotism*, TET, Oct 29<sup>th</sup>, 2017

It is also violating the Article 19(2) of the constitution which is freedom of speech and expression and it is said that reasonable restriction can be imposed by law only and the order that is given by the court does not come under law for the Part III which defines fundamental rights. Thus the order passed by the Bombay HC was without any authority.

This is also contradicting the judgment that was by Delhi HC in which PIL was initiated to cancel the license by the certification board. The PIL was dismissed as there was nothing which was related to the public interest and as it is been filed by just seeing the trailer so it might be premature. The appeal made to the SC was also rejected where Justice Lodha said *“if you don't like it, don't watch it”*.<sup>21</sup>

### 3. CASE OF LIQUOR BAN

In this case the ruling of a PIL in the SC was made which was related to the road safety and in this the sell of liquor was banned at the hotels, bars retail outlets which were 500m close to the state or a national highway.

#### OVERREACH:

The DPSP are the policies that are to be issued by the government. The court has no job to force the government for implementing it. the order that was given was against the concept of the separation of powers which is given by the constitution. The matter of this case was based on the administrative and the decision should have been made by the state government. The court was not a correct authority to make this decision.

Article 42 which says *“the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as in necessary for doing complete justice in any cause or matter pending before”* will not fit in the case for invoking the extra power of court although no notification was given by the state government the ban by still been extended by the court. This created a lot of problems.

The court had no evidence present which showed that banning the sale of liquor will help in reducing the death rate at the highways. Even the government had to face a lot of loss in the collection of revenue.<sup>22</sup>

### 4. CANCELLING OF TELECOM LICENSES IN 2G CASE

In this case the order was given by the SC for cancelling the license of 122 telecoms as the FIR was been registered by the CBI against the telecom department and allotment of the spectrum was done to eight different companies too. The process was said to be flawed by the SC. The government was then directed that the national resources must be allotted through auctions only.

#### OVERREACH:

The result of decision of cancelling license is rising non performing assets. The court here did not look into the loss that the economy is been facing because of this. Because of this decision the problem is still been faced by the telecom sector. Even the bank loans were been increased due to this.

The country's economic decision is the sole domain of the bodies like executive and legislative and in this case the power was been overreached by the court which gave a big impact on the economy.<sup>23</sup>

### 5. LODHA COMMITTEE REPORT ON BOARD OF CONTROL FOR CRICKET IN INDIA

This was been set up by the SC which followed the corruption allegations, fixing of match and also scandals of betting in the Indian cricket. The committee was been made to bring back the law and other in the BCCI and also in the cricket game. The committee gave the recommendation that BCCI shall come under RTI, the betting in cricket should be legalized, holding the position of office for more than two years consequently, the official positions must not be held by the government servants or ministers etc, one person should have one post only, the cricket bodies that are representing the states must have given the membership and also the rights of voting in BCCI and also

<sup>21</sup> Vidya, Bombay HC orders deletion of four scenes from Jolly LLB 2, India Today, 7<sup>th</sup> feb, 2017

<sup>22</sup> Krishnadas Rajagopal, Bar, Pubs, restaurants too come under highway liquor ban, The Hindu, 31<sup>st</sup> March 2017

<sup>23</sup> J. Venkatesan, SC scraps UPA's 'Illegal' 2G sale, The Hindu, July, 26<sup>th</sup> 2016



that the voting rights must not be given to the members of the all India university, Railway sport promotion board etc and should have the status of the members associated.

### **OVERREACH:**

The registration and the governing of the BCCI is done by the Tamil Nadu Societies Act and no money is take from the government by them and the controlling power was not given to central and neither to the state government. On the basis of the byelaws the officers, president and the secretary are been elected. So in this the lodha committee had no authority for making any recommendations. The instructions must have been given by the court to the BCCI in accordance to the provision of the act.

The court should not prescribe that how should a sport body should be run. The institutions's autonomy must be respected. For the development of such areas the interference and the violation from the external sources should not be done.<sup>24</sup>

### **6. THE NJAC CASE**

The striking down of the case of NJAC bill and the 99<sup>th</sup> constitutional amendment, the Allahabad High Court passed the order that it was mandatory for the Bureaucrats for sending their children to the government school in this case it is clearly shown that the power is been misused by the Allahabad High Court and thus leads to Judicial Overreach.<sup>25</sup>

### **PROBLEMS THAT OVERREACH CAUSE**

- The spirit of the constitution is been destroyed because the democracy follows the concept of separation of powers in the government organs.
- It also gives rise to conflict happening between the system of legislative and executive.
- As the judicial activism is helping to strengthen the faith of people in judiciary but the act done by the overreach completely destroys it.
- It is appearing as an act that is "tyranny of unelected" in the rule of the representative of the elected democracy.
- The trust of the people are been reduced for the public institutions that is turning out to be a very dangerous step for the democracy.
- It is also a Judicial time waste which can be utilized in which other essential matters can be heard which are related to the importance of the public related matter that are pending in front of the court.<sup>26</sup>

### **SOLUTION**

- As the legislature, executive and judiciary have its own sphere in which they perform their functions hence it is every essential that they should not encroach the domain of each other and confine to themselves only if this is not done it will affect the balance of constitution.
- The self restrain must be exercised by the Judiciary and the temptation must be eschewed to act as a super legislature if this is been exercised it will help to enhance the power and respect of judiciary itself.
- Judicial restraint is complementary to the balance of power among the branches of state independently. It helps in accomplishing it in 2 different ways that is
  1. It not only provides with the quality among the executive and legislative with the judiciary it also provides the equality by inter branch minimization by the judiciary's interference.
  2. It also protects the judiciary's independence and helps in complementing the overarching values of independence of judiciary and also of the separation of powers.<sup>27</sup>

<sup>24</sup> Sumit Chakraborty, *BCCI vs. Lodha Panel*, Financial Express 6<sup>th</sup> Oct, 2016

<sup>25</sup> Various, *Judicial Review vs Judicial Activism vs Judicial Overreach*, IPN (20<sup>th</sup> Nov 2016)

<sup>26</sup> Utkarsh Sharma, *Judicial Overreach*, ILS (30<sup>th</sup> Jan, 2018)

<sup>27</sup> R Shunmugasundaram, *Judicial Activism and Overreach in India*, SALS (2007)

**CHAPTER – IV****CONCLUSION**

The path from just interpreting the books that directed the power of government to a better approach for safeguarding constitution has seen a lot of changes in it. Judicial review has moved a step ahead and also adopted the approach of activist. The field is also been expanded and even the interpretation roles have been expanded too, it also gave rise to the practice of reflexive constitutionalism.

The concept of separation of power is been adopted in India so it cannot be assumed that the judicial review power is in a form which is full extended. If the court is presuming the power fully and arbitrarily of the judicial review then it will be leading to very bad work in the performance by all the government organs. For the functions to work properly every work that is to be done should be in a proper way. The concept of the judicial review in India embedded to the basic structure of our constitution. This concept is for helping the court so that it keeps a check and balance on the organs of the government that are working and the power is not been misused by them and also they work with the accordance of the constitution. The concept of the judicial review was been developed and became a part of basic structure in case law of *Minerva Mills V. Union of India*. Though the judicial review has given a power to safeguard the right of an individual and also prevent with some miscarriage is happening of the justice but it is still a lot many times been overreached by the courts. Judicial overreach basically means the interference of the judiciary even the accurate functioning of the executive and even the legislative organs of government that basically means that the functions of judiciary are been crossed by itself and pokes in functions of executive and legislative. This is said to be undesirable in democracy. It also goes against the concept of separation of powers. Some of the examples are been explained in the paper above.

**SUGGETIONS**

The court should perform the task that should be compiling the authorities for acting and passing an executive appropriately instead of substituting judicial ordered for the one of the administrative. They must be provided with the duties that are to be discharged by them properly and also command them to do the same. For doing this they must be accountable to the court. In the case of *Indian Drugs and Pharmaceuticals Ltd V. Workmen* it was held that the arrogation of the Supreme Court cannot be done to itself or to the powers of the legislature or the executive. The separation of power is a broad concept under the Constitution of India and also of the judiciary should know their limits and their ambit in which it needs to work.

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