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Author:
Harsh Chotwani
Amity Law School, Noida
3rd Year, BBA LL.B. (Hons.)

**HAS JUDICIAL OVERREACH HINDERED COVID PANDEMIC
MANAGEMENT?****What is Judicial overreach?**

There is a thin line dividing judicial activism and judicial overreach. Judicial activism implies the use of judicial power to articulate and enforce what is beneficial for the society in general, while judicial overreach implies when judicial activism crosses its limits. In layman terms when judicial activism crosses its limits and becomes judicial adventurism it is known as Judicial overreach. While overstepping the powers given the judicial system may step in with the proper functioning of legislative or executive organs of the government.

- It occurs only when judiciary starts to intervene with the proper functioning of legislative or executive.
- Judicial overreach is considered undesirable in any democracy.
- It goes against the basic principle of separation of powers.
- In any scenario the only defence given by judiciary is that they only stepped in to the cases where legislative and executive have underreach.

Examples in accordance with judicial overreach

Although it might be a matter of perception regarding judicial overreach, some examples showcase overreach by the judiciary one of them is misusing the power to punish for contempt of court.

NJAC and the 99th constitutional amendment¹

The Supreme court of India on October 16, 2015 struck down the National judicial appointments commission (Established through 99th constitutional amendment) on grounds of being unconstitutional. The sole purpose of this was to replace the collegiate system.

Banning of firecrackers

In November 2020 the Vice-President of India in the 80th All India Presiding Officers Conference termed the banning of Fire crackers during Diwali by Supreme court as judicial overreach.

Imposition of Patriotism in National Anthem Case

In the case of *Shyam Narayan Chouksey V. Union of India*² (December 2016), The Supreme Court of India made it mandatory that:

- All the cinema halls shall play the National Anthem before the movie starts.
- Every citizen present in the hall are obliged to stand up during the National Anthem to pay respect.
- The entry and exit door should be closed to avoid disturbances.
- The National Flag is to be displayed on the screen.

Separation of Powers (An Overview)

The theory of separation of powers was first put forward by Montesquieu (French philosopher) in 1747 in his book 'Espirat des Louis'. According to **Montesquieu's** theory of separation of powers the state is divided into Legislative, Executive and Judicial powers. He argued that to promote Liberty most effectively, these three powers must be separated, acting independently.

Judicial overreach in the matters of PIL

- Since 2018 the Madras high court were hearing a PIL petition which initially asked the court of madras to declare the linking of Aadhaar with a government identity proof as being mandatory for registering email and social media accounts.

¹ INDIAN CONSTITUTION, 99th Amendment act

² AIR 2003 MP 233

- Later the petitioners, victims of cyber-bullying went to the court as they found that law enforcement agencies inefficient at investigating cybercrimes, especially when it came to gather information about pseudonymous accounts on major online platform. This case brought some of the most repulsive trends in policymaking in India.
- One of the issue is argued in the book *Courting the people*³. According to the author the courts have continually expanded the scope of issues as considered in PILs. In this case it was clear that the court is not reviewing about any question of law. It could be considered as repudiation of the separation of powers provision in the constitution.

Judicial over-reach during pandemic

A judge is perceived as supreme, the one who gets to have the last word and the words uttered by the judge are considered as the pearls of wisdom. However, the ongoing adjudication of cases related to covid-19 management has set a worrying precedent of judicial over reach, creating dilution in the basic structure of Constitution i.e the “separation of powers”.

“From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked”⁴. The responsibility concurred within the constitutional framework lies with all stakeholders. However, during these pandemic situations, it was seen that the judiciary took matters in their own hands.

It was pointed out that the Allahabad high court entered the executive sphere, Suo moto and declared that the five cities of Uttar Pradesh must go into lockdown.⁵

Another issue that came up was the possibility of challenging executive orders for carrying out political capriciousness in a time of unprecedented crisis. In such a case the judiciary must bear in mind that though it must act in public interest, it also has a primary duty to safeguard executive power.

³ Gurshabad grover “Judicial overreach into the matters of regulation” Aug 27,2019

⁴ BIBLE NIV, Luke 12:48, 1973

⁵ S.N Aggarwal “Judicial overreach in times of Covid-19” The Indian Express, May 18, 2021

Benefits of Judicial over reach during pandemic

As the second wave approached and caught the executive with very little to do, the judiciary stepped in with immediate actions. The supreme court and the high courts passed orders to ensure better management of the pandemic. Whether it was the availability of oxygen, vaccinations, bed allocations or drugs.

- The Allahabad high court asked the Uttar Pradesh government to fix a minimum of Rs1 crore for officials who couldn't survive to the pandemic because of panchayat election duties.⁶
- The Kerala high court ordered a ceiling on charges in private hospitals for covid-19 treatment.⁷
- The Uttarakhand High court pulled up the state government for allowing of the Kumbh mela against scientific advice and for not following the standard covid protocol.
- The courts ordered a "Controlled reopening of the city" in accordance with the cases.
- The intervention of court began as merely a response to an individual problem. However, some may perceive it as undesirable, it was the court that stepped up during the pandemic.

In absence of such expert and administrative experience the executive body, doctors, scientists would've been left with very little room to figure out innovative solutions.

CONCLUSION

The pandemic has indeed caused a severe impact on the entire mankind. Many lost their lives while many are risking their lives to help others, it has destroyed families and left many

⁶ Omar Rashid "How Allahabad high court is monitoring U.P govt's response" The Hindu, May 12,2021

⁷ Rekha Dixit "Has judicial overreach impeded COVID-19 pandemic management?" The week, May 23, 2021

children orphaned. There were cases where the executive body, doctors and scientists were left with little to work with and in such cases the Judiciary stepped in and provided innovative solutions as well as expert and administrative opinions. From making sure that citizens are provided with adequate amount of oxygen, arranging of vaccinations from different countries to fixing a 'minimum' ex gratia for officials who succumbed to the pandemic; the Judiciary always came in-hand.

In some cases, the judiciary have called upon the executive to perform its obligations under the constitution and the laws. While it may be desirable but it will still be against the scheme and philosophy of the constitution.

So, the main question arises whether it was necessary for the judiciary to over reach its powers and go against the constitution? There are different perspectives while some may say it was unconstitutional, some say it was important in a pandemic situation as the powers of other bodies were lacking a quick decisive authority. In my opinion the involvement of judiciary in such matters hindered the basic principle of separation of powers but it was somewhere important as the lives of citizens are much more important than the constitution. If there was no constitution people would still figure out a way to live but if there were no people the constitution would be pointless.

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