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Judicial Oversight in Fiscal Policymaking: Balancing Economic Discretion and Constitutional Mandates

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A crucial nexus between constitutional principles and economic governance is the judicial scrutiny of fiscal policy. Examining the fine line between judicial intervention and economic discretion accorded to the policymaker, this article will look into the complex role of courts in scrutinizing fiscal measures. While the government and legislature have traditionally been in charge of economic decision-making, judicial oversight ensures that these policies follow constitutional requirements, thereby preventing discrimination, arbitrariness, or improper procedure. The author will use a doctrinal research approach to discuss this subject by addressing important issue areas using scholarly discourse, landmark rulings, and statutory analysis. One significant gap that has been found is in the absence of a standardized framework for evaluating fiscal policies that are subject to judicial review, which creates disparities in the way courts view the boundaries and scope of these policies, which might lead to judicial activism. The inherent contradiction in this makes maintaining constitutional values while honouring economic knowledge even more difficult. Another serious error is that there are no comprehensive standards to strike a balance between socioeconomic rights and financial constraints. The article argues that courts play a vital role in ensuring that budgetary decisions are open, fair, and constitutionally sound, even as their involvement in fiscal affairs must be limited to protect the authority of the executive. This analysis suggests that this balance is preserved through a subtle strategy that neither abdicates judicial responsibility nor oversteps into policymaking. This study concludes by emphasizing the importance of improving the judicial approach to fiscal policy and providing a more accurate framework to fill in the gaps found. Such developments are necessary to recognize the expertise-driven character of fiscal decisions

while preserving constitutional foundations in economic governance. This study adds to current debates and calls for more research in this crucial and developing field of law.

Keywords: *judicial review, fiscal policy, administrative authority, judicial activism, economic governance.*

INTRODUCTION

A key tenet of the Indian Constitution is judicial review, which guarantees that executive and legislative activities continue to be guided by the Constitution's directives. The prevailing trend is that the principle of total judicial deference to administrative policy judgments is no longer the rule, and the courts would not hesitate to take a 'hard look' at administrative policy decisions when the time is ripe.[1] The administrative policy decisions and, if necessary, would review a fiscal policy[2] decision under the 'larger public interest' and 'proportionality' standards as defined by Black's Law Dictionary, is the strategy a government uses to impact the economy and attain stable growth through taxing and spending. By protecting fundamental rights, maintaining the federal system, and enforcing the rule of law, this mechanism enables the court to serve as the custodian of the Constitution.[3] Nonetheless, there is a special difficulty in applying judicial review to budgetary policy. The judiciary must walk a tightrope between intervention and restraint since fiscal choices frequently touch on intricate political and economic factors. The concept of judicial activism, in which courts proactively fill legislative or executive gaps, is closely associated with the emergence of judicial review in India. While it is celebrated as being flexible enough to adapt to the vicissitudes of societal requirements, this tendency has necessarily generated debates about overreaching by the judiciary and upset its sensitive division of power. Judicial activism should be used to bridge legislative gaps rather than usurp the authority that belongs to other governmental organs. This balance is especially important when it comes to fiscal policy, as judicial review frequently sparks discussions.

[1] 'Judicial Review under COI' (*Drishti Judiciary*, 02 September 2024) <https://www.drishtijudiciary.com/to-the-point/ttp-constitution-of-india/judicial-review-under-coi> accessed 12 December 2024
[2] Henry Campbell Black, *Black's Law Dictionary* (6th edn, West Publishing Co. 1990)
[3] *Motor Vehicle Manufacturers Association of the United States v State Farm Mutual Automobile Insurance Co.* [1983] 463 US 29

THE CONSTITUTIONAL FOUNDATION IN INDIA

The Indian foundation of judicial review lies in Articles 13, 32, 131, 136, 142, and 226 of the Constitution,[4] by which the court is empowered to determine whether laws and governmental actions are constitutional. Yet, while it is widely believed that the court acts as a watchdog of the Constitution, its intervention into matters of fiscal policy is often distrusted. By definition, fiscal policy implies complicated economic analyses, distribution of resources, and public spending, which customarily fall within the province of the legislative and executive branches. The judiciary should thus exercise restraint in matters such as these lest it trespass into the domain of elected officials and specialists. This is, perhaps, the essence of separation of powers, the foundation upon which constitutional governance and judicial restraint in policy matters.[5] This doctrine that the separation of functions be preserved, so that no authority shall be able to usurp or usurps all the three organs, and is reiterated by such landmark judgments as *Indira Gandhi v Raj Narain*.[6] The role of the judiciary, as outlined in this case, is to interpret and uphold the Constitution without interfering in policy decisions unless they violate constitutional principles. The tension between judicial activism and restraint becomes particularly pronounced in fiscal policy, where courts must balance the need to uphold constitutional values with the imperative to respect legislative and executive prerogatives.

JUDICIAL EVOLUTION OF THE FISCAL POLICY

Cases related to fiscal policy can be seen as how diligently the judiciary approaches economic topics. In *R.K. Garg v Union of India,*[7] the Supreme Court established the presumption of lawfulness for fiscal enactments, which reflected the argument that the legislature and gurus should be the authority on matters of economic sagacity. This judgment had shown the judiciary's deference to the legislative power amidst complex socioeconomic issues. Along these lines, in *BALCO Employees' Union v Union of India,*[8] the Court upheld the principle that the

[4] *A.K. Kaul v Union of India* (1995) 4 SCC 73
[5] Dr. (Mrs.) Jyoti Jajodia Mozika, 'Judicial Review and Policy Decisions: Emerging Perspectives' (2013) 4(1) Indian Journal of Law and Justice <https://ir.nbu.ac.in/server/api/core/bitstreams/77766da1-701d-4953-808c-716e0d8ecff1/content> accessed 12 December 2024
[6] *Indira Gandhi v Raj Narain* (1975) 2 SCC 159
[7] *RK Garg v Union of India* (1981) 4 SCC 675
[8] *BALCO Employees' Union v Union of India* (2002) 2 SCC 333

judiciary should only enter policy concerns when constitutional or legislative violations manifest in clear ways. Such judgments and the resultant decision on the independence of legislative and executive bodies underscored the role of judicature regarding economic policy and understanding its limited scope.

Although it may be useful in correcting legislative and administrative errors, judicial activism carries the risk of overstepping, particularly in budgetary policy. A proper understanding of the constitutional framework and the limits of the authority of the judiciary must form the basis for any involvement in economic affairs. In *Mumbai Kamgar Sabha v Abdulbhai Faizullabhai*,[9] Justice Krishna Iyer's observations reveal the transformative power of judicial activism when used responsibly. He noted that judicial creativity must be based on constitutional principles and be a catalyst for social justice. However, courts undermine the concept of separation of powers and public trust in democratic structures when they attempt to formulate policy without sufficient information and when they pay scant heed to the challenges involved in exercising economic power. Activism and judicial review are the most essential instruments under the Indian legal system; however, they have to be exercised in light of constitutional principles, particularly the idea of separation of powers.[10] The courts can preserve integrity in democratic institutions and the federal design of the Constitution by carrying out judicial restraint while strictly upholding justice. This essay seeks to investigate the complex relationship between India's fiscal policy and judicial review, examining the implications for constitutional government. In so doing, it addresses the inherent risks of overreach while probing the more general issue of judicial activism, exploring how the dynamic responses of the judiciary have shaped the contours of constitutional law. This paper strives to provide an in-depth understanding of how the judiciary manages the relationship between significant judgments and theoretical thought.

[9] *Mumbai Kamgar Sabha v Abdulbhai Faizullabhai* (1976) 1 SCC 828

[10] Ananya Kumari Mehta, 'Judicial Activism and Judicial Intervention in India in Terms of Judicial Review - A Critical Analysis' (2023) 3(2) Indian Journal of Integrated Research in Law <https://ijirl.com/wp-content/uploads/2023/04/JUDICIAL-ACTIVISM-AND-JUDICIAL-INTERVENTION-IN-INDIA-IN-TERMS-OF-JUDICIAL-REVIEW-A-CRITICAL-ANALYSIS.pdf> accessed 12 December 2024

ENGLISH JURISPRUDENCE OF JUDICIAL REVIEW: A CRITICAL ANALYSIS

The concept of judicial review of administrative decisions in England has been formed under the influence of parliamentary sovereignty, which has often limited the judiciary's right to investigate legislative and executive activities. The English Constitution is largely unwritten, and its ultimate sovereignty belongs to Parliament. As there is no formal written constitution, the constitution does not explicitly grant the courts the right to review acts of Parliament. Instead, the scope of judicial review is determined by the concept of parliamentary sovereignty, especially when it comes to administrative acts and the validity of delegated legislation.[11] In England's past, judicial scrutiny of laws approved by Parliament was limited by the doctrine of parliamentary sovereignty. Traditionally, the purpose of judicial review has been to ensure that the activities of the executive or administration do not exceed the authority granted to them by Parliament.[12] Only when administrative judgments were found to be ultra vires—beyond the power granted by Parliament—could courts declare them unlawful. This limited framework reflected the idea that the judiciary should implement the 'will of Parliament'" rather than participate in substantive policy-making.

GAME-CHANGING CASE OF WEDNESBURY

Cases like Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1948)[13] mark the transition towards a more in-depth kind of judicial review. The jurisprudence of English law on this subject was also created by these cases, and they determined the limits of judicial review. The Court emphasized in the Wednesbury case that an executive decision could only be overturned if it was found to be 'so unreasonable that no reasonable body could have reached it.'[14] In this judgment, Lord Greene MR established a high bar for judicial involvement in executive decisions, holding that while courts could examine the legitimacy of administrative measures, they could only do so in situations where the decision was unreasonable. The author

[11] *Bradlaugh v Gossett* [1884] 12 QBD 271
[12] Devansh Tyagi, 'Judicial Review in India' (2023) 6(3) International Journal of Law Management and Humanities <https://doij.org/10.10000/IJLMH.114840> accessed 12 December 2024
[13] *Associated Provincial Picture Houses v Wednesbury Corporation* [1947] 2 All ER 680
[14] Michael Taggart, 'Proportionality, Deference, Wednesbury' (2008) 3 New Zealand Law Review <https://search.informit.org/doi/10.3316/agispt.20092336> accessed 12 December 2024

opines the courts' reluctance to enter the realm of policy issues and their sole focus on legality sometimes made it harder for them to defend people's rights because the role of the judiciary in administrative decisions was not yet fully developed. And though the courts were supposed to ensure that ministers were acting within their statutory limits, this setup did not necessarily solve the central problem of protecting fundamental rights. This judicial review gap has to do with crucial questions over the proper balance of judicial restraint and the need for strong checks on the exercise of executive power.

THE ROLE OF THE HOUSE OF LORDS IN JUDICIAL INTERPRETATION

The grounds for judicial review were further described in the GCHQ case.[15] In this case, the House of Lords expanded the list from the three main grounds into 'illegality, irrationality, and procedural impropriety.' These principles enabled courts to examine decisions concerning their legality, procedural fairness, and rationality, thus ushering in a new dimension of sophistication in judicial review.[16] The overall bar for judicial involvement, however, remained high despite these advancements, and courts continued to refrain from getting involved in policy issues that were thought to be the sole purview of Parliament. According to this doctrine, the primary function of judicial review in England was that the executive branch had acted within the limits that the law had granted. Courts were generally reluctant to second-guess or overturn the discretion of the executive as exercised on matters of administrative convenience or policy. This is stated explicitly in the decisions of many justices, such as Lord Diplock in *R. v Secretary of State for Education and Employment*, Ex Parte Begbie,[17] and Lord Justice Lawton in Laker Airways.[18] Lawton emphasized that judges were only concerned with ensuring that some ministers acted within their legislative powers and had no role to play in how policies were determined. Similarly, the views of Lord Diplock illustrated the judiciary's inability to scrutinize the executive's actions, particularly those related to policy-making.

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[15] *Council of Civil Services Unions v Minister for the Civil* Services [1985] 3 WLR 1174
[16] Arindum Roy et. al., 'The Scrutiny of Judicial Review in India – An Ultimate Challenge' (2023) 4(6) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_7c523197f8534998a1f9cad1885d6419.pdf> accessed 12 December 2024
[17] *5R. v Secretary of State for Education and Employment, Exparte Begbie* [2000] 1 WLR 1115
[18] *4R. v England Revenue Commissioners, Ex parte National Federation of Self-employed and Small Businesses* [1982] AC 617

Still, some were against the judicial review system of England. Some argued that the courts' ability to protect individual rights and liberties was limited by their strict adherence to the idea of legislative sovereignty. Accountability issues arose from the fact that the English courts refused to scrutinize the merits of executive judgments, especially where those judgments concerned policy. Because judicial restraint was considered important in administrative matters, some executive measures might remain unassailed even if the public had deemed them unfair. The evolving role of judicial review in the modern framework of government is yet another area of potential lacuna. Human rights questions, the increasing complexity of the administration, and the relationship between Parliament and the judiciary were the central themes of the traditional English approach. Because of the Rules, it was rare for administrative decisions of the authorities to set an extremely high bar for challenge by successfully contesting on this basis. It was commonly believed that criticising the executive branch was outside the constitutional purview of the judiciary.[19] Choices are based on their merits. Only the most unfair circumstances were to prompt the courts to step in. Until recently, Lord Diplock's dividing line between issues of law as belonging to the courts and policy and efficiency as belonging to Parliament stood as the benchmark for English judicial review jurisprudence.

JUDICIAL REVIEW IN INDIA: EVOLUTION AND CONSTITUTIONAL SIGNIFICANCE

Legal actions carried out by public administrative authorities, whose basic function is to supervise and conduct public policy, are known as administrative actions. Administrative actions, unlike legislative or judicial acts, are focused on specific situations and issues and are often related to law application rather than interpretation or innovation.[20] Although these behaviours may touch upon an individual's rights, they do not create or otherwise determine such rights. Nevertheless, administrative acts must always be conducted justly and fairly and by the principles of natural justice.[21] This means that even though administrative bodies are not

[19] Kruti Verma, 'Exploring Judicial Review Across Borders: A Comprehensive Comparative Analysis of the Indian and United Kingdom's Legal Systems' (2024) 35 Pen Acclaims <http://www.penacclaims.com/wp-content/uploads/2024/12/Kruti-Verma.pdf> accessed 12 February 2025

[20] *Ibid*

[21] M.P Jain and S.N. Jain, *Principles of Administrative law* (9th edn, LexisNexis 2021)

bound by the strict procedures that apply to judicial acts, they cannot ignore justice when acting on policy concerns.

CONSTITUTIONAL CONTRIBUTION AND UNDERSTANDING OF THE RULE OF LAW

According to the Indian Constitution, the rule of law governs and controls all state organs. According to the idea of the rule of law, the State must carry out its duties in an equitable and just way. Fundamentally, the need to act judicially means acting justly and fairly rather than irrationally or capriciously. The fact that administrative acts are frequently exempt from the same processes as court rulings is what distinguishes them. Formal processes like gathering evidence, hearing arguments in courts, and rendering a well-reasoned decision are not necessary for administrative bodies to follow[22]. Rather, they usually base their decisions on expediency, discretion, and subjective satisfaction. They have more freedom to choose, but this also raises questions about justice and openness. Finding a balance between accountability and discretion is the main obstacle here. The author's point of view is that the administrative bodies must, for their actions, be responsible even if they need leeway to act quickly and on the ball in some circumstances. Of course, being easy to dispute administrative acts with no established procedures in place makes this also a pathway for misuse. Decisions made only on the satisfaction of personal feelings, for example, have the risk of being made without adequate examination or supervision. Consequently, the legislative framework that governs administrative activities must ensure that even in the use of discretion, it is done within parameters that promote equity and justice.

In *I R. Coelho v Tamil Nadu State,* in a majority judgment, the court recognized the supremacy of judicial review of every provision of the Constitution and authoritatively defined the scope of the basic structure concept. The study demonstrates that judicial activism cannot exist and does not exist in and of itself.[23] The judiciary has always been active. It cannot afford to take it easy. The judiciary operates within its framework and is obliged to operate within its parameters because of the constitutional device of the division of powers, whereas the other two branches

[22] *A.K. Kraipak v Union of India* (1970) 1 SCR 457
[23] *I R. Coelho v Tamil Nadu State* (2007) 2 SCC 1

of government, the executive and legislative, alternate between being passive and becoming overactive. Statutory and non-statutory administrative actions are possible.[24] Being backed by either legislation or the Constitution, statutory activities have legal authority. By contrast, non-statutory actions are often orders or directives given to subordinates within an administrative body. Although they might not have the same authority as statutory ones, non-compliance will lead to disciplinary action. As stated in *Ugar Sugar Works Ltd. v Delhi Admn*, it is well established that courts, in exercising their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness, or unfairness, etc. Indeed, it is on account of its arbitrary, illogical, perverse, and malicious nature that the policy will be declared unconstitutional.[25] Whereas non-statutory actions are more flexible and mostly operate within the internal framework of administration, statutory activities make up a huge proportion of administrative acts and provide legitimacy through the law.

The Indian context provides a useful backdrop for grasping the challenges of administrative law. According to India's constitution, both the Union and the State, the Executive, Legislature, and Judiciary have varying powers. Although the Executive has a lot of authority administratively, it is always bound to operate within the larger constitutional framework, especially the 'Rule of Law.'[26] The rule of law principle posits that no one is above the law, not even the government. This means that administrative acts should be subjected to judicial review and carried out within legal parameters. Indian administrative law has developed to reconcile constitutional rights and administrative authority. The sheer administrative powers vested in the hands of the Executive at times clash with individual rights, hence their need to be checked in the courtroom.

The Indian context proves to be a useful perspective for understanding the challenge. The administrative law imposes legal restraints on the discretion of the administrative agencies to

[24] Vivek Sharma, 'Significance of Judicial Decisions in Administrative Law in India' (2023) 5(2) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_04bb293188e7475a98d923f10908b2ac.pdf> accessed 12 December 2024
[25] *Ugar Sugar Works Ltd. v Delhi Admn* (2001) 3 SCC 635
[26] Anisha Goyal, 'Constitutional Provisions under the Rule of Law: Analysis' (2021) 25 Supremo Amicus <https://supremoamicus.org/wp-content/uploads/2021/08/Anisha-Goyal.pdf> accessed 12 December 2024

avoid abuse and maintain equity.[27] It is impossible to exaggerate the importance of judicial review because it ensures that administrative powers are exercised fairly and lawfully. The administrative machinery is still prone to mistakes, however. Despite having the power to act for the greater good, administrative bodies often act in contravention of the concept of justice and equity in the Constitution. Because administrative discretion is so wide, it can sometimes result in decisions that are arbitrary and might be against personal whims.

However, the administrative machinery is not error-free either. Despite possessing powers to act for the betterment of society, administrative bodies very often act in a way contrary to the Constitution's idea of justice and equality. Since the discretion that an administrative body enjoys is so vast, it often results in whimsical decisions that may or may not favour individual sentiments. This gap between the theory of administrative law and practice calls for constant reforms to ensure that the administration does not violate the rights of individuals but remains efficient.[28] Making sure that administrative entities are working properly, especially when exercising discretionary powers, is, in the author's opinion, the greatest challenge. Although full procedural fairness may not be required sometimes for natural justice, there should always be a minimum standard met. This would raise the validity of administrative acts protecting people.

The Supreme Court of India has made several landmark judgments that have strengthened the concept of judicial review of executive and administrative policy choices. In *Delhi Development Authority v Joint Action Committee, Allottee of SFS Flats*,[29] the Court has defined the criteria for judicial review of a policy decision. These are those instances wherein the policy, either by law or contrary to law, is outside of the authority granted or violative of broader legal frameworks. The judiciary often held that even a policy's constitutionality and legality, though, can still be considered, with the fact that their merits or prudence might not be in any way touched.[30] However, the growing role of the court in examining policy choices questions the separation of

[27] Nityash Solanki, 'Judicial Review of Administrative Action: Checking the Despotism of an Oligarchy' (2022) 5(4) International Journal of Law Management & Humanities <https://doij.org/10.10000/IJLMH.113410> accessed 12 December 2024
[28] *Ibid*
[29] *Delhi Development Authority v Joint Action Committee, Allottee of SFS Flats* (2008) 2 SCC 672
[30] Apeksha Singh and Ekta, 'Threat Undermining Independence of Judiciary' (2020) 17 Supremo Amicus <https://supremoamicus.org/wp-content/uploads/2020/09/Volume-17.pdf> accessed 12 December 2024

powers premise. Under the Constitution, each of the three branches - executive, legislative, and judicial - is given specific tasks. Even in the name of assessing legality, the judiciary runs the risk of overstepping into the executive branch when it investigates the merits of policy decisions. This is important, especially in matters that call for specific knowledge, as is the case with issues such as public welfare programs or economic reforms. In *State of Kerala v Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd*,[31] Justice Krishna Iyer rightly cautions against overreaching by the courts when he says that policy considerations are better left in the hands of legislative judgment, especially those that aim at agrarian reforms. Although the courts hold the power to ensure that these plans adhere to the Constitution, engaging in the role of economic advisors undermines the democratic structure.

The lines of judicial review can be misty sometimes, even in self-limitation by the courts themselves, as noted in *Directorate of Film Festivals v Gaurav Ashwin Jain*. As mentioned, the Court explained its role to ensure a policy does not offend the statute and fundamental rights and certainly to act as an appeal authority or evaluate the prudence of a policy. However, judicial activism often arises from the subjective interpretation of ideas such as mala fide intents, arbitrariness, and unreasonableness. Although judicial action is necessary to stop abuses by the executive, over-meddling can cause problems and upset the balance of government. The judiciary's response to policy decisions has also been inconsistent. *In State of Rajasthan v Basant Nahata and Council of Scientific,*[32] the Court reiterated that no policy decision is beyond judicial scrutiny. However, it has also cautioned against substituting executive judgement with judicial opinion. This dual attitude reflects the judiciary's attempt to strike a balance between its responsibility as the Constitution's defender and its self-control over policy issues.

Judicial review of administrative acts has increased because realising that traditional parliamentary oversight mechanisms are frequently insufficient to limit executive authority has increased in such review. Given the high power of the executive in the modern period, judicial review is an essential protection to maintain accountability. This growing position must be used

[31] *State of Kerala v Gwalior Rayon Silk Manufacturing* (1974) 1 SCR 671
[32] *State of Rajasthan v Basant Nahata* (2005) 12 SCC 77

cautiously, though.[33] When governance is overly judicialized, then policymaking is paralyzed by the drawn-out legal reviews that expose every executive action that delays implementation. The author opines that in such cases, the courts should take more nuanced stances, distinguishing those matters of policy prudence from considerations of legality. Judicial interference is justifiable in cases of gross violations of the Constitution or statute, but it should not be in the position of determining whether the policies are acceptable or apt. For instance, when the Court held in *BALCO Employees' Union v Union of India*[34] that it could not evaluate the economic feasibility of a policy, it highlighted the need for judicial restraint in areas that require scientific knowledge.

Nevertheless, the judiciary is doing an appreciable job of coming to the defense of such basic values. The courts have seen that the administration remains within constitutional boundaries by widening the scope of judicial review into areas of administrative discretion and policy-making.[35] Fundamental rights and the protection of marginalized groups are some areas where this enlarged role becomes highly critical. The judicial review doctrine, which ensures the executive branch does not overstep the legal and constitutional boundaries, is the base of constitutional governance. Still, it can dilute the substance of democratic governance by excessive use in judging policy decisions. Policies initiated by the executive are typically well-deliberated, widely consulted, and well-understood, both in terms of expert inputs and ground realities. Courts, limited by their expertise and resources, may inadvertently undermine this process when they venture into the domain of policy assessment. This dynamic requires a judicial approach that is respectful of executive discretion while firmly upholding constitutional principles.

The principles of judicial restraint and separation of powers are constantly tested even though they are stated so clearly in modern judicial review. The courts have started using arbitrary

[33] Shreya Shukla, 'Independence of Judiciary in India, Its Role and Impact in Present Time' (2021) 2(2) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_3986f8305e19402b876e76a0d17a035b.pdf> accessed 12 December 2024

[34] *BALCO Employees' Union v Union of India* (2002) 2 SCC 333

[35] Ishita Garg, 'The Enforceability of Administrative Law Principles to Privatisation Challenges in India' (2021) 2(1) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_e8b385b14ee343fb8b3907134d6e62f5.pdf> accessed 12 December 2024

criteria like 'arbitrariness' and 'unreasonableness' to add an element of obscurity to their decisions.[36] Sometimes, the definition of irrationality or arbitrariness varies from case to case, leading to complaints about inconsistency in the court's interpretations. For instance, the Supreme Court made clear that the courts should not question the rationality of a policy in decisions such as *State of Orissa v Gopinath Dash*[37] *and Khoday Distilleries Ltd. v State of Karnataka*.[38] But these ideas have never been strictly followed in practice. This dichotomy underlines the need for well-defined rules on the judicial scrutiny of policy decisions.

Moreover, judicial participation in the shaping of public policy can bring about unforeseeable impacts on the government. It may lead to an environment where the administration hesitates to make risky judgments as they fear that those judgments might be declared invalid by the court as it sometimes intervenes with the issues concerning policy. This tendency often leads to 'judicial overreach,'[39] which will eventually cause policy gridlock that will impede the speed and effectiveness of governance. Hence, courts must find a balance between their duty to uphold the executive's autonomy and the function of being constitutional guards. Despite these objections, judicial involvement in administrative policy-making has often been the only way to solve structural problems and protect citizens' rights. Judicial activism, for instance, has played a significant role in ensuring that the administration does not sacrifice the general welfare in favour of expediency in matters concerning environmental degradation, public health emergencies, and minority rights.[40] Thus, the judiciary has been promoting accountability and openness by arguing, even at the policy formation point, that constitutional values apply. Of course, constitutional provisions must be applied to see that such interventions are anchored within constitutional infractions rather than arbitrary ideas of justice or morality.

The judiciary must formulate a structured and predictable course of judicial review. Such a framework should make a clear division between issues of legality and constitutionality, where

[36] Subekcha Prasad, 'A Critical Study of the Judicial Review Process in India' (2022) 4(3) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_debfd3849c9f4888944fda656a9f412d.pdf> accessed 12 December 2024
[37] *State of Orissa v Gopinath Dash* (2005) 13 SCC 495
[38] *Khoday Distilleries Ltd. v State of Karnataka* (1996) 10 SCC 304
[39] Prasad (n 36)
[40] *Ibid*

judicial scrutiny is called, and matters of policy acumen, which are best reserved for the administration. With a structured approach, cases of overreach will be reduced, and cooperation and respect between the many arms of government will be enhanced. The author believes that a re-evaluation of the role of the judiciary in policymaking is necessary in light of changes like governance in contemporary democracies. Courts should be vigilant of abuses by the executive but also cognizant of the political and practical limitations that the branch faces.[41] Judicial review has to be used as a scalpel rather than a sledgehammer in order not to upset the delicate balance of power in addressing constitutional offences.

One essential tool for ensuring that the administrative procedures comply with the rule of law is judicial review. However, by definition, its scope is confined only to determining whether the process of law has been complied with.[42] Administrative actions cannot be brought to judicial review unless they show jurisdictional mistake, irrationality, improper procedure, proportionality, or breach of reasonable expectation. Any opinion that exceeds these limits faces the threat of violating the doctrine of judicial overreach. The grounds for judicial review, although not all-inclusive, still serve to give courts a solid ground from which they could operate by wielding their authority. The doctrine of 'Strict Necessity' is to the effect that courts should only adjudicate constitutional questions when strictly compelled to do so. This doctrine puts a check on the courts, making them avoid the adjudication of constitutional questions in a broader scope than required or where there is an alternate remedy available. Further, constitutional adjudication should not be resorted to by those who have benefited from a statute or failed to show that their injury directly flows from its operation. If the interpretation of a statute provides an opportunity to avoid a constitutional question, then courts should choose that avenue.

The policy decision, which was challenged in a Public Interest Litigation (PIL), did not violate any laws and was not arbitrary or unfair. [43]This case emphasises how crucial it is to distinguish between private and public interests in PILs to avoid their abuse. Courts must follow the 'Strict

[41] *Ibid*
[42] *Ibid*
[43] S. P. Sathe, 'Judicial Review in India: Limits and Policy' (1974) 35 Ohio State Law Journal <https://kb.osu.edu/server/api/core/bitstreams/ae9f2f4f-7471-504a-bb8c-fe1737435683/content> accessed 12 December 2024

Necessity' theory[44] when deciding whether a PIL actually advances the public interest or just postpones administrative measures for personal benefit. Though initially meant as a tool for safeguarding the public interest, the practice of PILs is often becoming an instrument to block legally proper legislative or administrative acts. In addition to undermining public interest, this abuse buries the courts under fruitless lawsuits. To determine the true public interest and private interest masquerading as a public concern, courts need to use care along with the concept of 'Strict Necessity.'

The degree of judicial scrutiny is determined by the type of case. It is the responsibility of courts to zealously uphold human rights, fundamental rights, and rights to life and liberty. The non-statutory authority that governmental entities exercise over assets and property is also under judicial scrutiny. Judicial review does not extend to the merits of the decision but only to the procedure of making the decision.[45] Courts should verify the process that administrative authorities have followed unless in a situation of clear constitutional or legislative infraction, without becoming appellate authorities. Where the cases are exclusively administrative and fail not to contravene legislative or constitutional principles, the judiciary has no authority to exercise review. In such a scenario, the courts should demonstrate deference to the administrative realm by avoiding substitution of the decree made by the executive.

The Indian Supreme Court might be the only court in human history that has ever claimed it has the power of judicial review over amendments to the Constitution. This is perhaps unique because, generally, judicial review of constitutional amendments is permissible only on grounds of procedure or violations of expressed limitations mentioned in the Constitution. The Indian Supreme Court historically has held that before 1967, it did not possess any powers to strike down constitutional amendments on substantive grounds. This meant that the court was not empowered with judicial review in this particular aspect. In I.R. Coelho v State of Tamil Nadu (2007), the Supreme Court went further in clarifying and expanding the Basic Structure Doctrine. The Court decisively established the superiority of judicial review above all other provisions of the Constitution in this unanimous ruling by a nine-judge panel. This decision vindicated the

[44] *Ibid*
[45] *State of Bihar v union of India* (1970) 2 SCR 522

protection accorded to the Constitution by the judiciary and its authority to invalidate amendments that deviated from its fundamental framework. In that light, it can be argued that the Indian judicial review system has matured and reflects both the strengths and weaknesses of the system. On the one hand, judicial review is an important tool for maintaining the separation of powers and preserving the integrity of the Constitution.

This principle was further elaborated upon and expanded in I.R. Coelho v State of Tamil Nadu (2007), while confirming that the Basic Structure Doctrine indeed surpasses all other clauses within the Constitution, in this unanimous, nine-judge decision case where the Supreme Court assured the judiciary's protection for the Constitution and its jurisdiction to invalidate amendments which move away from the very founding foundations of the Constitution.

By critically analysing these changes, one could argue that the judicial review system in India has evolved to include both the pros and cons. The advantages of judicial review are, first and foremost, a crucial mechanism for the preservation of separation of powers and the sanctity of the Constitution. By critically analyzing these changes, it can be argued that Indian judicial review has evolved through all its strengths and weaknesses. On the one hand, the judicial review system is quite instrumental in maintaining the sanctity of the separation of powers and the integrity of the Constitution. It serves to keep the legislature and executive branches from capriciously exerting their authority. This role assumes importance because, in a democracy like India, where the rights of the under-represented group, as well as the values of equality and justice, need to be sustained, there is a need to emphasize that active engagement by the judiciary in upholding these values has often been their last resort in cases involving the protection of the weak, defenceless, and downtrodden from the abuse of power. But such boldness from the judiciary has also evoked much criticism. This is the fear of overreach on the part of the judiciary, whereby it assumes power that might undermine the prerogative of the legislature or the executive.

The very concept of democratic governance can be compromised by judicial activism, no matter how much praise is showered on it, as in cases where it defended the rule of law and protected fundamental rights. Criticism becomes sharper when its decisions are perceived to reflect personal interpretations rather than constitutional mandates. Practically speaking, the reliance

of the judiciary on judicial review has significantly impacted the government. The judiciary has often acted as a check on legislative and executive excesses by declaring bills and constitutional changes unconstitutional. However, this corrective function sometimes causes delays in the application of policies and breeds uncertainty in the legislative process. For example, including greater levels of inspection by judicial interventions could make governance difficult as well in social policy cases and economic reforms.

CONCLUSION

Judicial examination in this area calls for the verification of whether the fiscal policies conform with the constitutional obligations, more so, those enshrined under the Directive Principles of State Policy (DPSP) and Fundamental Rights. This would ensure that economic policies do not violate the rights of people or unfairly burden a section of society. This is particularly important in a multicultural country like India, where the economic hardships vary greatly from one region to another and from one population to another. The judiciary checks whether the government does not enact laws that may be discriminatory or against the values of justice and equality by scrutinizing fiscal policies. It is in this context that India's judicial review of fiscal policy is an important cornerstone to preserve the integrity of the Constitution and ensure that fiscal policies align with the more general ideals of justice, fairness, and equity. In a democracy like India, where the values of accountability, transparency, and the defence of individuals' rights have to guide governmental action, the judiciary's involvement in examining fiscal problems is particularly important. Fiscal policies refer to taxation, public spending, and debt management that determine much of a country's economic future. Any improper use or unconstitutional action in this area can be very problematic. In this regard, judicial review acts as protection against the abuse of power, assuring that all economic action is in more than one's interest apart from that of the state.

However, even while judicial review in this area is necessary, it must be done with circumspection. Decisions taken in the complex domain of fiscal policy are often supported by profound economic considerations beyond the comprehension of the judiciary. Therefore, the judiciary must exercise restraint and should not get too involved in the determination of economic issues unless and until there is a clear infringement of fundamental rights. Judicial

overreach brought on by excessive intervention may make it harder for the government to develop and implement sound economic policies in a fast-changing world. In my opinion, the judiciary should not micromanage or question the executive's actions, even though it must ensure that fiscal policies are constitutional, especially if they are supported by good economic reasoning.

The author stresses that nudging towards a more educated and collaborative approach is a step forward in improving India's judicial evaluation of fiscal policies. During the evaluation process, the judiciary should consider collaborating with third-party organizations and economic experts. Information about the subtleties of fiscal policy might be gathered by establishing a special economic bench or by inviting economists to assist judges, which may lead to more reflective and impartial decisions. This will ensure that judicial interventions are based on a proper understanding of the subject matter, aside from facilitating an understanding of the economic implications of budgetary measures.

In the author's view, the executive should embrace transparency within its financial decision-making procedure. It would cut back the call for judicial review and increase democratic accountability to get the public involved in formulating budget policies. There would be fewer occasions for judicial review of its budgets if more people were open to public discourse, debate, and public consultative input. This would encourage a more collaborative approach to government and reduce the adversarial nature of the relationship between the administration and the court.