

EXPANSION OF JUDICIAL REVIEW TO INCLUDE ECONOMIC AND SOCIAL RIGHTS IN INDIAN LEGAL SYSTEM

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ABSTRACT

The Indian Constitution guarantees a wide range of fundamental rights, including civil and political rights, as well as economic and social rights. However, the Indian Supreme Court has interpreted the Constitution to give it the power to review the government's compliance with economic and social rights, even though these rights are not explicitly mentioned in the Constitution. The Supreme Court's jurisprudence on economic and social rights has evolved over time. In the early years, the Court was reluctant to interfere in the government's economic policies. However, in recent years, the Court has become more willing to hold the government accountable for its failure to provide basic necessities such as food, water, and education.

The expansion of judicial review to include economic and social rights has had a significant impact on the Indian legal system. It has led to a more activist judiciary that is willing to challenge the government on issues of social justice. However, the Supreme Court's recent decisions suggest that the Court is committed to using its power to promote economic & social rights. This is likely to have a significant impact on the lives of millions of Indians in the years to come.

Key Words: Judicial review, Economic and social rights, Fundamental rights, Indian Constitution, Supreme Court of India, Judicial activism

CHAPTER 1: INTRODUCTION

I. Judicial Review

The concept of judicial review pertains to the authority of the courts to examine and assess the constitutionality of decisions rendered by other branches of government. The Indian Constitution specifically addresses the concept of judicial review in Articles 13¹, 32², 131–136³, 143⁴, and 226–246⁵. The power of judicial review plays a crucial role in safeguarding against governmental overreach and upholding the rights of both individuals and collectives. Judicial review is a mechanism employed by courts to nullify government actions that are deemed unlawful and laws that are deemed unconstitutional. Additionally, it serves to enforce compliance with the constitution by compelling the government to operate within its prescribed parameters. The Supreme Court of India, as the apex judicial body, possesses the jurisdiction to scrutinise all governmental actions, encompassing those undertaken by the legislative and executive branches. Furthermore, it should be noted that the High Courts of each state possess the jurisdiction to engage in the process of judicial review with regards to actions undertaken by state governments. Courts possess the authority to declare laws or governmental actions as unconstitutional due to various justifications. The followings are enumerated below:

1. Violation of fundamental rights- The Indian Constitution guarantees several fundamental rights, such as the right to life, liberty, and equality. Any legislation or governmental measure that infringes upon these fundamental rights is subject to potential legal scrutiny.
2. Ultra vires- The term "ultra vires" pertains to legislation or governmental action that surpasses the jurisdiction of the legislative or executive branches. For example, in the event that the legislative body enacts laws that exceed the scope of authority granted by the Constitution, the judiciary has the power to invalidate such legislation.
3. Abuse of power- Instances of power abuse occur when the legislative or executive branches engage in the misuse of their authority. In the event that the judiciary determines that a legislation that specifically targets a particular demographic is deemed as an exercise of excessive authority, it has the authority to nullify said legislation.

The process of judicial review plays a crucial role in upholding the boundaries of governmental power and safeguarding the rights of both individuals and society as a whole. Judicial review has been used by the courts to nullify legislation that exhibits discriminatory tendencies towards women, safeguard the rights of religious minorities, and defend the state's obligation to provide essential services to its populace. There exists a divergence of opinions among individuals about the concept of judicial review. There are many who contend that this confers an excessive amount of authority onto the court, thereby impeding democratic procedures. However, the court has shown a tendency to use judicial review in a cautious manner, reserving it for cases where legislation or other governmental activities are clearly in violation of the constitution. Judicial review has been used by the courts as a means to protect both individual and collective rights, as well as to curtail

¹ The Constitution of India, 1950, Art. 13.

² The Constitution of India, 1950, Art. 32.

³ The Constitution of India, 1950, Art. 131-136.

⁴ The Constitution of India, 1950, Art. 143.

⁵ The Constitution of India, 1950, Art. 226-246.

governmental overreach. Despite the considerable power wielded by judicial review, its use must consistently demonstrate prudence.

II. The scope of judicial review in India

Justice Syed Shah Mohamed Quadri has delineated the three fundamental domains that encompass the extent of judicial review within the Indian context. The first category encompasses the judiciary's authority to ascertain the constitutionality of legislative actions¹. The second category pertains to the judiciary's jurisdiction in assessing the constitutionality of administrative acts. The third category encompasses the judiciary's capacity to assess the legality of judicial actions. In the context of India, the exercise of judicial review is subject to various limitations and is not without constraints. The judiciary lacks the ability to conduct autonomous scrutiny of decisions made by the legislative, executive, or subordinate courts. The assessment of the actions of the aforementioned organs can only be undertaken by individuals when they are presented with a challenge or dispute regarding said actions. The desired outcome can be attained through the utilisation of Article 32, Article 226², or Article 136³ of the United States Constitution. The jurisdiction of the courts is limited to the examination and resolution of legal issues. In the event that a statute is deemed unconstitutional, it is incumbent upon the court to furnish a rationale for its decision. In the Indian context, the mechanism of judicial review serves as a means to evaluate the constitutionality of actions undertaken by the judiciary, administration, and legislature⁴. The concept of judicial review is explicitly mentioned in several provisions of the Indian Constitution, namely Articles 13, 32, 131-136, 143, 226, and 246⁵. The exercise of judicial review is subject to various limitations and is not without constraints. The judiciary lacks the capacity to conduct autonomous scrutiny of decisions made by the legislative, executive, or subordinate courts. The assessment of the actions of the aforementioned organs can only be conducted when they are challenged in their presence.

III. The role of judicial activism in expanding the scope of judicial review

Judicial activism refers to a legal approach wherein judges are perceived to exhibit a higher propensity for engaging in deliberation on matters pertaining to constitutional issues and subsequently nullifying legislative or executive actions. This phenomenon involves judges exercising their own interpretations of constitutional obligations instead of deferring to other governmental entities or previous judicial rulings⁶. Additionally, courts extend their analysis beyond the confines of relevant legal provisions to consider wider societal implications. The growth of judicial review within the Indian legal system, specifically with regards to economic and social liberties, has been notably shaped by the phenomenon of judicial activism. In the context of India, judicial activism has primarily served two key purposes, namely safeguarding individual rights and advancing socioeconomic equity. The courts have effectively responded to issues of inequity, discrimination, and insufficient implementation of social assistance programmes through the application of judicial activism.

Furthermore, the phenomenon of judicial activism has been instrumental in rectifying legal omissions and addressing deficiencies in legislation. The judiciary has assumed the responsibility of addressing the legislative's inability to pass or enforce laws that protect the rights and well-being of the populace. This phenomenon has been particularly evident in matters pertaining to the environment, women's rights, and marginalised communities. Furthermore, the phenomenon of judicial activism has been characterised by an expansion in the scope of judicial review through the adoption of a proactive approach. Public interest litigation (PIL) has been recognised by the courts, enabling individuals and organisations to initiate legal proceedings on behalf of individuals who lack access to the legal system⁷. As a result, the court is presently engaged in addressing systemic issues and ensuring governmental accountability. It is imperative to bear in mind that judicial activism encounters opposition. There are assertions that this action contravenes the fundamental principle of separation of powers by encroaching upon the legislative and executive domains. Critics argue that judicial activism may lead to an excessive exercise of judicial power and the formulation of policies that are typically within the purview of elected officials⁸. Despite receiving criticism, judicial activism has been shown to have a beneficial influence on the promotion of social justice and the enhancement of government accountability. The phenomenon of judicial activism, as observed in the expansion of judicial review, serves as a testament to the Indian legal system's dedication to constitutional principles and its inherent dynamism.

IV. Economic and Social rights

Economic and social rights, regarded as inherent to all individuals, encompass the capacity to live a dignified existence and engage actively within the community. Encompassed within these entitlements are provisions for social security, labour protections, as well as the availability of housing, sustenance, water, healthcare, and education. Civil and political rights are often regarded as being of greater fundamental significance due to their role in safeguarding our essential liberties. However, it is crucial to acknowledge that both economic and social rights hold equal significance as they guarantee individuals' access to essential necessities and enable their active participation within society. The subsequent items represent some of the most noteworthy fiscal and social rights:

- The concept of the right to labour encompasses two fundamental aspects: the absence of forced labour and the entitlement to receive a wage that is adequate for sustaining one's basic needs.

¹ Michael Freitas Mohallem, Immutable clauses and judicial review in India, Brazil and South Africa: expanding constitutional courts' authority, 15 Int'l J. Hum. Rts. 765 (2011).

² The Constitution of India, 1950 Art. 226.

³ The Constitution of India, 1950 Art. 136.

⁴ Vikram Narayan, A Case for Judicial Review of Legislative Process in India?, 53 Law & Pol. in Africa, Asia & Latin Am. 358 (2020).

⁵ The Constitution of India, 1950 Art. 246.

⁶ Santanu Sabhapandit, The public-private distinction in judicial review: a comparative analysis of India and England, 20 Oxford U. Commw. L.J. 261 (2020).

⁷ S. P. Sathe, Judicial review in India: limits and policy, 35 Ohio St. L.J. 870 (1974).

⁸ Santanu Sabhapandit, S. Article 12 and judicial review of administrative action: an analysis, 2 Indian L. Rev. 5 (2018).

- The right to education encompasses the entitlement to access a comprehensive education without financial barriers, encompassing both primary education and the option to pursue advanced academic studies.
- The concept of the right to health care encompasses two fundamental aspects: firstly, the entitlement to be free from any form of discrimination when seeking essential medical treatments, and secondly, the capacity to readily avail oneself of these services.
- The concept of the right to accommodation encompasses both the entitlement to adequate housing and the protection against forced eviction.
- The concept of social security encompasses the dual aspects of protection against extreme poverty and provision of social insurance.

The responsibility for the pursuit of economic and social rights lies with governmental institutions, businesses, and civil society. The establishment of a legal and policy framework by the government plays a crucial role in enabling the attainment of economic and social liberties. It is imperative for businesses to adhere to both economic and social rights while engaging in their operations. Civil society organisations have the capacity to monitor and enhance economic and social liberties¹.

The realisation of economic and social rights poses significant challenges and requires a complex and nuanced approach.² Nevertheless, it is imperative to undertake this endeavour in order to establish a society that is fair and impartial. By engaging in cooperative efforts, governments, businesses, and civil society have the potential to significantly improve the quality of life for a substantial number of individuals.

V. The challenges of expanding judicial review

Expanding the scope of judicial review to encompass economic and social liberties poses a formidable challenge. The conceptualization of economic and social liberties can present challenges in terms of establishing a precise definition. There exists a lack of consensus regarding the interpretation of these liberties, which are commonly characterised by their intricate nature. Hence, the task of courts in ascertaining the potential infringement of an individual's economic or social rights by a specific government action may pose challenges³. The enforcement of economic and social rights can present significant challenges. The government is often called upon to safeguard these essential rights via many means, including the establishment of infrastructure and the provision of social services. It is conceivable that the judiciary may have difficulties in overseeing and implementing this. Through the broadening of the jurisdiction of judicial review, the courts has the potential to provide fair and just possibilities for individuals to attain a dignified existence and engage meaningfully in the affairs of society. The inclusion of economic and social rights into judicial analysis presents inherent challenges and possible consequences. There are many who argue that this might potentially lead to occurrences of judicial activism or cases when judges exceed their lawful powers. There are others who argue that an increase in government spending on social services might have negative consequences for the economy. Nevertheless, the benefits of integrating economic and social rights into the process of judicial review surpass any potential drawbacks. Through the act of holding the government responsible for its failure to safeguard fundamental rights, the legal system has the capacity to attain social justice and notably augment the welfare of a substantial populace.

CHAPTER 2: THE EVOLUTION OF THE SUPREME COURT'S APPROACH TO JUDICIAL REVIEW

I. The early years: The Supreme Court was hesitant to interfere with economic and social policy decisions made by the government

Since its inception in 1950, the Supreme Court of India has exhibited a tendency to refrain from actively questioning the economic and social policies implemented by the government. This phenomenon can be attributed to various factors, which encompass the Court's deference to the government's specialised knowledge in these domains, its belief that courts should refrain from intervening in matters pertaining to social and economic policies, and its apprehension of facing allegations of judicial activism.

The Court's deference to the government's expertise

The Supreme Court exhibited restraint in intervening with economic and social policy determinations due to its acknowledgment of the government's specialised knowledge and competence in these domains⁴. The Court concluded that the government possessed a superior understanding of the economic and social needs of the nation in comparison to the judiciary. Furthermore, the Court reached the conclusion that the government possessed superior capabilities in the allocation of resources and the execution of social and economic policies. The court deemed the evaluation of the government's social and economic policies to be inappropriate.

The Supreme Court abstained from intervening in matters of government decisions pertaining to economic and social policy due to its perception that it lacked the responsibility to criticise the government's economic and social policies. The Court rendered a decision affirming that the authority to make these determinations rests with the government, and that judicial intervention should only occur in cases where a distinct violation of the constitution is evident.

¹ M. J. Fisher, Supreme Court of India and judicial review, 9 Syracuse L. Rev. 30 (1957).

² Taylor, W.K. (2023). "Judicial Agency and the Adjudication of Social Rights." Human Rights Quarterly 45(2): 283-305. doi:10.1353/hrq.2023.0014.

³ Pran Chopra, The Supreme Court Versus the Constitution: A Challenge To Federalism (Sage Publications Pvt. Ltd., New Delhi 2006).

⁴ Id., 18

The Court's fear of being accused of judicial activism

To mitigate the risk of facing allegations of judicial activism, the Supreme Court refrained from intervening in matters pertaining to economic and social policy determinations. Judicial activism refers to the perspective that courts should actively engage in shaping public policy. Critics may assert that the Supreme Court would exceed its jurisdiction and encroach upon governmental functions by engaging in economic and social policy discussions¹. In recent years, there has been a discernible shift in the Supreme Court's stance on matters pertaining to economic and social policy. The propensity of the Court to intervene has escalated in cases where the government's economic and social policies have exerted a substantial influence on the rights of individuals or collectives.

There are a multitude of reasons supporting the proposition of altering the Court's stance. In recent years, there has been a discernible movement in the Court's focus towards safeguarding human rights, with a special emphasis on economic and social liberty. Furthermore, the Court has developed a heightened level of assurance in its capacity to assess the societal and economic ramifications of governmental measures. Certain people place importance on the policy change of the Supreme Court due to their belief in the significance of avoiding government intrusion as a means of safeguarding the rights of both individuals and organisations. There are some who have raised apprehensions over the fluctuating position of the Supreme Court, positing that it may be seen as engaging in judicial activism and potentially undermining the principle of separation of powers. Over the course of its history, the Supreme Court has seen a transformation in its methodology for discerning economic and social policy. The Court originally abstained from involvement in these judgements. Nevertheless, the Court has shown an increasing inclination to interfere, particularly in cases when its decisions significantly affect the rights of specific persons or businesses. The Court's new tactic has garnered plaudits from some individuals, while others have expressed misgivings.

II. The mid-years: The Supreme Court reviewed economic and social policy decisions, particularly when they had a significant impact on the rights of individuals or groups

During a specific period, the Supreme Court of India exhibited an enhanced inclination to scrutinise governmental decisions pertaining to economic and social policy, particularly when these policies substantially affected the rights of specific individuals or groups. This represented a significant deviation from the Court's prior approach of according deference to the government's specialised knowledge in specific areas.

The Court's growing concern for the protection of human rights

The Court's increasing assurance in its capacity to assess the societal and economic ramifications of governmental actions also played a role in shaping the development of its policy. The Court concluded that it did not need to depend on the government's expertise in these fields and possessed the ability to independently assess the constitutionality and legitimacy of a policy. Moreover, the Court exhibited a growing propensity to intervene in cases where government policy infringed upon the rights of individuals or groups in an unjust manner. The Court has started to recognise the imperative for the government to guarantee that its policies do not result in the unfair treatment or prejudice against specific groups of individuals.

Examples of the Court's rulings in this period

During this specified period, the Court has rendered decisions that demonstrate a tendency to scrutinise economic and social policy determinations across a range of cases. The Supreme Court, in the case of **Bandhua Mukti Morcha v. Union of India**², rendered the aforementioned legislation, which authorised the utilisation of indentured labour in specific economic domains, null and void. The Court rendered a decision stating that the provision within the Constitution which prohibits the imposition of forced labour had been infringed upon.

In the case of **M.C. Mehta v. Union of India**³, the court issued a directive to the Delhi administration, mandating the implementation of measures aimed at mitigating air pollution. The court rendered a verdict indicating that the actions undertaken by the government were in contravention of both the constitutionally protected right to life and the well-being of the inhabitants of Delhi.

These two cases exemplify the Court's inclination to reassess economic and social policy determinations undertaken within this temporal context. The rulings rendered by the Court in these particular instances have exerted a substantial influence on the safeguarding of human rights within the jurisdiction of India. Over the course of the decade, there was a significant shift in the Supreme Court's stance on cases pertaining to economic and social policy. The Court exhibited a growing inclination to reevaluate prior rulings, particularly in cases where such rulings had infringed upon the rights of specific individuals or collectives. The revised strategy of the Court has garnered praise from some, while others have expressed scepticism.

¹ Erin Brown, The Lost Judicial Review Function of the Speech or Debate Clause, 107 Va. L. Rev. 1777 (2021).

² Bandhua Mukti Morcha v. Union of India, 1984 AIR 802

³ M.C. Mehta v. Union of India, 1987 SCR (1) 819

III. The recent years: The Supreme Court has become even more willing to review economic and social policy decisions, and has even struck down some government policies

In recent times, the Indian Supreme Court has shown a discernible inclination to more regularly scrutinize governmental decisions pertaining to economic and social policy. The court ruled that many government schemes were either unconstitutional or discriminatory. This exemplifies the proactive stance of the Court in safeguarding both individual and collective rights. The Court's developing viewpoint is influenced by several factors. The value of economic and social rights is increasingly recognized, hence fostering a deeper understanding of their worth. As to the Court's decision, it is incumbent upon the government to guarantee the fulfilment of these rights, which the Court has determined to possess equivalent importance to civil and political rights. The recent policy adjustment by the Court exemplifies the heightened recognition of the significance of international human rights legislation. The Court based its economic and social policy judgments on established international human rights principles. Consequently, the Court has shown an increased inclination to overturn governmental measures that, according to its viewpoint, violate these criteria.

Examples of the Court's rulings in recent years

In recent times, the Supreme Court has rendered verdicts that suggest its inclination to reassess economic and social policy decisions. The case of **Navtej Singh Johar v. Union of India**¹ resulted in the court's invalidation of a provision that rendered same-sex relationships as criminal offences. As per the court's ruling, the legislation was found to be in contravention of the privacy and equality principles enshrined in the Constitution.

In the case of **A.P. Pollution Control Board v. M.V. Nayudu**², the court issued a directive to the Andhra Pradesh government, mandating the closure of multiple enterprises that were found to be causing pollution. The Environmental Control Board (ECB) is a regulatory body responsible for overseeing and enforcing environmental regulations and policies. The court rendered a decision that concluded the insufficiency of the government's environmental protection measures and their infringement upon the right to life.

The Court's recent decisions indicate a propensity to critically examine economic and social policy choices. The rulings rendered by the Court in these particular cases have exerted a substantial influence on the safeguarding of human rights within the context of India. In recent years, there has been a notable shift in the Supreme Court's approach towards economic and social policy decisions. The Supreme Court has exhibited a heightened propensity to reevaluate prior decisions and has, in certain instances, overturned governmental policies. The revised strategy of the Court has garnered praise from certain individuals, while others have expressed scepticism regarding its effectiveness. Advocates of the Court's revised policy contend that it is imperative for the government to refrain from infringing upon the rights of individuals and collectives. It is argued by proponents that the judiciary possesses the capacity to effectively protect the rights and well-being of individuals who are disadvantaged or marginalised. Furthermore, they assert that the court is uniquely positioned to assess the potential economic and social impacts resulting from governmental actions. Critics of the Court's expansive policy contend that it erodes the principle of separation of powers and embodies a form of judicial activism.³ The authors contend that judicial intervention should be avoided, as economic and social policy determinations fall within the purview of the government. The ongoing debate surrounding the Court's jurisdiction over monetary and social policy determinations is expected to persist for an extended period. In recent years, it is indisputable that the Court has assumed a pivotal role in safeguarding the rights of both individuals and collectives.

Landmark cases of judicial review to safeguard economic and social rights

Analysis of landmark cases where the judiciary has used its power of judicial review to safeguard economic and social rights:

In the case of **Olga Tellis v. Bombay Municipal Corporation**⁴ (1985) the Supreme Court of India exercised its judicial review authority to safeguard the right to a livelihood for individuals residing on pavements. The court reached the determination that the constitutional provision of Article 21, which safeguards the right to life, encompasses the entitlement to a means of sustenance. The court ruling invalidated the municipality's decision to displace homeless individuals without offering them alternative housing or rehabilitative support. This pivotal ruling brought attention to the importance of economic rights and the responsibility of the state to safeguard the most marginalised individuals within the community.

The Supreme Court, in the case of **Bandhua Mukti Morcha v. Union of India**⁵ in 1984, exercised its judicial review power to address the matter pertaining to indentured labour within the Indian context. The court rendered a verdict declaring indentured labour to be unconstitutional and a violation of individuals' fundamental rights. The directive was issued to the government with the aim of identifying and liberating individuals subjected to bonded labour, ensuring their rehabilitation and provision of compensation, and ultimately eradicating the practise of bonded labour. This decision underscored the importance of social rights and the government's duty to protect citizens from abusive conduct.

The case discussed in the **People's Union for Civil Liberties (2002)**⁶ pertains to the issue of the right to sustenance and the occurrence of fatalities due to starvation in India. By using its power of judicial review, the Supreme Court

¹ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

² A.P. Pollution Control Board v. M.V. Nayudu, 1994 (3) SCC 1

³ Ochoa-Sánchez, J.C. (2019). "Economic and Social Rights and Truth Commissions." *International Journal of Human Rights* 23(9): 1470-1493. doi:10.1080/13642987.2019.1613380.

⁴ Olga Tellis v. Bombay Municipal Corporation, 1986 AIR 180

⁵ Bandhua Mukti Morcha v. Union of India, 1984 AIR 802

⁶ In Re People's Union for Civil Liberties. (2003) 2 S.C.R. 1136

issued a directive to the government, mandating the implementation of a range of social policies aimed at ensuring universal access to sustenance for all individuals. The court's ruling underscored the interdependence between the right to life and the right to food by placing responsibility on the government for its failure to address the pressing concerns of famine and malnutrition. This particular case served as a notable illustration of the significance of judicial review in safeguarding the socioeconomic rights of persons.

These landmark rulings exemplify the significance of judicial review in safeguarding economic and social liberties within the Indian context. The court's exercise of judicial review has played a crucial role in addressing matters pertaining to inequality, discrimination, and the inadequate implementation of social assistance programmes¹. These decisions have expanded the purview of judicial review with the aim of safeguarding the rights and welfare of the general public and promoting social justice within the country. These decisions enhance the judiciary's function as a guardian of the Constitution and fundamental rights, while also setting significant legal precedents for subsequent cases.

CHAPTER 3: THE IMPLICATIONS OF THE EXPANSION OF JUDICIAL REVIEW FOR THE PROTECTION OF ECONOMIC AND SOCIAL RIGHTS

I. The expansion of judicial review has helped to improve the protection of economic and social rights in India

The impact of the expansion of judicial review

The proliferation of judicial review has exerted a substantial influence on the safeguarding of India's economic and social rights. The expansion of judicial review has had several effects on the Indian legal system. These effects include the following:

- **Promotion of Social Justice-** The proliferation of judicial review has played a pivotal role in bolstering social justice within the country. The judiciary has effectively employed its power of judicial review to address grievances related to disparities, discriminatory practises, and insufficient execution of social welfare initiatives.² Consequently, the preservation of individual liberties and the well-being of the community have been safeguarded.
- **Filling Legislative Gaps-** The process of judicial review has led to the elimination of legislative loopholes. The judiciary has assumed the responsibility of addressing the legislative's inability to pass or enforce laws that protect the rights and well-being of the populace.³ This has resulted in the government being held responsible for its actions and the enforcement of the law being implemented on a national scale.
- **Accountability of the Government-** The implementation of judicial review has facilitated the establishment of governmental accountability. Through the exercise of its judicial review power, the court has effectively ensured that the administration is held responsible for its actions. Consequently, the government demonstrates adherence to the Constitution and maintains the integrity of the rule of law within the nation.

The judiciary has exercised its authority of judicial review to nullify government initiatives that infringe upon economic and social rights⁴. As an illustration, the judiciary has invalidated legislation that exhibits bias against marginalised groups such as minorities and women, while also mandating governmental efforts to enhance the quality of healthcare and education. The expansion of judicial scrutiny has additionally played a role in fostering a more comprehensive understanding of economic and social rights among the general public. The decisions rendered by the Supreme Court have served as evidence that these rights are indeed legally enforceable, thereby providing individuals with additional justifications to assert their entitlements and hold the government accountable for fulfilling its duties.

Challenges to the expansion of judicial review

The expansion of judicial review has posed challenges. Certain critics contend that the intervention of the Court in the social and economic policies of the government surpasses its legal jurisdiction. It has been posited by certain scholars that the Court may possess insufficient expertise to effectively assess the societal and economic ramifications of governmental measures. Despite the obstacles it faces, the expansion of judicial review in India has proven to be a beneficial development in safeguarding economic and social liberties⁵. The decisions rendered by the Court have significantly improved the quality of life for a vast number of individuals, thereby exemplifying the judiciary's crucial function in safeguarding the preservation of these rights.

The expansion of judicial review in India has resulted in enhanced protection of economic and social liberties. The decisions rendered by the Supreme Court have served to illustrate the enforceability of these rights, thereby providing individuals with further justifications to assert their entitlement to government compliance with corresponding obligations. The expansion of judicial review in India has been a significant advancement in safeguarding the country's economic and social rights, despite the challenges it presents. The inclusion of economic and social rights within the scope of judicial review presents significant challenges and potential risks. There are those who argue that this may lead to instances of judicial activism or the potential for courts to exceed their prescribed authority. There is an opposing viewpoint that argues that an escalation in government spending on social initiatives could have negative consequences for the economy. Nevertheless, the

¹ Shruti Rajagopalan, Interest Groups Repairing Unconstitutionality: India's Ninth Schedule, 50 J. Legal Stud. S151 (2021).

² Chong, D. (2009). "Five Challenges to Legalizing Economic and Social Rights." Human Rights Review 10(2): 183-204. doi:10.1007/s12142-008-0094-y.

³ Langford, M. (2009). "Domestic Adjudication and Economic, Social and Cultural Rights: A Socio-Legal Review." Sur: Revista Internacional de Direitos Humanos 6(11): 90-121. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,sso&db=asn&AN=53542260&site=ehost->

⁴ Stuti Deka, Constitutionalism & Constitution of India (2nd ed., Astral International Pvt Ltd, Guwahati 2018).

⁵ Michael Freitas Mohallem, Immutable clauses and judicial review in India, Brazil and South Africa: expanding constitutional courts' authority, 15 Int'l J. Hum. Rts. 765 (2011).

benefits of incorporating economic and social rights into the process of judicial review surpass any potential drawbacks. Through the act of holding the government responsible for its failure to safeguard fundamental rights, the judiciary has the capacity to advance social justice and substantially improve the well-being of a vast number of individuals.

The criticisms of the expansion of judicial review to include economic and social rights

There have been objections raised by certain individuals regarding the extension of judicial review to encompass economic and social rights. There are several concerns associated with the expansion of judicial review, which are as follows:

- **Encroachment on the Legislature-** Critics argue that the heightened level of judicial scrutiny poses a threat to the legislative authority. The authors contend that the court ought to exercise deference towards the elected representatives of the populace and abstain from engaging in policy-making.
- **Judicial Overreach-** Advocates for the expansion of judicial review argue that such an endeavour may lead to an overreach of judicial power.¹ The contention put forth is that the judiciary ought to refrain from engaging in governance or legislative endeavours until such actions have undergone scrutiny through legal challenges.
- **Lack of Expertise-** Critics argue that the court's capacity to effectively tackle complex social and economic matters is insufficient. The contention put forth is that the involvement of the judiciary in matters necessitating specialised expertise and proficiency is unsuitable.
- **Limited Resources-** Critics argue that the judiciary, constrained by its finite resources, should allocate priority to its core functions. The argument put forth is that the judiciary should not be responsible for addressing economic and social concerns.
- **Lack of Accountability-** The absence of accountability - As per critics, the judiciary demonstrates resistance towards criticism and exhibits a deficiency in public accountability. The contention put forth is that the judiciary ought to be accountable to the citizenry, with its rulings being susceptible to review and reconsideration.

There have been objections raised by certain individuals regarding the extension of judicial review to encompass economic and social rights². The expansion of judicial review has been subject to criticism due to its potential encroachment on the authority of the legislative branch, which may lead to instances of judicial overreach, a lack of specialised knowledge, resource constraints, and a potential disregard for accountability. Despite the potential validity of these criticisms, it is challenging to overlook the potential benefits of expanding judicial review in terms of promoting social justice and protecting the rights and welfare of individuals. The significance of the judiciary in safeguarding the Constitution and ensuring governmental adherence to legal principles cannot be exaggerated³. The proliferation of judicial review exemplifies the flexibility and commitment of the Indian legal system in safeguarding constitutional principles.

II. The challenges of expansion of judicial review as the need to balance the need to protect economic and social rights with the need to respect the government's discretionary powers

The proliferation of judicial review has proven advantageous in safeguarding human rights. Nevertheless, this development has presented certain challenges, specifically in terms of finding a harmonious equilibrium between upholding the government's discretionary authority and safeguarding the rights pertaining to the economy and society.

The need to balance competing rights

One of the challenges associated with the expansion of judicial review is the task of achieving a state of equilibrium between conflicting rights. For example, it is plausible for the government to possess a valid justification for imposing limitations on economic and social rights, with the intention of safeguarding other rights, such as those pertaining to public health or national security. Hence, in the process of determining the validity of a government action, courts are required to carefully consider and balance these conflicting rights.

The need to respect the government's discretionary powers

An additional challenge to the expansion of court review is the need to uphold the government's discretionary authority. The responsibility for making intricate decisions concerning resource allocation and policy implementation lies with the government. The involvement of courts in these decisions should be limited to cases where there is clear and evident violation of the Constitution.

The need to develop clear standards

The heightened level of judicial scrutiny has led to the need for the development of explicit standards for assessing government actions. It is imperative for the courts to provide a comprehensive rationale elucidating the grounds upon which they are nullifying a governmental policy. This mechanism facilitates the establishment of governmental accountability for its actions, simultaneously safeguarding the courts against potential perceptions of excessive exercise of their authority.

The need to be aware of the economic and social consequences

¹ Tushnet, M. (2004). "Social Welfare Rights and the Forms of Judicial Review." *Texas Law Review* 82(7): 1895-1919. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,sso&db=bsu&AN=13886581&site=ehost-live>

² Müller Jan-Werner, *The Constitution as a Pedagogical Project: Three Perils: (and How India Apparently Avoided Them)*, 8 *Global Intellectual History* 69 (2023).

³ Ornit Shani, *The People and the Making of India's Constitution*, 65 *Hist. J.* 1102 (2022).

It is imperative to thoroughly analyse the economic and social ramifications of court rulings. The potential reversal of a governmental policy possesses the capacity to exert a substantial influence on the livelihoods of a vast number of individuals¹. In order to mitigate unintended repercussions, it is imperative to conduct comprehensive investigations into court rulings.

The proliferation of judicial review has proven advantageous in safeguarding human rights. However, it has resulted in certain complications. In the realm of judicial decision-making, it is imperative for courts to engage in a meticulous examination of conflicting rights, acknowledge the discretionary powers vested in the government, establish clearly defined criteria, and evaluate the potential economic and social ramifications associated with their rulings². By effectively addressing these challenges, the judicial system can ensure that the utilisation of judicial review is employed to advance social justice and uphold human rights.

III. The expansion of judicial review to include economic and social rights is a significant development in the Indian legal system

The judicial review procedure in the Indian legal system has witnessed substantial transformation due to the incorporation of economic and social rights. This phenomenon can be attributed to the role played by this mechanism in holding the government responsible for its failure to safeguard essential civil liberties. Historically, the Indian judiciary has refrained from intervening in matters pertaining to economic and social policy. The reason behind their actions stemmed from their belief in the necessity of government management and the avoidance of judicial scepticism towards the government's expertise.³ Nevertheless, there has been a noticeable shift in the courts' inclination to critically examine determinations pertaining to social and economic policy in recent times. The aforementioned phenomenon can be attributed to several factors, namely an increased acknowledgement of the importance of economic and social rights, the rising prominence of international human rights law, and a changing judicial framework.

The proliferation of judicial review has yielded a diverse range of favourable consequences. Courts have exercised their jurisdiction to invalidate legislation that violates the economic and social rights of individuals. Furthermore, they have advocated for the government to improve the quality of education, healthcare, and other vital services. The expansion of judicial scrutiny has additionally played a role in fostering a more comprehensive understanding of economic and social rights within the general public. The court decisions have affirmed the legitimacy of these rights, instilling individuals with the assurance to assert their demands for the government's fulfilment of its obligations. However, the heightened utilisation of judicial review has posed several challenges. Certain critics have posited that the judiciary surpasses its jurisdiction by intervening in governmental economic and social endeavours. It has been contended by certain individuals that the judiciary possesses insufficient expertise to assess the societal and economic ramifications of governmental measures. Despite the obstacles, the expansion of judicial review in India has proven to be a beneficial development in safeguarding economic and social liberties. The judiciary plays a crucial role in safeguarding fundamental rights, as evidenced by the substantial improvement in the quality of life for millions of individuals resulting from court rulings.

The viability of judicial review in India is subject to scepticism. However, it is important to note that the judiciary will persist in its crucial function of safeguarding economic and social liberties. The judiciary will be tasked with assessing the relative significance of safeguarding these fundamental rights in light of the government's exercise of discretion. It is imperative to establish precise evaluation criteria for governmental activities.⁴ The judicial review procedure in the Indian legal system has experienced substantial transformation due to the incorporation of economic and social rights. This phenomenon can be attributed to its role in ensuring governmental accountability for the failure to safeguard essential civil liberties. In forthcoming times, the judiciary will assume a pivotal function in safeguarding these fundamental rights.

IV. The expansion of judicial review has the potential to improve the lives of millions of people and to make the Indian Constitution more responsive to the needs of the people

The Constitution of India is a dynamic and evolving text that has undergone various interpretations and amendments throughout its existence. The inclusion of economic and social liberties within the purview of judicial review represents a highly notable achievement within the last decade. The proposed expansion has the potential to enhance the quality of life for a significant number of individuals and foster a greater alignment between the Indian Constitution and the collective aspirations of the populace.

The potential to improve the lives of millions of people

As a result of the broadening scope of judicial review, encompassing economic and social rights, courts are now empowered to assess government policies that impact fundamental rights such as housing, healthcare, education, and other vital services. As a result, the judiciary now possesses the jurisdiction to enforce governmental responsibility in cases where there has been a failure to safeguard essential rights. The courts have exercised their power of judicial review to invalidate legislation that is deemed unconstitutional due to its discriminatory impact on minority groups and women. Furthermore, the authorities have issued directives to enhance the quality of healthcare and education provisions. The aforementioned decisions

¹ Nila Mohanan, Negotiating Political Power at "Critical Junctures": Women and Constitution Drafting in South Africa and India, 57 J. Asian & Afr. Stud. 559 (2022).

² Harsh Pathak, Concept of Right to Life and Its Protection under Constitution of India, RDC (Constitutional Law Review) (1) 55 (2019).

³ Alva, R.J. (2014). "Continuing Mandamus: A Sufficient Protector of Socio-Economic Rights in India?" Hong Kong Law Journal 44(1): 207-229. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,sso&db=lg&AN=96453166&site=ehost-live>

⁴ Khosla, M. (2010). "Making Social Rights Conditional: Lessons from India." International Journal of Constitutional Law 8(4): 739-765. doi:10.1093/icon/mor005.

have exerted a substantial influence on the livelihoods of numerous individuals and have played a role in India's progression towards a more fair and egalitarian society.

The potential to make the Indian Constitution more responsive to the needs of the people

The expansion of judicial review has enhanced the Indian Constitution's capacity to effectively respond to the evolving needs and demands of its populace. As a result, the judiciary is currently empowered to interpret the Constitution with consideration for the progressive changes in societal and economic circumstances. The judiciary has rendered decisions indicating that the entitlement to an unpolluted environment is a constituent aspect of the right to life. The perception of the right to equality includes the recognition of affirmative action as a means to address the underrepresentation of certain groups. These decisions have augmented the extent to which the Constitution is relevant and applicable to the daily lives of ordinary Indian citizens.

The potential augmentation of judicial review has the capacity to enhance the well-being of a substantial number of individuals and foster a greater alignment between the Indian Constitution and populist principles. It is imperative to recognise that the full realisation of this potential has not yet been achieved. Active participation of the legal system is imperative in safeguarding economic and social liberties. Furthermore, it is imperative to establish explicit benchmarks for assessing governmental endeavours. By effectively addressing these challenges, the Indian judiciary can ensure that the mechanism of judicial review is employed to promote and uphold human rights and social justice.

CONCLUSION

The proliferation of judicial review exemplifies the flexibility and commitment of the Indian legal system in safeguarding constitutional principles. To ensure the court does not exceed its boundaries, it is imperative to strike a delicate equilibrium between judicial intervention and the principle of the separation of powers. In a broader sense, the phenomenon of judicial activism and the subsequent expansion of judicial review have played a pivotal role in facilitating India's endeavours to tackle economic and social rights, promote social justice, and safeguard fundamental rights. Notwithstanding its inherent constraints, judicial activism plays a crucial role in safeguarding the Constitution and promoting governmental accountability. The court assumes a pivotal role in safeguarding the rights and welfare of individuals and communities as the Indian legal system progresses.