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*INJUSTICE ANYWHERE IS A
THREAT TO JUSTICE
EVERYWHERE*

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MARTIN LUTHER KING JR.





ARTICLE 32 AND 226

Syndicate Group 08

OVERVIEW

- INTRODUCTION OF ARTICLES
- WRITS AND SCOPE
- JUDICIAL REVIEW
- JUDICIAL ACTIVISM
- CONCLUSION



*TRUE PEACE IS NOT MERELY THE ABSENCE OF
WAR, IT IS THE PRESENCE OF JUSTICE* (JANE ADDAMS)

- The essence of justice lies in **Rule of law** *i.e.* supremacy of law
- Ensured by Supreme Court, High Court and lower courts



ROLE OF JUDICIARY IN DEMOCRACY

Constitution envisages a strong, independent, impartial and well-organized judiciary

Prevents the arbitrary use of governmental authority

Safeguards the rights and liberties of citizens.

Guardian of the constitution.



ARTICLE 32

“The very soul of the constitution
and the very heart of it”



ARTICLE 32

- Article 32(1) Guarantee to remedy
- Article 32(2) Power of supreme court to issue writs
- Article 32(3) Power of parliament to confer the power to issue writs to other courts
- Article 32(4) Suspension of Fundamental Rights.



How Article 32 is different from
other Fundamental Rights?



ARTICLE 226

Power of High Courts to issue any person or authority, including in appropriate case any Government, directions, orders or writs, for the enforcement of any of the rights conferred by Part III and for “any other purpose.”



BASIC DIFFERENCE BETWEEN THE TWO



ARTICLE 32	ARTICLE 226
FUNDAMENTAL RIGHT	CONSTITUTIONAL RIGHT
CAN BE SUSPENDED DURING EMERGENCY	CANNOT BE SUSPENDED
LIMITED SCOPE	WIDER SCOPE
JURISDICTION ALL OVER INDIA	CONCERNED STATE



SENTINEL ON QUI VIVE



In simple terms, enforcement of the Article 32 and 226 is done with the help of five prerogative Writs

Writ of
Habeas Corpus

Writ of
Certiorari

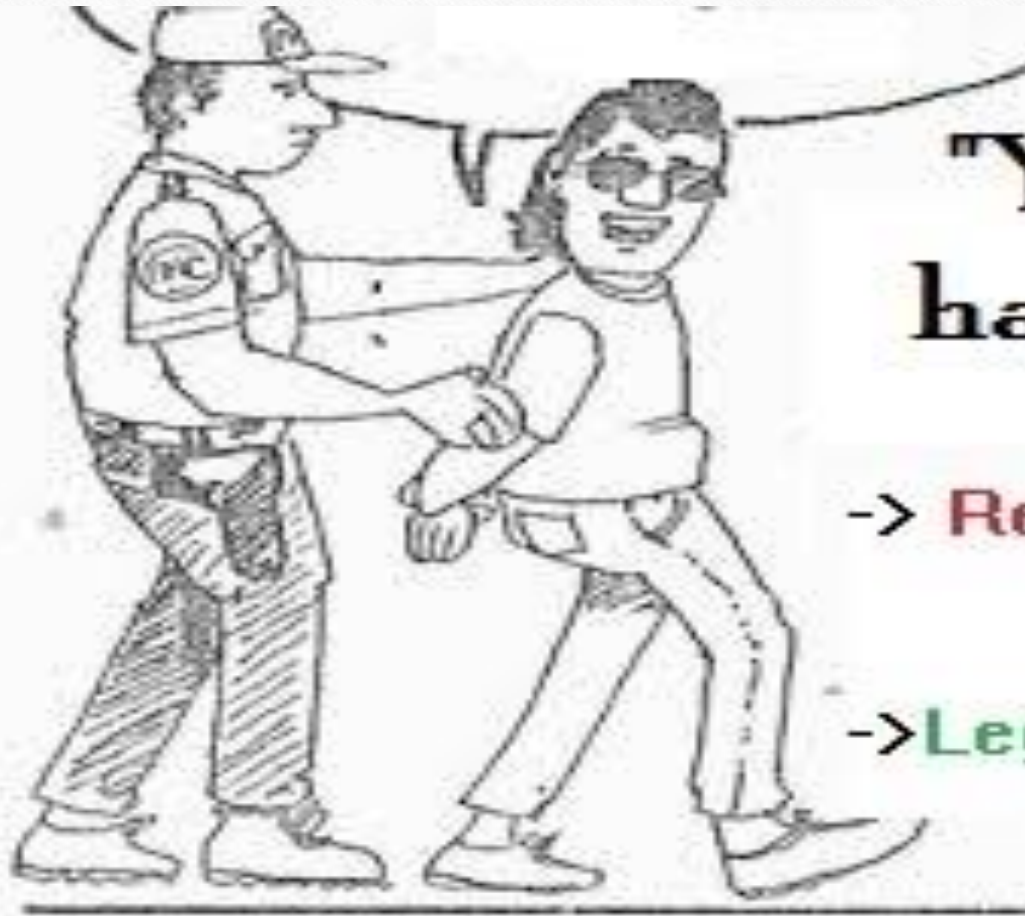
Writ of
Mandamus

Writ of Quo-
Warranto

Writ of
Prohibition

★ **HABEAS** ★
CORPUS ★





**"You should
have the body"**

- > **Release of person from
Illegal detention**
- > **Legality of detention**

Scope

- It is in the nature of an order calling upon the person who has detained another to produce the latter before the court
- To know on what ground he has been detained
- To set him free if there is no legal justification for the imprisonment

Increasing Scope of Habeas corpus

- **Kanu Sanyal v. District Magistrate**

the court may examine the legality of the detention without requiring the person detained to be produced before it

- **Sheela Barse v. State of Maharashtra**

if the detained person is unable to pray for the writ of habeas corpus, someone else may pray for such writ on his behalf.

- **Nilabati Behera v. State of Orissa**

The petitioner was awarded compensation of Rs. 1, 50, 000.



RENDER A FINAL
DECISION ON
PLAINTIFF'S
VISA WITHIN
20 DAYS.

A WRIT OF MANDAMUS
is a court's order
commanding an inferior
court or public authority
to perform an official
duty correctly.



Grounds for Writ of Mandamus

The Writ can be granted against a public authority if

- Acted against the law
- Exceeded his limits of power
- Acted with mala fides
- Did not apply his mind
- Abused his discretionary powers
- Did not take into account relevant consideration
- Has taken into account irrelevant consideration

Case Laws

- **Hemendra v Gauhati University :**

Mandamus was issued to direct a University to announce that the petitioner has passed where, University had refused so to declare though the petitioner had obtained the pass marks required by the statutory rules of the University.

- **Barada Kanta v State of West Bengal :**

Writ of Mandamus cannot be issued against an individual person or any private organization because they are not entrusted with a public duty.

Writ of Prohibition

- It is to forbid or to stop called as “Stay Order”
- Issued in cases where is excess of Jurisdiction and where there is absence of Jurisdiction.
- When the proceedings are pending in the court.
- Issued by both SC and HC’s to any inferior court or Quasi-Judicial Body but not against legislative or administrative body

Writ of Certiorari

- It means “To be Certified”
- Both preventive and curative.
- Issued by SC and HC’s for quashing the order of any inferior court, tribunal or Quasi-Judicial body.
- Propositions laid in issuing this writ by the High Court in **Hari Vishnu Kamath Vs. Ahmad Ishaque** 1955-I S 1104 : ((s) AIR 1955 SC 233)
 1. It is issued to correct the errors of Jurisdiction.
 2. When court or tribunal acts illegal in its jurisdiction.
 3. Order against principles of natural justice.
 4. Court acts in exercise of its supervisory and not appellate Jurisdiction.
 5. An error in the decision or determination itself may also be amenable to a writ of Certiorari.

Case Laws

- Nagendra Nath Bora & Anr. Vs. Commissioner of Hills Division and Appeals, Assam & Ors., (1958) SCR 1240, the parameters for the exercise of jurisdiction.
 1. Check whether inferior court has exceeded its jurisdiction.
 2. Mere formal and technical errors doesn't attract this.

Writ of Quo-Warranto

- It means “what is your authority”.
- Issued to restrain a person from holding a public office.
- Conditions:
 1. Public office created by a statute
 2. Person to be appointed by a statute or statutory instrument.
- *Illustrations:*
 - a) Subramanian Swamy petition against Jayalalitha in 2001. Two PIL's against her appointment.
 - b) Manohar Reddy vs Union of India: two advocates filed a petition quashing the appointment of a Judge of a HC of AP and a writ is in the nature of Mandamus commanding the Bar Council of AP to cancel the enrollment as an advocate N V Ramana.

Judicial Review



Historically, the judicial branch has often been the sole protector of the rights of minority groups against the will of the popular majority.

(Diane Watson)

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Judicial Review

- Judicial review is the idea, fundamental to the system of government, that the actions of the executive and legislative branches of government are subject to review and possible invalidation by the judicial branch.
- Judicial review allows the Supreme Court to take an active role in ensuring that the other branches of government abide by the constitution.
- Judicial review was established in the classic case of Marbury v. Madison, 5 US 137 (1803).
- Dealt under Article 13, Article 32 and Article 226 of the Constitution of India



Judicial Review

- Judicial review is one of the checks and balances in the separation of powers: the power of the judiciary to supervise the legislative and executive branches when the latter exceed their authority
- Judicial review should be understood in the context of both the development of two distinct legal systems (civil law and common law) and two theories of democracy (legislative supremacy and separation of powers) is that some countries with common-law systems do not have judicial review of primary legislation
- A basic structure of the constitution

Public Interest Litigation

- Welfare of weaker sections of society
- Expanded the ambit of judicial review
- Locus standi by public spirited persons and or group.



Judicial Activism



Judicial Activism

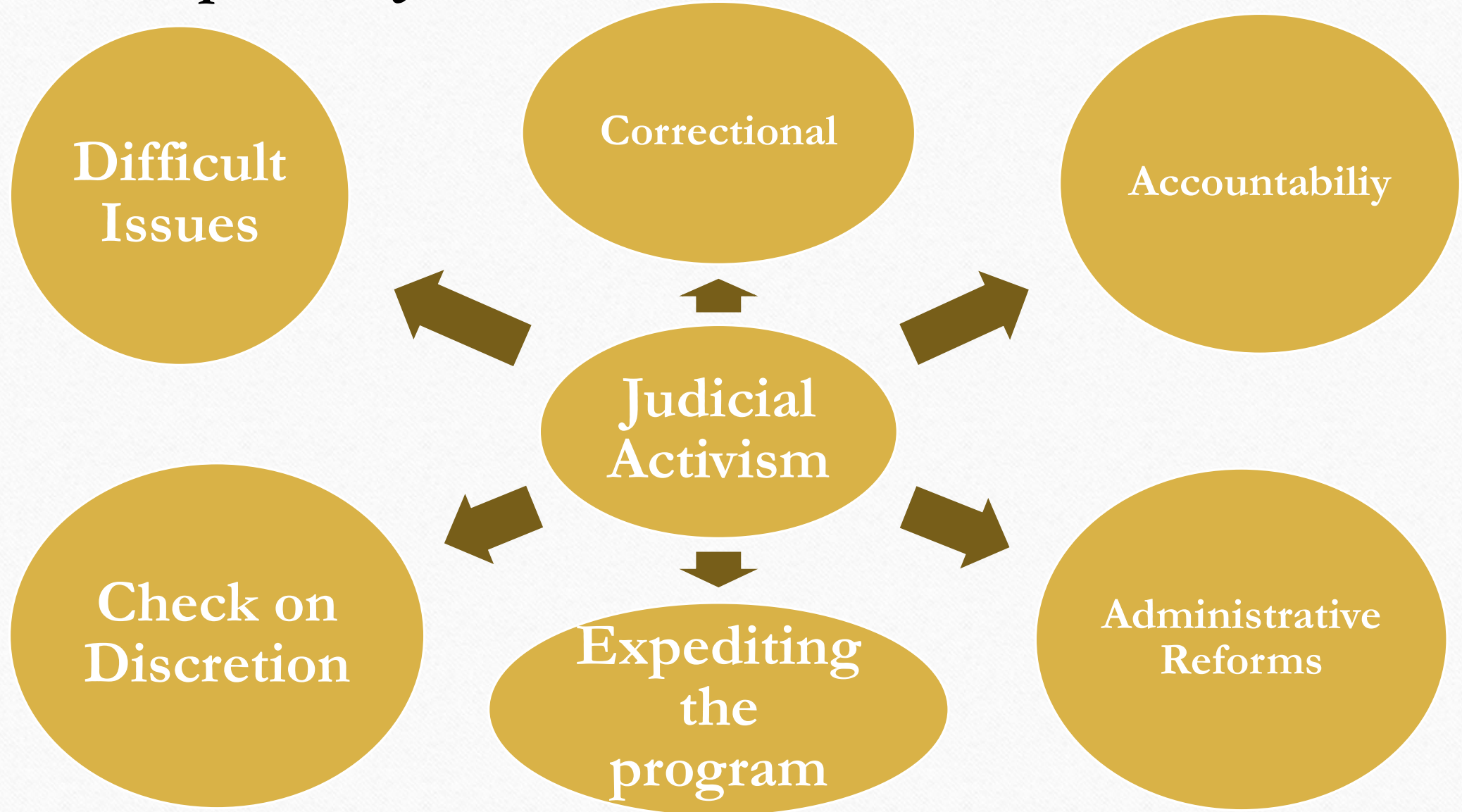
- The emergence of judicial review gave birth to a new movement which is known as judicial activism.
- Black Law Dictionary defines judicial activism as a "philosophy of judicial decision making whereby judges allow their personal views about public policy among other factors to guide their decision".



Judicial Activism

- Exercise of unconventional jurisprudence or creative approach of judiciary can be called as judicial activism for a instance in India the Supreme Court has treated even a letter as a writ petition and has passed appropriate orders. This concept has turned into a important means to enhance the applicability of a particular legislation for social betterment and also to bring improvement in the concerned state machinery.

Impact of Judicial Activism on Administration



◆ JUDICIAL ACTIVISM (Impact on Administration and Society)

CHILD WELFARE:

CASE: MUNNA . V. STATE OF U.P (1982) 1 SC

FACT: Public interest litigation was filed in the court on the basis of a news report about sexual exploitation of children by hardened criminals in Kanpur jail. The court directed the District judge, Kanpur to visit the jail and report the report confirmed the crime of sodomy committed against the children. The court directed the release of the children from jail and their shifting them to children's home.

RAPE ON WORKING WOMEN - Rehabilitation & compensation.

CASE : VISHAKA . V. STATE OF RAJASTHAN AIR 1997 SC 301141

- **FACT** : The Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work until legislation is enacted for this purpose.
- The court held that the court has the power under Article 32 to lay down such guidelines for effective enforcement of fundamental rights of working women at their work places and declared that this would be treated as the law declared by the Supreme Court under Article 141 of the constitution

PROTECTION AGAINST INHUMAN TREATMENT IN JAIL :

CASE: SUNIL BATRA .V. DELHI ADMINISTRATION AIR 1980 SC

- FACT: It has been held that the writ of
- habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment.

BAN ON SMOKING IN PUBLIC PLACES:

Murali S.Deora Vs. Union of India, AIR 2002 SC :

- The Supreme Court has directed all states and union territories to immediately issue orders banning smoking in public places and public transport, including railways.

Protection of ecology and environment pollution

In Shriram food and fertilizer case [M.C Mehta v/s Union of India, 1986, vol 2 scc 176]

- The Supreme court at the instance of a PIL, directed the company manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant.

Judicial Activism leading to Judicial overreach

- Tendency of judges to intrude into the domain of the executive and the legislature.
- Accountability of Judges
- Undermining of sovereign functions of Govt.
- Subjectivity of Judges' opinion and perception based verdicts



Judicial overreach

- Judicial Activism either in support of the other organs of the state or in opposition to them, but it is the latter pattern which usually happens
- Perhaps no State activity can be spared from the purview of the Supreme Court as a PIL matter.
- Can culminate in judiciary taking over the total administration of the country



Judicial overreach

- Violates the basic structure of constitution and negates the doctrine of separation of power
- Perils of judiciary venturing into areas where it doesn't have expertise and try to run the govt.
- Check and balances is also applicable to Judiciary for a healthy democracy



Examples of Judicial Overreach

- SC directing video-graphy of proceedings of Jharkhand Assembly, appointment of temporary speaker and convening a special session of assembly
- Creation of various high powered committees to monitor – e.g. monitor parking, regulation of traffic and implementation of traffic rules
- Declaring unconstitutional the order of Governor dissolving the Bihar assembly
- Allahabad HC order prohibiting caste based rallies

- Banning iron ore mining in Goa and Karnataka
- Gujarat HC order that new vehicles registered must run on CNG
- HC deciding on whether toll should be collected on toll plazas
- Order of Delhi HC on legality of constructions in Delhi and order of demolition
- Interlinking of rivers

Judicial restraint

- Judiciary to keep re-inventing itself through introspection and self-correction
- SC has said that judiciary must refrain from encroaching from executive and legislative domain
- Case laws :
 - Divisional Manager Aravali Golf Course vs Chander Haas, 2008
 - Almithra H Patel vs UoI, (2000) 2 SCC 679
 - UoI vs Kishan K Sharma, (2004) 5 SCC 518
- However, the effect of Judicial restraint vis-à-vis Judicial overreach is yet to be realized.

Conclusion

- This widest amplitude given to the fundamental rights is most welcome.
- By enlarging the scope of Article 32 and 226, judiciary has brought justice and revolutionized constitutional jurisprudence
- Makes the Constitution a living, dynamic document
- Judicial review in constitutional interpretation is a healthy trend
- Judicial activism and PIL help participation of spirited and enlightened people and helps to offer justice to the poor and the oppressed
- Judiciary in its activist role *vis-a-vis* PIL has taken a goal-oriented approach in the interest of justice

- The doctrine of separation of powers must be adhered and balance must not be overloaded beyond tolerable limits.
- Judiciary is not the final answer to all administrative ills and improvement in system should be a co-ordinate effort by all organs of the state.
- Judiciary should act as a lighthouse, not a destination in itself
- It should work in a self - reliant and self - restrained manner

*JUSTICE CONSISTS NOT IN BEING NEUTRAL
BETWEEN RIGHT AND WRONG, BUT IN
FINDING OUT THE RIGHT AND UPHOLDING
IT WHEREVER FOUND, AGAINST THE
WRONG.*

THEODORE ROOSEVELT

QUESTIONS??????

