



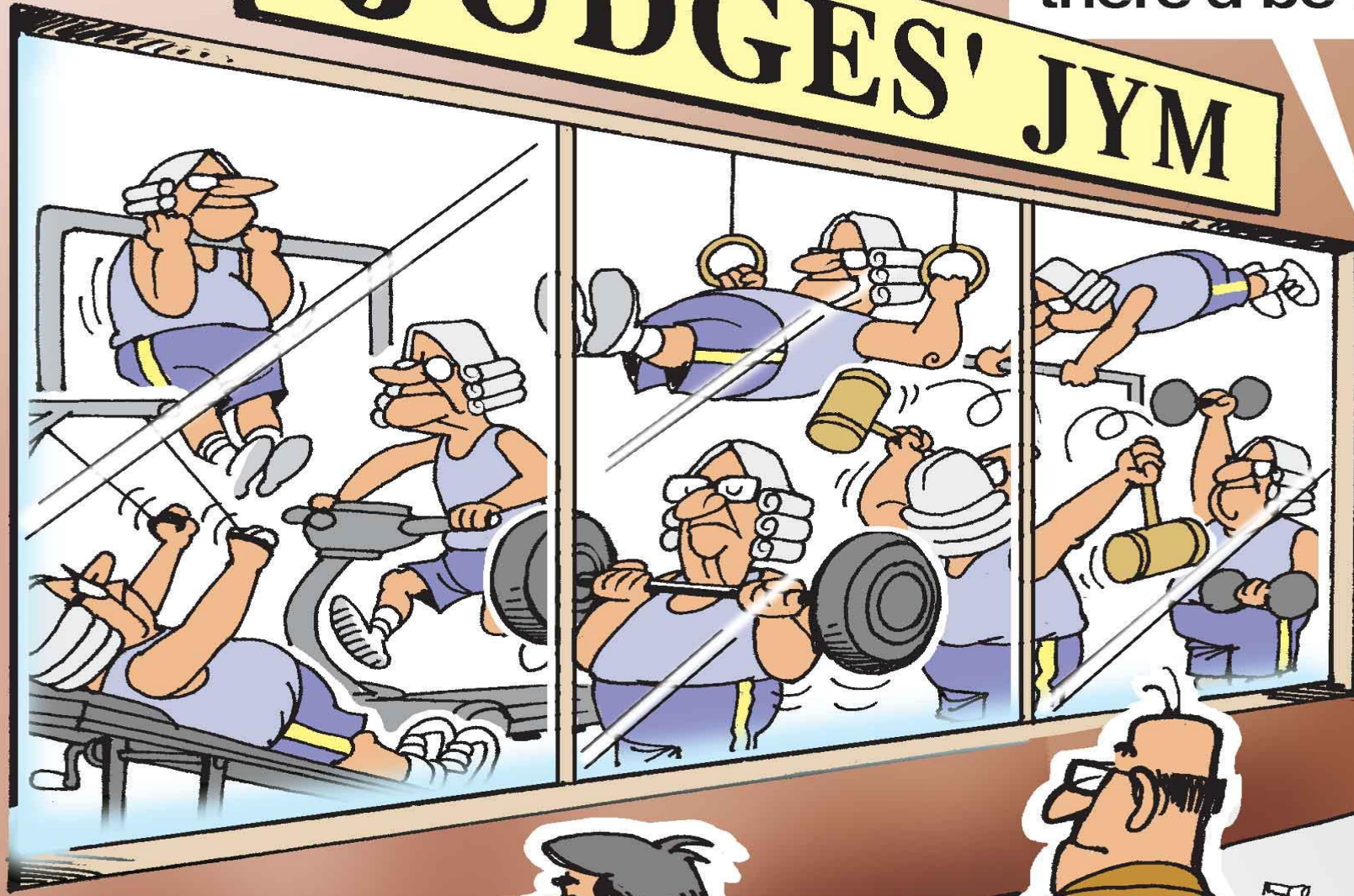
Judicial Activism in India



'Judicial Activism' – fast track courts.

JUDGES' JYM

If only they'd stick to this kind of judicial activism there'd be no problem.



Judicial Activism



JAI BHIM



Superintendence, direction and control of elections to be vested in an Election Commission

Article 324

- (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)
- (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine;

ANOOP BARANWAL Vs. UNION OF INDIA
2023 LiveLaw (SC) 155

Appointment to the posts of Chief Election Commissioner and the Election Commissioners shall be done by the President of India on the basis of the advice tendered by a Committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha and, in case, there is no such Leader, the Leader of the largest Party in the Opposition in the Lok Sabha having the largest numerical strength, and the Chief Justice of India. This norm will continue to hold good till a law is made by the Parliament.

SC ORDERS SETTING UP OF 6-MEMBER COMMITTEE TO PROBE SHARE CRASH





SC APPOINTS COMMITTEE
TO PROBE PEGASUS

JUSTICE

JUSTICE HIMA KOHLI

**Prevention of Corruption Act will apply to Judges of the higher courts.
But sanction has to be obtained from the CJI**

“For the purpose of s.6(1)(c) of the Prevention of Corruption Act, 1947, the President of India is the authority competent to give previous sanction for prosecution of a Judge of a superior Court.

No criminal case shall be registered under s.154, Cr. P.C. against a Judge of the High Court, Chief Justice of the High Court or a Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter”

K. Veeraswami vs Union Of India

1991 (3) SCC 655

Rickshaw pullers were made owners of Cycle rickshaws

The challenge in these writ petitions compels us to remind ourselves that under our constitutional system courts are havens of refuge for the toiler, not the exploiter, for the weaker claimant of social justice, not the stronger pretender who seeks to sustain the status quo ante by judicial writ in the name of fundamental right. No higher duty or more solemn responsibility rests upon this court than to uphold every State measure that translates into living law the preambular promise of social justice reiterated in Article 38 of the Constitution. We might have been called upon to examine from this angle of constitutionalised humanism, the vires of the Punjab Cycle Rickshaws (Regulation of Rickshaws) Act, 1976, designed to deliver the tragic tribe of rickshaw pullers, whose lot is sweat, toil, blood and tears, from the exploitative clutches of cycle rickshaw owners by a statutory ban on non-owner rickshaw drivers. But negative bans, without supportive schemes, can be a remedy aggravating the malady. For, the hungry human animal, euphemistically called rickshaw puller, loses, in the name of mercy, even the opportunity to slave and live.

“we have all the factors ready to cooperate in effectuating the purpose of saving the rickshaw pullers and making them owners. All that we have to do is to set out a self-working, specific scheme which makes the statutory ban not a negative, self-defeating interdict, but a positive economic manumission. All the counsel have played a role in the dynamic process which has resulted in the judicial project we are giving effect to.”



On receipt of the municipal certificate, the rickshaw puller concerned will apply to the Credit Guarantee Corporation of India (Small Loans), under the Guarantee Scheme of 1971, praying to the said Corporation that it stand guarantee to the Punjab National Bank (or other schedule bank mutually agreed upon) for advance of a loan upto Rs. 900 (and in special cases for a larger sum if satisfied that the price of a cycle rickshaw is more than Rs. 900). The Punjab National Bank (or other scheduled bank mutually chosen) will receive a sum of Rs. 50 by way of deposit towards the loan to be advanced to the applicant. The rickshaw pliers shall make this initial deposit to be eligible for the bank loan. The balance of the loan shall be guaranteed by the Credit Guarantee Corporation of India (Small Loans) whereupon the concerned bank will advance the sum needed for the purchase of a cycle rickshaw to the manufacturer or vendor indicated by the applicant.

Azad Rickshaw Pullers Union Vs State Of Punjab
1980 Supp SCC. 601

Karnataka Uniform Case



Government Order No: EP14 SHH 2022 Bengaluru

Dated: 05.02.2022

“In colleges that come under the pre-university education department’s jurisdiction, the uniforms mandated by the College Development Committee, or the board of management, should be worn. In the event that the management does mandate a uniform, students should wear clothes that are in the interests of unity, equality and public order.”

Justice Hemant Gupta's opinion

“secularism is applicable to all citizens, therefore, permitting one religious community to wear their religious symbols would be antithesis to secularism. Thus, the Government Order cannot be said to be against the ethic of secularism or to the objective of the Karnataka Education Act, 1983.”

Justice Sudhanshu Dhulia's opinion

“Under our Constitutional scheme, wearing a hijab should be simply a matter of Choice. It may or may not be a matter of essential religious practice, but it still is, a matter of conscience, belief, and expression. If she wants to wear hijab, even inside her class room, she cannot be stopped, if it is worn as a matter of her choice, as it may be the only way her conservative family will permit her to go to school, and in those cases, her hijab is her ticket to education.”

“The unfortunate fallout of the hijab restriction would be that we would have denied education to a girl child. A girl child for whom it is still not easy to reach her school gate. This case here, therefore, has also to be seen in the perspective of the challenges already faced by a girl child in reaching her school. The question this Court would put before itself is also whether we are making the life of a girl child any better by denying her education merely because she wears a hijab!”

By asking the girls to take off their hijab before they enter the school gates, is first an invasion on their privacy, then it is an attack on their dignity, and then ultimately it is a denial to them of secular education. These are clearly violative of Article 19(1)(a), Article 21 and Article 25(1) of the Constitution of India.

Aishat Shifa (Hijab Case) Vs. The State Of Karnataka
2023 (2) SCC 1

Sexual Harassment at Workplace



Law made by the Supreme Court

“the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under [Article 32](#) of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under [Article 141](#) of the Constitution.”

“we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.”

Vishaka & Ors vs State Of Rajasthan
1997 (6) SCC 241

Parliament enacts a new law

#LawExplainers

Sexual Harassment Of Women At Workplace Act, 2013

Thank You

