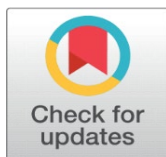
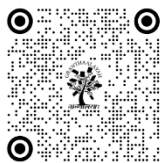


A RESPONSIVE THEORY OF JUDICIAL REVIEW

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ABSTRACT

As used in India, the Responsive Theory of Judicial Review stresses how important it is for judicial review to be aware of the Indian court's unique institutional position and abilities, as well as the Indian legal system's specific conditions and constraints. This way of thinking goes beyond the strict Indian perspective of judicial supremacy and calls for a more nuanced and careful use of judicial review. It requires thinking about the subtleties of public interest litigation in India and the possibility of legislative dysfunction. According to a responsive approach, judicial review in India is complicated and needs to take into account the courts' institutional limits and how it can affect other branches of government, all while still following democratic values and constitutional norms.

Keywords: Judicial Review, Responsive, Constitutional Rights, Political Process, Lawmakers

1. INTRODUCTION

1.1. IMPORTANT FEATURES OF INDIA'S RESPONSIVE JUDICIAL REVIEW

1) Fixing the Broken Legislative Framework

The idea says that the courts should work with the government to find out why they aren't doing anything, possibly using proportionality principles. They should also understand that lawmakers may not solve important concerns through legislation. Responsive judicial review says that judicial engagement should be in line with the issue at hand and that there is a risk of overreach or damage to the judiciary's credibility. This means that the potential for these things should be carefully considered. Suspended pronouncements of invalidity are an example of a unique remedy that the theory looks at. This would provide lawmakers the chance to pass laws before a final court decision, which might improve communication and cooperation between the legislature and the courts. The system's effectiveness depends on the political and legal situation at the time, and responsive judicial assessment recognizes that various courts may have varied skills. Judges should be brave enough to speak out against abuses of the Constitution and humble enough to know when their power is limited. This would strike a balance between judicial activity and restraint. According to Jhahnavi Sindhu's "A Responsive Theory of Judicial Review—A View from India," courts can use this framework to protect socio-economic rights and fix problems with the law. She also stresses that any notion of responsive judicial review should not aim to promote unrestrained judicial authority. An appraisal from the National Law School of India University shows

how important Rosalind Dixon's work has been for responsive judicial review. Dixon stresses how important it is for courts to be aware of their institutional limits and functions, the possibility of less finality in judicial decisions, and the need for more complex solutions. In short, responsive judicial review in India is a new way of doing things that takes into account the unique needs of each case and tries to find a balance between the principles of democratic governance, the limits of the judiciary, and the necessity for judicial oversight.

2) Fixing the problems with democracy

The idea of responsive judicial review acknowledges that democratic systems can break down in ways including not having enough discussion, too much power for the majority, and not doing anything about problems. This means that judicial review might be a good way for courts to deal with these problems, especially when legislatures or other interested parties don't talk about them.

3) Judicial remedies for weak cases

This ideology is based on the idea of "weak-strong" treatments. This plan lets courts take a more passive approach at first, letting other branches get involved and talk before moving on to more forceful actions if needed. People are pushing for this method to keep the courts from becoming too activist or too conservative.

4) Proportionality and calibrated evaluation

The idea supports a "calibrated" approach to proportionality and judicial review, which means that the level of scrutiny should change depending on the topic and the situation. According to the National Law School of India University, the proportionality test, which looks at the legitimacy, appropriateness, necessity, and proportionality of a measure, is a good way to look at Articles 19 and 21 of the Indian Constitution, which deal with fundamental rights.

5) Official power and skill

A responsive approach says that courts should think about their own strengths and limitations as institutions when they do judicial review. It stresses the need of being aware of aspects that are relevant to the situation and recognizes that not all courts are equally skilled or successful at doing this kind of analysis.

6) Limiting PIL

The theory agrees that Public Interest Litigation (PIL) is necessary to fight social injustices and protect socioeconomic rights. However, it also says that the judiciary has limits on its legitimacy and competence, which means that the PIL movement needs to be limited. Instead of giving explicit and specific orders, the court may tell the government to come up with and carry out plans, then watch the process to make sure it follows the rules.

1.2. CONSTITUTIONAL RIGHTS AND THEIR INTERPRETATION

Courts should read the Constitution with an eye towards how society's needs and values are changing. This is what responsive judicial review is all about. It recognizes the judiciary's role in protecting basic rights, especially when minority groups are discriminated against or pushed to the edges of society. A responsive theory of judicial review in India tries to go beyond the usual debate of activism versus restraint by taking a practical and flexible approach that takes into account the specific situation, keeps the principle of separation of powers, and ultimately aims to strengthen democratic constitutional values.

2. INDIAN COURT SYSTEM'S RESPONSIVE THEORY OF REVIEW

Judicial review, which gives courts the power to check whether laws and executive actions are constitutional, is very important for protecting constitutional democracies. An Indian "responsive theory" of judicial review suggests a balanced approach by recognising the court's role to protect constitutional values and individual rights, while also stressing the need for judges to exercise restraint and follow the concept of separation of powers. This idea looks for a more advanced way to do sound and efficient judicial review in a complicated democratic system, going beyond the simple choice between activism and restraint.

3. INDIAN SETTING AND HOW COMPLICATED POWER IS IN THE COURTS

Looking at a responsive philosophy of judicial review in India gives us a new way of thinking. The Indian judiciary has greatly increased its power to strike down unconstitutional laws. In addition to looking at constitutional amendments and giving policy-related directives, it has done this. The Supreme Court has a lot of power, thus it is becoming more and more responsible for settling a wide range of government disputes. People often question the Court's authority, especially when they think its judgments are stepping on the toes of elected officials. This is because the Court has a lot of obligations. This seeming clash shows how important it is to have a system that lets the court maintain constitutional ideals without hurting democracy.

3.1. ROLE OF THE COURT AND THE BREAKDOWN OF DEMOCRACY

Democratic regimes can break down, as seen by the lack of action by lawmakers or the violation of minority rights. Responsive judicial scrutiny recognizes this fact. In these situations, it is up to the courts to fix these problems. When lawmakers ignore important social issues or don't protect weak groups, the courts may step in with public interest litigation (PIL) to bring attention to the issue and start a conversation about possible remedies. Responsive approach, on the other hand, says that the courts shouldn't become involved in areas where the legislative or executive departments have more experience making policy.

3.2. COMPLICATED PROCEDURE FOR CALIBRATED TESTING AND PROPORTIONALITY

For judicial review to work, it is important to use a "calibrated" approach to proportionality and judicial scrutiny. This method means adjusting the level of judicial scrutiny to fit the facts and nature of each case. In this case, the proportionality test is very important because it checks to see if a measure is fair, necessary, and proportional. When judges do a proportionality analysis, they look at how much substantive debate a piece of legislation, especially one that violates fundamental rights, had in the legislature or during stakeholder meetings. If these talks don't happen, the court may find reasons to throw out the law in question.

3.3. SUBPAR YET EFFICACIOUS THERAPY AND DIALOGIC SUPERVISION

Responsive judicial review supports a "weak-strong" approach to fixing problems. This viewpoint says that the courts should first take a more respectful approach, including asking the president for an explanation or asking the administration to come up with a plan. This would give the other branches time to reply and work together. If the dialogic method doesn't work, courts may use harsher sanctions, but they must always think about the conditions and the effects of their choices. For example, the Indian Supreme Court dealt with the COVID-19 outbreak in a certain way. The court worked with other High Courts, did dialogic monitoring, and asked the government for more information about things like the supply of medical oxygen and the vaccination policy.

3.4. LIMITING LAWSUITS THAT ARE IN THE PUBLIC INTEREST

Public interest litigation (PIL) is important for giving a voice to people who are often ignored and for fixing wrongs in society. However, some people say that PIL should be regulated. When dealing with complicated policy matters, courts should not make unduly prescriptive or interventionist rulings and should be conscious of their own limitations in terms of legitimacy and competence. If the court makes the government come up with and carry out plans while keeping an eye on the process to make sure they follow the rules, it might be possible to foster a more collaborative and intentional approach.

3.5. MEANING OF CONSTITUTIONAL RIGHTS

Courts should interpret the Constitution in a way that reflects the changing needs and values of society. This is what responsive judicial review means. The courts must protect basic rights, especially when those that are already on the outside are being discriminated against or left out. The Indian Supreme Court's acceptance of rights, particularly the

right to privacy and the right to education, has highlighted this feature and inspired public discourse and legislative initiatives to strengthen individual liberty.

3.6. RESPONSIVE REVIEW IN INDIA: CURRENT STATE AND FUTURE PROSPECTS

There are a lot of problems that need to be solved in order to make judicial review work properly. To make this strategy work better, we need to resolve the continuous tension between judicial independence and accountability, deal with the judiciary's lack of resources, and reduce the number of cases that are piling up. Responsive judicial review is a good way to deal with the problems that modern constitutional democracies like India's are facing. This idea aims to improve the democratic system by encouraging courts to recognize their unique role in government, take a more nuanced approach to review and remedies, and encourage communication with other branches of government. Through more study and real-world application, this theory will be further refined and adapted to India's changing democracy and the problems it faces.

4. KEY FINDINGS FOR A RESPONSIVE THEORY OF JUDICIAL REVIEW IN INDIA

4.1. ROLE AND LEGITIMACY OF THE COURTS IN CONTEXT

The Indian court is very important in a constitutional democracy. However, responsive judicial review shows how important it is to have a balanced judicial power that protects rights while limiting institutions and keeping the separation of powers. It recognizes that the Indian courts face unique problems, such as democratic dysfunction (such legislative shortcomings or too much authority in the hands of a few) and the possibility of judicial overreach, especially in cases of public interest litigation (PIL). The second point is about dialogic oversight and the difference between weak and strong cures. Courts should start with "weak" or less intrusive remedies that allow for debate and legislative or executive response. They should only use "stronger" remedies when they are absolutely essential. During the COVID-19 pandemic, the Supreme Court asked for more information and pushed the government to deal with serious issues including vaccine policy and oxygen shortages. This is an example of dialogic oversight.

4.2. PROPORTIONALITY AND CALIBRATED EVALUATION

The principle of responsive judicial review says that the level of judicial review should be appropriate and based on the specific facts and character of the case. The proportionality test is an important way to figure out if limitations on rights protected by Articles 19 and 21 of the Indian Constitution are reasonable, suitable, necessary, and proportional. To use the proportionality test correctly, you need to think about the quality of legislative discourse or stakeholder participation. If there isn't any discussion, the courts may need to step in.

4.3. CHANGING THE WAY PEOPLE TALK ABOUT PUBLIC INTEREST LITIGATION

Public Interest Litigation (PIL) has helped make society fairer and protect economic rights, but the theory warns that the courts may go too far with their power and make too many decisions. Instead of telling the government what to do about complicated policy matters, the court can encourage a more cooperative and thoughtful approach by requiring the government to come up with and carry out plans and then overseeing the process to make sure they are followed.

4.4. MAKING THE CONSTITUTION CLEARER AND PROTECTING BASIC RIGHTS

Responsive judicial review, which sees the Constitution as a flexible and dynamic constitution that can adapt to changing circumstances, emphasizes the importance of the courts in protecting basic rights, especially for groups that are already excluded or disadvantaged. It says that Public Interest Litigation (PIL) and the broad reading of Article 21 show how the courts can be activist in fighting human rights abuses and pushing for social justice.

4.5. PROBLEMS AND POSSIBLE FUTURE DIRECTIONS

Things like case backlogs, empty courtrooms, and limited resources make it hard to carry out appropriate judicial review. The theory, on the other hand, provides a way to get around these problems. It calls for a flexible and practical

approach to judicial review that takes into account the situation, keeps the separation of powers, and ultimately aims to strengthen democratic constitutional values.

Judicial review gives the courts the power to decide whether decisions taken by the executive and legislative branches are constitutional. This is the basis of constitutional democracy. The idea of a “responsive theory” of judicial review in India stresses the importance of the separation of powers and the need for judges to be careful. This strategy is complicated and takes into account the judiciary’s important role in protecting individual rights and constitutional values. This approach aims to create a fair and effective system for judicial review in India’s complicated democratic system, going beyond the usual debate between judicial activism and judicial restraint. India is a very interesting and useful case study for responsive judicial review. Over the years, the role of the judiciary, notably the Supreme Court, has grown a lot. Its job has grown from just getting rid of illegal legislation to including looking at proposed constitutional amendments and giving advice that is close to shaping policy. The Court is very important for protecting constitutional democracy, but its growing importance raises concerns about its legitimacy, especially when its decisions seem to infringe on the power of elected officials.

An adaptable philosophy of judicial review shows the way forward. It stresses how important it is for the judiciary to know its limits and how important it is to keep the branches of government in balance, even if it is very important for the court to interpret and uphold the Constitution. Using responsive judicial review to fix the problem of democracy getting worse

Legislative inaction or the violation of minority rights are examples of democratic problems that responsive judicial review tries to fix. Public interest litigation (PIL) is a way for the courts to bring attention to problems in society and start conversations about how to make things better when the government isn’t doing enough. A responsive strategy also warns against too much judicial involvement in establishing policies, which is better left to other parts of the government. Instead than letting the courts decide policy outcomes directly, it suggests encouraging conversation with other branches. This dialogic strategy is especially useful when the legislative procedure is slow or doesn’t work to deal with politically sensitive but important topics that are important for sustaining democratic standards.

The responsive hypothesis says that proportionality and judicial scrutiny should be done in a “calibrated” way. The level of judicial scrutiny should change depending on the topic and the situation. The proportionality test is an important part of this in-depth study. It looks at a measure’s validity, appropriateness, need, and proportionality, especially in relation to the basic rights protected by Articles 19 and 21 of the Indian Constitution. The evaluation of a law’s proportionality should be based on how much thorough discussion there was among legislators or stakeholders when it was being made. The court might say that a law is unconstitutional because there were no such discussions. This method encourages more openness and responsibility in the lawmaking process, while also encouraging lawmakers to work together more. Supporters of responsive judicial review want a “weak-strong” approach to remedies. As a result, courts may not become involved at first, instead asking for explanations or asking the executive branch to come up with answers. This helps the three branches talk to each other, which speeds up the process of working together to solve constitutional problems.

If the dialogic approach doesn’t work or if more serious solutions are clearly needed, courts may use more aggressive measures. The way the Supreme Court dealt with the COVID-19 epidemic is a good example of this dialogic approach. It worked with other High Courts to keep an eye on things and asked the administration for further information on things like the vaccination policy and the provision of oxygen.

5. CONCLUSION

The responsive approach recognizes that PIL has been important in bringing attention to social inequalities and protecting socioeconomic rights in India. It also stresses the need to be careful while using it. When dealing with complicated policy matters, courts should not give unduly prescriptive or interventionist opinions, they should also be conscious of their institutional limits when it comes to legitimacy and competence. A judge may tell the government to come up with plans instead of putting them into action, and then watch over the process to make sure it follows the rules. We can preserve human rights and encourage a more cooperative and thoughtful way of doing things by doing this. Courts should interpret the Constitution as a living constitution that reflects the changing needs and values of society. This is the premise behind responsive judicial review. To protect minorities and fight socioeconomic inequalities, we need to have a more sophisticated understanding of judicial review. This is because the judiciary’s job to protect basic

rights becomes more important when disadvantaged groups are discriminated against or left out. This part of responsive judicial review is shown by the Indian Supreme Court's support for rights including the right to privacy and the right to education. These rights have sparked public debate and legislative discussion about how to improve individual freedom. India has trouble putting into action a good philosophy of judicial review. To make this technique better, we need to deal with the current case backlogs, the judiciary's lack of money, and the ongoing debate about judicial independence and accountability. Despite these problems, responsive judicial review is a good way to understand and run modern constitutional democracies, including India's. This theory says that India's democratic constitutional values should be strengthened and that judicial review should remain relevant and useful by encouraging communication between different branches of government, taking a more nuanced approach to scrutiny and remedies, and urging courts to recognize their unique role as institutions. This hypothesis will definitely be improved and changed as more study is done and as India's growing democracy faces new problems and situations.

CONFLICT OF INTERESTS

None.

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None.

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