



Judicial Audit of Law

For Prelims: [Supreme Court of India, Public Interest Litigation \(PIL\), National Food Security Act \(NFSA\), Sexual Harassment of Women at Workplace \(Prevention, Prohibition and Redressal\) Act, 2013.](#)

For Mains: Judicial Review and the Role of the Judiciary, Welfare Legislation in India, Slum Redevelopment Policies, Accountability in Governance, [Judicial Activism vs. Judicial Restraint](#), Urbanisation and Housing Challenges

[Source: TH](#)

Why in News?

Recently, the [Supreme Court of India](#) recently upheld the **judiciary's authority to direct the government** to conduct a **"performance audit" of its statutory laws**.

- This ruling emerged from an appeal regarding an **Act for slum area development** in Maharashtra, highlighting **concerns over the law's effectiveness in improving conditions** for its intended beneficiaries.

What is the Supreme Court's Ruling?

- The Supreme Court directed the Bombay High Court to **conduct a performance audit of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971**, due to a significant backlog of over 1,600 pending cases related to the Act.
- The Court highlighted that while the **Act aims to provide housing and dignity to marginalised individuals**, its implementation has led to **extensive litigation**, undermining its objectives.
- The Court emphasised that the **judiciary has both the power and duty to ensure laws are effective**. The Court noted that if a law fails to benefit its intended recipients, a performance audit is warranted.
- Additionally, the Court stressed the importance of **"institutional memory"** in evaluating legislation's long-term impact.

What are the Implications of this Judgment?

- **Judicial Activism:** It marks a shift towards **proactive judicial involvement in governance**, wherein the judiciary can **act as a facilitator of justice**, stepping in when bureaucratic delays hinder the enforcement of statutory provisions.
 - This could set a **precedent for similar audits of other welfare laws and schemes**.
- **Performance Audit:** The performance audit aims **to evaluate the effectiveness of the Act and identify systemic issues** contributing to litigation.
 - This could lead to **necessary reforms in the law**, enhancing its efficacy in achieving its intended goals.
 - The **fear of a performance audit of the law** may compel legislatures to **scrutinise**

laws more thoroughly before and during their promulgation to eliminate any inconsistencies and shortcomings.

- **Legislature and Executive Accountability:** The ruling reinforces the **constitutional duty of the legislature and executive to frame, monitor and assess the impact of legislation.** This may lead to increased accountability and responsiveness from government authorities in implementing welfare laws.
- **Focus on Marginalised Communities:** The Court's emphasis on the **law's intent to benefit marginalised groups** underscores the need for policies that genuinely address their needs. This could stimulate **further legal and policy initiatives aimed at protecting vulnerable populations.**
 - The Supreme Court's observations on the Act could lead to major reforms, creating a better framework for slum redevelopment and improving living conditions for affected communities.

What are the Previous Rulings of the Supreme Court Related Judicial Activism?

- **Anun Dhawan & Ors. vs. Union of India, 2024:**
 - In this, activists filed a **Public Interest Litigation (PIL)** advocating for the establishment of community kitchens to address hunger and malnutrition. The petition highlighted alarming child mortality rates due to these issues and argued that the situation violates **fundamental rights**, including the right to food and life.
 - **Supreme Court Judgment:** In this, the **Supreme Court declined to direct states to implement a specific scheme** for community kitchens to combat hunger and malnutrition.
 - The court emphasised the **limited scope of judicial review concerning government policy matters**, stating that it cannot mandate states to adopt a particular policy simply because an alternative might be considered better.
 - Instead, it acknowledged the existing frameworks under the National **Food Security Act (NFSA)** and left it to states and union territories to explore alternative welfare schemes as they saw fit.
- **Vishaka vs. State of Rajasthan, 1997:**
 - The case is a landmark judgment in India that established crucial guidelines to prevent **sexual harassment in the workplace.**
 - In this, the **Supreme Court** laid down comprehensive guidelines named **Vishakha guidelines**, outlining definitions, employer obligations, complaint mechanisms, and the need for training.
 - This ruling led to the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, significantly enhancing workplace safety for women.

What are the Reasons for the Legislature's Enactment of Ineffective Laws?

- **Complexity of Issues:** India's diverse population and interconnected social, economic, and environmental problems make it difficult to draft universally effective laws.
- **Lack of Research and Data:** Many laws are created without sufficient empirical evidence or thorough impact assessments, leading to ineffective solutions.
 - **Example:** Lack of scrutiny by the **Joint Parliamentary Committee (JPC)** on **three farm laws** passed in Parliament led to limited opportunities for detailed scrutiny and public input.
- **Political Pressures:** Partisan politics and **short-term electoral pressures** can overshadow public interest, resulting in poorly designed legislation.
- **Bureaucratic Challenges:** Resistance to change and limited resources within the bureaucracy can hinder the implementation and enforcement of new laws.
- **Inadequate Stakeholder Consultation:** Limited engagement with civil society and marginalised groups can lead to laws that fail to address real needs.
 - **For Example,** the **Forest Rights Act (FRA) of 2006** aims to protect the rights of

indigenous and tribal communities over forest land and resources. However, its implementation has struggled due to **inadequate consultation with the local communities**, hindering the effective recognition of their rights.

- **Overlapping Jurisdictions:** Conflicting laws and jurisdictional disputes can create confusion and inefficiencies in enforcement.
 - For Example, [Land acquisition laws](#) at both the central and state levels can create **conflicts regarding land use and compensation practices**.
- **Drafting Quality:** Ambiguous language and technical complexity in laws can result in misinterpretation and limited public understanding.
 - **For Example:** The [POCSO Act](#) strictly criminalises the possession and storage of child pornography to protect children from sexual abuse. In contrast, the [IPC](#) only addresses **the creation and distribution** of obscene materials, **leaving a gap regarding the possession and storage** of child pornography.

Way Forward

- **Enhanced Stakeholder Engagement:** Involve civil society, experts, and affected communities in the lawmaking process to ensure laws are practical and effective.
 - Example: The UK's **Citizen Space platform** allows for public consultation on proposed legislation, ensuring that diverse voices are heard.
 - A **similar initiative in India could lead to laws** that better reflect the needs of the people.
- **Data-Driven Legislation:** Invest in research and data collection to inform policy decisions, ensuring laws address root causes and are based on empirical evidence.
- **Streamlined Bureaucratic Processes:** Reduce bureaucratic delays by simplifying administrative procedures and ensuring timely rule-making to facilitate effective law implementation.
- **Clear Drafting Standards:** Establish guidelines for clear and unambiguous drafting of laws to minimise misinterpretation and ensure consistent enforcement.
 - Example: The **Plain Language Commission** in the UK promotes clear and concise legal writing. **India could benefit from similar guidelines** to improve the readability of its laws.
- **Robust Monitoring and Evaluation:** Implement comprehensive mechanisms to assess the effectiveness of laws post-enactment, allowing for necessary adjustments and improvements.
 - **Example:** Australia's **Regulatory Impact Analysis (RIA) system** is designed to **evaluate the potential costs and benefits of proposed regulations prior to their implementation**, ensuring that the regulations are both efficient and effective.

Drishti Mains Question:

Discuss the concept of judicial audit of law in the context of ensuring accountability and transparency in the legislative process.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. With reference to the Indian judiciary, consider the following statements: (2021)

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (c)

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