

JUDICIAL REVIEW AND CONSTITUTIONAL MORALITY: EXAMINING THE EXPANDING ROLE OF THE INDIAN JUDICIARY IN POLICY-MAKING

Kiran Shakya

PhD Research Scholar

Guest Faculty in the School of Studies in Law

Jiwaji University, Gwalior

DECLARATION: I AS AN AUTHOR OF THIS PAPER /ARTICLE, HERE BY DECLARE THAT THE PAPER SUBMITTED BY ME FOR PUBLICATION IN THE JOURNAL IS COMPLETELY MY OWN GENUINE PAPER. IF ANY ISSUE REGARDING COPYRIGHT/PATENT/OTHER REAL AUTHOR ARISES, THE PUBLISHER WILL NOT BE LEGALLY RESPONSIBLE. IF ANY OF SUCH MATTERS OCCUR PUBLISHER MAY REMOVE MY CONTENT FROM THE JOURNAL WEBSITE. FOR THE REASON OF CONTENT AMENDMENT /OR ANY TECHNICAL ISSUE WITH NO VISIBILITY ON WEBSITE /UPDATES, I HAVE RESUBMITTED THIS PAPER FOR THE PUBLICATION.FOR ANY PUBLICATION MATTERS OR ANY INFORMATION INTENTIONALLY HIDDEN BY ME OR OTHERWISE, I SHALL BE LEGALLY RESPONSIBLE. (COMPLETE DECLARATION OF THE AUTHOR AT THE LAST PAGE OF THIS PAPER/ARTICLE

Abstract

This paper explores the evolving role of the Indian judiciary as a policymaker and constitutional guardian through the frameworks of judicial review and constitutional morality. Traditionally limited to the interpretation of law, the judiciary has increasingly intervened in governance, addressing legislative and executive inaction, particularly through Public Interest Litigation (PIL). Groundbreaking judgments—such as those in Kesavananda Bharati, Navtej Singh Johar, and Sabarimala—have demonstrated the judiciary's reliance on constitutional morality to protect rights, dismantle regressive social norms, and expand the scope of fundamental freedoms. Through a critical analysis of landmark rulings, scholarly literature, and comparative constitutional perspectives, the study highlights the judiciary's dual role as a transformative force and a subject of democratic scrutiny. While judicial interventions have enhanced social justice and institutional accountability, concerns about separation of powers, democratic legitimacy, and judicial overreach remain. The paper calls for a balanced approach wherein the judiciary exercises its expansive powers with restraint, deliberation, and unwavering fidelity to the spirit of the Constitution.

Keywords; *Judicial Review, Constitutional Morality, Indian Judiciary, Public Interest Litigation, Judicial Activism, Policy-Making, Separation of Powers, Fundamental Rights, Constitutional Governance, Democratic Accountability*

1. INTRODUCTION

From merely interpreting the law to becoming a key component of democratic governance, the Indian judiciary has undergone significant development. Since its establishment, the judiciary has been charged with the crucial duty of upholding the Constitution and making sure that the legislative and executive branches functioned within its bounds. This role has grown significantly over time, especially as a result of the concepts of constitutional morality and judicial review. These two ideas have made it possible for the judiciary to take a more active role in addressing governance, human rights, and public policy issues. It frequently fills in for the legislative and executive branches when they have either failed to act or have acted in a way that is against the constitution.



Figure 1: Indian Judiciary

According to Articles 13, 32, and 226 of the Constitution, judicial review gives the courts the authority to overturn laws or executive actions that conflict with the constitution's goals. This authority has been assertively and widely construed in the Indian context, enabling the judiciary to get involved in issues that are typically the purview of policymaking. The court was empowered to protect the "basic structure" of the Constitution, which encompasses values like democracy, secularism, and the rule of law, by the seminal decisions in *Kesavananda Bharati v. State of Kerala* (1973) and *Minerva Mills v. Union of India* (1980). A more assertive judicial role in governance and policymaking began with these rulings.



Figure 2: Judicial Activism in India

The concept of constitutional morality, which refers to upholding the fundamental principles of the Constitution—such as liberty, equality, dignity, and justice—despite the views of the general public or popular opinion, has also become more and more important to the judiciary. Courts have been able to upend long-standing social hierarchies and customs based on caste, gender, and religious dogma thanks to this strategy. For example, the Supreme Court decriminalised homosexuality in *Navtej Singh Johar v. Union of India* (2018) by putting constitutional morality ahead of social prejudice. Gender equality was also highlighted by the Court in the Sabarimala case as a constitutional requirement that could not be compromised on the altar of religious tradition.

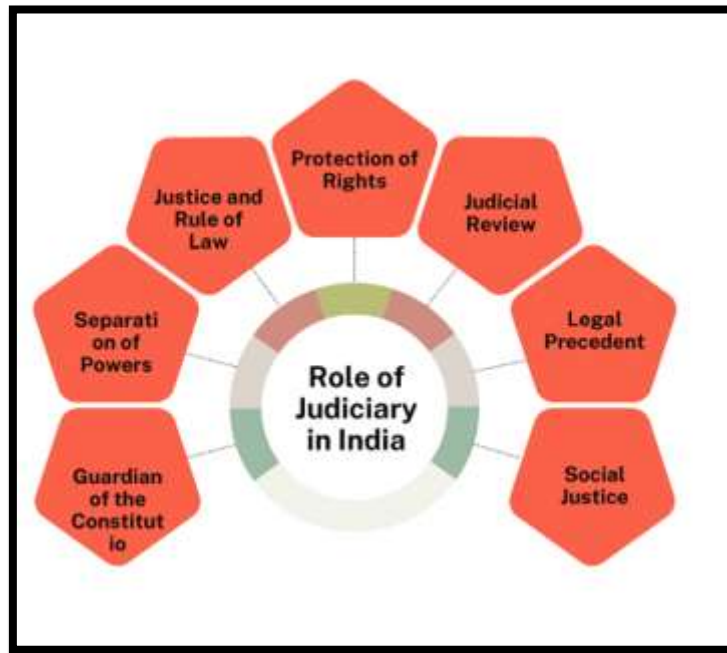


Figure 3: Importance of Indian Judiciary System in Maintaining Law

In the Indian democratic environment, which is frequently characterised by legislative deadlock, executive overreach, and administrative inertia, these developments are especially noteworthy. When other branches of government fail to uphold constitutional promises, the judiciary has positioned itself as a moral and legal compass in this setting. But this assertiveness has also spurred heated discussions about the separation of powers, judicial overreach, and the democratic legitimacy of unelected judges making decisions that impact millions of people.

Therefore, using the perspectives of judicial review and constitutional morality, this paper conducts a thorough analysis of the growing role of the Indian judiciary in policymaking. It charts the evolution of these doctrines over time, examines significant rulings that highlight this pattern, and assesses the ramifications of this judicial expansion for India's democratic system of government. The goal is to offer a comprehensive understanding of how and why the Indian judiciary has become so influential in forming the nation's governance structure and rights discourse, as well as the implications for India's constitutional democracy going forward.

2. LITERATURE REVIEW

Sheikh et al. (2024) provided a thorough analysis of how judicial review affects the development of public policy. Their analysis, which was mainly focused on South Asian

jurisdictions, showed how court rulings were increasingly influencing legislative and executive decisions and frequently encroaching on traditional policy areas. The authors underlined that although judicial interventions occasionally addressed gaps in governance, when used without distinct institutional boundaries, they ran the risk of upsetting democratic balance. They showed that the judiciary had taken on an activist stance by looking into historic cases, especially in fields like administrative accountability, civil liberties, and environmental regulation. Their research came to the conclusion that judicial review needed to be properly calibrated in order to have a positive influence on policy without jeopardising institutional cohesion.

Rao (2024) focused on the economic domain and raised significant concerns regarding the boundaries of judicial oversight in an area that has historically been left to political discretion. The study examined the conflict between constitutional mandates and economic pragmatism, demonstrating that courts have occasionally gotten involved in fiscal issues like tax laws, welfare benefits, and subsidies. Rao maintained that while this kind of judicial review supported the principles of equity and openness found in the constitution, it frequently interfered with the technical judgement needed for economic management. In order to avoid institutional overreach and maintain the executive's functional autonomy in budgetary matters, the paper advocated for a cautious application of judicial review in fiscal contexts.

Chandra and Sai (2025) examined the extent of judicial review in several jurisdictions, such as the US, UK, and India. They offered a thorough analysis of judicial supervision with regard to administrative adjudication, rule-making, and bureaucratic discretion. Their investigation showed that common law courts were comparatively more restrained than Indian courts, which had been assertive in evaluating administrative action. The authors noted that courts frequently gave substantive justice precedence over procedural compliance in Indian jurisprudence, which had developed into a rights-centric model. Although this trend helped protect rights, it occasionally caused conflict with the separation of powers doctrine, especially when courts declared executive plans unconstitutional based on moral judgements rather than legal flaws.

Mehta (2024) made the case that, despite the courts' frequent claims to converse with the legislature, their actual practice tended more towards judicial finality. In Indian constitutional discourse, the idea of dialogic review—which permits legislatures to respond and amend laws

in response to judicial recommendations rather than annulments—was frequently misunderstood or underdeveloped. Mehta's comparative study with South Africa and Canada demonstrated that mutual respect and institutional cooperation were the reasons why dialogic review had been successful in those countries. Indian courts, on the other hand, frequently issued expansive and binding rulings that left little opportunity for legislative response, even when they invoked dialogic ideals. According to the study, adopting a true dialogic model could improve constitutional flexibility and democratic legitimacy.

Gulati (2024) viewed judicial review from the perspective of improving governance and reforming administrative law. By issuing directives that went beyond legal interpretation into prescriptive administrative reform, her study highlighted the judiciary's expanding role in reshaping institutional governance. She examined a number of rulings in which judges ordered public institutions to implement procedural changes in order to guarantee accountability, openness, and public involvement. Gulati maintained that this pattern represented a shift in India's administrative law, with judicial review emerging as a crucial tool for modernising governance. Nonetheless, she issued a warning against the over-judicialization of governance, stating that persistent judicial micromanagement may jeopardise policy innovation and bureaucratic effectiveness.

3. HISTORICAL EVOLUTION OF JUDICIAL REVIEW IN INDIA

The framers of the Constitution intended to establish a system of limited government under the Constitution's supremacy, which serves as the foundation for judicial review in India. The framers gave the judiciary the authority to serve as the final defender of constitutional values because they understood that a democratic system could allow for legislative or executive abuses. Articles like Article 32, which permits people to petition the Supreme Court directly for the enforcement of fundamental rights, Article 226—which gives High Courts comparable authority—and Article 13, which states that laws that violate fundamental rights are null and void, institutionalised this vision. Together, these clauses guarantee that the courts act as both dispute resolution forums and guardians of constitutional integrity, with the authority to examine and declare state actions that violate the constitution unconstitutional.

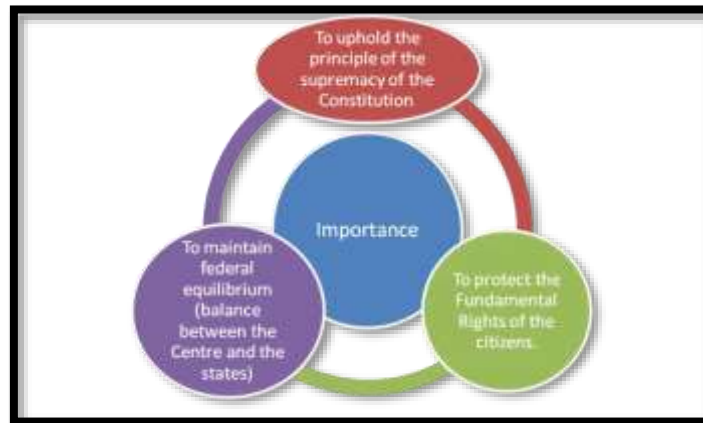


Figure 4 : Judicial Review In India

After the Emergency period (1975–77), which revealed the susceptibility of democratic institutions to executive authoritarianism, the concept of judicial review experienced a revolutionary expansion. The *Kesavananda Bharati v. State of Kerala* (1973) ruling gained new attention during this time. The Supreme Court established the Basic Structure Doctrine in this landmark case, holding that although Parliament can amend the Constitution, it cannot change its fundamental elements, including democracy, the rule of law, secularism, and the separation of powers. With the duty of upholding the philosophical foundation of the Constitution, this doctrine transformed the judiciary from a traditional interpreter of the law into a constitutional sentinel. The judiciary was able to redefine its role as a check on majoritarian impulses and a promoter of substantive constitutional justice by having the authority to review both ordinary laws and constitutional amendments, solidifying its position at the centre of India's democratic architecture.

4. UNDERSTANDING CONSTITUTIONAL MORALITY

Dr. B.R. Ambedkar introduced the idea of constitutional morality, which he believed was crucial to a constitutional democracy's operation. According to Ambedkar, upholding the spirit and fundamental principles of the Constitution—justice, liberty, equality, and fraternity—as well as the letter of the law is necessary for constitutional morality. He underlined that the development of a moral compass among institutions and citizens that continuously defends constitutional principles over societal norms, popular sentiments, or ephemeral majorities is just as important to the survival of democracy as legal frameworks. According to this

perspective, constitutional morality serves as an ethical compass that guarantees institutions operate within the parameters of constitutional values, particularly in situations where those values are at odds with popular opinion or cultural customs.

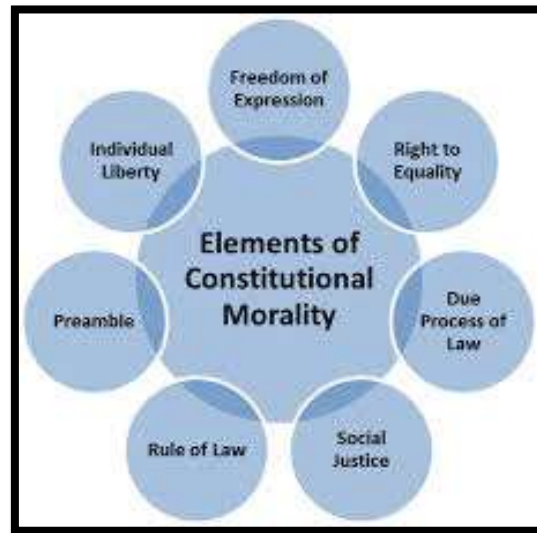


Figure 5 : Constitutional Morality

The Indian judiciary has used constitutional morality more and more in recent decades as a guiding principle to settle difficult and divisive constitutional disputes. This has been especially clear in cases involving gender equality, social reform, and individual rights, where the court has had to balance constitutional protections against ingrained social norms and popular opinion. The courts have positioned the Constitution as a living document with a transformative purpose by using constitutional morality to defend the autonomy and dignity of marginalised groups rather than yielding to majoritarian viewpoints. As a result, constitutional morality has become more significant from a philosophical and legal standpoint, developing into a potent judicial instrument to combat structural injustices and preserve democratic principles.

The Supreme Court's ruling in *Navtej Singh Johar v. Union of India* (2018), which invalidated Section 377 of the Indian Penal Code and decriminalised homosexuality, is a seminal example of this. The ruling was firmly grounded in the principles of constitutional morality, emphasising that individual autonomy, privacy, and dignity must take precedence over popular morality or majoritarian disapproval. The Court underlined that societal prejudice cannot take precedence over personal liberty and that the Constitution safeguards individual identity and self-

expression. This case was a turning point in Indian constitutional jurisprudence because it established constitutional morality as a binding judicial standard for assessing laws, in addition to being a theoretical principle.

Similar to this, the Supreme Court once again invoked constitutional morality in the Indian Young Lawyers Association v. State of Kerala (Sabarimala Case, 2018) to support women of all ages' access to the Sabarimala temple, even though long-standing religious traditions prohibited it. The Court ruled that religious dogma and social resistance could not supersede equality, dignity, and non-discrimination as fundamental constitutional principles. The idea that constitutional morality requires the reformation of practices that conflict with constitutional guarantees, even if they are covered up by religious tradition, was reinforced when it was decided that the practice violated women's fundamental rights under Articles 14, 15, and 25.

These decisions demonstrate how the judiciary's arsenal of transformative tools, including constitutional morality, has allowed courts to serve as agents of social justice and constitutional advancement. By using constitutional morality to push the boundaries of liberty and equality, the judiciary has affirmed the Constitution's role as a progressive and inclusive charter for all citizens, unhindered by historical prejudices or cultural inertia. But this developing theory also calls into question the boundaries of judicial power and whether the courts run the risk of replacing the legislature's or the people's vision with their own when they uphold moral principles. However, constitutional morality continues to be a crucial framework that the judiciary uses to try to balance justice and the law in a multicultural and dynamic society.

5. EXPANDING JUDICIAL ROLE IN POLICY-MAKING

The Indian judiciary has regularly dabbled in public policy over the past forty years. When Public Interest Litigation (PIL), which allowed courts to address complaints even in the absence of a direct petitioner, was introduced in the late 1970s, this trend gained momentum.

- The Vishaka Guidelines (1997), which established standards for sexual harassment in the workplace in the absence of laws, are an example of judicial policymaking.
- Right to Food Campaign (PUCL v. Union of India): India's food security policy was influenced by court orders.

- MC Mehta Environmental Cases: Initiated extensive environmental laws and governance structures.

6. KEY JUDICIAL DECISIONS REFLECTING POLICY INTERVENTION

The following seminal cases highlight the judiciary's expanding ability to influence policy through constitutional morality:

- Navtej Singh Johar (2018): By interpreting Section 377 IPC, he acknowledged the rights of LGBTQ+ people.
- In the 2018 case of Indian Young Lawyers Association v. State of Kerala, women were granted access to the Sabarimala temple.
- The 2017 case of Justice K.S. Puttaswamy v. Union of India established privacy as a fundamental right.
- Common Cause v. Union of India (2018): This case increased the extent of individual autonomy by legalising passive euthanasia.

7. CRITIQUES OF JUDICIAL OVERREACH

The judiciary's growing role has drawn criticism despite its progressive jurisprudence. Critics contend that:

- Democratic Legitimacy: Since judges are not elected, they do not have the authority to directly influence public policy.
- Separation of Powers: The balance between the constitutional organs may be distorted by judicial overreach into the legislative or executive branches.
- Lack of Expertise: Courts might not have the administrative and technical know-how needed to formulate complex policies.

8. JUSTIFICATIONS FOR JUDICIAL INTERVENTION

Judicial activism is required in the Indian context, according to proponents of an expansive judiciary, because

- Legislative paralysis and executive apathy: The legislature has frequently failed to pass legislation safeguarding fundamental rights.

- **Rights-Based Governance:** The judiciary is empowered by the Constitution to uphold and defend fundamental rights, which frequently necessitates active participation.
- **Transformative Constitutionalism:** This viewpoint views the Constitution as a tool for equality and social justice rather than just a legal document. When state institutions fall short of this vision, the judiciary, as its defender, must step in.

9. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

Different democracies around the world take differing positions on the judiciary's role in policy:

- **United States:** Although courts maintain judicial restraint, they have the ability to influence social policy, as demonstrated by seminal cases like *Brown v. Board of Education*.
- **South Africa:** Like India, the country's post-apartheid judiciary embraces transformative constitutionalism, particularly when it comes to upholding socioeconomic rights.
- **United Kingdom:** Judicial review is constrained by parliamentary sovereignty, despite a rise in judicial activism in recent years due to human rights legislation.

10. BALANCING JUDICIAL ACTIVISM AND DEMOCRATIC PRINCIPLES

It is critical to strike a balance between assertiveness and restraint in light of the Indian judiciary's growing involvement in governance and policy issues through judicial review and activism. Even though the courts have been essential in upholding accountability and defending rights, unbridled activism could jeopardise the idea of separation of powers and cause a crisis of legitimacy. Consequently, it is essential that the judiciary calibrate its interventions within a framework that respects democratic processes and upholds constitutional values. By following certain guiding principles, this balance can be preserved:

- **Respect for Institutional Roles:** The separation of powers, according to which the legislature makes laws, the executive carries them out, and the judiciary interprets them, is a fundamental tenet of democratic governance. Although Indian courts have the authority to overturn unconstitutional acts, they are not allowed to replace legislative or executive wisdom with their own unless there has been a blatant constitutional

violation. The legislative branch's representative power and the executive branch's technical and administrative capabilities must be respected in judicial decisions. This is particularly important in cases involving complicated legislative frameworks, national security, or economic policy, where the courts' insufficient subject-matter knowledge could jeopardise efficient governance. The judiciary upholds the legitimacy and integrity of every state organ by adhering to institutional boundaries.

- **Stakeholder Consultation:** Courts must not act alone when making decisions on issues that affect sizable portions of the populace or have complex policy implications, such as public health, education, environmental regulation, or data privacy. Before making decisions, they must instead encourage inclusive discourse, confer with experts, and take impacted stakeholders' opinions into account. The quality and durability of court rulings are improved by this consultative process, which also makes sure that they are not divorced from socioeconomic realities. For example, rather than being merely imposed by the courts, environmental decisions involving local communities, ecological scientists, and industries must be consultative and supported by evidence. Expert knowledge adds substance to decisions and upholds the deliberative democracy principle.
- **Self-imposed Limits:** The judiciary's dedication to judicial discipline, impartiality, and reasoned decision-making ultimately determines its legitimacy and power. Courts must set their own limits and avoid getting too involved in administrative or political matters when there are no constitutional directives at issue. This entails making decisions as brief as possible, staying away from general, abstract dicta, and making sure that remedies are reasonable and workable. When courts seem to be making laws from the bench or formulating policy frameworks without statutory support, judicial legitimacy may be undermined. Particularly in a pluralistic society like India, a limited, logical, and narrowly tailored judicial approach improves public trust and avoids charges of judicial overreach.

11. CONCLUSION

The judicial review and constitutional morality doctrines have greatly changed the democratic landscape in India by giving the judiciary a larger role and establishing it as a protector of fundamental rights as well as a policymaker. Historic progress has been made in advancing

equality, social justice, and the defence of human dignity as a result of this judicial activism. But this change has also spurred important discussions about the validity of judicial intervention in fields that have historically been under the purview of the legislature and executive branch, bringing up issues with institutional overreach and the deterioration of the separation of powers principle. As India's constitutional democracy develops further, the judiciary must strike a careful balance between exercising its power with caution, humility, and a profound regard for the democratic system while simultaneously serving as a transformative institution that preserves constitutional values. Maintaining the legitimacy of the Constitution and the well-being of India's democratic institutions will depend on making sure that its interventions are based on its spirit rather than its supremacy.

REFERENCES

1. Sheikh, W. R., Qayyum, A., & Khan, A. A. (2024). *Judicial Review and Its Impact on Public Policy: A Critical Analysis*. *Pakistan Research Journal of Social Sciences*, 3(2).
2. Rao, S. A. (2024). *Judicial Oversight in Fiscal Policymaking: Balancing Economic Discretion and Constitutional Mandates*. *Jus Corpus LJ*, 5, 267.
3. Chandra, S., & Sai, B. H. (2025). *Scope of Judicial Review and Oversight of Administrative Actions Affecting India and Other Jurisdictions*. In *Impacts of Leakage, Whistleblowing, and the Rise of Propaganda* (pp. 207-230). IGI Global Scientific Publishing.
4. Mehta, A. T. (2024). *Dealing with Dialogue: The (Mis) Application of Dialogic Judicial Review in India & Comparative Constitutional Dialogue*.
5. Gulati, P. (2024). *RETHINKING GOVERNANCE FOR SOCIETAL PROGRESS: A LEGAL STUDY FOR REFORMS IN INDIAN ADMINISTRATIVE LAW*. *Panjab University Law Review*, 63(1).
6. Patil, A. (2024). *Judicial Process*. Notion Press.
7. More, V. G. (2025). *Constitution and Law*. Academic Guru Publishing House.
8. Arora, A. (2025). *CONSTITUTIONAL DEMOCRACY AND LIMITATIONS OF JUDICIAL*. *JUDICIAL*, 301.
9. Bharal, S., & Sharma, R. *Between Guardian and Arbiter: Seeking Equilibrium Between Activism and Restraint in Indian Jurisprudence*.

10. Pahwa, G. (2025). *BALANCING POWERS: IS JUDICIAL ACTIVISM A THREAT TO DEMOCRATIC GOVERNANCE?. JUDICIAL*, 220.
11. Dogrul, S. (2024). *A deconstructive look at constitutional review: towards the rule of law or the rule of judges? (Doctoral dissertation, University of Zurich)*.
12. Jadoon, S., Inamullah, M., & Sanaullah, M. (2025). *Comparison of India and Pakistan Constitution and Its Impact on Both States. ASSAJ*, 3(02), 1088-1094.
13. BAGCHI, S., & RAGHUVANSH, P. (2024). *Law-Making*.
14. Imran, M. M. (2024). *CONSTITUTIONALISM AND LIMITS OF INTERPRETATION: AN ANALYTICAL STUDY OF CASE LAW AND JUDICIAL POLICY IN PAKISTAN (Doctoral dissertation, Department of Law, Faculty of Shari 'ah & Law, International Islamic University, Islamabad, Pakistan)*.
15. Hegade, S. (2024). *Contesting Caste and Justice: Rhetoric, Affirmative Action, and Ideology in Contemporary India. Affirmative Action, and Ideology in Contemporary India (September 30, 2024)*.

Author's Declaration

I as an author of the above research paper/article, here by, declare that the content of this paper is prepared by me and if any person having copyright issue or patent or anything otherwise related to the content, I shall always be legally responsible for any issue. For the reason of invisibility of my research paper on the website /amendments /updates, I have resubmitted my paper for publication on the same date. If any data or information given by me is not correct, I shall always be legally responsible. With my whole responsibility legally and formally have intimated the publisher (Publisher) that my paper has been checked by my guide (if any) or expert to make it sure that paper is technically right and there is no unaccepted plagiarism and hentriacontane is genuinely mine. If any issue arises related to Plagiarism/ Guide Name/ Educational Qualification /Designation /Address of my university/ college/institution/ Structure or Formatting/ Resubmission /Submission /Copyright /Patent /Submission for any higher degree or Job/Primary Data/Secondary Data Issues. I will be solely/entirely responsible for any legal issues. I have been informed that the most of the data from the website is invisible or shuffled or vanished from the database due to some technical fault or hacking and therefore the process of resubmission is there for the scholars/students who finds trouble in getting their paper on the website. At the time of resubmission of my paper I take all the legal and formal responsibilities, If I hide or do not submit the copy of my original documents (Andhra/Driving License/Any Identity Proof and Photo) in spite of demand from the publisher then my paper maybe rejected or removed from the website anytime and may not be consider for verification. I accept the fact that as the content of this paper and the resubmission legal responsibilities and reasons are only mine then the Publisher (Airo International Journal/Airo National Research Journal) is never responsible. I also declare that if publisher finds Any complication or error or anything hidden or implemented otherwise, my paper maybe removed from the website or the watermark of remark/actuality maybe mentioned on my paper. Even if anything is found illegal publisher may also take legal action against me.

Kiran Shakya