



## 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 **Vishaka 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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