
1st SURANA & SURANA & KLE LAW COLLEGE
NATIONAL CONSTITUTIONAL LAW MOOT COURT
COMPETITION – 2017

TEAM CODE - 10

BEFORE THE HON'BLE SUPREME COURT OF INDIGO

S.L.P. NO. _____ Of 2017

(Special Leave Petition filed under Article 136 of the Indigo Constitution)

SOCIETY FOR CRICKET CONTROL IN INDIGO

... Appellant

Vs

MR. DEV & OTHERS

... Respondent

WRITTEN ON BEHALF OF THE RESPONDENT

COUNSEL FOR THE RESPONDENT

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LIST OF ABBREVIATIONS

AIR	All India Reporter
Art	Article
Ed.	Edition
SC	Supreme Court
HC	High Court
u/a	Under Article
u/s	Under Section
SCJ	Supreme Court Journal
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
Hon'ble	Honourable
i.e.	that is
ILR	Indian Law reporter
No.	Number
PIL	Public Interest Litigation
Ors.	Others
SCCI	Society for Cricket Control in Indigo

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INDEX OF AUTHORTIES

CASES

- Sukhdev and Ors. etc. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc.
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- Ramana Dayaram Shetty v. International Airport Authority of India and Ors.
(1979) 3 SCC 489
- Evans v. Newton 382 US 296 15 L.Ed.-2nd 373, Ch 614 = 1963 1 All. E.R. 590
- New York v. United States 326 US 572
- Sukhdev and Ors. etc. v. Bhagatram Sardar
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- Zee Telefilms Ltd. and Anr. v. Union of India and Ors. (2005) 4 SCC 649
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- bcci vs. cricket association of bihar and ors., (2015) 3 scc 251
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- All India Bank Employees Association v. The National Industrial Tribunal (Bank
Disputes), Bombay and Ors., AIR1962SC171
- D.A.V. College v. State of Punjab, 1971 (2) SCC269
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- Maneka Gandhi v Union of India, AIR 1978 SC 597
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- Kumari Mathuri Patil & Anr. v. Addl. Commissioner, Tribal Development & Ors., (1994) 6 SCC 241
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- Aiyar, P Ramanatha, *The Law Lexicon*, (4thEd. 2014).
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STATUTES

- The Constitution of India, 1950
- Societies Registration Act,1860
- Bombay Public Trust Act 1950

STATEMENT OF JURISDICTION

The Hon'ble Supreme Court of Indigo has the jurisdiction to entertain the matter, since the Memorandum for the Petitioner "SOCIETY FOR CRICKET CONTROL IN INDIGO (SCCI)" is filed under **Article 136 (Special Leave Petition)** of the Constitution of Indigo.

Article 136 of Constitution of Indigo

136. Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

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SUMMARY OF FACTS

Indigo is a federal country with 30 states. Society for Cricket Control in Indigo (SCCI) was established in Indigo to control the sports of Cricket. It was formed in 1928 and was registered in 1940 under Societies Registration Act, 1860. SCCI is a self funded organisation. It selects Indigo cricket team to represent Indigo in International cricket matches. In 2009, SCCI started Indigo Premier League (IPL) a domestic 20-20 over cricket tournament. IPL gained huge popularity and brought lot of revenue to SCCI. Unfortunately, corruption made inroads into the great entertaining sport in the form of Match Fixing. The players who were involved in Match fixing were banned for lifetime. Meanwhile dispute arose over election to the Board of Directors (BOD) of SCCI and corruption was involved in the election as well. Aghast by the enormity of corruption and its impact on the quality of the game of Cricket, a former Cricketer of Indigo, Mr. Dev filed a PIL in the High Court of Maha Pradesh alleging that the top management of SCCI had involved in corruption in elections to BOD, match fixing ,betting and sought for appropriate directions to revive the credibility of the sports. SCCI appeared before the High Court and filed its counter affidavit denying the contentions of the petitioner. After considering both side's contentions, the Hon'ble High Court passed orders constituting a commission under Former High Court Judge Mr. Yodha to suggest reforms to bring out proper functioning of SCCI. As SCCI refused to accept the suggestions , the Hon'ble High Court issued interim directions to SCCI to conduct elections to its BOD as per the recommendations of Yodha Commission within two months. As SCCI did not comply with the interim direction, the High court was pleased to freeze the accounts of the society and also order for appointment of an administrator. Aggrieved by the orders of the High Court, the SCCI filed a special leave petition in Supreme Court of Indigo against the orders of the High Court. The Hon'ble Supreme court has granted leave and the civil appeal filed by the society was ordered to be placed before this constitutional bench for final hearing.

STATEMENT OF ISSUES

1.WHETHER SCCI IS AMENABLE TO THE JURISDICTION OF THE HIGH COURT?

2.WHETHER THE IMPUGNED ORDERS OF THE HIGHCOURT VIOLATES THE FUNDAMENTAL RIGHT GUARANTEED UNDER ARTICLE 19(1) OF THE INDIGO CONSTITUTION?

3.WHETHER THE IMPUGNED ORDERS OF THE HIGH COURT IS CONSTITUTIONAY VALID?

SUMMARY OF ISSUES

1.WHETHER SCCI IS AMENABLE TO THE JURISDICTION OF THE HIGH COURT?

It is humbly submitted the SCCI performs functions of public importance and it is also recognized by the government tacitly as it performs functions related to government and hence SCCI is a state under art 12 of the Indigo Constitution and hence amenable to the jurisdiction of the High Court.

2.WHETHER THE IMPUGNED ORDERS OF THE HIGHCOURT VIOLATES THE FUNDAMENTAL RIGHT GUARANTEED UNDER ARTICLE 19(1)(c) OF THE INDIGO CONSTITUTION?

It is humbly submitted that the impugned orders of the High Court has not Violated the fundamental right guaranteed under Article 19(1)(c) and futher the SCCI being a non citizen has no such right under Article 19(1)(c).

3.WHETHER THE IMPUGNED ORDERS OF THE HIGH COURT IS CONSTITUTIONAY VALID?

It is humbly submitted that the impugned orders of the High Court are completely constitutional as the impugned orders of the High Court is a result of the Judicial Activism of the Court which has been supported by various precedents.

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ARGUMENTS ADVANCED

1.WHETHER SCCI IS AMENABLE TO THE JURISDICTION OF THE HIGH COURT?

It is humbly submitted that Society for Cricket Control in Indigo (here in after referred to as SCCI) is a “State” under Article 12 of the Indigo Constitution and hence amenable to the jurisdiction of the high court of Maha Pradesh(herein after referred to as High Court).

1.1.SCCI IS A STATE UNDER ARTICLE 12 OF THE INDIGO CONSTITUTION

1.1.1.SCCI PERFORMS IMPORTANT PUBLIC FUNCTION

In *Sukhdev and Ors. etc. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc.*¹ it was held that

“Another factor which might be considered is whether the operation is an important public function. The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion.”

In *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*² this Court held that while a corporation may be created by a statute or incorporated under a law such as the Companies Act, 1956, or the Societies Registration Act, 1860, the question

¹ *Sukhdev and Ors. etc. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc.* (1975) 1 SCC 421

² *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.* (1979) 3 SCC 489

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that often arises is as to when does the corporation become an instrumentality or agency of the Government and what are the tests to determine whether a corporation is or is not such an instrumentality or agency. While holding that there is no cut and dried formula that can provide an answer, this Court referred to American decisions in *Evans v. Newton* 382 US 296 15 L.Ed.-2nd 373, Ch 614 = 1963 1 All. E.R. 590³ and *New York v. United States* 326 US 572⁴ to declare that if the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the State.

With reliance to the above two precedents, a corporation is an instrumentality or agency of the State when it performs function that are of public importance and closely related to governmental functions.

In the instant case , SCCI performs the following public functions.

1. public functions of regulating the game of Cricket in Indigo.
2. It represents Indigo in foreign countries and is tacitly acknowledged by the Indigo Government.
3. It selects Indigo cricket team to represent Indigo in International cricket matches.
4. SCCI has dominant position and controls almost all the State Level Cricket Associations and it functions like Cricket Federation as well.
5. it fixes the remuneration of players by classifying them into three categories
6. The SCCI makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket.
7. It has absolute power to select the players for Indigo Cricket team. the SCCI has the authority to determine whether a player would represent the country or not.

³ *Evans v. Newton* 382 US 296 15 L.Ed.-2nd 373, Ch 614 = 1963 1 All. E.R. 590

⁴ *New York v. United States* 326 US 572⁴

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Further, since playing cricket is a profession the SCCI controls the fundamental right of a citizen under Article 19(1)(g) of the Constitution.

The functions of the SCCI mentioned above are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the SCCI falls within the definition of State for the purpose of Article 12.

That the SCCI is the sole authority for organising major cricketing events in Indigo and has the disciplinary power over the players/umpires and other officials involved in the game and sports being a subject under the control of the States, in substance the SCCI exercises governmental functions in the area of Cricket.

The SCCI claims the power to debar players from playing cricket in exercise of its disciplinary powers. Obviously, it is submitted, a body that purports to exercise powers that impinge on the fundamental rights of citizens would constitute at least an 'authority' within the meaning of Article 12 of the Constitution

It is humbly submitted that the SCCI discharges public duties which are in the nature of State function.

1.1.2. GOVERNMENT AID AND PUBLIC FUNCTION

*In Sukhdev and Ors. etc. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc.*⁵

“97. Another factor which might be considered is whether the operation is an important public function. The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or

⁵ Sukhdev and Ors. etc. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc. (1975) 1 SCC 421

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absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion.

Further, SCCI has availed various benefits from GOI in the form of customs duty and tax exemptions, all civic and security during its cricket matches is provided by the State. Visa clearance and other hidden charges are borne by GOI and for majority of its stadiums in Indigo, GOI and State Governments have given huge piece of agricultural land at very meagre price.

Therefore with reliance to the above judgement , as the SCCI performs functions of public importance and also aided by the government with various benefits stated above, the the SCCI falls within the definition of State for the purpose of Article 12.

1.1.3.DEFACTO RECOGNITION OF THE GOVERNMENT

It represents Indigo in foreign countries and is tacitly acknowledged by the Indigo Government.

It is also stated that the Government of Indigo has granted de-facto recognition to the SCCI and continues to so recognise the SCCI as the Apex National Body for regulating the game of Cricket in Indigo also stated that it is because of such recognition granted by the Government of Indigo that the team selected by the SCCI is able to represent itself as the Indigo cricket team and if there had not been such recognition the team could not have represented the country as the Indigo cricket team in the international cricket arena and hence SCCI is tacitly acknowledged by the government.

The team fielded by the SCCI plays as 'Indigo Team' while playing One Day Internationals or Test Matches and the team purports to represent Indigo as a nation, and its wins are matters of national prestige.

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It is submitted that the SCCI is performing one of the most important public functions for the country with the authorization and recognition by the Govt. of Indigo, is amenable to the writ jurisdiction of this Hon'ble Court under the provisions of the [Constitution of India](#).

SCCI is the sole authority for organising major cricketing events in Indigo and it has power control over all the State Level Cricket Associations and it functions like Cricket Federation, in substance the SCCI exercises governmental functions in the area of Cricket. He submitted that this absolute authority of the SCCI is because of the recognition granted by the Government of Indigo, hence in effect even though it is as an autonomous body the same comes under 'other authorities' for the purpose of Article 12.

1.2.SCCI IS AMENABLE TO THE JURISDICTION OF THE HIGHCOURT UNDER ARTICLE 226 OF THE INDIGO CONSTITUTION.

Without conceding the fact that SCCI falls within the purview of state under the Article 12, even it is not a state it is amenable to the jurisdiction of the High Court.

In Zee Telefilms Ltd. and Anr. v. Union of India and Ors. ⁶ Having said that this Court recognized the fact that the Board was discharging some duties like the Selection of Indigo Cricket Team, controlling the activities of the players which activities were akin to public duties or State functions so that if there is any breach of a constitutional or statutory obligation or the rights of other citizens, the aggrieved party shall be entitled to seek redress under the ordinary law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.

This Court in the case of **Andi Mukta Sadguru Shree Muktajee Pandas Swami**

⁶ Zee Telefilms Ltd. and Anr. v. Union of India and Ors. (2005) 4 SCC 649

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Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors. ⁷has held :

'Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. The term 'authority' used in the context must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers powers on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party, no matter by what means the duty is imposed.

In *bcci vs. cricket association of bihar and ors.*,⁸ The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not 'State' within the meaning of Article 12.

With reliance to the above arguments and authorities cited , it is therefore submitted that SCCI is amenable to the jurisdiction of the High Court and thus justifying the impugned orders of the high court.and hence the petition filed by SCCI is liable to be dismissed.

⁷ Mukta Sadguru Shree Muktajee Pandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors. : 1989)IILLJ324SC

⁸ *bcci vs. cricket association of bihar and ors.*, (2015) 3 scc 251

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**2.WHETHER THE IMPUGNED ORDERS OF THE HIGHCOURT VIOLATES THE
FUNDAMENTAL RIGHT GUARANTEED UNDER ARTICLE 19(1) OF THE
INDIGO CONSTITUTION?**

It is humbly submitted that Article 19(1)(c), is in no way violated in case the recommendations made by the Committee in regard to the reform and the composition of the SCCI are accepted and directed to be implemented.

2.1.FUNDAMENTAL RIGHT OF 19(1)(C) IS GURANTEEND TO CITIZENS ONLY

Article 19(1)(c) of the Constitution of Indigo guarantees to the citizens of this country the right to form associations, unions or cooperative societies. It reads:

“19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right—

(c) to form associations or unions or cooperative societies ”

The right, it is evident from the above, is guaranteed in favour of citizens and citizens alone. Recourse to Article 19(1)(C) is not, therefore, open to juristic or other persons and entities who are non- citizens. Therefore it is humbly submitted that SCCI being a non citizen is not entitled to this fundamental right.

2.2.DOCTRINE OF LIFTING THE VEIL

In **Board of Control for Cricket Vs Cricket Association of Bihar and Ors**,⁹ the court held that in having regard to the decision of this Court in State Trading Corporation of India Ltd.¹, we do not see how we can legitimately entertain the petitioners plea in the present petitions, because if their plea was upheld, it would really mean that what the

⁹ Board of Control for Cricket Vs Cricket Association of Bihar and Ors. 2016 (5) MLJ 774, 2016 (7) SCALE 143, 2016 (8) SCC 535, 2016 (8) SCJ 689

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corporations or the companies cannot achieve directly, can be achieved by them indirectly by relying upon the doctrine of lifting the veil. If the corporations and companies are not citizens, it means that the Constitution intended that they should not get the benefit of Article 19. It is no doubt suggested by the petitioners that though Article 19 is confined to citizens, the Constitution-makers may have thought that in dealing with the claims of corporations to invoke the provisions of Article 19, courts would act upon the doctrine of lifting the veil and would not treat the attempts of the corporations in that behalf as falling outside Article 19. The effect of confining Article 19 to citizens as distinguished from persons to whom other Articles like 14 apply, clearly must be that it is only citizens to whom the rights under Article 19 are guaranteed. If the legislature intends that the benefit of Article 19 should be made available to the corporations, it would not be difficult for it to adopt a proper measure in that behalf by enlarging the definition of citizen prescribed by the Citizenship Act passed by Parliament by virtue of the powers conferred on it by Articles 10 and 11. On the other hand, the fact that the Parliament has not chosen to make any such provision indicates that it was not the intention of Parliament to treat corporations as citizens. Therefore, it seems to us that in view of the decision of this Court in the case of **State Trading Corporation of India Ltd.**¹, the petitioners cannot be heard to any that their shareholders should be allowed to file the present petitions on the ground that, in substance, the corporations and companies are nothing more than associations of shareholders and members thereof. In our opinion, therefore, the argument that in the present petition we would be justified in lifting the veil cannot be sustained.

In **All India Bank Employees Association v. The National Industrial Tribunal**
(Bank

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Disputes), Bombay and Ors,¹⁰ a Constitution Bench of this Court while explaining the scope of Article 19(1)(c) associations cannot lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, that is to say, the right of the citizens composing the body.

It is humbly submitted that SCCI being a corporate body cannot claim right of freedom of association guaranteed under Article 19(1)(c).¹¹ .

It is humbly submitted that the right guaranteed to them by Article 19(1)(c) has been exercised by the members of the SCCI and no restraint has been placed on that right and no infringement of that right is made. Once an association is formed, the business which is carried on by the said association is the business of the SCCI and is not the business of the citizens who get the SCCI formed or incorporated, and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens.¹²

With reliance to the above arguments and judgments, similarly in the present case, it cannot be justified by the SCCI that the court should lift the veil .

2.3.NO VIOLATION OF FUNDAMENTAL RIGHT UNDER ARTICLE

19(1)(C)

Without conceding the fact that the SCCI has no right under Article 19(1)(c) and the doctrine of piercing the veil can be exercised in the present case, even if it is argued the SCCI has rights under 19(1)(c) , it is not violated by the impugned orders of the High Court.

¹⁰ All India Bank Employees Association v. The National Industrial Tribunal (Bank Disputes), Bombay and Ors., AIR1962SC171

¹¹ D.A.V. College v. State of Punjab, 1971 (2) SCC269

¹² Board of Control for Cricket Vs Cricket Association of Bihar and Ors. 2016 (5) MLJ 774, 2016 (7) SCALE 143, 2016 (8) SCC 535, 2016 (8) SCJ 689

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Suffice it to say that so long as the initial voluntary composition of the SCCI who are complaining of the breach of their right under Article 19(1)(c) remains unaffected, there is no violation of what is guaranteed by Article 19(1)(c). Seen in the backdrop of the above, the recommendations made by the Committee in the instant do not interfere with or alter the composition of the Associations.

Individual citizens who came together to form the SCCI have not been asked to discontinue their association nor do the recommendations impose upon their members an obligation to associate with others with whom they do not wish to associate. Therefore the Composition of the SCCI remain unaffected, and so does the right of those forming such Associations under Article 19(1)(c).

Further the right under Article 19(1)(c) is subjected to restrictions under Article 19(4).

In *All India Bank Employees Association v. National Industrial Tribunal*, it was observed that the right guaranteed under Article 19(1)(c) does not carry with it a concomitant right that the Associations shall achieve their object such that any interference in such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interests of public order or morality. The right under Article 19(1)(c) extends inter alia to the formation of an Association or Union.

If an association were formed for the purpose of carrying on business, the right to form it would be guaranteed by sub-clause (c) of clause (1) of Article 19 subject to any law restricting that right conforming to clause (4) of Article 19.

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But the right does not extend so far as to include the right of any such association or union or cooperative society to achieve its objects or to conduct its business unhindered by any regulatory or other control.

It can further be justified that the impugned orders of the high court comes under reasonable restriction under Article 19(4) which was passed for the purpose of public order as the management of the association is unstable .

Therefore with the reliance upon the above arguments and judgments cited, it is submitted that there is no violation of Article 19(1)(c) of the Indigo constitution.

3.WHETHER THE IMPUGNED ORDERS OF THE HIGH COURT IS CONSTITUTIONAY VALID?

It is humbly submitted before this hon'ble court, that the impugned orders of the high court are the result of the judicial activism of the court which has also been appreciated by various precedents in Indigo.

3.1.EVOLUTION OF JUDICIAL ACTIVISM IN INDIGO

According to Black's Law Dictionary judicial activism is a " judicial philosophy which motivate judges to depart from the traditional precedents in favour of progressive and new social policies”

It is humbly submitted that According to the idea of judicial activism, judges should use their powers to correct injustices, especially when the other branches of government do not act to do so. In short, the courts should play an active role in shaping social policy on such issues as civil rights, protection of individual rights, political unfairness, and public

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morality.

Examples- of judicial activism are the decisions by the Indigo Supreme Court in **Maneka Gandhi's**¹³ case as well as its decisions relating to Article 21 of the Indian Constitution, the evolution of PIL.etc

In **A.K. Gopalan v. State of Madras**,¹⁴ the Indian Supreme Court rejected the argument that to deprive a person of his life or liberty not only the procedure prescribed by law for doing so must be followed but also that such procedure must be fair, reasonable and just. To hold otherwise would be to introduce the due process clause in Article 21 which had been deliberately omitted when the Indian Constitution was being framed.

However, subsequently in **Maneka Gandhi v. Union of India**, this requirement of substantive due process was introduced into Article 21 by judicial interpretation. Thus, the due process clause, which was consciously and deliberately avoided by the Constitution makers, was introduced by judicial activism of the Indian Supreme Court.

It is humbly submitted that the following are some of the well accepted reasons which compel a court or a judge to be active while discharging the judicial functions assigned to then either by a constitution or any other organic law¹⁵.

- i)Near Collapse of responsible government.
- ii)Pressure on judiciary to step in aid.
- iii)Judicial enthusiasm to participate in social reform and change.
- iv)Legislative vacuum left open.
- v)The constitutional scheme.

¹³ Maneka Gandhi v Union of India, AIR 1978 SC 597

¹⁴ A.K. Gopalan v. State of Madras AIR 1950 SC 27 : 1950 SCR 88

¹⁵ Omdutt role of judiciary in the democratic system of india (judicial activism under the supreme court of india) : golden research thoughts (sept ; 2012)

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vi) Authority to make final declaration as to validity of a law.

vii) Role of Judiciary as guardian of fundamental rights.

viii) Public confidence in the judiciary etc.

It is humbly submitted that, as far as the origin and evolution of judicial activism go, there are two theories behind the whole concept. They are: (i) Theory of vacuum filling and (ii) Theory of Social Want.¹⁶

THEORY OF VACUUM FILLING: The theory of vacuum filling states that a power vacuum is created in the governance system due to the inaction and laziness of any one organ. When such a vacuum is formed, it is against the good being of the nation and may cause disaster to the democratic set up of the country. Hence, nature does not permit this vacuum to continue and other organs of governance expand their horizons and take up this vacuum. In this case, the vacuum is created by the inactivity, incompetence, disregard of law, negligence, corruption, utter indiscipline and lack of character among the two organs of governance viz. the legislature and the executive. Hence the remaining organ of the governance system i.e. the judiciary is left with no other alternative but to expand its horizons and fill up; the vacuums created by the executive and the legislature. Thus according to this theory, the so-called hyper-activism of the judiciary is a result of filling up of the vacuum or the void created by the non-activism of the legislature and the executive.¹⁷

THEORY OF SOCIAL WANT : The Theory of Social Want states that judicial activism emerged due to the failure of the existing legislations to cope up with existing situations and problems in the country. When the existing legislations failed to provide any

¹⁶ Shailja Chander, Justice V.R. Krishna Iyer on Fundamental Rights and Directive Principles, (Deep and Deep Publications, New Delhi. 1998), p.223.

¹⁷ supra

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pathway, it became incumbent upon the judiciary to take on itself the problems of the oppressed and to find a way to solve them. The only way left to them within the framework of governance to achieve this end was to provide non-conventional interpretations to the existing legislations, so as to apply them for greater good. Hence, the judicial activism has emerged. The supporters of this theory opine that —judicial activism plays a vital role in bringing in the societal transformation. It is the judicial wing of the state that injects life into law and supplies the missing links in the legislation. Having been armed with the power of review, the judiciary comes to acquire the status of a catalyst on change.¹⁸

It is humbly submitted that in the present case, the function of the High Court are based on the Principle of Vaccum Filling. as there are no legislation as to reform the activities of the SCCI and the existence of the corruption in the field of cricket has pressurized the judiciary to step in aid and to fill the vaccum left open by the Legislature.

3.2.PRECEEDENTS SUPPORTING THE JUDICIAL ACTIVISM

In **Kumari Mathuri Patil & Anr. v. Addl. Commissioner**, Tribal Development & Ors.,¹⁹ the Supreme Court realised, that at the instance of fraudulent and fabricated certificates, candidates belonging to forward communities had been obtaining benefits that were meant only for reserved category candidates under the reservation policy of the State. In order to check the same, and to give such benefits to genuine candidates, the Supreme Court issued a set of 15 guidelines, providing for a complete procedure with respect to how such certificates should be granted, which would be the authority that is competent to issue such certificates, and a procedure for the issuance of the same. It also created a vigilance cell

¹⁸ supra

¹⁹ Kumari Mathuri Patil & Anr. v. Addl. Commissioner, Tribal Development & Ors., (1994) 6 SCC 241

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headed by a senior police officer, whose purpose was to investigate the social status of the claimant.

The Supreme Court, while deciding the case, in **Dayaram v. Sudhir Batham & Ors.**,²⁰ doubted the correctness of the said judgment. The court doubted the competence of the Supreme Court to issue such directions, which were allegedly to be legislative in nature. Therefore, the matter was referred to a larger bench, and such larger bench held, that in exercise of the powers conferred upon it by Article 32 r/w Article 142 of the Constitution, the directions issued by the Supreme Court were valid and laudable, as the same had been made to fill the vacuum that existed in the absence of any legislation, to ensure that only genuine SC/ST and OBC candidates would be able to secure the benefits of certificates issued, and that bogus candidates would be kept out. Simply filling up an existing vacuum till the legislature chooses to make appropriate laws, does not amount to taking over the functions of the legislature.

In **Vishaka & Ors. v. State of Rajasthan & Ors.**,²¹ the Supreme Court held: “In view of the above, and 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 workplaces 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.”

²⁰ Dayaram v. Sudhir Batham & Ors., (2012) 1 SCC 333

²¹ Vishaka & Ors. v. State of Rajasthan & Ors., AIR 1997 SC 3011

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, in the absence of the any legislation enacted by Parliament on the subject of inter-country adoption, i.e., the adoption of Indian children by foreign nationals, the Supreme Court issued detailed guidelines in **L. K. Pandey v. Union of India & Anr.**²² Since there has been no subsequent legislation, these guidelines continue to be the law.

Similarly, in the absence of any relevant legislation, the Supreme Court issued guidelines required to be followed while making arrests, in **D. K. Basu v. State of West Bengal**,²³ concerned about the plight of the undertrials, the Supreme Court issued pertinent guidelines in *Ramamurthy v. State of Karnataka*.²⁴

In **Aravali Golf Club v. Chander Hass**,²⁵ it observed that judges should not unjustifiably try to perform executive or legislative functions; in the name of judicial activism, the judiciary cannot attempt to take over the functions of another organ of the State. Nonetheless, the Court noted that judicial activism is a useful, if not necessary, adjunct to a healthy democracy. Such activism, however, should be resorted to only in exceptional circumstances where the interests of the nation or of the poorer or weaker sections of the society would be in peril in the absence of judicial action.

3.3.SEPARATION OF POWERS

The basic question that then arises is whether the Supreme Court has followed the principle of separation of powers even as it has embraced judicial activism? The answer has to be a resounding yes. The Court has always abided by the Constitution. It has valiantly fulfilled its primary responsibility of upholding the Constitutional goals. It is the Court's constitutionally mandated duty to enforce the law, not for each minor violation but for those

²² L. K. Pandey v. Union of India & Anr., AIR 1986 SC 272

²³ D. K. Basu v. State of West Bengal, AIR 1997 SC 610

²⁴ Ramamurthy v. State of Karnataka AIR 1997 SC 1739.

²⁵ Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683

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violations that result in grave consequences for the public at large. In such cases, no criticism of such acts as judicial overreach is sustainable in our constitutional framework. Despite being inspired by the constitutional objective of socio-economic justice, the Court has been rather cautious in its activism. It is only when both the legislature and the executive have failed to provide legislation in an area, that the Court has found it to be the duty of the judiciary to intervene and, that too, only until the Parliament enacts proper legislation covering the area.

Thus, the aforesaid cases clearly reveal that the courts in India have not violated the mandatory constitution, rather they have only issued certain directions. Some of them are admittedly legislative in nature, but the same have been issued only to fill up the existing vacuum.

Therefore it is humbly submitted that in reliance with the above judgments and arguments presented the impugned orders of the High Court was clearly constitutional and the same was only issued to fill up the existing vacuum in the legislature.

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PRAYER

In the light of the above, the respondents pray that this Hon'ble Court may be pleased to

1. Declare that SCCI is amenable to the jurisdiction of the High Court.
2. Declare the PIL filed by Mr. Dev is maintainable.
3. Declare that orders of the High Court is constitutionally valid and thus dismiss the Petition filed by the petitioner.

And further pass such orders that may this Hon'ble court deem fit and proper and thus kindly render justice.

For this act of kindness, the respondents shall duty bound forever pray.

All of which is humbly prayed,

(Counsel for respondents)