

JUDICIAL ACTIVISM IN INDIAN DEMOCRACY

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ABSTRACT

The scope of judicial activism not a limited one. It is used to look in the matters and enforce what is beneficial for the society at large. The word "JUSTICE" has no end, this critically tells that justice is for all, 'rich or poor, strong or weak', even the king and queen were entrusted by karma to provide justice. The object behind the research paper is focused on the expansion of judicial activism in Indian democracy. The judicial activism in India had touched almost every aspect of life to provide positive justice. Many a times the right to judicial review and judicial activism act as a boon for the weaker section of society in protecting their rights by mere filling of a social interest litigation or a public interest litigation. Many a time, judicial intervention into the matter of executive and legislature has provided society with the upper hand in getting justice. Judicial system is a means of providing 'JUSTICE' 'to all, and also to take all relevant and possible steps to protect the interest of JUSTICE. Judicial activism legal framework in Indian constitution integration towards fundamental rights.

KEYWORDS: *Judicial Activism in Indian Democracy, Legislature and Judiciary, Preservation of a Functional Democracy*

Article History

Received: 11 Jan 2022 | Revised: 28 Jan 2022 | Accepted: 03 Feb 2022

INTRODUCTION

The democratic government rests on the three pillars example, legislature, executive and judiciary. The three pillars of the government constitute the organs of government. The powers and the functions are provided in the constitution of India, which constitute or forms the supreme law of land. The primary function of the legislature is to make law and that of executive is to execute law made by legislature and judiciary is to enforce law and guarantee that justice is served. The Indian constitution has assigned three roles to the highest judicial system. They are as follow:

- Is to interpret the constitution to solve any ambiguity in language of any provision of the constitution, also to provide interpretation of various statutes.
- As the protector of fundamental rights which are guaranteed under constitution for its citizens.
- To resolve matters transferred from the subordinate courts, appeals, etc

Judicial activism may be described as judicial rulings suspected of being based on personal or political considerations rather than on existing law.

Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial activism means active role played by the judiciary in promoting justice. Judicial Activism to define broadly is the assumption of an active role on the part of the judiciary. The word of Justice J.S Verma, describe Judicial Activism as "the active process of implementation of the rule of law, essential for the preservation of a functional democracy".

In the modern democratic world, judicial activism can be defined as a mechanism which is used to curb legislative defects and executive using its power despotically by enforcing constitutional limits. That is when executive and legislature fail in their responsibility, then The Constitution of India operates in happy harmony with the instrumentalities of the executive and the legislature. But to be truly great, the judiciary exercising democratic power must enjoy independence of a high order. But independence could become dangerous and undemocratic unless there is a constitutional discipline with rules of good conduct and accountability: without these, the robes may prove arrogant. The belief behind judicial activism is that judges act as an independent "trustee" or play a role as an independent policy maker. Judicial activism believes that judges assume a role as independent policy makers or independent "trustees" on behalf of society that goes beyond their traditional role as interpreters of the Constitution and laws. The concept of judicial activism is the polar opposite of judicial restraint. Failure on part of the legislative and executive wings of the Government to provide 'good governance' makes judicial activism an imperative one.

Judicial Activism in India

Judicial activism in India means the power that vests in Supreme Court and the high courts but not on the sub-ordinate courts to declare the laws as unconstitutional and void if it infringes or if the law is inconsistent with one or more provisions of the constitution. According to SP Sathe "a court giving a new meaning to the provision so as to suit the changing social or economic conditions or expanding the horizons of the rights of the individual is said to be an activist court." The history of judicial activism can be traced back to 1893 when justice Mehmood of the Allahabad High Court delivered a dissenting judgement of a under-trial who did not have money to engage a lawyer, this judgement showed the seed of an activism in India.

Supreme Court of as in the 1950s but slowly started acquiring more power through constitutional interpretation. Its transformation into an activist court has been gradual and imperceptible. In fact the roots of judicial activism are to be seen in the court's early assertion regarding the nature of judicial review.

Supreme Court has attained the zenith of its powers in 1973 with its claim to invalidate even an amendment of the Constitution on substantive grounds. As an eminent lawyer sums up, from about 1974, the court's emphasis has shifted to correcting the executive actions of Government for their un-reasonableness particularly in Administrative matters

Landmark Judgments

In Kesavananda Bharati v. State of Kerala, 1973 Khanna said that Judicial Review has become an integral part of our Constitutional system and if the provisions of the Statutes are to be found violative of any of the Articles of the Constitution which is the touchstone for the validity of all the laws, the Supreme Court and the High Courts are empowered to strike down the said provisions of the Statutes.

Two dissenting judges in **Sajjan Singh v. Rajasthan, 1965** case raised doubts whether the fundamental rights of citizens could become a plaything of the majority party in Parliament. The judges had the opinion that the law passed by the Legislature can be declared void if it violates the Fundamental Rights.

Judicial activism is not an easy concept to define. It means different things to different persons. Critics denounce judicial decisions as activist when they do not agree with them. In India, the opening up of access to courts to the poor, indigent and disadvantaged sections of the nation through Public Interest Litigation, popularly known by its acronym PIL, is unexceptionable judicial activism. From 1979, the judiciary led by the Supreme Court in India became relevant to the nation in a manner which is not contemplated by the makers of the Constitution and became an active participant in providing people with social justice. It is a matter of concern that over the years this original, beneficial and unexceptionable character of the Court's activism in PIL has been largely converted into a general supervisory jurisdiction to correct actions and policies of government, public bodies and authorities. This is a type of judicial activism unparalleled in any other judiciary.

For Basic Rights

PIL jurisdiction began haltingly with little idea of its potential when the Supreme Court, in 1979, entertained complaints by social activists drawing the attention of the Court to the conditions of certain sections of society or institutions which were deprived of their basic rights.

In 1979, Supreme Court advocate Kapila Hingorani drew the Court's attention to a series of articles in a newspaper exposing of under trial prisoners of BIHAR, most of whom had served pretrial detention more than the period they could have been imprisoned if convicted.

Sunil Batra, a prisoner, wrote a letter to Justice Krishna Iyer of the Supreme Court drawing his attention to torture by prison authorities and the miserable conditions of prisoners in jails. This was taken up as a petition and the Court passed orders for humane conditions in jails. In 1980, two professors of law wrote a letter to the editor of a newspaper describing the very unfair conditions of detention in the Agra Protective House for Women which was made the basis of a writ petition in the Supreme Court. The exploitation of workmen at construction sites in violation of labour laws was brought to the attention of the Supreme Court by a letter. The slave-like condition of bonded labourers in quarries was brought to the attention of the Court by a social activist organisation. A journalist moved the court against the evictions of pavement dwellers of Bombay.

In dealing with such cases, the Court evolved a new regime of rights of citizens and obligations of the State and devised new methods for its accountability. In 1982, Justice P.N. Bhagwati correctly stated the purpose of PIL as it originated. He emphasised that PIL "a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation."

The social action dimension of PIL has been diluted and eclipsed by another type of "public cause litigation" in courts. In this type of litigation, the court's intervention is not sought for enforcing the rights of the disadvantaged or poor sections of the society but simply for correcting the actions or omissions of the executive or public officials or departments of government or public bodies. Examples of this type of intervention by the Court are innumerable. In the interest of preventing pollution, the Supreme Court ordered control over automobile emissions, air and noise and traffic pollution, gave orders for parking charges, wearing of helmets in cities, cleanliness in housing colonies, disposal of garbage, control

of traffic in New Delhi, made compulsory the wearing of seat belts, ordered action plans to control and prevent the monkey menace in cities and towns, ordered measures to prevent accidents at unmanned railway level crossings, prevent ragging of college freshmen, for collection and storage in blood banks, and for control of loudspeakers and banning of fire crackers.

In recent orders, the Supreme Court has directed the most complex engineering of interlinking rivers in India. The Court has passed orders banning the pasting of black film on automobile windows. On its own, the Court has taken notice of Baba Ramdev being forcibly evicted from the Ramlila grounds by the Delhi Administration and censured it. The Court has ordered the exclusion of tourists in the core area of tiger reserves. All these managerial exercises by the Court are hung on the dubious jurisdictional peg of enforcing fundamental rights under Article 32 of the Constitution. In reality, no fundamental rights of individuals or any legal issues are at all involved in such cases. The Court is only moved for better governance and administration, which does not involve the exercise of any proper judicial function.

In its most activist and controversial interpretation of the Constitution, the Supreme Court took away the constitutionally conferred power of the President of India to appoint judges after consultation with the Chief Justice, and appropriated this power in the Chief Justice of India and a collegium of four judges. In no Constitution in the world is the power to select and appoint judges conferred on the judges themselves.

The Court is made the monitor of the conduct of investigating and prosecution agencies who are perceived to have failed or neglected to investigate and prosecute ministers and officials of government. Cases of this type are the investigation and prosecution of ministers and officials believed to be involved in the Jain Hawala case, the fodder scam involving the former Chief Minister of Bihar, Lalu Prasad Yadav, the Taj Corridor case involving the former Chief Minister of Uttar Pradesh, Mayawati, and the recent prosecution of the Telecom Minister and officials in the 2G Telecom scam case by the Supreme Court.

The judiciary has shed its pro-status-quo approach and taken upon itself the duty to enforce the basic rights of the poor and vulnerable sections of society, by pro-gressive interpretation and positive action.

The Supreme Court has developed new methods of dispensing justice to the masses through the public interest litigation. Former Chief Justice PN. Bhagwati, under whose leadership public interest litigation attained a new dimension comments that the Supreme Court has developed several new commitments.

The term 'judicial activism' is intended to refer to, and cover, the action of the court in excess of, and beyond the power of judicial review. From one angle it is said to be an act in excess of, or without, jurisdiction. The Constitution does not confer any authority or jurisdiction for 'activism' as such on the Court. Judicial activism refers to the interference of the judiciary in the legislative and executive fields. It mainly occurs due to the non-activity of the other organs of the government. In short, judicial activism means that instead of judicial restraint, the Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government regarding policies and also matters of administration.

Judicial Activism Has Arisen Mainly Due to the Following Factors

- Judicial activism has arisen mainly due to the failure of the executive and legislatures to act.
- It has arisen also due to the fact that there is a doubt that the legislature and executive have failed to deliver the goods.

- It occurs because the entire system has been plagued by ineffectiveness and inactiveness.

The violation of basic human rights has also led to judicial activism. Finally, due to the misuse and abuse of some of the provisions of the Constitution, judicial activism has gained significance.

- In case of a hung parliament where the government is very weak and instable.
- When the governments fail to protect the basic rights of the citizens or provide an honest, efficient and just system of law and administration,
- Finally, the court may on its own try to expand its jurisdiction and confer on themselves more functions and powers.

RIGHT TO LIFE AND JUDICIAL ACTIVISM

The assessment of judges and their way breaking execution as to changing the elements of article 21. American Constitution's idea of Due process was at last encapsulated in the words "technique set up by law". The present subject will manage the development of the arrangement because of the transformation made by the MANEKA GANDHI Judgment. The idea of PIL began coming to fruition, which was spearheaded by the colossal Equity P.N Bhagwati who took comprehension of the way that in specific conditions, A PIL might be presented in an official courtroom by the court itself (suo moto), as opposed to the abused party or another outsider. Post Maneka Gandhi's case, the Supreme Court found out that, keeping in mind the end goal to regard a great crucial right, it is a bit much that it ought to be explicitly expressed in the constitution as major right. Political, social and economical changes in the nation involve the acknowledgment of new rights. The law develops to meet the requests of the steadily advancing society. Thus the Supreme Court has discovered Article 21 to fuse the substantive flexibility that serves as intends to evacuate real territories, for example, destitution, poor financial open doors and additionally methodical social hardship. A most huge element of extension of article 21 has been that a number of the Non-legitimate Mandate Standards have been changed over into ENFORCEABLE Central RIGHTS by the hands of judges. Guarantees of economic opportunities and protection against social deprivations were established in various decisions:

- Quality of life
- Right to Livelihood
- Right to medical care
- Right to Die
- Sexual Harassment
- Ecology and Environment
- Right to Privacy
- Right to Privacy

CONCLUSIONS

The constitution does not give in particular and express terms any privilege to protection all things considered Right to Privacy is not hampered as a Fundamental Right in the Constitution. Be that as it may, such a privilege has been winnowed by the Supreme Court from Art 21 and a few different arrangements of the Constitution read with the Directive Principles of State Policy. As said over, the Kharak Singh was the first of its own kind, to initiate the possibility of "security" where issues were raised with respect to suggesting the privilege to protection from existing basic rights, for example, Article 19(1)(d) and 19(1)(e) and 21. Amid that time, J Subba Rao had remarked "The right to personal liberty takes in not only a right to be free from restrictions but also free from encroachments on his private life."

REFERENCES

1. Chaterji Susanta, " 'For Public Administration' Is judicial activism really deterrent to legislative anarchy and executive tyranny ? ", *The Administrator*, Vol XLII, April-June 1997, p9, at p11
2. *Justice, Judiciary and Democracy in India: Boundaries and Breaches Hardcover – Import*, by Sudhanshu Ranjan (Author), 25 Sep 2012