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JUDICIAL ACTIVISM IN INDIA

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Abstract

The ultimate power of the Judiciary to liberally interpret the laws with their acumen and unbiased beliefs to provide fair and equitable justice to the disadvantaged is known as Judicial Activism. In the current situation when multiple problems are plaguing the country which includes farm laws, oxygen supplies, Central vista, etc., the judiciary was seen to step up its game to take the role of other organs of the government to ensure accountability and proper checks and balances on the part of the government.

There are two sides to the same coin, which means Judicial Activism has both proponents and opponents. The proponents believe that it is constitutional power given to the judiciary when government fails to function properly, while on the other hand, the opponents argue that the judiciary is trying to encroach upon the powers of the government which dilutes the whole principle of separation of powers.

In this research work, I will analyze this aspect and try to put more light on this contemporaneous topic by understanding it with the help of landmark judgments that show both positive and negative sides of this concept.

Introduction

The Indian Judiciary is an autonomous body and it is one of the three main organs of the government that serves as a sentinel on the *qui vivo*[2] when it comes to protecting the fundamental rights of the people and promoting social harmony amongst the citizens. The Legislature comes into play while formulating laws and the task of implementing these laws is upon the Executive.

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[2] State of Madras v V.G. Row, A.I.R. 1952 SC 196 (India).

When there is a gap created by the legislative or executive's passivity, then the judiciary takes it upon itself to liberally interpret these laws with respect to contemporary circumstances and add their personal acumen or beliefs to the matters they decide, to provide fair and equitable justice to those who would have been victim to the traditional viewpoint of the framers of the Constitution.

This research project will analyze the arguments of advocates and critics of Judicial Activism in India and will also examine and comprehend the pros and cons of Judicial Activism in India with the help of famous landmark judgments by legal luminaries. In the light of the introduction, it will also include the following sub-topics:

Chapter 1 – Learn about the origin and the definition of Judicial Activism in India and other parts of the world.

Chapter 2 – Understand the pros and cons of Judicial Activism in India.

Chapter 3 – To study the extent of Judicial Activism and what impacts it creates.

Chapter 4 – Learn about the history and evolution of Judicial Activism in the Indian legal system with famous landmark judgments.

Review of Literature

1. Judicial Activism in India – Former CJI P.N. Bhagwati: In this article, the former CJI and pioneer of Judicial Activism supported the judges to give meaning to the laws by interpreting them and not feeling apologetic about the law creating roles of the judges. He supported this concept and states that it has become a ray of hope for the Indian citizens.

2. Judicial Activism Under the Indian Constitution – Former CJI K.G. Balakrishnan: He explains the concept of judicial review, which is the means via which judicial activism is exercised. He states that judicial review ensures fairness in administrative action and it questions the legitimacy of the laws which are unconstitutional in nature.

3. Judicial Activism - Justice (Retd.) V.G. Palshikar: The Justice goes on to define the concept, evolution, and history of Judicial Activism by bringing into the picture both its advantages and

disadvantages. He gives his support to this concept but also cautions about the excessive use and points out that it should be used repeatedly to interfere in the functioning of legislature and executive.

4. Judicial Activism: The Indian Experience – S.P. Sathe: The author, in his book, describes judicial activism as a counter-majoritarian check on democracy but also cautions about its limitation and extent. He vouches for judicial activism and goes on to say that it gives life and expression to the Constitution.

5. Judicial Activism in India: Whether More Populist or Less Legal? – Swati Sharma *et al.*: In this article, the writers go on to define how judicial overreach or intolerance may be harmful to the judiciary. They further shed light that the judiciary should avoid overreaching their domain of power to decide the technical matters which are outside their ambit.

Origin & Definition of Judicial Activism

The term "Judicial Activism" was first conceived by Arthur Schlesinger Jr. in his article published in Fortune Magazine titled "The Supreme Court: 1947" in January 1947.[3] Earlier this term was not acknowledged in the legal system but the means by which Judicial activism was pursued i.e., Judicial Review was well in practice and got recognized first by the Supreme Court of United States in *Marbury v Madison*, 1803[4]. Judicial Review in India can be defined as the power given to the Judicial System to review the laws passed by the legislature and to test their validity, whether they contrast with the Indian Constitution or not, and decide accordingly.

Black's Law Dictionary defines judicial activism as "judicial philosophy which motivates judges to depart from the traditional precedents in favor of progressive and new social policies." In other words, it is the process by which the judges of the court fill the gap created by the legislature or executive's inactivity. Thereafter, the judges take it upon themselves to liberally interpret the language of the constitution or laws and color their judgments with their impartial beliefs and opinions, in order to provide equitable and fair justice to minimize human suffering.

[3] Arthur Schlesinger Jr., *The Supreme Court: 1947,* FORTUNE, Jan. 1947, at 202, 208.
[4] Marbury v. Madison, 5 U.S. 137, (1803).

Initially, when the Supreme Court of India came into existence, the court used to follow the constitutional principles as written and did not deviate from the conservative approach. It was until *A.K. Gopalan v. State of Madras*[5] that showed the initial activism of the court but it attained attention only after a series of judgments were delivered in the court which interpreted the constitutional laws liberally. The courts acquired this power from Articles 32 and 226 of the Indian Constitution, under which an ordinary citizen can approach the Supreme Court or the High Court for seeking the rights which may have been hampered by the laws which undermine the Constitution of India.

In the words of S.P. Sathe, "a court giving a new meaning to the provision 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."[6]

In the Indian context, the name of the two most prominent legal luminaries, which shaped their decision by upholding human rights which includes, advocating against solitary confinement is Justice (Retd.) V.R. Krishna Iyer and Justice (Retd.) P.N. Bhagwati. The concept of Public Interest Litigation (PIL), in which action can be taken even if a simple letter or a notice is sent to the court on the behalf of the victim by any concerned social activist. This idea was conceived, in order to improve access to justice for the poor or for those who are not aware of their legal rights and are at risk of being exploited by the system.

The Supreme Court of India attained its pinnacle during the 1970s due to a series of landmark judgments given by eminent jurists such as Justice Hidayatullah, Justice V R Krishna Iyer, and Justice P N Bhagwati, who were known for their brilliant acumen and personal wisdom they used in their judgments by deviating from the traditional approach of rigidly following constitutional principles to freely interpreting the laws as intended by the framers of the constitution.

Pros & Cons of Judicial Activism in India

For all its purpose, Judicial Activism is a double-edged sword, which has both its benefits and drawbacks. However, until now, the benefits of Judicial Activism outweigh its drawbacks. The

[5] A.K. Gopalan v. State of Madras, A.I.R. 1950 SC 27 (India).
[6] S P Sathe, Judicial Activism in India (2d ed. 2002).

pros and cons are listed below –

Pros related to Judicial Activism

- It establishes a system of checks and balances on the activities of other organs of government. The aggrieved person can approach the court under Articles 32 and 226 to seek remedies if his fundamental rights are breached by the government.
- If the constitution or the laws passed by the legislature fails to provide balance with regards to the matter, then the judges can use their acumen and wisdom, in order to provide fair and equitable justice.
- It helps to revitalize the faith of citizens, which was lost due to the inaction of the legislature and the executive, and also gives a sense of justice and the positive perception towards the Judiciary strengthens.

Cons Related to Judicial Activism

- If the judiciary repeatedly tries to interfere in the functioning of the legislature & the executive, then it dilutes the principle of separation of power, which is called judicial overreach or judicial adventurism and also the faith of citizens towards the government diminishes.
- The judgments of the court, in the guise of judicial activism, may be altered by personal bias, selfish motives, or political affiliations which could become a precedent for the upcoming cases, thereby, undermining the concept of judicial activism.
- As a result of judicial overreach, there may be divergent opinions between the legislative and the judiciary, which might undermine the stability of the government and make it more difficult for it to function properly.

Impact & Extent of Judicial Activism in India

There is a line between Judicial Activism and Judicial Overreach. The court, while interpreting laws and statutes must be vigilant while pronouncing judgments, because the judgments will definitely have a considerable impact on the functioning of the government. The judges, while pronouncing judgments must restraint themselves to some extent which is permissible in the

national interest as observed by the Supreme Court in *Rajeev Suri v. Delhi Development Authority*[7]. This restraint by the judges to limit themselves to the written constitutional principles and following the orthodox approach while giving judgments is called Judicial Restraint. It is just the opposite of what Judicial Activism strives for. This is frequently observed in the Indian court system because it protects judges from involvement in conflicts with the government.

This concept of a legal activist court, when overreached, can also have its negative impact which was observed in one of the most controversial and infamous cases of the Supreme Court in *ADM Jabalpur v. Shiv Kant Shukla*[8], also known as the *Habeas Corpus Case*. This case was filed during the Emergency Period in 1975-77, in which all the fundamental rights of citizens were suspended. The majority of four-to-one judges pronounced a judgment favouring the government of Indira Gandhi in the Emergency Period in which it was held that fundamental rights enshrined under Article 21 could be suspended by the government. This judgment received heavy backlash from the citizens and was called to be pro-government judgment. Justice Hans Raj Khanna, the lone dissenting judge came as a symbol, arguing for judicial independence in this case.

Evolution of Judicial Activism by the Landmark Judgments

Judicial Activism, not by its concept but by its action emerged in 1893 in the Allahabad High Court when Justice Mahmood passed a dissenting judgment in a case of an under trial, who could not bear the cost of a lawyer. In this case, it was held that: "the pre-condition for hearing a case would be accomplished only when someone speaks."[9]

Post-Independence Era till halfway through the 1960s, the Judiciary acted only as a supplement to the Legislature and the Executive in its functioning. These two organs of the government had their unparalleled power until 1967, after which multiple landmark judgments were delivered which became a beacon of Judicial Activism.

The following are relevant case laws:

- ***I.C. Golaknath and ors. v. State of Punjab*[10],** (1967)

[7] Rajeev Suri v. Delhi Development Authority, (2021), A.I.R. 2021 SC 7 (India).
[8] ADM Jabalpur v. Shivkant Shukla, A.I.R. 1976 SC 1207 (India).
[9] Balakrishna, When Seed for Judicial Activism was Sowed, THE HINDUSTAN TIMES, April 1, 1996, at 2.
[10] I.C. Golaknath and ors. v. State of Punjab, A.I.R. 1967 SC 1643 (India).

The facts of this case dealt with the power of the Parliament under Article 368 of the Indian Constitution, in which the Parliament has the power to amend the Constitution and procedure. The Supreme Court said that Parliament cannot take away the fundamental rights of the people enshrined under Part III, by amending the Constitution, even though there was no such restriction mentioned under Article 368.

❖ ***Kesavananda Bharati* v. *State of Kerala*[11],** (1973)

This is one of the most famous landmark cases ever recorded in the judiciary which comprised of the largest constitutional bench of 13 judges. In this case, the doctrine of "basic structure of the constitution" was evolved, which was not mentioned anywhere in the Constitution. The Supreme Court held that the Parliament cannot amend the basic structure of the constitution. The judgment emerged as a quintessential of Judicial Activism.

❖ ***Maneka Gandhi v. Union of India*[12],** (1978)

In this case, the plaintiff, Maneka Gandhi's passport was seized by the government under "public interest." The plaintiff opposed this action of the government that her "personal liberty" under Article 21 was violated. The Supreme Court held that the action of the government was *ultra vires* and overruled the judgment delivered in the *Gopalan* case. The principles of natural law were also incorporated in this case, which would be applied in future cases. It was done through stretching and widening its interpretation of the Constitution, which is one of the most essential components of Judicial Activism.

❖ ***K.S. Puttaswamy* v. *Union of India*[13],** (2017)

This case dealt with the constitutionality of the Aadhar Scheme of biometrics launched by the incumbent government, which violated the right to privacy, though not fully incorporated by the Supreme Court but decided in several previous judgments, was in question. Though it was not explicitly mentioned in the Indian Constitution but the Supreme Court upheld that the right to privacy should be recognized under Article 21 – life & liberty.

The above-mentioned case laws show how the concept of Judicial Activism in India evolved

[11] Kesavananda Bharati v. State of Kerala, A.I.R. 1973 SC 1461 (India).
[12] Maneka Gandhi v. Union of India, A.I.R. 1978 SC 597 (India).
[13] K.S. Puttaswamy v. Union of India, (2017) 10 SC 1 (India).

from the late 1960s and it still plays an imperative role in the legal system.

Conclusion

To cut a long story short, the concept of judicial activism is a self-acquired power given to the courts of justice, which must be supported only for the rights of the common people and to uphold the supremacy of the Constitution but this activism can become adventurism in no time if political beliefs and bias of the judges' flow from the judgments. The court should observe and respect the domains of the legislature and the executive for the proper functioning of democracy and also preserve the principle of separation of powers enshrined in the Constitution.

To emphasize the other aspects it has, the court should not exceed the authority given to it in such a manner that it becomes fruitless. However, keeping aside a few judgments that tarnished the image of the court, the benefits of judicial activism outweigh its drawbacks. To be legitimate, this concept's scope must be limited to the extent that it serves the national interest of the country.

To sum up this, judicial activism – a noble concept evolved by eminent jurists is a way forward for the development of the country. What it should be recognized for, and what I support, is its wise use for the welfare of the poor and disadvantaged.

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