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JUDICIAL ACTIVISM: EXPANDING FUNDAMENTAL RIGHTS AND SOCIAL JUSTICE

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Abstract

This paper examines the topic of judicial activism and the doctrine of separation of powers. Judicial activism take place when judiciary goes beyond the role of interpreting laws and more into the matters of legislation or in the process of creating new legal standards often, in response to legislative inaction or for a pressing social cause. It is a crucial check for the government and a saviour for many but it is often criticised about the balance of power between the judiciary and legislature. This paper discusses that how judicial activism can enhance democracy when exercised with caution but it can also distort the balance of power between the pillers of democracy. The deeper implications of this study underline the necessity for a careful treatment on how judicial activism fits into modern governance and its possible effects towards separation of powers.

Introduction

Judicial activism has influenced the constitutional landscape expanding fundamental rights and social justice. It is also a part of judicial independence. In order to maintain justice and the rule of law, it is imperative that this independence be maintained[2]. Initially judicial activism was finite to overruling the laws passed by the legislature on the ground of incompatibility with the provisions of constitution[3]. Judicial activism is often described as the

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[3]Aithal, K. R. (2023). "Judicial Activism — the Enforcement of Human Rights in India." International Journal of Law and Social Sciences, 1(1), 60–75https://doi.org/10.60143/ijls.v1.i1.2015.11"

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proactive use of judicial authority to bring about socioeconomic and political reforms through policy making[4]. According to S.P. Sathe:[5]

There are two models of judicial review. One is technocratic model in which judges act simply as technocrats and hold a law invalid if it is *ultra vires* or over step the powers of the legislature. In the second model, a court interprets the provisions of a constitution liberally and in the light of the spirit underlying it keeps the constitution abeam with the times through spirited interpretation.

Judicial activism can have both positive and negative impacts. It is considered positive when it works to balance power relations among different groups, making them more equitable. Contrarily, it is seen as negative when it maintains the status quo and adopts a conservative stance.[6] The expanded concept of locus standi with PIL has enlarged the jurisdictional limits of the courts. Judicial activism in India addresses gaps in legislation concerning human rights. It strengthens democracy and uphold the common man's trust in the 'rule of law' but the judiciary should be cautious while exercising the power of judicial review, as observed by Lord Justice Lawton in Laker Airways [7] :

In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given (sic.) him by statute or the common law. If he is declared by a court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as Parliament gives him the powers he wants. In a case such as this I regard myself as a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play.

Judicial activism and judicial restraint are interrelated concepts. It's crucial to recognize that judicial restraint is just as important as judicial activism. To ensure that judicial activism does not turn into 'judicial adventurism,' courts must exercise caution and appropriate restraint.

[4] Ibid
[5] .S.P. Sathe, Judicial Activism in India - Transgressing Borders and Enforcing Limits 5 (2002).
[6] Bhatia, Ravi P. "Evolution of Judicial Activism in India." Journal of Indian Law Institute, vol. 45, 2003, pp. 262-274.You can access the article through the Indian Law Institute's repository
[7] Laker Airways v. Sabena, Belgian Wd. Airlines,1977 (2) WLR 234 at 26

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History of Judicial Activism in India

After independence, judicial restraint was prevalent, with the supreme court supporting the actions of other state organs. Except those that were not in accordance with fundamental rights as in the case of *A.K. Gopalan v/s State of Madras*[8]in which the judgement was a narrow interpretation to words such as 'personal liberty' and 'procedure established by legitimate law' in article 21[9]. In this period the judiciary and legislature disagreed only on matters relating to the right to property and reservations for socially and educationally disadvantaged groups.[10]Land reforms were pursued with ardency The Supreme Court interpreted the provisions on right to property in Article 31[11] was interpreted broadly to hamper the agrarian land reform. Parliament exercised its powers under Article 368 to amend the Constitution to outwit the decision of the Supreme Court. The first amendment also introduced the Ninth Schedule of the Constitution, protecting land reform enactments in the Schedule from judicial review. In 1962, in the matter of *Sakal Newspapers v/s Union of India*[12], it held that a law which prescribed the number of pages, price and space for advertisement in a newspaper violated the freedom of the press, which was included in freedom of speech guaranteed by Article 19(1)(a) of the Constitution. The Supreme Court held that unlike any other business which could be regulated in the interest of the general public as provided by Article 19(6), the press could be restricted only on the specific grounds given in clause (2) of that Article, such as the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation, or incitement to an offence. The Court derived the doctrine of preferred freedoms by differentiating between clauses (2) and (6) of Article 19, thus safeguarding media freedom of expression from future executive interference.

The case of *Golak Nath v/s State of Punjab*[13]is a landmark case in the course of judicial activism in India. The challenge in the Golak Nath case was to the constitutional vires of the

[8] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[9] Article 21 reads as thus: "No person shall be deprived of his life or personal liberty except according to procedure
established by law.
[10].S.P. Sathe, Judicial Activism in India - Transgressing Borders and Enforcing Limits 5 (2002).
[11] Article 31 guaranteed right to property. It was amended by the 4th and 25th Amendments before being omitted by the
44th Amendment. Article 31A was inserted by the 1st Amendment to enable acquisition of land and property by the State.
[12] Sakal Newspapers v. Union of India, AIR 1962 SC 305.
[13] Golak Nath v/s State of Punjab, AIR 1967 SC 1643

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Punjab Security of Land Tenures Act, 1953,that allowed ownership of land only upto a prescribed limit and permitted the State to appropriate land in surplus of the prescribed limit. The argument was that this enactment condensed the fundamental right of a citizen to acquire and hold property and to practice any profession. The Seventeenth amendment[14] had placed the Punjab Act in the Ninth Schedule putting it beyond judicial review. Advancing the doctrine of prospective ruling, the Supreme Court held that the enactment abridged fundamental rights and was constitutionally invalid also striking down the amendment to the Constitution that placed the enactment in the Ninth Schedule.

In the 1960s, the supreme court started interpreting the right to life and personal liberty under Article 21 more broadly to include additional rights within its scope in *Kharak Singh v/s State of U.P*[15] the Court held that personal liberty in Article 21 included the right to privacy

In *Satwant Singh v/s Assistant Passport Officer*[16]The Court ruled that the fundamental right to personal liberty comprise the right to travel abroad. The Court pointed out a gap in the Passport Act due to the lack of a defined procedure for managing the issuance or refusal of passports. To reciprocate this Parliament enacted the Passport Act of 1967 which consisted the specific procedure for obtaining passport.[17]

The case of Maneka Gandhi v. Union of India[18] marked a significant milestone in the Supreme Court's role as an activist body. The Court determined that personal liberty comprises a range of rights beyond those listed in Article 19, including the right to travel abroad. It also put emphasis that when a law limits personal liberty, the Court must assess whether it also restricts any rights protected by Article 19.The Court also laid down a fundamental principle of legal construction of the Constitution affirming that one had go beyond the textual construction of words to arrive to the true nature of rights involved that may have effect on the words "life" and "personal liberty" in Article 21.

Separation of Powers

[14] The Constitution (Seventeenth Amendment) Act, 1964, India Code (1964).
[15] Kharak Singh v. State of U.P., AIR 1963 SC 1295
[16] Satwant Singh v/s Assistant Passport Officer,AIR 1976, SC 1836
[17] Umashankar, "JUDICIAL ACTIVISM AND THE SUPREME COURT OF INDIA."
[18] Maneka Gandhi v. Union of India, AIR 1978 SC 597

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The Indian Constitution envisions a governance system based on separation of powers, despite not explicitly stating it. Article 53(1)[19]vests the executive property in the hands of president and Article 50 explicitly states that the State must take appropriate measures to separate the judiciary from the executive. In *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab*[20], the Supreme Court, observed:

"The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another."

The doctrine of separation of powers has not been adopted in its strict sense. However, the Constitution of India had tried to safe guard each branch of government from having its powers encroached upon by the other branches. This is reflected in constitution like Article 121 of the Constitution which puts a kind of restriction on Parliament. It states that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. A similar provision regarding the State legislatures is Article 211 of the Constitution of India. Additionally, Article 361 of the Constitution grants a kind of immunity to the President or the Governor. It states that the President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office. Besides this, Article 74 (2) of the Constitution mandates that the question whether any, and if so, what advice was tendered by Ministers to the President shall not be inquired into by any court.

In L. C. Golak Nath & Ors. v. State of Punjab & Anr[21], the supreme court bolstered its stance on the matter of separation of power :

> "The constitution creates Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within

[19] Article 53(1) of the Indian Constitution states that the executive power of the Union is vested in the President of India, who exercises it either directly or through officers subordinate to him in accordance with the Constitution.
[20] Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab, AIR 1955 SC 549
[21] L. C. Golak Nath & Ors. v. State of Punjab & Anr, AIR 1967 SC 1643

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the spheres allotted to them."

Judiciary defines the specific colour and content of the words used by the legislature. The famous American rationalist jurist Justice Holmes, in Towne v. Eisner[22], observed this:

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought, and may vary greatly in colour and content according to the circumstances and time in which it is used."

The judges give meaning to the laws passed by legislature and interpretation is the most creative and one of the key functions of a judge. However, the role of judiciary in legislation is highly confined. The judiciary is not empowered to make new laws. According to Justice Holmes in his argument in Southern Pacific v. Jensen[23]:

> "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions."

The writ of mandamus is the writs used by the supreme court under Article 32 of the constitution for enforcement of fundamental rights. It was used traditionally to impel the state or public authorities to do what they are legally bound to do. In case of discretion the court can not issue this writ. Under public interest litigation (PIL), although, mandamus is issued to mandate the acts that fall within the discretion of the government, thereby increasing the scope of the writ. In Common Cause v/s Union of India[24] in response to a PIL that exposed significant deficiencies in the collection, storage, and supply of blood across various blood centers in the country, the Supreme Court issued a writ of mandamus instructing the Central government to establish a National Blood Transfusion Council while State Governments were asked to form similar councils to implement the Court's measures.

The scope of Supreme Court directions using writ jurisdiction is truly stupendous. These directives include circumstances in which government hospitals rendered no appropriate emergency medical care to a patient; this is a violation of the individual's rights to life and

[22]Towne v. Eisner, 245 U.S. 418 (1918)
[23] Southern Pacific v. Jensen, 244 U.S. 205 (1917)
[24] Common Cause v/s Union of India,1996 (1) SCC 753

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also fall under measures targeted at enforcing public health and cleanliness against municipal bodies[25]against the mosquito threat that endangerment of the right to life[26] and various directions given to the government that show that the court have powers beyond declaring laws void.

The Emergence of Public Interest Litigation

Traditional legal theory of judicial process envisioned a passive role for the courts[27]. It was based on the following postulates :

(i) The court only found the law or interpret it, but did not make it;

(ii) If the courts made the law, it was solely to fill the gaps left by statutes, and only to the extent necessary to resolve the issue at hand;

(iii) A court will only give its decision in a legal question if the question crops up at the trial of the case.

(iv) After a matter is decided by a court the decision is binding on both the parties and the same matter cannot be raised again before the same court or court of concurrent jurisdiction

(v) Only an individual whose rights have been infringed has the right to approach the court and initiate legal proceedings.

(vi) An individual with a cause of action and the locus standi to bring an issue before a court must do so within the legally specified time frame.

In three decades since 1980s, each of these postulates was turned on its head by judicial process in India, and the instrument for setting aside these postulates was Public Interest Litigation (PIL).The first deviation from the postulate arose in Sunil Batra v/s Delhi Administration[28]. In this regard, the petitioner was an innocent onlooker and a jail inmate of the complaining party. Consequently, the object of the petition was a letter, and thus, it technically violated some of the rules of the Court. For the purpose of justice, the Court has stripped the opponent style of proceedings and nominated an advocate for the injured party. This representative was empowered to move within the prison, to meet the prisoner, to study the relevant documents and to interrogate all necessary witnesses. The Delhi Administration

[25] People's Union of Civil Liberties v/s Union of India, AIR 1997 Del 395
[26] Union of India v/s S.J.Pandit, AIR 1997 Ker 152
[27] S.P. Sathe, Judicial Activism in India - Transgressing Borders and Enforcing Limits 5 (2002).
[28] Sunil Batra v/s Delhi Administration, AIR 1978 SC 1675

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through the Solicitor-General of the State was fully supportive of the Court pointing out that the State is equally concerned as the Court is in correcting miscarriages of justice. The Court held that, for convicted persons, imprisonment does not take away the Article 21 protection concerning civilized treatment in prisons.

The role of PIL can be explained in the words of Justice P.N Bhagwatiin People's Union of Democratic Rights v/s Union of India [29] :

> "We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and 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 which is essentially of an adversarial character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the rights of one individual against another as happens in the case of ordinary litigation, but is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed."

The rule of locus standi as a standard for maintaining the petition became more liberal when expressed in the language of poor or oppressed in the search of justice. Justice Bhagwati sought change in literal construction of Article 32to say that "there is no limitation in the words of clause (1) of Article 32 that the fundamental right which is sought to be enforced by moving the Supreme Court should be one belonging to the person who moves the Supreme Court nor does it say that the Supreme Court should be moved only by a particular kind of proceeding." Thus the age of PIL was born.

[29] Para 1 of the judgement in People's Union of Democratic Rights v/s Union of India (AIR 1982 SC 1473) obtained from
http://www.indiankanoon.org/doc/496663/ retrieved on 22nd May, 2013

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Conclusion

Judicial activism has significantly shaped constitutional values and has expanded with a focus on the promotion of fundamental rights and social justice. To maintain rule of law and justice, it is necessary for the judiciary to remain independent. At the beginning of judicial activism, it was limited only to overruling laws that were found to be inconsistent with the Constitution. Over time, it evolved into the proactive use of judicial authority to bring about socio-economic and political reforms.

There are two spectrums of judicial review if we look at the technocratic model, where judges act like legal technocrats who invalidate laws that overstep legislative powers. If we look at the liberal model, where the court interprets the Constitution in such a way that it remains relevant till contemporary times, Judicial activism can have both positive and negative impacts. It is positive when it balances power relations and promotes equity but becomes negative when it adopts a conservative stance in order to maintain the status quo. Public interest litigation has increased the jurisdictional reach of the courts. In India, judicial activism addresses the legislative gaps that concern human rights, strengthens democracy, and upholds public trust in the direction of the rule of law; however, the judiciary must remain cautious and move forward. Judicial adventurism should be avoided.

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