

A STUDY ON JUDICIAL ACTIVISM IN INDIA

BY PIYUSH SINGH

Introduction

The state is solemnly responsible to ensure justice, liberty, equality, and fraternity in the country as provided under the Indian Constitution. It is a responsibility of the state to protect the individuals' fundamental rights and implement the Directive Principles of State Policy. The Indian Constitution has conferred certain inherent powers for reviewing the State's action upon the courts as to make the state responsible. In India, judiciary has been considered as the protector and guardian of the Indian Constitution. Certain roles are performed by the judiciary as provided under the constitution and they are:-

- Interpretation of the constitution to solve any ambiguity in the language of any provision of the constitution, also to provide an interpretation of various statutes.
- It acts as a protector of fundamental rights that are guaranteed under the constitution for its citizens.
- To adjudicate over the matters transferred from the subordinate courts, appeals, etc.

The Black's Law Dictionary defines judicial activism as "judicial philosophy which stimulates judges to depart from the traditional precedents in favour of progressive and new social policies."

When the courts review the State actions, judicial activism plays a vital role in it. The Constitution under Article 13 when read with Articles 32 and 226 provides power for judicial review to the higher judiciary to affirm, any statutory, administrative action, void if it violates the Constitution. Under the Indian Constitution, the power of judicial review is a basic structure.¹

Evolution of Judicial Activism in India

In 1893 Justice Mehmood of the Allahabad High Court delivered a dissenting judgement in a case of an under-trial who is unable to give money to engage a lawyer, where he provided

¹ L. Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261.

certain interpretations in relation to while giving judgement which showed the seed of activism in India. In 1950 Supreme Court started its functioning but it gradually started acquiring more power through constitutional interpretation. The origin of judicial activism can be recognised from the court's early assertion regarding the nature of judicial review. Supreme Court has obtained the crest of its powers in 1973 with its entitlement to invalidate even an amendment of the Constitution on substantive grounds. From 1974, the court's emphasis shifted towards modifying the executive actions of the government for their unreasonableness, particularly in Administrative matters.²

Landmark Judgments:

In *Kesavananda Bharati v. State of Kerala*³, Justice Khanna said that Judicial Review has become an important part of the Constitutional system and if any Statutory provisions are found to be violative of any articles of the Constitution upon which rationality of all the laws the based, then SC and HC are accredited to strike down the said provisions of the Statutes.

In *Sajjan Singh v. Rajasthan*⁴ case two judges raised their suspicion whether for the ruling party fundamental rights of citizens is just a plaything. They opined that if any law passed by the Parliament violates the Fundamental Rights, then it should be declared void.

In his minority judgment in *Minerva Mills v. Union of India*⁵ Justice Bhagwati observed that “It is the responsibility of judiciary to impart the constitution values as well as impose the constitutional limitations. He emphasised on the principle of rule of law, and stated that ‘Any governmental body whether the legislature or the executive or any other authority while performing their function, would be subject to the law and the constitution.’”

Judicial Activism and PIL

Each and every person is entitled to have access to justice as per the rule of law. Though individuals are unable to reach the proper justice system due to lack of basic necessities, poverty, discrimination, illiteracy, poor infrastructure of the justice system, etc. Through

² Andhyarujina, T.R: Judicial Activism & Constitutional Democracy in India, (Bom: 1992) at p.29

³ AIR 1973 SC 1461

⁴ AIR 1965 SC 845

⁵ 1980 AIR 1789, 1981 SCR (1) 206

various landmark judgments, Supreme Court has recognised that access to justice is a fundamental right.⁶

The court allows the petitions which are being filed in the public interest by the public spirited persons. Therefore, the superior courts have emancipated themselves from the restraints of the principle of locus standi and paved a way for the Public interest litigation in India. The judicial process has become “more participatory and democratic” after its shift from locus standi to PIL.⁷ The court decision under PIL bound not only the parties to the litigation but all those who are related to it.

In *People’s Union for Democratic Rights v. Union of India*⁸ case, The court said that PIL promotes the public interest. It will help in bringing justice to backward and underprivileged sections of society. The main aim of PIL is that the interest of each member in the society should be sustained and will not violate his/her constitutional or legal rights.

In *S.P. Gupta v. Union of India*⁹ case, the court acknowledged the locus standi of bar associations to file writs by way of public interest litigation. It was held that questioning the executive’s policy of arbitrarily transferring High Court judges is in the public interest.

Moreover, PIL should not be filed for creating exasperation or for barricading the administration of justice¹⁰ and should not be misused by anyone.¹¹

Judicial Activism and Fundamental rights

The scope of judiciary widens while giving legal interpretations of fundamentals rights including the right to life and personal liberty, right to live in a healthy and clean environment, right to education, and prohibition on child labour.

The Supreme Court acknowledged the fundamental right to education to children. In *Bandhua Mukti Morcha v. Union of India*,¹² the Supreme Court held that the right to education is implicit in the right to life guaranteed under Article 21.

⁶ Imtiaz Ahmad v. State of Uttar Pradesh, A.I.R. S.C. 2012 642.

⁷ S.P. Sathe, Judicial Activism in India (Sixth Indian Impression, OUP 2010) 17

⁸ (1982) 3 S.C.C. 235.

⁹ A.I.R. 1982 S.C. 149.

¹⁰ Common Cause (A Regd. Society) v. Union Of India and Others, decided on 11 April, 2008 by the Supreme Court of India.

¹¹ Dattaraj Nathuji Thaware v. State of Maharashtra, A.I.R. 2005 S.C. 540

¹² A.I.R. 1984 S.C. 802.

In the Constitution (Eighty-sixth Amendment) Act of 2002, three new provisions were introduced into the Indian Constitution i.e., Article 21A, new Article 45, and 51-A (k). Under the Right of Children to Free and Compulsory Education Act, 2009 it guarantees the fundamental right to education in India.

In the case of *Bachpan Bachao Andolan v. Union of India*¹³ the Supreme Court issued guidelines for the state to prohibit child labour at circuses so as to implement right to education. The court had ordered the government officials to raid the circuses to free children. The government was directed to provide rehabilitation and shelter to all rescued children at care and protective homes until they attain the age of 18 years.

Judicial activism or judicial intervention

In various circumstances, the functioning of judiciary has been criticized by the Parliament on the ground of judicial intervention. According to Parliament, the judiciary overreaches its constitutional power in various cases.

In *Vineet Narain v. Union of India*,¹⁴ the Supreme Court has issued directions to the government for bringing transparency and accountability in the Central Bureau of Investigation (CBI) by invoking Articles 32 and 142 of the Constitution.

In certain cases, the government has recognised that there has been judicial intervention by the courts. Such as Supreme Court's verdicts on National Eligibility-cum-Entrance Test (NEET) i.e., single test for admissions in medical courses, reformation in Board for the Control of Cricket in India (BCCI), filling up the judges' post, etc.

In *Divisional Manager, Aravali Golf Course v. Chander Haas*,¹⁵ SC has opined that: "Judges should act within the certain limits and interfere in the matters of government unless necessary. They must have modesty and propriety, and not to behave like Emperors. There is a huge distinction in the separation of powers provided under the Constitution and each organ of the State i.e., the legislature, the executive, and the judiciary, and they must regards each work and should not encroach into each other's domains."

¹³ Writ Petition (C) No. 51 of 2006, decided on January 22,2010

¹⁴ (1998) 1 S.C.C. 226

¹⁵ (2008) 1 S.C.C. 683

Conclusion

It is considered that in judicial activism the courts play an active role in resolving social, economic, and political problems. The Court should sustain the 'guardian ethic' as they act as a guardian of constitution. The subject of judicial activism is closely associated with statutory construction, constitutional interpretation, and separation of powers. There is a narrow gap between activism and overreach. According to Justice J.S. Verma "Judicial activism is a sharp-edged means which should be used as a scalpel by a skilful surgeon to cure the malady and not as a Rampuri knife which can kill". Judicial activism is regarded as a positive supplement of the executive actions but its interference into their domain might affect the functioning of a democratic country.