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Research Paper

Law

Social Activism as Judicial Activism

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ABSTRACT

The paper entitled "Social Activism as Judicial Activism" attempts to elaborate the reasons as to the necessity of judicial activism and resulting expansion of the scope of law. The two popular theorems enunciating the factors which led to the origin and growth of judicial activism are enumerated.

It also reveals the innovative approach of interpreting fundamental rights in the light of Directive Principles and reading the latter into the former whenever and wherever possible in judgments that reflects judicial activism. It also lists the judgments delivered by Courts in select cases that highlight judicial activism and which merit mention. It incidentally shows how the employers and worker are affected by some judgments.

Finally the judiciary is hoped not to be overactive and act with restraint and circumspection inorder to address criticism to the judicial activism.

KEYWORDS: : Judicial Activism, fundamental rights, Directive, Principles, Judgment

Law making is a complex exercise. The original bill may have been well drafted and properly vetted by the Law Commission. When it is tabled in the parliament several interest groups press for amendments of all sorts. Democratic decision-making often entails accommodating conflicting views and making compromises with the result that by the time the original bill comes out of the parliament as an Act, it loses its original shape and sharpness. Therefore, the intent of the act may not explicitly clear in the texts/clauses that follow.

Judges are human beings. Therefore they have their own inclinations and ideological persuasions. Not surprisingly, some judges deem it their privilege to pass judgments on the intent (preamble) rather than content (clauses/texts) of the law. This gives them the power to expand the scope of the law. The judges, while interpreting Constitutional law and State made laws, draw certain innovative conclusions which are not explicit in laws to the vexing issues and deliver verdicts based on these conclusions in order to conform to social justice and equity.

Freedom was not an end in itself. It was only a means to achieve an end; the end being to free India through a new Constitution, to feed the starving millions, to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity. In its bid to accomplish the above said motive, Indian Government has been enacting various legislations. But due to the glossed wit and obscured malice, the down trodden majority in India has to live in the same fetters, but this time, controlled by Swadesi rulers. The growing hiatus between promise and performance, expectation and reality, enactment and implementation has been causing disenchantment of the underdogs who seem to be developing a feeling of helplessness and alienation.

In Democratic Society there are perhaps two approaches to any judicial role performance and perception. The judiciary can adopt a proactive approach or it can act within the boundaries of self-restraint. Judicial activism refers to the first one. Before peeling away the layers of past of judicial activism, we must go through the background which caused the emergence of a proactive judiciary. There are two popular theories enunciating the factors which led to the origin and growth of judicial activism namely, the "theory of vacuum filling" and "theory of social want".

The "theory of vacuum filling" implies that due to inaction or laziness of any organ, a power vacuum is created and the remaining organs of the Government start filling that vacuum by expanding their horizon, because power vacuum may cause disaster to the fabric of democracy and rule of law. Thus judicial activism is the result of the vacuum created by the two organs (i.e. legislature and executive) of the Government. Because it is true that nature does not permit a vacuum. What has come to be called hyper activism of the judiciary draws its strength and legitimacy from the inactivity, incompetence, disregard of Constitution and law, criminal negligence, corruption, greed for power and money, utter indiscipline and lack of character and integrity among the leaders, ministers and administrators.

The "theory of social want" states that the origin and growth of judicial activism lies in failure of existing legislations to cope up with the problems of our society. Ultimately the judiciary responded to the knock of the poor and the oppressed for justice. The supporters of this theory opine that judicial activism plays a vital role in bringing in the societal transformation. It is 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 catalyst on change.

The proactive role thus played by judiciary is termed as 'judicial activism' and the judgements delivered constitute what are called judge made laws. Judges displaying 'judicial activism' are powered by ideals they believe and ideals they cherish. Therefore while the affected parties may label them pro-labour or pro-capital, the judgments per se cannot normally be faulted. In labour law, judges are not bound by the precedent effect even though employers/managers are. Judicial activism is the product of liberal mind set. The secular religion of socialism, now deceptively called as liberalism is driving to-days' judicial activism.

When justice is evasive elsewhere, the judiciary takes it upon itself to award social justice by offering creative interpretations and innovative solutions to vexing issues in consonance with the fact that Supreme Court is a 'mission to do justice' as rightly said by justice Earl Warren. Unfortunately however, when judges interpret law in a manner that influential section of parliament considers not palatable, it has not lost the opportunity to amend law to make judgements redundant. It is saddening to note that both Parliament and judiciary consider it necessary to periodically and frequently assert their superiority through such shadow boxing. Parliamentarians accuse that judiciary assuming the role of a super Government and brand 'judicial activism' as 'judicial terrorism'. The bureaucracy sometimes resorts to the practice of withholding the passing fruits of law enacted by parliament by simply not notifying the enactment in the official Gazette.

Government and employers often consider that judgments in specific cases apply only to the parties in the cases concerned. They do not seem to realise the value of underlying principles to parties in similar situations on subsequent occasions. It is a matter of concern that smaller benches of the Supreme Court sometimes give judgements setting aside the verdicts given earlier in similar cases by larger benches of the Supreme Court. This undermines the binding of the verdicts of the judiciary and it is an indication of growing trend towards judicial indiscipline.

The judiciary by virtue of the power vested under the Constitution of India is the protector of the civil liberties of the citizen and it seeks to protect and guarantee same under its public law jurisdiction. In addition to the Fundamental Rights are interpreted in the light of the Directive Principles and latter are read into the former where ever and whenever possible in judgments that aptly reflect judicial activism. The Supreme Court has tried to expand the ambit and reach of Fundamental Rights and make them meaningful to the large masses of the people in the country by taking guidance and inspiration from Directive Principles.

In human affairs, there is a constant recurring cycle of change and experiment. A society changes as the norms acceptable to the society undergo a change. Old ideologies and old systems give place to a new set of ideologies and new systems which in turn are replaced by different ideologies and different systems. The judges have to be active to this reality and while discharging their duties have to develop and expound the law on those lines while acting within the bounds and limits set out for them in Constitution. A heavy responsibility is cast upon judge to evolve law in consonance with changing needs and aspirations of the society and to serve the cause of social justice. Judicial activism is the founding stone of this approach. The mere existence of particular piece of beneficial legislation cannot solve the problems of the society at large unless the judges interpret and apply the law to ensure its benefit to the right quarters and to see that the rights guaranteed by the Constitution are made available to the masses of the country. When the courts interpret the Constitution their decisions cannot be reversed by statutes enacted by the legislature. The ultimate values protected by the written Constitution are deliberately placed beyond the powers of legislation.

The judges have to develop and adopt the law to the changing needs and requirements of the people and on each occasion they do so they are expected to provide justifying reasons which must satisfy not only themselves but also critics and jurists, nay the society itself, for what they decide. Therefore the characteristics of judicial activism are 1) sensitivity and understanding of social needs, social requirements and political compulsions 2) accountability in the form of providing reasons satisfying critics, jurists and the society itself.

Judicial activism can take many forms but technical and juristic for the two important forms of activism and no legal system can survive in modern age without providing some scope to the judge to exercise these two forms of judicial activism. Beyond these two forms is the third form of activism which is termed by Justice Bhagwati as social activism. The modern judiciary cannot afford to hide behind notions of legal justice and plead incapacity when social justice issues are addressed to it. It is crucial for the judiciary in order to obtain social and political legitimacy to go beyond legal justice and need the challenge of making a meaningful contribution to issues of social justice. And social activism is the key to meet this challenge. Every new decision by the court on every new situation is a development of the law. Law does not stand still. It moves continually. The virtue of judicial review lies in restraining the improper unconstitutional Act on the pain of its being scrutinised by the Court and risking invalidation. The check itself provides a powerful restrain but the check flows from the activist role of the Court. It needless to say that Courts have geared themselves to 'creativity' in furtherance of the needs of the weaker sections of the society to the liberal realistic interpretations, sweeping the procedural cobwebs lying in the way and filling up what legislature has left out to make law meaningful.

Judicial institutions have a sacrosanct role to play not only for resolving inter se disputes but also to act as a balancing mechanism between the conflicting pulls and pressures operating in a society. In order to realise this role to play the Judge should have a sense of moral freedom, a sense of independence in the service of justice. We cannot look to him to resist abuse of power, if he is made to feel important. Courts of law are the products of the Constitution and instrumental for fulfilling the ideals of the State enshrined therein.

Judicial activism in response to PIL has opened the gates of justice to the poor and needy. It is hoped that judiciary is not overactive in displaying judicial activism. It is therefore cautioned by the former CJ of Supreme Court, A.M. Ahmadi that with regard to admission of PIL the judiciary is asked to act with restraint and introspection in order to address criticism the judicial activism from various quarters.