Research Paper Political Science

Impact of Judicial Activism on the working dsemocratic institutions

Mohammad Alamgeer Professor of Political Science, P.G. Dept. of Political Science Samastipur College Samastipur 848101

ABSTRACT *Parliamentary democracy in India is facing serious threat from Supreme Court as it has developed new methods of dispensing justice to the masses through the public interest litigation. Judicial activism has arisen mainly due to the failure of the executive and legislatures to act. In the Common Law realm, this critique is based on the age old notion of 'parliamentary sovereignty'. With respect to the inherent value of a written constitution that also incorporates 'judicial review' The Paper examines the negative impact of judicial activism on the working of democratic institutions in India.*

KEYWORDS : Judicial Activism,. Pubic Interest Litigation, Separation of powers, Judicial Review

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. Judicial activism is a way through which relief is provided to the disadvantaged and aggrieved citizens. Judicial activism is providing a base for policy making in competition with the legislature and executive. 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 failure of the executive and legislatures to act. Secondly, it has arisen also due to the fact that there is a doubt that the legislature and executive have failed to deliver the goods. Thirdly, 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 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 first idea is that the judiciary being an unelected body is not accountable to the people through any institutional mechanism. In most countries judges are appointed through methods involving selection or nomination, in which ordinary citizens do not have a say. It is argued that allowing the judiciary to rule on the validity of the enactments passed by a popularly elected legislature amounts to a violation of the idea of 'separation of powers'.

Skepticism is also voiced against judges using their personal discretion to grant remedies in areas in which they have no expertise. This critique locates the role of the judiciary as purely one of resolving disputes between parties and deferring to the prescriptions of the elected legislature while doing so. In the Common Law realm, this critique is based on the age old notion of 'parliamentary sovereignty'. With respect to the inherent value of a written constitution that also incorporates 'judicial review', it would be appropriate to refer to an observation made by Justice Aharon Barak: *"To maintain real democracy and to ensure a delicate balance between its elements -a formal constitution is preferable. To operate effectively, a constitution should enjoy normative supremacy, should not be as easily amendable as a normal statute, and should give judges the power to review the constitutionality of legislation. Without a formal constitution, there is no legal limitation on legislative supremacy, and the supremacy of human rights can exist only by the grace of the majority's self-restraint. A* constitution*, however, imposes legal limitations on the legislature and guarantees that human rights are protected not only by the self-restraint of the majority, but also by constitutional control over the majority. Hence, the need for a formal constitution.*[1]

The new intervention

However, over the years, 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.

The Court has for all practical purposes disregarded the separation of powers under the Constitution, and assumed a general supervisory function over other branches of governments. The temptation to rush to the Supreme Court and High Courts for any grievance against a public authority has also deflected the primary responsibility of citizens themselves in a representative self government of making legislators and the executive responsible for their actions. The answer often given by the judiciary to this type of overreach is that it is compelled to take upon this task as the other branches of government have failed in their obligations. On this specious justification, the political branches of government may, by the same logic, take over the functions of the judiciary when it has failed, and there can be no doubt that there are many areas where the judiciary has failed to meet the expectations of the public..

The observations of Arun Jaitley about the role of the judiciary in adjudicating on policy matters has sharpened the debate over separation of powers and constitutional obligations of the judiciary as a counter majoritarian institution. Jaitley observed, "Judicial review is the legitimate domain of the but then a Lakshmanrekha has to be drawn by all the institutions themselves... executive decisions are by the executive and not the judiciary".[2] These reflect the concerns not only of the government also of other institutions of democracy; the judiciary will not disagree with the separation of power principle. The real difficulty is in relation the line should be drawn. Historically,

the judiciary has been progressive and inclusive in interpreting the constitution**.** The evolution of PIL, progressive interpretation of rules, expansive interpretation of fundamental rights and directive principles, invoking the writ of continuing mandamus, recognition of substantive and procedural due process as tools to fulfil the constitutional values, all these have been appreciated.

The following principles can inform us of what is at stake and enable institutions of government to exercise powers in an effective manner, respecting the separation of powers doctrine. First, law policy and judicial intervention; the separation of power is about the legislature having the prerogative of making laws; the executive being entrusted with the responsibility to implement laws; and the judiciary vested with legal and constitutional powers to adjudicate disputes and review both legislation and the executive actions for their compliance with the Constitution.

The judiciary must evolve principles on the basis of which it will, on its own, differentiate its interventions on matters that are not related to law and are policy questions. Elected governments are best suited to make policy choices. They are better placed to determine the suitability of policy choices. But the judiciary must intervene if any, or all of these powers, are arbitrarily exercised. It is not all that difficult to tell, a priori, what is law and what is policy. The difficulty arises when enforcement of law and implementation of policy results in violation of fundamental rights.

Second, constitutional norms and institutional limitations: The judiciary is vested with the obligation to ensure that all the wings of the government follow constitutional norms. Our courts have intervened in many matters that appear, at first blush, to be substantive questions of public policy, as opposed to law. In such matters the judiciary interprets issues from the standpoint of upholding rights and justice. The judiciary must recognise that there are inherent limitations to the exercise of judicial powers when it comes to its policy questions.

Why must the judiciary exercise self-restraint in policy matters without violating fundamental rights? Because it lacks competencies to grasp all the ramifications of policy choices. A decision of the Supreme Court is the law of the land (Art. 143 of the Constitution). When courts decide what policies should be legally mandated, it will need revision judgments to change those policies in the public interest. Judicial calibration of policies is unwise.

'The judiciary is the weakest organ of the State. It becomes strong only when people repose faith in it. Such faith of the people constitutes the legitimacy of the court and of judicial activism. Courts have to continuously strive t o sustain their Legitimacy. They do not have to bow to public pressure rather they have to stand firm against any pressure What sustains legitimacy of judicial activism is not its submission to populism but its capacity to withstand such pressure without sacrificing impartiality and objectivity. Courts must not only be fair, they must appear to be fair. Such inarticulate and diffused consensus as bout the impartiality and integrity of the judiciary is the source of the Court's legitimacy'[3]

We also have to admit that judges are human beings as fallible as other human beings are. If we have good judges we have b adjudges to Judges are bound to have their predilections and those predilections are bound to influence their judgments.

The courts themselves have imposed restraints on their powers in order to minimize the chances of vagaries arising out of subjective lapses or prejudices of the judges. The courts are bound to follow precedents, they are bound to follow the decisions of the higher courts, and they are bound to follow certain rules of interpretation. Further decisions of courts are reasoned and are often subject to appeal or review. These restrictions ensure that the lapses would be minimal. Criticism of the judgments of the courts would further act as a corrective to objectionable judgments. Through such process the courts sustain their legitimacy'.[4]

Justice Jackson of the U.S. has aptly said: "The doctrine of judicial activism which justifies easy and constant readiness to set aside decisions of other branches of Government is wholly incompatible with a faith in democracy and in so far it encourages a belief that judges should be left to correct the result of public indifference it is a vicious teaching."[4]

The Court has for all practical purposes disregarded the separation of powers under the Constitution, and assumed a general supervisory function over other branches of governments. The temptation to rush to the Supreme Court and High Courts for any grievance against a public authority has also deflected the primary responsibility of citizens themselves in a representative self government of making legislators and the executive responsible for their actions. The answer often given by the judiciary to this type of overreach is that it is compelled to take upon this task as the other branches of government have failed in their obligations. On this specious justification, the political branches of government may, by the same logic, take over the functions of the judiciary when it has failed, and there can be no doubt that there are many areas where the judiciary has failed to meet the expectations of the public by its inefficiency and areas of cases**.**

References:

1. Aharon Barak, 'A judge on judging: The role of a Supreme Court in Democracy, *Harvard Law Review* 16 (2002) 116
2. *Raj kumar C., Line cannot be blurred , Hindustan Times Patna,May24, 2016*
3. Sathe, S.P., Judicial Activism in Indi Transgressing Borders and Enforcing Limits, Oxford University Press New Delhi.20002. p310
4. Ibid p,311
5. *Andhyarujina TR, Disturbing trends in judicial activism, The Hindu, August 6.* 2012