



JUDICIAL ACTIVISM VS JUDICIAL OVERREACH IN INDIA

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ABSTRACT

Among three Organs of the Govt, Judiciary can be considered as a most pivotal institution which draws its powers from the constitution of India to act as a watch dog for the well-functioning of our democracy. Such an important Organ necessarily need to be active or show its activism whenever needed in the absence of responsible functioning of other organs.

An evolving and a maturing democracy gives space for creative avenues to attain a status of just society. Public Interest Litigation, Innovative interpretation of constitution and progressive Verdicts etc., are few such avenues supported by judiciary to enrich the democratic principles of our country. it was commented that judiciary must draw its own 'Lakshman rekha (inviolable boundary)' and not take decisions that fall in the domain of executive, highlighting the increasing friction between the judiciary and executive over a perceived overreach by the courts

Right from Gopalan Case of 1950s to the recent Environment friendly judicial activism verdicts, judiciary has played proactive role in remembering the responsibilities of Legislature and executive. It is true there are instances where judicial activism turned into judicial overreach encroaching the spheres of other Organs. It is high time for judiciary to check its own path of activism to be progressive and well convinced and not to touch the border of overreach.

KEYWORDS :

Judicial Activism

The expression "judicial activism" is often used in contrast to another expression "judicial restraint". Judicial activism is a dynamic process of judicial outlook in a changing society. Judicial Activism refers to the process in which judiciary steps into the shoes of legislature and comes up with new rules and regulations, which the legislature ought to have done earlier. Stringent, neutral, unbiased observation of the laws made by legislature and suggesting amendments so as to make them more constitutionally compatible and egalitarian can also be termed as Judicial Activism. Arthur Schlesinger introduced the term "judicial activism" in a January 1947 fortune magazine article titled "The Supreme Court: 1947". According to Black' Law Dictionary judicial activism is a judicial philosophy which motivates judges to depart from the traditional precedents in favour of progressive and new social policies".



The Indian judiciary has been constitutionally vested with the power of review to keep the Executive and Legislature within constitutional boundaries. The Judiciary can strike down any law that is beyond Parliament's legislative competence or is violate of the Constitution. Similarly, it can strike down any Executive action, if there is any patent illegality or arbitrariness to it. While Articles 13, 21, 32, 226 and 227 encompass this power, Article 142 extends a unique, extraordinary power to our Supreme Court to do 'complete justice' in any matter before it.

Manifestation of Judicial Activism

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 and government policies and also administration. It is a way through

which justice is provided to the disadvantaged and aggrieved citizens. 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. In recent years, as the incumbents of parliament have become less representative of the will of the people, there has been a growing sense of public frustration with the democratic process. That is why the Supreme Court had to expand its jurisdiction by, at times, issuing novel directions to the executive. In recent years law making has assumed new dimensions through judicial activism of the courts. The judiciary has adopted a healthy trend of interpreting law in social context.

Significance of Judicial Activism

Judicial activism is mainly due to

- Failure on the party of the other organs of governance
- Growing challenges in front of the judiciary in the back drops of new issues.
- Failure of Executive i.e. Corruption, Delay, Non responsive, Inefficiency etc.
- Failure of Legislative thus Absenteeism legislator, Legislative's inability to come out with law in a number of contemporary issue, Improper addressing of issues through legislature.

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. Due to the misuse and abuse of some of the provision of the constitution, judicial activism has gained significance. Development of new issues such as: privacy in cyber space, right to life, environmental concerns, growing pollutions and when the legislature fails to discharge its responsibilities. In case of a hung parliament where the government is very weak and instable and when the government fail to protect the basic rights of the citizens or provide an honest, efficient and just system of law and administration and when the party in power misuses the courts of law for ulterior motives as was done during the Emergency period, and finally, the court may on its own try to expand its jurisdiction and confer on themselves more functions and powers.

Areas of Judicial Activism

During the past decade, many instances of judicial activism have

gained prominence. The areas in which judiciary has become active are health, child labour, political corruption, environment, education, etc. Judiciary has shown

- Its firm commitment to participatory justice
- just standards of procedures
- immediate access to justice, and
- Preventing arbitrary state action.

In recent orders, the Supreme Court has directed the most complex engineering of interlinking rivers in India. The Court has passed orders banning the pasting of black film on automobile windows. On its own, the Court has taken notice of Baba Ramdev being forcibly evicted from the Ram Lila grounds by the Delhi Administration and censured it. The Court has ordered the exclusion of tourists in the core area of tiger reserves. All these managerial exercises by the Court are hung on the dubious jurisdictional peg of enforcing fundamental rights under Article 32 of the Constitution. In reality, no fundamental rights of individuals or any legal issues are at all involved in such cases. The Court is only moved for better governance and administration, which does not involve the exercise of any proper judicial function.

Recent Instances of judicial Activism:

- 1) The order passed by the Allahabad High Court making it compulsory for all Bureaucrats to send their children to government school
- 2) The Supreme Court ruling about road safety, has banned the sale of liquor at retail outlets, as also in hotels, restaurants and bars, that are within 500m of any national or state highway
- 3) Levying congestion charges in peak hours at airports
- 4) Allotment of a particular bungalow to a judge
- 5) Chandigarh High Court is deciding what tolls should be charged at a toll plaza in Gurgaon.
- 6) Gujarat High Court has ordered that all new vehicles registered in the state should run on compressed natural gas.

Evolutionary timeline for the genesis of judicial Activism in India:

1)1950-1970: This is the phase of traditional judiciary where judiciary mainly focuses upon seeing the constitutional validity of laws and associated with limited functional domain.

2)1970-2000: This is the phase of judicial activism and it continues beyond 2000. In this phase judiciary comes out with a number of landmark judgements such as:

In the Gopalan case (1950), the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means that the state can deprive the right to life and personal liberty of a person based on a law. This is because of the expression 'procedure established by law' in Article 21, which is different from the expression 'due process of law' contained in the American constitution. Hence, the validity of a law that has prescribed a procedure cannot be questioned on the ground that the law is unreasonable, unfair or unjust. Secondly, the Supreme Court held that the 'personal liberty' means only liberty relating to the person or body of the individual. But, in Menaka case (1978), the Supreme Court overruled its judgement in the Gopalan case by taking a wider interpretation of the Article 21. Therefore, it ruled that the right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just. In other words, it has introduced the American expression 'due process of law'. In effect, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. Further, the court held that the 'Right to life' as embodied in Article 21 is not merely confined to animal existence or survival but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete

and worth living. It also ruled that the expression 'personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of man.

In the Kesavananda Bharati Case (1973), the Supreme Court declared that judicial review is a basic feature of the constitution and hence, cannot be taken away.

In the Minerva Mills Case (1980), the Supreme Court also held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles. They together constitute the core of commitment to social revolution. They are like two wheels of a chariot, one no less than the other. To give absolute primacy to one over the other is to disturb the harmony of the constitution. This harmony and balance between the two is an essential feature of the basic structure of the constitution. The goals set out by the Directive principles have to be achieved without the abrogation of the means provided by the Fundamental Rights'.

3)2000-till now: this is the phase of judicial activism along with instances of judicial overreach. In this phase, because of a number of situation such as:

1. Globalization and complexities of laws in the backdrop of globalization
2. Growing consciousness of people.
3. Role played by the media and civil society organizations.
4. Growing concerns for the environment.
5. Growing number of the PILs.
6. Besides that problems associated with the executives and legislatives.

Some present manifestation of the judicial Activism:

The Supreme Court set up Mudgal Committee and the Lodha Panel to investigate the betting charges and suggest reforms. Now, the Supreme Court has dismissed BCCI officials for not adhering to the suggested reforms.

The Supreme Court ordered the UPA government to set up an SIT to probe black money. The UPA government did not take action on this judgment. The NDA government has now in the process of fulfilling the task. With the supreme court ruling that the National Eligibility-cum-Entrance Test (NEET) would be the only test for admissions to medical courses in India, the centre and the states have gone into a huddle and are discussing and debating the matter. While most states are in favour of NEET, some have expressed concerns with regard to the difference in syllabus between state boards and CBSE, logistical issues and language barriers.

SC orders centre to create a new policy to handle drought: while **there is no doubt about the precarious condition of farmers in drought-hit Maharashtra and some other places, with famer suicides on the rise, the question, however, is whether the Supreme Court has the right to order the government to frame policies. It has ordered the government to look into drought management, abandon the current and existing system and form a transparent policy- with a set time-frame for declaring drought and a standard methodology.**

The apex court has also directed the union government to set up a National Disaster Mitigation Fund within three months. SC orders government to set up a bad loans panel: it can be debated whether the apex court even has the authority to decide how the banks with collect their dues or even with respect to write-offs. But the Supreme Court has ordered the government to appoint a committee to look into the issues pertaining to bad loans and the huge write-offs by public sector banks. This, despite the Reserve Bank (RBI) counsel saying that systems are already in place for most of the issues raised.

Activism can deteriorate into overreach if the judiciary considers itself the sole custodian of public interest, interprets public interest in its own fashion and seeks to force the legislature and the executive to implement its version of it. Judiciary has only got to interpret the laws and decide whether they conform to the Constitution and not more than that.

Judicial Overreach

Judicial Overreach refers to an extreme form of judicial activism where arbitrary, unreasonable and frequent interventions are made by judiciary into the legislature's domain, often with the intention of disrupting the balance of powers between executive, legislature and judiciary.

This is a situation where the court encroaches upon the role of the legislature by making laws. Cases where the courts encroach upon the role of executive by making rules or indulging in censorship can also be termed as judicial overreach.

Characteristics of Judicial Overreach:

The line between judicial activism and judicial overreach is very narrow. In simple terms, when judicial activism crosses its limits and becomes judicial adventurism it is known as judicial overreach.

When the judiciary oversteps the powers given to it, it may interfere with the proper functioning of the legislative or executive organs of government.

Manifestation of Judicial Overreach:

Striking down of NJAC Bill by the Supreme Court. National Judicial Appointments Commission (NJAC) was proposed by the body which would have given it powers to appoint judges to higher judiciary. Passed by both houses of parliament it was termed as unconstitutional by constitutional bench of the Supreme Court and now stands repealed.

The advantages and disadvantages of Judicial Activism:

Advantages:

It acts as a check and balance for the other organs of the government and it makes the judiciary vibrant, updated and pro-people. It helps in the protection of the spirit of the constitution by giving a wider definition to a number of life bearing articles of the constitution such as: Article 14, article 19, article 21 and article 32 etc. Through judicial activism judiciary is trying to promote more transparency and accountability in governance.

Disadvantages:

According to some critics, judicial overreach is upsetting the constitutional balance among the three organs of state – the legislature, the executive and the judiciary.

Viewed as a challenge to basic structure:

The judicial activism, at one point of time, was considered necessary to correct the failings of the legislature and the misdeeds of the executive. But it has now grown into a situation where the idea of separation of powers, which should be considered a feature of the basic structure of the Constitution, is challenged.

Sometimes Judicial activism led to judicial overreach and judicial adventurism. Incidences of judicial overreach has a negative impact upon the constitutional core i.e. Separation of power.

Judicial overreach may have a negative impact upon the morale of the executive because the executive's function of policy making and policy implementation are more challenging and depends upon the 4F i.e. Fund, function, framework and functionary. Because the judicial overreach, sometimes the coordination between the executive and judiciary get affected which has a negative impact upon the constitutional framework.

There is a thin line between activism and overreach. While judicial

activism is considered positive to supplement the failings of the executive, but the overreach into the executive's domain is considered an intrusion into the proper functioning of democracy. Just as independence of the judiciary is part of basic structure, the primacy of the legislature in policy making is also part of basic structure and interference by the courts into their domain is not justified.

Conclusion

There are indications that the judiciary is overreaching and intruding more and more in the exclusive space of the legislature and the executive, thereby creating unhealthy asymmetry in the delicate balance among institutions in the country. We cannot have a situation where the country is run by judicial decrees, where other organs of the democracy are unable to take decisions with confidence and gradually go redundant.

Although, judicial review is legitimate domain of judiciary but then a limit or boundary has to be drawn. Judiciary, like all institutions in a democracy, should be accountable and know its own limits. It should not become a super parliament that frames laws and a super executive that seeks to implement them. The quality and speed of the mainstream judicial system can be improved by a comprehensive and integrative approach, focussed on improving judicial infrastructure and reducing indiscipline.

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