



Judicial activism and its relevancy in India

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Abstract

Under the Indian constitution, the state is under the prime responsibility to ensure justice, liberty, equality and fraternity in the country. The goal of the constitution, enunciated by our worthy founding father in its preamble, is to secure to the people of INDIA justice-social, economic and political, liberty of thought, expression, belief faith and worship, equality of status and opportunity. For achieving this goal, the constitution has created three organs of state, the legislature, the executive and the judiciary. state is under the obligation to protect the individuals fundamental rights and implement the directive principles of state policy. one must say central and state legislature have by and large, performed their duty fairly but in order to restrain the state from escaping its responsibilities, the Indian constitution has conferred inherent powers of reviewing the state action on the courts. The Indian judiciary has played an active role whenever required, in protecting the fundamental rights against state action. By this paper i have to inquire the judicial activism is how and to what extent beneficial for Indian people. is it judicial activism or judicial overreach.

Keywords: preamble, justice, liberty, equality, fraternity, expression, belief faith, obligation, responsibility, providing, fundamental right, activism, overreach

Introduction

Under the Indian constitution, the state is under the prime responsibility to ensure justice, liberty, equality and fraternity in the country. The goal of the constitution, enunciated by our worthy founding father in its preamble, is to secure to the people of INDIA justice-social, economic and political, liberty of thought, expression, belief faith and worship, equality of status and opportunity. For achieving this goal, the constitution has created three organs of state, the legislature, the executive and the judiciary. state is under the obligation to protect the individuals fundamental rights and implement the directive principles of state policy. one must say central and state legislature have by and large, performed their duty fairly but in order to restrain the state from escaping its responsibilities, the Indian constitution has conferred inherent powers of reviewing the state action on the courts. The Indian judiciary has played an active role whenever required, in protecting the fundamental rights against state action.

Meaning of judicial activism

As to its meaning, Judicial Activism is not a distinctly separate concept from usual judicial activities. The word 'activism' means "being active", 'doing things with decision' and activist is the 'one' who favours intensified activities. Justice Krishna Iyer observed 'every judge is an activist either on the forward gear or on the reverse Justice of the Supreme Court of India, Justice J.S. Verma, "The role of the judiciary in interpreting existing laws according to the needs of the times and filling the gaps appears to be the true meaning of judicial activism." In other words, it is a continuous process that helps to advance the cause of law in the wider interest of the public. In a way, judicial activism constitutes an integral part of

judicial review. According to Mr. Justice A.H. Ahmadi, the former Chief Justice of India, judicial activism is a necessary adjunct of the judicial function because the protection of public interest, as opposed to private interest, is the main concern. Activism in judicial policy making furthers the cause of social change or articulates concepts such as liberty, equality or justice. It has to be an arm of the social revolution. An activist judge activates the legal mechanism and makes it play a vital role in socioeconomic process.

An eminent Indian jurist defines judicial activism in the following words: (Judicial) Activism is that way of exercising judicial power which seeks fundamental re-codification of power relations among the dominant institutions of State, manned by members of the ruling classes? The same authority goes on to add that judicial activism is the use of judicial power to articulate and enforce counter-ideologies which when effective initiates significant re-codifications of power relations within the institutions of governance. An analysis of the above attempt by Upendra Baxi to define judicial activism shows that activism of the judiciary pertains to the political role played by it, like the other two political branches. The justification for the judicial activism comes from the near collapse of responsible government and the pressures on the judiciary to step in aid which forced the judiciary to respond and to make political or policy-making judgments.

Historical and theoretical background

Judicial activism has become a subject of controversy in India. Recent and past attempts to hinder the power of the courts, as well as access to the courts, included indirect methods of disciplining the judiciary, such as supersession of the judges and transfers of inconvenient judges. Critics of judicial

activism say that the courts usurp functions allotted to the other organs of government. On the other hand, defenders of judicial activism assert that the courts merely perform their legitimate function. According to Mr. Justice A. H. Ahmadi, the former Chief Justice of India, judicial activism is a necessary adjunct of the judicial function because the protection of public interest, as opposed to private interest, is the main concern. Courts cannot interpret a statute, much less a constitution, in a mechanistic manner. In the case of a statute, a court must determine the actual intent of the authors. In the case of a constitution, a court must sustain the constitution's relevance to changing social, economic, and political scenarios. In the words of Justice Benjamin Cardozo, a court must give to the words of a constitution "a continuity of life and expression. An apex court, besides deciding the law that binds all courts subordinate to it also must make "vocal and audible the ideals that otherwise might remain silent. The original intentions of the founding fathers do not bind a constitutional court. Rather, the court is free to interpret the constitution in terms of what the framers would have intended under the circumstances that exist at the time of such interpretation. In the absence of such judicial activism, a constitution would become stultified and devoid of the inner strength necessary to survive and provide normative order for the changing times.

People's understanding of judicial activism depends on their conception of the proper role of a constitutional court in a democracy. Those who conceive the role of a constitutional court narrowly, as restricted to mere application of the pre-existing legal rules to the Given situation, tend to equate even a liberal or dynamic interpretation of a statute with activism. Those who conceive a wider role for a constitutional court, expecting it to both provide meaning to various open textured expressions in a written constitution and apply new meaning as required by the changing times, usually consider judicial activism not as an aberration, but as a normal judicial function. Since the judiciary has come to be recognized as an independent and separate organ of the Government under the Government of India Act, 1935 and subsequently under the Constitution of India, it would be prudent to scan the period subsequent to 1935 for tracing the origin. However, there are a few instances even prior to that period, where certain selected judges of High Courts established under the Indian High Courts Act, 1861 exhibited certain flashes of judicial activism. Way back in 1893, Justice Mahmood of the Allahabad High Court delivered a dissenting judgment which sowed the seed for judicial activism in India.

Causes of Judicial Activism

The following trends were the cause for the emergence of judicial activism - expansion of rights of hearing in the administrative process, excessive delegation without limitation, expansion of judicial review over administration, promotion of open government, indiscriminate exercise of contempt power, exercise of jurisdiction when non-existent; over extending the standard rules of interpretation in its search to achieve economic, social and educational objectives; and passing of orders which are unworkable. From locus standi to PIL. Power of supreme court and high court of judicial review Judicial activism happens when the courts have power to

review the State action. Article 13 read with Articles 32 and 226 and 131-136, 143, 226, and 246 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare, any legislative, executive or administrative action, void if it is in contravention with the Constitution. The power of judicial review is a basic structure of the Indian Constitution. From locus standi to public interest litigation: Access to justice is a fundamental aspect of rule of law. If the justice is not accessible to all, establishment of the rule of law is not possible. The individuals fail to reach justice system due to various reasons including lack of basic necessities, illiteracy, poverty, discrimination, privacy, poor infrastructure of the justice system, etc. The Supreme Court of India has recognised in many landmark judgments that access to justice is a fundamental right. Indian Judiciary has played an active role in ensuring access to justice for the indigent persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of beggar, transgender, etc. Since Independence, the Courts in India have been adopting innovative ways for redressing the grievances of the disadvantaged persons. In many cases, the Supreme Court exercised its epistolary jurisdiction and took suo motto actions on mere postal letters disclosing the human rights violations in society. Human rights violations, which published in the newspapers, were taken into judicial consideration. The court Entertains the petitions which are being filed by the public spirited persons in the public interest. By doing so, the superior courts have liberated themselves from the shackles of the principle of locus standi and given the birth to the Public interest litigation in India.

The shift from locus standi to public interest litigation made the judicial process "more participatory and democratic. S.P. Sathie says: "The traditional paradigm of judicial process meant for private law adjudication had to be replaced by a new paradigm that was polycentric and even legislative. While under the traditional paradigm, a judicial decision was binding on the parties (res judicata) and was binding in personam, the judicial decision under public interest litigation bound not only the parties to the litigation but all those similarly situated." The Supreme Court in People's Union for Democratic Rights v. Union of India¹⁶ held that public interest litigation is different from the traditional adversarial justice system. The court said that public interest litigation is intended to promote public interest. Public interest litigation has been invented to bring justice to poor and socially or economically disadvantaged sections of the society. The violations of constitutional or legal rights of such large number of persons should not go unnoticed.

Course of judicial activism

In the first decade of independence, activism on part of the judiciary was almost nil with political stalwarts running the executive and the parliament functioning with great enthusiasm, judiciary went along with the executive. In the 50s through half of the 70s the apex court wholly held a judicial and structural view of the constitution. In the famous Keshav ananda Bharati case, two years before the declaration of emergency, the Supreme Court declared that the Executive had no right to tamper with the Constitution and alter its fundamental features. But it could not avert the emergency

declared by Mrs. Gandhi and it was only at the end of it that the apex court and the lower courts began to continuously intervene in executive as well as legislative areas.

The first major case of judicial activism through social action litigation was the Bihar under trials case. In 1980 it came in the form of a writ petition under article 21, by some professors of law revealing the barbaric conditions of detention in the Agra Protective Home, followed by a case against Delhi Women's Home filed by a Delhi law faculty student and a social worker. Then three journalists filed a petition for the prohibition of the prostitution trade in which women were bought and sold as cattle. Taking cognisance of custody deaths Supreme Court ordered the police not to handcuff a man arrested purely on suspicion, not to take a woman to the police station after dusk. High Court judges visited the prisons to check the living conditions of prisoners, in the year 1993, in just a month the apex court proclaimed judgment protecting the rights of innocents held in Hazratbal mosque in Srinagar, defining the constitutional powers of the Chief Election Commissioner, threatening multi-crore rupees industries with closure if they continued to pollute the Ganga and Taj Mahal and brought all government and semi government bodies under the purview of the Consumer Protection Act.

In a 1994, judgement it asked the Chief of Army Staff to pay Rs. 6, 00,000 to the widow and two children of an army officer who died due to the callousness of the authorities concerned some 16 years before.

The controversial 27% reservation of jobs in Central Government and public sector undertakings was referred to the Supreme Court by the Rao Government. The court decision favoured 49% of jobs for backward castes and class but the creamy layers; ere exempted from this reservation. Simi larlythe court put a curb on the operation of capitation fee in colleges in Karnataka.

The Supreme Court giving directions to the CBI and summoning the head of the CBI to efort on the hawala case reveals the breakdown of other machineries of the government. The court interference with the CBI working became inevitable in the make of the tactics of delay and technical evasion that was undertaken by the Investigative agencies

Conclusion

In country like India the judiciary has played a vital role providing fundamental rights to individuals. Recently the country has seen instances of beneficial judicial activism to a great extent. It cannot be disputed that judicial activism has done a lot to ameliorate the conditions of the masses in the country. It has set right a number of wrongs committed by the states (J.N. Pandey, 1998) as well as by individuals. The common people are very often denied the protection of law due to delayed functioning of the courts, also called judicial inertia or judicial tardiness (Nikhil Chakrawartty, 1997). Judicial activism has started the process to remove these occasional aberrations too. This can be furthered only by honest and forthright judicial activism and not by running down the judiciary in the eyes of the public. The greatest asset and the strongest weapon in the armoury of the judiciary is the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even-handed justice and

keep the scales inbalance in any dispute. The Chief Justice of India Adarsh Sen Anand (as he then was) has realized that the real source of strength of the judiciary lies in the public confidence in it (A. S. Anand, 1998) and the judges have to ensure that this confidence is not lost.

As Justice J.S. Verma (as he then was) has referred: Judicial activism is a sharp-edged tool which has to be used as a scalpel by a skilful surgeon to cure the malady. Not as a Rampuri knife which can kill.? (J. S. Verma, 1996). The courts have innovated to reach justice to the deprived section of the society. Anything contrary would be like suggesting the abolition of marriage in order to solve the problem of divorce. This socio-economic movement generated by court has at least kept alive the hope of the people for justice and thus has weaned people away from self -help or seeking redress through a private system of justice .It is necessary for sustaining the democratic system and the establishment of a rule of law in society. Therefore, one has to be both adventurous and cautious in this respect and the judiciary has to keep on learning mostly by experience.

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