

JUDICIAL ACTIVISM IN INDIA:- A COMPREHENSIVE STUDY.

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ABSTRACT

Executive, legislature and the judiciary are the three wings of the government with their own limited powers and duties. But as the time passes, sometimes the vacuum is created by the virtue of the failure of other two wings, which is supposed to be fulfilled by the judiciary. In the process it has rewritten some parts of the constitution. The right to life and personal liberty and the procedure established by law has been converted de facto and de jure into a procedural due process clause contrary to the intent of the makers of the constitution. This expanding right has encompassed, within itself, the right to bail, the right to a speedy trial, immunity against cruel and unusual punishment, the right to dignified treatment in custodial institutions, the right to legal aid in criminal proceedings and above all the right to live with basic human dignity. The Supreme Court has developed a new normative regime of rights and insisted that a state cannot act arbitrarily but must act reasonably and in public interest on pain of its action being invalidated by judicial intervention. There is heated disagreement in opposition that judiciary violates the principle of separation of powers. This research tries to discuss the activist role of the judiciary. It contends that judicial activism has done positive justice and become a symbol of hope for the people of India. Various Judgments and many constitutional provisions have been discussed for this purpose.

Introduction

“There is no need for judges to feel shy or apologetic about the law creating roles”

- Justice P.N. Bhagwati.

During 1950s the Hon'ble court lost the opportunity to establish a people friendly court. The reason behind this unfortunate was that the all legal machinery consists of lawyers, judges and prosecutors come from the same background, i.e., same class, caste, attitude which was one of the major reasons behind the judiciary not taking a very progressive approach. Even many constitutional experts called the Supreme Court as “Rich man's court”¹ before the 80's. During the 1950's the Supreme Court was behaving like an “economic activism” to protect the status quo. The proclamation of the emergency was an attempt to take control over the judiciary. The tendency of the Supreme Court changed after the proclamation of the emergency in 1975.² In the few years the Supreme Court has, through intense judicial activism, become a symbol of hope for the people of India. It has augmented its moral authority and acquired a new credibility with the people through judicial activism and judicial creativity.³

The Judiciary has played a vital role in order to fulfill the drawbacks of the other two wings i.e., legislature and executive. In the process it has rewritten some parts of the constitution. The right to life and personal liberty and the procedure established by law has been converted de facto and de jure into a procedural due process clause contrary to the intent of the makers of the constitution. This expanding right has encompassed, within itself, the right to bail, the right to a speedy trial, immunity against cruel and unusual punishment, the right to dignified treatment, custodial institutions, the right to legal aid in criminal proceedings and above all the right to live with basic human dignity. The Supreme Court has developed a new normative regime of rights and insisted that a state cannot act arbitrarily, but must act reasonably and in the public interest on pain of its action being invalidated

¹ Aman kumar Burnwal,, & Shilpa Rani”, Judicial Activism in india: Assertion of Judicial Power to fill the legislative vacuum, 2 IJLDAI 19, 27 (2016).

² Aman kumar Burnwal,, & Shilpa Rani”, Judicial Activism in India: Assertion of Judicial Power to fill the legislative vacuum, 2 IJLDAI 19, 20 (2016).

³ Justice PN Bhagwati (Apr. 13, 2020, 11:11 PM), https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf

by judicial intervention.⁴ The Vishakha guidelines in case of sexual harassment of women at workplace is a paragon of judicial activism; these guidelines were given by the Supreme Court in case of *Vishaka v State of Rajasthan*.⁵

What does the “Judicial Activism” Mean?

Upendra Baxi, an eminent Indian Jurist has defined judicial activism as the way of exercising power vested by judiciary, which seeks fundamental re-codification of power relations among the dominant institutions of State, manned by the members of ruling class.⁶

Black’s Law Dictionary has defined judicial activism as a “philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent”⁷.

Mainly the judicial activism is seen in three ways-

1. Overturning any law as unconstitutional.
2. Overturning of the judicial precedent
3. Interpretation of the constitution.

In a lay man’s word, judicial activism can be seen as the political role played by the judiciary. The Concept of judicial activism can be regarded as synonym of judicial absolutism, judicial anarchy, judicial supremacy, and judicial imperialism. Judicial activism and judicial restraints are terms used to emphasize the ‘right role of Courts’.

GROWTH OF JUDICIAL ACTIVISM.

⁴ Justice PN Bhagwati (Apr. 13, 2020, 11:11 PM), https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf

⁵ *Vishaka v State of Rajasthan*, A.I.R. 1997 S.C. 3011 (India).

⁶ Aman kumar Burnwal,, & Shilpa Rani”, *Judicial Activism in India: Assertion of Judicial Power to fill the legislative vacuum*, 2 IJLDAI 19, 20 (2016).

⁷ Aman kumar Burnwal,, & Shilpa Rani”, *Judicial Activism in India: Assertion of Judicial Power to fill the legislative vacuum*, 2 IJLDAI 19, 20 (2016).

Through the activism tendency the Supreme Court has developed our human rights jurisprudence and brought help to the common masses of people in the state. Aristotle states that “*He who bids the law's rule bids God and reason rule, but he who bids man's rule adds the element of the beast, for desire is a wild beast and passion perverts the minds of rulers even though they be the best of men.*”⁸

Aristotle and Plato were very much aware that the law can't anticipate the endless permutation of circumstance and situation. There is a gap between the generalities of the law and the specifics of life. This gap is filled by the judges. In handover of this task to the judge, the judges have incorporated the wisdom of Plato and Aristotle. It is here that the judge takes Part process of lawmaking. The judge gives life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society.⁹

Even the constitutional framework has given enough scope for judicial activism as judiciary, and especially Supreme Court enjoys unique position. Article 13 empowers Court to declare any law unconstitutional if it violates any fundamental right of citizens guaranteed by the Constitution.¹⁰

Article 19 states that the Supreme Court can determine whether the restrictions imposed on fundamental right are reasonable or not. Article 131 talks about the federal principle. The Supreme Court is the highest authority in all cases either the criminal or the civil. Its decision is binding on all courts except himself.¹¹

Paragon of Judicial Activism in India

In the last few years judicial activism has done positive justice and become a symbol of hope for the people of India. The first major judicial activism case occurs through the social action litigation was the Bihar under trial case. We have some path-breaking judgments like **Keshavananda Bharti**¹² popularly known as Fundamental Rights case, in that case, decision of **Golak Nath**¹³ was overruled and Basic Structure Doctrine was given and Court retains the power to check the validity of constitutional amendments. We have cases in the interest of prisoner's right where the court permits

⁸ Justice PN Bhagwati (Apr. 13, 2020, 11:11 PM), https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf

⁹ Justice PN Bhagwati (Apr. 13, 2020, 11:11 PM), https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf

¹⁰ Justice PN Bhagwati (Apr. 13, 2020, 11:11 PM), https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf

¹¹ INDIA CONST. art. 141

¹² Keshavananda Bharti v. State of Kerala, A.I.R. 1973 S.C. 1461 (India).

¹³ Golak Nath v. State of Punjab, A.I.R. 1967 S.C. 1643 (India).

that the prisoners have the right to have an interview. In the case of **Kadra pahadiya vs state of Bihar**¹⁴ it was held by the apex court that the prisoners have the right to speedy trial. In the case of **Maneka Gandhi vs UOI**¹⁵ the court observes that the life or personal liberty of a person can be deprived by the state but it must be fair and reasonable in manner. In the case of **Vineet Narain vs UOI**¹⁶ the apex court states that requirements of public hearing in court is a part of fair trial. In the case of **Mohammed Rafi vs state of Tamil Nadu**¹⁷ the court observed that every accuse has the right to be defended. In the landmark judgment of **Triveniben v. state of Gujarat**¹⁸, a constitutional bench of the Supreme Court held that undue & long delay in the execution of the death sentence will entitle the concerned person to approach the court for the conversion of sentence into life imprisonment. Further, the court observed that before doing so the court will examine the nature and circumstances of the case. The Hon'ble court has also given path-breaking judgments to protect the environment. In the case of **MC Mehta**¹⁹ the Supreme Court has issued a number of direction to more than 300 industries to transfer the location of industry operating in Agra within the allotted time.

Dimensions of Judicial activism

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The concept of judicial activism is multi-dimensional. Possible Maker, however, there cannot be a universal application of these dimensions; they vary according to constitutions and ideologies. Political Science Professor Bradeley C. Canon had observed judicial behavior in leading democracies and considered six important dimensions.²⁰ Majoritarianism, Interpretive Stability, Interpretive Fidelity, Substance Democratic-Process Distinction, Specificity of Policy, and Availability of Alternative. Now, whether they are applicable in the Indian scenario or not can be tested only in the light of judicial decisions.

¹⁴ Kadra pahadiya v state of Bihar, A.I.R 1981 S.C. 939 (India).

¹⁵ Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597(India).

¹⁶ Vineet Narain v. Union of India, A.I.R 1998 S.C. 889 (India).

¹⁷ Mohammed Rafi vs state of Tamil Nadu, A.I.R 2011 S.C. 308 (India).

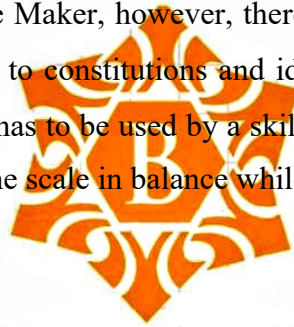
¹⁸ Triveniben v. state of Gujarat, A.I.R. 1989 S.C.142 (India).

¹⁹ M.C. Mehta v. Union of India, (1997) 2 S.C.C. 353 (India).

²⁰ Aman kumar Burnwal,, & Shilpa Rani", Judicial Activism in India: Assertion of Judicial Power to fill the legislative vacuum, 2 IJLDAI 19, 26 (2016).

CONCLUSION

During 1950s the Hon'ble court lost the opportunity to establish a people friendly court due to several reasons as discussed in the above research paper. There is a gap between the generalities of the law and the specifics of life. This gap is filled by the judges. In handover of this task to the judge, the judges have incorporated the wisdom of Plato and Aristotle. Even the constitutional framework has given enough scope for judicial activism as judiciary, and especially Supreme Court enjoys unique position. It is here that the judge takes Part process of lawmaking. The judge gives life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society. In the last few years judicial activism has done positive justice and become a symbol of hope for the people of India. We have some path-breaking judgments like **Keshavananda Bharti**, **Kadra pahadiya vs state of Bihar**, **Maneka Gandhi vs UOI**, **Vineet Narain vs UOI**, **Mohammed Rafi vs state of Tamil Nadu** so on and so forth. The concept of judicial activism is multi-dimensional. Possible Maker, however, there cannot be a universal application of these dimensions; they vary according to constitutions and ideologies. Justice J.S Verma said that judicial activism is a sharp tool which has to be used by a skillful surgeon and not as a knife to kill. While being active, court has to keep the scale in balance while deciding any dispute.



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