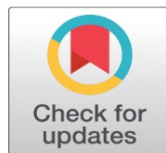


THE ROLE OF JUDICIAL ACTIVISM IN INDIA A STUDY

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ABSTRACT

Judicial review, public interest litigation and judicial activism in the Indian judiciary have increased the role and responsibility of the judiciary. Under a democratic system, judicial activism is pro-people and has increased the activity of the judiciary and made it transparent. Judicial activism is when the judiciary is vigilant when the legislature and the executive do not discharge their responsibilities constitutionally and honestly. It is the responsibility of the government and government institutions to protect the values of the constitution, when this responsibility is forgotten, the judiciary starts its activity. Solving the problems of the citizens and protecting the interests of the citizens is the primary duty of the elected representatives. But if most of the elected representatives forget this, the development of India will not be possible. The Constitution has provided freedom, equality, rights and justice to the citizens. Fundamental rights and directive principles of the state should be duly implemented by the legislature and the executive. If these are not implemented, the judiciary will be active.

Keywords: Constitution, Activism, Public Interest Litigation, Article, Review

1. INTRODUCTION

Judicial activism was first used by the American historian Arthur Schlesinger Jr. in 1947. Later, Indian judges V.R. Krishna Iyer, P.S. Bhagwati, A. Chinnappa Reddy and D.A. Desai developed judicial activism in India. According to Arthur Schlesinger Jr., "Judicial activism involves judges who are more willing to question legislative and executive actions to decide constitutional issues." According to Justice J.S. Verma, judicial activism is "the active process of implementing the rule of law necessary for the preservation of a functioning democracy." According to Justice A.H. Ahmadi, "Judicial activism is a dynamic approach in which judges interpret laws based on the needs of society rather than following rigid legal techniques." Justice K.G. Balakrishnan has defined it, "The marginalized sections of society should be brought under the purview of the judiciary to uphold constitutional values." Justice P.N. Bhagwati has defined it as "the exercise of judicial review to ensure that the rights of the people are protected and when other organs of the state fail to act in accordance with the Constitution."

2. OPPORTUNITIES IN THE INDIAN CONSTITUTION FOR THE EXERCISE OF JUDICIAL ACTIVISM

The idea of judicial activism is found in many places in the Indian Constitution. Several articles, including Articles 13, 21, 32 and 226, describe judicial activism. Judicial activism, which is based on the "basic structure" doctrine of the Indian Constitution, keeps a check on the laws of the legislature and the acts of the executive.

- 1) **Article 32:** The cornerstone of judicial activism of the judiciary is Article 32. Indians can file petitions to the Supreme Court for violation of the fundamental rights of Part III of the Constitution through writs. The activism of the judiciary helps protect the fundamental rights of the citizens through habeas corpus, mandamus, prohibition, certiorari and quo-warranto. Therefore, Article 32 has been defined as the soul and heart of the Constitution.
- 2) **Article 226:** The High Court has the jurisdiction to protect the fundamental rights described in Articles 12 to 35 of Part III of the Constitution of India. The High Court receives writ petitions from the public and protects the rights of the citizens. The judiciary is alerted when the legislature and the executive act against the constitution and deny the rights of the citizens.
- 3) **Article 142:** According to this article, the judiciary has the jurisdiction to provide complete justice in any case and to pronounce judgments. The Supreme Court has the power to inspect any government documents, issue orders to the public and punish those who have committed contempt of court under the judiciary.
- 4) **Article 136:** Article 136 allows appeals to the Supreme Court against cases decided by subordinate courts, except military court judgments. The Supreme Court can question the judgments, orders and sentences of subordinate courts. Cases like a miscarriage of justice and violation of natural justice are important in subordinate courts.
- 5) **Article 141:** Article 141 states that the judgments given by the Supreme Court of India are a record for all subordinate courts. Therefore, the Supreme Court is called a court of record. The decisions, records, observations and orders of the Supreme Court have to be used by the subordinate courts in their decisions. The subordinate courts base their decisions on the decisions of the Supreme Court.
- 6) **Article 145(3):** The judiciary has the power to interpret the Constitution. There is a rule that when the judiciary interprets the Constitution, there should be at least five judges in the Constitution Bench. The more the number of judges, the more people will understand the Constitution. The Chief Justice of the Supreme Court of India has the power to appoint judges in the Constitution Bench, and all of them together interpret the Constitution. The important cases in which the Constitution has been interpreted by the Constitution Bench are; the A.K. Gopalan case of 1950, the Berubari case of 1960, and the Keshavananda Bharati case of 1973 are important.
- 7) **Article 21:** Article 21 describes the right of the people of India to life, liberty and personal liberty. The most important article of judicial activism is Article 21. The Supreme Court has explained the right to life and personal liberty of an individual many times through its judgments. The 1978 Maneka Gandhi case upheld Articles 14, 19 and 21 of the Constitution.
- 8) **Public Interest Litigation (PIL):** Judicial activism is effective in strengthening democracy and enhancing the judicial process. Public interest litigation can be filed directly in the Supreme Court and High Courts through post and get justice. Any matter of public interest can be brought before the judiciary by the public. No fee or lawyer is required for a public interest litigation.

3. IMPORTANT JUDGMENTS OF JUDICIAL ACTIVISM IN INDIA

The Supreme Court and High Courts have used judicial activism in many cases in India. The judiciary is active when governments fail to protect fundamental rights and implement the needs of citizens fairly. Such judgments are;

- 1) **Kesavananda Bharati v/s State of Kerala (1973):** The Supreme Court delivered the landmark Kesavananda Bharati judgment in 1973 based on the "basic structure" of the Constitution. The Supreme Court ruled that Parliament has the power to amend the fundamental rights enshrined in Part 3 of the Constitution. While affirming that Parliament has the power to amend fundamental rights, the Supreme Court ruled that Parliament does not have the power to amend the original structure of the Constitution. This put a check on the unnecessary

amendment of fundamental rights by the legislature and the executive and checked the unbridled power of Parliament.

- 2) **Hussainara Khatoon v/s State of Bihar (1979):** This is a case of judicial activism in the history of India in which the Supreme Court ruled on the right to life. In 1979, advocate Pushpa Kapila Hingorani filed a PIL against the inhuman treatment of undertrial prisoners in the state of Bihar. The Supreme Court in this case clarified that there was a violation of the right to life and personal liberty under Article 21. The judiciary, not only ordered the release of undertrial prisoners in custody but also showed humanity whereas the executive had not acted honestly. The judgment reflected the principles of equal justice, the need for legal services and fair trials.
- 3) **Maneka Gandhi v/s Union of India Case (1978):** The Central Government confiscated Maneka Gandhi's passport without giving any reason. Maneka Gandhi filed a case in the court alleging that this violated Articles 14, 19 and 21 of the Constitution. The Supreme Court gave its verdict and stated the principles of fairness, equality and proportionality of laws on the individual position. The Supreme Court ruled in the Maneka Gandhi case that Articles 14, 19 and 21 of the Constitution are interrelated. The Supreme Court, which ruled in favour of Maneka Gandhi, upheld the right to personal liberty.
- 4) **Vishaka v/s Rajasthan case (1997):** A Public Interest Litigation (PIL) was filed in the Supreme Court regarding sexual harassment of women at work. An NGO named Vishaka filed a PIL in the Supreme Court against the police for not registering a case and investigating the brutal gang rape of Bhanvari Devi, a social worker who was preventing child marriage. The Supreme Court, which took up the case, passed a judgment in 1997 and took steps to protect women at work. It found that Articles 14, 19 and 21 of the Constitution were being violated at work and issued directions to the government. These are known as the "Vishaka Guidelines". In 2013, the Central Government enacted a law to protect women from sexual harassment and assault at work.
- 5) **M.C. Mehta v/s Union of India case:** The M.C. Mehta case is a historical landmark in environmental law. The Supreme Court in this judgment imposed restrictions on the environmental pollution in Delhi due to gas leakage from industries engaged in hazardous activities. The damage caused by the leakage of oleum gas from a factory owned by Shriram Foods and Fertilizers in Delhi was brought to the notice of the court. It questioned the adverse environmental risks caused by setting up chemical plants in populated areas. This case became more powerful after the Bhopal gas tragedy and includes the Ganga pollution case of 1985, the Taj Mahal pollution case of 1996, and the vehicular pollution cases of 1998. This case made the government aware of the dangers to the citizens due to environmental pollution and the need to protect the environment.
- 6) **S.R. Bommai v/s Union of India case (1994):** In 1989, the Central Government dismissed the S.R. Bommai government, who was the Chief Minister of Karnataka, using Article 356 and imposed President's Rule. S.R. Bommai filed a case in the Karnataka High Court against the central government alleging that Article 356 was misused against his government. But the High Court dismissed the case. Fed up with this, S.R. Bommai filed a case in the Supreme Court in 1994. The Supreme Court in its judgment prohibited the central government from misusing Article 356 and indicated the necessary guidelines. Article 356 should be used as a last resort and state governments that have lost their majority should be allowed to form the government again. The Supreme Court ruled that two months should be given for that and that any political party should be allowed to form the government if it wants to.
- 7) **Shayara Bano Case (2017):** A case filed in the Supreme Court against the practice of triple talaq among Muslim men is the Shayara Bano case. Muslim personal law states that if a Muslim man pronounces the words talaq three times to his wife, the marital relationship between the two ends and the marriage is dissolved. The Supreme Court ruled in 2017 that it violates the right to life under Article 21 and is unconstitutional. The central government enacted the Muslim Women (Protection of Rights on Marriage) Act 2019 because triple talaq was a violation of the Constitution.

4. IMPORTANCE OF JUDICIAL ACTIVISM

Judicial activism is important in the establishment of social justice, the strength of democracy, and the rule of law. The judiciary becomes active when the legislature and the executive fail to perform their responsibilities. Judicial activism is important and very necessary.

- 1) **Protection of democracy:** Democracy involves the participation of citizens and is governed by their representatives. Governments should govern according to constitutional principles. Judicial activism becomes important when democracy is weakened and authoritarian tendencies emerge by those who exercise power against the constitution.
- 2) **Interpretation of the Constitution:** Since India has a written constitution, the judiciary has the power to interpret the constitution. The judiciary has given interpretations to constitutional activism issues in many cases. Shankari Prasad and Union of India case of 1951, Sajjan Singh and Rajasthan case of 1965, Golaknath case of 1967 and State of Punjab case of 1973, Kesavanand Bharati case of 1973 are the Supreme Court cases that have given interpretation to the Constitution.
- 3) **Social Justice:** The Constitution of India has provided social justice to the Indians. Articles 14 to 18, 19 to 22, 23 to 24, 25 to 28, 29 to 30, 32, Articles 38, 39, 41, 46, 338, 339, 340, 342, 344 of the Constitution are the articles that explain social justice. The legislature, executive, government institutions and officials should take the initiative to implement social justice. Otherwise, the judiciary will wake up the government institutions and officials through judicial review.
- 4) **Progressive Laws:** While the Parliament makes laws for India, the state governments make laws for the respective states. If the laws made by the legislature are outdated, the judiciary makes the laws progressive and relevant through judicial activism. This makes the laws strong and long-lasting. The Navtej Singh Johar case of 2018, the Shayara Bano case of 2017, the Vellore Citizens Welfare Forum case of 1996 and others are important documents for the implementation of progressive laws by the judiciary.
- 5) **Public Interest Matters:** The judiciary works actively by receiving public interest petitions. Governments should adequately address issues of public interest such as the abolition of bonded labor, protection of the neglected, atrocities on women, exploitation of workers, atrocities on Scheduled Castes and Scheduled Tribes, exploitation of undertrial prisoners, assault on children, adequate distribution of basic amenities, economic empowerment, etc. Otherwise, the judiciary will act proactively. In the Hussainara Khatoon case of 1979, and the M.C. Mehta case of 1981, the Supreme Court has given guidelines to the legislature and the executive regarding public interest.
- 6) **Awareness in the legislature and executive:** The legislature and executive have elected representatives who are chosen by the people. The representatives who are responsible to the people should sincerely focus on the development of the people. The legislature and the executive become aware that the judiciary has the power to question governments that are not in the interest of the people. The government is aware because people file their problems in the courts through public interest or because the courts hold the legislature and the executive.

5. CRITICISMS OF JUDICIAL ACTIVISM

Although judicial activism indicates the superiority of the judiciary, some criticisms have been expressed by thinkers.

- 1) The legislature makes the necessary laws for the country, and the judiciary conducts the judicial process according to the law made by the legislature. If the laws of the legislature are not in order, the judiciary itself directs the law. Due to this, the judiciary usurps the function of the legislature.
- 2) Judicial activism interferes with the powers of the legislature and the executive. Interference by the judiciary in the duties of the legislature and the executive undermines the legislature and the executive elected by the people.
- 3) Elected representatives are responsible to the people, but judges of the judiciary are not responsible to the people and do not have to answer to the people. This is why the legislature should have been important in a democracy, but judicial activism has given importance to the judiciary.
- 4) The opinions of judges are personal, their decisions are likely to be biased.
- 5) If the judiciary is subjected to judicial activism, there is a possibility of delay in the delivery of justice. This delays the timely delivery of judicial decisions to the citizens.

6. CONCLUSION

The principle of checks and balances between the legislature, the executive and the judiciary is followed in the theory of separation of powers in India. The judiciary acts proactively when the legislature and the executive do not exercise their powers according to the law. There are also criticisms that this proactivity of the judiciary weakens the powers of the legislature and the executive. But in India, the judiciary should be proactive for social justice, economic conditions, protection of women, protection of children, and protection of Scheduled Castes and Scheduled Tribes. Judicial proactivity is essential for the protection of the poor, the exploited, the weak, and the disabled and to question all the activities of the country. Judicial proactivity is a beacon for India in strengthening and implementing democracy.