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Evolution of Judicial Activism in India

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ABSTRACT

The judicial system plays the most pivotal role in Indian democracy, the role to interpret the law framed by the legislature which is later sent to the executive. It resolves and adjudicates the disputes between center and state or, group of states against a state, or state and state, or, state and an individual, or between two individuals. And for this reason it is called Saviour of Democracy. The three organs of the government ensure efficiency and effectiveness and any instability among them can directly hamper the administrative progress. And to regulate the mutual coordination among the three pillars for smooth functioning, the judiciary acts as a catalyst to protect the rights of the individuals and state from chaos and exploitation. It also protects the rights and law of the land and this act is known as Judicial Activism. The Judicial system in India has touched every aspect of human life in India and has always proven to be affirmative by becoming a boon for the poor and weaker section of the society, by protecting their individual rights. It is very difficult to trace the inception of Judicial Activism in India as it was recognized and identified as a separate organ of the Government. The dissenting judgment of the Justice Mahmud sowed the seed of judicial activism in the soil of India. This paper illustrates the evolution, concept and reason for growth of Judicial Activism in India. This paper aims to instill a deep understanding on the evolving dimensions of Pre and Post emergency Judicial Activism through the help of case laws and a glance on Indian perspective on Judicial Activism.

Keywords: *Judicial Activism, Constitution, Judiciary, PIL.*

I. INTRODUCTION

To attain the goals of the Preamble which are meticulously articulated, three organs were created by the Constitution- Legislature, Judiciary and the Executive. It is irrelevant to say that the Legislation and Judiciary have so far completed their duty fairly and smoothly and also has been able to deliver many enacting laws and also regulating smooth functioning of activities in the field of social, economic, educational hemisphere, certainly touching the every aspects of human life and especially working towards safeguarding the interest of the

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weaker section of the society. It is also very much known that the one pillar out of three, i.e. Executive have been constantly failing in implementing these laws. And consequently, several laws, schemes, policy could not be implemented and were made available for the citizen of the country due to lack of efficiency of the Executive, and they just lay as a mere declaration which is no good to be used for. This shortcoming of the Executive has caused great menace especially to the poor and vulnerable people as a lot of economic and social schemes could not be delivered. And when such complains moves to court, it becomes the duty of the courts to deliver justice to the people suffering because of the inefficiency on the part of government. This is where the other pillar Judiciary interferes and gives out certain directions to set out goal and thus protects the rights of the individual and it is called Judicial Activism in deprecatory sense. The lapse on the part of Executive and Legislature wings of the Government makes the judicial activism imperative one.

II. DEFINITION OF JUDICIAL ACTIVISM

The term Judicial Activism was first coined by Arthur Schlesinger Jr³. There is no precise or statutory definition of Judicial Activism. The scope of judicial activism is so vast that every jurist, scholar has defined it differently.

Black Law Dictionary defined Judicial Activism is as *“philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions”*

*“Judicial Activism is broadly defined as the assumption of an active role on the part of the judiciary”*⁴. In simple words Judicial Activism has been defined as the power of the Supreme Court and High Courts to declare a law unconstitutional if it affects the larger section of the society and to promote justice in simple means.

Justice J. S. Verma enumerated the definition of Judicial separation as *“the active process of implementation of law is essential for the preservation of a functional democracy”*

In modern definite term judicial activism is often interpreted as the mechanism of curing defects of the Executive by using its democratic power within constitutional limits. It is said to be believed that judicial activism gives power to the judges to act as Individual policy maker and behave like independent trustees on behalf of the citizen of the country beyond their traditional role. In General, Judicial Activism shows the active part played by the

³Arthur Schlesinger Jr- “The Supreme Court: 1947” published in Forbes Magazine, 1947

⁴ Chaterji Susanta, “‘For Public Administration’ Is judicial activism really deterrent to legislative anarchy and executive tyranny ?”, *The Administrator*, Vol XLII, April-June 1997, p9, at p1

Judiciary to correct the wrong decisions taken by Executive or Legislative for smooth co-ordinated functioning of all three vital pillars.

The concept of “Judicial Activism” is contrary and polar apart to “Judicial Restraint”. Both these terms are used often to describe the assertiveness of the judicial power and also used from the direction of ‘personal view’ and ‘professional view’ which puts the courts in the position to lean towards one of the view in order to play the right role. In country like US, many judges have given their reasons for favoring and rejecting judicial activism and thus they have maintained diverse notions on the mechanism of playing the ‘right’ and ‘proper role’. In US, the term Judicial Activism is often exchanged with “Judicial Supremacy”, “Judicial Absolutism”, “Judicial Anarchy” etc. Judicial Activism is also contemplated as an ascriptive term⁵. It means the assessment of the judges is done on the basis of their ideologies, opinions, values and interest.

The above discussion makes it clear that the term Judicial Activism is a broader concept. The term has no definitive meaning. It cannot be formulated together into one precise definition. It has different meaning and interpretation to different individuals, judges, jurist etc.

III. ORIGIN OF JUDICIAL ACTIVISM IN INDIA

For a decade long time, the Indian Judiciary was not very considerate of the concept of Judicial Activism; rather they have persistent conservative, unorthodoxical perspective. In India, the Judicial Activism could be seen occasionally and scattered and that’s why they could be hardly recognized as the country was not familiar with this concept. The authentication of Judicial Activism can be traced back in the year 1983 where dissenting judgment was given by Justice S. Mehmud⁶ of Allahabad High Court, in a case of under trial. That judgment gave new dimension to the concept of Judicial Activism in India. The roots of judicial activism could be seen in Court’s early assertion in context of the nature of judicial review.

IV. REASON FOR GROWTH OF JUDICIAL ACTIVISM

It is very difficult to ascertain the exact reason for rise in Judicial Activism under any Constitution. Further there cannot be any precise or accepted reason behind the rise and emergence of Judicial Activism, as the term is wider, it has different meaning, ideologies and approach to different people all over the globe. Some of the reasons for the growth are:

⁵ Supra Note no. 143

⁶Evolution & Growth Of Judicial Activism In India’, Shodhganga at 79, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/32340/8/09_chapter%203.pdf

- Due to lapse and failure on the part of Legislature and Executive
- Due to near fall of the responsible government
- Due to lack of Efficiency and inactiveness on the part of Executive to enact laws and policies
- Due to constant pressure on the Judiciary to to maintain balance between all the three pillars
- Due to lack of proper functioning of the Legislature which left vacuum open
- Due to the fact the Supreme Court decided to play the role of activist in order to protect the interest of the people and act as guardian etc.

V. PRE-EMERGENCY JUDICIAL ACTIVISM

During the reign and prevalence of British courts, the Supreme Court exercised as technocratic court but gradually followed the activist path. In the case of **A K Gopalan v State of Madras**⁷, where the writ was filed to ascertain whether the detention without trial was not considered to be violation of fundamental rights under Art. 14, 19, 21 and 22. The Supreme Court asserted that the power of judicial review was possessed in the written constitution. Even though the challenge failed in its attempt but it was awakening of new legal trend which was visible in coming subsequent years.

In the case of **Sakal Newspaper Private Ltd. v Union of India**⁸, Supreme Court held that it is violation of Freedom of press in order to schedule the number and price of pages in a newspaper. And also held that newspaper business could not be carried out like any other business, it is a carrier of information and thought. In the case of **Balaji v State of Mysore**⁹, the Apex Court held that backwardness should not be resolute to caste alone but can be one of the criteria and differentiated caste from class and also stated the reservation should not be more than fifty-percent in all. It was held that Article 15 and 16 are being species of Article 14 and it should be in uniformity and conformity with this Article. Similar restrictions were imposed by the Court in the case of in **Chitrallekha v. State of Mysore**¹⁰. During the enactment of 24th Amendment, Supreme Court in the case of **Goloknath v. State of Punjab**¹¹ held that majority can be established by six against five. And the Court also held that Parliament could not amend Constitution so as to “abridge” or “take away” the

⁷ AIR 1950 SC 27, 34.

⁸ AIR 1962 SC 305.

⁹ AIR 1963 SC 649.

¹⁰ AIR 1964 SC 1823

¹¹ AIR 1967 SC 1643

fundamental rights. The amendment was challenged in case of **Kesavananda v. State of Kerala case**¹², where the Supreme Court with the largest 13 judge's bench held that Parliament could amend constitutional provisions but Constitution cannot be altered. The judgment given in the landmark case is the best example of judicial activism in India which slated superior power of non-elected judiciary over Parliament.

VI. POST EMERGENCY JUDICIAL ACTIVISM

With the enactment of 44th Amendment, the new government, shell out the provision of declaration of emergency to be difficult and preservation of rights under Art 20 and 21. The Judicial Activism in post emergency period showed progressive, broad minded interpretation towards Art 14 and Art 21.

In the case of **Maneka Gandhi v. Union of India**¹³ in which Maneka Gandhi challenged the court for violation of personal liberty over impounding of her passport by the authorities. The court held impounding of passport to be unconstitutional. And the verdict of the Supreme Court overruled the judgment given in the A K Gopalan case and validity of personal liberty under ART 14, 21 was ensured.

In the case of **Minerva Mills Ltd. v. Union of India**¹⁴, the Supreme Court in his judgment ruled out section 4 and 55 of 42nd Amendment unconstitutional, in order to maintain harmony and strike a balance between Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Constitution.

In **Charles Sobraj v. Superintendant of Central Jail**¹⁵ and in **Sunil Batra v. Delhi Administration**¹⁶ cases the apex Court held that the prisoners could not be deprived of their fundamental rights.

VII. PUBLIC INTEREST LITIGATION (PIL) AND JUDICIAL ACTIVISM

Development of PIL has provided vital aid in making the judicial activism meaningful. This type of litigation has given the court an opportunity to give directions in public interest and enforce the public duties. The arrangement has brought to light many a medieval practices still predominant in India such as relief to prisoners, plight of women in protective homes, victims of the flesh trade and children of juvenile institutions and exploitation of the bonded and migrant laborers, untouchables, tribal etc. The attempt was done to show that how

¹² AIR 1973 SC 1461

¹³ AIR 1978 SC 597

¹⁴ AIR 1980 SC 1789

¹⁵ AIR 1978 SC 1514.

¹⁶ AIR 1978 SC 1675; AIR 1980 SC 1579

willingly Supreme Court desires to act as guardian of the victims to protect their rights and liberties from cruelty, exploitation etc. Therefore, the Apex Court also played the perfect role of activist by initiating PIL in order to deliver justice to the citizen at large. There was exploitation of PIL as large number of frivolous matters is filed before the Supreme Court like- teacher's, banker's strike, Shortage of buses, Lack of cleanliness in hospitals, Irregularities in stock exchange, labor demanding high wages, Painting of road signs etc. The essential of a genuine PIL is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. It is a powerful instrument to preserve the rule of law and to ensure the stability, accountability of and transparency within structures of governance. But PIL had now become an instrument for people greedy, publicity mongers or those who wanted to settle personal, business or political scores. This massive mismanagement will heavily damage judiciary and other democratic institutions. The case of *Maneka Gandhi*¹⁷ opened treasure for a lot of deeds following which judicial activism was visible in various judgments of the courts. Earlier PIL can only be filed who has '*Locus Standi*' but the rules of '*Locus Standi*' was altered by Justice P.N, Bhagwati and V.R. Iyer.¹⁸

Some of the PIL initially filed to protect the interest of poor people were-**Bandhu Mukti Morcha v. Union of India**¹⁹,**Hussainara Khaton v. State of Bihar**²⁰,**PUDR v. Union of India**²¹, **Azad Riksha Pullars Union v. State of Punjab**²².

Some of the **Environment related PIL** were such as-**Oleam Gas Leak case**²³, **Ganga River case**²⁴, **Taj Mahal case**²⁵ etc.

PIL related to **Sexual Harassment- Vishaka v State of Rajasthan**²⁶.

Judicial process would become charades if the court did not take any strict action to control the bombarding of tonnes of PIL's which hamper and delay serving of justice in genuine cases which require immediate attention.

¹⁷ AIR 1978 SC 597

¹⁸ Jeremy Cooper, 'Poverty and Constitutional Justice: The Indian Experience', *Mercer Law Review* 44 (1993) at 611, 614-615

¹⁹ AIR 1984 SC 802, 816

²⁰ AIR 1979 SC 1360

²¹ AIR 1982 SC 1473, 1476

²² 1981 AIR 14, 1981 SCR (1) 366

²³ AIR 1987 SC 965

²⁴ AIR 1998 SCC 471

²⁵ AIR 1997 SC 734

²⁶ AIR 1997 SC 477

VIII. JUDICIAL ACTIVISM AND SEPARATION OF POWER

The Doctrine of Separation of Powers deals with the mutual relations between the three organs of the Government namely legislature, executive and judiciary.

The Doctrine of Separation of Powers concerns with the amicable relations between the three organs of the Government namely legislature, executive and judiciary. Judiciary being one of the strongest pillars of the democracy has always played a crucial role in imparting justice. The Constitution, under various provisions, has clearly stated that both the Legislature and the Judiciary should maintain their independence in their respective functioning. In most developed countries the organs of the Government are subject to scrutiny each other by way of checks and balance. It is of utmost importance said that all the organs of the government should behave in a certain way that they do not violate the principal law or the rule of law of the country and it should be upheld in all circumstances for the better protection of the fundamental rights, liberties and freedoms of the citizens of the country. Article 105 (2) and 194(2) protect the legislators from interference of the Courts in context of to his/her freedom of speech and freedom to vote. It is evident from the various Articles of the Constitution which enable the judiciary to play a correctional role which keeps the judiciary superior and manages the two branches of the state. In the case of **I. R. Coelho v. State of Tamil Nadu**²⁷ the court has reemphasized the importance of the separation of powers and balances in the constitution. It observed that for preservation of liberty and prevention of tyranny the doctrine of separation of powers is absolutely essential. It was held that separation of powers constitutes one of the basic and important features of the Indian constitution.

IX. CONCLUSION

Judicial Activism has laid down strong foundation of the fact that Constitution, rule of law, Constitutionalism are being protected by the Judiciary which acts as a safety net in situation of crisis which are created by different interest group of the societies. It is the Judiciary which makes sure that justice is served and interpretations are done in good faith keeping in mind the interest of the public. In the recent times, judiciary has become the weakest organ of the three because of the reason that judges do not have power to and they rely on the public faith. Secondly, keeping the exceptions aside, it creates repercussions when judges become overenthusiastic and they tend to cross certain lines which make it difficult to retain the traditional functioning of the courts. Therefore, there must be line of separation between judicial activism and judicial overreach because the judiciary will be destabilized if the

²⁷ AIR 2007 SC 861

judicial overreach takes place. The Government needs to function more efficiently, smoothly in order to maintain peace, prosperity, law and order in the country, judiciary cannot be overburdened to work as an umbrella to hide and amend the wrongdoing and incorrect decisions taken by the Government. The work of the court is to interpret the laws and serve justice and ensure welfare which in the interest of the society.

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