

JUDICIAL ACTIVISM & PROTECTION OF RIGHTS OF PEOPLE IN INDIA: AN OVERVIEW

- Dr. Krishna Mohan Malviya* & Dr. Sushim Shukla**

Abstract

The preamble to the Constitution of India levies certain obligations to ensure justice, liberty and equality. This draws our attention towards a well-known saying that, "Justice must not only be done, but also seen to be done." This enables state to consider that everyone has easy access to justice. They mark the edge to prevent any wings from encroaching on the domain of others' works. This paper attempts, to highlight judicial activism as an important phenomenon dealing with assuring the rights of people. However, it also memorizes the Emergency period in India, and attempts to puts focus on control over the courts attempted in this period. This paper also highlights the different aspects of Public interest litigations gave the courts the idea to speak with the public directly and pay attention even though the litigant might not be the victim. It enables the courts to automatically take such instances under consideration. This trend has received both support and opposition.

Keywords: Justice, Judicial Activism, Legislative, Executive, and Judiciary.

* Asst. Professor @ College of Law & Legal Studies, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh

** Asst. Professor @ College of Law & Legal Studies, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh

INTRODUCTION

An obligation to uphold justice, liberty, and equality for all citizens of the nation is spelt out in the preamble of the Indian Constitution. This suggests the well-known adage, “*Justice must not only be done, but also seen to be done.*” This forces the legislature, executive branch, and judiciary to consider ensuring that everyone has easy access to justice because it is their duty to enact, carry out, and interpret the law correctly. Ignorantly, they carry out this duty with a just heart for the wellbeing of the people and the utmost faith in the welfare of the nation.

It is excellent that everyone is performing their assigned duties. It eliminates conflict between two or more groups and increases work diligence. Additionally, it is evident in our constitution i.e., the division of powers.¹ Any such conflicts were known to the constitution’s creators. As a result, they split the government’s duties into three categories and the legislative, executive, and judicial branches into three groups. Additionally, they mark the perimeter to prevent any wings from encroaching on the domain of others’ works.

However, a dilemma occurs and a broader public interest in the shape of fundamental and other rights suffers if one wing is unable or neglects to carry out its own role. It is referred to as judicial activism when the judiciary steps in to address the matter in question by any method of judicial review and goes above and beyond what is required under the law to safeguard social interests more broadly.

¹ A. K. Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury Publishing, 2017)

However, if one wing is unable or unwilling to carry out its own responsibility, a problem results, and the wider public interest—in the shape of basic and other rights - suffers. In such a situation, judicial activism is defined as when the judiciary takes action to settle the matter at hand using any means of judicial review and goes beyond the scope of the applicable laws to safeguard society interests more broadly.

Judicial activism is a relatively recent phenomenon in India. However, it arose following the Emergency² in India, and attempts were made by the Government to exert control over the court. Public interest litigation gave the courts the idea to speak with the public directly and pay attention even though the litigant might not be the victim. It enables the courts to automatically take such instances under consideration. This trend has received both support and opposition.³

Judges in India have extensive authority and a long history of judicial activism, which is practically unheard of in the United States. Judges have recently ordered the conversion of Delhi's auto-rickshaws to natural gas to reduce pollution, shut down a large portion of the nation's iron-ore mining sector to reduce corruption, and decided that candidates facing criminal charges could not run for office. In fact, the Supreme Court of India and the Parliament have been in open conflict for many years, with the Parliament making numerous constitutional revisions in response to different Supreme Court decisions.

² *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461

³ Rekha Kumari R Singh, *An analytical and critical study on judicial activism vis vis judicial overreach with respect to legislative function of the Indian parliament* (2015) (Unpublished Ph.D. thesis, Veer Narmad South Gujarat University) available at: <http://hdl.handle.net/10603/32340> (last visited on: 20.06.2023)

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After extensive analysis, it has been determined that the fundamental rights outlined in Part III of the Indian Constitution⁵ include the right to privacy, the right to a living, the right to an education, among other things. In *Kesavanand Bharati v. State of Kerala*⁶, the Supreme Court declared that the "basic structure" idea of the Constitution cannot be changed, despite its authority. Nations like Bangladesh, Pakistan, and Malaysia have accepted this idea as part of their legal systems. Important examples involving the application of this theory in other nations, including Singapore and Uganda, have been reported in those nations. In the case of *State of Uttar Pradesh v. Raj Narain*⁷, where Indira Nehru Gandhi's candidature was denied by the Allahabad High Court in 1973, the present tendency of judicial activism had its start. Justice V. R. Krishna Iyer reintroduced and broadened the public interest litigation. Among the other instances cited is the directive to the

⁴ "Judicial Supremacy v. Parliamentary Supremacy in India" available at: <https://www.lloydlawcollege.edu.in/blog/judicial-supremacy-v-parliamentary-supremacy.html> (last visited June 21, 2023)

⁵ Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury Publishing, 1st Ed. 2017)

⁶ Supra note 2

⁷ *Uttar Pradesh v. Raj Narain*, 1968 AIR 960

Delhi government to convert the auto rickshaw to CNG, which is thought to have decreased Delhi's formerly severe smog issue (which is now claimed to come back) and contrasted with Beijing's.

Judicial Activism: Judicial activism is the judiciary's aggressive role in defending citizens' rights. The USA is where judicial activism first emerged and developed.

The Supreme Court and/or the High Court in India have the authority to review the constitutionality of any law, but the lower courts lack this authority. If any law is found to conflict with any provision of the Indian Constitution, it may be declared unconstitutional by the Supreme Court and/or the High Court.⁸ In India judicial activism is pioneered by Justices V.R. Krishna Iyer, P.N. Bhagwati, O. Chinnappa Reddy, and D.A. Desai.

Judicial Restraint: The concepts of judicial restraint and judicial activism are diametrically opposed. The doctrine of judicial restraint encourages judges to restrict the use of their own authority through judicial interpretation. That is to say, the courts should interpret the law rather than get involved in shaping policy.⁹

CASES SHOULD BE DECIDED BY COURTS ON THE BASIS OF

⁸ Jeremy Cooper, *Poverty and Constitutional Justice: The Indian Experience* XLIV MLR (1993)

⁹ "Courts can declare, interpret law but cannot entrench upon legislation: SC judge" The Economic Times, 14 July 2021 available at: <https://economictimes.indiatimes.com/news/india/courts-can-declare-interpret-law-but-cannot-entrench-upon-legislation-sc-judge/articleshow/84417571.cms> (last visited on: 16.06.2023)

1. The main intent of those who wrote the constitution.
2. Precedent - past decisions in earlier cases.
3. Also, the court should leave policy making to others.

Judicial Over-reach: Judicial Overreach is the term used to describe judicial activism when it crosses the line and turns into judicial adventurism. When the court begins to obstruct the proper operation of the legislative or executive branches of the government, this is known as judicial overreach.

Generally judicial overreach is undesirable in democracy as it violates the rules of separation of powers. However, judiciary responds this criticism by asserting that it has only intervened when the legislative or executive branch fails in performing their own duties towards the citizens.

Judicial Activism: Legal activism has developed mostly as a result of the inaction of lawmakers and the executive. There's no question that the legislative and executive branches haven't succeeded in producing the anticipated objectives. It occurs as a result of the system's widespread inefficiency and inactivity. The abuse of fundamental human rights has also served as a catalyst for judicial activism. The exploitation and abuse of certain provisions of the Constitution, judicial activism has gained more significance.

NECESSITY OF JUDICIAL ACTIVISM

It is quite important to understand the factors responsible behind judiciary playing a significant role in order to comprehend the rising role of the judiciary. The executive many times lost interest in their own work and fail to produce the necessary results. The legislative responsibilities of

Parliament have become slack. Democracy's fundamental tenets were steadily deteriorating. Public Interest Litigations brought up public issues.

The judiciary was compelled to take an active part in such a situation. It was only made feasible by a system like the court, which has the authority to right a variety of social wrongs. The Supreme Court and High Courts took on the task of addressing these issues.

For instance, Justice Gajendragadkar decided in *G. Satyanarayana v. Eastern Power Distribution Company of A. P.*¹⁰ that a mandatory investigation should be carried out if a person is fired for wrongdoing and that he should be given the chance to defend himself. This decision added rules to labour law that the law had been ignoring. Like this, the significant case of *Vishaka v. State of Rajasthan*¹¹ serves as a reminder of the necessity of judicial activism. Here, the SC outlined rules that must be adhered to to ensure proper treatment of women in the workplace. It further declared that until Parliament passes laws enforcing gender equality, these principles should be regarded as law.

In the *Kesavananda Bharati case*¹², the Indian Supreme Court ruled that the executive branch lacked the authority to interfere with the constitution's fundamental principles. In case of *Sheela Barse v. State of Maharashtra*¹³ A letter by a journalist to the Supreme Court on the abuse of female inmates while they were incarcerated. The court took notice of the letter and regarded it as a writ petition.

¹⁰ 2016 SCC OnLine Hyd 552

¹¹ (1997) 6 SCC 241

¹² Supra note 2

¹³ (1983) 2 SCC 96

In case of *I. C. Golaknath & Ors v. State of Punjab & Anrs*¹⁴ Hon'ble Apex Court ruled that Fundamental Rights are impervious to legislative amendment and cannot be changed. In 1979 case of *Hussainara Khatoon (I) v. State of Bihar*¹⁵, The newspaper articles reflected the inhumane and savage treatment of the detainees awaiting trial. The Supreme Court accepted it and held that the right to a quick trial is a basic right under article 21 of the Indian Constitution. In *A.K. Gopalan v. State of Madras*¹⁶, the Indian Supreme Court rejected the claim that in order to deny someone their life or freedom, both the legal process and the requirements of fairness, reason, and justice must be followed.

Judicial Restraint: Judicial restraint may help in preserving a balance among the three branches of the government- i.e.

1. Judiciary
2. Executive and
3. Legislative.

To uphold the law established by the government in the state legislature, it is of utmost importance:

1. To show respect for the separation of governmental issues.
2. Also, to permit the legislature and the executive to follow their duties by not interfering in their arena.
3. Also, to show respect for the democratic form of government by leaving the policy decisions with the policymakers.

¹⁴ AIR 1967 SC1643

¹⁵ AIR 1979 SC 1360

¹⁶ AIR 1950 SC 27

Tendency behind Judicial Restraint: In case *S.R. Bommai v. Union of India*¹⁷ judiciary used the restraint. According to the ruling, if the issue is political judicial review is not imaginable. The court refused to conduct judicial review due to the authority of article 356 was a political matter. The court said that if judicial principles were applied to political issues, it would be invading the political sphere and should be avoided.

However, in case of *Almitra H. Patel v. Union of India*¹⁸, Hon'ble Apex Court refused to instruct the Municipal Corporation that who would be responsible for maintaining the cleanliness of Delhi and said that it could only appoint authorities to carry out legal obligations.

The concept of Judicial Overreach: Legislative and executive carelessness or incapacity results "Judicial overreach". It means these both wings of governments are weak and rash, both in the creation of legislation and in their implementation.

Many legal experts, attorneys, and judges have criticised the Indian judiciary for taking too activist positions and overreaching.

JUDICIAL ACTIVISM: BY SEVERAL MEANS

Judicial Review: By judicial review, the judiciary examines the activities of legislative and executive. Judicial review plays as a role of check and balance on the actions of the legislative and executive under the present system. This rule of judicial review has been taken from the American Constitution by the Indian legal system. Under this rule the Supreme Court has the power to review the constitutionality of any legislatively enacted law.

¹⁷ AIR 1994 SC 1918

¹⁸ 1999 (7) SCALE 376

Public Interest Litigation: Public Interest litigation was propounded by Hon'ble Justice P.N. Bhagwati and V.R. Krishna Ayer. By this any legal action for the benefit of the public is brought. This rule has been made so liberal that any person can bring the attention of Supreme Court by a letter also. If by any means Supreme Court takes notice that there is interest of public at large in any matter and this matter is not brought to the notice of court, then Supreme Court can take notice suo- motto.

Precedent: The past decision in an earlier case is precedent. Judges who follow judicial restraint must adhere to the idea of stare-decisis or must uphold previously decided cases.

Leaving the legislature and executive to decide policies: Judicial Restraint is followed when the court leaves policy making to others.

Constitutional Interpretation: Constitutional interpretation court tries to resolve the disputes and problems of the people and gives the original legislative intent of the constitution which was intended by the Constitution makers. The possible source of the interpretation can be divided in two parts primary source and secondary source.

Access to international statutes for ensuring constitutional rights: The court refers many types of international statutes in its judgements. This reference by the Supreme Court is only for the protection of the rights of the common people because there is no any value of international statutes in municipal Law but if court has to protect the rights of common people then it interpret according to it.

CONCLUSION

The Indian judiciary has played a significant role in the improvement of society because of judicial activism. By this, the Supreme Court has tried to make the path of the court very easy. Everyone can approach the court for the protection of ones right as well as for the right of others also. If someone approach the court for the protection of the right of others this is public interest litigation. By this the Supreme Court and the High Courts have many times supported progressive social programmes, and the public has high regard for the judicial system.

However, it is very crucial to maintain the separation of power between all the three wings of the government. It may be possible only when all the three wings of the government take their active role for their own works. No one will remain depend upon others. Neither wing go and work upon the works of others.