

Judicial Activism, Judicial Overreach & Judicial Restraint

Judiciary is an independent body i.e. evenhanded, unbiased & unprejudiced. The S.C. of India is considered as Sentinel Qui Vei & protect the constitutional & fundamental rights of people. S.C. is also a forum for social, legislative transformation & develop some new principles in judicial proceedings. In this regard, Judicial Activism is a practice of protecting & expanding individual rights by the progressive interpretation of Constitution & decisions that depart from established precedence. It is also a process to evolve new principles, maxims, doctrines & concepts in any constitutionally mediated system.

In India, the process of Judicial Activism is much

more suggestive & directive with the purpose to extend judicial control over discretionary forces, to expand judicial review over administration, to extend the conventional translations & guidelines that prevailed in the administration. & to provide justice in pro-active manner. Although Judicial Activism in India is also based on political & personal rational & prudence of a judge presiding over the issue.

S.C. allowed the 3rd party litigation to operationalise Judicial Activism in the country. The objective of Public Interest Litigation is to open a portal in favour of underprivileged & disadvantaged group so that the justice could be delivered in universal form. Court also relaxed the procedure by holding that even an ordinary letter could be treated as a Writ Petition.

This advisory jurisdiction in the hand of higher judiciary has a potential to transform the court of law into court of justice.

Impact of Judicial Activism

a) In the field of environmental legislation / jurisprudence

S.C. & H.C. by the progressive interpretation of several legislation had evolved several principles in the field of environmental Jurisprudence. In Vellore Citizen's Forum case, 1996, court applied the principle of "polluter pay & precautionary", to create a relationship between environment & development. These doctrines are instrumental for the purpose of ecological restoration & environmental conservation.

court by applying the doctrine of polluter pay makes industries liable to pay compensation as they have adversely affected the environment. Similarly, the basic idea of precautionary principle is that preventive measures should be taken while carrying out any activity which could be hazardous & lead to environmental degradation.

In various judicial pronouncements court able to evolve the doctrine of "Public Trust" i.e. certain resources like sea, water, air, land, flora, fauna are of public use & can't be privately owned by any particular individual. Apart from this court in Union Carbide case also applied the principle of absolute liability.

b) In electoral & constitutional reforms:

S.C. has addressed several limitations & deficiencies on the part of legislature & executive to formulate a meaningful structural reform in the process of election.

E.C.
Election
Commission

In Association Democratic Reform case 2002, court directed E.C. to take informations like education qualification, criminal background & financial position of all the candidates contesting the election.

Similarly, S. Balaji case 2013, court again directed E.C. to determine election manifesto in collaboration with several political parties. Court also held Section 8(4), RPA 1951 as unconstitutional in Lily Thomas case 2013 to curtail tendencies

like criminalisation of Politics & politicisation of criminals.

c) In securing Human Rights

S.C. in several of its pronouncements has expanded the ambit of Article 21 with the purpose to deliver justice in pro-active manner. In Hussainara Khatoon case court

addressed the inhuman & barbaric condition of undertrial prisoners & held that the right to speedy trial is also a fundamental Right.

Similarly in Sheela Barse case

Court addressed the issue based on the letter & written by a journalist. In this case, court took the cognizance of the matter & issued guidelines to address the custodial violence of women prisoners in jail.

d) Institutional & organisational Reform

Judiciary has also acted assertively to ensure probity & responsiveness in several organisations. Court established the Lodha Panel amidst accusation of corruption, match-fixing, betting controversies in Indian cricket. Thereafter, a 3 member committee was also established to regulate the functioning of BCCI.

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In Christian medical college Vellore case, the court prohibited the state from conducting separate entrance examination for medical courses.