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Evolution of Judicial Activism in India

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ABSTRACT

In Indian democracy, the judiciary plays a crucial role in interpreting the laws that are drafted by the legislative and then sent to the government. It settles and decides conflicts between the center and a state, a group of states against a state, a state and another state, a state and a person, or a disagreement between two people. It is referred to as the Savior of Democracy for this reason. The three branches of government work together to maintain efficiency and effectiveness, and any unrest within them could impede administrative advancement. The judiciary also serves as a catalyst to control the mutual coordination among the three pillars for efficient operation and to safeguard the rights of the person and the state against anarchy and exploitation. This act, which is referred to as judicial activism, also defends the Constitution and the law of the land. Every area of human life in India has been impacted by the judicial system, which has consistently shown it to be positive by benefiting the weaker and poorer segments of society by upholding their constitutional rights. It is quite challenging to pinpoint the exact beginning of judicial activism in India because it was recognized and designated as a distinct government agency. The Justice Mahmud's dissenting opinion planted the seed of judicial activism in India. This essay demonstrates the development, meaning, and justification of Indian judicial activism. With the use of case laws and a brief look at the Indian perspective on judicial activism, this study seeks to provide a thorough grasp of the shifting aspects of pre- and post-emergency judicial activism.

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

I. INTRODUCTION

The Constitution established the legislative, judicial, and executive branches in order to accomplish the precisely outlined purposes of the Preamble. It is irrelevant to say that the Legislation and Judiciary have so far carried out their duties fairly and efficiently. They have also been successful in passing laws and regulating the efficient operation of activities in the social, economic, and educational spheres, touching on every aspect of human life and working particularly hard to protect the interests of the weaker members of society. Additionally, it is well recognized that just one of the three pillars, the Executive, has been successful in putting these laws into effect. As a result, a number of laws, plans, and policies were made available to the country's citizens but were unable to be put into action due to the Executive's inefficiency. Instead, they remained merely declarations that served no useful purpose. Due to the inability of the Executive to deliver on many economic and social programs, the poor and vulnerable people have been particularly threatened. 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. In order to accomplish its goals and safeguard people's rights, the second pillar of the legal system,

the judiciary, steps in at this point. This is referred to as judicial activism. The lapse on the part of Executive and Legislature wings of the Government makes the judicial activism imperative one.

II. DEFINITION OF JUDICIAL ACTIVISM

Arthur Schlesinger Jr.[1] was the one who originally used the term "judicial activism." Judicial activism has no definite term or legal description. The range of judicial activism is so broad that every jurist and academic has given it a unique definition.

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*"

"The assumption of an active role on the part of the court is commonly defined as judicial activism." [2]The ability of the Supreme Court and High Courts to declare a statute unlawful if it affects a broader segment of society and to advance justice through straightforward ways is known as judicial activism.

According to Justice J. S. Verma, is that "the active process of implementing the law is vital for the preservation of a functional democracy." is called judicial Activism.

Nowadays, judicial activism is frequently understood as a method of correcting the Executive's flaws by exercising democratic power within constitutional bounds. According to popular belief, judicial activism empowers judges to go above and beyond their conventional responsibilities and make independent decisions on behalf of the nation's citizens. In general, judicial activism demonstrates the active role played by the judiciary in overturning bad judgments made by the executive or legislative branches to ensure the efficient coordination of the three key pillars.

The idea of "Judicial Activism" is opposed to and diametrically opposed to that of "Judicial Restraint." Both of these phrases are frequently used to describe the assertiveness of the judicial power and are also used from the perspectives of "personal view" and "professional view," placing the courts in the awkward position of having to lean towards one of the perspectives in order to play the proper role. In a nation like the US, many judges have explained why they support or oppose judicial activism, and as a result, they have maintained different ideas about the mechanism of performing the "correct" and "appropriate role." In the US, the terms "judicial activism," "judicial supremacy," "judicial absolutism," "judicial anarchy," etc. are frequently used instead. A term for judicial activism is also being considered. It implies that the judges are evaluated based on their ideas, viewpoints, values, and interests.

The enlightenment above shows that the phrase "judicial activism" refers to a larger concept. The meaning of the phrase is ambiguous. It is impossible to put all of it together into a clear definition. To different people, judges, jurists, etc., it has a different meaning and interpretation.

III. ORIGIN OF JUDICIAL ACTIVISM IN INDIA

The Indian judiciary has maintained a persistently conservative, unorthodox viewpoint for more than a decade, and has not been particularly sensitive to the idea of judicial activism. Judicial activism was only infrequently and sporadically observed in India, which is why it was difficult to identify it because the nation was unfamiliar with the idea. The earliest evidence of judicial activism dates to 1983, when Justice S. Mehmud[3] of the Allahabad High

[1] Arthur SchlesingerJr- " The Supreme Court: 1947" published in Forbes Magazine, 1947

[2] 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

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

Court issued a dissensing decision in a case that was still pending. The idea of judicial activism in India took on a new meaning as a result of the decision. The Court's early declaration regarding the nature of judicial review can be considered as the beginning of judicial activism.

IV. REASONS FOR GROWTH OF JUDICIAL ACTIVISM

Any Constitution makes it very difficult to pinpoint the precise cause of the growth in judicial activism. As the phrase is broad and has varied meanings, philosophies, and approaches to different people around the world, there cannot be any clear or widely recognized reason for the advent and establishment of judicial activism. The following are a few causes of the growth:

- 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

The Supreme Court operated as a technical court throughout the monarchy and predominance of British courts, but increasingly veered toward activism. In the case of **A K Gopalan v. State of Madras**[4], a writ was filed to determine whether incarceration without charge or trial was in violation of Articles 14, 19, 21, and 22 of the United States Constitution. According to the Supreme Court, the written constitution contains the judicial review authority. Even though the challenge was unsuccessful in its endeavor, it marked the beginning of a new legal tendency that became apparent in the years that followed.

The Supreme Court ruled in **Sakal Newspaper Private Ltd. v. Union of India**[5] that setting a newspaper's page count and price is a breach of the right to freedom of the press. Additionally, they believed that because newspapers are a conduit for ideas and information, they could not be operated like other businesses.

The Apex Court declared in the case of **Balaji v. State of Mysore**[6] that backwardness should not be limited to caste alone but might be one of the criteria, distinguished caste from class, and further stated that the overall percentage of reservation could not exceed fifty percent. According to the ruling, Articles 15 and 16 are subsets of Article 14 and should be consistent and in line with it.

The Court set similar limitations in the case of **Chitralekha v. State of Mysore**[7]**.**

[4] AIR 1950 SC 27, 34.
[5] AIR 1962 SC 305

[6] AIR 1963 SC 649

[7] AIR 1964 SC 1823

The Supreme Court ruled in **Goloknath v. State of Punjab**[8] during the passage of the 24th Amendment that a majority can be obtained by six votes against five. And the Court also held that Parliament could not amend Constitution so as to "abridge" or "take away" the fundamental rights.

In the **Kesavananda v. State of Kerala case**[9]**,** when the amendment was contested, the Supreme Court's largest bench of 13 judges ruled that while Parliament might amend constitutional provisions, the Constitution itself could not be changed. The ruling rendered in the famous case is the best illustration of judicial activism in India, which criticized the judiciary's superior power over that of Parliament.

VI. POST EMERGENCY JUDICIAL ACTIVISM

With the passage of the 44th Amendment, the new administration made it harder to declare an emergency and maintain the rights guaranteed by Articles 20 and 21. After the emergency ended, judicial activism demonstrated a progressive, open-minded interpretation of Articles 14 and 21.

In the case of **Maneka Gandhi v. Union of India**[10]**,** Maneka Gandhi accused the court of violating her right to personal liberty by seizing her passport. The court determined that seizing a passport was unconstitutional. And the Supreme Court's decision overturned the ruling in the A. K. Gopalan case, guaranteeing the validity of personal freedom under ART 14, 21.

In order to preserve harmony and establish a balance between Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Constitution, the Supreme Court declared in **Minerva Mills Ltd. v. Union of India**[11] that sections 4 and 55 of the 42nd Amendment are invalid.

The Supreme Court ruled in the instances of **Charles Sobraj v. Superintendant of Central Jail**[12] and **Sunil Batra v. Delhi Administration**[13] that inmates could not be denied access to their basic rights.

VII. PUBLIC INTEREST LITIGATION (PIL) AND JUDICIAL ACTIVISM

The growth of PIL has been a crucial component in giving judicial activism purpose. The court has a chance to provide guidance in the public interest and uphold the public duties thanks to this kind of litigation. The arrangement has exposed numerous mediaeval practices that are being practiced today in India, including the exploitation of bonded and migratory workers, untouchables, tribal people, and women living in protective homes as well as victims of the flesh trade and children in juvenile institutions. The goal of the endeavor was to demonstrate how eagerly the Supreme Court wants to act as the victims' protector, defending their rights and liberties against abuse, exploitation, etc. So, by starting a PIL to bring justice to the general public, the Apex Court also fulfilled the ideal activist role. There was abuse of the PIL process as numerous frivolous cases were brought before the Supreme Court, including those involving labourers demanding high wages, road sign painting, a teacher's strike, a banker's strike, a bus shortage, unclean hospitals, irregularities in the stock exchange, and shortages of buses. A valid PIL must demonstrate that the

[8] AIR 1967 SC 1643

[9] AIR 1973 SC 1461

[10] AIR 1978 SC 597

[11] AIR 1980 SC 1789

[12] AIR 1978 SC 1514

[13] AIR 1978 SC 1675; AIR 1980 SC 1579

person filing it before the court has no personal stake in how the case is resolved beyond their status as a citizen in general. It is a potent tool for upholding the rule of law and ensuring the stability, accountability, and openness of governmental organizations. However, PIL had now turned into a tool for those who were avaricious, craved attention, or sought to settle political, commercial, or personal scores. The judiciary and other democratic institutions would suffer significant harm as a result of this colossal mishandling. The **Maneka Gandhi case**[14] provided a springboard for several actions, and as a result, judicial activism could be seen in a number of court rulings. Previously, only those with "Locus Standi" may file PILs, however Justices P.N. Bhagwati and V.R. Iyer [15]changed the definition of "Locus Standi."

Bandhu Mukti Morcha v. Union of India[16], **Hussainara Khatoon v. State of Bihar**[17], **PUDR v. Union of India**[18], and **Azad Riksha Pullars Union v. State of Punjab**[19] are a few of the PILs that were first filed to preserve the interests of the poor.

Examples of environmental-related PILs include the **Taj Mahal, Ganga River case**[20], **and Oleam Gas Leak case.**[21]

PIL related to Sexual Harassment- **Vishaka v State of Rajasthan.**[22]

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.

VIII. JUDICIAL ACTIVISM AND SEPARATION OF POWER

The doctrine of separation of powers addresses the interactions of the three branches of government—the legislative, the executive branch, and the judiciary.

The harmonious relationships between the three branches of government—the legislative, the executive branch, and the judiciary—are addressed by the doctrine of separation of powers. One of the greatest pillars of democracy, the judiciary, has always been essential to delivering justice. The Constitution, under various provisions, has clearly stated that both the Legislature and the Judiciary should maintain their independence in their respective functioning. The majority of industrialized nations have systems in place that provide for checks and balances between the various government institutions. In order to better protect the fundamental rights, liberties, and freedoms of the nation's citizens, it is essential that all governmental organs act in a way that does not violate the primary law or the rule of law of the land. This behavior must be upheld at all times. Legislators are protected by Articles 105(2) and 194(2) from court interference with their right to free speech and the right to vote. It is clear from the different Constitutional Articles that the court is allowed to perform a corrective function that maintains its superiority and coordinates the two arms of government. The court has reiterated the significance of the constitution's separation of powers and checks and

[14] AIR 1978 SC 597

[15] Jeremy Cooper, 'Poverty and Constitutional Justice: The Indian Experience', Mercer Law Review 44 (1993) at 611, 614–615

[16] AIR 1984 SC 802, 816

[17] AIR 1979 SC 1360

[18] AIR 1982 SC 1473, 1476

[19] 1981 AIR 14, 1981 SCR (1) 366

[20] 25AIR1997 SC 734

[21] AIR 1987 SC 965

[22] AIR 1997 SC 477

balances in the case of **I. R. Coelho v. State of Tamil Nadu.**[23] It stated that the idea of separation of powers is absolutely necessary for the maintenance of liberty and the avoidance of tyranny. It was decided that one of the fundamental and significant aspects of the Indian constitution is the division of powers.

IX. CONCLUSION

Judiciary protection of the Constitution, the rule of law, and constitutionalism has been firmly established by judicial activism, which serves as a safety net in times of crisis brought on by various interest groups in society. The judiciary is responsible for ensuring that justice is carried out and that interpretations are made with the public's best interests in mind. Due to the fact that judges lack authority and rely on public trust, the judiciary has recently lost ground to the other two organs. Second, excluding the exceptions, it has consequences when judges overreact and tend to step outside the bounds, which makes it challenging to maintain the conventional way that courts operate. In order to prevent the court from becoming unstable, there must be a clear distinction between judicial activism and judicial overreach. In order to uphold peace, prosperity, law, and order throughout the nation, the government must operate more effectively and smoothly. The court cannot be overworked into serving as a shield to cover up and remedy the wrongdoing and poor decisions made by the government. The job of the court is to apply justice, uphold welfare, and interpret the law in the interest of the community.

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[23] AIR 2007 SC 861