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A Conceptual Analysis Of Judicial Activism In India

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Abstract:

Judiciary plays an important role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism. It is a term, which signifies an important source of judicial power judge use for realisation of 'willed result'. It carries 'public interest' dimension through 'private interest', which collectively go hand in hand. The basis of judicial activism is the interpretation of the law, the constitutional articles or provisions or the legality of any executive action, leading to extension of the scope of law or actionable jurisdiction. This entails, stepping into the domain of the executive. It may even cover, in its sweep, executive inaction, acts of omission, besides the acts of commission - either inadequately or wrongly. All normal interpretative functions of judiciary do not generally attract the appellation of 'activism' - some do. They depend on the nature, scope and thrust of the judgment - the reformatory zeal of the judge. Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups, because of the efforts of justices V R Krishna Ayer and P N Bhagwati.

Judicial Activism can take many forms but 'technical' and 'juristic' are two important ones in all legal systems. Beyond these two forms is third form termed as social activism, a complex and challenging task facing the modern judiciary today, particularly in the developing countries. Judicial activism is the central feature of every political system that vests adjudicatory power in a free and independent judiciary. It is not an aberration but is a normal phenomenon and is bound to mature into judicial activism. It is a term used to describe the assertiveness of judicial power. A court engaged in altering the power relations to make them more equitable is positively activist and a court using its ingenuity to maintain the status quo in power relations is negatively activist. Judicial activism is a concept that originated in the US in 1947. It has been seen in India since 1970's, defined as the 'Emergency days'.

Key words: Judiciary, Interpretation, Activism, Executive, Realization.

Introduction:

The Supreme Court of India is considered to be 'Sentinel Qui Vie' and protect the fundamental and Constitutional Rights of the People. Judicial activism happens when the courts have power to review the State action. Article 13 along with Articles 32 and 226 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare, any legislative, executive or administrative action, void if it is contradictory with the Constitution. The power of judicial review is a basic structure of the Indian Constitution. Article 32 of the Indian Constitution gives right to every individual to move directly to the Supreme Court of India for the enforcement of his or her fundamental right. Article 32 confers power on the Supreme Court to issue any order or writ for the enforcement of any of the fundamental rights. Article 226 of the Indian Constitution gives power to the High Courts to issue any appropriate order or writ, for the enforcement of fundamental right and other legal rights. Both Articles 32 and 226 are basic structure of the Indian Constitution. Article 227 further gives power of supervisory control to the High Court over the subordinate courts, special courts and tribunals.

One of the most important constitutional provisions giving extraordinary power to the Supreme Court is Article 142 of the Indian Constitution. This provision empowers the Supreme Court to pass suitable decree or order for doing complete justice in any pending matter before it. Despite the fact that the law-making power in India lies primarily with the Parliament only, the Supreme Court is able to legislate under Article 142 of the Indian Constitution. This provision is responsible for the judicial legislation in India. However, the judicial legislation is being done only when there is vacuum in law on the concerned subjectmatter. The directions or rules issued by the Supreme Court under Article 142 would remain into force until the Parliament makes proper legislation on the subject matter. It means that the court understands the fact that appropriate law-making body is the Parliament only. For Parliament has more resources the Supreme Court to pass suitable legislation on the subject-matter.

A distinction needs to be made between judicial activism and judicial populism. The former is an exercise in reconceptualization of the basic rules of the judicial process with a view to making it more accessible and participatory. The latter is a deviation taking place either when it overreaches itself turning judicial review into judicial excessiveness. It is populism when doctrinal froth goes beyond the institutional capacity of the judiciary to translate the doctrine into reality, when a court undertakes responsibilities that should normally be discharged by other coordinate organs of the government.

Methods of Judicial Activism in India:

As discussed earlier, the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution, is known as Judicial Activism. However, in India, it is practiced in different shapes or forms. Some of them are detailed as follows.

- **Public Interest Litigation:** A person filing the petition must not have any personal interest in the litigation, this petition is accepted by the court only if there is an interest of large public involved; the aggrieved party does not file the petition. It carries 'public interest' dimension through 'private interest', which collectively go hand in hand.
- **Constitutional interpretation:** Interpreting the constitutional provisions, laws from time to time is undertaken by the Judiciary of country.
- **Access of international statute for ensuring constitutional rights**
- **Supervisory power of the higher courts on the lower courts**

Milestones in the path of Judicial Activism in India, started when the Allahabad High Court rejected the candidature of Indira Gandhi in 1973. In 1979, the Supreme Court of India ruled that undertrials in Bihar had already served time for more period than they would have, had they been convicted. Golaknath case clearly identified that fundamental rights cannot be amended by the Parliament and do amend the fundamental right a new constituent assembly would be required. Also the Supreme Court stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution. Kesavananda Bharati case set another milestone in the process of Judicial Activism, which defined the basic structure of the Constitution. The Supreme Court held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be revoked even by a constitutional amendment." This is the basis in Indian law in which the judiciary can strike down an amendment passed by Parliament that is in conflict with the basic structure of the Constitution. Even in the 2G scam, the Supreme Court cancelled 122 telecom licenses and spectrum allocated to 8 telecom companies on the grounds that the process of allocation was flawed. The Court rolled out a blanket ban on firecrackers in the Delhi – NCR area with certain exceptions in 2018. The Supreme Court invoked terror laws against alleged money launderer Hasan Ali Khan. In Hussainara Khatoun (I) v. State of Bihar, the inhuman and barbaric conditions of the undertrial prisoners reflected through the articles published in the newspaper. Many prisoners who were under trial had already served the maximum persecution without being charged for the offense. A writ petition was filed by an advocate under article 21 of the Indian Constitution. The apex court accepted it and held that right to speedy trial is a fundamental right and directed the state authorities to provide free legal facilities to the under-trial inmates so that they could get justice, bail, or final release. Another important case Sheela Barse v. State of Maharashtra, a letter written by a Journalist was addressed to the Supreme Court avouching the custodial violence of women prisoners in Jail. The court treated that letter as a writ petition and took cognizance of that matter and issued the apposite guidelines to the concerned authorities of the state. In Sunil Batra v. Delhi Administration, the court

exercised its epistolary jurisdiction, and a letter written by a prisoner was treated as a petition. The letter supposed that the head warden atrociously inflicted pain and assaulted another prisoner. The Court stated that the technicalities cannot stop the court from protecting the civil liberties of the individuals. Some instances when the mechanism of Judicial Activism turned to the Judicial overreach. The parliament of India has held responsible or accused the Judiciary for intervening and overreaching its constitutional powers. In the Supreme Court Advocates-on-Record Association v. Union of India, the National Judicial Appointments Commission (NJAC) Act, and the constitutional amendment was declared unconstitutional by the Apex court and the judgment was delivered with the majority of 4:1. The act was declared unconstitutional as it was violating the judicial independence. And the existing collegium system pertaining to transfer and appointment of judges again came in the operation. Justice Khehar said, the absolute independence of judiciary, from other organs of governance, protects the rights of the people.

These are some of the examples of Judicial Activisms, in India. Hence, Judicial Activism in simple words means, when judges interpret their own personal feelings into a conviction or sentence, instead of upholding the existing laws. For some reason, every judicial case has a base of activism within it, so it is imperative to weigh the pros and cons to determine the aptness of the course of action being carried out.

Advantages of Judicial Activism in India

- Judicial Activism sets out a system of balances and controls to the other branches of the government. It emphasizes required innovation by way of a solution. When the legislature fails to make the necessary legislation to suit the changing times and governmental agencies fail miserably to perform their administrative functions sincerely, it leads to an erosion of the confidence of the citizens in the constitutional values and democracy. In such a scenario, the judiciary steps into the areas usually earmarked for the legislature and executive and the result is the judicial legislation and a government by judiciary.
- In cases where the law fails to establish a balance, Judicial Activism allows judges to use their personal judgment. The greatest asset and the strongest weapon in the armory of the judiciary is the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even-handed justice and keep the scales in balance in any dispute.
- It places trust in judges and provides insights into the issues. The oath of bringing justice to the country by the judges does not change with judicial activism. It only allows judges to do what they see fit within rationalised limits. Thus, showing the instilled trust placed in the justice system and its judgments.
- Judicial Activism helps the judiciary to keep a check on the misuse of power by the government when it interferes and harms the residents.
- In the issue of majority, it helps address problems hastily where the legislature gets stuck in taking decisions. In case the fundamental rights of the people are trampled by the government or any other third party, the judges may take upon themselves the task of aiding the ameliorating conditions of the citizens.

Disadvantages:

- Firstly, When the elected representatives fail to create a welfare state then the role of judiciary becomes indispensable but the judiciary cannot intervene in the state affairs just to show its supremacy. When it surpasses its power to stop and misuse or abuse of power by the government. In a way, it limits the functioning of the government.
- It clearly violates the limit of power set to be exercised by the constitution when it overrides any existing law.
- The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.
- Judicial activism can harm the public at large as the judgment may be influenced by personal or selfish motives.
- Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

Conclusion:

The concept of judicial activism has both positives and negatives. If the judiciary intervenes too much in the working of other organs of the government and tries to overreach the constitutional powers, then this concept of judicial activism loses its importance and essence. Sometimes in the name of activism, the judiciary often rewrites personal views and power separation theory is being overthrown. While judicial activism is deemed favorable in addition to the legislative's failures, overreaching the domain of the other organs of the government is regarded as an interference into the appropriate workings of democracy. Its significance, however, lies in the institution's role as a place of hope for aggrieved individuals.

The role of Judicial Activism cannot be negated or overlooked as it played a significant role in providing justice to the underprivileged sections of the society, indigent individuals, socially and educationally backward classes, victims of trafficking and under trial prisoners. Proper implementation of fundamental rights could only become possible due to the advancement of Judicial Activism. There is a narrow demarcation between activism and overreach. Sometimes in the process of judicial activism, the judiciary intervenes too much and reflects its personal beliefs in the course of providing justice. The interpretation of law which is the primary function of judiciary but the courts rather than interpreting the law start making the law, issue guidelines and directions which is to be done by the legislature. Due to judicial overreach, conflict takes place between the legislative and judiciary, and the legislative seems to be inactive or less competent to the people. Besides this, the separation of powers on which the democracy stands is killed by the judicial overreach. An activist court is certainly far more efficient than a legal positivist-conservative court to safeguard humanity from legislative and executive tyranny.

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