

Judicial activism in India

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ABSTRACT

The Supreme Court of India has become the most active state body. The chief instruments through which judicial activism have flourished in India is Public Interest Litigation (PIL), the exercise of writ jurisdiction and a broad interpretation of the fundamental rights guaranteed by the Constitution of India. Judicial activism, which affects all aspects of governance, has become the norm recently. Judicial activism means the assertive role played by the judiciary to force other organs of the state to perform their duties properly. This research work traces the evolution of judicial activity since independence by decisions of the Supreme Court. The research paper illustrates the rulings of the Federal Supreme Court that the PIL instrument and the exercise of the writ jurisdiction of the Supreme Court go beyond the traditional tenets of the trial, as well as judicial activity schemes in accordance with the Indian Constitution.

Key Words : Judicial activism, Supreme Court, PIL

INTRODUCTION

The purpose of the Constitution of India, formulated by our worthy founding fathers in the preamble, is to guarantee the people of India “justice - social, economic and political; Freedom of thought, expression, faith, and religion, and equal status and opportunity”. To achieve this goal, three organs of state were created in the Constitution: legislative, executive and judicial, as well as autonomous institutions such as the election commission, and the Comptroller and Auditor-General. I must say that the parliament and state legislatures as a whole have done their duty quite satisfactorily; they adopted many laws that affect and regulate activities in the social, economic, and educational and health sectors - of course, all types of activities that affect the lives of citizens, especially the weak and vulnerable segments of the population. However, it is well known that the executive branch to a large extent does not risk applying these laws literally and in spirit. As a result, various laws and schemes in the social and economic sectors remain declarations of good intentions. A visit to any public school, public hospital, or primary care centre is enough to bring this platitude home. In such circumstances, if a complaint is filed with a court - especially the High Courts and the Supreme Court - that a particular law or regulation or scheme is not being properly implemented and leadership is requested for its implementation. The judiciary is also a state body granted by the Constitution to achieve the goals set out in the preamble and parts III and IV. But

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when these guidelines are adopted, it is called “judicial activism” in a critical sense. Another type of “judicial activism” is the interpretation of fundamental rights; in particular the right to equality (Articles 14-16), various freedoms in Article 19 and the right to life and personal freedom in Article 21, judges have the freedom to read their personal philosophies. It is true that in some cases the courts could exceed their limits. For example, orders aimed at the construction of roads or bridges, orders for setting the timetable for trains, orders for the improvement of the railway station, etc. But again, this is simply a fallacy. Based on this, judicial activity has rendered a great service to society.

Definition of judicial activism:

The term Judicial Activism was first coined by Arthur Schlesinger Jr. in his article, “Supreme Court: 1947”, published in Fortune magazine in 1947. Judicial Activism has not been defined in any law or judicial system. Simply put, this means pointing to the role of the judiciary, which plays an active role in promoting justice. Judicial activism, in general, is the adoption of an active role by the judiciary. According to former Chief Justice of India A.M. Ahamadi, “Judicial activism is a necessary adjunct of the judicial function since the protection of public interest as opposed to private interest happens to be main concern^[1].”

Origin of judicial activism in India:

For a very long time, the Indian judicial system adhered to an orthodox attitude to the very concept of judicial activity. However, it would be wrong to say that there were no cases of judicial activity in India. From time to time there have been separate and random cases of judicial activity. But they did not reach the spotlight since the concept itself was not known in India. However, the history of judicial activity began in 1893, when Justice Mehmood of the Supreme Court of Allahabad issued a special decision, sowing the seeds of activity in India. It was a case of a trial in which it was not possible to hire a lawyer. Thus, the question was whether the court will be able to resolve your case by barely glancing at your documents. Justice Mehmood argued that the precondition for hearing the case (and not just reading) would be met only when someone speaks. Therefore, it has the widest possible interpretation of the relevant law and laid the foundation of judicial activity in India. The Supreme Court of India began as a technocratic court in the 1950s, but gradually began to gain strength through constitutional interpretation. Indeed, the roots of judicial activity should be considered in the Court’s initial assessment of the nature of the judicial review. In *A.K Gopalan v. State of Madras*^[2] although the Supreme Court narrowly understood its role, it stated that its judicial oversight powers were inherent in the very nature of the written constitution. The constitution seems to be the subject of extreme caution. Even in their absence, if any of the fundamental rights have been violated by any legislative amendment, the Court always has the right to declare this amendment to the extent that it goes beyond the limits, invalid. The position of the Supreme Court as a technocratic court gradually changed to the court of activists. *Sakal Newspapers Private Ltd. v. The Union of India*^[3] argued that the price list and pages that determine how much a newspaper can charge per page violate freedom of the press. The court also developed the doctrine of giving a privileged position to freedom of expression, including freedom of the press, with regard to freedom of doing business. The Supreme

Court ruled that in the newspaper it was not just business; It was a carrier of thought and information, and therefore it could not be regulated, like any other business. In *Balaji v. In Mysore*^[4], the Supreme Court ruled that while backward classes have the right to protective discrimination, such protective discrimination should not abrogate the right to equality and equal protection of the law. He argued that the delay should be determined not only by the caste but also by secular criteria, although the caste may be one of them and that the places reserved in the educational institution should not exceed fifty percent of the total number of places.

Recent legislation adopted by judicial activism:

Right to privacy:

In *Justice K.S. Puttuswamy v. Union of India and Others* (24/08/2017)^[5], the Supreme Court ruled that the right to privacy is protected as a fundamental right in articles 14, 19 and 21 of the Constitution.

Sexual intercourse with your own wife under 18: Rape

In *Independent thought v. Union of India* (11th October, 2017)^[6]. The Supreme Court criminalized the sexual relations of a husband and wife under the age of 18 years. From now on, this will be considered rape. In fact, the trial nullified the protection that the husbands enjoyed under section 375, exception 2 of the Indian Penal Code, which allows the husband to have sex with a minor wife if she is at least 15 years old.

Right to marriage:

In *Shakti Vahini v. Union of India and Others* (27/03/2018)^[7], the Supreme Court ruled that the consent of a family or community is not required when two adults agree to marry. This is your fundamental right to marry of your choice.

Declaring triple talaq invalid:

In *Shayara Bano v. Union of India*^[8] the Supreme Court has announced the practice of “triple talaq” as unconstitutional on 22 august 2017.

Judicial activism and the constitution:

There are some provisions in the Indian Constitution which related to Judicial Activism:

Article-13: Power of Judicial Review:

The justification of fundamental rights and the source of the “Judicial Review” can be found in Art. 13 are considered the most important provision since they undermine fundamental rights that cannot be violated by the state by passing a law on this matter or administrative actions. It declares that all laws prior to the Constitution will be abrogated to the extent of the inalienability of their fundamental rights^[9] and expressly provides that the State will not create a law that strikes fundamental rights. Or authorizes and a statute infringes on a fundamental right, and to the extent, such infringement is denied^[10]. In fact, this is an important provision regarding laws adopted after the adoption of the constitution, and if such a law

violates any fundamental law, it becomes invalid. Indeed, this makes the constitutional courts of India the sole protector, protector and interpreter of fundamental rights.

Article-32:

This provision, in search of better-targeted expression, is called the right to constitutional remedies and provides the Supreme Court with explicit powers to fulfil its obligations under Article 13, that is, to protect fundamental rights. This is one of the main constitutional guarantees against state tyranny, and it can be said that it provides full opportunity for judicial activism on the Supreme Court, which can be seen from a number of statements made by him, but at the same time gives meaning. Modern to fundamental rights and, thus, from time to time creates new rights and obligations.

Article-226:

This provision means an essential aspect of the Constitution of India since it gives the higher court written jurisdiction and has a much wider scope than that which is considered by the Supreme Court in accordance with Articles 32. Thus, it can be understood that the arsenal is a judicial power with enormous power to act actively.

Article 131:

Since the Indian Constitution establishes a federal policy in which intergovernmental disputes usually arise, article 131 addresses such cases, providing a mechanism for the speedy settlement of such disputes at the highest judicial level. Under this provision, the Supreme Court has exclusive original jurisdiction over any dispute between a centre and a state or a centre and a state on the one hand and a state on the other or between two or more states. A dispute subject to justification in accordance with this article shall relate to a question of law or a fact on which the existence or degree of legal law depends. That is, the dispute should include confirmation or approval of the legal right of the government of India or the state. Political issues that are not related to any legal aspects are excluded from the conclusion of the Court^[11]. The jurisdiction of the Supreme Court in accordance with this provision is limited to two shackles that is, in respect of parts and subject matter.

Article 133:

In accordance with this provision, the Supreme Court shall appeal to any judicial decision, ruling or final ruling in a civil proceeding in a higher court if it certifies that the case concerns an essential matter of common law and that, in the opinion of a high-level judge, the court indicated issue must be resolved by the Supreme Court^[12].

Article-134:

This provision governs the appeals of the Supreme Court and is intended to deal only with major criminal cases. It provides limited criminal jurisdiction to the Supreme Court^[13] because the court only considers appeals in exceptional criminal cases where justice requires the intervention of the apex court.

Article-141:

According to this provision, the Supreme Court has the right to pronounce any law, and this statement has the force of an authoritarian precedent, binding on all other Indian courts, of course, with the exception of the Supreme Court itself. The ultimate authority, which the Supreme Court claims to have, includes the right to determine and interpret legality. Such a requirement gives the court unlimited discretion without any liability and judicial development is a further development.

Article-142:

The Supreme Court, in exercising the powers granted by this provision, has the right to approve any decree or issue any order, if necessary, to ensure complete justice in any matter or issue under its consideration^[14].

Judicial activism and public interest litigation:

The idea of PIL arose from the “actiopularis” of Roman jurisprudence, which allowed the court to gain access to all citizens in matters of public error^[15]. The development of PIL has been instrumental in highlighting judicial activity. Due to this type of litigation, the court found it possible to give directions for the public interest and to fulfil public duties. This strategy revealed many of the medieval practices still prevalent in India, such as helping prisoners, the plight of women in protective homes, victims of meat trade and children in childcare facilities, and the exploitation of untouchable and tribal slave and migrant workers. Etc. An attempt was made to show how, when considering these cases, the Supreme Court is considered as the custodian of the rights and freedoms of victims of repression, cruelty, and torture. Therefore, the Supreme Court of India, in its role as a *vis-a-vis* PIL activist, has adopted a focused approach in the interests of justice, clarifying the highest technical and anachronistic procedures.

PIL has become an “industry of corporate interests”:

PIL is abused because a large number of frivolous matters have been referred to the Supreme Court, such as the student and teacher strike, lack of buses, lack of cleanliness in hospitals, stock market irregularities, traffic sign painting, dengue, and examinations and admission to universities, etc. An essential aspect of a genuine PIL is that the person who moves the court does not have a personal interest in the outcome of a case that goes beyond the general position of a citizen in court. It is a powerful tool to maintain the rule of law and ensure accountability and transparency in governance structures. But PIL has become a front for people craving for advertising, or for those who want to hit personal, commercial, or political points. The true face of the plaintiff behind the facade was rarely revealed. A “flood of misdirected petitions” will cost the judiciary and other democratic institutions very expensive. PIL has already “seriously denied the effectiveness of the judiciary, reducing the ability of the court to spend its time and resources on cases that legally require attention.” The lawsuit would have been turned into a farce if nothing had been done to close the PIL gateways. Therefore, it is time for the judicial system to verify the reality of the appearance of PIL, and this should be limited to cases when it is necessary to achieve justice in that part of society

that cannot go to court due to socio-economic shortcomings or when it is a serious social problem.

Conclusion:

The judicial system often issues several decrees and orders to address various situations that plague ordinary citizens of a country. But in some cases, judicial activity led to difficulties on the part of ministries, government departments, investigative agencies and the police. Although there are minor issues of intervention, the judiciary has helped a lot in addressing various issues and challenges. A procedure must be encouraged to ensure that these minor hiccups are avoided:

- Article 142 should be a weapon of last resort. Measures must be taken to ensure that Article 142 has no recurring invoice.
- The executive must set a deadline for the executive before taking the route of Article 142.

There is a slight difference between judicial activism and judicial deliberation. Passing will lead to uncertainty of governance. Judiciary must make sure that Article 142 is followed so that the supremacy of the constitution and the separation of powers are not compromised.

REFERENCES

1. Ahmadi, AM. (1996). Judicial Process: Social Legitimacy and Institutional Visibility 4 SCC (Jour), pp.1-10.
2. Gopalan, AKV. State of Madras AIR SC.1950; 27:34.
3. Sakal Newspapers Pvt. Ltd. v. Union of India AIR SC. 305, 1962.
4. Balaji V. State of Mysore AIR SC 649, 1963.
5. Writ petition (civil) no. 494 of 2012
6. (Civil) WP. No. 382 of, 2013.
7. Writ petition (civil) no. 231 of 2010
8. Writ petition (civil) no. 118 of 2016
9. Art. 13(1) of the Constitution of India
10. Art.13 (2) of the Constitution of India.
11. State of Bihar v. Union of India AIR 1970 SC 1446.
12. Article 133(1).
13. Under Art. 134(2), the Parliament is authorized to enlarge the criminal appellate jurisdiction of the Supreme Court. To this effect, it has enacted the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, further authorizing the Supreme Court to hear appeals from High Courts.
14. Delhi Electric Supply Undertaking V. Basanti Devi AIR SC, 2000, 43.
15. <https://www.legalbites.in/law-notes-administrative-law-public-interest-litigation>.
