



PIL promoting judicial activism in India

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Abstract

Judicial activism in India acquired importance due to public interest litigation. During the past decades, many instances of judicial activism have gained prominence. It is not a result of general development of judicial procedure but is an essential aspect of the dynamics, derivatives and independent findings of the courts. Judicial activism, an approach to the exercise of judicial review, or a description of a particular judicial decision, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions.

Keywords: judicial activism, PIL promoting, independent findings

Introduction

Judicial activism sometimes used as an antonym of judicial restraint. Judicial activism is a controversial political issue, particularly in the United States. It is closely related to constitutional interpretation, statutory construction and separation of powers. It is not a result of general development of judicial procedure but is an essential aspect of the dynamics, derivatives and independent findings of the courts. It does not mean governance by the judiciary rather a specific judicial interest about the issues. It must also function within the limits of judicial process. Within those limits it performs the function of stigmatizing, as well as legitimizing, the actions of the other bodies of the Government- more often legitimizing.

The term *activism* is used in both political hetic and academic research. In academic usage activism usually means only the willingness of a judge to strike down the action of another branch of government or to overturn a judicial precedent, with no implied judgment as to whether the activist decision is correct or not. On the other hand in political hetic activism is used as a pejorative. To describe a judge as activist in this sense is to argue that he decides cases on the basis of his own policy preferences rather than a faithful interpretation of the law, thus abandoning the impartial judicial role and "legislating from the bench."

Judicial activism, an approach to the exercise of judicial review, or a description of a particular judicial decision, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions. Although the term is used quite frequently in describing a judicial decision or philosophy, its use can cause confusion, because it can bear several meanings.

The term 'judicial activism' is intended to refer to and cover the action of the court in excess of and beyond the power of judicial review. From one angle it is said to be an act in excess of or without, jurisdiction. The Constitution does not confer any authority or jurisdiction for 'activism' as such on the Court. It refers to the

interference of the judiciary in the legislative and executive fields. It mainly occurs due to the non-activity of the other organs of the government. It means that instead of judicial restraint, the Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government regarding policies and also matters of administration.

As to its meaning, Judicial Activism is not a distinctly separate concept from usual judicial activities. The word 'activism' means "being active", 'doing things with decision' and activist is the 'one' who favours intensified activities. Justice Krishna Iyer observed 'every judge is an activist either on the forward gear or on the reverse'.

David A. Strauss argued that judicial activism can be narrowly defined as one or more of three possible actions: overturning laws as unconstitutional, overturning judicial precedent, and ruling against a preferred interpretation of the constitution. 'Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India told that 'judicial activism' carries more than one connotation.

Judicial activism appears to have been coined by Arthur M. Schlesinger, Jr., in a 1947 article in *Fortune*.

PIL and Judicial Activism

The proponents of judicial activism were judges like V R Krishna Iyer, P N Bhagwati, Chinnappa Reddy and D A Desai, who have rendered many judgments touching upon basic rights of the people. It is often said that the genesis of judicial activism lies in the evolution of public interest litigation and the consequent liberalization of the locus standi rule. PIL was originally conceived with the noble objective of empowering the downtrodden, the poor and the needy by ensuring justice to them by relaxing the rigour of locus standi.

The Supreme Court of India as the apex court is also the highest court of appeal acts as the guardian of the Constitution of India. Since independence, the judiciary has been playing a very active role in dispensing the justice. However, judiciary remained submissive till 1960s but its assertiveness started after 1980s when Allahabad High Court introduced Public Interest

Litigation (PIL) by Justice P N Bhagwati, the former Chief Justice of Allahabad High Court. Under his leadership public interest litigation attained a new dimension. The area of judicial intervention has been steadily expanding through the device of public interest litigation. In the form of Public Interest Litigation, citizens are getting access to justice. In the present days. Public interest litigation means a suit filed in a court of law for the protection of public interest such as pollution, terrorism, road safety etc. Judicial activism in India acquired importance due to public interest litigation. It is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. The court has to be satisfied that the person who has resorted to PIL has sufficient interest in the matter. In India, PIL initially was resorted to towards improving the lot of the disadvantaged sections of the society who due to poverty and ignorance were not in a position to seek justice from the courts. The courts to improve administration by taking up PIL cases, for ensuring compliance constitutional provisions has also increased.

PIL is filed for a variety of cases such as maintenance of ecological balance, making municipal authorities comply with statutory obligations of provision of civic amenities, violation of fundamental rights etc. It has provided an opportunity to citizens, social groups, consumer rights activists etc., easier access to law.

Causes of Judicial Activism

The following trends were the cause for the emergence of judicial activism — expansion of rights of hearing in the administrative process, excessive delegation without limitation, expansion of judicial review over administration, promotion of open government, indiscriminate exercise of contempt power, exercise of jurisdiction when non-existent; over extending the standard rules of interpretation in its search to achieve economic, social and educational objectives; and passing of orders which are unworkable.

Areas of Judicial Activism

During the past decades, many instances of judicial activism have gained prominence. The areas in which judiciary has become active are health, child labour, political corruption, environment, education, etc. The judiciary has shown its firm commitment to participatory justice, just standards of procedures, immediate access to justice, and preventing arbitrary state action.

PIL has been considered a boon, as it is an inexpensive legal remedy due to nominal costs involved in filing the litigation. It is an extraordinary remedy available at a cheaper cost. The time has come now when the courts must become the courts for the poor and the struggling masses of this country'.

The Supreme Court cases provide a useful insight into the growth and development of judicial activism in independent India in *Keshavananda Bharti v State of Kerala*, 1973 rendered a judgment that can be regarded as an important milestone in the Indian constitutional jurisprudence. In 1979 in *Hussainara Khatoon v State of Bihar*, the Supreme Court first took up a PIL action on behalf of prisoners awaiting trial who had been

linguishing in jails for periods longer than the maximum punishment prescribed for the offences concerned. It becomes strong only when people repose faith in it. Such faith constitutes the legitimacy of the Court and of judicial activism. The judicial activism is the use of judicial power to articulate and enforce what is beneficial for the society in general and people at large.

Relevance of Judicial Activism in India

Judicial activism is a way through which relief is provided to the disadvantaged and aggrieved citizens. Judicial activism is providing a base for policy making in competition with the legislature and executive. It is the rendering of decisions, which are in tune with the temper of the times. It has arisen mainly due to the failure of the executive and legislatures to discharge their responsibilities, when the government is instable and fail to protect the basic rights of the citizens. At the same time during the Emergency and the court when expand its jurisdiction. It has carried forward towards participative justice and has laid the standards of procedure.

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