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Judicial Activism in India – A Critical Study

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ABSTRACT:

Judicial activism refers to the active interpretation and molding of laws by courts, particularly higher ones, to address societal issues extending beyond conventional legal disputes. In this approach, judges assume a broader role, often intervening in matters related to public policy and social justice. While some advocate for judicial activism as essential for driving progressive change and safeguarding rights, others condemn it for exceeding the bounds of judicial authority. In systems characterized by judicial activism, courts take a proactive stance in promoting social and political agendas. They may adopt expansive interpretations of laws to accommodate evolving societal norms or bridge gaps in legislation. Courts argue that judicial activism undermines democratic principles by granting unelected judges' authority over decisions that should fall within the realm of elected officials. They argue that this approach may lead to judicial overreach, wherein courts impose their own preferences rather than faithfully interpreting the law. Moreover, judicial activism can incite opposition and diminish public trust in the judiciary's neutrality. Despite a ongoing debate, the impact of judicial activism on legal systems is undeniable. It has often played a crucial role in advancing civil rights, fostering equality, holding governments accountable. Nonetheless, achieving a delicate balance between judicial activism and restraint remains a persistent challenge in upholding the rule of law and democratic governance.

KEYWORDS: judicial activism, judicial authority, laws interpretation, progressive change.

INTRODUCTION

"Judicial activism is likened to a precision tool, akin to a scalpel wielded by a skilled surgeon, capable of curing ailments rather than a blunt weapon like Rampuri knife, which can cause harm" – justice J.S. VERMA, 1996.

The three pillars of Indian democracy consist of the executive, the legislative and the judiciary. The legislative formulates laws interpreted by the judiciary, while the executive implements them. However, when shortcomings arise within the executive or legislature, when the legislature becomes overly bold and the executive turns autocratic or negligent, judicial activism becomes necessary to ensure justice is served.

Chief justice of India, A.M. AHMADI, aptly noted, "in recent years, as parliamentary representatives have drifted from reflecting the will of the people, there has been growing public frustration with the democratic process. Consequently, the supreme court has had to extend its jurisdiction by occasionally issuing innovative directives to the executive, a measure it wouldn't resort to if the other democratic institutions were functioning effectively."-AHMADI, 1996.

In India, judicial activism sparks debate. Critics perceive it as encroaching on the functions of other democratic organs, labelling it as judicial terrorism. Some argue its akin to "legislating from the bench" (Tanenbaum, 2005), supposedly acting as mere interpreters of the law. At times judges are accused of issuing rulings based on political leanings and personal sentiments. Others lament that the judiciary is gradually dismantling the legislature "brick by brick".

For proponents, it represents judicial dynamism and creativity. They view the constitution not as static but as a dynamic, living document, with the judiciary tasked with imbuing constitutional documents with vitality and relevance.in judicial activism, a judge's rulings stem from a blend of their emotions and intellect. They are driven by a desire to deliver "distributive justice" rather than merely serving as neutral referees avoiding involvement in contentious matters. However, in India, judicial activism has permeated every aspect of life and occasionally transcended established legal principles to ensure appropriate justice is served.[1]

REVIEW LITERATURE

- Vishal Jain delves into the intricacies of judicial activism, exploring refines itself through this dynamic concept.

[1] Justice A.M. AHMADI, DR ZAKIR HUSSAIN memorial lecture on the problems and prospectus of Indian democracy: an evaluation of its working for designing the processes of change for peaceful transformation.

- Naveen Talwar provides an in-depth exploration of judicial activism, tracing its roots, evolution, and the phenomenon of activism exceeding its bounds in India.
- Akshaya chintala examines the significance of judicial activism and the necessity for reforms in the Indian context, offering insights into the future trajectory of activism or its potential reforms.

RESEARCH PROBLEM

Judges may go beyond their role and make decisions based on personal opinions instead of the law itself.

RESEARCH OBJECTIVE

- To research the evolution of judicial activism in India.
- To analyse the necessity of judicial activism from an Indian perspective.

RESEARCH METHODOLOGY

The present research primarily emphasizes doctrine and analysis, taking into account the researcher's extensive review of various studies, e-journals, and online resources. Relevant information has been sourced mainly from secondary sources.

HYPOTHESIS

In India, the nation's prevalent issues have spurred a rise in proactive and innovative measures aimed at addressing societal challenges. This heightened concern has consequently fueled the expansion of judicial activism, leaving a notable impact on Indian society.

CONCEPT OF JUDICIAL ACTIVISM

The current activist approach of the supreme court has introduced rationalism to address the deficiencies of the traditional method, effectively tackling previously overlooked aspects of the judicial process. judicial activism operates under two guiding theories:

- Theory of vacuum filling
- Theory of social want

- Theory of vacuum filling:

According to this theory, when there is inactivity, laziness, incompetence, indifference, indiscipline, lack of integrity, corruption, greed, and disrespect for the law by the legislature and/or the executive, it creates a void of power. Nature doesn't tolerate a vacuum for long, thus requiring the judiciary to expand its scope and fill the vacuum. This idea is echoed in Benjamin Cardozo's statement that judges only legislate where there are gaps in the law, filling those spaces. However, the extent to which they can go beyond these gaps cannot be precisely delineated.[2]

- Theory of social want:

According to this view, in situations where the existing legislative framework is unable to alleviate societal ills, the judiciary must take on the role of societal transformation in order to deliver justice to those who have been wronged. Thus, the judge makes corrections where the legislature fails.[3]

REASONS FOR JUDICIAL ACTIVISM

Identifying definitive reasons for judicial activism is challenging, and universal acceptance of these reasons is not guaranteed. However, under Indian circumstances, certain factors are widely acknowledged as compelling the judiciary to be highly active in executing its judicial functions.

- Judicial enthusiasm
- Legislative vacuum
- Moral pressure on judiciary
- Near collapse of responsible government
- The constitutional provisions

[2] Benjamin n Cardozo, "the nature of the judicial process" (1927) at 91-93.
[3] Shailji Chander, 'justice V.R. Krishna Iyer on fundamental rights and directive principles'.

- Guardian of fundamental rights
- Public confidence
- Enthusiasm of the individual players.

The reasons mentioned above serve as indicators rather than a comprehensive list. Depending on the prevailing circumstances, there could be numerous other factors prompting the judiciary to act as a catalyst for change.[4]

ORIGIN AND DEVELOPMENT OF JUICIAL ACTIVISM IN INDIA

Law originates from two main sources: the primary source being legislature, and the secondary source being judge-made law through the judicial interpretation of existing legislation. Judicial activism arises from this process of creating law through judicial interpretation.

The beginners of judicial activism in India date back to 1893, when Allahabad high court judge S. MAHMUD ruled that the precondition for hearing a case would be fulfilled only when someone speaks. In this particular case, the defendant, an under trial, was unable to afford legal representation. Article 13 of the Indian constitution explicitly provides for the power of judicial review. It prohibits legislatures from enacting any laws that might infringe upon or limit the fundamental rights guaranteed by the constitution. Any law found to be inconsistent with or derogatory to fundamental rights is deemed void.

Article 13 forms the constitutional basis for judicial review, empowering the supreme court and high courts to interpret pre-constitutional laws and determine their compatibility with the principles and values of the present constitution. If any conflict arises, such laws are rendered ineffective until they are amended to align with the constitution. The Indian constitution grants the supreme court extensive powers under articles 32, 141, 142, and 144 to issue necessary orders to address gaps until the legislature acts or the executive fulfilles its responsibilities properly.

PRE-EMERGENCY JUDICIAL ACTIVISM (1950 TO 1975)

The supreme court of India initially operated as a technocratic institution, adhering to the traditions of British courts. However, over time, it transitioned into an activist court. The pivotal moment marking this shift was the **A.K. Gopalan v/s State of Madras**[5] case in 1950. This case revolved around the question of whether detention without trial, as authorised by the preventive detention act of 1950, violated fundamental rights guaranteed under articles 14, 19, 21 and 22 of the constitution.

While four judges upheld the validity of the preventive detention act, two judges reached contrary conclusions. Although the challenge failed, this case initiated a new legal trend that became evident in subsequent years.

Indeed, in early1950s, the court upheld government actions and practised judicial restraint. The primary disagreement between the court and parliament revolved around property rights. However, inconvenient supreme court rulings were bypassed through constitutional amendments, notably the 1st (1951), and the 17th (1964) amendments, which excluded various property-related laws from judicial review. Consequently, when the supreme court's authority was diminished, it adopted a more expansive interpretation of constitutional provisions to enhance people's rights.

In the 1962 case of **sakal newspapers pvt. Ltd. v/s union of India**[6], the government sought to control the number of newspaper pages relative to their price, as per the newspaper act of 1956 and the daily newspaper order of 1960. However, the supreme court broadened the interpretation of freedom of speech guaranteed by article 19(1)(A) of the constitution. It ruled that newspapers couldn't be regulated as typical businesses because they serve as conveyors of ideas and information.

In the 1963 case of **Balaji v/s state of Mysore**[7], the supreme court logically established economic backwardness as the foundation of social backwardness. It emphasized that backwardness shouldn't solely be evaluated based on caste but also distinguished between caste and class.

Furthermore, it determined that reservations should not surpass fifty percent for all reserved categories. The court also asserted that articles 15 and 16, as derivatives of article 14, must align with the principle. Similarly, in the 1964 case of **Chitralekha v/s state of Mysore**, the court imposed comparable limitations on reservation policies.[8]

In the late sixties, the supreme court increased its involvement in judicial matters. In 1967, in the **Goloknath v/s State of Punjab**[9] case, the supreme court, with a narrow six-to-five majority, ruled that parliament couldn't diminish of curtail fundamental rights through constitutional amendments. In response, parliament passed the 24th amendment. This amendment faced a challenge in the landmark **Kesavananda v/s state of Kerala**[10] case, where the supreme court, with its largest bench of 13 judges, affirmed that parliament could amend any constitutional provision except the basic structure of the constitution. This instance exemplifies judicial activism and solidifies the supremacy of the unelected judiciary over the elected parliament.

[4] "Evolution and growth of judicial activism in India", shodhganga at 79.
[5] A.I.R 1998 S.C. 889.
[6] A.I.R 1950 S.C. 27.
[7] Balaji v/s state of Mysore, A.I.R. 1963 S.C. 649.
[8] Chitralekha v/s state of Mysore, A.I.R. 1964 S.C. 1823.
[9] A.I.R. 1967 S.C. 1643
[10] A.I.R. 1973 S.C. 1461

In 1975, in the case of **Indira Gandhi v/s Raj Narain**[11], the supreme court invalidated the 39th constitutional amendment, citing its outright denial of the right to equality enshrined in article 14 of the constitution. The court emphasized that free and fair elections, essential to democracy, could not be compromised. This ruling reinforced the concept of the basic structure of the constitution. It serves as a counter-majoritarian safeguard to preserve democracy, as highlighted by Dworkin in 1977.

DECLARATION OF EMERGENCY AND JUDICIAL SURRENDER

The declaration of emergency by Indira Gandhi on June 26, 1975, marked a significant moment. While the supreme court had evolved into a powerful apex institution, its vulnerability became apparent in the **A.D.M. Jabalpur v/s Shivakant Shukla**[12] (1976) case. In this ruling, the court, with a majority of 4:1, found no evidence of malice in the presidential proclamation suspending fundamental rights under article 19.

Despite upholding the basic principles of law, the court refrained from declaring the presidential order void, even though it infringed upon a fundamental feature of the constitution. This marked a troubling chapter in the court's history, as it couldn't invoke the arguments established in the **Kesavananda Bharati** case and affirmed in the **Indira Gandhi v/s Raj Narain** case to challenge the presidential proclamation, which restricted access to courts and undermined the rule of law.

POST-EMERGENCY JUDICIAL ACTIVISM

In 1977, prime minister Indira Gandhi recommended to the president to dissolve the Lok Sabha and hold elections. Following the elections, Gandhi and her congress party suffered a significant defeat, leading to the formation of the Janata party government. Subsequently, the government enacted the 44th constitutional amendment, which made it more challenging to declare emergencies and safeguarded the rights outlined in article 20 and 21.

Following the emergency period, the supreme court made efforts to restore its reputation, as noted by professor baxi[13], who observed that judicial populism was, in part, a response to the post-emergency situation. This included an endeavour to rehabilitate the court's image, which had been marred by certain decisions made during the emergency, and also to establish new, historical justifications for judicial authority. During this period, there was a tendency towards judicial activism, particularly seen in the liberal interpretation of articles 14 and 21.

A significant milestone occurred in the case of **Menaka Gandhi v/s union of India** (1978)[14]. Mrs. Menaka Gandhi contested the impounding of her passport, arguing that it infringed upon her personal liberty. The court ruled that the impoundment was unconstitutional because it failed to adhere to the principles of natural justice, namely "nemo judex in causa Sua" and "Audi alteram partem", rendering it void. This landmark decision by the supreme court overturned the Gopalan case and reaffirmed the importance of personal liberty enshrined in articles 21 and 19 of the constitution. This serves as a notable example of the dimension of interpretive stability within judicial activism.

In the case of **Charles sobhraj v/s superintendent of central jail** (1978)[15] and **Sunil Batra v/s Delhi administration** (1978)[16], the supreme court ruled that prisoners cannot be deprived of their fundamental rights.

In **Minerva mills ltd. v/s union of India (**1980)[17] case, the supreme court declared sections 4 and 55 of the 42nd amendment unconstitutional to uphold a balance between part III (fundamental rights) and part IV (directive principles) of the constitution, aiming to maintain harmony.

The **Daniel Latifi case** (2001)[18] stands out as a prime example of judicial activism, wherein a five-judge bench of the supreme court specifically interpreted section 3(1)(a) of the Muslim women's (right to divorce) act. This interpretation mandated husbands to provide maintenance and future provisions during the iddat period, thereby rectifying the act's deviation from articles 14,15, and 21 of the constitution.

The **Singur case** (2016)[19] serves as a notable illustration of judicial activism, where the supreme court nullified the land acquition and directed its return to the farmers, citing that the acquisition did not serve a public purpose.

JUDICIAL ACTIVISM - SOME CRITICISMS

Labelling a counter-majoritarian opinion or a ruling that goes against judicial precedents as judicial activism is only valid when it actively engages with constitutional principles. However, in numerous instances, judicial activism has led to unwarranted interference in political and social matters, excessive reliance on international laws, decision-making influenced by individual personalities, and inefficient utilization of institutional resources. These factors have contributed to legal uncertainty, delays, backlog, and a decline in institutional credibility. It would be prudent to exercise restraint, as seen in the

[11] A.I.R. 1975 S.C. 2299
[12] A.D.M. JABALPUR, A.J.R. 1976 S.C. 1349.
[13] Upendra baxi, "the Indian supreme court and politics", (1980) at 79-120.
[14] A.I.R. 1978 S.C. 597
[15] A.I.R. 1978 S.C. 1514
[16] A.I.R. 1978 S.C. 1675; A.I.R. 1980 S.C. 1579
[17] A.I.R. 1980 S.C. 1789
[18] Daniel Latifi v/s union of India (2001) 7 SCC 740
[19] Kedar Nath Yadav v/s State of West Bengal and others (2016): SCC online, SC, at 855

Jharkhand legislative assembly case, by maintaining a distance, allowing legislative proceedings to operate freely in accordance with the provisions of article 212.

In the judgements of cases like **Sarla Mudgal** (1995)[20], **Ramesh Yeshwant** (1996)[21], **Manohar joshi** (1996)[22], and **Ramachandra G kapse** (1996)[23], the supreme court introduced ideologically grounded concepts such as "Hindutva", leading to conflicting interpretations of the terms "Hindutva" and "secularism". These conflicts could have been mitigated by refraining from incorporating ideological references. Similarly, in the well-known **shah Bano** (1985)[24] case, the court's use of non-legal sources like the holy Quran and its generalization could have been avoided by providing legal reasoning to prevent unnecessary political controversies.

The supreme court's judgement in the **Ashok Hurra** (2002) case was both shocking and stunning, dealing a severe blow to the foundation of the appeal process.

Supreme court intervention in a peace pact (shiva Kant Jha case,2002)[25] or an order in a military operation in 1993 (the Indian express,2016)71. The top 72 instances of judicial activism-motivated overreach are listed below. The judiciary ought to continue to be activist while you move your muscles.

There is judicial anarchy and indiscipline in the legal system as a result of the contradictory precedents and disregard for conventional standards, which provide innumerable problems for the high courts and the lower courts. Furthermore, "forum shopping" by appellants and solicitors was made possible by personality-driven rulings as opposed to "justice according to law".

CONCLUSION

The judiciary is the state's weakest branch. Judges are neither endowed with the sword or the purse. Public trust and confidence are the foundation of their power. The court's constitutionality and judicial activism are established by this faith. It is not the administration of justice, yet it is seeking to deliver justice to the general public while operating within the bounds of the constitution to verify whether the other branches of government are acting in a reasonable or inappropriate manner. The judge must interpret the law in a fair, impartial, faceless, emotionless, and humble manner in order to achieve this.

However, the issue comes when judges become overly eager and active to encroach into areas that are not their purview, and this has recently become the norm. extraordinary authorities should only be used in extraordinary situations; abusing them devalues them. Its effectiveness and produces an inconsistent effect.

Judicial activism and overreach must be distinguished by a narrow boundary. An excessive amount of activism will inevitably upset the institutional balance. It is the responsibility of the other branches of government to manage the nation, not the courts. The judiciary must be compassionate in all of the government's decisions. Rather than seeming as the only one to save society, the supreme court need to call the other branches attention to the issues at hand

[20] (1995) 3 SCC 635; (cri) 569
[21] (1996) S.C.C. 130
[22] (1996) 1 S.C.C. 169
[23] (1996) 1 S.C.C. 206
[24] (1985) 2 S.C.C. 556
[25] (2002) 256 ITR 563 (DEL.)