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A Critical-Analysis on Judicial Activism

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Abstract

The paper delves into the intricate phenomenon of judicial activism, which involves the use of judicial power to interpret and enforce laws that benefit society at large. Despite constitutional constraints, the Supreme Court has emerged as a beacon of justice. The concept of justice, encompassing the global population, remains highly contentious and subject to evolving interpretations. Judicial activism in India has profoundly influenced various facets of life, aiming to deliver equitable justice even beyond the strict letter of the law. However, it is crucial for the judiciary to navigate this path carefully, ensuring that in its pursuit of justice for the common man, it does not exceed the constitutional boundaries that are deemed sacred.

Keywords: Judicial Activism, Judicial Review Laws Interpretation.

Introduction

The powers of the state are typically divided into legislative (making laws), executive (enforcing laws), and judicial (resolving disputes by applying laws). While a strict separation of these powers is not feasible, there should be cooperation and coordination among the three branches. The judiciary's role has evolved from a conventional one to a more active and participatory role to keep up with societal changes. The judiciary works to protect citizens' rights and restrain constitutional violations by other branches. Sometimes, this means stepping beyond traditional boundaries using judicial intellect, leading to what is known as judicial activism. This modern judicial approach aims to ensure justice for all. However, if judges use this power arbitrarily, it is considered judicial overreach.

Concept of Judicial Activism

Judicial activism is a term used for a necessary creative activity of the judiciary under the philosophy of tries political, there should have three organs of the State and these organs should maintain their certain powers under the mechanism of checks and balances. Hence, the judiciary is entrusted with dispute resolutions activities through different modes, by which it uses its intellect and creativity.

Meaning of the Judicial Activism

On general approach , the term Judicial Activism refers the court's decision , based on the judge's personal wisdom or political affiliation that do not go rigidly within the

text of the statutory passed by legislature and the use of judicial power broadly to provide remedies to the wide range of social wrongs for ensuring proper justice.¹ Paul Mahoney narrated that, “Judicial activism exists where the judges modified the law from what was previously stated to be the existing law which often leads to substituting their own decisions from that of the elected representatives of the people.”² “Technically, the concept is related broadly to the constitutional interpretation and statutory construction.

The Supreme Court (hereafter referred as “SC”) by means of interpretation enlarges the scopes of exercising its power. As directive principles are inserted into the constitution, the SC refers to, besides restraining upon the executive power, direction and guidance³. The jurisdiction relating judicial interpretation is exercised for sustaining social order, integrating the people, elongating the constitutional rights and confirming the enjoyment of those rights by all people⁴. The activist judges, on the way of inculcating soul and fluid into the dry skeleton provided by the legislature, create a living entity appropriate and adequate to fulfil the social demands.⁵

Historical Development of the Concept of Judicial Activism

The concept of “judicial activism” is prominently discussed in legal and political studies. It originates from English notions⁶ of equity and natural rights. Its early roots in the United States can be seen in cases like **Marbury v. Madison**⁷ where Chief Justice Marshall established the basis for judicial activism alongside judicial review. In more recent times, Arthur Schlesinger introduced the term “judicial activism” to the public, using it to critique judges whom he saw as overly active.⁸ Public Interest Litigation (PIL) allows individuals or groups to file cases directly when they perceive that governmental actions undermine public interests. It represents a new legal frontier where courts can initiate and enforce actions to protect significant public interests. In India, PILs gained prominence starting in the late 1970s and flourished in the 1980s. **Justices VR Krishna Iyer and PN Bhagwati** of the Indian Supreme Court delivered landmark judgments that expanded the scope of PIL and opened new avenues for public interest advocacy.

Comparative study of judicial activism

Before embarking upon a journey to reach a finally and justly arrived conclusion on the delicate subject of Judicial activism in Indian context, it would be fair to cast our glances over the phenomenon of Judicial activism in three exemplary modern democratic stage’s viz the UK the U.S. and Switzerland.

Switzerland in a direct democracy where the will of people is law the question of Legislative impropriety and executive maladministration does not exist. Hence the scope of Judicial review is restricted or almost non-existent this is the case of Switzerland, one of the greatest democratic, a Monolithic block where problems are few and people decide their own mode of governance through direct participation in ancient Greco-Roman tradition. And thus there is no payable Judicial review syndrome and the Judiciary plays a secondary role in the constitutional system result the three branches of government work in harmony for the greatest good of the greatest number of people.

The U.K there are three kinds of law in England namely common Law, statute law and equity. The Judiciary in Britain administrator these three basic types of law without any fear or favour. the courts Rule By Precedents and sets precedents as future law till the same is set aside by Parliament which undoubtedly is supreme. Hence, the U.K Judiciary does not have the power of judicial review. But democracy works there smoothly as the political system is fool - proof and infringement of basic human rights is rare or almost non-existent.

The U.S.A But in the USA the case is quite different. The underlying principles governing the Judicial psyche is this. It is necessary to interpret law and punish law Breakers. The sound principle in politics is that law and not whims and caprices of men should govern. It is imperative that Judiciary must check the arbitrary power of the Legislature and the anarchist ambition of the executive. Hence article III of the American Constitution empowers the American Judiciary to strongly defend the Constitution through the potent weapon of Judicial review. It can declare any legislation Ultra vires the constitution and nullify any action of the all-powerful Executive. It is euphemistically called the third chamber and deservedly so. As Beck has put it “tersely” the Supreme Court is not only a Court of justice but in a qualified sense a continuous constitutional convention that continues the work of the Philadelphia convention of 1787.

Transformation of Judicial Activism in Judicial Overreach

Just opposite concept of judicial activism is judicial overreach or judicial over-activism, but it is very difficult to determine a median line between these two concepts. When the judiciary crosses over the power by interfering the proper functioning of the legislature or executive organs of the government and by causing a grave breach of the doctrine of separation of powers, the judicial activism becomes judicial adventurism, which is popularly known as judicial overreach. As **Mr. Chief Justice J. S. Verma** stated that, judicial activism is appropriate when it is in the domain of legitimate judicial review. It should neither be judicial adhocism or judicial tyranny.⁹

Methods of Judicial Activism

The judiciary plays a vital role in constitutionalism, tasked with interpreting laws enacted by the legislature and directing the executive if laws are not properly enforced. Consequently, the judiciary's departure from its traditional role to a more active form, engaging dynamically with evolving societal challenges, is not unwarranted. Judicial activism manifests within the legal framework through various approaches.

Judicial Review

Judicial review is a legal process where courts review the actions of public officials to ensure they comply with the constitution and laws of the land. It empowers judges to invalidate unlawful decisions or actions that infringe upon constitutional rights or exceed lawful authority exercised by public officials in their official capacity. The purpose of judicial review is to safeguard the rule of law and uphold the principles enshrined in the constitution, thereby ensuring accountability and protecting individual rights within the legal framework of a country.

The concept of “Judicial Review “ refers to a mode of court's proceeding by which the judges act for eliminating unlawful and unruly decisions or actions by a public official exercising public duties to protect the constitutional rights and to protect the laws of the land.

Public Interest Litigation

The rise of social action litigation corresponds with the broadening of the locus standi principle. Justice Krishna Iyer of the Supreme Court first clearly articulated the concept of Public Interest Litigation (PIL), emphasizing that in our socio-economic context, promoting public interest requires a generous interpretation of who can approach the courts. The landmark Judges Transfer Case of 1982, presided over by Justice PN Bhagwati, marked a new phase in the PIL movement. He emphasized that PIL not only serves to deliver justice to the poor and marginalized but also acts as a powerful mechanism for protecting group rights and advancing public interest. The courts have affirmed that advocating for public interest alone is sufficient grounds for

any concerned individual or group to petition under Article 32 or 226 of the Constitution. Top of Form Bottom of Form

To achieve the goal of social justice, the apex court has continually adapted and broadened the innovative concept of PIL. Its evolution can be summarized in several key stages.

1. Evolving epistolary jurisprudence.
2. Enforcing public duty.
3. Appointing social legal Commission for enquiry.
4. Monitoring execution of judicial order.

Contemporary Scenario of the Judicial Activism And Overreach

In the recent years, the judiciary has pronounced many landmark verdicts concerning unlawful imprisonment, environmental matters, health related problems, rights of children and women, minority affairs and issues of human rights by interpreting the procedural rules and various statutes for a better regime of communal justice of what is known as judicial activism.

Impacts of the Judicial Activism

At present, it is observed that the judges have shown their true colour for ensuring proper justice by applying judicial creativity and consequently and inchmeal judicial activism has touched almost every aspects of life. The impacts of the judicial activism can be described in following several heads.

1. Judicial Creativity.
2. Filling the Legislative gaps.
3. Collapse the Responsible Government.

Probable Solutions of Controlling Judicial Overreach

Judicial activism can be beneficial for democracy but needs proper checks to avoid chaos. To control judicial overreach and maintain a balance of power among branches of government, judges should practice judicial restraint. This means interpreting laws strictly according to their original intent and precedent, without exceeding constitutional limits. The judiciary shouldn't assert superiority over other branches, and reforms should be balanced with respect to implementation. Judicial activism should only occur when there are clear and manageable standards justifying court intervention. Judges must avoid usurping the roles of the executive or legislature and should limit their actions prudently. **Justice Markandey Katju** has emphasized that while courts can strike down laws that violate the Constitution, they should generally refrain from questioning legislative wisdom or amending laws.

Conclusion

Creating a balance among the branches of government is crucial for upholding constitutionalism. In adversarial legal systems like common law, judges are seen as impartial decision-makers who promote values and dignity. The judiciary should be a unique institution with roles in resolving disputes and influencing laws, aiming to fulfil legal obligations while respecting other branches' powers. Judicial activism often effectively addresses contemporary challenges but should not dominate governance. It's important to use the constitutional principle of separation of powers carefully, as it can have both positive and negative effects.

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