



Judicial activism in India: An exercise of unconventional jurisprudence

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Abstract

An unbiased, impartial, and independent judiciary is a body that functions independently. It operates within the parameters of the constitution, which are established by the idea of the separation of powers. It upholds the rule of law and the norms outlined in the constitution. The Indian Supreme Court is regarded as the sentinel who lives and defends the people's basic and constitutional rights.

Judicial activism refers to decisions made by the court that are due to the political and personal judgement and wisdom of judges. It is a phrase used in law to describe court decisions that are entirely or partially influenced by the political or personal views of the judge rather than by the law in effect. Through the action of Justice Coke, the authority of Judicial Review was accepted for the first time in Britain in 1610. According to the then-Chief Justice Coke, if a statute passed by Parliament violated common law or "reason," the judiciary might evaluate it and declare it invalid. In India, judicial activism means that the Supreme Court and the high courts, but not the lower courts, have the power to declare laws invalid and unconstitutional if they violate or are inconsistent with one or more constitutional provisions.

Keywords: judicial review, PIL, judicial overreach, judicial restraint, Indian constitution

Introduction

In India, judicial activism has blossomed and gained tremendous public support. However, the judiciary's activist stance will inevitably cause conflict and strife with the other state agencies. Such stress is normal and, in certain cases, even desired. Through the expansion of access to justice and the provision of assistance to underprivileged groups and the have-nots through public interest litigation, judicial activism acquired a humanitarian aspect in India (PIL). After hearing both sides, judicial activism occurs when the courts shift from their traditional position of decision-making to that of the legislature and enact new laws, regulations, and policies.

The judiciary showed almost no activism during the first ten years of independence, when the executive branch was led by political heavyweights, the parliament worked tirelessly, and the judiciary collaborated with the executive.

The Supreme Court had a comprehensive institutional and judicial understanding of the constitution from the 1950s. Prerogative writs can be started with a postal letter or simply a postcard addressed to the court; courts are not bothered about the details. By allowing civic-minded persons to present public matters to the court, the Supreme Court of India liberalized the conventional concept of the locus standi. Thus, since 1977, there have been more PIL activities.

The majority of Incidents that occurred between 1975 and 1977 under the emergency regime are responsible for the expansion of PIL after that time. One can clearly distinguish between post-emergency rule in India and the judicial philosophy used prior to 1977. This change in action was a reflection of the times and the needs of the overall population of the nation as a whole. Although there were many instances of violations of fundamental human rights during the emergency period, the courts were circumspect.

Origin of judicial activism

The phrase "judicial activism" was first used in the United States in 1947 by Arthur Schlesinger Jr. in a article for Fortune Magazine. The idea already existed before the phrase could be given a name, and it has been debatable ever since. According to American constitutional law, judicial review of legislation was common in the U.S. Although the American constitution does not explicitly grant the Supreme Court the authority to overturn a law if it is in violation of the same, Chief Justice Marshall declared in *Marbury v. Madison* that such authority was inferred, which led to criticism. In India, it was discovered much later because the Indian judiciary for a very long period adhered to its traditional approach to the idea. The debate between the executive and judicial branches of the government following independence gave rise to the idea and gave it impetus.

There was no court action within the first ten years after independence. Between the 1950s and the 1970s, the Supreme Court investigated the Indian Constitution, which resulted in the first few instances of judicial activism in India, like *Hussainara Khatoun v. State of Bihar*, *Olga Telis v. Bombay Municipal Corporation*, *M. C. Mehta v. Union of India*, etc. The Supreme Court's ruling in the earlier case of *Golak Nath v. State of Punjab*, when it was decided that the constitutional rights outlined in Part III of the Indian Constitution could not be changed, also caused some controversy. In *Kesavananda Bharati v. State of Kerala*, the Supreme Court overturned the *Golak Nath* ruling, but it maintained that Part III of the Indian Constitution's legal structure could not be altered. In rare instances, as *Vishaka v. State of Rajasthan*, the Supreme Court went a step further and established rules and regulations, in essence taking on the function of the legislature.

Methods of judicial activism

There are several methods of judicial activism that are being followed currently in India. They are as following:

- Judicial review
- PIL (Public Interest Litigation).
- Constitutional interpretation, Access of international statute for ensuring constitutional rights
- Supervisory power of the higher courts on the lower courts

Judicial Overreach

Judicial Overreach is the term used to describe judicial activism when it crosses the line and turns into judicial adventurism. To put it simply, it occurs when the court begins to obstruct the proper operation of the legislative or executive branches of the government.

Judicial overreach violates the separation of powers principle, which is undesirable in a democracy. The judiciary has responded to this criticism by asserting that it has only intervened when the legislative or executive branch has failed in its own duties.

Judicial overreach in India

Discarded the bijoe Emmanuel Case

The court did not mention the important ruling in the Bijoe Emmanuel case in its order. This situation. In this instance, three kids from Kerala were expelled from school for refusing to sing the national anthem since their religion forbade them from participating in any ceremonies other than praying to Jehovah. The court had determined that no one is required by law to sing the national anthem and had ordered the school to return three expelled students. The court has disregarded circumstances in which persons may be unable to stand up for mental, physical, or religious reasons because they may knowingly believe that their religious beliefs forbid them from doing so.

Neglected the uphaar tragedy case

The Supreme Court disregarded its own prior decision in the Uphaar tragedy case, when the court had declared that under no circumstances could the doors at a cinema be shut from the outside, by ordering that entry and exit doors be closed while the National Anthem is being played.

Ardent censorship in the case of jolly LLB 2

Section 5B of the Cinematograph Act of 1952, which forbids the certification of films that contain defamation or contempt of court, was allegedly breached by the movie Jolly LLB 2 after the Central Board for Film Certification (CBFC) granted the movie certification. The Bombay High Court granted the petition, and a committee was established to produce a report. The Court also authorizes Committee to make the modifications. The Court ordered the removal of four movie scenes in accordance with the committee's recommendations, and it also gave the CBFC instructions to recertify the film. The Court's defence stated that this was derogatory to the legal industry.

Concept of judicial restraint

The complete opposite of judicial activism is judicial restraint. It is a judicial interpretation approach that exhorts judges to use restraint. The principle of restraint is a procedural approach that instructs courts to defer issuing decisions on legal issues, particularly constitutional ones,

until the ruling is essential to resolving a specific conflict between opposing parties. It encourages judges to give the elected branches great legitimacy while debating constitutional issues and to only disapprove of their actions when they are in violation of the constitution.

Judicial activism in India

In contrast to the US Constitution, the Indian Constitution's Articles 13, 32, 226, 141, 142, and 144 expressly provide for judicial review. The Supreme Court of India invokes the troika clauses of the Constitution—Articles 32, 226 and 142—to defend the use of its judicial review authority. According to Article 13(2) of the Constitution, neither the Union nor the States may pass legislation that restricts or abridges any basic rights, and any measure that does so will be null and void to the degree that it does so. The right to judicial review is one of the foundational elements of the Indian Constitution. In India, where constitutionalism has only been practised for a relatively brief period of time, the power of judicial review has developed to protect citizens' fundamental rights as guaranteed by the constitution and to make decisions on issues of legislative competence between the centre and the states.

The judiciary is the only branch of government in India with the authority and responsibility to determine whether or not legislative provisions and administrative decisions are constitutionally acceptable. The superior courts have the authority to void an executive action as unconstitutional and find a statute to be extra vires the constitution.

These judicial review powers are granted to ensure a system of checks and balances between the legislative and executive branches on the one hand, and the judiciary on the other, rather than to elevate the judiciary to a supreme body superior to the other wings of the constitutional framework. In order for the system to work, one of the wings' unconstitutional activities must be rectified by the other, and vice versa. The opposition is supposed to serve this role in a democratic democracy, therefore judicial review is not intended to critique legislative or executive acts. The judiciary's job is to analyze executive and legislative activities and determine whether they adhere to the requirements of the Indian Constitution. Speaking on the topic of "Judicial review – judicial activism – need for care," Justice Dr. A. S. Anand, a former Chief Justice of India and Chairperson of the Human Rights Commission of India, called for caution.

In *Golak Nath v. State of Punjab*, the Supreme Court ruled in 1967 that Part III of the Indian Constitution's fundamental rights could not be changed, despite the absence of a similar restriction in Article 368, which only required a resolution to be passed by two-thirds majorities in both Houses of Parliament. In *Keshavananda Bharti v. State of Kerala*, a 13-judge Supreme Court bench overruled the *Golak Nath* ruling but maintained that the Constitution's fundamental principles could not be changed. Although several later judgements have attempted to clarify it, it is still unclear what exactly is meant by "basic structure."

Judicial activism and article 21 of the Indian Constitution

Article 21 of the Indian Constitution states: "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*"

The Supreme Court of India rejected the argument that the taking of a person's life or liberty must also be fair, reasonable, and just in addition to following the law in the case of *A.K. Gopalan v. State of Madras* however in *Maneka Gandhi v. Union of India*, the court interpreted Article 21 to include this requirement of substantive due process. The due process clause was omitted from the Indian Constitution on purpose, and as a result, it was introduced by the Indian Supreme Court through judicial activism.

In *R. Rajagopal v. State of Tamil Nadu*, a new right known as the "right to privacy" was included into Article 21. The Court ruled that a citizen has a right to protect the privacy of his or her own affairs, including marriage, family, procreation, motherhood, childbearing, and education.

The Supreme Court further declared that the right to a living is part of the right to life protected by Article 21. In *Kapila Hingorani v. Union of India*, it was explicitly stated that it is the responsibility of the State to provide adequate means of subsistence in cases where people are unable to afford food. This decision recognised the right to food as a component of the right to life.

The Court has also ruled that one of the fundamental rights that spring from the right to life is the right to clean drinking water. Rights include the following: the right to a fair trial; the right to health and medical care; the protection of tanks, ponds, forests, etc. that provide a quality of life; the right to family pension; the right to legal aid and counsel; the right against sexual harassment; the right to medical assistance in case of an accident; the right against solitary confinement; the right against handcuffing and bar fetters; the right to a speedy trial; the right against police atrocities, torture to be included in the expression of 'right to life' in Article 21.

In a recent case, *Centre for Environmental Law v. Union of India* (writ petition 337/1995 determined on 15.4.2013), the Supreme Court ordered the construction of a second home for Asiatic lions on the grounds that Article 21 protects the environment. Article 21 was said to include the right to sleep in the following case: *Ramlila Maidan, In re* (2012) S.C.I. In *Ajay Bansal v. Union of India*, Writ Petition 18351/2013, the Supreme Court ordered, by order dated 20.6.2013, that helicopters be provided for people who are trapped in Uttarakhand.

Due to the Supreme Court of India's judicial activism, a vast number of rights have been determined to derive from Article 21. But there may be serious concerns about some of these orders. The Supreme Court mandated the death penalty for "honour killing," which is defined as the killing of young men and women who marry outside their caste or religion, or in their same village, thereby "dishonouring" the parents or their caste, in a later decision, *Bhagwan Dass Vs. State (NCT) of Delhi*, 2011.

The most recent instance of judicial activism involved *Aruna Ramchandra Shanbaug vs. Union of India and Others*. In 1973, while working as a nurse in a hospital in Mumbai, Shanbaug was sexually assaulted; she has since been in a permanent vegetative state. The Supreme Court of India heard the appeal to the plea for euthanasia submitted by a social activist claiming to be Aruna's friend in 2011, after she had been in this state for 37 years. The Court denied the petition, but in a groundbreaking decision, it permitted passive euthanasia, or the removal of life support from a person who is permanently vegetative, subject to High Court consent.

Conclusion and suggestions

There is no clear definition of judicial activism because its scope is so broad. The Indian Constitution gives judges the authority to impose themselves and carry out an effective function, which gives judges the authority for judicial activism or review. Judicial activism strengthens the protection of the Constitution, the rule of law, and constitutionalism in the judiciary and acts as a safety net in the event of a crisis caused by another interest group in society. The judiciary supervises the execution of justice and guarantees that decisions are made in good faith and the public interest.

However, courts in India should exercise caution while using the concept of judicial activism as. when judges become agitated and step outside their boundaries, the traditional functioning of the courts might become a bit challenging to maintain. There must be a clear distinction between judicial activism and judicial overreach as excess judicial overreach will ultimately lead to weakening of the judiciary in India. The art of judicial activism should be practised with utmost care and caution because it represents the height of judicial innovation and touches on a delicate subject. Otherwise, the integrity of the system will be jeopardized.

Through PILs and other types of activism, the Indian courts have taken an active role in society. The rights of socially marginalized people have been reinstated as a result. The people hold high regard for the legal system of nation as a whole and the Supreme Court and High Courts have backed progressive social programmers. In a democracy, it is essential to uphold the idea of the separation of powers and the legitimacy of the three branches of government.

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