

Judicial Activism

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Abstract

Judicial activism has constantly been a source of heated debate, especially in the brilliance of current improvements in such manner.. Over the last few years with various controversial decisions, judges of the Supreme Court as well as various High Courts have once again triggered off the debate that has always generated a lot of heat. But still, what the term "judicial activism" actually connotes is still a mystery. From the inception of legal history till date, various critics have given various definitions of judicial activism, which are not only different but also contradictory. This is an attempt to bring out the exact connotation of "judicial activism" and to find out its effects on today's changing society.

Keywords: Judicial activism, connotation, public interest litigations, Supreme Court, controversies

Introduction

Justice is the primary demand of any society and state is responsible to provide guarantee of justice to all its citizens. Indian constitution in its preamble guarantees for social, economic and political justice. In democracy there are 3 pillars of government i.e. legislature, executive and judiciary. All these organs have different functions i.e. making law, executing that law and providing justice on any breach of law. But in deep all these provide justice to individuals. Judicial activism is newly developed concept of supreme court to provide justice to aggrieved persons.

REASON FOR RISING OF JUDICIAL ACTIVISM :-

Various reasons for judicial activism. There was a time when the confidence in the Constitution and Democracy amongst the citizens. There was also a legislative vacuum where no law or rule was present in such a situation Judicial Activism was the only option. Judicial Activism has helped in encouraging Public Interest Litigation and liberalizing the principles of 'Locus Standi'.

Indian constitution adopts the broad concept of a welfare state. India is a welfare state and not a police state. A welfare state is generally sensitive to all angles of police life. Hence, public weal is the ultimate object of welfare state. Here judiciary plays the role of active sentinel. It has to satisfy that all the constitutional deals and concepts are being executed between public generally. court leaving unnecessary technicality and traditions, devoted to play more active role. This judicial tradition is called as judicial activism.

It is notable that there is no any statutory definition of judicial activism, but it can be defined as an abnormal untraditional but effective and positive device for the protection of public interest, rule of law and fundamental spirit of constitution. It is a practical but untraditional mode of performance of constitutional liability adopted by judiciary in the arena of welfare state concept.

Judicial activism is developed gradually. Justice V.R Krishna Ayyer says that activeness of judiciary shows that executive has failed to perform its liabilities. Hence executive in activism is the main cause of development of judicial activism. Judiciary plays two roles in Indian constitution. Firstly, as a regular judicial organ of state and secondly, as the guardian of constitution. When it plays the role of a guardian it can control and direct the legislative and executive organ of the state to perform their functions according to constitution. Judicial review is a power provided to judiciary to control over the legislative organ. On the other hand, it has to control over the executive organ. Article 32 and 226 of the constitution of India provide that court can issue writs, orders, directions etc. against executive body. But under these provisions, court can direct the authority to perform their duty or can prohibit ultra virus actions but court is not empowered to take active initiative. Behind this shadow executive authorities tended to pass through safely.

IMPLEMENTATION OF JUDICIAL ACTIVISM :-

Judicial activism is a practice that helps in expanding individual rights. We have been talking about judicial activism but how does it work. The idea of legal activism is firmly identified with the idea of "Public Interest Litigation (PIL)." It is the legal activism of the Supreme Court which is the central point for the ascent of PIL. All in all, PIL is a result of legal activism. Indeed, PIL is the most famous structure (or sign) of legal activism.

Ultimately administrative arbitrariness and corruption increased gradually and faith of public towards govt. was diminishing rapidly, which was not good for healthy democracy. In these moments of defection, judiciary came forward to play active role of careful, active and sensitive guardian of constitution. The first step in this direction was birth of the concept of PIL (public interest litigation). The credit of development of PIL goes to justice V R Krishna Ayyer, justice P N Bhagwati and justice Chandrachud.

Judicial activism is justifiable upto that extent only where it protects the public against executive arbitrariness and inactivism. Beyond that, it is unjustifiable and deleterious for democracy. The unjustifiable judicial activism can be limited by awarding and activating executive organ. Executive organ should be aware and conscious about their liability towards public and judiciary should restrain itself to misuse the judicial activism.

In the 1990s, there was a rise in custodial death, and no one was held accountable for the deaths. Due to this as PIL was filed in 1981 through the case of Anil Yadav v. State of Bihar, where 33 suspected criminals were blinded and this PIL was also based on the newspaper article. Supreme Court directed that the price of the medical treatment would be given by the government.

These are just a few cases that have led to the rise in power of the judiciary through judicial activism. According to Dr. Vandana, the concept of Judicial activism can be seen to be reflecting from the following trends, namely:

1. Expansion of rights of hearing in the administrative process.
2. Excessive delegation without limitation.
3. Expansion of judicial control over discretionary powers.
4. Expansion of judicial review over the administration.
5. Promotion of open government.
6. Indiscriminate exercise of the contempt power.

ANALYSIS :-

Judicial activism must not become judicial adventurism, the Supreme Court warned the adjudication must be done within the system of historically validated. Restraints and conscious minimization of judges' preferences "The courts should not humiliate regulatory specialists and should understand that managerial specialists have aptitude in the field of the organization while the court doesn't. The avocation frequently given for a legal infringement on the area of the chief or the council is that the other two organs are not taking care of their responsibilities appropriately. In any event, expecting this is along these lines, similar claims can be made against the legal executive too because cases are forthcoming in courts for 50 years. If the council or the leader was not working as expected, it was for individuals to address the imperfections by practicing their establishment appropriately in the following races and deciding in favor of up-and-comers.

CONCLUSION :-

Proponents of judicial activism argue that it is necessary to correct injustice and promote necessary social changes. They see the courts as a last resort for those in society who lack the political power to influence other branches of government. We do notice that judicial activism has given us various rights and has empowered us. It has helped in covering the lacunas where no rule of law is there. And even if the law is there then there is no proper implementation of it.

If the concept of judicial activism or PIL was not there then there is a high probability that our rights and freedoms in the country won't be that of world level and we might have been last in

the race of rights and freedom to citizens. However, in recent times, the concept of judicial activism has been criticized by the legal fraternity as it goes against the principle. Separation of powers by interfering in the areas of other organs of government. There has been an abuse of power of PIL. PIL has become a tool for some to harass others and violating their rights. The solution to this is that there should be a proper criterion for filing PIL. Legislative could work upon expanding the old right and creating new ones to the gap of rights could be covered. The professionals who are involved in the media and legal field should be more sensitized so that there is no abuse of PIL. Therefore, we could say that judicial activism is surely key to justice but there shouldn't be any overpowering of one authority on another to maintain the separation of power.

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