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JUDICIAL ACTIVISM IN INDIA

What is judicial activism?

The term 'judicial activism' refers to the "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent"¹ according to the Black's law dictionary. The term "judicial activism" was coined for the first time by Arthur Schlesinger Jr. in his article "The Supreme Court: 1947" published in Fortune magazine in 1947.²

Judicial activism happens when the court takes the power to review the actions taken by state. The power of judiciary forms a part of basic structure of Indian Constitution. Judicial activism implies the judge's personal understanding or perspective over a decision. When the judges rely on their own values and beliefs, it leads to a better evaluation of the situation. In a broader sense, judicial activism refers to the tendency of judges to interpret the law in a creative manner. As stated by Justice V.R. Krishna Iyer, a former judge of the Supreme Court of India, 'judicial activism is the essence of democracy'. Indian judiciary had a crucial role to play in safeguarding the rights of marginalized communities and ensuring social justice.

Origin of judicial activism in India

It is one of the most difficult tasks to trace the origin of judicial activism in India. The evidence of judicial activism can be dated back to the year 1893, when judge S. Mahmud held the pre-condition for hearing a case would be accomplished when someone speaks.³ The concept of judicial activism has been evolving and can be traced back from certain decisions and orders of the Supreme Court. Some of the decisions underlying the concept of judicial activism are:

- The concept of judicial activism has found its roots in the English concepts of 'law of equity and natural rights', these concepts found an expression in the concept of judicial review. The first landmark case is considered to be the case of Marbury v. Madison.

¹ Prof. Dr. Nishtha Jaswal & Dr. Lakhwinder Singh, Judicial Activism in India, Mar 2017,

<https://docs.manupatra.in/newslines/articles/Upload/0BD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>

² Nitu Mittal & Tarang Aggarwal, JUDICIAL ACTIVISM IN INDIA, 2014-15,

https://docs.manupatra.in/newslines/articles/Upload/3D22F96F-B1FF-4D03-B90E-B0B2690BD83E.1-g_constitution.pdf

³ EVOLUTION & GROWTH OF JUDICIAL ACTIVISM IN INDIA,

https://shodhganga.inflibnet.ac.in/bitstream/10603/32340/8/09_chapter%203.pdf

- The judiciary since 1973 claims the power to nullify on substantive grounds; even an amendment made to the constitution by the amending body if it changes —the basic structure or framework of the Constitution. This concept of judicial control over the constitution has been evolved by and known to courts in India only.⁴
- Power of Judicial review as exercised by the Supreme Court and the High Courts has been recognized by those courts to be an unalterable —basic structure of the Constitution⁵
- Certain other decisions underlying the concept of judicial activism are Vishaka vs state of Rajasthan, 1997, Sakal Newspapers Private Ltd. v. Union of India, Golak Nath v. State of Punjab, 1967 and many more.
- The concept of article 13 of the Indian Constitution empowers the judiciary to review the legislative actions and strike down the laws that violate fundamental rights. This power of judiciary gives immense power to the courts and allow them to serve as guardians of the Constitution. Judicial activism often comes into play when the courts actively review and invalidate laws that infringe or violate the fundamental rights, hence, promoting the concept of constitutionalism and the rule of law.

Rise of judicial activism in India

- Public interest litigation (PIL) Has been one of the most important tools of judicial activism in India. It allows individuals or organization irrespective of the caste, class or any unprivileged group to approach the judiciary seeking legal remedy in cases where there is a violation of rights that affect a large section of society. The emergence of PIL has been important in many ways.
- Women empowerment has been another significant aspect which has risen up due to judicial activism in India. The judiciary has taken vital steps in increasing awareness among women in the society which has resulted in the improvement of living and working conditions of women. In the case of Mohd. Ahmed Khan v. Shah Bano Begum and Others⁶, the Hon'ble Supreme Court overturned the writings in Muslim Law and extended the period of Iddat to provide justice to Shah Bano Begum.
- One of the prominent reasons for rise of judicial activism in India can be the inefficiency of the other two branches of government; executive and legislature. When these branches fail to address the rising social issues or protect fundamental rights of the citizens, they may turn to the judiciary for the remedy. This enhances the concept of checks and balances as well, giving an independent authority to the judiciary.
- The Indian judiciary is considered as the guardian of the Constitution and the protector of fundamental rights. If anyone's fundamental right has been infringed, they can proceed to the court for getting the remedy.

Conclusion

⁴ Keshavanada Bharti v. State of Kerala AIR 1973 SC 1463.

⁵ In Indira Nehru Gandhi v. Raj Narain, (1975) SCC Supp. 1, Kihota Hollohon v. Zachillu L. (AIR 1993 SC 412) Chandra Kumar v. Union of India (1997, SC) AIR 1997 SC 1125.

⁶ 11985 AIR 945, 1985 SCC (2) 556

The concept of judicial activism is considered as a part of judicial review. Sometimes, the courts can be active in their decisions, which means the judges take part actively and lead the path towards a creative decision (judicial activism) while, on the other hand, also checking if those decisions follow the rules of the constitution (judicial review). It is not necessary that every decision made by a judge would involve checking whether the decision follows the constitution, and not every review of the constitution involves making an active decision. Hence, the two terms; judicial activism and judicial review are related to each other but not synonymous in nature.

To conclude, it is important to understand that we cannot rely completely on the laws made by the legislature. Perhaps, Baxi has rightly said that an activist assertion cannot lie on state laws and its processes. An activist judge has to use his own reasoning and opinion rather than completely relying on laws stated in the constitution or made by the legislature. Thus, he has to be creative and apply Judicial Activism. It is the justice of the people which is the first and the most important thing.⁷

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⁷ Nitu Mittal & Tarang Aggarwal, JUDICIAL ACTIVISM IN INDIA, 2014-15, https://docs.manupatra.in/newslines/articles/Upload/3D22F96F-B1FF-4D03-B90E-B0B2690BD83E.1-g_constitution.pdf