
JUDICIAL ACTIVISM: ANALYSIS OF DEVELOPMENTS MADE BY THE SUPREME COURT

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ABSTRACT

The concept of Judicial activism first originated in America in 1947. The Indian Constitution also implements the Rule of Law which makes sure that there is a checks and balance system, to keep a check on each other's functioning. Article 32 and Article 226/227 give protection to every citizen from unlawful or arbitrary use of power by the Government. These articles give the Judiciary a wide power of Judicial review.

Justice Jagmohanlal Sinha invalidated the Prime Ministers win in the past election and suspended her for six years from contesting elections the prime Minister declared emergency. During this time all the fundamental rights were suspended and the leaders and supporters of the opposition parties were arrested. This was a crucial time as the Judiciary was put to test. Even though the courts declared that during emergency Article 20 and Article 21 which gives right to life and liberty are also suspended during emergency, the Supreme Court itself later disagreed with this view

This transformation of the Judiciary from strict Locus Standi mode to a more public affected cause petition has evolved the Judicial activism in India. the judiciary has developed the fundamental rights jurisprudence while giving the liberal interpretation to the 'right to life and personal liberty'

However many a times relief was not granted by the Judiciary even when it was so needed. The best example of this the famous Habeas Corpus case wherein the Judges of the Supreme Court supported the Government by stating that eve Article 21 can be taken away during emergency.

Introduction

"All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent Judiciary"- Andrew Jackson (7th President of U.S.A). The Judiciary is the end product of the legislature. The concept of Judicial activism first originated in America in 1947. The Judiciary finishes what the Legislature started. The Country of India functions mainly through three organs. The Legislative that makes the law, the executive that implements the law and the third and the most important, the Judiciary that makes sure that if the law is followed by everyone and if not followed they are punished. These three system are separated from each other by the separation of power making sure that neither of the organs interfere in each other's functioning. On the other hand the Indian Constitution also implements the Rule of Law which makes sure that there is a checks and balance system, to keep a check on each other's functioning.

Black's Law Dictionary defines judicial activism as: "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". The Constituent Assembly while drafting the Constitution made sure that the Judiciary has the maximum freedom from the interference of the legislature and the executive. They incorporated Article 32 and Article 226/227 to give protection to every citizen from unlawful or arbitrary use of power by the Government. These articles give the Judiciary a wide power of Judicial review. The fundamental Rights guaranteed under part 3 of the Constitution are protected by the Supreme Court or the High Court. Hence, these articles make sure that the Government does not use its authority arbitrarily. The Supreme Court through these article have expanded its horizon to make sure that justice is provided by fair means. This Judicial Activism of the Courts first came into prominence in the Kesavananda Bharti case¹, in that case the Supreme Court stated that Article 368 gives the Government power to amend the Constitution, but it cannot change the basic structure of the Constitution. Thereafter, in 1975 a case was filed against the Prime Minister under the allegations of temperament with the election process². After Justice Jagmohanlal Sinha invalidated the Prime Ministers win in the past election and suspended her for six years from contesting elections the prime Minister declared emergency. During this

¹ His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (case citation: AIR 1973 SC 1461)

² The State of Uttar Pradesh v. Raj Narain (1975 AIR 865, 1975 SCR (3) 333)

time all the fundamental rights were suspended and the leaders and supporters of the opposition parties were arrested. This was a crucial time as the Judiciary was put to test. Even though the courts declared that during emergency Article 20 and Article 21 which gives right to life and liberty are also suspended during emergency, the Supreme Court itself later disagreed with this view.

Salus populi est suprema lex- The maxim that formed the bedrock of P.I.L states that the regard for the welfare of the public is the highest law. The scope of Judicial Activism was even more expanded after the introduction of P.I.L. In *Hussainara Khatoon Vs State of Bihar* when a prisoner sent a letter complaining about the condition prisoners in Bihar jail whose suits were pending in the Court. In this case, the Supreme Court upheld that the prisoners should get benefit of free legal aid and fast hearing.³ The specialty of this case was that the petition was not filed by a single prisoner rather by many prisoners of Bihar Jail. After this case many cases were filed similar to these and Justice was done to those case by the Courts. After the emergency many cases were admitted to the Court that involved public interest at large. The Courts therefore started relaxing the concept of locus standi and let any person with a cause that involve the public be filed with locus standi. It was not until 1986 when the term P.I.L was first introduced. Along with Justice P. N. Bhagwati, Justice V.R Krishna Iyer introduced the concept of PILs (Public Interest Litigations) or "people's involvement" in the country's courts with a series of cases. This revolutionary tool, initially used by public-spirited citizens to file PILs on behalf of sections of society unable to on their own, continues to bring in unheard changes in the day-to-day lives of the people even now, decades later. Observing this, he states:

"To transform the Supreme Court of India into the supreme court for Indians was the challenge...When the history of the judiciary in India comes to be written, PIL will be glorified as the noblest ally of the little Indian"

The Supreme Court later even introduced the concept of postcard petition, wherein even a post card was used to file a petition. People started addressing their complaint through the postcard. This transformation of the Judiciary from strict Locus Standi mode to a more public affected cause petition has evolved the Judicial activism in India. In *Minerva Mills* case Since the Constitution had conferred a limited amending power on the Parliament, the Supreme Court defined the limits of Article 368 and stated that "Parliament cannot under the exercise of that

³ *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar* 1979 AIR 1369

limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power can not be destroyed. In other words, Parliament can not, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot be the exercise of that power convert the limited power into an unlimited one"⁴. The Javed litigants challenged the constitutionality of a coercive population control provision, which governed the election of the panchayat. The Haryana Provision disqualified "a person having more than two living children" from holding specified offices in panchayats. The objective of this two-child norm was to popularize family planning, under the assumption that other citizens would follow the example of restrained reproductive behaviour set by their elected leaders. The petitioners and appellants in the Javed case were individuals who had been disqualified from either standing for election or continuing in the office of a panchayat because they had more than two children. Upholding the Haryana Provision as "salutary and in the public interest", the Court's main emphasis was on "the problem of population explosion as a national and global issue" at the expense of protecting human rights. The Javed decision did not evaluate critically the impact of the contested provision on family planning. The Court described the provision as "well-defined", "founded on intelligible differentia", and based on a clear objective to popularize family planning.

M.C Mehta is a pioneer in filing P.I.L against multinational companies exploiting the natural resources. He filed multiple case in the Court challenging many companies and firms that were disturbing the environment. In the Taj trapezium case The Supreme Court ordered the factories that were near the Taj Mahal to move from there to other location. As the gas let out by these factories were destroying the Taj Mahal, and even the chemical let out by these factories was destroying the lakes near Taj Mahal. He has even filed P.I.L against the factories that were destroying the river Ganga by letting out huge amounts of chemicals. Since the River Ganga is very holy and many people visit and drink it was causing many harmful side effects. Hence, after the case the Supreme Court ordered the factories to stop letting out the chemicals The judgement delivered on January 12, 1988, lashed out at civic authorities for allowing untreated sewage from Kanpur's tanneries to make its way into the Ganges. The court passed three landmark judgements and a number of Orders against polluting industries, numbering more

⁴ *Minerva Mills Ltd. and Ors. v. Union of India and Ors.* (case citation: AIR 1980 SC 1789)

than 50,000 in the Ganga basin, from time to time. In this case, apart from industries, more than 250 towns and cities also had to set up sewage treatment plants. 600 tanneries operated in a highly congested residential area of Kolkata. The ruling shifted them out of the city and relocated them to a planned leather complex in West Bengal. The Court closed down several industries, allowing them to reopen only after setting up effluent treatment plants and controlled pollution. As a result, millions of people escaped air and water pollution in the Ganga basin, covering eight states in India. Parmanand Katara, a human rights activist, filed a writ petition in the Supreme Court. His basis was a newspaper report concerning the death of a scooterist after an accident with a speeding car. Doctors refused to attend to him. They directed him to another hospital around 20 km. away that could handle medico-legal cases. Based on the petition, the Supreme Court held that: Preservation of human life is of paramount importance, Every doctor, at a government hospital or otherwise, has the professional obligation to extend his/her services to protect life, There should be no doubt that the effort to save the person should receive top priority. This applies not only to the legal profession, but also to the police and other citizens part of the matter.

In India, the judiciary has developed the fundamental rights jurisprudence while giving the liberal interpretation to the 'right to life and personal liberty'. In its landmark judgements, the Supreme Court recognized prisoners' rights including access to court and legal facilities, right to meet his or her family relatives and friends, freedom of speech and expression, right to compensation, mental privacy, etc. The judiciary in India is again responsible for the fundamental right to live in healthy environment, implementing Precautionary and Polluter Principles as basic features of the sustainable development, the application of doctrine of public trust for the protection and preservation of natural resources, etc. The Supreme Court recognized the fundamental right to education to children. In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court held that right to education is implicit in and flows from the right to life guaranteed under Article 21. The Hon'ble Supreme Court of India in *Mohini Jain v. State of Karnataka* said that the cumulative effect of Articles 21, 38, Articles 39 (a) and (b), 41 and 45 bind the State to provide education to all of its citizens.⁴¹ The Supreme Court declared that the right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. Finally, the Court announced that the State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens. The Constitutional validity of right to education was again discussed by the Supreme Court in *J.P. Unnikrishnan*

v. State of A.P. The Supreme Court held that the right to education under Article 21 must be read with the directive principles in Part IV of the Indian Constitution. The Court said that right to education means: “(a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes the age of 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its developments.” By the Constitution (Eighty-sixth Amendment) Act of 2002, three new provisions i.e., Article 21A, new Article 45 and 51-A(k) were inserted into the Indian Constitution. Currently, Right of Children to Free and Compulsory Education Act, 2009 enforces fundamental right to education in India. Due to judicial intervention only, the government was directed to rehabilitate the children of prostitutes. It was ordered that the children of prostitutes should not be allowed to live with their mothers in the undesirable surroundings of prostitute homes. They require accommodation and rehabilitation in reformatory homes. Increasingly, the Supreme Court of India in Vishal Jeet v. Union of India, again issued directions to the government to rehabilitate such children. In Bachpan Bachao Andolan v. Union of India, the Supreme Court directed the government to prohibit the employment of children in circuses in order to implement the fundamental right to education. The government was ordered to raid in these circuses to free children. The court directed the government to provide shelter and rehabilitation to all rescued children at care and protective homes until they attain the age of 18 years. In D.K Basu vs state of West Bengal the Supreme Court went a step further and treated a Telegraph newspaper as a writ petition. In this case there were many custodial deaths happening in police custody, so the court gave a few guidelines as to the procedure to be followed after an arrest is made. In Vishaka vs state of Rajasthan the Supreme Court gave a few guidelines to be followed by companies for the protection of women in office space.

‘In recent years, as the incumbents of parliament have become less representative of the will of the people, there has been a growing sense of public frustration with the democratic process. This is the reason why the supreme court had to expand its jurisdiction by, at times, issuing novel direction to the executive’. According to CJI Ahmadi. Even now in the last decade the Supreme Court has been giving decision in favour of Justice by going against the Government. The 2016 case of Shafin Jahan v. Ashokan K.M & ors where a girl who wanted to marry a muslim guy was refused by the High Court the Supreme Court reversed the case and stated that the Right to marry is fundamental right under the Article 21 of the Constitution. In Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors when a case was filed against the

Aadhar rules of the Government and the Supreme Court ruled that Right to Privacy is fundamental right under Article 21. The judgement also paved the way for the decision in *Navtej Singh Johar v. Union of India* (2018). In this case the in landmark judgement the Supreme Court stated recognized the rights of the LGBTQ community and decriminalized Section 377 of I.P.C. However many a times relief was not granted by the Judiciary even when it was so needed. The best example of this the famous *Haebous Corpus* case wherein the Judges of the Supreme Court supported the Government by stating that even Article 21 can be taken away during emergency. The dissenting view of Justice Hans Raj Khanna was the only thing that was appreciated. He stated that "article 21 of the Constitution could not possibly be the sole repository of the fundamental rights to life and liberty as these predate the Constitution itself and the existence of these rights cannot be subjugated to any executive decree even during the period of national emergency for these are inalienable to one's life and dignified existence, is widely extolled as a show of judicial valor in defending the fundamental rights to life and liberty in the Indian democracy."