



RETHINKING JUDICIAL ACTIVISM IN INDIA IN THE LIGHT OF MECHANISMS -PIL, QUO WARRANT AND SUE MOTO

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Abstract

Success of democracy highly depends upon active role of judiciary .Being an integral part of government it administers justice according to law. It has empowered to check the role of legislatures and executive by maintaining healthy balance of power of the government. Being the guardian of the constitution it has the supreme responsibility to safeguard the rights of the people. A citizen has the right to seek the protection of the judiciary in case his rights are violated or threatened to be violated by the government or by private organisations or fellow citizens. In all such cases, it becomes the responsibility of the judiciary to protect his rights of the people. But judiciary must be active and vibrant in justifying its constitutional role .Since the earliest inception of independence Indian judiciary has been playing a significant role in making constitution dynamic and progressive .Of course, its activism has been questioned at different times. The proposed study is a humble attempt to unveil nature of judicial activism in India.

Key Words:*Democracy, Judiciary, Constitution, Activism Etc.*

Introduction

Judiciary is a strong pillar of democracy. But it becomes strong when it is active and vibrant. Therefore the concept of judicial activism has been a very important issue in democratic country like India. There are many complaints, criticisms, dissatisfaction against judiciary system in India. Many people and intellectuals argue that India judiciary is weak, lazy and partial. It kills both time and money. Here justice is denied because justice is delayed. There are many settlements of cases which got finished after death of persons who waited for justice. Therefore, a humble attempt is made to rethink judicial activism in India through this study .

Objectives of study

The main objectives of the study are to

1. Unveil conceptual meaning of judicial activism.
2. Analyse nature of judicial activism in India
3. To analyse historical development of judicial activism in India.
4. To understand PIL, Quo Warrant and Sue Moto as mechanisms of judicial activism in India.
5. Conclude with suggestion

Methodology

The proposed study has been made with the help of historical and analytical method. Data for it used from secondary source like books, journal and electronic materials. Logic used here is both deductive and inductive.

Discussion

Meaning and definition of Judicial Activism

In simple sense, judicial activism is known as the effort and effectiveness of judiciary for bringing proper justice in society. According to Justice J.S Verma-The active process of implementation of the rule of law, essential for the preservation of functional democracy.¹ Another thinker Ahmadi says that Judicial activism means active role played by the judiciary in promoting justice.² Judicial activism is a dynamic process of judicial outlook in a changing society. That will be called judicial activism when judgement of court is not influenced by personal, political and other force. It must be free and fair from any domination. According to the idea of judicial activism, judges should use their powers to finish injustice. In short, the courts should play an active role in shaping social policy on such issues as civil rights, protection of individual rights, political unfairness, and public morality.



Judges must follow law and constitution. He should not bargain with any political for bringing justice, morality, equality and liberty in society. Being the guardian of constitution and fundamental rights judges must be concerned with speed and active process of judicial activity. Moreover they must give importance to social environment, emotion and spirit of people for democracy. Frankly speaking democracy sustains and lives long with the judicial activism.

History of Judicial activism in India.

The concept of **Judicial Activism** originated and developed in the USA. This term was first coined by Arthur M. Schlesinger Jr. — an American historian, social critic and public intellectual, in his article “The Supreme Court: 1947” which was published in the Fortune magazine.³ However, in India, the doctrine of Judicial Activism was introduced in mid-1970s. Justice V.R.Krishna Iyer, Justice P.N.Bhagwati, Justice O.Chinnappa Reddy and Justice D.A.Desai laid its foundation.

1.03: Examples of Judicial Activism in India

Rejection of Candidature of Indira Gandhi by Allahabad High Court
Introduction of PIL (Public Interest Litigation)
Evolution of Doctrine of Basic Structure
Reforming BCCI (Board of Cricket for Control in India)
Bhopal Gas tragedy
Jessica Lal murder case

1.04: Judicial activism in India

Judicial Activism is an important feature of Indian Judicial System. In India, the judiciary has been given the power to protect the Constitution and to preserve the Fundamental Rights of the people. It has been empowered by the authority of judicial review and in that capacity it has been exercising its power in recent years which is known as judicial activism. Under judicial activism, the court has begun to interfere in and question the activities of the executive and the legislature, warning g them, from time to time, of their duties and responsibilities to the society. At present, Indian Judiciary is getting more active towards its social responsibility. By Public Interest Litigation (PIL), Quo Warrant and Sue Moto is making steps for attaining its social objective. As for example, Supreme Court suggested to the Government of India in May 1995 and again in July, 2003 to introduce Uniform Civil Code for all of India and for all Indians, as mentioned in Article 44 of the Constitution. Since Independence, the Courts in India have been adopting innovative ways for solving the complaint of the affected persons. In many cases, the Supreme Court exercised its took Quo warrant, sue motto and PILL actions on mere postal letters from affected and deprived disclosing the human rights violations in society. Human rights violations, which published in the newspapers, were taken into judicial consideration⁴

Causes and main areas of Judicial Activism in India.

It is important to mention that judicial activism is emerged due to failure of legislature and executive in providing socio economic and political safeguards to people. In such situation public or individual citizen appeals judiciary to force government to take necessary steps. Judicial activism has arisen mainly due to the failure of the executive and legislatures to act. Secondly, it has arisen also due to the fact that there is a doubt that the legislature and executive have failed to deliver the goods. Thirdly, it occurs because the entire system has been plagued by ineffectiveness and inactiveness. The violation of basic human rights has also led to judicial activism. Finally, due to the misuse and abuse of some of the provisions of the Constitution, judicial activism has gained significance

In recent years judicial activism has been grown up on following areas –

- Right to live with Human Dignity
- Right to Livelihood
- Right to Shelter
- Right to Privacy



- Sexual harassment of working women
- Right to Health & Medical Aid
- Right to live in a Pollution Free Environment
- Ban On Smoking In Public Places
- Compensation for Violation of Article 21
- Right of Prisoners

1.06 Main method of judicial activism in India.

Quo Warrant

Quo Warrant is a strong way of judicial activism. Through it a case can be filed against a person who enjoys public office illegally. Any person can file case against public office holder and on the basis of such complain judiciary can take action against such person in public office. Assam Public Service commission was found appoint a good number of persons in public offices like magistrate, Assam civil service, Income tax. But after lodging quo warrant against such illegal appointment court took speed steps against the commission. Such cases of judicial activism are very common. Quo warrant is becoming very popular in making judiciary more active and vibrant in recent years. This writ is issued to enquire into legality of the claim of a person or public office. It restrains the person or authority to act in an office which he or she is not entitled. Quo warrant is used to test a person's legal right to hold an office. The object of this writ is to determine the right of a person to hold a particular public office. Such a person is asked to show what is the authority under which he is holding that office.

Sue Moto

Another important method of judicial activism is *Suo Moto*. It is a special power of High Courts and the Supreme Court of India to initiate a hearing by itself without anybody filing any appeal or writ petition or PIL. When court feels that a matter requires serious and immediate legal intervention when a court takes notice on his or her own way then it is called "suo moto" notice it is a step taken by judiciary of its own. We know that court and judiciary always run function on the basis of case filed by citizens.⁵ But in case of *Suo Moto* court conducts any activity on its own. It does not wait for any external case. In many cases Indian judiciary has adopted such method for bringing justice in society. As for example in Nirbhoya Rape case Indian Judiciary took the *Suo Moto* method for giving justice to victims. The term generally refers to a situation wherein a judge acts without request by either party to the action before the court. Indian judiciary has taken many steps for judicial activism through *Suo Moto*. As for example judiciary applied it in the case of Sahara company, Bijoy Malia, Kathua Gang rape, Neina Sahani Murder case.

Public Interest Litigation (PIL)

Public Interest Litigation is a new branch of Judiciary. It is used to give Justice to people in public interest. Public Interest Litigation, which is popularly known as PIL, is often called New Legal method. Since very beginning, this system has started getting popularity in India. Justice P.N. Bhagwati and others have played pivotal role in this process. Thus this system has developed as an important component of Indian Judiciary System. In Public Interest Litigation court can initiate any case for protecting any Public or General Interest Issue. When any public or general is being affected badly by any individual or institution then Courts can initiate proceedings under legal framework. PIL proceedings can be initiated by any individual, group of individual or association, which brings to the notice of court any such violations. A simple letter can be sent to court and if court accepts it, then it can consider it to be a petition and start proceedings. Court can appoint any official to investigate any written complaint and after finding the report it can initiate legal proceedings to protect public interest. There are many examples of public interest litigation cases in India. As for example, In December 1979, Kapila Hingorani had filed a petition regarding the condition of the prisoners detained in the Bihar jail, whose cases were pending in the court. The special thing about this petition was that it was not filed by any single prisoner; rather it was filed by various prisoners of the Bihar jail. The case was filed in the Supreme Court before the bench headed by Justice P.N. Bhagwati. Another cases under PIL are *Visahaka versus State of Rajasathan*, *Javed Versus State of Haryana*, *Husanara versus Bihar* etc.



Critical Evaluation

The above discussion reflects judicial activism in India. In recent time, many landmarks have taken place in the history of Indian judiciary. Newly developed methods have created new directions in this field. But still I can say that justice is delayed in India. Still I argue that justice is denied in India. Nearly more than 10 Lacs cases are pending unsolved. Many of people wrongly accused and punished only because of lack of money for running after lawyer. Justice is bargained in India. It can be gained at high speed if it is proceeded by high profile lawyers like Ram Jethmalini, Kapil Sibal , Bijon Mohajaon , Arup Borbora. Methods and mechanisms of judicial activism will nothing to do in the market of justice. It is bitter to say entire system is complex and unscientific. Judges and other related staffs are not enough as per cases. Day to day cases are increasing unsolved due to lack of judges. Moreover, it is becoming more expensive and time killing way. However, Government has introduced free legal service for socially disadvantaged section but it is still far away from reality. Official red tapism is one of reasons of pending cases and delay justice. Of course in spite of being affected many problems Indian judiciary has shown its activism with the pace of time. No doubt it has many technical problems but we cannot suspect its independency and loyalty to constitution. It is proving judicial activism by protecting constitution and fundamental rights of citizens since very beginning.

Notes and References

1. Hans Raj ‘ Indian Government and Politics , Surjeet Publication , New Delhi,2004 P.343
2. Ibid.P.344.
3. Nabin Gohain and Deepen Das, *Bhartiya Sorkar aru Rajniti* , Bidyabhavan , Jorhat,Assam,2012, P.150
4. Ibid.
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