

## Understanding Judicial Activism and its impact

Shyam Prakash Pandey<sup>1</sup>

### Abstract

*Judicial activism is a judicial philosophy holding that the courts can and should go beyond the applicable law to consider broader societal implications of its decisions. The objective of this paper is to study the active role of Indian Judiciary for promoting Justice. Judicial Activism is the tool that has helped the judiciary to create a supremacy over the affairs of the other two organs and their functioning. The society is to be regulated beyond the realm of laws as well, whenever there is a grey area or loopholes, judiciary cannot just sit quietly and let injustice happen and thus they play the role of protectors of law beyond the subjective laws as well. The paper also analyses the impact of judicial activism on Indian society and Indian politics. It can be conclude that when the elected representatives fail to create a welfare state then the role of judiciary becomes indispensable but the judiciary cannot intervene in the state affairs just to show its supremacy.*

**Keywords:** *Judicial activism, judicial review, Judicial Intervention, Public Interest Litigation, Protecting Society*

### Introduction

Judicial activism is an active role of the judicial system in promoting justice. It is a judicial creativity, a process by which juristic principles are to update the existing law to bring conformity with the current needs of the society and thereby to subservice the constitutional purpose of advancing public interest under the Rule of law. Judicial activism may be defined<sup>2</sup> as:

*“a theory of judicial decision-making by which judges allow their personal opinions on public policy, among other factors, to direct their decisions, usually with the implication that adherents to this theory appear to find constitutional violations and are willing to disregard precedents.”*

Judicial activism occurs when the courts, after hearing all sides, shift from their traditional decision-making position to that of the legislature, enacting new legislation, rules, and policies. Judicial activism is actually judicial intervention. These interventions can be seen in three ways: First, by declaring any statute invalid, then by reversing legal precedents, and finally, by developing social welfare principles while awaiting judgment. Simply put, judicial activism refers to the judiciary's involvement in politics.

The idea of judicial activism is multifaceted. These measurements, on the other hand, cannot be applied universally. They differ based on constitutions and philosophies. The concept of judicial activism is not simple. It means that various people have varied opinions on what judicial activism entails. Those opposed to the activism claim that it weakens the elected branch of government and harms the rule of law and democracy. However, those who support judicial activism believe that it is a legitimate form of judicial review and that interpretation of the law should change with the changing needs of society. Judicial activism is good when it is for the benefit and development of under-

---

<sup>1</sup> Shyam Prakash Pandey, Superintendent of Customs at Indian Customs, Mumbai

<sup>2</sup> Judicial Activism, Black's Law Dictionary

advantage sections of society. However, it should not interfere with the policy making power of government.

### **Judicial Activism in Its Many Facets**

Judicial activism is a judicial ideology that holds that courts can and should consider broader societal ramifications of their judgements in addition to the applicable law. In India, judicial activism has been established in the form of various judicial principles some of which are as below:

#### **1. Public Interest Litigation**

The traditional rule is that the right to move the Supreme Court is only available to those whose fundamental rights are infringed. However, this rule has been relaxed in its recent rulings. The court now permits Public Interest Litigation or Social Interest Litigation at the instance of public spirited citizens for the constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the court for relief.

In **Hussainara Khatoon v State of Bihar**<sup>3</sup> is one of the leading judgments related to judicial activism in India. In this case, a number of under trial prisoners were kept in various jails of Bihar for several years. The Court ordered that all such prisoners whose names were submitted to the court should be released forthwith.

In **Murli Deora v. Union of India**<sup>4</sup>, the Supreme Court on the PIL filed by the petitioner directed all states and Union territories to immediately issue orders banning smoking in public places and public transports including railways.

In **Sunil Batra v. Delhi Administration**<sup>5</sup>, it was held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment.

In **M. C. Mehta v. Union of India**<sup>6</sup>, the Supreme Court directed the Shriram Food and Fertilizer Company to take all necessary safety measures before reopening of the plant. The management was directed to deposit a sum of Rs. 20 lacs by way of security for payment of compensation claims of the victims of oleum gas leak with the Registrar of the Court.

In **D. C. Wadhva v. State of Bihar**<sup>7</sup>, the petitioner by a PIL challenged the practice of the state of Bihar in promulgation and repromulgation of ordinances on a large scale without enacting them into acts of the legislature and keeping them alive for an indefinite period. The court held that an ordinance is used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends.

In **Vishaka v. State of Rajasthan**<sup>8</sup>, the Supreme Court laid down an exhaustive guideline for prevention of sexual harassment of working women in place of their work. The court held that it is the duty of the employer to prevent sexual harassment of working women.

#### **2. Judicial review**

Judicial review is a court's ultimate ability to declare unconstitutional and hence unenforceable any act of legislatures or executives, such as a) any statute, b) any official

---

<sup>3</sup> Hussainara Khatoon v State of Bihar (1980) 1 SCC 81

<sup>4</sup> Murli Deora v. Union of India 2001 Supp. (4) SCC 650

<sup>5</sup> Sunil Batra v. Delhi Administration 1978 4 SCC 409

<sup>6</sup> M. C. Mehta v. Union of India 1987 SCR (1) 819

<sup>7</sup> D. C. Wadhva v. State of Bihar 1987 AIR 579

<sup>8</sup> Vishaka v. State of Rajasthan AIR 1997 SC 3011

action based on a law, and c) any other action by a public official that it believes to be in contradiction with the constitution. In India, courts have a constitutional obligation to interpret the constitution and declare laws invalid if they are proven to be in violation of any constitutional requirements. The following instances vividly highlight the nature, scope, and significance of the Supreme Court of India's role in preserving the supremacy of the constitution.

"In India, the constitution is supreme," the court stated in *A. K. Gopalan v. State of Madras*, "and a statute law to be legal, it must in all situations be in compliance with the constitutional requirements, and it is for the judiciary to decide if any enactment is constitutional or not." In **Keshavananda Bharati v. State of Kerala**<sup>9</sup> the Hon'ble 13 Judge Constitution Bench of Supreme Court held that legislature has power to amend the constitution except changing its basic structure. The court has evolved the doctrine of basic structure in this case according to which sovereign state has certain characteristics that cannot be erased by its legislature.

Judicial review extends to every governmental or executive action from high policy matters like the President's power to issue a proclamation on failure of constitutional machinery in the States like in **S.R. Bommai v. Union of India**<sup>10</sup> case, to the highly discretionary exercise of the prerogative of pardon like in **Kehar Singh v. Union of India**<sup>11</sup> case or the right to go abroad as in **Satwant Singh v. Assistant Passport Officer, New Delhi**<sup>12</sup> case. Judicial review knows no bounds except the restraint of the judges themselves regarding justifiability of an issue in a particular case.

In **Maneka Gandhi v. Union of India**<sup>13</sup> the judicial review has acquired the same or even wider dimensions as in the United States. Now 'procedure established by law' in Article 21 does not mean any procedure laid down by the legislature but it means a fair, just and reasonable procedure. A general principle of reasonableness has also been evolved which gives power to the court to look into the reasonableness of all legislative and executive actions.

Supreme Court in **Minerva Mills Ltd. v. Union of India**<sup>14</sup> observed that the constitution has created an independent judiciary which is vested with the power of judicial review to determine the legality of administrative action and validity of legislation. It is the solemn duty of the judiciary under the constitution to keep different organs of the state within the limits of the power conferred upon them by the constitution by exercising power of judicial review as sentinel on the *qui vive*.

Ahmadi, C.J in **L. Chandra Kumar v. Union of India**<sup>15</sup> has observed "The judges of the Supreme Court have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the

---

<sup>9</sup> *Keshavananda Bharati v. State of Kerala* AIR 1973 SC 1461

<sup>10</sup> *S.R. Bommai v. Union of India* AIR 1994 SC 1918

<sup>11</sup> *Kehar Singh v. Union of India* AIR 1989 SC 653

<sup>12</sup> *Satwant Singh v. Assistant Passport Officer, New Delhi* AIR 1967 SC 1836

<sup>13</sup> *Maneka Gandhi v. Union of India* AIR 1978 SC 597

<sup>14</sup> *Minerva Mills Ltd. v. Union of India* AIR 1980 SC 1789

<sup>15</sup> *Chandra Kumar v. Union of India* AIR 1997 SC 1125

balance of power envisaged by the constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limits”.

### **3. Independence of Judiciary**

Supreme Court vide its series of judgments has ensured independence of judiciary. It has ensured that the Judicial appointment, Transfer and Removal have no or minimum interference of executive. The government passed 99<sup>th</sup> Constitution Amendment bill to establish NJAC for appointment and transfer of judges of High Court and Supreme Court of India. However, the Supreme Court by a 4: 1 majority struck down 99<sup>th</sup> Constitutional amendment. The Supreme Court held that NJAC did not provide an adequate representation to the Judicial Component.<sup>16</sup>

### **4. Curative Petition**

Even after a review petition filed under Article 1377 is rejected by the Court, which may not be the end of the world. The court may still review the case under its inherent power but a very restricted ground. Such a petition can be filed on very strong grounds such as

- i. Variation of the principal of natural justice
- ii. Abuse of the process of the court

In a judgement of far reaching consequence in **Rupa Ashok Hurra v. Ashok Hurra**<sup>17</sup>, a five judge constitution bench of the supreme Court has unanimously held that in order to rectify gross miscarriage of justice in its final judgment which cannot be challenged again the Court will allow curative petition by the victim of miscarriage of justice to seek a second review of the final order of the Court. However, the court has laid down certain specific conditions for the court to entertain such a curative petition under its inherent power to prevent floodgates of unnecessary petitions seeking their second review.

### **5. Post decisional hearing**

In **Maneka Gandhi v Union of India**<sup>18</sup>, the idea of post decisional hearing was evolved by the Supreme Court to maintain a balance between administrative efficiency and fairness to the individual. The court held that the it would not be fair to exclude the application of *audi alteram partem* on the ground of administrative convenience and where pre decisional hearing was not held, post decisional hearing to be conducted in order to ensure that the principle of natural justice was followed during adjudication.

### **6. Right to Life**

Article 21 of the Constitution of India provides right to life. However, over a period of time, Supreme Court has subsumed a variety of rights under the umbrella of Right to life. Some of these rights are as below

- a) Right to Privacy<sup>19</sup>: In a case, Supreme Court held that violation of privacy amounts to violation of right to life guaranteed under the Constitution.
- b) Right to travel abroad<sup>20</sup>
- c) Right to get Pollution Free Environment<sup>21</sup>
- d) Right to free legal aid<sup>22</sup>

---

<sup>16</sup> Supreme court Advocate on Record Association v. Union of India

<sup>17</sup> Rupa Ashok Hurra v. Ashok Hurra AIR 2002 SC 1771

<sup>18</sup> Maneka Gandhi v. Union of India AIR 1978 SC 597

<sup>19</sup> Kharak Singh v. State of Uttar Pradesh

<sup>20</sup> Satwant Singh v. Asst. Passport officer, New Delhi

<sup>21</sup> Subhash Kumar v. State of Bihar, M. C. Mehta v. Union of India

<sup>22</sup> M. H. Hoskot v. State of Maharashtra

- e) Right against solitary confinement<sup>23</sup>
- f) Right of speedy trial<sup>24</sup>
- g) Right against illegal arrest and custodial death<sup>25</sup>

#### 7. Capital Punishment in rarest cases

Death penalty or Capital punishment is the harshest punishment in the Indian penal Code. No other punishment deters man so effectually from committing crimes as the punishment of death. However, the death sentences are rarely given in the Indian criminal courts. In the case of **Bachan Singh vs State Of Punjab**<sup>26</sup>, the Supreme Court held that capital punishment shall be given in the “rarest of the rare” case. However, what constitutes the “rarest of the rare cases” is not prescribed by the Supreme Court or by the legislature.

In the case of **Mithu v. State of Punjab**<sup>27</sup>, the Supreme Court held that the mandatory death penalty is invalid and unconstitutional in nature. However, no comments were made on the consequent legislation for drug and criminal offences wherein the death penalty is considered mandatory. But at the same time, Indian courts actually applied the mandatory death penalty for these crimes.

The recent trend in India is clearly towards the abolition of death sentence. In **Ediga Anamma v State of Andhra Pradesh**<sup>28</sup>, the Supreme Court Observed, “while murder in its aggravated form in the extenuating factors connected with crime, criminal or legal process still is condignly visited with death penalty, a compassionate alternative of life imprisonment in all other circumstances is gaining judicial ground.

In **Raghubir Singh V State of Haryana**<sup>29</sup>, although the Supreme Court accepted the contention that the murder was treacherous, death sentence was reduced to life imprisonment. In **Rajendra Prasad V State of Uttar Pradesh**<sup>30</sup>, the appellant was sentenced to life imprisonment in a previous case but released on Gandhi Jayanti day. He again committed murder and was sentenced to death by the Sessions Judge and his death sentence was confirmed by the High Court. However, the same was converted into life imprisonment by the Supreme Court.

#### Impact of Judicial Activism

The broad view of the recent Supreme Court ruling has some exciting insight into the transfiguration of judicial activism in India. Judicial activism in India has now given the citizens a provoking face. The eyes of the Indian Supreme Court have now gone beyond the protection of the socially and economically disadvantaged. However, its opinions often resemble aspirations rather than adhering to pronouncements.

The Supreme Court broadens the rights of the people according to the circumstance and condition of the right to equality and the right to personal liberty. It gave the expansive meaning to the word life, liberty and personality under Article 21 of the Indian constitution. According to the doctrine of the inventive interpretation of the constitution of India, the Supreme Court after consulting the Chief Justice abolished the constitutionally vested power on the President of India to select judges and conquered the power in the

<sup>23</sup> Sunil Batra v Delhi Administration

<sup>24</sup> Husstainara Khatoon v State of Bihar

<sup>25</sup> D. K. Basu v State of West bengal

<sup>26</sup> AIR 1980 SC 898, 1980 CrLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145

<sup>27</sup> 1980 2 SCC 684

<sup>28</sup> (1974) 4 SCC 443

<sup>29</sup> (1975) 3 SCC 37

<sup>30</sup> (1979) 3 SCC 646

Chief Justice of India and the Collegiums of Four Judges. This shows the workings of judicial activism in the territory as nowhere in the world has the power to select and appoint judges to the judges themselves.

### **Conclusion**

Judicial activism is a tool of Social engineering and an example of legal realism. It enables protecting scared civil liberties and maintains constitutional discipline. It enunciates the concept of basic structure and has a democratized access to apex court. Activism of any kind is always welcome especially from the Judiciary because it is the only institution where citizens continue to repose faith.

Judicial activism is more a matter of compulsion rather than choice. It is only when the other wings of the administration shy away from carrying out their responsibilities and performing their statutory duty; the judiciary has to step in. The objective behind judicial intervention is not just to protect larger public interest or safeguard the cell being of an individual but to restore people's faith in the justice delivery system.