

EFFICACY OF JUDICIAL ACTIVISM IN INDIA : A SOCIO-LEGAL OUTLOOK

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Introduction

Judicial activism and its notion have entered into every dimensions of life of legal system as well as human beings. It may include justice, freedom, equality, integrity which has been enshrined in the Constitution of India. Judicial activism empowers higher judiciary to enter into domain of executives and legislatures if needed for the benefits of public at large. The judiciary with notion of House of Lords in *Thomas Bonham v. College of Physicians*,² and American precedents in U.S. Supreme court, *Marbury v. Madison*³ have paved way for idea of judicial activism. The aim of judiciary is to deliver fair and appropriate justice. In this regard, judiciary may declare any law as unconstitutional if it is inconsistent with constitution of India or fundamental rights or moral values in respective society. If the judiciary exceeds beyond the constitution in achieving justice then the constitutional limitations will limit power of judiciary. Therefore, judiciary exercise its activist role within parameters and limits of Constitution of India, and acceptable to the society.

Judicial Activism: Theoretical Foundation

Adjudication or administration of justice is one of the most important functions of any legal system. In legal system, this task has been allotted to Judiciary which is most important sovereign

function on the notion of Doctrine of Separation of Powers. The relationship between law and justice has been dynamic one and it takes shape as per demands and changing needs of society to reach to grass roots level. The sources of law like morality, ethics, values, religion, faith, sovereign authority are need to be pursued creatively by judicial system around the globe etc. The utilitarian jurist J. Bentham propounded Principle of Utility. It aims at true goal of society ought to be the 'greatest happiness of the greatest number. He further added that, "*We may approve or disapprove of an action according to its tendency to increase or diminish an individual's happiness.*"

Even Prof. John Rawls had enunciated important principles to achieve justice. He said that, "*each person is to have an equal right to the most extensive total system of 'liberty for all.'*" Basic liberties include political liberty, freedom of speech and conscience, freedom of thought, freedom from arbitrary arrest and seizure as defined by the concept of rule of law. He also added that, "*social and economic equalities are to be so arranged that they are both to the greatest benefit of the least advantaged, consistent justice, saving principle and attached to offices and positions open to all under conditions of fair equality of opportunity.*" Therefore, from above it can be analyzed that, the happiness of people is the most important factor for smooth and good functioning of democracy and state. An eminent Indian jurist defines judicial activism in the following words: *(Judicial) Activism is that way of exercising judicial power which seeks fundamental re-codification of power relations among the dominant institutions of State, manned by members of the ruling classes.*⁴ The American Legal Realism is another notable contribution by thinkers like Karl Llewellyn, Jerome Frank etc. Brian Leiter observes, "*The legacy of American legal realism consists of phenomena like these: lawyers now recognize that judges are influenced by more than legal rules; judges and lawyers openly consider the policy or political implications of legal rules and decisions; law texts now routinely consider the economic, political, and historical context of judicial decisions. In this sense it is often said that 'we are all realists now.'*"⁵

Essence and Efficacy of Judicial Activism

The foundation of justice from prism of a major reason which made an impact over judicial system to as an activist today is due to failure of other two organs in the legal system. The duties enshrined by the Constitution of India were not fulfilled at several situations wherein the Judiciary had to act as a promoter, protector and as guide for rights & interests of people. There have been ample incidences of disappointments by the Executive or lethargy of Legislatures which created the vacuum of unjust, unfair and non-exercise of power. These lacunas had to be filled up by the third organ of legal system viz. judiciary. In the judgment of *Vishakha vs. State of Rajasthan (1997)*,⁶ judiciary in spite of absence of any legislation, dealt adequately with sexual harassment of women at workplaces, the Apex court had to lay down certain directives for the executives to follow. In this regard, Soli Sorabjee had observed that, “*it is the executives’ failure to perform its duties and the notorious tardiness of the legislature that impels judicial activism and provides it motivation and legitimacy.*” This statement made a clear picture to note down importance of activist role of judiciary.

The essence and efficacy of activist role of judiciary can be traced from the behavior of Supreme Court of India since its inception. The critical analysis of role of Supreme Court can reveal that it was shift of perception of judiciary from “literal interpretation of the text” to “a conceptual value oriented reading of the same.” In the initial period, the role of court while interpreting constitution of India was very narrow and strict after independence. It was not very prominent to achieve the ideals enshrine in the preamble of the Constitution. It was impact of British tradition as of to give less importance to judicial review. But in the written constitution, judiciary as one of the pillars of the democracy has to act as the guardian of the Constitution. It can be said that judges have turned into true lexical examiner to do absolute and fair justice. In the contemporary era, judiciary had entered into sphere of executive and legislative authority, whenever it was required to meet ends of justice. The need and urge was visible through number of cases to deliver fair justice, to protect rights of poor, vulnerable, disadvantaged class of individuals in the society.

Social Justice in India : Judicial Activism

The preamble of the constitution of India lays down concept of social justice from the prism of Chairman of Drafting committee of Constitution of India. It Also Provided Fundamental Rights and Directive principles of state policy to achieved ideals of preamble of the constitution. This notable and noble ideals and values are adhered by judiciary time to time with their creative and wider interpretation to achieve justice. The liberal and flexible approach of higher judiciary had paved way for evolution of judicial activism to strengthen social justice. Indian judiciary has followed approach of courts of America as to give directions to state and its machinery to take appropriate steps, positive action, and affirmative approach towards securing fundamental rights of people. It was by way of *Marbury vs. Madison* judicial review started in America in 1803. It was observed in this case that, “*the constitution was the fundamental and paramount law of the nations and it is for the court to say what the law is.*” If there was conflict between a law made by the parliament and the provisions in the constitution, it was the duty of the court to enforce the constitution and ignore the law. The twin concepts of judicial review and judicial activism were born. The factors like conviction, courage, innovative, prescience, and realistic helps judiciary to complete assigned task. The judiciary may not have sword or specific purse but it is Constitution of India as powerful weapon in hands of judiciary. The duty of judiciary is in the fulfillment of basic needs of life of individuals. The activist’s role played by judiciary is not charity but it is fundamental constitutional demands and commands of the

constitution.

There are number of glimpses of activist role played by judiciary in India. In the case of *Maneka Gandhi vs. Union of India*⁷, the Supreme Court held that, the right to travel abroad is a fundamental right guaranteed under article 21 of the Constitution, and any procedure which permits impairment of individual's right to go abroad without giving him a reasonable opportunity to be heard be concerned as unfair and unjust. In *Hussainara khatoon vs, Home Secretary*⁸, the right of an under trial prisoner for speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art.21. of the Constitution. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair and just.'

The innovation of judges of higher judiciary had sown the seeds of concept of public interest litigation which opened doors of judiciary to every individual. The difficult task was transformed into easy way by the efforts of judiciary. Justice Krishna Iyer, was the pioneer of idea of Public Interest Litigation in India. In the case of *Mumbai Kamagar Sabha vs. Abdulbhai*⁹ Justice Krishna Iyer sown the seeds of public interest litigation. In *Bandu Mukti Morcha vs. Union of India*¹⁰, Justice Bhagwati explained the nature of public interest litigation as follows:- "Public interest Litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the significant tune of our constitution." Justice Bhagwati further mentioned that, "Art. 32 does not merely confer power on the court to issue a direction, order or writ for the enforcement of the fundamental rights but it also lays a constitutional obligation on this court to protect the fundamental rights of people and for that purpose the court has all incidental and ancillary powers including to forge new remedies and fashion new strategies designed to enforce fundamental rights. It is in realization of this constitutional obligation that this court has innovated new methods and strategies particularly for enforcing the fundamental rights of the poor and disadvantaged who are denied their human rights and to whom freedom and liberty have no meaning." Therefore, Supreme Court of India has recognized its constitutional obligations and reiterated it through number of judicial pronouncements.

Judicial Activism & Human Rights

The judicial activism has many colours, dimensions, shades and variations. It does not have any limitations or boundaries from the point of view of attaining goals of the constitution as well as universal human rights. The human rights jurisprudential ethos in India was developed and shaped by Judiciary. Though its origin can be traced back from ages of *Magna Carta* but the values of human rights philosophy were adhered by the judiciary through number of judicial trends. Judicial activism gave an ample discretion for wide interpretation of legislation for judiciary, which laid to protection of human rights of individuals in true sense. In the case, *Olga Tellis vs. Bombay Municipal Corporation*¹¹, It was held by the Supreme Court that the right to dwell on pavement or in slums by the indigent was accepted as part of right to life enshrined in Art.21 of the Constitution of India. *M.C. Mehta vs. State of Tamilnadu*¹² wherein Supreme Court held that, the tender age of the children should not be abused and they should have enough opportunities and facilities to develop in a healthy manner.

In the case of *People's Union for Democratic Rights vs. Union of India*,¹³ it was held that, Public Interest Litigation which is a strategic arm of legal aid movement and which is intended to bring justice within the reach of poor masses, to reconstitute the low visibility area of humanity, is

a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character. Therefore, it is intended to promote and indicate public interest which demanded that violation of constitution or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unaddressable. Even in *Neelabati vs. State of Orissa*,¹⁴ in this case, the court held that, the violation of human rights and fundamental rights, the state and its agency must award compensatory compensation and rejected the defense of sovereign immunity. The court held that custodial death amounts to violation of fundamental right to life.

Conclusion

The above analysis signifies the impact and influence of activist role of judiciary in the realm of social welfare state. In the contemporary era, the interpretation, strategic devices, tools, techniques adopted by Higher Judiciary reach to speedy justice to protect fundamental rights and interests of deprived class. It is highly commendable that activist role of judiciary leads to achieve integrity, unity and equity within parameters of legal system and society. It is indeed needed to ameliorate the plight of the poor, vulnerable as well as disadvantaged victims by imparting justice to them and eradicate discriminatory treatment. The cognizance and recognition evolved by judiciary protects, promotes human rights of all individuals and strengthen democratic fabric of nation.

(Endnotes)

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- 2 8 Co. Rep. 107a, 113b, 77 Eng. Rep. 638, 646 (1610 Court of Common Pleas United Kingdom).
- 3 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803 Supreme Court of United States)
- 4 Upendra Baxi, *Courage Craft and Contention -The Indian Supreme Court in the Eighties* (Bombay : 1985) P.10
- 5 Brian Leiter, "Legal Realism," in *A Companion to Philosophy of Law and Legal Theory*, ed. by D. Patterson, Oxford: Blackwell, 1996, p. 261.
- 6 AIR 1997 SC 3011
- 7 AIR 1978 SC 597
- 8 AIR 1979 SC 1360
- 9 (1976) 2 SCC 832
- 10 AIR 1984 SC 803
- 11 AIR 1986 SC 180
- 12 AIR 1991 SC 417
- 13 AIR 1982 SC1473
- 14 AIR 1993 SC 1960