BLOGS

Judicial Activism in India: Navigating the Boundaries of Judicial Power

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Introduction

Judicial activism is a concept in which the judiciary plays an active role in interpreting and sometimes even shaping laws to promote justice and protect the rights of citizens. Over the years, several landmark judgments have exemplified judicial activism in India.

In this post, we will briefly explore important cases, highlighting their facts, issues, and judgments pertaining to judicial activism against the backdrop of its advent and preponderance in

the Indian jurisprudence.

Definition of Judicial Activism

Judicial activism is the practice of judges making rulings based on their views rather than a strict interpretation of existing law. Often judicial activism is used to examine actions of the State.

It contrasts with judicial restraint, which emphasizes adherence to precedent and a certain degree of reluctance to liberal interpretation of the law.

The Role of Courts in the Current Socio-legal Structure

After **the emergency rule in India, there was a significant shift** in the judicial approach. Before 1977, the courts had a more conservative stance, even in reported violations of fundamental human rights. However, **after the emergency rule, judicial activism** in India gained momentum.

This change in approach was driven by changing times and the people's aspirations. Public interest litigation (PIL) played a crucial role in this transformation. The Supreme Court of India relaxed the traditional concept of locus, allowing public-spirited citizens to bring public causes to the court. As a result, the number of PIL actions has been on the **increase significantly since 1977**.

Fundamental human rights violations were reported during the emergency rule between 1975 and 1977. However, the courts' approach remained conservative. For example, in the case of ***ADM Jabalpur v. Shukla (1976)***, the Supreme Court held that a detainee under preventive detention did not have the common law right to secure his release from an illegal and arbitrary preventive detention order, even if it was passed without the authority of law. The court reasoned that the fundamental rights guaranteed under the Constitution were suspended during the emergency.

The shift in judicial approach in India, from a conservative stance to judicial activism, responded to the changing times and the need to address the people's aspirations, mainly through public interest litigation. This change has allowed the judiciary to play a more active role in safeguarding the rights of citizens and redressing grievances.

Judicial Activism in India and the Expansive Evolution of Article 21

One can argue that judicial activism has aided in protecting Fundamental Rights in India through creative judicial interpretation.

Article 21 of the Constitution of India, which states that no person shall be deprived of life and liberty except according to the procedure established by law, has evolved significantly through judicial interpretation.

Indian courts have played a crucial role in expanding the scope and application of Article 21, effectively incorporating a range of rights not explicitly outlined in the Constitution.

This evolution has been significant in protecting and advancing the fundamental rights of individuals. The courts have creatively interpreted Article 21 to encompass various essential rights for a person's dignity and well-being. This broad interpretation has been instrumental in safeguarding individual freedoms and ensuring justice.

One notable milestone in this evolution occurred in the case of ***Keshavananda Bharathi (1973)***, where the Supreme Court held that a constitutional amendment, even if duly passed by the legislature, could be deemed invalid if it damaged or destroyed the basic structure of the Constitution. This groundbreaking decision established the supremacy and permanence of the Constitution, ensuring that its fundamental features were beyond the reach of Parliament.

Critics have pointed out that the court has not provided an exhaustive definition of these basic features, potentially allowing the judiciary considerable discretion in interpreting and protecting them. Nonetheless, Article 21 has become a dynamic tool for Indian courts, enabling them to read into it a comprehensive set of rights not explicitly enumerated in the Constitution.

Judicial Activism and Gender Equality: The Role of the Judiciary in filling the Legislative Void on Workplace Sexual Harassment

In the landmark case of ***Vishaka v. State of Rajasthan***, the Supreme Court of India took an unwavering stance on the issue of sexual harassment of women in the workplace. The court emphatically declared that each incident of such harassment violated the fundamental rights of gender equality and the right to life and liberty.

Lamenting the legislature's inaction in enacting comprehensive legislation to address this critical issue, the Supreme Court invoked its authority under **Article 32 of the Constitution** to enforce fundamental rights. It established guidelines and norms for strict adherence, effectively creating a legal framework for combating sexual harassment in workplaces. In doing so, the court boldly declared that these guidelines held the same weight as the law under **Article 141 of the Constitution**.

This judicial intervention represented a precise instance of judicial activism and a temporary assumption of legislative powers. While such actions may appear to be usurpations of legislative authority, they ultimately serve the greater good, especially when the legislature fails to act.

Origins of Judicial Activism in India

The **emergence of the theory of judicial activism in India can be traced back to the late 1960s and early 1970s**, a period marked by significant ideological confrontation **akin to what has occurred in the United States of America and the United Kingdom**.

During this time, India witnessed a clash between a conservative executive and a progressive judiciary, or at times, a progressive Parliament, and a conservative court, leading to a dynamic interplay of powers.

The Clash Between Executive and Judiciary

One pivotal moment in this evolution of judicial activism occurred during the tenure of Prime Minister Mrs. Indira Gandhi, who sought to implement progressive socialistic policies prominently encapsulated in her slogan "garibi hatao".

Her measures included abolishing the Privy Purses and privileges granted to the former rajas and princes of pre-independent India and **nationalizing the 14 major banks** to serve the underprivileged sections of society better.

However, a conservative judiciary did not view these legislative actions favorably and declared them unconstitutional. This was reminiscent of the **challenges faced by President Franklin D. Roosevelt during the Great Depression in the United States and his New Deal legislation**. In India, the Supreme Court's judgments on Privy Purse abolition and bank nationalization were seen by Mrs. Gandhi as instances of judicial overreach.

In response to this perceived judicial overreach, Mrs. Gandhi took decisive action. It is believed that, following the advice of Mohan Kumaramangalam, an eminent lawyer and Union Minister at the time, the most senior judges of the Supreme Court who had participated in the majority judgments in these cases were overlooked for appointment as Chief Justice of India.

Instead, a dissenting judge, Mr. A. N. Ray, who ranked fourth in seniority, was appointed to the position. This move led to the resignation of the three senior judges (Justices Hegde, Shelat, and Grover).

This episode marked a crucial turning point and set the stage for the theory of judicial activism in India. It was born out of the confrontation between the executive and the judiciary, highlighting the delicate balance of power and the evolving relationship between these two branches of government.

Criticisms of Judicial Activism

1. Lack of Accountability in the Judiciary

In a healthy democracy, the adoption of an all-powerful attitude by the judiciary raises concerns, notably because the judiciary, as an institution, lacks the same degree of accountability to the people as the legislature and the executive.

2. Judicial Actions and Accountability

The executive's actions are subject to judicial review in cases of social, economic, or political injustice or deviations from legal and constitutional provisions.

The highest court intervenes when the legislature enacts laws beyond constitutional boundaries or acts arbitrarily against the basic structure of the Constitution.

However, only a larger bench or a constitutional amendment can address the issue when the judiciary itself oversteps.

3. Impeachment as the sole removal mechanism

The only mode of removing judges, as prescribed in the Constitution, is impeachment, a cumbersome process.

The judiciary's lack of accountability necessitates self-restraint and cautious decision-making.

4. The Call for Judicial Responsibility

The late Chief Justice Ismail Mohamed of South Africa emphasized thatjudges' integrity, judicial temperament, character, and sense of responsibility give the judiciary's claim to independence and legitimacy credibility and respect.

5. Judges' Responsibility and Judicial Power

Judicial power, like legislative or executive power, is susceptible to abuse.

The critical distinction is that while an independent judiciary can police legislative and executive abuses, there is no effective constitutional mechanism to regulate judicial abuses.

6. Onerous Judicial Responsibility

Judges, especially in a constitutional setup with no constitutional referee to review their actions, must be keenly aware of the profound responsibility that accompanies judicial power.

The potentially significant reach of judicial power necessitates a commensurate depth of judicial responsibility.

7. Abuse of contempt power

Higher courts' use of contempt power has often been criticized as unwarranted and unregulated. Instances of abuse have outweighed its proper use, raising concerns about the judiciary's self-image.

Way forward

The former Solicitor General of India, Mr. Dipankar P. Gupta, highlights the dangers of judicial activism potentially fueling excessive administrative activism.

1. Balancing Activism

The risk lies in the possibility of judicial activism leading to increased activism among other state authorities.

The judiciary should compel authorities to act and issue appropriate executive orders instead of substituting judicial orders for administrative ones.

2. Accountability and court mandates

Authorities should be held accountable to the court, which should guide them in effectively fulfilling their duties.

The judiciary should refrain from arrogating the powers of the executive and legislature and remain mindful of its constitutional limits.

3. Maintaining a Delicate Balance

The Supreme Court's acknowledgment that it should not assume the roles of the executive or legislature underscores the importance of maintaining a balanced separation of powers and respecting constitutional boundaries.

4. Striking a Balance in Judicial Activism

In the intricate web of democracy, judicial activism plays a significant role in safeguarding the rights and principles enshrined in the Constitution. It has been a potent tool for rectifying social injustices, upholding fundamental rights, and ensuring accountability in the functioning of the government. Yet, it is a tool that must be wielded judiciously and keenly aware of its limitations.

Conclusion

Judicial activism, while laudable in many instances, should never transform into judicial overreach. The boundaries of power separation among the three branches of government are sacrosanct and must be respected. The judiciary's role is not to supplant the executive or legislature but to ensure they adhere to constitutional principles and perform their duties diligently.

The judiciary must exercise self-restraint, always mindful of the delicate balance of power in a democratic system. While it is tasked with reviewing the actions of the other branches, it should do so without infringing upon their legitimate spheres of operation. The executive branch and the legislature shouldn't use judicial activism as a justification to evade their obligations; instead, it should force them to carry out their constitutionally mandated duties.

Moreover, accountability in the judiciary itself is a crucial aspect of maintaining public trust and confidence. Mechanisms for addressing judicial excesses should be accessible and practical, ensuring that the judiciary remains a responsible and impartial arbiter.