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Judicial Activism- Trends, Scope and Significance

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ABSTRACT: In judicial activism the courts go beyond applied laws for social decisions. The judge decides constitutional issues invalidating legislative actions. Activism is however the willingness of judge to strike down the rule of government. The supreme court is conservative in comparison to legislatures and also more liberal than congress in case of politics. The constitution says that in any controversy politics is difficult than the law. Upholding of citizens and preservation of constitutional and legal ways is judicial activism. This philosophy of judicial system motivates judges for progressive and new social policies. Methods of judicial activism are judicial review, PIL (personal interest in litigation), supervisory power of high courts on lower ones. The Indian judiciary is the guardian and protector of Indian constitution. Judicial activism counters the opinion and judiciary is the mere spectator.

I. INTRODUCTION

There are many pros and cons of judicial activism. Judges have to interrupt their personal feelings instead of upholding laws. It balances and controls other government branches. Oath of bringing justice to the country is active. It checks the misuse of power by government not causing harm to citizens and addresses problems hastily. It limits the functioning of the government. [1]

The judicial activism is opposite of judicial restraint which obliges to follow constitutional laws while implementing its duties. Judiciary surpasses the line of powers and judges can freely decide and make laws of their choice. This has to be respected and a clear balance is maintained. Constitutional values can hence be sustained. [2]

II. DISCUSSION

Democracy excess is also considered bad and many political aisle members accuse supreme court of being extremely activist. Who criticize the courts misunderstand judicial review. This is however not judicial supremacy and the implementation applies equal participation. Over active judiciary cases have been found in Keshvanand Bharati Vs. Kesala, Minerva Mills Vs. Union of India, India of Gaudlis Vs. Raj Naraian & SP Vs. Union of India etc.[3]

In judicial interpretation the activist role of judiciary in india is better. The legal doctrine that no one except the affected person can approach a court for a legal remedy was holding the field both in respect of private and public law adjudications until it was overthrown by the PIL wave. PIL is a manifestation of judicial activism and have many procedure complexities. It helps in improvement of many disadvantaged sections of society who are unable to seek justice and beginning with the Ratlam Municipality case the sweep of PIL had encompassed a variety of causes.[4]

Golak Nath case is also an example of judicial activism in that the Supreme Court. For the first time by a majority of 6 against 5, despite the earlier holding that Parliament in exercise of its constituent power can amend any provision of the Constitution, declared that the fundamental rights as enshrined in Part III of the Constitution are immutable and so beyond the reach of the amendatory process.[5]

The declaration of law by the Supreme Court that Indian Parliament has no power to amend any of the provisions of Part III of the Constitution became the subject matter of very animated discussion.

Kesavananda Bharati had given a burial to the controversy of amendment of any of the provisions of the Constitution. By a majority of seven against six, the court held that under Article 368, Parliament has undoubted power to amend any provision in the Constitution but the amendatory power does not extend to alter the basic structure of the Constitution.[6]

III. CONCLUSION

Matters of policy of government are subject to the Court's scrutiny. Distribution of food-grains to persons below poverty line was monitored, which even made the Prime Minister remind the Court that it was interfering with the complex food distribution policies of government. In the 2G Licenses case, the Court held that all public resources and assets are a matter of public trust and they can only be disposed of in a transparent manner by a public auction to the highest bidder. This has led to the President making a Reference to the Court for the Court's legal advice under Article 143 of the Constitution. In the same case, the Court set aside the expert opinion of the Telecom Regulatory Authority of India (TRAI) to sell 2G spectrum without auction to create greater teledensity in India.[7]

The Court has for all practical purposes disregarded the separation of powers under the Constitution, and assumed a general supervisory function over other branches of governments. The temptation to rush to the Supreme Court and 21 High Courts for any grievance against a public authority has also deflected the primary responsibility of citizens themselves in a representative self government of making legislators and the executive responsible for their actions. The answer often given by the judiciary to this type of overreach is that it is compelled to take upon this task as the other branches of government have failed in their obligations. On this specious justification, the political branches of government may, by the same logic, take over the functions of the judiciary when it has failed, and there can be no doubt that there are many areas where the judiciary has failed to meet the expectations of the public by its inefficiency and areas of cases.[8]

Justice Jackson of the U.S. has aptly said: "The doctrine of judicial activism which justifies easy and constant readiness to set aside decisions of other branches of Government is wholly incompatible with a faith in democracy and in so far it encourages a belief that judges should be left to correct the result of public indifference it is a vicious teaching." Unless the parameters of PIL are strictly formulated by the Supreme Court and strictly observed, PIL which is so necessary in India, is in danger of becoming diffuse, unprincipled, encroaching into the functions of other branches of government and ineffective by its indiscriminate use.[9]

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