

Steps towards Judicial Activism In India

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Abstract :

An independent judiciary has been established in India by the Constitution. Whose task is to deal with the promises before, them impartially. In the initial years, the judiciary was discharging its responsibilities as provided by the Constitution, but later the situation became such that the legislature and executive, both the other organs of governance, appeared unable to fulfill their obligations. There seemed to be seriousness in the ideals of the Constitution and lack of sensitivity to public interest, in such a manner, the judiciary, which was still mute in compliance with traditional values and standards, rose up to secure the rule of law. The judiciary has introduced some social and welfare functions, which has introduced some social and welfare functions, which has been named activism of the Judiciary, while introducing public sensitivity. The basis of judicial activism is constitutional which the judiciary has explained from time to time in interpreting the constitution.

Keywords:- Independent, Judiciary, Executive Interpreting

Introduction :

The Indian judiciary has come to exercise vast powers of Judicial review in respect of the legislative and executive functions of the State and of the judicial actions of the judiciary. The supreme courts and the High Courts not only act as the arbiters to determine disputes that may arise between the centre and states but also protect and enforce the fundamental rights of the citizens against the arbitrary actions of the State. They also interpret the laws made by the legislature and they have a final say in the validity of any legislative or executive action of the State if it contravenes or abridges the fundamental rights of the citizens. It is a unique feature identified only with the Indian higher judiciary that it has the power to determine the validity of Constitutional Amendments which perhaps is seen nowhere under any other Constitution, written or unwritten. This power of judicial review is also vested by the judiciary by implication. even in certain quasi-judicial bodies like Administrative tribunals.

Objectives :

1. Assess the role of Judiciary in modern Constitutional state.
2. To discuss and analyze the concept of judicial activism and reparation of power with particular reference in India.

Judicial Activism in India

The Supreme court of India in its initial years was more a technocratic court but slowly began to become more active through constitutional interpretation . The court became an activist through its involvement and interpretation of law and statutes but the whole transformation took years and it independent body that is evenhanded , unbiased, and unprejudiced. It functions within the framework of the constitution defined under the concept of the reparation of powers. It interprets the constitution which is supreme and at times needed supports the rule of law and the standards laid down in the constitution. The supreme Court of India is considered the sentinel qui vie and protects the fundamental and constitutional rights of the people.”

What is judicial activism :

- The judiciary plays an active role in maintaining constitutional values and ethics under the constitutional system.
- The judiciary uses justice and creativity to address civil dilemmas and to fill the gap between the positive and normative aspects of the laws ,resulting in justice activism.
- Judicial activism is a recent development in the sphere of judiciary to realize the objective of social justice with the erosion of the credibility of political leadership , the people are bound to depend more on the exercise of judicial power because in it they seek refuge from the improper exercise of legislative and executive powers”³.

Principal of Separation of power :

Under various provisions ,the constitution has clearly drawn the line between the legislature and the judiciary to maintain its independence in the respective functioning .Although there is no explicit mention of the principle of separation of power in the constitution of India , there is substantial difference of India , there is a substantial difference in the functions of various organs of government , thus one part of the government cannot interfere in the functions of the other organ . Separation of powers is a doctrine of constitutional law under which the three branches of government executive, legislative, and judicial are kept separate .This is also known as the system of checks and balances, because each branch is given certain powers so as to check and

balance the other branches .Each branch has separate powers, and generally each branch is not allowed to exercise the powers of the other branches.

Where article 121 and 211 forbid the legislature from discussing the conduct of any judge in the discharge of his duties , Articles 122 and 212, on the other hand prevent the courts from sitting in judgment over the internal proceeding of the legislature .

Article 105(2) and 194(2) protect the legislators from the interference of the Courts with regards to his/her freedom of speech and freedom to vote.

Arguments in favors of judicial activism :

- It provides a system of checks and balances at other government branches .Judicial activism is a delicate practice involving creativity .This brings about the necessary innovation in Judicial adjudication.
- Judicial activism gives judges the opportunity to use their personal knowledge in cases where the law failed to provide balance.
- In addition ,judicial activism also provides insight into the issues ,which is why it instills a quick confidence in the established justice system and its decisions,
- Many times public power harms people hence it becomes necessary for judiciary to investigate misuse of public power.
- It is a good options to provide solutions quickly on various issues where the legislature is stuck on the majority issue.

Judicial Activism sets out a system of balances and controls to the other branches of the government. It accentuates required innovation by way of a solution .In cases where the law fails to establish a balance ,judicial activism allows judges to use their personal judgment.

Arguments in opposition to judicial activism

- Judges can override any existing law . Therefore it clearly violates the boundary line formulated by the Constitution.
- Judicial opinion of judges becomes standard for ruling other matters .Additionally, decisions may be motivated by personal or selfish motives that may harm the public at large.
- Due to repeated intervention of the courts, the trust of the people is reduced towards the quality , integrity and efficiency of government institutions,

What makes the judiciary to step –in?

- When the legislature fails to make the necessary legislation to suit the changing times and governmental agencies fail miserably to perform their administrative functions sincerely ,it leads to an erosion of the confidence of the citizens in the constitutional values and democracy. In such a scenario , the judiciary steps into the areas usually earmarked for the legislature and executive and the result is the judicial legislation and a government by judiciary.
- In case the fundamental rights of the people are trampled by the government or any other third party , the judges may take upon themselves the task of aiding the ameliorating conditions of the citizens,
- The greatest asset and the strongest weapon in the armoury of the judiciary is the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even handed justice and keep , the scales in balance in any dispute.

Examples where the judges may have encroached upon the legislature :

- Arun Gopal v. Union of India (2017) : The supreme court fixed timings for bursting Diwali fireworks and prohibited the use of non-green fire works , although there are no laws to that effect.
- MC . Mehta V. Union of India (2018) :- The court annulled the statutory Rules 115(21) of the Central Motor Vehicle Rules ,1989 when it directed that no BS-4 Vehicle should be sold after March 30,2020 and that only BS-6 vehicles can be sold after that date .
- Subhash Kashinath Mahajan V. State of Maharashtra (2018):- The Court amended the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ,by annulling Section 18 which said that no anticipatory bail will be granted to persons accused under the Act ; by requiring a preliminary enquiry ; and by prohibiting arrest under the act except with permission in writing by the appropriate authority.
- National Green Tribunal (NGT) : Ordered that a no 15 year old petrol driver or 10 year old diesel driven vehicle will ply in Delhi ,and the Supreme Court has directed impounding such vehicle though neither the NGT nor the supreme court are legislative bodies.

Conclusion :

Judicial activism is not supported by the constitution it is a product made entirely by judicial officers .when the judiciary steps on the demarcation of powers granted in the name of judicial

activism , one can say that the judiciary then begins to abolish the concept of separation of powers specified in the constitution .Judges are free to make laws according to their choices .

So that they not only go against the principal of separation of power ,but it can also create uncertainty in law because on this basis each judge according to his wishes and admirers will start drafting its own laws.

Therefore, judicial discipline should be considered to maintain a clear balance .It is the duty of the legislature to make laws and to fill the gaps between laws and it is the executive 's job to implement them properly. The advantage of this is that the judiciary will have to explain only one function , its jurisdiction as a result it can maintain a coherent balance and constitutional values among all the organs of government.

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