



ACTIVENESS OF JUDICIARY IN INDIAN DEMOCRACY

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ABSTRACT :

The scope of activeness of Indian judicial system has not limited by law. It always works in the favor of society it tried to look into the matters of common people and gives beneficial decision and makes laws compliant to the society. As John Rawls said in his 'Theory of Justice', "Justice is the first virtue of social institution, as truth is of thoughts". 'Justice' is not only the word but is the philosophy which has no limits, It is said that justice is for all, 'rich or poor, strong or weak, black or white, men or women etc. even other animals are also has a right of justice. The objectives behind this research paper are to focus the expansion of activeness of judiciary in Indian democracy and governance. Many times it seen that these judicial activism and judicial review is mercy for the section of society which is unable to protect their rights sometimes we can say fundamental rights too by only with a weapon of public interest litigation. Democracy has three pillars Legislature, Executive and Judiciary. Judiciary is therewith provides justice all, sometimes judiciary also intervenes in between the legislature and executive which also provide justice to the society and also to take all possible steps to protect the interest of society. Indian constitution provides legal framework to the judicial activism because it gives protection to the fundamental rights which are the basic rights for the development of man and without these rights justice has no meaning.

KEYWORDS : Judiciary in Indian democracy, judicial system.

INTRODUCTION

As Dr. B.R. Ambedkar said, "Democracy is not merely a form of government. It is primarily a mode of associated living of conjoint communicated experience. It is essentially an attitude of respect and reverence towards fellow men". So that judiciary should be active in democracy because while measuring the development of society the last person in the ladder should get justice. In democracy government rests on the three pillars i.e. Legislature, executive and judiciary, these pillars constitute the organs of governance. The Constitution of India provides supreme law of the land, which provides powers and functions to these pillars to protect democracy. The primary function of the legislature is to make law and that of executive is to execute that law and judiciary is to enforce that law and measure its constitutionality which provides security to society that Justice has been served. Legal survey is the intensity of the Supreme Court to look at the lawfulness of authoritative authorization just as official requests. The constitution of India built up a coordinated legal framework where preeminent court at the top and high courts underneath it and under these high courts chain of command of area and other lower courts.

The highest judicial body has following roles assigned by The Constitution of India.



They areas follow:

- Supreme Court has to interpret the constitution to solve any ambiguity about provision of the constitution.
- Supreme Court empowers as the protector of fundamental rights which are guaranteed by the constitution.
- To solve the matters referred by subordinate courts

The philosophy of judicial activism developed in the USA. The term was first originated by Arthur Schlesinger. In India, Judicial activism was introduced in the mid of 70's by Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice o. Chinnappa Reddy and Justice D. A. Desai.

Judicial activism can be define as following-

"Judicial activism is the practice in the judiciary of protecting fundamental rights through designs that depart from precedents. The concept of public Interest Litigation (PIL) is the manifestation of judicial activism".

"Judicial activism means active role of judiciary in protecting justice.

Justice J.S Verma , describe Judicial Activism as " the active process of implementation of the rule of law, essential for the preservation of a functional democracy".

In the modern day democracy, judicial activism can be defined as a mechanism in which it used to curb legislative defects and despotic power usage of executive by enforcing constitutional limits. that is when executive and legislature fail in their responsibility, then The Constitution of India operates. The legal executive practicing popularity based force which appreciates freedom of a high request. In some cases freedom could get perilous and undemocratic without constitutional rules, discipline with responsibility: without these, the robes may demonstrate pompous. The way of thinking behind legal activism is that judges as an autonomous "trustee" or needs to assume a job as a free strategy producers for the benefit of society and which goes past the customary job of mediator of the constitution.

JUDICIAL ACTIVISM IN INDIA

Judicial activism in India, According to SP Sathe "a court giving a new meaning to the provision so as to suit the changing social or economic conditions or expanding the horizons of the rights of the individual is said to be an activist court."

In India judicial activism lies in the Supreme Court and the high courts but not on the sub-ordinate courts which checks the constitutionality of any law made by legislation. It denotes the proactive role played by the judiciary in the protection of the rights of the citizen and in promotion of the justice in society.

EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

The history of judicial activism in India can be found back in 1893 when justice Mehmood of the Allahabad High Court delivered a dissenting judgment of a under-trial who did not have money to engage a lawyer, this judgment showed the seed of an activism in India.

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Preminent Court has accomplished the pinnacle of its forces in 1973 with its case to nullify even a change of the Constitution on substantive grounds. As a famous legal advisor summarizes, from around 1974, the court's accentuation has moved to amending the official activities of Government for their un-sensibility especially in Administrative issues

JUDGMENTS :

- **KesavanandaBharativ.State of Kerala**

In KesavanandaBharativ. State of Kerala, (1973) 4 SCC:AIR 1973 SC 1461

“Justice Khanna said that Judicial Review has become an integral part of our Constitutional system and if the provisions of the Statutes are to be found violative of any of the Articles of the Constitution which is the touchstone for the validity of all the laws, the Supreme Court and the High Courts are empowered to strike down the said provisions of the Statutes.”

- **Sajjan Singh v. state of Rajasthan**

In Sajjan Singh v. RajasthanAIR 1965 SC 845

This case raised questions whether the central privileges of residents could turn into a toy of the larger part party in Parliament. The judges had the conclusion that the law passed by the Legislature can be pronounced void on the off chance that it disregards the Fundamental Rights. At the point when article 368 gives on parliament the privilege to revise the constitution, the force being referred to can be practiced over all the arrangement of the constitution.

- **Minerva Mills v. Union of India**

Minerva Mills v. Association of India AIR 1980 SC 1789It saw that "It is the legal executive to maintain the constitution esteems and to implement the sacred impediments. That is the quintessence of the standard of the law, which entomb alia requires that 'the activity of the forces by the Government it be the lawmaking body or the official or some other position, be molded by the constitution and the law.' The intensity of the Judicial Review is a necessary piece of the constitution framework, the intensity of legal survey is the Part of the essential structure of the Constitution."

Judicial activism is not an easy task; it proposes different things to different persons. Many people denounce judicial decisions as social activists when they do not agree with them. In India it is very important to give access to the court for poor and disadvantaged sections of society, so that there is a Public Interest Litigation (PIL) is unexceptionable judicial activism. In Indian Judiciary the supreme court of India become relevant to the nation which is not contemplated by the makers of the constitution and become active in providing social justice.

PIL jurisdiction began with the idea of potential of the Supreme Court in providing social justice, in 1979, entertained complaints through social activists which grab attention of the judicial system to the condition of certain sections of society. It open ups the voice against various discrepancies in governance, policy making and implementations. It raised voice against the bad practices which deprived the basic rights of marginalized section of society.

The social activity measurement of PIL has been upheld by another sort of "open reason suit" in courts. In this sort of prosecution, the courts not just looked for ensuring the privileges of the hindered or poor segments of the general public however for adjusting the activities of the official or open authorities or divisions of government or open bodies. There are different instances of this sort of mediation can be seen day by day. In light of a legitimate concern for forestalling contamination, Court ordered command over outflows through autos, businesses, family units, agribusiness, power stations, and so forth. The Court is only moved for better governance and administration, which does not involve the exercise of any proper judicial function.

Judicial activism is gaining prominence in the present days. In the form of Public Interest Litigation (PIL), citizens in getting access to justice.

FACTORS OF JUDICIAL ACTIVISM-

Judicial activism has arisen mainly due to the following factors:-

- Most important factor for judicial activism is failure of Legislative and Executives.

- Citizen has a doubt that legislative and judiciary are unable to deliver the goods
- Inefficiency of governance system
- Misuse of the some provisions of the constitution for political gains.
- The violation of basic human rights and fundamental right of citizen.
- The government fails to protect the basic rights of citizen and unable to provide efficient, honest just system of law.

SECTORS OF JUDICIAL ACTIVISM -

Last some years witnessed the wide area of judicial activism, which gained prominence in various sectors. Such as health, education, child labor, environment, policy implementation, political corruption, governance and administration.

There are various cases where judiciary shows its activism time to time, cases relating to, Punjab Police, Bihar Care Home cases, Bandhua Mukti Morcha,, Bombay Pavement Dwellers the judiciary has shown its commitment to participatory justice, just standards of procedures, immediate access to justice, and preventing state action.

In recent period a fascinating point was achieved in the renowned NAZ FOUNDATION CASE. The applicants contended 'such that the restriction of certain private, consensual sexual relations (gay person) gave by Section 377 IPC preposterously abbreviates the privilege of protection and pride inside the ambit of ideal to life and freedom under Article 21 can be condensed just for a convincing state intrigue which, in its accommodation, is out of order here' An intriguing point was accomplished in the prestigious NAZ FOUNDATION CASE.

IMPACT OF ACTIVENESS OF JUDICIARY ON GOVERNANCE:-

Judicial activism has got considerable impacts on relationship between executive and judiciary.

1. When executive fails in its responsibilities, Judiciary curb dilemma of the executive by enforcing constitutional limitations.
2. It makes governance responsible through address the concern of people.
3. Results in judicial tyranny where sometimes judges would be ruling based on personal or political emotions.
4. Sometimes it results in diversion of constitutional and institutional resources for other than those of constitutionally assigned reason.

Positive Impact

As mentioned in constitution our preamble and Directives Principles of State Policy it gives access to social and economic justice.

Activeness of Judiciary enlarges the scope of Justice.

- 1) 2G Spectrum corruption case
- 2) Coal block allocations corruption case
- 3) Electoral reforms
- 4) Increasing pollution level
- 5) Reservation Policy.

Negative impact

- 1) Interference in working of legislature. E.g. (Jharkhand Legislative Assembly)
- 2) Interference in military operation. E.g. (J&K-1993)

CONCLUSION:-

Doctrine of activeness of judiciary in India is that courts should take an active role in solving social, economic, and political problems. It should be the guardian of citizen. It must be protector of basic fundamental rights enumerated in the constitution.

The working of active judiciary is closely related to protection of constitutionalism, interpretation of constitution, statutory construction and separation of powers.

There is very thin border which divides activism and adventurism, while judicial activeness is positive supplement to the falling governance system, whereas overreach in to executive domain may cause intrusion into the functioning of democracy.

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