

JUDICIAL ACTIVISM IN INDIA

Prepared by,
Mr. Thomas G.M.,
Associate Professor,
Pompei College Aikala DK.

Introduction:

- The concept of judicial activism has been a new development in the history of the functioning of Indian judicial system since 1980s.
- Judicial Activism refers to the active role played by the judiciary in protecting the public interest, even going beyond its traditional role to render justice.
- In the process the judiciary has overstepped the exclusive spheres of policy making business of the legislature and executive wings of the government.
- In the recent years, the Indian Supreme court has brought out more far reaching changes than the legislature and executive combined.

Meaning:

- Judicial activism is not a distinctly separate concept from usual judicial activities.
- The word 'activism' simply means being active or doing things with decision.
- Judicial activism is policy making in competition with policy making by the legislature & executive.
- The essence of true judicial activism is rendering of the decisions which are in tune with the temper and tempo of the time.

Meaning

- Activism counters the traditional concept that judiciary is a mere umpire on the other hand, it work as an active catalyst in the constitutional scheme. It has to be an arm of the social revolution. An activist judge activates the legal mechanism and makes it play a vital role in socio-economic process.
- “Judicial activism may be defined as the action of the judiciary, which tends to increase on legislative and executive fields. Judges not only direct the executive, they also try to monitor actions and counter inaction every time the apex court gives a decision involving judicial activism, interest in the subject is enlivened. An enlightened executive should welcome judicial activism.”(P.B.Sawanth)

Causes:

- The parliament and the executives are the custodians of honest public life in the country.
- But when the custodians themselves compromise with corruption or politicize it, the judiciary has to step in.
- The concept of judicial activism in India has been caused by the following trends like –
 - Excessive delegation without limitation,
 - Expansion of judicial control over discretionary powers,
 - Expansion of judicial review over the administration,
 - Promotion of open government,
 - Indiscriminate exercise of contempt power,
 - Exercise of jurisdiction when non-existent, and so on.

Evolution:

- During the first three decades of independence the idea of judicial activism was conspicuously absent.
- It was only after the internal emergency the courts began to show the signs of judicial activism and began to intervene in executive as well as legislative areas cautiously.
- The first major case of judicial activism through social action litigation was the Bihar under trials case in 1980.

Evolution

- The supreme court began to take cognizance of custody deaths, bride burning and rape in police stations.
- It ordered that no woman can be taken to a police station after dusk.
- It also ordered the police not to handcuff a man arrested purely on suspicion.
- High court judges began to visit prisons to check the living conditions of the prisoners.
- It defined the constitutional powers of the chief election commissioner, threatened the multi-crore Rupees industries with closure if they continued to pollute Ganga and endanger the Taj mahal, and brought all the government and semi government bodies under the purview of the consumer protection Act.

Evolution

- The orders of the supreme court during the nineties in cases like Chadraswami, Jain Hawala, fodder scam, Lakhubhai Pathak cheating, St kitts forgery, capitation fee case, case for CNG buses for Delhi exercised jurisdiction with courage and creativity.
- Judiciary being the custodian of the constitution and constitutional system in the country this exercise of judicial activism is a necessity.
- More over, judiciary also has the responsibility of reducing the sufferings of people through its intervention.

Critical evaluation:

- In defending the judicial activism Kuldip Nayyar opined “Judicial activism fills the vacuum that non-activism of other institutions creates”.
- The current phase of judicial activism is justified on the ground of reluctance of the legislature and the executive to take hard and unpleasant decisions.
- Judicial activism is necessary to curb the inaction and indifference of the executive and legislatures which are the elected bodies to redress the grievances of the people.
- The judiciary exercises judicial activism to maintain the rule of law.
- When the legislature and executive fails to discharge its responsibilities causing harm to the basic rights or interests of the people the court needs to exercise judicial activism.

Critical evaluation

- Some of the major positive outcome of the judicial activism are –
 1. Corruption exposed in high places,
 2. Penal action initiated against top politicians and public servants.
 3. Strict enforcement of Environmental laws leading to closure or relocation of a large number of industries, etc.

Critical evaluation:

- Critics are of the opinion that judicial activism is undemocratic as the judiciary is not an elected body to redress the grievances of the people.
- Judicial activism is also known as judicial excessivism or judicial adventurism which may ultimately leads to judicial despotism.
- Former justice H.R. Khanna criticized the supreme court for trespassing into spheres constitutionally assigned to the legislative and executive organs of the polity.
- Judicial activism leads to government by judiciary (Fehrendbacher). It is democracy's non democratic alternative to representative government.
- Thus, Judicial activism is nothing but the active role played by the judiciary and this has been caused by the passive or lethargic role of the executive and legislature.