

Judicial activism with human rights: An analysis

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Abstract

Law and Justice remained known to be in presence later from the beginning of human evolution. It was hard to generate a society in an enlightened form without the law and justice. Apparently, society and time both remain dynamic and so stays the Law and justice. In early period, there remained laws too, but they stood mainly based upon morals and ethics and those values of morals and ethics were mandatory towards manhood.

Indian structures have deep oriented background intrinsic in Dharma by telling us its gigantic political and legal thinking. Law has its root since from Vedic scriptures, which we called as Dharma today. Unfortunately, in this modern era, there is no difference remained in Law and Religion. A judge is a person who is the ruler of the court in other words he supervises the court and is expected to be fair and impartial.

Judicial Activism is aimed at the eccentric character did before the court once it gives significant judgments and inheritances assistance to the persecuted person as per its ethical and societal wisdom of justice in a condition wherever constitutional law is quiet.

Keywords: judicial activism, human rights relation, public interest litigation

Introduction

“The service of India means the service of the lots who hurt. It means the ending of poverty and ignorance and illness and inequality of chance. The ambition of the utmost man of our generation has been to wipe every tear from each eye. That may be yonder us, but if there are crying and suffering, so long our work will not be over.”

- Pandit Jawaharlal Nehru

Dr. B.R. Ambedkar, the father of Indian Constitution, acrimonious with a reason of Professor. K.T. Shah advocated: “There is no clash whatever that the Executive should be parted from the Judiciary. With regard to the separation of the Executive from the Legislature, it is true that such a parting does exist in the Constitution of United States; but many Americans themselves were pretty dissatisfied with the rigid separation embodied in the American Constitution between the Executive and the Legislature. There remains not slightest hesitation in my mind and in the minds of many scholars of Political Science, that the work of Parliament is so complex, so vast that unless and until the members of the Legislature obtain direct guidance and inventiveness from the members of the Executive, sitting in Parliament, it would be very problematic for Members of Parliament to carry on the effort of the Legislature. I personally so, do not think that here is any very countless loss that is likely to occur if we do not admit the American method of disentanglement the Executive after the Legislature [1].”

▪ Merriam Webster’s Lexicon of Law:

“Judicial Activism remains the practice in the judiciary of increasing and shielding individuals’ rights over decisions that depart from the recognized precedent or are sovereign of or in opposition to supposed constitutional or legislative intending to [2].”

▪ Black’s Law Lexicon:

“A Philosophy of judicial law creation whereby judges let their personal views about public policy, amongst other factors to guide their pronouncements; usually with the suggestion that supporters of this philosophy lean towards to find constitutional violations and are eager to ignore precedent [2].”

We can say that in every judicial case is based on activism,

1. Politics plays a role in almost all the branches of government; it makes sense to do the same in the judicial system as well. However, tags such as “progressive interpretation” or “literalism” are used instead of being liberal or conservative. Judicial politics consists of how judges view and interpret the law.
2. Judicial activism is employed to allow a judge to exercise his personal judgment wherever the law is unsuitable.
3. Judges can practice their personal feelings to enforce laws that they feel to be biased. Whether an executive order, an immigration question or a criminal case, judges would be able to determine the consequence of a certain case.
4. Most local judges were elected, they rule in such a way that people constantly disagree. Some judges, though, could serve up to 15 years from a sole election, so that this benefit could be limited.
5. When a judge takes oath to bring justice to country, they do their best in the reasonable limits while cover judicial activism and it shows the confidence in justice system.
6. Judge decides and decides that certain laws are unfair, then an appeal to one more court, even the Supreme Court, can in datum be overruled.

Relation with Human Rights

- The Constitution of India which came into force on 26th January 1950 with 448 articles in 25 parts and 12 schedules. The Preamble to the Constitution states India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' means that the Government gets its authority from the will of the public. It stretches a feeling that they all are equivalent" irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution tells, justice, social, economic and political, freedom of thought, trust, faith and worship, expression, equality of status and of opportunity and fraternity promising the dignity of the individual and the unity and integrity of the nation to ail its citizens.
- H.R jurisprudence has been cogitating toward urbanized by the persistent sustenance of judicial activism. And the progression of human beings from the inhumane beings of themselves and it convoluted is articulately labeled in streaks of Rabindranath Tagore:

"Into the mouths of these dumb, pale and weak, we have to infuse the language of the soul, into the hearts of these weary and worn, dry and forlorn, we have to minstrel the language of humanity ^[4]."

- Acc. to the concept of jurisprudence:

"A right is distinguished as positive or negative according to the nature of the correlative duty. In case of a positive right, the person subject to duty is bound to do something here as in case of negative right, the person subject to duty is restrained from doing something ^[5]."

The Public Interest Litigation Regime: A Heyday of Judicial Activism

Public Interest Litigation - an expansion of class action under the common law - is a procedural innovation, which the Indian judiciary has by now perfected based on a concept borrowed from the United States. The public interest litigation came to be promoted by the Supreme Court,

- In the Sunil Batra v. Union of India ^[6] case, the Supreme Court entertained a letter from Batra, a prisoner, complaining about the treatment meted out to a fellow prisoner in a jail. The letter activated the Court to deal with a wide variety of issues such as solitary confinement in jails, conditions of under-trial prisoners, sexual exploitation, sexual exploitation of blind girls in Schools, detention of mentally ill persons, minimum wages, illegal sale of babies, bonded labor, environmental protection, ill-treatment of freshers in Colleges, better roads, land entitlement, conditions of children in children's homes, treatment of inmates of care homes, conditions of mental hospitals and deaths at alleged Police encounters.
- Rudal Shah v. State of Bihar ^[7], The emergence of the right to compensation has nullified one of the reservations made by India in its instrument of accession to the human rights Agreements which stated that the Indian law did not identify such a right in the event of right deprivation.
- Paramanand Katra v. Union of India ^[8], to rule that the right to life and liberty under Article 21 also encompasses the right of the workers to health arid medical aid.

- The Supreme Court in the case A.K. Gopalan v. State ^[9] of reflecting on the intentions of the Constitution-makers, held that" procedure established by law" only meant that a procedure had to be set by law enacted by a Legislature.
- Sheela Barse v. State of Maharashtra ^[10], a letter written by a Journalist stayed addressed to the Supreme Court avouching the protective violence of female's prisoners in Jail. The law court treated that letter as a writ petition and took cognizance of that matter and delivered the conflicting guidelines to the concerned authorities of the state-run.
- Golaknath & Ors. vs State of Punjab ^[11], the Supreme Court professed that FR's protected in Part 3 are immune and cannot be edited by the legislative assembly.
- In the case Ajay Hasia v. Khalid Mujib ^[12] professed that it has a special responsibility, "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence."
- In Bar Council of Maharashtra v. M.V. Dabholkar ^[13], it remained stated that the Bar Council plays 2 crucial parts, firstly, in the getting complaints, secondly, notifying considerate guilt, also professional or other misbehavior and finally case is mentioned to disciplinary committee.
- Vishaka v. State of Rajasthan ^[14], the judgment recognized sexual harassment as "a strong violation" of the important constitutional rights to equality, non-discrimination, life and liberty. The rules, directed to employers, comprised a meaning of sexual harassment, a list of phases for harassment deterrence, and an account of complaint measures to be "strictly detected in all workspaces for the protection and enforcement of the right to gender equality."
- Javed v. State of Haryana ^[15], Keeping the Haryana Provision as "salutary and in the public interest," the Court's chief importance was on "the problematic population explosion as a nationwide and worldwide issue". The Javed's verdict neglected to assess critically whether the disputed provision was really having its intended effect on domestic planning. The Court pronounced the provision as "well-defined," "founded on intelligible differentia,"
- M.C. Mehta vs. Union of India ^[16], The verdict delivered and lashed out at public authorities for allowing unprocessed sewage from Kanpur's tanneries creation its way into the Ganges. In this case, apart from industries, additional 250 towns and cities have been well-ordered to put dirt treatment plants to remove waste.

Conclusion

A judge is said to construe the law not merely by sticking to the principles of statue or to its literal meaning but by interpreting with his own acquaintance as he deems fit as per his estimation, then he is known to be an activist judge. Judicial activism in India was not a quarantined paradigm. In fact, it is a progression being in the custom since epochs immemorial. Judicial activism through PIL with procedural and substantial changes has facilitated with development implementation and greater recognition of human rights. Now, we are all modernized where everything is dynamic and is keep changing be it a law or any other practice. In

fact, it has been asserted more frequently that we are in an epoch of “Judicial Activism”

References

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