Judicial Activism

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ABSTRACT: ***Judicial review applies to the authority of the courts to review the legitimacy of a statute or order and to determine it. Judicial advocacy, on the other hand, refers to the use of judicial authority to express and implement what is advantageous to society in general, and the power of the Supreme Court and the high court, but not the subordinate courts, to find the laws invalid and void suggests citizens at large or judicial activism. India has a separate judiciary with comprehensive authority over statutory and administrative activities. The theory in which legislative and executive decisions are subject to scrutiny by the judiciary may be described as judicial review. In general, it is known as the underlying structure of an autonomous judiciary. Judicial decision making may either be an action in favour of legislative and executive policy decisions or in opposition to them. Yet in general, the latter is referred to as judicial liberalism. The core of actual judicial activism is the making of decisions in the time and mood of the times.***

KEYWORDS: ***Authority; Decision; Constitution of India; Judicial Activism; Judicial Review; Judiciary.***

INTRODUCTION

The definition of judicial activism is thus the polar opposite of the constraint of the judiciary. The two words used to characterize the ideology and motivation underlying certain judicial rulings are judicial advocacy and judicial restraint. Judicial advocacy, an approach to the practice of judicial review, or a summary of a single judicial ruling under which a judge is usually perceived to be more likely to decide procedural issues and to reverse legislative or administrative decisions[1].

While the word is used very often to describe a judicial judgment or theory, its usage can create confusion, as it can have many interpretations, and even though speakers agree on which interpretation is meant, they also do not agree on whether a given decision is accurately described[1].

In both political rhetoric and scholarly studies, the word advocacy is used. Activism typically implies only a judge's ability to strike down the intervention of another branch of government or to reverse a legal precedent of scholarly use, without any implicit judgement as to whether or not the activist opinion is right[2].

Instead of deferring to the decisions of other elected officials or prior courts, progressive judges impose their own views on constitutional standards. Activism, described in this manner, is literally the antonym of restraint. It is not pejorative, and analysis suggests that it does not have a consistent political meaning. In this way, both liberal and conservative judges can be militant, while conservative judges were more likely to invalidate federal legislation and liberals were more likely to strike down those of the states[2].

Activism is used as a pejorative of political rhetoric. In this way, to define judges as activists is to argue that they decide cases on the basis of their own political interests rather than a faithful reading of the rules, thus sacrificing the neutral judicial position and "legislating from the bench." Decisions can be labelled as activists either for striking down or allowing legislative or executive action to stand[3].

In the early 21st century, Kelo v. City of New London (2005), in which the court enabled the city to use its eminent domain authority to move land from residents to a private developer, was one of the most criticized Supreme Court cases in the United States. Since judges may be labeled activists for either striking or permitting government intervention (they allowed it in Kelo) and since political activity is often considered wrongful, this sense of activism is not the antonym of restraint[3].

A judicial opinion can also, in a procedural context, be considered an activist if it resolves a matter of law which is irrelevant for the disposition of the case. The contentious case of the Supreme Court in Citizens United vs. Federal Election Commission (2010), which effectively struck down federal election law regulations that had restricted business and union spending on campaign ads, is a contested example of supposed extreme procedural activism[4].

The discussion on judicial activism does not take the form of reasons for and against, because neither conservatives nor liberals say that judicial decisions should be based on politics rather than law. Each hand, instead, accuses the other of advocacy while denying that they believe in it themselves. The continued divergence in opinion between academics and judges as to how the Constitution can be read, however, makes it impossible to show that any decision is the result of politics rather than of law in a contentious situation. Consequently, naming a decision activist primarily tends to show the certainty of the speaker that those on the other side should not work in good faith[5].

The current political system involves exploitation and corruption. Capital Control, Muscle Power, Media Influence, and Ministerial Authority's unbridled behaviour abused the masses beyond imagination. Judicial decision making may either be an action in favour of legislative and executive policy decisions or in opposition to them. Yet in general, the latter is referred to as judicial liberalism. The core of actual judicial activism is the making of decisions in the time and mood of the times[5].

DISCUSSION

Judicial advocacy, particularly in light of recent developments in this respect, has often been a subject of intense discussion. With many contentious decisions in the last few years, the judges of the Supreme Court, as well as the various High Courts, have again sparked a controversy that has always been very strong. However, it is also a mystery what the term "judicial activism" really connotes. The State is under the primary duty, under the Indian Constitution, to ensure order, liberty, freedom, and fraternity in the land[6].

The Indian judiciary has been seen to be the protector and defender of the Indian Constitution in this way. In view of its constitutional obligation, wherever necessary, the Indian judiciary has played an important role in defending the basic rights of the citizen against the unfair, unreasonable, and discriminatory actions/inactions of the State. The principle of judicial liberalism is, however, the very opposite of judicial restraint. The two words used to characterize the ideology and motivation underlying certain judicial rulings are judicial advocacy and judicial restraint[6].

The notion of judicial advocacy has its origins in the principles of 'equity' and 'natural justice' in English. It is really hard to trace the origins of judicial populism in India. The Indian judiciary has, for a very long time, taken an orthodox approach to the very idea of judicial activism. However, it would be misleading to claim that no cases of judicial activism have arisen in India. From time to time, several sporadic and stray cases of judicial activism have occurred. Although, since the very idea was new to India, they did not come to the fore. The history of judicial activism can, however, be traced back to 1893, when a dissenting judgment was delivered by Justice Mehmood of the Allahabad High Court that sowed the seed of judicial activism in India[7].

As contemporary language signifies, judicial activism emerged much later in India. The Philosophy of Social Want proposed by David McClelland can be traced to this origin. It was due to executive abuses and excesses during court hearings that the courts had to interfere. Let us explore the reasoning behind such interference. The executive has long regarded the judiciary as an aggressive division of the state since independence from the British Raj. As the bureaucracy degenerated into a machine for personal and not public benefit, this opinion gained more traction and acceptance. Activism in judicial policy encourages the cause of social reform or articulates ideas such as democracy, freedom, or equity. It needs to be the social movement's weapon. The justice mechanism is caused by an activist judge which makes it a vital part of the socioeconomic cycle[7].

Since the judiciary has come to be recognised under the Government of India Act, 1935, and subsequently under the Constitution of India, as an independent and distinct government entity, it would be prudent to look at the period after 1935 for the tracing of origin. A new law is set in effect not only for the purpose of addressing and fixing the problem at hand, but also to potentially apply to any possible issues that are not actually before the Court but are expected to appear in the future[8].

Judicial activism is defined as "a theory of judicial decision-making by which judges allow their personal opinions on public policy, among other factors, to direct their decisions, usually with the implication that adherents to this theory seem to find constitutional violations and are willing to disregard precedents," according to Black's Law Dictionary[8].

Judicial advocacy is where, after considering both sides, the Courts shift from their traditional decision-making role to the legislature's position and make new statutes, new laws, and new policies. Activism on the part of the judiciary was almost negligible in the first decade of democracy, with political stalwarts controlling the government, and the Parliament operating with great zeal, the judiciary working with the executive. The Supreme Court held a full judicial and structural interpretation of the constitution from the 1950s to the 1970s[9].

The Bihar court, Hussainara Khatoon Vs State of Bihar, was the first major case of judicial interference by social action litigation. In 1980, several law professors revealed the barbarous conditions of imprisonment at the Agra Protective Home in the form of a written petition pursuant to Article 21, followed by a complaint brought against the Delhi Women's Home by a member of the Delhi Law School and a social worker. In 1967, the Supreme Court ruled, in Golak Nath v. the State of Punjab, that the fundamental privileges of Section III of the Indian Constitution could not be revised, despite the lack of such a restriction in Article 368, which only contained a two-thirds majority vote of both Houses of Parliament[10].

In 1967, in Golak Nath v. the State of Punjab, the Supreme Court ruled that, despite the absence of such a limitation in Article 368, which included only a two-thirds plurality vote in both Houses of Parliament, the basic rights of Section III of the Indian Constitution could not be changed. It is still not clear as to what 'basic structure' entails, although several later verdicts have tried to explain it. However, the argument to be noted is that there is no reference in Article 368 to the fact that it was not possible to change the basic structure. Article 368 was also modified by the ruling. Article 21 of the Indian Constitution applies to a large number of decisions of the Supreme Court of India, on which it has taken an activist position, and we are thus concerned with it separately[10].

CONCLUSION & IMPLICATION

The country has seen cases of beneficial judicial advocacy to a great degree lately. A high-profile politician, Shibu Soren, was accused of a 1994 murder. Under the 1993 Weapons Act, Tinsel's world-renowned Sanjay Dutt of Gandhigiri fame was arrested. Navjyot Sidhu, a former cracker with a talent from Gab, was accused 18 years ago of a road rage killing. It cannot be denied, whatever the critique of judicial activism, that judicial activism has done much to improve the circumstances of the masses in the world.

It corrects a number of wrongs that both governments and people have perpetrated. Regular citizens, also referred to as judicial inertia or legal tardiness, are most deprived of the security of the law because of the inefficient workings of the judiciary. The task of removing these rare aberrations has already begun with judicial advocacy. Only genuine and vocal judicial activism, and not pulling the courts down in the eyes of the people, will encourage this. The biggest strength and best tool in the judiciary's armour is the respect it commands and the trust it inspires in the minds of people in its ability to do even-handed justice and keep the scales in balance in any confrontation.

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