

Judicial Activism

Introduction

Judicial activism, a concept that has profoundly influenced the Indian judiciary, refers to the proactive role played by the judiciary in enforcing and expanding the scope of fundamental rights and constitutional provisions. This phenomenon has often been lauded for its role in safeguarding democracy and ensuring justice, especially in a socio-economic context where the executive and legislative branches may fall short. However, it has also faced criticism for overstepping boundaries and encroaching upon the domains of other branches of government.

Evolution

Judicial activism in India finds its roots in the Constitution, which envisages a system of checks and balances among the three branches of government. Articles 32 and 226, which empower the Supreme Court and High Courts respectively to issue writs for the enforcement of fundamental rights, are central to this framework. The judiciary's role in interpreting and applying the Constitution often brings it into a proactive stance, especially when addressing issues of public interest. The term "judicial activism" gained prominence in India during the late 20th century, particularly under the stewardship of Chief Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, who championed the cause of Public Interest Litigation (PIL).

Social Justice

Public Interest Litigation emerged as a powerful tool in the hands of the judiciary to address grievances of the marginalised and underrepresented sections of society. The landmark case of **Hussainara Khatoon v. State of Bihar (1979)** epitomises the judiciary's activist stance, where the Supreme Court took cognizance of the pitiable conditions of undertrial prisoners languishing in jails for years without trial.

Environmental Activism

The judiciary's intervention in environmental issues has also been a hallmark of judicial activism. The case of **M.C. Mehta v. Union of India (1986)**, commonly known as the **Oleum Gas Leak case**, marked a significant departure from traditional judicial approaches. The Supreme Court, while dealing with the aftermath of a hazardous gas leak from a factory in Delhi, laid down the principle of absolute liability for industries engaged in hazardous activities, thereby ensuring stringent protection for the environment and public health. This case, among others, demonstrates the judiciary's willingness to fill legislative and executive voids in addressing critical environmental concerns.

Right to Education

The right to education is another domain where judicial activism has had a profound impact. The Supreme Court's judgement in **Mohini Jain v. State of Karnataka (1992)** declared that the right to

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education is implicit in the right to life under Article 21. This was further reinforced in **Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)**, where the Court provided the contours of this right, leading to the enactment of the Right of Children to Free and Compulsory Education Act, 2009.

Concerns of Judicial Overreach

Critics of judicial activism argue that it leads to judicial overreach, where the judiciary encroaches upon the domains of the executive and legislature, thereby disturbing the delicate balance of power envisaged by the Constitution. The case of **S.P. Gupta v. Union of India (1981)**, also known as the Judges' Transfer case, is often cited in this context. Here, the Supreme Court's expansive interpretation of the term "consultation" in judicial appointments was perceived by many as an undue intrusion into the executive's prerogatives.

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Proponents of Judicial Activism

However, proponents of judicial activism contend that such interventions are necessary to uphold the rule of law and protect fundamental rights, especially in instances where the other branches of government are either inactive or ineffective. The **Vishaka v. State of Rajasthan (1997)** case, where the Supreme Court laid down guidelines to prevent sexual harassment at the workplace, is a prime example of judicial activism serving as a catalyst for legislative action. The Court, in this case, filled a legislative vacuum by formulating guidelines that eventually led to the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**.

Some scholars, like **Upendra Baxi**, view it as an essential component of judicial function in a democratic society, arguing that it serves as a check against majoritarian impulses and ensures justice for marginalised groups. Others, like **Justice A.S. Anand**, caution against the perils of judicial overreach, emphasising the need for judicial restraint to maintain the balance of power among the branches of government.

Conclusion

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Through its proactive stance, the judiciary has addressed various socio-economic issues, expanded the scope of fundamental rights, and filled legislative and executive voids. While it has faced criticism for overstepping its boundaries, its contributions to the protection and enhancement of constitutional rights cannot be overlooked. The debate over judicial activism versus judicial restraint continues to be a dynamic and evolving discourse, reflecting the complexities of a constitutional democracy.

