

## **JUDICIAL ACTIVISM: AN OVERREACHING STEP IN WAKE OF RECENT JUDGEMENTS**

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### **ABSTRACT**

Over the years, the judiciary has evolved certain doctrines including the doctrine of basic structure, Judicial Review, and Judicial Activism. The author herein seeks to diagnose the doctrine of Judicial Activism and how it has overstepped the authority of the Judiciary into the domain of the legislature and executive. The author has extensively relied upon research papers published in reputed contemporary journals, and has gone through commentaries on judicial activism. Certain impetus is given to recent cases of the apex court showing the overreaching aspect of the judicial mechanism.

### **INTRODUCTION**

Judicial activism happens when the courts have power to review the State action. Article 13 read with Articles 32 and 226 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare, any legislative, executive or administrative action, void if it is in contravention with the Constitution.<sup>2</sup> The power of judicial review is a basic structure of the Indian Constitution.<sup>3</sup> Thus, judicial activism involves when the judicial machinery starts to work on its own accord and become activists and compel the authority to act. If the court leaps into a new territory by enunciating the widest decision possible in a particular case, even though the case could be decided on narrower grounds, then it is said to be indulging in Judicial Activism.<sup>4</sup> Over the years, the role of judicial bodies has assumed a different dimension with these bodies interpreting laws in relation with the social fabric of the country. The objective behind judicial activism is that it empowers the judiciary to tackle the laws passed by the legislature and executed by the executive which are guided by personal or political motivations. But over the years, it has been seen that the judiciary has exceeded its power and has stepped into the role of

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<sup>2</sup> N. Jaiswal & L. Singh, *Judicial Activism in India*, B.L.R 1, 1 (2017).

<sup>3</sup> L. Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261 (India).

<sup>4</sup> A. Laxmikanth & A. Namballa, *Judicial Activism and Judicial Restraint*, 2 AULJ, 125 (1996).

the executive and the legislature and the demarcation between the three organs of the government have blurred.

### CASE LAWS

The author herein has chosen the following cases where the judiciary has over stepped its powers:

1. In *Shayam Narayan Chouksey v. Union of India*<sup>5</sup> the SC made it compulsory to stand during the national anthem which was to be played before every movie screening in a theatre. The SC in *Bijoe Emmanuel and Ors v. State of Kerala*<sup>6</sup> held that singing of national anthem in school assembly is not compulsory and thus went against its own decision in the wake of pseudo nationalism.
2. In *State of T.N. V. K. Balu*<sup>7</sup>, the SC banned the sale of liquor at retail shops, hotels and restaurants that are within 500m of the highway. This was seen as a unreasonable interference from the part of the judiciary, as this a matter of state policies which would be adequately deal by the state govt and requires no force from the judiciary. Such an order also had an impact on the livelihood of the people related to selling of liquor and also led to confusions as people came up with innovative solutions to evade form the policy laid down by the SC.
3. In *Vardhaman Kaushik v. Union of India*<sup>8</sup>, the National Green tribunal and further supplemented by the SC held that Ten years old commercial diesel vehicles shall not ply in the Delhi and National Capital Region (NCR). This is clearly seen as exceeding its power as it is out of its purview as the norms relating to the pollution levels are dealt by the Motor Vehicles Act, 1986 which is passed by the legislature.
4. In *Centre for Public Interest v. Union of India*<sup>9</sup>, the apex court held that telecom licenses and spectrums allotted to the companies were flawed and thus cancelled them. The above case was clearly seen as an overreach by the judiciary as according to the constitution, the economic matters and welfare which are a part of Directive Principles of State Policy are

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<sup>5</sup>Shayam Narayan Chouksey v. Union of India, AIR 2018 SC 357.

<sup>6</sup>Bijoe Emmanuel and Ors v. State of Kerala, (1986). 3 SCC 615.

<sup>7</sup>State of T.N. V. K. Balu, AIR 2017 SC 262.

<sup>8</sup>Vardhaman Kaushik v. Union of India, M.A No. 284 Of 2015.

<sup>9</sup>Centre for Public Interest v. Union of India AIR 2012 SC 3725.

exclusive domain of the executive and legislature and thus the decision of the apex court had an adverse effect on the economic relations.

5. In the very controversial judgement pronounced in *the Indian Young Lawyers Association v. State of Kerala*<sup>10</sup> commonly referred to as the Sabrimala Dispute, allowed women of all groups to enter the temple, when in reality no women with a few exceptions have really entered the temple while limiting the scope of the executive and legislature to act in accordance with the decision of the apex court.
6. In *Swaraj Abhiyan v. Union of India and Ors*<sup>11</sup>, the apex court directed the Union government to set up a National Disaster Mitigation Fund within three months. This order was held to be in excess of its power as the court does not have the power to order the govt to make laws on a particular order and in this case, tow funds existed, one at the national level while the other at the state level, thus creating additional confusion.
7. In *Board of Control for Cricket v. Cricket Association of Bihar*<sup>12</sup>, the apex court set up a committee headed by Justice R.M. Lodha to look into matters of corruption and maladministration amongst the board. The decision of the SC was vastly criticised and became controversial as the board of control of cricket is a private body and is governed by its own private laws.

## CONCLUSION

Thus, to conclude, the objectives and the reasoning behind the evolution of the doctrine of Judicial Activism was noble and a method to make the laws more democratic and in line with the constitution, but as illustrated by the above examples, has ended up by blurring the line of distinction amongst the three organs of the government. It is seen as giving way too much power to non-elected members over the elected members sitting in the legislature and the executive.

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<sup>10</sup>The Indian Young Lawyers Association v. State of Kerala (2018), SCC 1690.

<sup>11</sup>Swaraj Abhiyan v. Union of India and Ors, (2016), 7 SCC 499.

<sup>12</sup>Board of Control for Cricket v. Cricket Association of Bihar, (2016), 8 SCC 535.