



Judicial Activism in India

**-Dr.G.B.Reddy,
Sr.faculty
University College of Law
Osmania University,Hyderabad-7
gbredlaw@gmail.com**

Evolution of Judicial Activism

- Traditional role of judiciary - Adjudication & determination of Cases and Controversies
- Doctrine of Separation of Powers
- Theory of Checks and Balances
- Marbury v. Madison (1803) & Judicial Review in USA
- Judicial statesmanship of John Marshall



Meaning of Judicial activism

- **A species of judicial power**
- **Encroachment on Domain of Legislature and Executive**
- **Assertion and Expansive use of Judicial Power**
- **An attribute of Constitutionalism**
- **Omnipresence and Omnipotence of Judicial Power**
- **Political role played by judiciary**

Reasons for growth of Judicial Activism

- **Abdication of powers by Political organs of the State**
- **Judicial review**
- **Advent of Democracy**
- **Constitutional Mandate (Art.32,141 etc)**
- **Active Judges (John Marshal, Koka Subba Rao, V.R. Krishna Iyer & P.N. Bhagwati etc)**
- **Other Active Players (Activist Lawyers, NGOs & Civil society)**
- **Realization that Judiciary owes duty to Public**
- **Weak and Unstable governments**



Notable Forms of Judicial Activism

- **PIL**
- **Expansion of scope of F.Rt.s. (Art.21)**
- **Interpretation of DPSP as F.Rts**
- **Basic Structure Theory**
- **Creamy Layer concept**
- **Assumption of Judicial Primacy in appointment of transfer of judges**
- **Environmental, Prison & Human Rights jurisprudence etc**

Instances Judicial Overreach/Over activism

- **Evolving 'Continuing Mandamus'** (Vineet Narain v.UoI,1998,SC)
- **Bihar Assembly Dissolution-** (Rameshwar Prasad v.Union of India,2006)
- **Impracticable directions reg. Bonded Labour** (Bandhua Mukthi Morcha,1984,SC)
- **Impregnating Art.21 with numerous Fundamental Rts.**

Recent debate

- **'In the name of judicial activism, judges cannot cross their limits and try to take over functions which belong to another organ of the state.'** & **'Judges must know their limits and must not try to run the government. They must have modesty and humility and not behave like emperors,'** -Justice Mathur and Justice Katzu, **[Dec.2007 - in case relating to legal status of sex workers i.e., accused or victims under the SITA]**

Recent Debate

- **“Pursuing a particular policy is in exclusive domain of the executive and the courts must not interfere with the government's policy to ensure the right balance of power among the three organs of the state”**- Additional Solicitor General Vikas Singh before the SC – April 2008
- **'If the executive does not function, where will the common man go? Will he go to the chief minister?'**& **'If the executive does not function, the duty is cast upon courts to mitigate their grievances,'**-Justice K.G.Balakrishnan, CJI (April 2008)

Recent Instances of Judicial Activism

- **S.C. Directions in Black Money case** (Ram Jethmalani & Ors v. Union of India, 04 July 2011- Govt. Review Petition is pending)
- **Salwa Judum Judgment** (Nandini Sundar v. Chattisgarh, 05 July 2011--banning of the *Salwa Judum* & disarming and discontinuation of special police officers (SPOs) in combat operations)
- **Smt. Selvi v. state of Karnataka** 5 May, 2010- rel.to involuntary administration of certain scientific techniques, namely **narcoanalysis**, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases.

Limits & Limitations of Judicial Activism

- Difficulty in Enforcement of Directions & Orders
- Limited scope of Contempt power
- Judges-no more beyond criticism
- Lack of judicial accountability
- Constitutional need for maintaining equilibrium [Raja Ram Pal v Hon'ble Speaker, Lok Sabha and Others - Date Of Judgment: 10/01/2007]
- Judiciary - an undemocratic institution

Contribution of Judicial Activism India

- **PIL/SAL**
- **Proactive role in protection of Environment (E.g. : Banning of smoking at public places)**
- **Institutionalizing legal aid**
- **Prevention of misuse of Art.356**
- **Creation of Human rights jurisprudence**
- **Imposing reasonable limitations on Compensatory Jurisprudence etc.**
- **Judicial Legislation in certain cases (E.g. Sexual Harassment of working women)**
- **The 86th Amendment & The Right of Children to FACE Act, 2009**

Conclusion

- **Constitutional vision - supremacy of Constitution**
- **Need for respecting sovereignty of Political organs of State**
- **Realization that judiciary can be only a catalyst / watchdog**
- **Need of the hour - Self Realization, Self Restraint and Self Regulation**
- **Political executive –required to shun intolerance towards judicial activism**

Thank You