

An Active Role Of An Independent Indian Judiciary In Interpreting Laws: A Comprehensive Study

Dr. Kailash Kumar Kurmi¹, Mr. Abhishek Rathi², Ms. Jyoti
Garg³

¹Assistant Professor, Faculty of Law, University of Delhi.

²LL.M Student, Department of Law, Kurukshetra University,
Kurukshetra.

³Assistant Professor, Department of Law, Dr. C.V. Raman
University, Bilaspur (C.G.)

Abstract: -

Present research seeks to analyse the role of one of the pillars of the democracy i.e., the independent judiciary in relating prevailing laws with present day scenario and enforcing the Laws in India, including landmark judgments and also the concept of judicial activism, distribution of powers between the various organ. "Judiciary is one of the three organs of the state. The function of independent judiciary is to provide justice based on the law of the land and other prevailing laws which are running as an undercurrent from the Constitution of the country. In India, there is a concept related to checks and balance of powers between the three organs. So, this separation of power is based on the distribution of powers as well as responsibilities of state into distinct branches and clearly defining their premises and so that its misuse is avoided. In India the concept of independent Judiciary is important to protect the people against capricious, tyrannical and whimsical powers of the state." "When the legislative and executive powers are united in the same person, then there are greater chances to its misuse and there can be no liberty. Again, there is no liberty if the judicial power is not separated from the legislative and executive power. Where it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Where it joined with the executive power, the judge might behave with violence and oppression then there would be end of everything

was the same man or the same body to exercise these three powers.”¹ So, there should be a balance between all three organs of the state to provide social justice to the people of the country.

Keywords:-

Dispensing: distribute or provide (a service or information) to a number of people

Jurisprudence: a body or system of law

Quashed: reject as invalid

Disguised: “to conceal or cover up the truth or actual character of/by a counterfeit form or appearance; misrepresent”

Introduction

Literature Review:-

Various research studies on the topic of judicial activism and the role of independent judiciary to provide justice to the society through interpreting various laws. Many literature work related to present topic can be seen through various books, journal articles, proceedings, thesis and dissertations, reports and magazines. But some more research is needed to make the content more elaborative.

“The Constitution is a handy shield and sword to the activist confronted by the lawlessness of the state”²

“³The twentieth century has seen the shift in the role of Judiciary not only in India but in some other democratic countries too. Instead of playing their traditional role of mechanical interpreters and appliers of law, the judges have assumed the role of policy makers both for the government and public institution. The „Project social justice“, which is a constitutional promise and this fact, assigned an activist role to the apex court. This proactive goal-oriented approach for achieving social justice. It is judicial activism directed towards the achievement of social Justice”.

¹ Montesquieu, *De L' Esprit des lois*, 1748 quoted in Justice D. D. Basu: *Administrative Law*, Edn, 199, P. 23

² See Upendra Baxi, “Activism at Cross roads with signposts” 36 *Social Action* 378-389 (1986)

³ Parmanand Singh, “ Judicial Socialism and Promises of Liberation: Myth and Truth”, 28 *J.I.L.I* 336-347 (1986)

“The Scope of Judicial Activism varies with the width of power conferred on the courts. Where the courts have the power of Judicial review there is greater scope for judicial activism and the scope increases considerably where the power of judicial review extends not only over executive action as in the United Kingdom but also over legislative action, as in USA and over the constitutional amendments as in India”⁴

“The main object of judicial activism is to maintain the rule of law in the country. The rule of law requires each organ of the government to perform the functions assigned to it by constitution. If the legislature does not make required law and the executive does not execute the law, does not arrest the law breakers and does not collect evidence against them, there will be complete death of the rule of law which is necessary for the very existence of the society”. The court work as a guardian on the prevailing laws in the society which are originated from the constitution of the country and So ultimately “it is not wrong to say that courts have the ultimate right and duty to safeguard the rule of law, on the foundation of which the super-structure of democratic rule rests, judicial intervention becomes the need of the hour”⁵

Research Methodology:-

Style of Writing- The researcher would mainly focused on the Doctrinal method of research, confining to the library. It would involve study of books and commentaries on the role of Judiciary in interpreting and enforcing the constitution.

Sources- The researcher would mainly focus for legal points on the present legal issue of this topic on the primary sources i.e., various statutes and various Committee Reports and some secondary sources like books of different authors, articles, journals, pending/decided cases, case controversies and news in magazines/web portals/newspapers and websites. Opinions of research scholars, professors, experts in respective fields who have dealt with this subjects relating to the present topic on hand, shall be used as real contribution to this work.

⁴ P.N Bhagwati, “ Judicial Activism and Public interest litigation” 23 Columbia Journal of transnational Law 561-578 (1985)

⁵ V.V. Upadhyaya, “Judicial Activism- Its Origin and Relevancy”, AIR 1997 Journal 140.

Introduction:-

“Indian democratic structure are based on three pillars which are the Executive, the Legislature and the judiciary. The first pillar is the legislature its work is to frame the laws which is later on interpreted by the judiciary and the third pillar is Executive which helps in execution of law in the country”. When there is lack on the part of one pillar then the other pillar will take a check and balance approach to maintain the harmony and establish a democratic structure of law. “When the legislature becomes adventurous and the Executive becomes autocratic, careless and insensible, then the role of judiciary comes into picture to deliver justice. Judicial Activism is an ‘active’ role of the judicial system in promoting justice. It is a judicial creativity, a process by which new concepts, doctrines and guidelines, principles are evolved to update the existing law to bring it in main stream so that the current needs of the society and thereby, to subservice the constitutional purpose of advancing public interest under the rule of law. It denotes the ‘proactive’ role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. It implies the assertive role played by the judiciary to force the legislature and the executive to discharge their constitutional duties. It is also known as Judicial Dynamism. It is the antithesis of Judicial Restraint, which means self-control exercised by the judiciary”.

In this context, the former Chief Justice of India, “A.M. Ahmadi, has rightly said, In recent years, as the incumbents of parliament have become less representative of the will of the people, there has been a growing sense of public frustration with the democratic process... This is the reason why the (Supreme) Court had to expand its jurisdiction by, at times, issuing novel directions to the executive; something it would never have resorted to had the other two democratic institutions functioned in an effective manner”. (Ahmadi, 1996)⁶. “In India judiciary has a vital role in interpreting the various prevailing laws and in India judicial role of interpreting laws specially interpreting the constitution has become a debatable issue. One side of debate contends that

⁶ Justice A.M. Ahmadi, Dr Zakir Husain Memorial Lecture on the problems and prospects of Indian Democracy: An Evaluation of its working for Designing the processes of change for peaceful Transformation, SCC(Jour)2(1996) at 1, available at <https://www.ebc-india.com/lawyer/articles/96v2a1.htm>

sometimes one pillar of the democracy encroaches into the functions of the other organs of democracy. It is argued that judicial activism is 'legislating from the bench' (Tannebaum, 2005)⁷ works as an interpreter in such case of the law. Many authors and thinkers observe that the constitution is not static, it is a dynamic, living document and it is the judiciary which gives constitutional documents 'a continuity of life and expression' (Cardozo, 1927)⁸ and tunes them with the social, cultural and technological developments. In our constitution the role of the judiciary and related powers and duties rested so that judiciary will keep an eye on the other pillars i.e., the legislature and its action and other administrative actions. In case of any action taken by the legislative and the administrative which is ultra vires the judiciary will take steps and will keep a check over them. The court will declare such statute and actions taken by the administration void. These powers to judiciary are given not with a view to make the judiciary a supreme body superior to the other wings of the constitutional framework, but to ensure a system of checks and balances between the legislature and the executive on one hand, and the judiciary on the other. The mechanism has been devised to function in such a way that the unconstitutional actions of one of the wings are corrected by the other, and vice versa. Courts of today are not remaining passive, with the negative attitude of merely striking down a law or preventing something being done. The new attitude is towards positive affirmative actions, and issuing orders and decrees directing remedial actions. In the estimation of an ordinary Indian citizen the legislature and the executive have failed miserably in their cherished duties towards the general public. The executive and the legislators are made accountable for their actions. Their nearness to the people generates high expectations from the public and attracts sharp criticism whenever their actions do not follow the expected lines. It is under this situation that the judiciary has taken an activist approach. Judicial activism has flourished in India and acquired enormous legitimacy with the Indian public."

⁷ Brian Tannebaum, 'Government hatred of judges' (July 14, 2005), available at <https://criminaldefenseblog.blogspot.com/2005/07/governments-hatred-of-judges.html>

⁸ Benjamin N. Cardozo, 'The Nature of the Judicial Process'(1927)

It would be necessary to analyse the role of Indian judiciary to interpret the Indian constitution.

Meaning: -

“Judicial independence is the concept that the judiciary is an independent branch from the other branches of government. For such reason it is important for the democracy in any country that the courts should not take any steps under the improper influence from the other pillars of the democracy. Judicial independence is important for the doctrine of separation of powers and its proper implementation. In other words, we can say that one way to promote judicial independence is by granting long tenure for judges, which helps then to prevail the rule of law and judicial discretion, even if those decisions are politically unpopular or opposed by powerful interests”.

Features of Judicial independence:-

Some important features of independence of judiciary are as follows:

- **Independent from other branches of govt.:** There must be a clear separation of powers between all branches of govt. to promote independent judiciary. This leads to give a free atmosphere to the judiciary so that there is no political or any other form of pressure on judiciary to provide justice.
- **Protection against arbitrary removal or dismissal:** In our constitution protection is provided for judges regarding protection against arbitrary removal and suspension. This insures their loyalty and integrity towards faith in constitution and helps them to make decisions and provide justice.
- **Freedom from outer influences:** There should not be any improper influence on judicial system from other organs of democracy or from private or partisan interests. Judicial act must be on merits and based on fair and appropriate laws and without any influences.
- **Allocation of proper resources and staff:** Judicial machinery will work independently by providing proper resources i.e. legal research team, administration staff to perform their duties efficiently and effectively. This leads to improve efficiency.
- **Proper training and research:** To strengthen judicial independence, it is necessary to give proper training and

guidance to judges and legal researchers. This keeps them in touch with the recent legal updates and development in legal field. This also enhances their skill and knowledge which create judiciary an independent judiciary.

- **Protection of Rights:** The independence of judiciary provides safeguards to the citizens and their fundamental rights with the help of writ.
- **To provide Fair Trials and transparency:** The judiciary ensures fair trial on the underline principle of the constitution and also provides transparency in its system which leads them towards an independent judiciary.
- **Supremacy of Rule of Law:** This is the common principle of law that the law is supreme and judiciary which enforces the law must be independent.

Constitutional Provisions:-

In our Indian Constitution there are several provisions which provide spirit of Judiciary independence. Some of them are as follows:

- **Art. 124 Appointment of Supreme Court Judges:** This constitutional provision deals with the appointment of judges, its selection process based on their eligibility and qualification to maintain judicial independence.
- **Art. 214 and 215 Establishment of High Courts in different states and Union Territories:** These articles deal with establishment of High courts in different States and Union Territories. These articles also deals with appointment of Judges in different High Court.
- **Art. 50 Independence of Judiciary form Executive and Legislature:** “This provision deals with the independence of judiciary form the other branches of govt. like executive and legislature. So that there is no interference among these branches of govt”.
- **Art. 121 and 211 Restriction on legislative discussion:** The conduct of judges while performing official duties should not be discussed in outside by any legislative and executive bodies which promote an independent judiciary.
- **Art. 125 and 221 Salaries and Allowances:** These articles of the constitution provide the provisions regarding the salaries and other allowances of the judges which should not be altered even in emergency situation.

- **Art. 32 and 226 Safeguarding of fundamental rights and other rights:** “These provisions are the heart and soul of the constitution which provide guarantee against the infringement of the fundamental rights. These articles also provide the powers to the Supreme Court and High Courts to issue writ and guidelines for the protection of fundamental rights and other legal rights”.

Case study: -

- **Kesavananda Bharti v. State of Kerala¹¹** “This case was a landmark decision of the hon’ble supreme court of India that also known as the ‘Basic Structure Doctrine’. The question raised was that whether the parliament had the power to take away the fundamental rights of the citizens granted under the articles 25, 26, 14 and 19(1)(f) by way of amendment as mentioned under 368 of the Constitution of India”.
- This was not for the first time that such a question had been raised. It was first raised in “**Sri Sankari Prasad Singh Deo v. Union of India¹²** and then in **Sajjan Singh v. State of Rajasthan¹³**. In both the cases the power to amend was upheld by article 368. It was finally in Kesavananda Bharti that the Hon’ble Supreme Court said that the parliament by way of amendment could not take away the fundamental rights of citizens or amend the basic structure of constitution.”
- “**AK Gopalan v. State of Madras¹⁴**, This case is the first case where the court has observed and interpreted key fundamental areas/rights enshrined in the constitution of India i.e., article 19 and article 21. Court in this case elaborated the concept of ‘procedure established by law’ in article 21 and finally held that article 19, 21 and 22 are mutually exclusive.”

☐ **“Kharak Singh v. State of Uttar Pradesh¹⁵**, In this case a writ petition was filed regarding the validity of chapter 20 of the U.P. Police regulations on the ground that it is in violative of article 19(1)d and article 21. Court held that if article 21 is violated by the state or any authority then it is the duty of the state to satisfy that both fundamental rights are not infringed and there is no unreasonable restriction”.

¹¹ (1973) 4 SCC 225: AIR 1973 SC 1461 ¹² 1951 AIR 459,1952 SCR (1) 933 ¹³ 1965 AIR 1643,1967 SCR (2) 762 ¹⁴ AIR 1950 SC 27

¹⁵ AIR 1963 SC 1295.

- **“Satwant Singh Sawhney v. Union of India⁹**, Moreover, Chief Justice Subba Rao used combination of American

9

I

L

R

1

9

8

6

D

e

I

h

i

4

5

1

b

.

1

7

(

1

9

7

8

)

2

S

precedents, along with the opinions in Kharak Singh, to rule that the term „personal liberty“ is as broad in India as the term „liberty“ is in the 5th Amendment of the U.S. Constitution. The court recognized that right to life and liberty could be taken away by a „procedure established by law“.

- **“Maneka Gandhi v Union of India¹⁷, This is the case which was a landmark judgment of the hon’ble supreme court of India in which court resorted a light of hope in the heart of people about independent judiciary. This judgement was based on the term ‘personal liberty’. The Supreme Court not only broadened the meaning of „personal liberty“ but also adopted the theory of „due processes in „procedure established by law“. The court recognized that it is necessary for judiciary to come forward when any law violates the personal liberty of a citizen of the country. Court here examined the validity of act of the state against the citizens and interpret the term ‘personal liberty’. Court here done an interlinking interpretation of article 19 and article 21 by way of judicial activism.”**
- **“Vishaka vs State of Rajasthan¹⁰:** In this case, the Supreme Court issued guidelines for the prevention of sexual harassment at the workplace in the absence of any specific legislation on the issue.”
- **“National Legal services Authority vs. Union of India¹¹:** “In this case, the Supreme Court recognized the right to self-identify one’s gender and held that transgender persons have the right to be treated as their self-identified gender rather than their assigned gender at birth.”

·
C

·
R

·
6

2

1

·
¹⁰ AIR (1997) SC

¹¹ AIR (2014) SC

- **“Shayam Narayan Chouksey v. Union of India¹²**: The Supreme Court, in this case, made it mandatory that all the cinema halls in India shall play before the feature film starts. It was argued that this direction goes beyond the prevention of insults to National Honour Act 1971, which says that no film, drama or show of any sort can have the National Anthem as part of the show.”
- **“Liquor ban case¹³**: The Supreme Court, in this case had banned the sale of liquor at retail, outlets, as also in hotels, restaurants, and bars, that are within 50m of any national or state highway. These orders were felt to be against the spirit of the separation of powers given by our constitution. It was argued that it was an administrative matter where the decision rested with state governments.”

Conclusion:-

On the basis of above study I came to the conclusion that over the years Indian polity has been seen increasing role of judiciary in the political process. The mechanism of checks and balance is required to restore balance between different organs of state. It is said, “True freedom requires rule of law and a system in which rights of one are not secured by denial for rights to others”. The advancement of society and proactive attitude of government has simultaneously brought benefits as well as various risks in the absence of adequate regulatory framework while interpreting the Indian constitution and other laws. Need arises for proper interpretation to meet the correct legislative framework.

Suggestions and recommendations:-

These are few suggestions regarding the independence of judiciary:

- There should be no interference by the legislature or the executive in the proceedings of judiciary.
- Reform laws which provide strength to Judicial Independence.

¹² AIR 2016 SC

¹³ AIR 2017 SCC

- To provide resources and proper training to the judicial officers and other staff member for their smooth working.
- To promote legal research and education for ensuring the latest updates in legal field.
- Appointment of the judges in the hon'ble Supreme Court of India and in the hon'ble High Courts should not be based on political recommendations.
- There should be a separate body for the appointment of the judges of the Supreme court and High courts.

References:-

1. Bansal, J.P, Supreme Court: Judicial Restraint Versus Judicial Activism (Jaipur: Unique Trader, 1985)
2. Baxi, Upendra, "Alternatives in Development law- the crisis of the Indian legal system"
(New Delhi- Vikas publishing house Pvt. Ltd. 1982)
3. Jain, M.P., Constitutional Law of India 4th Edition, Wadhwa & co., Nagpur
4. Baxi, Upendra, "The Indian Supreme Court and Politics", Law Publishers and Booksellers,pp.10
5. Baxi, Upendra, Courage, Craft and contention, the Indian Supreme in the Eighties (Bombay: N.M, Tripathi Pvt, Ltd. 1985)
6. Chaurvedi, R.C, "Judiciary under the constitution" (Allahabad: Law Book company, 1969 edition with 1972 supplement)
7. Dhavan, Rajeev, "The Supreme court of India and political sovereignty: A critique of its approach to the recent constitutional crisis" (New Delhi: sterling publishers 1976)
8. Dube, M.P, " Role of Supreme court in Indian Constitution" (New Delhi: Deep and Deep 1987)
9. Hidayatullah, M, " The Consitution, the Parliament and the Court", (Delhi: The Dominion Press, 1972)
10. Palkhivala N.A. ed., "A judiciary made to measure" (Bombay, M.R. Pai, 1973)
11. Tripathi, P.K. "Spotlights on Constitutional interpretation", (Bombay: Tripathi, 1972)

12. Iyer, V.R. Krishna – Report of the expert Committee on legal Aid “ Procedural Justice of the poor” may 1973 (New Delhi- Controller of Publications, 1973)