

Judicial Activism & Constitutional Challenges in India

Noman Gul *

Naghma Farid †

Muhammad Siraj Khan ‡

Abstract: Courts in India intervened in policy matters; education, environment, property rights, and clean water are some of the areas in which precedents have been established. Supreme Court has become a final interpreter of the constitution. It even checked the amendments made by parliament. A weaker political system provided a feeding ground for the judiciary to intervene in the matters of the executive and legislatures. By noticing the checkered history, the emergency of the 1970s has weakened the judiciary which has been compensated in the last few decades. Powers belong to those who utilized them. The unconstitutional dismissals provided a vacuum for the judiciary to play its role. The judicial review, interpretation of fundamental rights, environmental issues, constitutional amendments and appointment of judges, have broadened the jurisdiction of courts in India.

Key Words: Judicial Activism, Independence of Judiciary, Constitutionalism

Introduction

Indian judiciary has a peculiar setup. It not only interprets the constitution but also reviews the enactments and amendments (Baxi, 1985). As compared to colonial master England which got the power to review the legislation and executive orders in 1977; U.S Supreme Court is considered to be the most powerful court in the world but it doesn't have the advisory opinion as enjoyed by the Indian federal court. In the same manner, its appellate jurisdiction, special leave to appeal and a sound integrative system with the high and district courts make it a stable organ of government. Indian supreme court has exercised her power to declare many legislative measures as null and void since independence; the first amendment (1951), fourth (1955), seventh (1956), seventeenth (1964), twenty-fourth (1971), twenty-five (1972), twenty-six (1972), twenty-nine (1972) thirty-fourth (1974), thirty-ninth (1975) and the forty fourth (1978) were some of them.

Judiciary has been a guarantor of democracy as stated by S.C Kashyap (1994) "In a representative democracy, administration of justice assumes special significance in view of the rights of individuals... An independent and supreme judiciary is also an essential requisite of a federal polity when there is a constitutional

division of powers between the federal government and governments of the constitutional units and a functional division of powers between the executive, legislature and the judiciary" (Kashyap, 1994).

Although the executive and judiciary have distinct jurisdictions sometimes they overlap each other; in recent times, the judiciary has exercised its powers excessively. Like the American judiciary it started its proceedings in the cases of judicial review; in A.K Gopalan V Madras (1950),

Judicial activism is the inherent feature of the judicial review; due to unavoidable circumstances especially in the socio-economic fields judiciary had to go beyond the constitutional parameters as discussed by S.P. Sathe. There are two models of judicial review. One is a technocratic model in which Judges act merely as technocrats and hold a law invalid if it is an ultra virus of the powers of the legislature. In the second model, a court interprets the provisions of a Constitution liberally and in the light of the spirit underlying it keeps the Constitution abreast of the times through dynamic

interpretation (Sathe, 2002).

Baxi (2002) an imminent analyst has classified the term into progressive (the activism of PM Nehru in the early days of independence

* Nawab Allah Nawaz Khan Law College, Gomal University, Dera Ismail Khan, KP, Pakistan.

Email: profnauman@gmail.com

† Nawab Allah Nawaz Khan Law College, Gomal University, Dera Ismail Khan, KP, Pakistan.

‡ Nawab Allah Nawaz Khan Law College, Gomal University, Dera Ismail Khan, KP, Pakistan.

especially in the land and property sectors was called Progressive) and another shape of the concept has been the Reactionary (while declaring an emergency in the state and going beyond the constitutional parameters, especially in the Shukla case [1976] has been declared by judges as Reactionary).

Analysis of Judicial Activism from an Indian Perspective

Due to the polarization of society, judiciaries in India have been involved in drastic activism. Although there has been a mixed reaction in society, some are in favour while others are against it. The most important case that came to the front of judicial circles was the Gopalan case (1950). The case was the detention of an Indian citizen who had communist leanings. Article 21 was selected for discussion regarding the said case. In the R.C. Cooper V Union of India (1970), the court overruled the decision earlier made in Gopalan (1950). Supreme Court has changed its stance from positive activism to reactive activism due to the prevailing circumstances of Indian society. In these processes, the courts have intervened in the executive domain on a number of occasions. In the Golanath case (1971), the court interpreted the amending power of the Indian parliament and stated that property must be delisted from the fundamental rights, the court has been objected to the amending process of the parliament but later on, the decision was challenged in Kesavanada Bharati case (1973). It overruled the decision made in the Golanath Singh case (1967) stating that article 368 of the Indian constitution forbids to enact of the legislation because it is against the basic structure of the constitution. In the same manner, Minerva Mills (1980) the decision of the court had been reported "Section 4 of the Forty second Amendment was beyond the amending power of Parliament since it damages the basic or essential features of the Constitution and destroys its basic structure by the total exclusion of challenges to laws to implement Directive Principles at the expense of Articles 14 and 19. It was also ruled that Section 55 was also beyond the amending power of Parliament, In the Minerva Mills Case (1980), a number of questions were raised; what is the position of the amendment process in the light of the forty-second amendment and article 31C of the constitution of India. The case proved significant in the constitutional foundation and the basic structure doctrine in India; the question arose whether it is the authority of the court to decide what parliament shall do or otherwise. Justice Hedge and Mukherjee gave the following remarks when the power to amend the

Constitution is given to the people, our Constitution was framed on the basis of consensus and not on the basis of majority votes... Therefore, the contention on behalf of the Union and States declaring that two-thirds of members in the two Houses of Parliament are always authorized to speak on behalf of the entire people of this country is unacceptable. The plea of the bench was whether the coalition government can challenge the constitution which doesn't have the entire majority in the government. Meanwhile, when an emergency was imposed by Indira Gandhi in 1975 the government enacted the 39th amendment bill to the constitution of India. The said amendment was challenged on the plea that A constitutional petition was challenged in the State of Rajasthan V. Union of India (1977), president while exercising article 356 dismissed the three State Governments. The court sustained the decisions taken by the president that it has been according to article 356 of the constitution of India. The said decision was overturned in the Bommai V. Union of India (1994), the court held that when a president dismisses the State government under the said article; the central legislature can undo the dismissal order by passing the resolution in the favor of reinstatement within 2 months. (Mozoomdar, 1999, pp. 261-296). The judgment number of dismissals in the judicial history of India; when central government recommended dismissal of Uttar Pradesh State government by BJP led government in 1999; President Narayan suggested the central government reconsider the decision, it was turned down by the president and the government never forced again to issue the dismissal orders. In the same manner when BJP led central government wanted to dismiss the provincial government of Bihar under Rabri Devi in 1999; the Congress party refused to support the government in the upper house, thus the said State government had to be reinstated. Another incident took place in the 2002 election when no party was in a position to form government in Uttar Pradesh; the governor under article 356 wanted to impose governor rule but BJP & BSP in combination averted the danger and formed the said government.

The court in India took a new turn in the post-1980s by channelizing this institution for the welfare of the people while explaining the new activist role of Supreme Court Sathe reports." The Court took an opportunity to expand the rights of the people through liberal interpretation of the constitutional provisions... It gave expansive meanings to the words 'life', personal liberty', and 'procedure established by law' contained in article 21 of the Constitution... Post-emergency judicial activism was inspired by a philosophy

of constitutional interpretation that looked at the Constitution not as a mere catalogue of rules but as statements of principles of constitutional governance" (Sathe, 2005)

Constitution Parameters of Judicial Activism in India

The court utilised article 21 for that purpose; it not only interpreted the doctrine of fundamental rights but the socio-economic sector was also focused on. In the Unnikrishnan case, education was considered an important subject to be focused on. In the light of said case government passed 86 amendments in 2002 to declare education a pre-requisite for the development of children's personality, article 45 was modified and article 21 A was added to the constitution which stressed that education for all must be focused throughout the country. Courts in India have broadened their jurisdiction not only in the conventional laws but have become quasi-legislative bodies in the number of the case; it lay down guidelines for gender issues, the status of women in society, and article 141 of the constitution declared as a base for such decisions.

Even since the early sixties some of the English authorities in law introduce the doctrine of "Responsive Interpretation" gave rise to new concepts in judicial circles. Analysts like Lord Reid reports "There was a time when it was thought almost indecent to suggest that judges make laws - they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdin's cave there is hidden the Common Law in all its splendour and that on a judge's appointment there descends on his knowledge of the magic words Open Sesame. Bad decisions are given when the judge muddles the password and the wrong door opens. But we do not believe in fairy tales anymore".

The new role of the courts has been analyzed by Benjamin Cardozo who argued "He (the judge) legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of the interstices cannot be staked out for him on a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the performance of an art".

In India Justice Ahmadi has been considered an authority on law who reported that "Judicial Activism is a necessary adjunct of the judicial function since the protection of public interest, as opposed to private interest, happens to be its main concern. Although the basic duty of the judge is to interpret the law of the land within constitutional bounds when a judge performs a legislative or

administrative action he became a lawmaker". (Malviya, 2013, P. 113)

The doctrine of separation of power has been applied in most democratic countries but due to recent judicial over-activism, it has changed the spirit of the doctrine in India; Nehru once quoted that if we go the wrong judiciary can make us feel but when practically the later went against the government policy of land and property, the government come back with constitutional amendments. In the Gopalan case (1950) the court explained the doctrine and described its limited interventions in such matters. In Sajjan Singh (1965), the court explained the concept with two of the bench judges who argued that the policy of the government to amend the constitution according to his wish, especially in the fundamental rights is against the spirit of the constitution but the majority in the bench disagreed with the dissent notes and finalized the decision that parliament has been the supreme institution to make, amend and repeal the laws.

In the Golak Nath (1967), case the decision of the court was criticized by lawyers and other learned people of India because it discourages the role of parliament in the amendment of the constitution. Their plea was that how the court can forbid parliament to amend the constitution because under the doctrine of separation of power it is the prime duty of the legislature to make, amend and repeal the laws. Other cases which involved activism were the Bank Nationalization (1970) and others which marked a new era of activism in the Indian Judiciary.

The era of 1970s was a dark period for democracy in India; the declaration of emergency brought frustration, violence, atrocities and gross violation of human rights, there was a severe headache of separation of power in India, and when courts were knocked for justice it spread further disappointment in Shukla case (1976) in which the role of executive and legislature was miserable (Baxi, 1980). The next chapter for Indian courts was to rescue the prisoners, accused criminals, bonded labour, child labour and some of the other sections in the society which did not get due attention. The majority of such cases did happen in 1979; the number of newspapers, magazines and articles drew the attention of the judges towards the social issue in Indian Society. Letters were dispatched from jails by the prisoners about their shabby conditions and inhuman treatment being done to them; such a letter was written by Sunil Batra to the chief justice. The said letter was taken as a petition for such prisoners and a decision was made to rectify the inhuman treatment in prison departments. There were severe gender issues in the 1980s,

women were tortured and were vulnerable to violence in society, such a letter was written by two professors stating the conditions of women in Agra. Another instance of such violations was reported in the labour community, especially in the industries, lands, and construction sites. They were facing brutalities in their respective fields; letters were dispatched from these sectors to the chief justice to do something for the people.

The courts while responding to such letters and the resentment in the ranks of the general masses were met out through public interest litigation. Justice Bhagwati said, "...a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constituted the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation". These words were uttered by an honourable judge while commenting on *People's Union for Democratic V. Union of India & others* (1982), he argued that from now on the ward, the court will not protect the wealthy class but shall care for the people which is the bulk of Indian population. The court took enough time to handle the election disputes which often led to political disputes in the political parties; the issue of reserve seats have been of immense importance in democracy (Sathe, 2005).

The courts came to the rescue in the fields of Housing colonies, environment, traffic control, cleanliness, garbage, accident matters on the Railway, steps for college sectors, and rules for blood banks. Such kind of intervention was welcomed by the people. It was followed by the Jain Hawala case, Fodder scam, Taj corridor case, 2G network case and many others but practically this intervention couldn't improve the conditions of the common man however in the matters of environmental pollution the courts in India took positive steps to control the pollution which is spreading unhygienic atmosphere in the country. In *Shiram food and fertilizer case* the honourable court directed the authorities to ensure a healthy environment on the ground that life is precious and must be maintained at all costs. In another case to rescue the Taj Mahal the petitioner went with a solid reason and provided the courts with a full record. It stated that 292 industrial units are being operational in the neighbourhood which has created a destructive atmosphere for a historical monument; the plea was that natural gas must be supplied to these units which will make the atmosphere pollution-free (Mehta V. Union of India, 1997).

Commenting on such cases the court argued that if the government failed to ensure the fundamental rights of the people which are the

constitutional right of the people; the court will have an obligation to meet the demands according to article 12 of the constitution. Many petitions were registered for the implementation of such rights. In the same manner, the owners of industries went against article 39 to provide shelters for living near industrial areas. In the cases of Habeas corpus, the atrocities of police authorities were challenged according to article 21 of the constitution. In *Sunil Batra* (1966), the court held that illegal detention must not bear. It further stated that inhuman treatment must be avoided. If a person has been deprived of life due to a fake operation by law-enforced agencies, the victim must be compensated. Sexual harassment has been another social issue faced by developing countries. The court laid down certain rules for working women to protect them from this menace. Article 141 deals with such kinds of issues. This guideline serves as law for the government and the people. *Vishaka's case* was taken as a case study to frame guidelines in this respect. The government took many years to practicalize it in the shape of the Prevention, Prohibition and Redressal act of 2013. The court while dealing with the social issues declared that the medical department must first aid the injured before the procedural formalities because it comes under the circles of fundamental rights. Bonded labour has been another subject which has to be dealt with by the court. It declared that the government should enact legislation under article 21 of the constitution; a dignified life has been the right of every individual whether he is rich or poor. In the same manner, the children act (1938) had to be ensured. In this regard, a child should work in the match factory because of certain dangerous chemical which badly affects the health of the children. The court laid down minimum wages for the child which was fixed at five thousand and a premium to be paid by the industry, they can work only in the manufactured industries in India (Mehta V. State of Tamil nadu, 1991).

According to the changing circumstances, the judiciary in India has to adapt itself to the recent socio-economic needs that necessitate interpreting the constitution (Smwal and Khsla, 2008, P.118). Articles 13, 21, 32, 226 and 227 conferred powers to the judiciary to declare the law as unconstitutional if it violated the spirit of the constitution; the framers of the constitution deliberately inserted these articles to ensure transparency in the remaining organs of government. Article 13(2) indicates that no central or provincial government can legislate which violates the doctrine of fundamental rights (Balakrishnan, 2009, P. 2).

Since world war-II governments used oppressive measures against populations, in the shape of arbitrary arrest, detention, and extra-judicial killings; to safeguard these rights judiciary needs to tackle the issues with new dimensions, in India every action must be taken according to the spirit of the constitution (Bag, 1997, P. 167). The performance of the remaining organs and their involvement in socio-economic evils necessitated the new role of the judiciary. In this situation, it plays a proactive role while coming out of the constitutional circles to solve the socio-economic problems in society. Dr Ambedkar the chairman of the drafting committee, deliberately inserted article 38 which deals with the "Directive Principles of the State policies" which is for the equitable distribution among the citizens (Constituent Assembly debate, 1948), the jurisdiction was further expanded with the passage of time; judiciary in the post-independence period has worked on the interpretation of fundamental rights i.e. life, liberty, property and others in a true sense. Thus a new socio-economic dimension has been developed. A constitution cannot explain everything in black and white. This function has to be performed by the judiciary, rights like shelter, privacy, education and going abroad were some of them which have been interpreted by the judiciary in various cases. Justice Krishna had to remark "Every new decision on every new situation is a development of law, it doesn't stand still, it moves continuously" after that it is the duty of the judge to interpret the law for the welfare of the people. In the post-1970s judiciary exercised its judicial review in fundamental rights, directive principles of state policies and social action litigation which expanded the role of the judiciary. (Chatterjee, 1997, P. 9) Justice Bhagwati while explaining the new role of the judiciary stated "a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation (Andhyarujina, 2012).

Judicial Activism in Post-2000

The new role of the judiciary in recent years has corrected the actions of the government in socio-economic fields. It has facilitated citizens as social activists and in other forms to get protection through laws developed through judicial decisions; Justice Bhagwati and Krishna have developed the concept in a true sense to encourage people to approach courts for their due rights. Most people consider judicial activism as a passive thing which has a negative impact on governance but it is a vague term with different meanings as explained

by Bakshi "A judge who selects a bold course of action is generally understood as representing judicial activism" (Bakshi, 1997, p. 5). This concept has given rise to a judiciary with a new dimension as reported by Lakshminath (Lakshminath, 1997, P. 109) and Jariwala argued that: "the judicial activism reinforces the strength of democracy and reaffirms the faith in the rule of law. It would not be in the interest of the democratic society if the judiciary shuts its door to the citizen who finds that the legislature is not responding and the executive is indifferent. It must be seen that the authorities come out of the slumber and perform their role" (Jariwala, 1999, P. 336).

Supreme court of India delivered a historic judgment in People's union for civil Liberties V. Union of India and others (2001) by accepting that the right to food has been the basic privilege of the citizens (Birchfield and Corsi, 2010, PP. 15-18). The court while explaining the fundamental right inserted in the constitution which was not clearly defined; earlier a petition has been registered to safeguard the right to food to the people under the Famine code (1962). Although it was under the 'Doctrine of the Directive Principles of the State policies' which are not rigidly implementable the court dealt with the case under article 21 of the constitution that deals with fundamental rights. Since the inception of the country courts have played a significant role in the interpretation of the constitution for the socio-economic rights of the people, in the post-1970s the concept of public litigation has a significant impact on the Indian judiciary (Cassels, 1989, pp. 495-519). Justice Bhagwati explained the role of courts in the following words "if the Court cannot help the people who need it most, "fundamental rights would remain merely an illusion"(Baar, 1990, P. 140). While expanding the role of the judiciary bench on many occasions argued that Directive principles and Fundamental Rights are complementary to each other; now it is the prime obligation of the courts to rescue people in these entitlements, in succession to this statement in Unni Krishnan J.P.V State of Andhra Pradesh (1993) argue "The provisions of Part III and IV are supplementary and complementary to each other and not exclusionary of each other" (Balakrishnan, 2008).

The court viewed that the role of the court must not be only to interpret the law but to realize it; it was the basic reason behind the implementation of food and other rights for the people in India. Due to the expanded role of the Judiciary, it has switched itself from traditional to social litigation which is quite different from the earlier one. It can be better explained in the following words "[T]he

court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organization of the proceedings, moulding of the relief and supervising the implementation. This wide range of responsibilities necessarily implied correspondingly higher measures of control over the parties, the subject matter and the procedure" (Sheela Barse V. Union of India, 1988). Judges in the situation have to perform well as explained "The power...is not only injunctive in ambit, that is, preventing the infringement of a fundamental right but it is also remedial in scope and provides relief against a breach of the fundamental right already committed"(Mehta V. Union of India, 1987). The judiciary interpret the constitution likewise as reported, "conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms"(Bandhua Mukti Morcha v. Union of India, 1984). In the Vishaka case, the court directed the authorities to innovate in legislative and executive fields because both organs needs drastic changes to meet the requirement of the masses. The courts in India have a better implementation mechanism through the "Doctrine of continuing Mandamus" to "keep a case open and direct the authority to perform and report, so you are constantly breathing down the neck of that authority" (Vineet Narain, A.I.R. 1996).

Due to the recent wave of judicial activism, there have been debates regarding the new role of the judiciary. The parliamentarians and officials have felt that they are losing their support in the masses, and the court's performance is better than the remaining organs of government, even the common man also feels the same. While legitimizing the new role of activist the court stated " It is not possible to ignore the fact that someone needs to do something about a lot of problems being faced by citizens of India in their everyday lives, and it is the Court that has taken the lead when approached by the citizens" while an ex-chief Justice had to remark that " So if judicial intervention activates the inert institutions and covers up for the institutional failures by a compelling performance of their duty... then that saves the rule of law and prevents people from resorting to extra-legal remedies".

Supreme Court has become a primary source of judicial activism; article 21 has enlarged the jurisdiction of courts while dealing with the cases of activism, and environmental issues have been added to the said article. In the initial years, the judiciary played a neutral role; it dealt with the cases mostly applying the laws while hesitating from the interpretation of the constitution. In the early 1950s, the issue of land and property came

to the surface and needed interpretation but this issue was resolved by the government through amendments; since the emergency of 1975 the court has assumed an activist role, and the judiciary interpreted Part IV of the constitution in the number of cases. The Bhopal gas issue (1984) marked the beginning of a new era in activism; explosive material has been used in the industry which destroyed the health of many citizens. It led to the death of 1000 people while injuring more than 5000 citizens. It was at that time when the court again re-interpreted article 21 of the constitution. The courts first mandated the application for environmental pollution and also for securing rights through the interpretation of the constitution. The rights to clean water, a good atmosphere, clean air, and less noise were recognized, and environmental public goods were guaranteed through this initiative a situation in which the state created conditions and actions for those rights. The issue in India was quite different from the west. Here competition was between the government and the poor classes of the society while in developed countries it was the rich and the industrial class in the state. The response of the government in India regarding the implementation of the court decision was poor while responding the court adopted stern behaviour for the enforcement, the Godavarman case (2005) reflected the issue. The applicant submitted a petition to the Supreme Court for deforestation under Forest Conservation Act (1980) to stop the private ownership of forest land and, timber mafia and mining in forests were included among the sufferings. The said case abrogated the executive orders but the policies formulated by MOEF but the central empowered committee must be part of it. Some analysts considered the role of the Supreme Court as a violator of the doctrine of necessity.

India has the lengthiest constitution in the world which has explained each and every subject very clearly. In the 1970s, the cases of Habeas corpus were interpreted and the liberties of the people have been safeguarded. The central government has been involved in sacking the provincial governments under article 356. The courts did intervene in the matter and interpreted the whole situation, it has also been involved in the protection of other rights which were later on inserted in article 21 of the constitution. The court in India through Social action litigation has broadened the jurisdiction of courts and has explained the social domain, each and every issue happening in society has been discussed and interpreted under the law of the land. Supreme Court has contributed to the promotion of democratic ideals in the country; although there have been some cases waiting long for justice.

Over 20 million such people have been waiting for rescue. In the matters of rule of law, it has performed well. Constitution and democracy go in the direction but practically judiciary and executive have been in the cold war with each other regarding good governance, fundamental rights, directive principles and other issues of the social domain. In the recent wave of activism, representatives have a lesser role than the judicial bench which has now become policymakers and a source of judge-made laws in India. When Prime Minister Indira Gandhi suspended article 21 in 1975, the court restored the situation which was the beginning of a new era for the federal courts in India. Here a cold war erupted between the two strong organs i.e. Executive and the Judiciary but the latter have to dominate the scene. It not only interpreted the fundamental rights, and civil liberties but also took accountability for the government at hand. The policy matters like issues of the environment were interpreted and the government was compelled to make legislation for safeguarding the common citizens. The appointment of judges was another issue which created tension between the two organs. It was hotly debated whether opt for the English pattern, in which the executive appoints them while the system of the United States confirms the appointment through legislation. The issue was resolved through "The Third Case (1993) in which the role of Chief Justice was declared vital for the said issue. Senior judges have a vital role in this process; the government considered its activism in matters of the executive domain.

The question has been vital i.e. who is the real interpreter of the constitution in India, although courts considered themselves so, the parliament on the other hand has been a supreme body to make, amend and repeal the laws. Competition among the two powerful institutions will last for a long time. Both of them showed power in episodes to express that the ultimate remains with it. On the one hand, courts can nullify the laws enacted by legislation while parliament can overrule the decision by making amendments to the said law as was noticed in the early days of independence in land and property legislation by the Nehru government. The Basic structural doctrine clearly indicated the strength of the legislature. In the 1990s, when no party had the majority in the legislature, the courts assumed a dictatorial position because it was in no position to replace the court decisions. Analysts argued that with the passage of time legislative overruling of court decisions will have to face court scrutiny one day. Then again Supreme Court will emerge as a strong institution. This competition among the organs of government will go on forever. It has been not a temporary setup. The decisions made

by courts must have constitutional authority. It does not only involve a hearing or announcing the decision but courts will have to see the legitimacy of the decision in all respects.

In the *Golak Nath* case, the court's focus was on the interpretation of fundamental rights in the constitution. In *Kesavanada*, the focus was that parliament can't amend the court's decision. In *Babri Mosque*, the proceedings went on for 50 years, when the executive was in a precarious situation. In an advisory opinion, the court regarded it as the jurisdiction of the appellate court, while voting of Rajya Sabha secret polling was not openly debated and left the matter to the parliament (*Kuldip Nayar V. Union of India*, 2006). There have been two assumptions; either law of the land is poor or courts have weak jurisdiction. Ultimately the competition among the organs of government has strengthened the democratic system in India.

Judicial activism is a vague term; broadly it has two perspectives, first that the action of the court is legitimate and Second whether the decision made by courts is effective or otherwise. While interpreting the doctrine of rights and principle of policy it got the legitimacy of the people, while interfering in the legislative cum executive domain, revived mixed reactions from the masses. The aim of the courts must be to protect democracy by preserving the values and norms; socio-economic rights must be preserved by the judiciary. But it is not clear whether parliament better protects the rights of courts but there are some cases in which judges will have to follow the adventurism technique to solve the issue. On the one side, legislatures are the representative bodies and the court is the guardian of everything to assess the legitimacy of its initiative will make us feel.

In India, the court's ruling regarding schools; the meal, transport and other activities have a good impact on society but on the contrary, decisions related to the health department have little impact on society, its decisions will be welcomed if they have a constitutional coverage, protect the doctrine of rights, preserve values, discourage authoritative initiatives. The social domain of the court is remarkable; it has taken a positive decision for bringing positive change to society. Mr Baxi considers judicial activism a cure for chaotic disorder in the government and society, as was expressed by Hand "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it" (Hand, 1959).

Conclusion

Since the 1980s, the judiciary has evolved itself in the subjects of education, health, bonded labour, child labour, gender-related violence, environment, and political corruption. Through these measures, socio-economic and political sectors have been improved in India. It has encouraged people to participate in the national development without any fear and in case of any misshape, they can knock on the door of the court for justice. The recent judicial wave has encouraged common folk to believe in law and the justice system. Now a common man has a belief in the judiciary to rescue them in case of tension, and the poor and marginalized people are playing their due role in the promotion of democracy in India. Although there are some instances in which the judiciary has wrongly intervened in political matters. Some analysts argue that it is not well trained to nullify the legislative measures and came forward with judge-made laws because it needs a speciality in the field but that is lacking. Some disregard the concept of judicial activism because it violates the concept of separation of power which necessitates that each organ of the government should work in its own domain to ensure efficiency. They consider the role of a bench as not an interpreter of the constitution but one that involves itself in the political domain of the country. It is even against his oath of allegiance which he undertook while joining the service. They recommend judicial restraint for the justice system which focuses within the allotted bounds to play a role in justice delivery. Judiciary must realize that legislature has its own jurisdiction which can't be violated and so is the case of the executive if the judiciary will intervene in those matters that perform the duty of the judiciary. In *Asif Hameed V The state of Jammu and Kashmir* (1989), the court stated that although the doctrine of separation of power has not been written in the Indian constitution with emphasis yet it has defined the jurisdiction of each organ in the country while in *Aravali Golf course V. Chander Haas* the supreme court declared "judges must know their limits and not try to run the government. They must have modesty and humility and not behave like emperors. There is broad separation of powers under the Constitution, and each of the organs of the state must have respect for the others and must not

encroach into each other's domain" (Katju, 2012). The court's roles in environmental issues have been remarkable; in multiple cases. It focused on the control of automobile emissions, pollution, noise, garbage, and other unhygienic commodities outside the public population which has increased the people's confidence in the courts. Courts have successfully implemented articles 21, 13, 32 and other provisions regarding the fundamental rights of the people. If we review different cases decided by Indian Supreme Court, it is encouraging to say that it has played its part in many areas while there are some examples in which courts have played a passive role. We must be aware that the concept should assume the shape of judicial overreaching which is very dangerous for national development.

Suggestions and Recommendations

Federalism required a strong judiciary to feed all organs of the government in the true sense. In the ideal situation, there must be an institution to play a balancer role among the three Big decisions sometimes eroded while in certain cases strengthened democracy, a question is important is when courts will use judicial review or act as activists? The interference of the union government in State affairs made courts believe to intervene in the matter, 1977 when according to the court's opinion, nine state governments have been dismissed, weakening federalism in India. Some analysts argued that the power structure within the legislature affected the courts' role as explained by many scholars. In *Bommai case* (1994), declared that there must be a clear reason for dismissing the provincial government to strengthen federalism.

The true separation of power support activism because it improves and reduces the dominance of one organ in the government; when the parliamentary system stabilized the judiciary lost the rhythm but this is not a universal principle because Australia and Canada had strong parliaments and stable judiciary. Even the latter is the second activist supreme court in the world. In the case of India, separation of power has been disturbed by the judiciary a number of times. Even it has become a policy-making organ of the government. The courts ignored the doctrine prevailing in the democratic world, article 122 and 212 suggested that courts will not interfere in the central and State legislatures; but this has often been ignored.

References

- Andhyarujina, T. R. (2012, August 6). Disturbing trends in judicial activism. *The Hindu*
- Baar, C. (1990). Social action litigation in India: The operation and limitations of the world's most active judiciary. *Policy Studies Journal*, 19(1), 140.
- Bag, R. K. (1997). Judicial activism vis-à-vis public administration. *The Administrator*, XLII (2), 167
- Bakshi, P. M. (1997). Judicial activism: some reflections. *The Administrator*, XLII(2), 5.
- Balakrishnan, K. G. (2008). Constitutional Control Praxis in the Present Day. *Brazilian Supreme Court, Brasilia*.
- Balakrishnan, K. G. (2009, October 14). Judicial activism under Indian constitution (p.4). Dublin, Ireland, Trinity College.
- Bandhua MuktiMorcha v. Union of India, (1984) 2 S.C.R. 67, 13 (India).
- Baxi, U. (1985). Taking suffering seriously: Social action litigation in the Supreme Court of India. *Third World Legal Stud.*, 107.
- Baxi, U. (1980). *The Indian Supreme Court and Politics*. Eastern Book Co.
- Cassels, J. (1989). Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?. *The American Journal of Comparative Law*, 37(3), 495-519.
- Chatterji, S. (1997). For public administration: Is judicial activism really deterrent to legislative anarchy and executive tyranny. *The Administrator*, 42(2), 9.
- Hand, L. (1959). *The spirit of liberty: Papers and addresses of Learned Hand*. Vintage Books.
- Jariwala, C.M. (1999). Poorman's access to judicial justice: A reality or myth. *Indian Journal of Birchfield, L., & Corsi, J.* (2010). The right to life is the right to food: People's Union for Civil Liberties v. Union of India & others. *Human Rights Brief*, 17(3), 3:15-18
- Public Administration, XLV(3), 336.
- Kashyap, S. C. (1994). Our constitution. *National Book Trust of India, New Delhi*, 49.
- Katju, M. (2012, July 20) Lessons in judicial restraint. *The Hindu*.
- Kuldip Nayar v. Union of India and Others W.P. (C) Nos. 217, 262, 266, and 305 of 2004 JT 2006 (8) SC 1 (not yet published in AIR or SCC).
- Lakshminath, A. (1997). Jurisprudence of judicial activism. *The Administrator*, 42(2), 109.
- M. K. Malviya, (2013) *Independent Judiciary: A Study in Indian Perspective*. Bharati Law Review, July - Sept., p. 113
- M.C Mehta v State of Tamilnadu AIR 1991 SC 417
- M.C. Mehta v. Union of India, (1987) 1 S.C.R. 819
- Sathe. S.P. (2005). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Mozoomdar, A. (1999). *The Indian Federal State and its Future. V/A PaiPanandiker and AshisNandy (New Delhi: Tata McGraw-Hill, 1999), 261-296.* Oxford University Press.
- Semwal, M. M., & Khosla, S. (2008). Judicial activism. *The Indian Journal of Political Science*, LXIX(I), 118.
- Sheela Barse v. Union of India, (1988) Supp. 2 S.C.R. 643,
- Vineet Narain, A.I.R. 1996 S.C.3386