TO GO BEYOND THE AMBIT

Written by ***Shikha Tripathi***

B.Com LLB Student, Institute of Law, Nirma University

ABSTRACT

Judicial activism due to one or another reason has turned out to be the pivot for a lot of controversy. Over the time, people have termed it as judicial anarchy, judicial over-activism, or judicial despotism. In ordinary parlance, the term activism means being active. Judicial activism, be it a boon or a bane, is very much required because the legislature, while enacting a law, cannot visualize all the situations which would arise in future. Changes take place in the society and new and complex situations arise giving rise to different interpretations of the laws to cater to the needs of the society and fill in the necessary gaps. In this process, judicial creativity is required which is often termed as judicial activism. Undoubtedly, the Indian judiciary has shown unprecedented initiative during the last few years. There is no universal model of what constitutes judicial activism. It depends on the prevailing conditions in a particular country.

Nonetheless perfection is not a common attribute of our race and justice is dispensed by judges who are, equally, a part of this race. They are not gifted with infallibility and therefore, judicial aberrations do occur occasionally. But that is no reason for condemnation of active exercise of judicial power. There has been vociferous criticism of judicial activism. This paper attempts to identify the causes for the same and analyse to what extent does the Indian society requires it.

INTRODUCTION

Activism being just one word constitutes several meanings and so Indian judiciary has shown it in not one but many ways. This paper traces the instances of judicial activism through the changing political scenarios. It is divided into the Nehruvian era, the emergency and the post emergency period. There have been instances of liberal legalism, following the rule of law. There have also

been instances where the court has followed the legal realism and the sociological jurisprudence. The evolution of judicial activism can be looked at in two different ways. One way is to take it positively and the other way is to problematize it. The positive narrative develops in us a thought that judicial activism has always been there as part of the constitution since the beginning. The nehruvian era was marked by parliamentary sovereignty for two decades. The activism of the courts was to the extent that produced legitimation for the parliamentary actions for example the passing of the first amendment which resulted in the inclusion of the ninth schedule into our constitution barring the judiciary from reviewing manifestly unconstitutional legislation.

However, in the post nehruvian era, the Apex court was able to offer a more expansive interpretation of the constitution. But one cannot stick to a positive or a problematic narrative of judicial activism in India since all the narratives remain discontinuous and equally extraordinary. Hence, what remains problematic is the attempt to place it under one narrative. What is left with us now is its variegated constitutional avatars and a profusion of different periodical manifestations yet to grow.

Criticizing the judiciary's action is a task in itself. Activism has brought extraordinary power in the hands of the judiciary and with it certain anomalies. Hence what results is on one hand reactionary activism and on the other, progressive. The nehruvian era, with its issues of land and right to property and the pre- emergency activism witnessed reactionary judicial activism. The anomie that is marked by the progressive judicial activism commenced with Golak nath[1] and Keshwananda Bharti[2] leading to the development of public interest litigation. When compared over a period of different traditions of judicial activism, we come to realize hoe indeterminate and fungible it has been. In the words of professor Sathe, " it offers a kind of chemotherapy for the carcinogenic body politic."[3] All in all, it is a form of power inherently at odds with itself.

[1] Golak Nath V. State of Punjab AIR (1967) SC 1643.
[2] Keshwananda Bharti V. State of Kerala AIR (1973) SC 1461.
[3] S. P. Sathe, Judicial Activism in India, 25 (2nd ed. 2013).

EVOLUTION

How one views the process of judicial activism depends upon their perception of the working of a constitutional court. Its narrow perception has restricted its actions to mere interpretation and application of the present legal rules. A wider perception a more liberal and dynamic interpretation of a statute.

India has had the judicial review since the colonial period. The laws were not struck down that frequently by the courts. When the constitution was brought into being it was criticized by some members of the constituent assembly for giving the judiciary such powers the provision was defended by Dr. B R Ambedkar as he stated that it is absolutely necessary as a quick relief against the abridgement of fundamental rights.[4]

Its advent can be traced back to 1893, when Justice Mahmood of Allahabad High Court delivered a dissenting judgement in a case of an under trial who could not afford to engage a lawyer, So the question was whether the court could decide his case by merely looking his papers, Justice Mahmood held that the pre-condition of the case being "heard" would be fulfilled only when somebody speaks.

THE NEHRUVIAN ERA

In the first decade of independence, activism on part of the judiciary was almost nil with political stalwarts running the executive and the parliament functioning with great enthusiasm, judiciary went along with the executive. In the 50s through half of the 70s, the apex court wholly held a judicial and structural view of the constitution.

The activism of the Apex Court during the early years was restricted to right to property. It followed an Austininan approach with respect to other liberties. As interpreted in A. K. Gopalan[5] to its strictesr sense. The court asserted its power but at the same time limited it. But when courts interpret the law in a much broader sense they not only consider themselves the upholders of the law but also of justice. Later on in certain exceptional cases such as that of Kharak Singh vs. State

[4] CAD Vol. 7, p.700(official report reprinted by the Lok Sabha Secratariat, New Delhi)
[5] A. K. Gopalan V. State of Madras, AIR 1950 SC 27.

of U.P.,[6] a wider interpretation was made with regard to fundamental rights. It was held in this case that the right to life included right to privacy.

POST- NEHRUVIAN ERA

A shift from the narrower meaning was finally articulated in the Maneka Gandhi v. union of India.[7] The roots of post-emergency judicial activism can be seen in Basheshar Nath vs. commissioner of income tax[8] which was the beginning of a pro- judicial activism period in India. During the first score the courts deferred to the will of the legislature on matters concerning economic regulations. in those days, judicial activism that favoured state intervention was welcomed by the executive and the legislature. But as India moved from shankri prasad towards keshwananda Bharti or be it champakam dorairaja towards indra swahaney, it faced massive criticism from all sects because of the court's anti-majoritarian stance.

POST- EMERGENCY PERIOD

The post-emergence period from 1977 to 1998 saw a period of good judicial activism. Or what can more precisely be termed as doctrinal effervescence. This was a period which witnessed the judiciary's approach towards liberty and good governance. The case of A.D.M Jabalpur[9], also known as the fundamental rights or the habeas corpus case, had resulted in high criticism of the judiciary. It was held that the action of the executive could not be examined in any court of law. The post-emergency period was inspired by the fact that the elite social image which the Apex Court enjoyed was not enough against the powerful political establishment. Therefore, be it consciously or unconsciously, the court became relatively more accessible to people and it has become much more people oriented. It has reinterpreted the provisions of the fundamental rights more liberally and has facilitated access to the courts by relaxing its technical rules of locus standi.

Judicial activism became much more questionable when writ petitions challenging the investigation process of high profile dignitaries were being considered in the court of law. In the case of Vineet Narain v. Union of India[10], the court went to the extent of suggesting the procedure

[6] AIR 1963 SC 1295.
[7] (1978) 1 SCC 248.
[8] AIR 1959 SC 159.
[9] A.D.M. Jabalpur V. Shiv Kant Shukla, AIR 1976 SC 1207.
[10] (1997) 1 SCC 226.

for selecting the CBI chief for the first time. Major corruption cases were being taken up by the court and the centre's hegemony was being challenged. The case of S R Bommai gave immense powers to the courts to prevent the abuse of article 356. It also placed secularism under the ambit of basic structure.

One may criticize the court for acting politically but this is, in fact, what helped the politics of governance become more democratic.

Judicial activism has to be distinguished from populism and excessivism[11]. While correcting the distortions created by other organs of the state in fulfilling the goal of the constitution it also requires to maintain a delicate combination of discretion, tact and vision and it must know its institutional limitations.

CONTEMPORARY POSITION

There are a multitude of reasons judicial activism is shaped by:

Social constructions of judicial role and functions and the rather indifferent potential for social change by the judges,

The series of political events, which determine the time for judicial interventions, and the moments of seizure, when the judiciary acquires the capability to confront structures of abuse of public power and lawlessness, and

The sufferings of the masses without rights to their names.

Judicial activism is not just a tussle between the judiciary and other organs of the state but a way to attain social justice. There have been a few instances where the supreme court had to intervene and take up the role of executive or the legislature in order to provide this social justice.

[11] Supra note 3.

A few months ago, the Supreme Court held that licences for dance bars be issues in Maharashtra in two days. The court has also been making efforts to reform the Board for the Control of Cricket in India (BCCI), even after recognizing itself that it is a private body working independently.

The court also passed an order directing the Reserve Bank of India to set up a panel to chase bad loans. This shows the court's effort to probe into black money.

Then the court decided that allowing religious structures to encroach on public spaces is an "insult to God".[12]

The Supreme Court, being a protector of the environment, directed that non-CNG cabs be not driven on the roads which was later modified by it. Earlier once it had also banned diesel SUVs above a certain size from being registered in Delhi, in order to control pollution levels. In an attempt to promote social and economic justice the court also directed the Air India to connect with backward states such as Shimla and provide air links there.

Then the court thwacked certain states for not implementing the food security act. It also gave notice to the Centre for implementing the MNREGA, the rural job creation scheme.

Recently, the Apex Court also instructed the Speaker of the Uttrakhand Assembly with respect to counting of votes in the trust vote for not doing his job properly. The Speaker's domain was breached but the wrongful practice was stopped.

Another instance where we saw the court intervene because of the injustices happening was during the Arunachal Pradesh crisis. The court directly issued the notice to the governor. It was later on withdrawn but the court examined the actions of the governor.

During the Maharashtra drought the Bombay High Court asked the IPL to shift its matches outside the state after April, 2016 in view of the water shortage in many parts of the state. In another case, it ordered the Maharashtra government to make sure that the weight of the school bags that children carry be reduced.

[12] Arun Jaitley's outburst is justified: The supreme court is playing god, Politics (Firstpost May 13, 2016), http://www.firstpost.com/politics/supreme-court-arun-jaitley-article-356-bcci-ipl-rbi-dance-bars-2779546.html.

On receiving a poor response from the police, a Delhi high court judge filed a PIL in the court for poor response to his call for help on dialling 100.

Another key example of judicial activism, which possibly is the most significant was when the Apex Court seized the constitutional right of the President of India to appoint judges showing its autonomy and independence from other organs of the state. This decision was taken after consultations with the Chief Justice, and the authority was assumed by the Chief Justice and a collegium of four judges basing it on its own judgement which is popularly known as the Three Judges Cases.

The latest instance where the court took charge in its hand due to the chaos created was in the NEET case when it ruled out that there shall only be one test conducted for all medical courses and admission to all medical colleges in India. After this the center and the states went into a clump. While some states have shown support for it, others show concern for logistical issues and language barriers.[13]

Nonetheless, the amount of interference by the judiciary has increased to an extent where it needs to be curbed.

ANALYSIS OF THE INDIAN LEGAL PROVISIONS

it is a wrong impression that judicial activism is a disease to our democracy. Our judiciary and judges have been afflicted by it and this has led to disastrous consequences.

Ever since its origin our Supreme Court has spelt out many principal rights which are not explicitly mentioned in the Chapter on Fundamental Rights. This legal practice is performed on the commence that specific unspecified rights are understood or intrinsic in the express counted ensures. For instance, our Constitution does not particularly ensure opportunity of the press as an essential right. In a few choices of the Supreme Court from 1950 onwards opportunity of the press has been held to be certain in the assurance of the right to speak freely and expression. Opportunity

[13] Nidhi JAISWAL, "Moral Rights Of An Author Under Copyright Laws," VOLUME 1 www.csripr.orG (2013), http://www.csripr.org/uploads/1/3/3/1/13313802/paper_on_moral_right_of_an_author.pdf.

of the press one of the mainstays of popular government has accordingly gained the status of an essential right because of extremist legal translation.

Our Supreme Court has resolved other basic rights which are not explicitly specified in the Constitution. For instance, the privilege to protection, the privilege to travel abroad, the privilege to training, opportunity from remorseless and barbaric discipline or treatment. Would anyone be able to truly question this dissident legal approach which has amplified the central privileges of our kin. These healthy improvements have absolutely been a help.

Of the few critical judgments conveyed by our Supreme Court the most noteworthy and way softening is its judgment up Keshavananda Bharati where the Court propounded the one of a kind tenet of the essential structure of the Constitution.

There is an arrangement in our Constitution for revising the Constitution. It is Article 368. On an exacting perusing of the Article the force of revision is outright and boundless and any and each arrangement of the Constitution, including central rights, can be changed. The force of change as set out in Article 368 is not subject to any constraint. Over a timeframe laws which were violative of key rights were placed in a Schedule called the IXth Schedule and immediately these laws couldn't be tested on the ground of infringement of essential rights. A few laws were embedded in the IXth Schedule including those which had nothing to do with agrarian change. The Supreme Court decided that the force of change was not outright but rather was liable to an inferred impediment to be specific that the force of alteration can't be practiced in order to revoke the fundamental elements of the Constitution along these lines harming the essential structure of the Constitution. As indicated by the Supreme Court a portion of the fundamental elements of the Constitution are (a) the Rule of Law; (b) Democracy; (c) Secularism; (d) Federalism and (e) Judicial Review. The choice in Keshavananda Bharati's case was the peak of legal activism.

The choice was at first quite censured, especially on the ground that the judges had, by the choice, in actuality corrected the Constitution and practiced supra-administrative capacities by acquainting restrictions which are not with be found in Article 368. This feedback is not without constrain. Then again it must be recollected that because of this teaching of fundamental structure, no gathering having outright lion's share in either House of Parliament can impact a sacred revision which would make India a religious State by giving that individuals from specific groups or

religion alone can hold the workplace of President, Vice-President, Prime Minister and the Chief Justice of India. Because of the essential structure convention arrangements for nothing and reasonable races can't be canceled from the Constitution, nor would it be able to be given that races would occur if and when Parliament decides rather than at regular intervals and consequently make a joke of majority rule government. On account of the fundamental structure principle the legal can't be denied of the force of legal survey nor can the lead of law be annulled. Again because of this teaching federalism can't be demolished and States made vassals of the Center. These, to my brain, are unmistakable and significant advantages. In my view the essential structure tenet has surely been a shelter.

Feedback as often as possible made about legal activism depends on the precept of detachment of forces. There is no unbending mass of division of forces in our Constitution. Regardless the acknowledged position is that the three wing of the State, in particular, the governing body, the official and the legal have certain forces and capacities allocated to each of them under the Constitution and one wing of the State ought not trespass or barge in into the field held for alternate wings. Despite the fact that there are no brilliant lines that different the part of the council, the official and the courts from each other, there are sure matters that are pre-famously inside the area of either of the three wings of the State. For instance, Whether discretionary relations ought to be kept up or disjoined with another State or whether the Prime Minister ought to visit certain nations or whether there ought to be a lessening of the military in Jammu and Kashmir or whether the Prime Minister ought to visit Sri Lanka. These are matters simply in the area of the official and clearly the legal has no part to play in these matters, and no court has held or administered something else.

Our Supreme Court has led in more than one choice start with the Bank Nationalization case and coming full circle in its historic point choice in Balco that it is not "inside the area of the courts nor the extent of the legal survey to set out upon an enquiry in the matter of whether a specific open strategy is insightful or whether better open arrangement can be advanced. Nor are the courts slanted to strike down an arrangement simply in light of the fact that an alternate approach would have been more pleasant or smarter or more logical or more coherent". In the Bank Nationalization case the primary and capable contention of Nani that nationalization of banks was not in broad

daylight premium was not acknowledged by the Supreme Court as that issue identified with the monetary approach of the administration.

However the Supreme Court has made it clear that if the approach is in negation of an established arrangement or it is in break of a required statutory arrangement or is mala fide legal mediation will be accessible. Where state arrangement is in struggle with the Constitution, courts need to figure out if the State has neglected to offer impact to its established commitments. On the off chance that in a given case the state has neglected to do as such, the court is obliged by the Constitution to so pronounce. On the off chance that that constitutes an interruption into the area of the official, that is an "interruption" ordered by the Constitution itself. Summon of the partition of forces convention in such cases is confounded and the Hon'ble Speaker Somnath Chatterjee's intermittent salvos against the legal are outlandish.

The bearings given by the Supreme Court to the Speaker of the Jharkhand Assembly in March 2005 were going a bit too far in guiding the Speaker precisely what to do including, for instance, requesting a video recording of the procedures and have been seriously scrutinized. There is unquestionably constrain in this feedback. However, consider the outcomes if the Supreme Court had declined to mediate. The factional activity to swear in an administration which did not have a lion's share, trailed by endeavors to keep an option government from being shaped by another mix of gatherings was against all standards of reasonable play and in break of very much settled traditions. Refusal to mediate would have been adverse to the vote based process. Moreover, a portion of the bearings offered were to guarantee that there was free and reasonable voting and to block objections about the direct of decisions.

As of late the Supreme Court needed to manage the question whether Houses of Parliament in practice of their forces and benefits are able to oust individuals for enjoying the exploitative and degenerate routine of taking trade for making inquiries out Parliament. The Supreme Court held that Parliament possessed that power and that the convenience and need of practicing that power are for the assurance of Parliament and State lawmaking bodies and that is not a matter for the Courts. However the Supreme Court additionally decided that nobody, howsoever grand, can case to be the sole judge of the power given under the Constitution and the practice of legal audit with respect to the way of practice of force does not imply that Parliament's capacity has been usurped

by the legal. On the off chance that a national, whether a non-part or an individual from the governing body, gripes that his principal rights have been encroached it is the obligation of the Supreme Court to look at the benefits of the said grievance and choose. Court may reject the grievance as unwarranted yet in the event that there is gross mishandle of force by Parliament or the State governing body, the Court will set aside the nonsensical activity being referred to. On a reasonable perusing of the judgment it would be obvious that there is no genuine clash between the legal and Parliament in such cases.

However the vexed question is whether the court can embrace essential administrative movement. At the end of the day can the legal make a law where none exists despite the fact that there is crying requirement for it. It is contended that the cure lies with Parliament or the State lawmaking bodies and not in legal law making and that the legal can't usurp the elements of Parliament and governing bodies. This contention however not without substance neglects to notice that as far as we can tell has exhibited that it is vain to summon Parliament or the lawmaking bodies. This is obvious from the way that measures have barely been taken for quite a long time to cure a few social indecencies.

Consider a striking case of legal enactment. On account of Vishaka the Supreme Court was stood up to with the tenacious and unavoidable issue of lewd behavior in the work environment. There was no enactment managing this underhandedness. The Court alluding to different worldwide agreements and observing the nonattendance of residential law possessing the field issued a few bearings. These bearings included meaning of inappropriate behavior, the preventive strides that can be taken, the disciplinary activity and criminal procedures that might be embraced for lewd behavior. The Court additionally concocted a protestations component and a grievances panel. The Court stressed that these bearings would tie and enforceable in law until reasonable enactment is established to possess the field. This judgment, most likely praiseworthy in plan and content furthermore valuable to the casualties of lewd behavior, is an exemplary occurrence of star tem impromptu legal enactment. It involves lament and disgrace that so far no enactment has been ordered by Parliament.

Entirely the Supreme Court judgment in Vishaka breached the standard of division of forces. However, please recollect that each nation needs to work out its salvation as indicated by its particular needs and unconventional issues. It is the people groups welfare and not Montesqueu's

eighteenth century treatise on detachment of forces, which is significant and ought to be transcendent.

The issues and debates about legal exceed have emerged in particular in the field of Public Interest Litigation [PIL] where practice of legal power on occasion has gone haywire. It is frequently overlooked that the beginning of PIL was for the insurance of the major privileges of people who because of neediness and extreme monetary and social incapacities can't themselves approach the court and to avoid proceeded with infringement of their essential rights with exemption.

In this setting two perspectives ought to be remembered. Infringement of human rights frequently happen attributable to non-execution of laws. For instance, inaction to authorize laws established to ensure youthful kids in workshops or disallowing their work in hazardous occupations or laws and directions to counteract contamination. One of the fundamental explanations behind legal mediation is the steady disappointment of the official verging on insensitivity to execute the laws made by Parliament and the State governing bodies. At the point when proceeded with abandonments of statutory and protected commitments bringing about gross infringement of essential rights are conveyed to the notice of the Court, it can't overlap its hands and decline to act. Dissimilar to the official or the governing body, the legal can neither evade the truth nor hesitate. It should expeditiously react. As a rule the Court is requesting the official to actualize the laws made by the governing body. In this way it is not running the legislature nor has it assumed control over the organization of the nation.

In any case it can't be denied that the legal pendulum in PIL can swing and on events has swung unpredictably. A few requests and bearings which have been passed are past the legal circle. The legal can't immediate the organization to develop streets and erect structures, to enhance a flimsy railroad station, to secure terrains in a specific territory for obliging certain people, to designate directors at a compensation settled by the Court or to give specially appointed bearings for colossal financial installments for casualties of mobs or common catastrophes. Such requests are in the domain of the governing body and the official and have genuine monetary and budgetary ramifications and can be viewed as pernicious.

The purpose behind such weak requests is the conviction a few judges have ingrained in themselves that the legal can take care of the considerable number of issues that burden our

country. It should dependably be recollected that PIL is not a pill for each evil. Each matter of open intrigue can't be the premise of a PIL, e.g. increment in the cost of onions or update of railroad charges or the issue of trains not running on time. It is additionally important to guarantee that authentic PIL does not worsen into Private Interest Litigation, Political Interest Litigation and Publicity Interest Litigation. These 3 Ps are the hazards of PIL and must be maintained a strategic distance from. Soft spot for exposure influences judges legal advisors and defendants alike. Vanity is not the selective restraining infrastructure of Hollywood and Bollywood. Legal advisors and judges are not safe from this human shortcoming. They want to see their names in strong features in the print media and are excited to watch their splendid faces in the electronic media.

Engaging silly PILs prompts to misuse of legal time and expands the long line of prosecutors weeping for a considerable length of time for equity. Such petitions ought to be rejected at the edge as more than once said by Justice Pasayat. Other than passing whimsical requests in PILs places an undue weight on the organization and in addition takes away from the huge utility of PIL and gives it a terrible name. It likewise gives a prepared reason to some to attack the legal. In such circumstances legal activism has pernicious results.

Another note of alert is important. Legal activism must not be mistaken for legal dramatic skill or legal adventurism. Legal activism does not require a trigger cheerful approach of striking down laws which are unpalatable to the individual inclinations of judges. Legal activism does not warrant wandering into fields where the legal does not have the imperative skill.

The essential issue is that equity is not administered by opening machines but rather by people. It must be recollected that flawlessness is not the property of normal mankind and judges are after every single person. They are not heavenly bodies supplied with the endowment of dependability. In this way legal abnormalities do happen incidentally. Be that as it may, that is no motivation to infer that the legal has assumed control running of the nation. It is essential that vociferous feedback of legal activism and politically motivated justices comes from civil servants and pastors and wielders and holders of force who loathe feedback of their activities and are angry when their requests or choices are put aside by the courts. The general population has no grumbling or grievance about legal activism. Truth be told, general sentiment is emphatically for it with the exception of when a few judges pass some whimsical requests.

In reasonableness it must be perceived that various people have profited by legal requests in PIL. E.g. under-trial detainees grieving in prisons for excessive periods, reinforced workers, prisoners of havens and care-homes living in sub-human conditions, laborers in stone quarries, kids working in dangerous occupations, ladies enduring the injury of inappropriate behavior and other abused portions of society. In light of present circumstances PIL has been a blended gift.

In conclusion I might want to call attention to that there is no all-inclusive model of legal activism. It to a great extent relies on upon the common circumstance in a specific nation, its laws or nonattendance of laws and the level and nature of open organization. Journey for equity, particularly social equity and alleviation of human languishing is the vital inspiration over legal activism. What's more, recollect that central privileges of our kin will stay decorative show pieces and get to be distinctly prodding deceptions unless they are converted into living substances and get to be distinctly significant at any rate to a few areas of the discouraged and misused fragments of Indian mankind That relies on upon the standpoint, the demeanor, the approach and for sure the identity of the judge. Is the legal essentially worried with laws of property, contracts and amalgamations and mergers of organizations? On the other hand is it profoundly worried to maintain and ensure the essential human privileges of the general population particularly those of the abused and the oppressed? Is it considering human enduring important and reacting to it with affectability? Legal activism will positively be a shelter if there are delicate, sensible and fearless judges who don't jump [faulter] in rule against the administration of the day, judges who are not influenced by well known acclaim or disdain, judges who don't make legal restriction an appearance for self-refusal, judges who practice legal power effectively, vivaciously, not excessively and without straying into taboo fields. What's more, honored is the nation which has such judges.

CONCLUSION

Judicial activism is not what might be called an aberration or a bane. being a counter- majoritarian check on our democracy, it is one of the most essential and significant aspects of our constitution. It does not mean judicial governance for it functions within the limits of the constitutional framework and within those limits, it performs its functions keeping a check on the legitimacy or illegitimacy of the actions of the legislature or the executive.

Judiciary in itself cannot take action unless approached hence on the face of it, it is one of the weakest organs of the state. It gets power from the society at large. They are independent of any pressure and this is where their power comes from. They stand firm against all injustices.

The black letter law is promoting the traditional role of judges and hence has created a myth with respect to the sustainability of the legitimacy of the judicial activism. It surely contradicts the age old thinking that the role of judiciary is not to make the laws but merely interpret it. This myth was exploded later on, and it was recognized as a constitutional court, protector of the rights of the people. But as it was recognized as a constitutional court, now has come a time when its role needs to be seen as a political institution as well which does not necessarily mean it being partisan or unprincipled.

What also needs to be recognized is that the anomaly or the fallacies in the certain judgements occur since the judges are a part of the people and their judgements are influenced by their experiences. They are bound to have certain predilections and these predilections influence their decisions. This drawback is known to them and hence their actions are self-regulatory in nature. In certain instances, they do go out of their powers and direct the executive on how to perform their actions or issue guidelines but those instances require such action to be taken. Decisions of the courts are reasoned which ensures minimal lapses and objectionable judgements can always be appealed against or called for review. Through such processes the courts sustain their legitimacy.

SUGGESTIONS

The organs legislature, judiciary and executive should be self-restraint and function according to constitution. Constitution is the guiding document for our democracy. The state and the judiciary gets its power from the constitution. The acts of the organs of the democracy should also be in consonance with the social and economic environment of our country. The role of the judiciary is to interpret laws but there are a lot of instances whereby the apex court has gone to the extent of forming guidelines and laws. While exercising individual freedom, judiciary should ensure that it plays the role of guardian protector and interpreter.

Through civil and criminal justice systems the courts provide remedies or enforcing rights and duties of the citizens and it is the precondition of rule of law. Woefully justice at this stage is very expensive and overly technical which is far from the understanding and reach of a common man. There's a contradiction in the system itself over here. Over the years we have seen many Supreme Court judgements which shows how active the apex court of our country is when it comes to common issues faced by our country, but so far as mainstream justice system is concerned judiciary enters passive mode. Judicial activism should also be extended to mainstream justice system. There's over reliance on the higher judiciary so far as judicial activism is concerned.

Judicial accountability has been one of the major issue India is facing today. It is provided for in the constitution to empower the judiciary to take call on acts which are unconstitutional. Unfortunately, neither the parliament nor the judiciary have shown any earnestness about handling the issue of Judicial Accountability. Nor is there any political will to usher other reforms which are very much required to repair the judicial system, as a result of which the common man hardly has access to courts or justice in our country.