

Role of Indian Judiciary: Judicial Activism vs. Judicial Assertiveness (1985–1996)

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Indian democratic system presents a peculiar paradox of the fusion of parliamentary and federal features of the governmental functioning. The founding fathers sought to inherit the unique semblance of the *Westminster* model despite the peculiarities of the indigenous political set up. However, they also attempted to imbibe the dynamism of the American presidential system owing to its distinct characteristics and viability for a vast democratic multiethnic society. This symbiosis between the parliamentary and presidential system has its decisive bearing on the relationship between and among the three important pillars of governmental trinity, namely, legislature, executive and judiciary.

The founding fathers created an integrated judicial system in India where judiciary was asked to act both as a constitutional watchdog and an institutional harbinger of social transformation. Judiciary got its constitutional strength in terms of its special power of judicial review to check and contain the excesses of other two wings of the government. It also managed to establish its constitutional ascendancy in terms of possessing its sole discretionary right in progressive interpretations of law. As a result one can witness the changing role of judiciary in Indian polity since independence.

In fact, the perceptible change in the role of Indian judiciary over the years has also created great political ripples in the entire system of governance and the concept of social justice. One can broadly identify these specific changes that are associated to judiciary from the 1980s onwards. The decade of the eighties also presents a paradox in terms of the debate between the growing trends of activism and assertion of the judiciary.

The social scientists have been trying to find out and locate this phenomenon of activism and assertivism of the Indian judiciary. Research has been on the anvil on various aspects of the activist and assertive trends of the judiciary. My attempt has been not only to highlight this landmark decade of the mid-eighties to the mid-nineties in terms of making a comprehensive study of various cases undertaken by the judiciary but also to analyze the depth and magnitude of these cases and their possible ramifications

which ultimately strengthened the ongoing debate between the activist and the assertive judiciary in different political realms.

The entire research work is based on primary as well as secondary sources. Whether the activist trends of judiciary are more pronounced over its assertive trends during the designated decade was the initial dilemma faced by the researcher in the beginning. To testify this hypothesis in question, both theoretical and pragmatic analysis has been undertaken with regard to the role of the judiciary. The work has been divided into six major chapters each one is attempting to analyze and discuss this varying and changing role of judiciary in the Indian political system.

The first chapter tries to focus on the theoretical aspect of the institution of judiciary in the global political map. In this chapter titled "Institution of Judiciary: Theoretical Analysis" an attempt has been made to discuss the different phases of judiciary from the ancient times till the enactment of Indian Constitution. It deals with the information on the role of judiciary in parliamentary and presidential political systems, particularly with reference to the judicial setups in United Kingdom and United States of America.

The second chapter "Judiciary in the Post Independence India: A study of Constitutional Aspects" seeks to provide the information on the establishment of the two sets of judiciary, namely Union Judiciary and State Judiciary. Besides delving into the comprehensive powers of the courts at different levels of judicial hierarchy, it also highlights the enlargement of the jurisdiction of the Supreme Court.

The third chapter attempts to examine the "Relationship between Indian Judiciary and Indian Parliament". The detailed study throws light on the confrontations between the two powerful organs.

"Expanding Contours of Indian Judiciary with special reference to Public Interest Litigation (PIL)" is the focus of the fourth chapter which largely revolves around the imperative need to make judiciary more accessible to the disadvantaged and the most suffering sections of the society. It seeks to discuss the inevitable changes that have crept in the traditional functioning of the Supreme Court with the upcoming of PIL.

The fifth chapter attempts to focus on the various prevalent "Trends of Judicial Activism and Judicial Assertiveness (1985–1996)" in view of the Court's judgments and their power of judicial review. By analyzing various cases undertaken by the judiciary during this decade, an attempt has been made to link these cases in terms of the changing trends that kept on imparting unique role to the judiciary.

The sixth chapter analyzes the "Judicial Functioning and People's Reaction". It deals with the general public opinion on the working of the judiciary and covers different and distinct views of advocates, judges, educationists and different other sections of the society in terms of the questionnaire presented to them.

In view of the judiciary's vital and integral role in rather complex democratic political system of India, the concluding observations have been made in an attempt to highlight and try to solve the initial dilemma whether the judiciary has been playing an

appropriate activist role in Indian democracy or is it transgressing its judico-constitutional limits by usurping the powers of other two organs of the government and thereby turning to an assertive judiciary.

The present research reflects an image of an impartial study undertaken to analyze this debate regarding Judicial Activism and Judicial Assertiveness in the changing Indian democratic polity.