

## JUDICIAL ACTIVISM AND ITS IMPLICATIONS IN INDIA

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**Abstract:** The concept of Judicial Activism emerged to fill the gap aroused due to judicial restraint. Though there is no clear definition as what the concept tries to convey, to simplify it judicial activism is if there is no law specified in the constitution for certain cases, the judges themselves act as a law creator to finalise the case. Thus the judgement will be quoted in succeeding cases having the same nature of the preceded one. Judicial activism cannot be neglected in the society where each and every day new set of problems arises. Our constitutional makers touched almost all the burning issues of the future and provided solutions, but the modern society inventing a lot of problems which were not addressed in the constitution, hence something alternate has to be done to get this gap filled up in a legal manner, so judicial activism serves for this purpose. Public interest litigation is considered as one of the tool of judicial activism, which aids to get justice for the marginalised sections of the society. PIL was first headed by Justice P.N.Bhagwati, where a social activist wrote in post card about the problems faced by the prisoners in Bihar Prison. It was first of its kind where even written on piece of paper also be considered as petition and also it broke the rule that only victim can file a petition but also by third party.

**Keywords:** Judicial Activism, Justice Bhagwati, Public Interest Litigation

**Introduction:** Governing a nation in a fruitful way is largely dependent on the three pillars of democracy. Almost all the nations in the world adopted democratic form of government hence the role of these pillars is very much important to obtain the status of good governance. The pillars were called as legislature, executive and judiciary respectively. If a question arises how these organs do supports the administration of the nation, the answer would be the first makes the law, the second executes it and the latter defend it.

To make democracy alive and strengthen, it is not only possible if the laws lies in the paper but also it should be safeguarded through proper channel called as judiciary. This pattern of administering the nation also applicable to world largest democratic nation India. Judiciary in India is given imperative place in the society, protects the rights of the citizen. In recent decades the scope of judiciary has been expanded through numerous ways, one such expansion has emerged with concept of Judicial Activism. Though the concept is not new one, but its importance is felt only in recent times.

Judicial activism touched almost many issues like human rights, environment issues relating to women and the list continues. It is approached through the tool called Public Interest Litigation (PIL). Justice P.N Bhagwati was forerunner in introducing the genesis of PIL in firming Judiciary. The concept of PIL evolved when a social activist wrote to letter about the conditions of the prisoners in Bihar Jail to then Chief Justice Bhagwati, he considered this as a petition and took suo motto action against the case. Then onwards there is no look back as far as PIL is concerned. Thus the paper tries to explain the origin, meaning, applicability of Judicial activism in the society, finally the glitches and scenarios of concept of

Judicial Activism in the contemporary Indian society. The paper is based on descriptive study information were drawn from books, journals, newspapers and E-sources.

**The Indian Judiciary:** The evolution of Indian judiciary goes right back to the 18<sup>th</sup> century with uniform pattern of judiciary high courts were established in presidency town and federal courts hear the appeals of the high court respectively. It settles the disputes between the citizen, states and between the states and the Union. It also has power to enforce fundamental rights, demolish unauthorised constructions, prohibits strikes and bandhs. The Indian Judicial system is the most powerful judiciary in the world next only that of USA<sup>1</sup>.The judiciary in India play a prominent role in constitution to safeguard the rights of its citizens. Its role clearly mentioned in constitution. The courts can interpret the constitution through the process of Judicial Review and have the power to declare any law null and void<sup>2</sup>.

India got Independence from the British nearly six decades ago, from then the democratic set up of the nation could not be bothered its only because of the power that the Indian judiciary possess, even many nations could not have a hold in preserving democratic form of government they witnessed a wide fluctuations in forms of government but India would not come under this list, it is evident from one of the historical incident of Indian politics, when Indira Gandhi declared emergency in 1975, it was the judiciary which the declared the constitutional amendment relating to declaration of emergency void, in post emergency era the democracy of the nation was not disturbed. Being most influential organ of the government, its scope has been extended in various form. One the expanded form of scope is judicial activism.

**Nature of the Concept - Judicial Activism:** "Judicial Activism is nothing but the proc-active role played by the judiciary in ensuring, protecting and preserving the rights and liberties of citizens." -P. N Bhagwati.<sup>3</sup> The main purpose of judicial activism is to ensure social justice. Social justice is not limited only to the weaker section of the society but it extends to every nook and corner of the society where ever there is a negligence. Judicial activism which is implicit in judicial review is made explicit in the hands of activist court, it focusses not merely enforcement of law. It allows the court to project the personal views of its members on question of public policy, without manifestly violating the provisions of law, but often deviating from precedents and standard practice<sup>4</sup>. The Prominent features of judicial activism were judges act as an activist judge, they should go with reality of the case rather sticking on to the law which irrelevant to the case. Judicial activism is very much essential because the present scenario society is changing day by day so to encounter the changes, existing law could help only to certain extent but not always hence there must some renovations to be done on the part of judiciary.<sup>5</sup>

The Judicial activism in India was realised when inhuman treatment of prisoners in Bihar jail were brought to the notice of then chief justice Bhagwati, hence he pioneered in bringing the concept of Public Interest Litigation, one of the tool of renowned concept of Judicial activism. The landmark cases which explains the role of judges in law making and extent of judicial activism is A.K. goapalan V state of Madras and Menaka Gandhi V Union of India where justice bhagwati gave wider meaning for "life", "liberity" and "procedure" mentioned in Article 21 of the constitution.<sup>6</sup>

Public Interest litigation is one of the tool of Judicial Activism. It is issued in the interest of the public, can be introduced in court by itself in the name suo motu in the interest of public, Article 32 of the constitution joins public with judiciary. One the advantage of the PIL is it was that only victim could file case on behalf of him, but PIL states that it not only the victim even the third party file the case on behalf of vicitim. PIL is issued in all issues like environment problems, human rights violations and problems of the weaker sections of society.

**Judicial Activism is boon or bane:** The ongoing debate is that whether judicial activism served the purpose for which it was originated or it spoils the

nature of the judiciary. Each and every new concept has both positive and negative side, same way even judicial activism faced a lot of applause as well as criticisms by different sections of the society. The concept judicial review and judicial activism act as a checks and balances to have an eye over other two branches of the government if any law framed with violation of constitution judiciary plays a major role in reviewing the same through judicial review. Basically judicial activism works on the two theories namely theory of vacuum filling and theory of social wants. First, works on the principle if there is any gap in existing laws and the latter works based on the need of the society. Hence even there is any loop hole in laws it is rectified by judicial activism. Judges themselves act as activist in certain cases where a change is required rather sticking on to the existing laws. It also provides a space for a layman to fight against the unjust issues in the society through PIL.

It also negative side like when judges override the laws then judiciary will become powerful than other two organs. Judgement may vary from different judges in case of similar features then, it would create a confusion in succeeding cases. PIL interest litigation might be filed due to some personal vengeance over other. If judiciary interprets the laws in frequent instances, then the power of legislature is minimised. As then finance minister P.Chidambaram pointed out "Judicial Institutions cannot take over governance, we must rediscover the balance between our institutions and we have to reassert the balance between reforms, development and institutions<sup>7</sup>."

**Conclusion:** Judicial Activism is widely accepted by the society. As it fights for bringing social justice to the people. Judicial institutions alone cannot govern the nation, hence there should be balance between three organs of government in providing the justice. Judicial activism supports in blocking the loophole formed in the constitution. It fetched many reformations in the field of judiciary. It cannot be totally eliminated, but constitution to set up boundary as to where its scope could be expanded. It creates awareness among deprived masses to know about their basic rights provided for them in the constitution. Many initiatives have been taken by the judiciary with the help of NGO's, social activist by implementing LokAdalats, legal aid programmes to teach people about their basic rights. Hence, every concept used in appropriate means, it serves for the advancement of the society.

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