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“BREAKING SHACKLES OF JUDICIARY: JUDICIAL ACTIVISM.”

**AUTHORED BY: MR. AYUSH SHUKLA (BBA. LL.B),
SHRI RAMSWAROOP MEMORIAL UNIVERSITY, LUCKNOW,
CO-AUTHORED BY: MS. SHRUTI CHAUHAN (B.A.LL.B),
PSIT, KANPUR,
EMAIL IDS: SHUKLAAYUSH464@GMAIL.COM,
SHRUTI2527SCHAUHAN@GMAIL.COM.**

“All respect for the office of the presidency aside, I assumed that the obvious and unadulterated decline of freedom and constitutional sovereignty, not to mention the efforts to curb the power of judicial review, spoke for itself”

-Ruth Bader Ginsburg

I. ABSTRACT:

The concept of Judicial Activism is associated with the notion of public action and it has grown rapidly in recent years, gaining a huge legitimacy amongst people in India in the context of unrestrained and contradictory behaviour of legislative and executive organs of the Government. Within the framework of democratic ideals, there has to be a fundamental requirement of people's participation in order to influence Government policies and programmes, and this is the prerequisite for good governance.

II. INTRODUCTION:

Indian Judiciary by pioneering judicial activism in the context of our society has played the role of an activist to promote interests of marginal sections. The term Judicial Activism originated in the United States. Under the Indian Constitution, the State is under the prime

responsibility to ensure justice, liberty, equality and fraternity in the country¹. Judicial Activism in the middle of 20th Century in around the 1950s and 1960s had a positive implication as Courts were viewed as upholding democratic rights of the people, this was also the time when the Supreme Court was concerned with upholding the rights of African-Americans and other minorities in the United States. Several scholars praised the efforts of judges in the protection of civil rights. Judicial Activists were distinguished Civil Rights Activists often.

More recently people have been describing Judicial Activism as when a Judge oversteps or misuses its authority since democracies thrive on the equal separation of powers amongst Judiciary, Executive and Legislature. Excessive Activism on the part of the Judiciary is sometimes seen as stepping out to the rights of the other arms of the Government i.e., Executive and Legislature.

Judicial Activism may be defined as *an approach to the exercise of Judicial Review or a description of a particular judicial decision in which the judge is willing to decide on Constitutional matters and to invalidate legislative or executive action*. Black's Law Dictionary defines judicial activism as: *"a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent"*.

There are two components in this definition that are significant to our understanding of social policy; First, the fact that the public activism essentially involves reinterpreting the Constitution to create a legal mandate for certain types of Social and Economic Rights, and the Second is that, sometimes when the Government is not necessarily availing to address the emerging social problems than through public actions Judiciary allows for the recognition of specific social problems even when the other arms of the Government have failed to do so. Judges may be called as Activists for either permitting Government actions or forbidding it.

¹ The Constitution of India, 1950, the Preamble

Judicial Activism is considered controversial, as Courts as the final interpreters of the Constitution should not replace other branches of the Government that are equally important. Judicial Activism may result in the conservative or progressive outcomes; therefore all forms of activism performed by the Judiciary historically have not always been beneficial to social policy.

III. JUDICIARY IN THE CONTEXT OF INDIA²:

The democratic system of India rests on the separation of powers between the legislature, executive and judiciary. The function of Legislature revolves around formulating laws, the executive which consists of Council of Ministers looks after administrative functions of the country within Constitutional confinements. The role of the Judiciary is essentially to mediate disputes, to check unrestrained behaviours of other two organs of the Government and to protect and safeguard rights and liberties of the people. This last and the final role i.e., protection and safeguarding of rights is where the Judiciary has emerged as a forum of activists branch of the Government.

IV. THE PERSPECTIVE OF JUDICIAL ACTIVISM IN INDIA:

On reading Article 144 of the Constitution³, which states that Ruling of S.C. is binding on all other Courts within the territory of India, it is inferred that judicial activism traces its path in India since the times of Constitution. There are certain situations which lead to Judicial Activism activities they are:

- ☐ Failure to discharge duties on the part of Legislature;
- ☐ Presence of weak and unstable government;
- ☐ Misuse of Court of Law;
- ☐ Failure on part of Government to address the welfare needs of the nation and provide a fair and just system of Law and Administration;

² Saha, Arpita, Judicial Activism in India: A Necessary Evil (July 8, 2008). Available at SSRN: <https://ssrn.com/abstract=1156979> or <http://dx.doi.org/10.2139/ssrn.1156979>

³ Dr.JN Pandey "Constitution of India".

- ❑ Expansion of its Jurisdiction by the Court to provide them with more powers and functions;

Indian Judicial system occupies a significant place as it reviews the validity of laws, their interpretation and implementation framed by the legislature. Its work includes the settlement of mutual disputes and the disputes arising out of the clashes between Centre and the States and amongst the States also fall under the jurisdiction of Judiciary.

V. AN INCREASED HORIZON: INTERPRETATION OF ARTICLE 21:

One of the contributions of the Supreme Court in India from where it has been increasingly highlighted is that Judicial Activism has been the interpretation of Article 21 of the Constitution of India. The Supreme Court's interpretation of Article 21 has been crucial for the growth of Judicial Activism in the context of the Indian Democracy. A large number of rights such as the *right to education, privacy, to go abroad, to legal aid, to speedy justice, against custodial violence, safe working conditions and medical aid to the workers, pollution-free water and air, to food, clothing and shelter, of every child the full development, the access to roads etc, of prisoners, to a humane and healthy environment, to sustainable development that is not included in Fundamental Rights* have been made enforceable through a wide and liberal interpretation of the Article 21. This Article which defines Right to life and personal liberty has increased its horizon and introduced various categories under it, which ensures every individual a free nation for development and life full of dignity rather than mere animal existence. This all credit goes to Judiciary who has interpreted actively for promoting and protecting the rights of individuals and promoting the objective of welfare States.

VI. JUDICIARY'S STAND ON PROMOTING WELFARE:

Judicial Activism promotes the goals of welfare State and this is where comes the correction between Judicial Activism and Social policy, with Judicial Activism judiciary endorses a proactive approach where the Courts move from its traditional functions of interpreting laws

and settling of disputes between Centre and States and different arms of the Government and protects rights and liberties of the people.

The activist role of Judiciary not only defends Fundamental Rights mentioned in Part III of the Indian Constitution but also promotes socio-economic rights under the Directive Principles of State Policy envisaged in Part IV of the Indian Constitution which are not legally acknowledged. One of the ways in which public grievances have been coming to the attention of the Courts, and how the Court has been using its mandate to both interpret the law as well as protecting function is through the instrument of ***Public Interest Litigation (PIL)***. PIL was introduced which extended the functions of the judiciary in public affairs. In the words of Justice Iyer, "***Law is a social auditor and only someone with the public interest can ignite this***".

One of the ways in which public programs and social programs can work effectively is by making the Government more accountable to people and enabling people to participate in democracy in such a way that creates accountability mechanisms. Public Interest Litigation is one of the tools which enable people to do this audit function in order to make laws which would otherwise be not used or work actively in protecting or safeguarding human rights.

On the other hand, Justice PN Bhagwati viewed that Courts should adopt new techniques and approaches to provide free legal aid to those sections of the society who are deprived of basic human rights. Therefore one can see two different ideas about Judicial Activism and which can contribute towards widening the understanding of Judicial Activism and not just a negative development of Judiciary overstepping on the roles of other organs of the Government.

Judiciary can perform social audit functions and can also enable a large section of the marginalized population through the provision of free legal aid and other forms of assistance to bring their social concerns to the court.

VII. HIGHLIGHTING SOCIAL CONCERNS:

- ❑ In 1980, Judicial Activism appeared in the form of a writ petition by two academicians who described the brutal conditions of imprisonment in the Agra Protective House for Women.
- ❑ Degrading and callous conditions of the protective home violated Article 21 of the Constitution and inmates due to their lower financial status could hardly seek judicial redress.
- ❑ Conditions of labourers at the construction sites, the eviction of pavement dwellers, custodial violence meted out to women prisoners was communicated to the Court through letters. The Court treated the letter as a writ petition and with this, the PIL was well and truly introduced, the marginalized and disadvantaged strata of society were able to find easier access to the courts.

VIII. GOOD GOVERNANCE:

In recent years, a new type of *Public Cause Litigation* came to the forefront where the Court's interventions are not only limited to looking into the plights of disadvantaged sections, but also correcting the activities of governmental bodies. This could be seen as a contribution of Judiciary towards good governance in general, the Supreme Court has directed numerous interventions for the day to day public affairs such as;

“Control over automobile emissions, air and noise and traffic pollution, gave orders for parking charges, disposal of garbage, control of traffic in New Delhi, the mandatory wearing of seat belts, ordered measures to prevent accidents at unmanned railway level crossings, prevent ragging of college freshman, for collection and storage in blood banks, and for control of loudspeakers and banning of firecrackers, banning of pasting of black film and automobile windows, the prohibition of tourists in the tiger reserves and so forth in the name of better and good governance.”⁴

⁴Prof. Dr. Nishtha Jaswal & Dr. Lakhwinder Singh, “Judicial Activism in India”, Bharati Law Review, Jan. – March, 2017

IX. SOCIAL LEGISLATIONS:

As a result of the activist role of the judiciary, the Supreme Court contributed greatly in formulating progressive legislations like; *Right to Food, Right to Education, Right to Information*. Social Activism in India has acquired a new dimension because of Judicial Activism.

The Supreme Court's involvement in *the 2g spectrum and Coal Allocation scam*⁵, instruction to states to provide *mid-day meals* to school children under *National Food Security Act 2013* are some of the instances where Indian Judiciary came out of its traditional role of interpreting laws and stood against injustices.

X. PROMOTING DEVELOPMENT AND PROTECTION OF RIGHTS:

Development today is increasingly framed in the language of Human Rights. In the past developments were focused on social, and economic welfare. Human Rights involves establishing a universally, accepted legal regime that conceptualizes rights in terms of 'duty-bearers' and 'rights holders'. Judicial Activism helps the Government to remind them of their duties. Rights approach contributes to the development agenda in a number of ways;

- ❑ It adds legal tools and institutions such as the judiciary and processes such as litigation as a means to secure development.
- ❑ It shifts the emphasis on those who have been excluded from gaining development benefits.
- ❑ It stresses the importance of voice, information and integration of civil and political rights into development processes.

Judicial Activism, in fact, can be considered to be an aspect of the nature of development and how development has emerged in the language of human rights and that's where Judicial Activism stands.

⁵ <https://www.thehindu.com/news/resources/full-text-of-2g-case-verdict/article22122341.ece>

XI. EMPOWERMENTS AND DEMOCRACY:

- ❑ Rights-based approach contributes to the empowerment of citizens to demand the delivery of the rights and services that they are entitled to.
- ❑ It develops the capacity of states to fulfil the obligations to protect, respect and promote the rights of their citizens.
- ❑ It strengthens participatory grassroots processes to empower vulnerable groups.

When people realize that their social concerns or their social problems are not being met and the fact that they have a redressal by using Public Interest Litigation, by appealing to judiciary, by igniting the activist role of judiciary all of this ensures that the agenda of social empowerment is accomplished.

XII. CONCLUSION:

Public action through Judicial Activism has created a debate in Indian society. Access to justice is a fundamental aspect of the rule of law. If justice is not accessible to all, the establishment of the rule of law is not possible. Judicial Activism is not a result of the general development of the judicial procedure. It is an important aspect of the dynamics, derivatives and independent findings of the courts. It is a specific judicial interest about the issues. By the term Judicial Activism, it does not mean governance by the judiciary. The judicial process lays down the limit for the functioning of Judicial Activism.

The constitutional value must be maintained and these all existing constitutional challenges can be addressed by Judicial Activism very well. Reforms in the Indian society take place with Judicial Activism and people have developed faith in the Judiciary. The concept has attracted both admiration and opposition from the masses. It is well established that the judiciary is the watchdog of the nation and it ought to/should overstep its boundaries to maintain safety, peace and order. One school of thought regards Judicial Activism as necessary since democratic ideals of Indian society are reinforced through Judicial Activism and it reasserts people's lost faith in the judiciary which was earlier only limited to the reach of rich and elites.