

# JUDICIAL ACTIVISM: LOCUS STANDI TO PUBLIC INTEREST LITIGATION

Author: **Dr. Jharasri Paikaray**

Faculty of Law, P.G.Department of Law, Utkal University, Bhubaneswar, Odisha

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## ABSTRACT

Indian judiciary has been considered as the guardian and protector of the Indian Constitution. This paper analyses the conceptualization and operationalization of judicial activities. The role of judicial activism cannot be negated or over looked as it played a significant role in providing justice to the underprivileged sections of the society, indigent individuals, socially and educationally backward classes, victims of trafficking, undertrial prisoners, beggar and transgender. The author also focuses on public interest litigations where Supreme Court exercised its epistolary jurisdiction which leads activism to overreach.

**Keywords:** Judicial activism, judicial review, locus standi, evolution, intervention.

## INTRODUCTION

Judicial activism happens when the courts have the power to review the state action. Under the Indian constitution the state is under the prime responsibility to ensure justice, liberty, equality and fraternity in the country. State is under the obligation to protect the individuals fundamental rights and implement the Directive Principles of State Policy. In order to restrain the state from escaping the responsibilities the Indian Constitution has conferred inherent powers of reviewing the state's action on the courts. In this context the Indian Judiciary has been considered as the guardian and protector of the Indian Constitution. "A judicial decision either stigmatises or legitimises a decision of the legislature or the executive. In either case, the court neither approves or condemns whether the legislative policy, its concern is merely to determine whether the legislation is in conformity with or contrary of the provision of the constitution. It often includes consideration of the rationality of the statute. Similarly,

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where the court strikes down an executive order, it is not in a spirit of confrontation or to assert its superiority but in discharge of its constitutional duties and the majority of the law.” Independence and fearlessness of judiciary not only expected from superior courts but also from District courts and Judicial Activism is necessary to ensure that unheard voices cannot be buried by more influential voices.

## **ORIGIN OF THE CONCEPT OF JUDICIAL ACTIVISM**

The concept of judicial activism found its roots in the English concepts of ‘equity’ and ‘natural rights’. On the American soil these concepts found expression in the concept of judicial review. The first landmark case in this regard was the case of *Marbury vs. Madison*<sup>i</sup> in the concept of judicial review. In this case, for the first time the judiciary took an active step above the legislative actions. In this case, although the warrant of appointment was signed it could not be delivered. With the power of judicial review up in its sleeves, the American judiciary started the modern concept of judicial activism on 1954 with the landmark judgement is “*Brown vs. Board of Education*”<sup>ii</sup>

In India due to activist approaches of judges a new facet of judicial review emerged during course of time to be known as ‘Judicial Activism’ that envisages changes in interpretation of the constitutional and statutory provisions. The history of judicial activism can be traced back to 1893, when Justice Method of the Allahabad High Court delivered a dissenting judgement which sowed the seed of activism in India. It was a case of an under trial who could not afford to engage a lawyer. So the question was whether the court can decide his case by merely looking at his papers (Justice J.S. Verma 1996). Mehmood held that the pre-condition of the case being heard as opposed to merely being read would be fulfilled only when somebody speaks. So he gave the widest possible interpretation of the relevant law and laid the foundation stone of the judicial activism in India.

It was due to executive abuses and excuses that the judiciary had to intervene during the course of legal proceedings. The executive has always looked upon the judiciary as a positive branch of the state. This view gained more memorable and popularity when the bureaucracy degenerated into a system of personal gains and not public gains. Exploitation and corruption

became inbuilt in the present political system. It becomes a responsibility of the judiciary to do something to provide relief to the oppressed masses of the society. when law matters take for too long for social patience to suffer courts have to make with interpretation and curve on word sculpt on stone without waiting for the distant marble.” Therefore in the historic case of Mumbai Kamghar Sabha vs. Abdul bhai,<sup>iii</sup> the apex court introduced the doctrine of judicial activism: the theory judicial activism received impetus in the case of Meneka Gandhi vs. Union of India,<sup>iv</sup> where the apex court substituted the due process clause in the Article 21 of the constitution instead of procedure established by law in order to bypass the absolutism of the executive and its interference with the task of unearthing many scams, providing justice to the citizens and also to enhance their rights.

## **CONSTITUTIONAL POWERS OF THE SUPREME COURT AND HIGH COURTS IN INDIA**

Judicial activism happens when the courts have power to review the social action. Articles 13, 32 and 226 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare any legislative, executive or administrative action void if it is in contravention with the constitution. The power of judicial review is a basic feature of the Indian Constitution as decided in the judgment of L.Chandra Kumar vs. Union of India<sup>v</sup>. The Supreme Court interpreted Article 32 in a very literal manner in many cases in order to enforce fundamental rights even against the private entities performing public functions. Article 226 of the Indian Constitution gives power to the High Courts to issue any appropriate order or writ for the enforcement of fundamental rights and other legal rights.

The Supreme Court has power to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed by any court or tribunal under Article 136 of the Indian Constitution which confers special power on it. The Supreme Court exercises special power in those cases where gross injustice happens or substantial question of law is involved also the Supreme court has power under Article 142 of the Constitution to issue directions and guidelines for implementing and protecting the fundamental rights in the absence of any enactment.

## **JUDICIAL ACTIVISM FROM LOCUS STANDI TO PUBLIC INTEREST LITIGATION**

Access to justice is a fundamental aspect of rule of law. If the justice is not accessible to all establishment of the rule of law is not possible. The individuals fail to reach justice system due to various reasons including lack of basic necessities, illiteracy, poverty, discrimination, privacy, poor infrastructure of the justice system etc. The Supreme Court of India has recognised in many landmark judgements that access to justice is a fundamental right as in the case of *Imtiyaz Ahmad vs. State of Uttar Pradesh & Ors*,<sup>vi</sup> Indian judiciary has played an active role in ensuring access to justice for the indigent persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of beggar, transgender etc.

In many cases the Supreme Court exercised its epistolary jurisdiction and took suo motto actions on mere postal letters disclosing the human rights violations which published in newspapers were taken into judicial consideration. The court entertains the petitions which are being filed by the public spirited persons in the public interest. The shift from locus standi to public interest litigation made the judicial process mere participatory and democratic.

The Supreme Court in *Peoples Union for Democratic Rights vs. Union of India*,<sup>vii</sup> held that public interest litigation is different from the traditional adversarial justice system. The court said that public interest litigation is intended to promote public interest. Public interest litigation has been invented to bring justice to poor and socially or economically disadvantaged sections of the society. In *Fertilizer Corporation Kamgar vs. Union of India*<sup>viii</sup>, the court held that the public interest litigation is part of the participative justice. In *Sheela Barse vs. Union of India*<sup>ix</sup> said that the compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to where in an egalitarian social-order and a welfare state. While passing any order under public interest litigation the intention of the court is to enforce the constitution and rule of law in the society. Another good example of public interest litigation is *S.P.Gupta vs. Union of India*<sup>x</sup>. In this case, the court recognized the locus standi of bar associations to file writs by way of public interest litigation. It was said that questioning the executive's policy of arbitrarily transferring High Court judges is in the public interest. A person who has suffered a legal wrong or a legal

injury and is unable to approach the court on account of same disability then some other person can invoke the assistance of the court for the purpose of providing judicial redress.

## **THE PIL REGIME: A HEYDAY OF JUDICIAL ACTIVISM**

“The proponents of judicial activism were judges like V.R. Krishna Iyer, P.N.Bhagawati,, Chinnappa Reddy and D.A. Desai, who have rendered many judgements touching upon the basic rights of the people.”

It is often said that the genesis of judicial activism lies in the evolution of public interest litigation and the consequent liberalization of the locus standi rule PIL was originally conceived with the noble objective of empowering the downtrodden, the poor and the need by ensuring justice to them by relaxing the rigour of locus standi. It is the activist approach of the supreme court due to which innumerable rights crucial for the welfare of the citizens have been inferred from Article 21 of the Constitution of India dealing with protection of life and personal liberty. It is notable in the following area:

1. Bonded labour:- Bandhua Mukti Morcha vs. Union of India, People’s Union for Democratic Rights vs. Union of India, Neerja Choudhury vs. State of M.P are the cases decided on the issue in the welfare of the bonded labour.
2. Child welfare:- The judgements in M.C.Mehta vs.State of Tamil Nadu, Lakshmi kant Pandey vs. Union of India, Sheela Barse vs. Union of India etc. have been delivered in the welfare of the child.
3. Women welfare:- The Supreme court issued several directions in Vishaka vs. State of Rajasthan,<sup>xi</sup> for prevention of sexual harassment of working women and also in relation to trial of rape case in Bodhisattwa Gentam vs. Subhra Chakraborty <sup>xii</sup>. In the landmark judgement of Gourav Jain vs. Union of India,<sup>xiii</sup>several directions were issued for the rescue and rehabilitation of child prostitutes and children of fallen woman.
4. Protection of prisoners:-In Joginder Kumar vs. State of U.P.,<sup>xiv</sup> right against illegal arrest, in Post Sangbam Nigol vs. General officer commanding<sup>xv</sup> right against police torture in people’s Union for Civil liberties vs. Union of India,<sup>xvi</sup> right against fake encounter in the case of Kishore Singh v. State of Rajasthan,<sup>xvii</sup> right against inhuman

treatment in D.K. Basu vs. State of West Bengal,<sup>xviii</sup> right of compensation for death in police custody etc. have been recognised for protection of prisoners.

5. Privacy and protection of Environment:- Right to privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21. Right to privacy has been recognised as a part of the right to life and personal liberty in justice K.S.Pattaswamy (retired.) vs. Union of India,<sup>xix</sup>. Right to live in pollution free environment was recognised in M.C.Mehra vs. Union of India and directions were issued for the protection of environment.

## **JUDICIAL ACTIVISM & JUDICIAL INTERVENTIONS: TRANSFORMATION FROM ACTIVISM TO OVER REACH**

It will be against the scheme and philosophy of the condition if the judiciary oversteps and dons the mortal of the executive and the legislature. While in cases related to labour policy (e.g. minimum wages, working conditions etc.) and also in respect of issues related to environmental and ecological matters judicial behaviour can be perceived to be proactive, judicial intervention in matters related to fiscal policy ( political affairs, internal proceedings of the legislature etc.) can be categorized as judicial over reach.

The acknowledgement of this difference between “judicial activism” and “judicial over reach” is vital for the smooth functioning of a constitutional democracy with the separation of powers as its central characteristics and supremacy of the constitution as the foundation of its edifice. Glaring instances of judicial overreach include the police reform case. Supreme Court’s directions to videographer the proceeding of the Jharkhand Assembly and the appointment of a temporary speaker. Judicial legislation in Vishakha’s case regarding the prevention of sexual harassment of women in the workplace, the creation of high powered committee to monitor parking charges, the wearing of helmets, parking space are way traffic. Evenly the recent Gujrat fake encounter case in which the court has decided to monitor the investigating agency while not entrusting the case to the CBI is a case of overstepping the constitutional thin live which is the mythological Lakshman rekha.

## CONCLUSION

Under the constitution, the legislature, the executive and judiciary have their own broad spheres of operation. It is therefore important that these three organs of the state do not enreach upon the domain of another and confine themselves of their own otherwise the delicate balance in the constitution will be upset. The judiciary must therefore exercise self-restraint and eschew the temptation to act as a super legislature. By exercising restraint, it will only enhance its own respect and prestige. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the state. It accomplishes this in two ways. First it not only recognises the equality of the other two branches with the judiciary, it also fasters that equality by minimizing inter branch interference by the judiciary. Second, it trend to protect the independence of the judiciary. The judiciary is not at the disposal of any government. It is an asset that belongs to the whole nation.

## ENDNOTES

- <sup>i</sup> US(1) 137 (1803)
- <sup>ii</sup> 347 US 483 (1954)
- <sup>iii</sup> AIR 1976 SC 1465
- <sup>iv</sup> AIR 1978 SC 853
- <sup>v</sup> (1997)3 SCC 261
- <sup>vi</sup> AIR 2012
- <sup>vii</sup> (1982)3 SCC 285
- <sup>viii</sup> AIR 1981 SC 344
- <sup>ix</sup> (1988)4 SCC 226
- <sup>x</sup> AIR 1982 SC 149
- <sup>xi</sup> AIR 1997 SC 3011
- <sup>xii</sup> AIR 1996 SC 922
- <sup>xiii</sup> AIR 1997 SC 3021
- <sup>xiv</sup> AIR 1994 SC 1349
- <sup>xv</sup> AIR 1997 SC 3435
- <sup>xvi</sup> AIR 1997 SC 1203
- <sup>xvii</sup> AIR 1981 SC 625
- <sup>xviii</sup> AIR 1997 SC 610
- <sup>xix</sup> AIR 2017