

JOURNAL FOR LAW STUDENTS AND RESEARCHERS**JUDICIAL ACTIVISM IN INDIA****Lavanya Panwar****Manipal University, Jaipur**

According to Justice J.S. Verma of Supreme Court, *“The role of Judiciary in interpreting existing laws according to the needs of the times and filling in the gaps appears to be true meaning of Judicial Activism”*.

Judicial Activism, a term which was coined in the 20th century can be described as, when the Supreme Court or the lower the courts instead of practising judicial restraint become an activist and compel the authorities to act and sometimes also direct the government regarding policies and also matters of administration.

The three pillars of the country that is the legislature, the executive and the judiciary are obligated to follow the constitutional ideology rather than any political or social ideology for the development of the country. In an era where our country has seen great transgressions on the fundamental rights of the citizens by the hands of both, the Legislature and the Executive, where the individuals have suffered due the negligence of the past and the present governments it becomes a sacrosanct duty of the Judiciary to stand by the citizens to stop such encroachments or apprehension of encroachments.

“Law must be stable, yet it cannot stand still”, said Roscoe Pound. Interpretations drawn by the Court shall reflect the true nature or intent of the policy-makers and nuances of such laws but what if such an interpretation leads to anomaly, sabotaging of fundamental rights, obscurity, abuse and misuse of powers of the Constitution. The laws created by the legislature shall have room for change as it needs to stand the tide of time and such interpretation shall be bought by the judiciary which shall be evolutionary and reformative but not revolutionary and dramatic for such dramatic judgements will be error prone and will create difficulty for the High Courts and Lower Courts as they will be left in sea of conflicting precedents and laws. Under the umbrella of Judicial Review, Judicial Activism plays an important role in

removing derogative policies, laws and precedents on the questions of political corruption, child labour, environments, educations, etc.

A decade after the enunciation of Judicial Activism came Public Interest Litigation (Article 32 and Article 226) where the public spirited individuals seek redress in matters which do not affect them individually but rights of people in general.

PIL has democratized access to the Apex Court. Such matters have broadened the scope of Fundamental Rights to include right to dignity, shelter, health, environment, privacy, etc. but often such matters lead to 'Private Interest Litigation' which effect the already existing logjam of matters in the Courts. However, such cases gained conformity from Justice P.N. Bhagwati and M.N. Venkatachallial as they took the lead and rest of the Judges followed and became bolder.

According to Justice P.N. Bhagwati, judicial activism and judicial restraint are the different faces of the same coin and judges shall refrain from commenting on policy matters. But, in the later times where the common man faces intolerance and corruption within every aspect of government machinery, the individuals can only turn towards the Judiciary for assistance.

This debate of whether excessive intervention of the Judiciary through the veil of Judicial Activism has given rise to conflict between the legislature and Judiciary where latter straightens up the former for its lack of duty and indifference. However, one can't ignore the fact where today the general populace favours the nominated; it may tomorrow favour the elected and in a disheartening scenario where neither is found appropriate will lead to a revolution. Amongst many other principles of The Constitution, Democracy is most paramount which is threatened by this very practise, a circumstance feared by even the most highly intellectual and conscientious citizens of India. Nani Palkhivala observes that, "*It portends the twilight of democracy we have lost all sense of propriety and are not only willing but eager to call upon the court to decide those questions which is the duty of the government to decide firmly and courageously. We forget the elementary proposition that judicial pronouncements can never be a cover for inadequacy of government.*" The survival of Democracy is threatened. Judicial Activism should never lead to arrogant righteousness which further graduates to despotism.

The Constitution is a voluminous document in which we find both social and political integration. The Constitution of India defines the powers and governance of everybody, be it-

the legislature, the executive or the judiciary. No such act by any of the three branches shall infringe on rights guaranteed to citizens by the Constitution. Just as the ministers, bureaucrats and legislators are under the radar of constant criticism and scrutiny, the Judges of the Supreme Court and the High Courts can't be presumed to be beyond such criticism and scrutiny.

The principal of 'Basic Structure of the Constitution' was evolved in the famous case *Keshvanand Bharti v. Union of India*¹ where the Legislature and Executive sought to destroy the Constitution through the provisions the Constitution and the Judiciary marginalised the principal of 'in accordance of law' in a very revolutionary and dramatic decision to protect the Constitution and free will of Judiciary. In the case of *VC Shukla v Delhi Administration*² the Court upheld the legislative prerogative of the State to pass the laws for the establishment of special courts to deal with cases pertaining to offences committed by persons holding high public offices. The Court in this case also clarified its stance on the term "basic structure"; it stated that the terminology shall apply to constitutional amendments and not to ordinary laws passed by the Parliament or the state legislature.

In the case of *Hussainara Khatoon v. State of Bihar*³ the Supreme Court took up the PIL pertaining to the rights of prisoners languishing in the prisons awaiting trial for a much longer time than the actual sentence prescribed for those offences. The court issued directions to the authorities to take appropriate measures. In the case of *Sunil Batra v. Delhi Administration*⁴ and *Sheela Barse v. Union of India*⁵ the Supreme Court held that the authorities shall be responsible for the health and safety of inmates both males and females; the females shall have separate lock-ups.

The Judges of Supreme Court and the High Courts to leave their traditional roles and become the guardians of the Constitution but only in such exceptional situations because where the Courts involve themselves in the sensitive issues of public debate such as 'Hindutva' would prove to be irresponsible and erroneous.

For the development of the country, the balance of roles of three wings is necessary and for such development these three bodies shall abide by the provisions of the Constitution .

¹ AIR 1973 SC 1461

² 1980 AIR 1382

³ 1979 AIR 1369

⁴ 1980 AIR 1579

⁵ 1986 SCALE (2)230