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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN ANALYSIS OF JUDICIAL ACTIVISM AND NEW HORIZONS OF ARTICLE 21 OF INDIAN CONSTITUTION

AUTHORED BY - DR. AJAY KUMAR

Abstract

Judicial Activism is commonly regarded as the force behind prolonged “Judicial Review.” This is inferred from the very work of Professor Sathe in his celebrated book ‘Judicial Activism in India,’ where he introduced the work as being a monograph on judicial review and its position in democracy. Sathe elaborates on how the judiciary has gradually acquired strength through time, highlighting the traditional position of the judiciary under the Indian Constitution and the manner in which former judges have employed the powers of judicial review. However, he believes that ‘Activism’ may easily exceed the line of judicial review and devolve into populism and excessivism. Judicial activism is the use of judicial power to declare, explain, and enforce principles that benefit society and individuals in general. Through judicial activism, the Supreme Court has done a huge amount of good. It has essentially sought to wipe away all the tears of society’s underprivileged, disadvantaged, and uneducated sections. The Judicial Activism has touched almost every aspect of life of individuals in India to do positive Justice. It makes this paper important to the scheme of this work, as it recognizes the need, in fact, to establish the limits within which judicial review powers must be exercised in order to maintain equilibrium between, on the one hand, the judicial body of the State and, on the other, the two co-equal bodies of the State i.e. Legislature and Executive.

Key Words: Judicial Activism, Judicial Review, Constitution, Article 21, Fundamental Right to Life and Personal Liberty, Separation of Power

Introduction

“The rule of law through democracy is a continuing work-in-progress where people’s scrutiny is paramount and courts are part of the dialogue. There is a thin line that divides the rule of law from the rule by law – one is democracy and the rulers are the people, and the second one is the rule by a monarch, a dictator or tyrant. The courts are the last stop to ensure continuity of the rule of law when all else fails!”

Justice Shripathi Ravindra Bhat¹

According to the Indian Constitution, the state has primary responsibility for ensuring the country’s justice, liberty, equality, and fraternity. Individuals’ fundamental rights must be protected, and the Directive Principles of State Policy must be implemented by each state. The Indian Constitution has given courts inherent authority to scrutinize the state’s actions in order to prevent the state from avoiding its responsibilities. The Indian judiciary has been regarded as the protector and guardian of the Indian Constitution in this aspect. The Indian judiciary has played an active role in preserving individuals’ fundamental rights against the State’s unjust, irrational, and unfair actions/inactions, in accordance with its constitutional obligations.

According to **Merriam-Webster’s Dictionary of Law**, - “Judicial Activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from the established precedent or are independent of or in opposition to supposed constitutional or legislative intent.”²

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”.³

According to **Justice P.N. Bhagwati**, “The judge infuses life and blood into the dry Skelton provided by legislature and creates a living organism appropriate and adequate to meet the needs of the society. The Indian judiciary has adopted an activist goal oriented approach in the

¹ Judge of Supreme Court of India, <https://www.livelaw.in/top-stories/justice-ravindra-bhat-role-of-judiciary-in-governance-judicial-activism-rule-of-law-180030>. Retrieved on 14.04.2022

² Merriam-Webster’s Dictionary of Law, (Springfield, Massachusetts: Merriam-Webster, 1999).

³ Garner A. Bryan, Black’s Law Dictionary (West Group Publication, 7th edn., 2002)

matter of interpretation of fundamental rights. The judiciary has expanded the frontiers of fundamental rights and the process rewritten in some part of the Constitution through a variety of techniques of judicial activism. The Supreme Court of India has undergone a radical change in the last few years and it is now increasingly identified by the justice as well as people's last resort for the purpose bewildered.”⁴

Objectives of the Research

This Research paper will make a significant and considerable effort in answering the following Research Objectives:

- To explore the concept of Judicial Activism.
- To analyze the expanding dimensions of Right to Life and Personal Liberty guaranteed under Article 21 of Indian Constitution.
- To critically examine the scope of Judicial Activism, Public Interest Litigation, Principle of Locus Standi and Separation of Power under Indian Constitution

Research Methodology

The research paper utilizes data obtained from various sources such as libraries, encyclopedias, books, journals, magazines, newspapers, seminars, conferences, and internet resources. Proper credits have been given to these sources. The study primarily employs the “Doctrinal Research” methodology.

Judicial Activism and Public Interest Litigation: A Shift from Principle of Locus Standi

Access to justice is indeed a fundamental element of the rule of law. Without accessible justice, the establishment of a just society becomes unattainable. Many individuals are unable to access the justice system due to various barriers, such as lack of basic necessities, illiteracy, poverty, discrimination, privacy concerns, and inadequate infrastructure of the justice system. These barriers prevent individuals from seeking and obtaining justice, thereby undermining the principles of fairness and equality. Efforts to address these barriers and promote equal access to justice are crucial in upholding the rule of law.

Former Chief Justice of India, Mr. P.N Bhagwati, the founding father of Public Interest

⁴ Justice P.N. Bhagawati, “Enforcement of Fundamental rights – Role of the Courts” 24 Indian Bar Review 19 (1997).

Litigation observed that “Greatness of the bench lies in the creativity of the judgement rendered by Courts in the case where a decision one way or the other will count for future, which will advance, retards sometimes much or sometimes less, but the development is always in the right direction. It is from these types of decisions from such cases where a judge leaps into the heart of legal darkness, where the lamps of precedents and common law principle flicker and fade, that the judges gets an opportunity to mould the law in its own way and give the shape and direction. This is what we have been trying to do in India.”

The Supreme Court of India has recognized access to justice as a fundamental right in several landmark judgments. The Indian judiciary has actively worked towards ensuring access to justice for marginalized individuals, including the indigent, socially and educationally backward classes, victims of human trafficking, beggars, and transgender individuals. Since India’s independence, the courts have employed innovative approaches to address the grievances of disadvantaged individuals. In many cases, the Supreme Court has exercised its epistolary jurisdiction, taking suo motu actions based on anonymous letters exposing human rights violations. Media reports on human rights violations have also been considered by the courts. The judiciary entertains petitions filed by public-spirited individuals in matters of public interest, thus liberating itself from the confines of the locus standi principle and giving rise to Public Interest Litigation (PIL) in India.

The shift from locus standi to public interest litigation (PIL) has indeed made the judicial process in India more participatory and democratic. Previously, the locus standi principle required individuals to demonstrate a direct personal interest in a case in order to have standing to bring it before the court. However, with the advent of PIL, the courts expanded the scope of standing to allow public-spirited individuals or organizations to file petitions on behalf of those who may not have the means or ability to approach the court themselves.

This shift has democratized the judicial process by enabling the courts to address and adjudicate on issues of public importance and societal concerns. PIL has provided a platform for marginalized and disadvantaged groups to seek redress for their grievances and assert their rights. It has allowed the judiciary to take cognizance of matters that may otherwise go unnoticed or unaddressed, promoting transparency, accountability, and social justice.

Overall, the transition from locus standi to public interest litigation has facilitated broader citizen participation, expanded access to justice, and enhanced the democratic nature of the judicial system in India.

According to S.P. Sathe, the traditional paradigm of judicial process meant for private law adjudication had to be replaced by a new paradigm that was polycentric and even legislative. While under the traditional paradigm, a judicial decision was binding on the parties (res judicata) and was binding in personam, the judicial decision under public interest litigation bound not only the parties to the litigation but all those similarly situated⁵.

The Supreme Court in *People's Union for Democratic Rights v. Union of India*⁶ 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. The violations of constitutional or legal rights of such large number of persons should not go unnoticed.

In *Fertilizer Corporation Kamgar Union v. Union of India*⁷, the court held that public interest litigation is part of the participative justice. Furthermore, the Supreme Court in *Bandhua Mukti Morcha v. Union of India*⁸ has justified the public interest litigation on the basis of "vast areas in our population of illiteracy and poverty, of social and economic backwardness, and of an insufficient awareness and appreciation of individual and collective rights".

In the *S.P. Gupta v. Union of India*⁹ case, the court recognized the locus standi of Bar Associations to file writs through public interest litigation. The court emphasized that questioning the executive's policy of transferring High Court judges arbitrarily is a matter of public interest. The court further explained the significance of public interest litigation, stating that when a person who has suffered a legal wrong or injury, or whose legal rights or legally protected interests are violated, is unable to approach the court due to disability or other practical reasons, another person can seek the court's assistance to provide judicial redress for

⁵ S.P. Sathe, *Judicial Activism in India* (Sixth Indian Impression, OUP 2010) 17

⁶ (1982) 3 S.C.C. 235

⁷ A.I.R. 1981 S.C. 344

⁸ A.I.R. 1984 S.C. 802

⁹ A.I.R. 1982 S.C. 149

the wronged or injured individual. This ensures that the legal wrong or injury does not go unaddressed and justice is served.

In *Sheela Barse v. Union of India*¹⁰ held 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 usher -in an egalitarian social -order and a welfare-State”. In the Case *State of Himachal Pradesh v. A Parent of a Student of Medical College*¹¹, the Court opined that while passing any order under public interest litigation, the intention of the court is to enforce constitution and rule of law in the society.

Epistolary jurisdiction was exercised by the Supreme Court in *Sunil Batra v. Delhi Administration*¹² when a prisoner’s letter was treated as writ petition. The prisoner alleged in the letter that Head Warde brutally assaulted another prisoner. The Court said that the technicalities cannot stop the court from protecting the civil liberties of the individuals.

One of the landmark cases related to public interest litigation is *Hussainara Khatoon (I) v. State of Bihar*. In this case, a newspaper published a series of articles highlighting the plight of under trial prisoners in Bihar. Many of these prisoners had already served the maximum sentence without being charged for the offense. An advocate filed a writ petition to bring attention to the issue. Recognizing it as a matter of public interest, the Supreme Court ruled that the right to a speedy trial is a fundamental right under Article 21 of the Indian Constitution. The court directed the state to provide free legal aid to the under trial prisoners to facilitate their bail or final release.

In the case of *Sheela Barse v. State of Maharashtra*¹³, a journalist wrote a letter to the Supreme Court alleging custodial violence against women prisoners in jail. The journalist had conducted interviews with some women prisoners and brought their plight to the court's attention. Considering the letter as a writ petition, the Supreme Court took cognizance of the matter and issued directions to the relevant authorities regarding the issue of custodial violence against women prisoners.

¹⁰ (1988) 4 S.C.C. 226

¹¹ (1985) 3 S.C.C. 169

¹² (1978) 4 S.C.C. 494

¹³ A.I.R. 1983 S.C. 378

In the case of *Parmanand Katara v. Union of India*¹⁴, an advocate filed a writ petition seeking the court's directions to ensure immediate medical treatment for individuals injured in road or other accidents, bypassing the technicalities of the criminal procedure. The Supreme Court accepted the advocate's application and issued directives to the medical establishments to provide prompt medical assistance to accident victims without delay.

Indian Judiciary has also played very important role to protect and improve Environment and provided new concept of Environmental Jurisprudence. In *Municipal Council, Ratlam v. Vardichand*¹⁵, the Court admitted the writ petition filed by a group of citizens who sought directions against the local Municipal Council for removal of open drains. The Court said that if the “centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men”. Similarly, a petition seeking court’s directions for protecting the lives of the people who made use of the water flowing in the river Ganga, was accepted as public interest litigation by the Supreme Court of India in the case of *M.C Mehta v. Union of India*¹⁶. In this case, the court directed the local bodies to take effective measures to prevent pollution of the water in the river Ganga.

The concept of PIL has given a new way to provide Justice through Judicial Activism but the public interest litigation should not be abused by anyone. It cannot be allowed to be used for creating nuisance or for obstructing administration of justice.

Future of Judicial Activism and Judicial Reforms

The concept of judicial activism is multidimensional; however, these dimensions cannot be universally applied because they vary according to constitutions and ideologies. The concept of judicial activism is not straightforward, which means that different people have different perspectives on what it means. Opponents of this activism claim that it undermines the power of the elected branch of government and harms the rule of law and democracy. Many, however, argue that it is a legitimate form of judicial review and that the interpretation of the law should change in accordance with society’s changing needs. Judicial activism is good when it is for

¹⁴ A.I.R. 1989 S.C. 2039

¹⁵ (1980) 4 S.C.C. 162

¹⁶ A.I.R. 1988 S.C. 1115

the benefit and development of under-served sections of society, but it should not interfere with the policy-making power of government if it converts into supervisory power to correct policies and government actions, public authorities, and citizens flock to the Supreme Court and High Courts.

If the failure of other branches of government is defended, the question of the consequences of the judiciary's failure to meet standards, as well as its inefficiency, may be raised. By the same logic, they will assume the functions of the judiciary. According to Justice J. S. Verma, "Judicial activism is a sharp-edged tool which has to be used as a scalpel by a skilful surgeon to cure the malady. Not as a Rampuri knife which can kill." It is impossible to deny that the court's socioeconomic movement has increased people's hope for justice. This is required for the establishment of democracy and the rule of law. Because of judicial inertia, ordinary people are denied justice. Such a lag will have to be eliminated through judicial activism. This advocacy should be carried out with integrity in order to gain trust and inspire hope for the future. Many laws have been passed that are insufficient to be interpreted by the judiciary; therefore, the existence of judicial activism in the country must have a firm grasp on the issues raised by citizens. Judicial advocacy is an essential component of the constitutional court's complexities. It must work for the benefit of citizens, but only within certain parameters. The Court must draw on its experience with financial, economic, and cultural transitions. While the Court is in session, it must keep the scales balanced when deciding on any dispute.

New Horizons of Judicial Activism under Article 21

Article 21 reads as follows:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

According to Bhagwati, J., Article 21 "embodies a constitutional value of supreme importance in a democratic society." Iyer, J., has characterized Article 21 as "the procedural magna carta protective of life and liberty".

This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.

The recent rulings of the Supreme Court in India shed light on the evolving nature of judicial activism. It has extended its focus beyond safeguarding the rights of socially and economically

disadvantaged individuals and overseeing public administration. The Court's opinions often reflect aspirational goals rather than strict legal pronouncements. In the realm of post-emergency advocacy, the Supreme Court has surpassed legal positivism, displaying a broader and more proactive approach in shaping legal principles and societal norms.

With the help of a liberal reading of the constitutional clause, the Supreme Court broadens the people's rights based on the circumstance and condition of the right to equality and the right to life and personal liberty. Judicial Activism has done a great service to the society which can be inferred through following decisions:

1. *"Personal liberty includes nothing more than physical freedom of body i.e. freedom from arrest and detention from false imprisonment or wrongful confinement. Article 21 of the Constitution did not require Indian courts to apply a due process of law standard"* (Narrow interpretation of the term 'Right to Personal Liberty' and 'Procedure established by Law')¹⁷
2. Right to Write a Book¹⁸
3. Right against Solitary Confinement¹⁹
4. Right to Bail²⁰
5. Right to Fair Procedure (The Supreme Court significantly expanded the interpretation of Article 21 of the Constitution of India with Principles of Natural Justice)²¹
6. Right to Free Legal Aid & Right to Appeal²²
7. Right to Go Abroad²³
8. Right to Live with Human Dignity²⁴
9. Right to Free Legal Aid²⁵
10. Right to Speedy Trial²⁶
11. Right against Bar Fetters²⁷

¹⁷ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27

¹⁸ *State of Maharashtra v. Prabhakar Pandurang*, 1966 SCR (1) 702

¹⁹ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675

²⁰ *Babu Singh v. State of Uttar Pradesh*, AIR 1978 SC 527

²¹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

²² *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548

²³ *Satwant Singh Sawhney v. Assistant Passport Officer, New Delhi*, 1967 SCR (2) 525, *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

²⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746

²⁵ *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar*, AIR 1979 SC 1369, 1979 SCR (3) 532, *Sheela Barse & Ors. v. Union of India & Ors.*, 1986 SCC (3) 596

²⁶ *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1360

²⁷ *Sunil Batra v. Delhi Administration*, 1980 SCC (3) 488

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12. Right against Hand Cuffing²⁸
 13. Right to Food²⁹
 14. Death by hanging not Violative of Article 21³⁰
 15. Right against Delayed Execution³¹
 16. Right to Compensation³²
 17. Right against Public Hanging³³
 18. Right to Livelihood³⁴
 19. Right to Clean Environment³⁵
 20. Right to Medical Care³⁶
 21. Right to Reputation³⁷
 22. Right to Work Not a Fundamental Right under Article 21³⁸
 23. Right to Shelter³⁹
 24. Right to get Pollution Free Water and Air⁴⁰
 25. Right to Education⁴¹
 26. Right to Social Security and Family Protection⁴²
 27. Right against Illegal Detention⁴³
 28. Right to Health⁴⁴
 29. Right to Social Security and Protection of Family⁴⁵
 30. Right to Life does not include Right to Die⁴⁶
 31. Right against Rape⁴⁷

²⁸ *Prem Shankar v. Delhi Administration*, AIR 1980 SC 1535

²⁹ *People's Union for Civil Liberties v. Union of India & Others*, AIR 1982 SC 1473

³⁰ *Deena v. Union of India*, 1983 SCC (4) 645

³¹ *Sher Singh v. State of Punjab*, 1983 SCR (2) 582

³² *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141

³³ *Attorney General of India v. Lachma Devi*, AIR 1986 SC 467

³⁴ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180, *D.T.C. v. D.T.C. Mazdoor Congress*, AIR 1991 SC 101

³⁵ *M.C. Mehta v. Union of India*, AIR 1988 SC 1037

³⁶ *Parmananda Katara v. Union of India*, AIR 1989 SC 2039

³⁷ *Smt. Kiran Bedi v. Committee of Inquiry*, AIR 1989 SC 714, *D.F. Marion v. Minnie Davis*, 55 American LR 171

³⁸ *Sodan Singh v. New Delhi Municipal Committee*, 1989 SCR (3) 1038

³⁹ *Chameli Singh v State of U.P.*, 1996 SCC (2) 549

⁴⁰ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420

⁴¹ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858

⁴² *C.E.S.C. Ltd. v. Subhash Chandra Bose and Ors*, AIR 1992 SC 573, (1992) 1 SCC 441

⁴³ *Joginder Kumar v. State of Uttar Pradesh*, AIR 1994 SC 1349, *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610

⁴⁴ *Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 922, 1995 SCC (3) 42

⁴⁵ *L.I.C. of India v. Consumer Education and Research Centre*, JT 1995(1) SC 637

⁴⁶ *Gian Kaur v. State of Punjab*, AIR 1996 SC 946, 1996 SCC (2) 648

⁴⁷ *Bodhisattwa Gautam v. Subhra Chakraborty*, AIR 1996 SC 922, 1996 SCC (1) 490

32. Right against Sexual Harassment at Workplace⁴⁸
33. Tapping of Telephone and Right to Privacy⁴⁹
34. Right to Public Trial⁵⁰
35. Right against Honour Killing⁵¹
36. Right against Smoking in Public Place⁵²
37. Disclosure of Dreadful Diseases⁵³
38. Right against Noise Pollution- In Re: Noise Pollution⁵⁴
39. Right to Fair Trial⁵⁵
40. Right to Live-in-Relationship⁵⁶
41. Right to Die with Dignity and Euthanasia⁵⁷
42. Right to Privacy⁵⁸
43. Right to Choice of Sex (Sexual Autonomy)⁵⁹
44. Right to Marriage⁶⁰
45. Right against Custodial Abuse⁶¹

The Supreme Court of India has held that the right to life under Article 21 includes the right to live with dignity, which includes the right to basic amenities of life, such as food, clothing, shelter, and medical care. The Court has directed the government to provide basic healthcare facilities to all citizens and has also directed hospitals to provide free treatment to poor patients.

In *Justice K. S. Puttuswamy v. Union of India and others*⁶², the Supreme Court has declared that “the Right to Privacy is protected as a fundamental right under the Articles 14, 19 and 21 of the Constitution of India”.

In *Independent Thought v. Union of India*⁶³, the Supreme Court has criminalized sexual

⁴⁸ *Vishakha v. State of Rajasthan*, 1997 SCC (6) 241

⁴⁹ *People's Union for Civil Liberties (PUCL) v. Union of India*, (1997) 1 SCC 301

⁵⁰ *Vineet Narain v. Union of India*, (1998) 1 SCC 226

⁵¹ *Surjit Kumar v. State of U.P.*, AIR 2002 (NOC) 265 (All), 2002 All. L. J. 2012

⁵² *Murli S. Deora v. Union of India*, AIR 2002 SC 40

⁵³ *Mr. X v. Hospital Z*, (2003) 1 SCC 500

⁵⁴ (2005) 5 SCC 733, AIR 2005 SC 3136

⁵⁵ *Zahira Habibullah Sheikh v. State of Gujarat*, AIR 2006 SC 1367

⁵⁶ *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600, *Nandakumar v. State of Kerala*, AIR 2018 SC 2254, *Gulafsha and another v. State of Punjab and others*, CRWP No.3329 of 2022

⁵⁷ *Aruna Ramchandra Shanbaug v. Union of India*, 2011 (4) CSC 454, *Common Cause v. Union of India*, (2018) 9 CSC 382

⁵⁸ *Kharak Singh v. State of U.P.*, AIR 1963 SC 129, *Justice K. S. Puttuswamy v. Union of India and others*, (2017) 10 SCC 1

⁵⁹ *Navtej Singh Johar v. Union of India*, 2018 (1) SCC 791

⁶⁰ *Shakti Vahini v. Union of India*, 2018 (7) SCC 192

⁶¹ *Sumit Kumar v. State of Bihar*, Pat., CR. WJC No. 333 of 2020 dt. 22-12-2020

⁶² *Justice K. S. Puttuswamy v. Union of India and others*, (2017) 10 SCC 1

⁶³ *Independent Thought v. Union of India*, (2017) 10 SCC 800

intercourse by a husband with his wife who is below 18 years of age. Henceforth it will be considered as rape. In effect, the Judgment has done away with the protection that husbands enjoyed under Section 375 exception 2 of the Indian Penal Code that allows husband to have sexual intercourse with a minor wife, provided that she is not below 15 years of age.

In *Shayara Bano v. Union of India*⁶⁴, the Supreme Court has declared by 3:2 majority that “the practice of “Triple Talaq” (Talaq-E-Biddat) is unconstitutional”.

In *Common Cause v. Union of India*⁶⁵, the five members Constitutional Bench while recognizing passive euthanasia, the Supreme Court of India allowed the “advance directive or living will”, by which patients can spell out whether treatment can be withdrawn if they fall terminally ill or are incompetent to express their opinions.

In *Shakti Vahini v. Union of India and other*⁶⁵, the Supreme Court decided that “the consent of the family or community is not necessary when the two adult individuals agree to enter into a wedlock. It is their fundamental right to marry of their own choice”.

In *Joseph Shine v. Union of India*⁶⁶, the Supreme Court declared “Section 497 of Indian Penal Code, 1860 as unconstitutional and decided that adultery is not an offence in India but it can be treated as civil wrong for dissolution of marriage i.e. a valid ground for divorce”.

Judicial Restraint

In India, there are three branches of government: the legislature, the executive, and the judiciary, each with its own set of responsibilities. The doctrine of separation of powers applies to all three organs. Judicial restraint occurs when the court must restrain itself in order to perform the functions of the executive or legislature. The framers of the Constitution have precisely defined the roles of various State organs, yet concept of separation of powers is not fully recognised in the Constitution.

The legislature and executive branches of the state hold control over the state’s finances and armed forces. While the judiciary does not have jurisdiction over these areas, it does have the authority to ensure that the legislature and executive function within the boundaries set by the Constitution. The judiciary acts as a guardian of democracy, monitoring and checking any unconstitutional exercise of power by these organs through judicial review. Judicial review is a crucial mechanism for curbing abuses of power by the legislature and executive, and it has expanded to encompass the concept of social and economic justice. While the judiciary can

⁶⁴ *Shayara Bano v. Union of India*, AIR 2017 SC 4609

⁶⁵ *Shakti Vahini v. Union of India*, 2018 (7) SCC 192

⁶⁶ *Joseph Shine v. Union of India*, AIR 2018 SC 4898 : (2019) 3 SCC 39 : 2018 (11) SCALE

scrutinize the actions of the legislative and executive branches, the only limitation it can impose on their powers is through self-imposed judicial restraint.

Conclusion and Suggestions

Judicial activism is a blessing of the modern era, just as scientific progress and human evolution have made society more organised and civilised. Today, as the world moves toward equality and the abolition of all forms of discrimination based on gender, religion, caste, creed, or nationality, the role and scope of judicial activism in upholding and protecting human rights becomes enormous. Judges, without a doubt, lack the power of the sword, but their strength is based on public trust and confidence. To maintain its stalwart image in the eyes of the public when all other options have failed, the judiciary must be a fair, faceless, impartial, impassive, and humble interpreter of the law. At the same time, judges must maintain balance and refrain from being overly active and enthusiastic. If judicial activism becomes overly active, it may create institutional imbalances or even destabilise the system. Courts must remember that they are not in charge of running the country; it is the responsibility of the elected government to do so. Courts must be sympathetic to the rights of the public because they will always be the weaker party in the face of the government. *The Supreme Court's recent rulings on "Sexual intercourse with one's own wife under the age of 18 Years – Rape", "Declaring quick Triple Talaq – Invalid and Unconstitutional", "Right to Marriage – A Fundamental Right", "Adultery – Not an Offence in India", "Live in-Relationship", and "Right to Sexual Autonomy" have all become contentious issues in Indian culture, tradition, family values, and philosophy.*

According to Hon'ble Chief Justice of India Mr. N. V. Ramana, *"Judiciary cannot be controlled, directly or indirectly, by the legislature or the executive, or else the 'Rule of Law' would become illusory."*

Whatever one may say about judicial activism, it is undeniable that it has done a great deal to improve the lives of the country's masses. It rightens wrongs committed by both states and individuals. The common people often face a lack of legal protection due to the slow functioning of the judiciary, also known as judicial inertia or legal tardiness. Judicial activism has emerged as a means to address these exceptional cases. However, this can only be effectively accomplished through sincere and vocal judicial advocacy, rather than undermining public confidence in the judiciary. The judiciary's greatest strength lies in the trust it commands

and the faith it inspires among the people, as they rely on its ability to deliver impartial justice and maintain fairness in resolving disputes. Upholding this trust is the judiciary's most valuable asset and its most powerful tool.

Based on the foregoing analysis, it is clear that the Supreme Court's powers under Article 142 are undefined and can be exercised whenever the conditions are met. Article 142 empowers the Supreme Court to engage in judicial activism whenever necessary and to render complete justice, which it has done in many cases. However, in many cases where the issue should be resolved by the legislature or the executive, the Supreme Court exercised judicial restraint. The judge should be able to distinguish between judicial activism and judicial restraint. Because Supreme Court decisions are legally binding in India, every judge should cultivate this skill.

Judicial activism has faced criticism on multiple occasions. Critics argue that it often involves the judiciary incorporating personal biases and opinions into the interpretation of the law under the pretext of activism. Another concern is that judicial activism undermines the principle of separation of powers, blurring the lines between the three branches of government. By intervening in administrative matters and engaging in judicial adventurism or overreach, the judiciary's activism is seen as going beyond its intended role. Additionally, some argue that judicial activism may occur even when no fundamental rights of any particular group are at stake. In response to these concerns, the concept of judicial restraint is often discussed as an alternative approach.

As per the Indian Constitution, the Supreme Court of India holds extensive jurisdiction. When conferred with authority, it should always be regarded as a responsibility by the constitutional functionary. While laypeople may perceive it as power, a Supreme Court judge must exercise caution to avoid being influenced by emotion or bias.

Nonetheless, the introduction and adaptation of Public Interest Litigation has resulted in significant evolution in terms of a new regime of citizen rights and obligations of the State, as well as the development of new methods for its accountability. PIL was created to protect the rights of the underprivileged. However, it was diluted in the process and was used to interfere with the government's ability to make policy decisions on a variety of issues. It has resulted in increased judicial intervention in legislative law-making.

The Judiciary should exercise caution when utilizing Articles 136 and 142 to avoid jeopardizing the supremacy of the Constitution and the separation of powers. The three branches of the State, namely the legislature, executive, and judiciary, should all operate within the constitutional boundaries. No branch should encroach upon the responsibilities of another. The Constitution depends on the judgment and discretion of each branch to function effectively while adhering to the prescribed procedures. It is crucial for each branch to be strong and self-sufficient in order to fulfill its functions appropriately.

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