



Edited By:

1) **Saumya Tripathi**

(Editor)

Saumya.judicateme@gmail.com

+91 9044382618

Publisher Details:

1) Saumya Tripathi

+91 9044382618

Address: Vikas Nagar, Lucknow

Email Address: Saumya.judicateme@gmail.com

JUDICIAL ACTIVISM

*By, Erica Roseline Toppo
From, Fairfield Institute of Management
Technology, Guru Gobind Singh
Indraprastha University.*

Judicial activism introduces judicial rulings that are presumed of being established on personal opinion, rather than on existing law. According to Black's Law Dictionary, judicial activism is a "Judicial philosophy which prompts judges to deviate from the conventional precedents in favor of progressive and new social policies".

Its emergence are often followed back to 1893 when Justice Mahmood of Allahabad supreme court delivered a dissenting judgment. it had been a case of an undertrial who couldn't afford to interact a lawyer, therefore the question was whether the court could decide his case by merely watching his papers, Justice Mahmood held that the pre-condition of the case being "heard" would be contented only somebody speaks.

The term "Judicial Activism" was formulated by Arthur Schlesinger, Jr. in

1947. In a Fortune article, Schlesinger organized the sitting Supreme Court justices into two categories: proponents of broad interpretation and proponents of judicial restraint. The "judicial activists" on the bench believed that politics play a task in every legal decision. According to him, a judicial activist views the Law as malleable and believes that law is meant to do the prominent feasible social good.

Judicial Activism has played a consequential role in the antecedent of India such as the Emergency of 1975 and its aftermath embodied elucidating prominence for judicial activism in India. In the infamous decision in ADM Jabalpur v. Shukla the Supreme Court permitted civil liberties to be suspended during the Emergency. The very Constitution of India permitted the suspension of civil liberties in Part II, such as the right to personal liberty. The Supreme Court's decision in that case, nevertheless, despite being judicially restrained, struck a devastating blow to civil liberties in India and was widely condemned subsequently. Justice H.R. Khanna's eloquent dissent was activist but acknowledged.

Former Chief Justice P.N.Bhagwati is the pioneer of Public Interest Litigation (PIL), effectuated a contemporary facet. PIL has carried advancing participative justice, standards of procedure, and fabricated justice more attainable to citizens.

The Constitution's three pillars - Parliament, Executive, and the Judiciary of the state that simultaneously was to be the administrators of the exemplars of the nation as enshrined in the Constitution. In the last several months, however, the Parliament has become dysfunctional, the Executive has relinquished its duties and the Judiciary is cracking the whip.

An effectual judiciary is one that takes its endeavor of sustaining the fundamental rights of the people and their liberties against the onslaught of the state, earnestly. As far as judges are perturbed, it is a matter of mindset. One judge could say that policy formulation is the job of the Executive and Judiciary does not need to arbitrate while another could believe that even in policy formulation, the Judiciary would need to arbitrate to guard fundamental rights.

Judicial activism is providing the idea for policymaking in competition with the legislature and executive and rendering of selections, which are in tune with the temper and tempo of the days.

The Predicaments that engender to judicial activism:

- (i) The infringement of rudimentary human rights.
- (ii) Squander and exploit some of the provisions of the Constitution
- (iii) When the legislature fails to liberate its responsibilities
- (iv) The non-activity of the other organs of the government.
- (v) In the case of a maladjusted parliament where the government is very debilitated and unstable.
- (vi) When the governments fail to protect the rudimentary rights of the citizens of providing an honest, efficient and just system of law and administration,
- (iv) When the party in power debilitates the courts of law for ulterior inducements as was done during the Emergency period, and
- (vii) Finally, the court may on its own try to expand its jurisdiction and counter on themselves more functions and powers.

Judicial judgment must take deep account of the day before yesterday in order that yesterday may not paralyze today. - Felix Frankfurter

DIMENSIONS OF JUDICIAL ACTIVISM

During the past decade, many instances of judicial activism have gained prominence. The areas in which the judiciary has become active are health, child labor, political corruption, environment, education, etc. The following cases of the judiciary have shown its firm commitment to participatory justice, just standards of procedures, immediate access to justice, and preventing arbitrary Union and State action.

1. The imposition of Patriotism in National Anthem Case: The Supreme Court in December 2016, passed its judgment within the case of Shyam Narayan Chouksey v. Union of India, which makes it mandatory, that each one the cinema halls in India shall play the anthem before the feature starts and all present within the hall are obliged to face up to point out respect, etc.

2. Liquor Ban: In the Supreme Court, ruling on a PIL which was about road safety, has banned the sale of liquor at retail outlets, as also in hotels, restaurants, and bars, that are within 500m of any national or state expressway .

3. The cancellation of telecom licenses in 2G case: After the CBI registered FIR against the officials of the Department of Telecom in the 2G scam case, the Supreme Court ordered to cancel 122 telecom

licenses and spectrum allocated to eight companies. The Supreme Court held that the method of allocation was flawed. It further directed the govt. to allocate national resources through auction only.

4. The Lodha Committee report on BCCI: The Lodha Panel was set up by the Supreme Court, following the allegations of corruption, match-fixing and betting scandals in Indian cricket. The committee was set up in an attempt to bring back law and order into the BCCI and the game of cricket.

5. Golaknath's case: In which the Supreme Court declared that Fundamental Rights enshrined in Part 3 are immutable and cannot be amended.

6. Kesavananda Bharati Case: The Supreme Court introduced the doctrine of the basic structure, i.e Parliament has the power to amend without altering the basic structure of the Constitution.

7. In Maneka Gandhi vs Union of India case: The court recited the term 'procedure established by law' under Article 21 of the Constitution by repositioning it as 'due process of law' which suggests the procedure which is established by the law must be just, fair and reasonable.

8. In the case of Vishakha vs the State of Rajasthan: The court laid down guidelines for the protection of women from sexual harassment at the workplace.

9. **In Olga Tellis vs Union of India:** The court said that the outlines of Article 21 which provides the right to life also include itself the Right to livelihood as well as shelter.

Judicial connotations are established on the realities of the situation. India has to work out of its Constitution according to its problems, requisites, and dictates such as revoke of Article taking 370. Judicial activism is the first step to bring back the role of law in a peaceful manner and not through a brutal revolution. It is obligatory for democratic India, not to leave judges solitary; it is the duty of every citizen and media to help the judiciary endeavors.