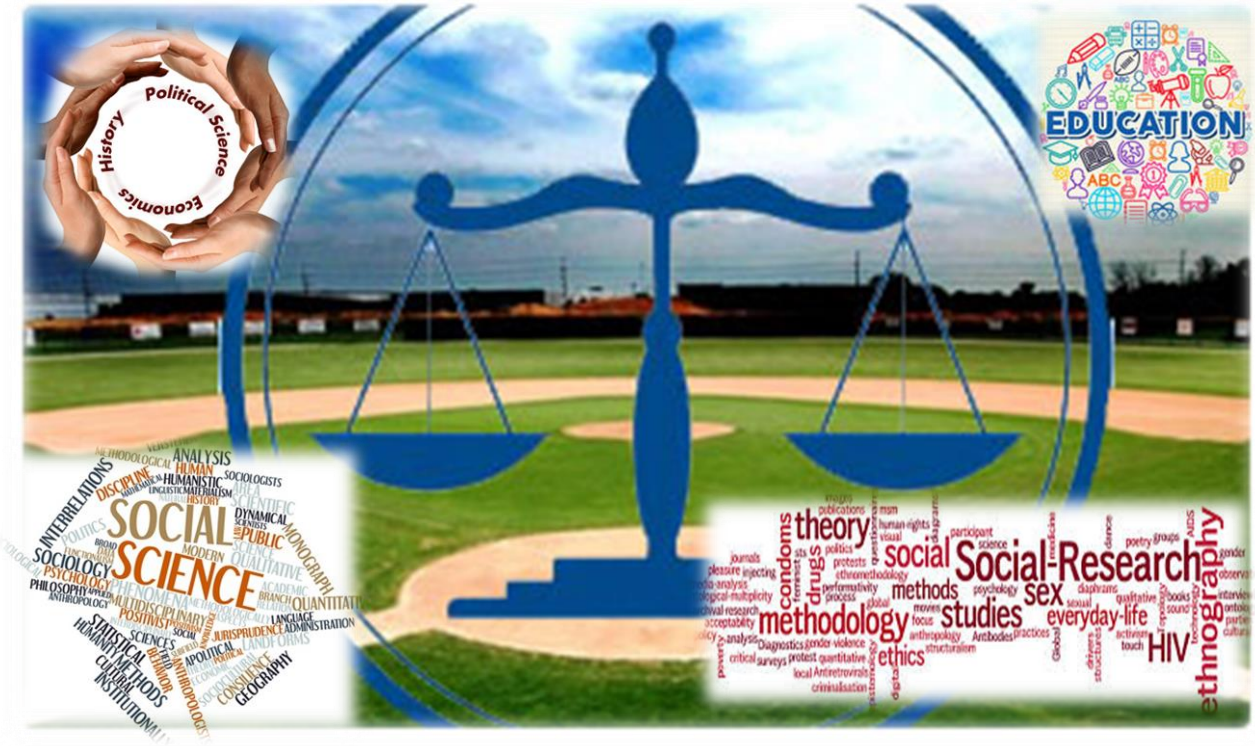

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JUDICIAL ACTIVISM: A TOOL TO ACHIEVE SOCIAL CHANGE

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ABSTRACT
57 years ago the founding fathers of the Constitution of India engrafted their most laudable dreams in the form of Fundamental Rights (Chapter III) and Directive Principles of State Policy (Chapter IV) in our Constitution. Amongst them, access to justice is one as reflected in the preambular part as well as Directive Principle of State policy of the Constitution. To this end, Judiciary in India is constantly attempting to address all the challenges implicit in the face of India's democracy. On numerous occasions, the activist stance and creative interpretation of law by judiciary have proved that it plays a vital role in maintaining rule of law in the country. However, present judge strength is an alarming problem in the face of judiciary. Increase of cases per day on one hand and pendency of litigation on the other urge for additional judicial manpower and support staff, as well as infrastructure to handle the situation. With development and a corresponding growth in litigation, more judges will certainly be required to handle the same so that justice is done in its truest possible sense.

Key Words: Constitution, Judiciary, Judicial Activism, Institutional Liability, Judicial Restraint.

INTRODUCTION

> Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions....Judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt.[1]
>
> - Justice Felix Frankfurter[2]

[1]LAWRENCE S. WRIGHTSMAN, The Psychology Of Supreme Court (Oxford University Press, 2006, Pg. 3)

[2] Felix Frankfurter (November 15, 1882 – February 22, 1965) was a jurist, who served as an Associate Justice of the United States Supreme Court. Frankfurter was born in Vienna and immigrated to New York at the age of 12. He graduated from Harvard Law School and was active politically, helping to found the American Civil Liberties Union. He was a friend and adviser of President Franklin D. Roosevelt, who appointed him to the Supreme Court in 1939. Frankfurter served on the Supreme Court for 23 years, and was a noted advocate of judicial restraint in the judgments of the Court.

Crime is a pressing national concern- evident from the headlines of any major newspapers in India. Stories about crime, high- profile cases involving heinous crimes or well known victims or defendants and decisions of Supreme Court and High court- affecting the criminal justice system- also get front- page billing. In a democratic country like India, this degree of media coverage to the judicial system as well as their outcomes is not really shocking.

Among the three instrumentalities of government—legislature, executive and judiciary, the judiciary has pre-eminence. India has the oldest judiciary in the world.[3] No other judicial system has a more ancient or exalted pedigree.[4] It is an institution that continues to evolve over the period of time.

Being the cornerstone of democracy, guardian of the constitution and protector of individual rights, the presence of a strong, independent and efficient judiciary, both in letter and spirit is indispensable in India. But the judiciary itself has to act within the four corners of the Constitution. While many judicial pronouncements have fashioned the Indian polity to a great extent, ensuring fairness in the process of governance, nonetheless, allegations questioning the integrity of this great institution have increased manifold, ascribed to the lack of transparency. Remnant corruption and lack of accountability have diluted the trust reposed in the conscience keeper of the law. Apart from these the judiciary has been constantly concerned with the workload of the subordinate judiciary, judge strength and resources[3]. However, decisions of the court touch the lives of citizens, fosters social transformation. So, to understand the structure and the liability, the function of the judiciary is not only significant but duty of every public spirited citizen of India.

JUDICIAL ACTIVISM: US PERSPECTIVE

"Courts ought not to enter [the] political thicket,"[5] Justice Frankfurter implored in 1946. The warning came too late as the judiciary had already entrenched into the ambit of legislature in the *Marbury v. Madison*[6] case. The doctrine of judicial review, which came from the concept of separation of powers, is highly complex. Chief Justice Marshall invoked the same to strike down the Acts which are repugnant to the Constitution. According to Pennsylvanian judge Gibson, the line between judicial review and judicial supremacy is very difficult to be identified.[7] Therefore to lessen the risk of becoming of the judiciary as "proud pre-eminence", the Court has prescribed certain limits within which the judiciary has to work.[8] For Chief Justice Marshall, the judicial review has both negative and positive effects. He did not want to be remembered either he has enlarged the power of the judiciary beyond its ambit or did not do enough to achieve the objectives of the statute to its fullest extent.[9] Justice Holmes, expressing the conviction that "the ultimate good desired is better reached by free trade in ideas," called this "the theory of our Constitution."[10] Stone recalled that Justice Holmes believed that judges "should not be too rigidly bound by the tenet of judicial self-restraint in cases involving civil liberties." [11] Justice Brandeis cited "a fundamental principle of American Government" to justify the wide range accorded "freedom to think as you will and to speak as you think," tracing

[3]*Mr. Justice S. S. Dhavan*,The Indian Judicial System A Historical Survey (February 14, 2017, 11:00 PM) http://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.pdf.

[4]*Id*.

[5]5 M. SHAPIRO, LAW AND POLITICS IN THE SUPREME COURT 15 (1964).

[6]*Marbury v. Madison*,7 5 U.S. (Cranch) 137 (1803)

[7]*Ashwander v. TVA*, 297 U.S. 288, 346 (1936).

[8]*Id*.

[9]*Letter from Marshall to Story*, October 12, 1831, quote A. BEVERIDGE, THE LIFE OF JOHN MARSHALL 522 (19)

[10]*Abrams v. United States*, 250 U.S. 616, 630 (1919

[11]*Letter from Harlan Fiske Stone to Clinton L. Rossiter*, April 12, 1941, quoted in A. MASON, HARLAN FISKE STONE: PILLAR OF THE Law 516 (1956)

this priority to those "who won our independence," to men who "were not cowards," and "did not fear political change." [12]As Chief Justice, Hughes led a Court which acted on his belief that certain rights, notably speech and press, must be preserved "in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means." "Therein," the Chief Justice declared emphatically, "lies the security of the Republic, the very foundation of constitutional government."[13]

Two general baseline criteria for "judicial activism" are (1) a lack of judicial deference to other branches of government and (2) a lack of proper respect for judicial precedent and the principle of stare decisis.[14] It signifies policy making by the judiciary in contrary to policies made by the other departments of the Government or when there is inactivity in the other organs of the State.[15] The first of the two categories signifies the action of the Courts to invalidate the legislative or executive action on the Constitutional Grounds.[16]

This does not prevent the Courts to do the same on the non-Constitutional grounds as well. Judicial Activism will be measured as total number of the reported judgments which have an 'activist' outcome. In a sample year, the decisions can be divided into 'activist' and 'non-activist'. The criteria for classifying any case as activist were as follows: (1) any case ruling against a non-judicial governmental actor on grounds of state law and (2) any case expressly overruling, disapproving, or discarding state law precedent.[17] Any case that does not fall within either of these two categories is coded as "non-activist". The first category includes those cases where the Courts nullify the action of the Government on the state grounds and it includes those cases where the State is a party and the Court gives an adverse judgement against it.[18] In both the categories the Courts try not to accept the position of the other organs of the Government and show its lack of deference to the actions of legislative and executive actions and substitute its judgement in place of the same.[19]

In the activist cases, whenever there is dispute between two non-judicial organs of the State, it will inherently result into judicial activism, no matter whatever the court ruling. This step will be after the Courts accept its jurisdiction to solve the dispute.[20] These cases will mostly involve issuance of advisory opinion or addressing of a political dispute. Cases will not be considered as activist one where there is application of federal rulings to the state actors notwithstanding the nature of the judgement i.e. for or against the government.[21] This will be assumed to be acting in reference to the Federal directives but not in reference to the State actors. This activism only encompasses conflict with the non-judicial government actors but it will not include any reversal of rulings of the lower Courts by the higher Courts.[22] In the second category of the activism cases, it includes within its ambit those cases where the Court expressly abandons precedent in favour of a new rule. It is only when the Court opines that the precedent is expressly overruled that it will be called as judicial

[12]*Whitney v. California*, 274 U.S. 357, 375 (1927).

[13]*DeJonge v. Oregon*, 299 U.S. 353, 365 (1937).

[14]*Supreme Court Activism and Restraint*, eds. Stephen C. Halpern and Charles M. Lamb (Lexington, Mass.: D. C.

[15]John Patrick Hagan, *Patterns of Activism on State Supreme Courts*, Publius, Vol. 18, No. 1 (Winter, 1988), pp. 97-115, 98.

[16]*Id* at 99.

[17]*Id*.

[18]*Id* at 100.

[19]*Id*.

[20]*Id* at 101.

[21]*Id* at 102

[22]*Supra* Note 11at 103.

activism.[23]During the recent years, the federal Courts of United States of America has refined its jurisdiction over the government misconduct and hereby made its power limited to regulate and functions of the State and local governments.[24]

THE INDIAN SCENARIO

The Supreme Court of India has been made the guardian and protector of the Constitution. It is the sentinel of democracy. The Constitution has assigned it the role to ensure to rule of law including the supremacy of law in the country. For this purpose it has been conferred wide power of judicial review. Judicial review is the powerful weapon to restrain unconstitutional exercise of the power by the legislature and executive. Article 13, 32, 141, 142 and 226 are of considerable importance in Judicial Activism.

PIL, a manifestation of judicial activism, has introduced a new dimension regarding judiciary's involvement in public administration. Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of "*Locus Standi*" that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of the so called "***PUBLIC-SPIRITED CITIZENS***" for the enforcement of Constitutional and Legal rights. Now, any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition[25]:

1. In the Supreme Court under Article 32 of the Constitution of India;
2. In the High Court under Article 226 of the Indian Constitution
3. In the Court of Magistrate under Section 133 of the Code of Criminal procedure

The seeds of the concept of public interest litigation were initially sown in India by Krishna IyerJ.,in 1976 in *Mumbai Kamgar Sabha vs. Abdul Thai*[26]and was initiated in *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India (AIR 1981 SC 298)*, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna lyer J., enunciated the reasons for liberalization of the rule of *Locus Standi* in *Fertilizer Corporation Kamgar Union v. Union ofIndia*[27]and the idea of 'Public Interest Litigation' blossomed in *S.P. Gupta and others v. Union of India*.[28]

Judicial activism prompted by public interest suits ranging from cases of out-of-turn allotment of government houses without proper reason, discretionary allotment of petrol pumps and LPG connections to those having influence with highly placed bureaucrats and politicians, the fraud involving 'fodder scan' in Bihar, and of course, the infamous "Hawala cases," the Supreme Court has given firm decision.

INSTANCES OF JUDICIAL ACTIVISM IN INDIA:

In 1967 the Supreme Court in *GolakhNath vs. State of Punjab*[29], held that the fundamental rights in Part III of the Indian Constitution could not be amended, even though there was no such restriction in Article 368 which only required a resolution of two third majorities in both Houses of Parliament.

Subsequently, in *Keshavanand Bharti vs. State of Kerala*[30], a 13 Judge Bench of the Supreme Court overruled the Golakh Nath decision but held that the basic structure of the Constitution could not be

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[23]*Supra* Note 11 at 104.

[24]*DeShaney v. Winnebago County Dep't of Social Servs.*, 109 S. Ct. 998, 1007 (1989).

[25]Pritamkumar Ghosh, "Judicial Activism And Public Interest Litigation In India", Vol. no. 1, 2013, *Galgotias Journal of Legal Studies*, 77-97 at 79

[26]AIR 1976 SC 1455.

[27]AIR 1981 SC 344.

[28]*Supra, note 50*, 77-97 at 77

[29]AIR 1967 SC 1643.

[30]AIR 1973 SC 1461.

amended. As to what precisely is meant by `basic structure' is still not clear, though some later verdicts have tried to explain it. The point to note, however, is that Article 368 nowhere mentions that the basic structure could not be amended. The decision has therefore practically amended Article 368.

A large number of decisions of the Indian Supreme Court where it has played an activist role relate to Article 21 of the Indian Constitution.

In *A.K. Gopalan vs. State of Madras*[31], the Indian Supreme Court rejected the argument that to deprive a person of his life or liberty not only the procedure prescribed by law for doing so must be followed but also that such procedure must be fair, reasonable and just. To hold otherwise would be to introduce the due process clause in Article 21 which had been deliberately omitted when the Indian Constitution was being framed.

However, subsequently in *Maneka Gandhi vs. Union of India*[32], this requirement of substantive due process was introduced into Article 21 by judicial interpretation. Thus, the due process clause, which was consciously and deliberately avoided by the Constitution makers, was introduced by judicial activism of the Indian Supreme Court.

In *Francis Coralie vs. Union Territory of Delhi*[33] held that the right to live is not restricted to mere animal existence. It means something more than just physical survival.

The 'right to privacy' which is a new right was read into Article 21 in *R. Rajagopal v. State of Tamil Nadu*.[34] The Court held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matters.

The Supreme Court in *Olga Tellis vs. Bombay Municipal Corporation*[35] also ruled that the right to life guaranteed under Article 21 includes the right to livelihood as well.

The right to food as a part of right to life was also recognised in *Kapila Hingorani vs. Union of India*[36] whereby it was clearly stated that it is the duty of the State to provide adequate means of livelihood in the situations where people are unable to afford food.

In *A. P. Pollution Control Boards vs. Prof. MV Nayudu*[37]the Court has also held that the right to safe drinking water is one of the Fundamental Rights that flow from the right to life.

Right to a fair trial[38], right to health and medical care[39], protection of tanks, ponds, forests etc which give a quality life[40], right to Family Pension[41], right to legal aid and counsel[42], right against sexual harassment[43], right to medical assistance in case of accidents[44], right against solitary confinement[45], right against handcuffing and bar fetters[46], right to speedy trial[47], right against police

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[31]AIR 1950 SC 27.

[32]AIR 1978 SC 597.

[33] AIR 1978 SC 597.

[34] (1994) 6 SCC 632.

[35] AIR 1986 SC 180a.

[36] (2003) 6 SCC 1.

[37] AIR 1999 SC 822.

[38] Police Commissioner, Delhi v. Registrar, Delhi High Court, AIR 1999 SC 95.

[39] Consumer Education and Research v. Union of India, AIR 1995 SC 922.

[40]Hich Lal Tiwari v.Kamla Devi and Others, (2001) 6 SCC 496.

[41] S. K. Mastan Bee v. GM South Central Railway, (2003) 1 SCC 184.

[42] M. H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548.

[43]Vishakha v. State of Rajasthan, 1997 (6) SCC 241.

[44] P. Katara v. Union of India, (1998) 4 SCC 286.

[45] Sunil Batrav. Delhi Admi. (1978) 4 SCC 498.

[46] Charles Shobhrajv. Delhi Admi. (1978) 4 SCC 104.

[47]HussainaraKhatoonv. Home Secretary, (1980) 1 SCC 81.

atrocities, torture and custodial violence[48], right to legal aid[49] and be defended by an efficient lawyer of his choice[50], right to interview and visitors according to the Prison Rules[51], right to minimum wages[52] etc. have been ruled to be included in the expression of 'right to life' in Article 21.

Recently the Supreme Court has directed providing a second home for Asiatic Lions vide *Centre for Environmental Law v. Union of India*[53] on the ground that protecting the environment is part of Article 21.

The right to sleep was held to be part of Article 21 vide in *Re RamlilaMaidan*.[54]

In *Ajay Bansal vs. Union of India*[55], the Supreme Court directed that helicopters be provided for stranded persons in Uttarakhand.

Judicial interpretation also expanded the definition of 'State' under Article 12 of the Constitution whereby even corporations[56] 'instrumentalities of the State', etc were brought within the scope of 'State' helping in the expanded enforcement of fundamental rights.

Article 14 of the Constitution, which originally was understood to only mean non-discrimination by the States, was later interpreted in Royappa's case (1974) and Maneka Gandhi's case (1978) to also mean non arbitrariness.

Right to freedom of expression provided by Article 19 of the Constitution is one of the widely construed rights. Thus, the right also brings within its ambit the freedom of press and publication in the print media[57] and the right to participate in the public communicative systems.[58]

The importance of this right in democracy gained importance when the judiciary struck down the Ordinance that amended the Representation of People Act, 1950 that allowed the candidates non-disclosure of assets stating that in the context of exercise of voting rights in democracy, the right to know the assets, liabilities and past criminal records cannot be restricted by the right to privacy of the candidates.[59]

Furthermore, though Directive principles only talk about socio-economic rights which are not enforceable, creative interpretation by reading them into the Fundamental Rights (which are enforceable) formed a major step in developing these new rights and above all advocating the rights of the unrepresented masses became much easier. In the case of *Unni Krishnan v. State of A. P.*[60] It was held that the right to education is a Fundamental Right under Article 21 as it 'directly flows' from right to life. Thus the Court interpreted Article 21 in the light of Article 45 wherein the State is obligated to provide education to its citizen's up to 14 years of age. Similarly in *M. C. Mehta v. Union of India*[61] the Supreme Court relying on Article 48-A gave directions to the Central and the State Governments and various local bodies and Boards under the various statutes to take appropriate steps for prevention and control of pollution of water.

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[48] Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96 and D. K. Basuv. State of West Bengal, (1997) 1 SCC 4116

[49] Khatri v. State of Bihar, AIR 1981 SC 928.

[50] State of M.P. v. Shobharam, AIR 1966 SC 2193.

[51]PrabhaDutt v. Union of India, AIR 1986 SC 6.

[52] State of Gujarat v. Hon'ble High Court of Gujarat, (1998) 7 SCC 392.

[53]writ petition 337/1995 decided on 15.4.2013.

[54] (2012) S.C.I.1.

[55]Writ Petition 18351/2013 vide order dated 20.6.2013.

[56]Ramana Shetty v. International Airport Authority., (1979) 3 SCC 479.

[57]RomeshThapar v. State of Madras, AIR 1950 SC 124.

[58] Indian Express Newspaper (Bombay) v. Union of India, AIR 1986 SC 515.

[59] Peoples Union for Civil Liberties v. Union of India, (2003) 4 SCC 399.

[60] (1993) 1 SCC 645.

[61] (1988) 1 SCC 471.

In *Vishakha vs. State of Rajasthan*[62], the judiciary expressly laid down the law regarding sexual harassment at the work place. In *Sakshi vs.Union of India*[63], the provisions of in camera proceedings were made applicable in cases of rape victims keeping in view their needs in the absence of specific legislative provisions.

Another instance where the judiciary was needed to come to the rescue of the its people was the case of *Lata Singh vs. State of U.P. & Anr.*[64], where the Supreme Court taking note of the deep rooted caste system of the country came down hard on the relatives of a newly married couple who resorted to violence and harassment as a way of showing their anger on the boy and girl marring outside their caste or religion. Appropriately exercising judicial activism the Court held:-

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. […] We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

In a subsequent decision, *BhagwanDass vs. State (NCT) of Delhi*[65], the Supreme Court mandated death sentence for `honour killing' i.e. killing of young men and women who married outside their caste or religion, or in their same village, thereby `dishonouring' the parents or their caste.

In *ArunaRamchandra Shanbaug vs. Union of India and Ors.*[66] The Court in its landmark judgment allowed passive euthanasia i.e. withdrawal of life support to a person in permanently vegetative state, subject to approval by the High Court.

Most recently in *Supreme Court Advocates on Record Association vs. Union of India*[67], within a year of both houses of union legislature passed much awaited National Judicial Appointment Commission Bill, the Supreme Court struck down the NJAC Act by 4:1. Justice JS Khehar ,MBLokur, Kurian Joseph and Adarsh Kumar Goyal declared the 99th amendment of the Constitution and NJAC ACT unconstitutional .

In *Yakub Abdul Razak Memon vs. State of Maharashtra*[68], Yaub Memon's final plea before the apex court was heard in court room 4 which was opened for an unprecedented 90 minute hearing that started at 3.20 am and ended a little before dawn. The bench comprising Justice Deepak Misra, Justice Amitabha Roy and Justice PC Pant agreed and observed that granting further time was not necessary in the present case. It was said that the execution was "inevitable" after rejection of the mercy petition. Yakub was executed the very next day.

In *Subramanian Swamy vs. Union of India*[69], the Supreme Court upheld the constitutional validity of Sections 499-502 (Chapter XXI) of Indian Penal Court relating to criminal defamation. The bench comprising of justice Deepak Misra and PC Pant held that the right to life under article 21 includes right to reputation.

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[62] AIR 1997 SC 3014.
[63] (2004) 5 SCC 518.
[64] 2006 (5) SCC 475.
[65] 2011(5) SC 498.
[66] JT 2011 (3) SC 300.
[67] WRIT PETITION (CIVIL) NO. 13 OF 2015.
[68] WRIT PETITION (CRL.) NO.135 OF 2015.
[69] WP (Cr) No. 184 OF 2014.

In Jindal's stainless LTD vs. State of Haryana[70], 9 judge constitution benches upheld the constitutional validity of entry tax imposed by states on goods coming in from other states. The bench also directed that the 3-judge bench to decide whether the state entry tax laws on the basis of guidelines issued by this bench.

In *Narendra vs. K.Meena*[71] , the supreme court of India held that persistent effort of the wife to constrain her husband to be separated from the family constitute an act of cruelty to grant divorce.

In *Swaraj Abhiyan vs. Union of India*[72], a 2-judge bench of Supreme Court of India issued landmark guidelines for disaster/drought management. The writ petition was filed by Swaraj Abhiyan in the backdrop of declaration of drought in some districts or parts thereof in 9 states i.e. UP, MP, Karnataka, AP, Telangana, Maharashtra, Udisha, Jharkhand and Chhattisgarh.

In *Jeeja Ghosh vs. Union of India*[73], Supreme Court asked the SpiceJet Ltd. to pay rupees 10 Lakhs to Jeeja Ghosh, an eminent activist involved in Disability rights, for forcibly de-boarding her by the flight crew, because of her disability. The court also issued guidelines with regard to "carriage" by person with disability and/or persons with reduced mobility and observed that people with disability also have the right to live with dignity.

In *Justice MarkandeyKatju vs. the Loksabha*[74], Supreme Court refused to quash the March 2015 resolution by both houses of parliament against justice Katju for describing Gandhi as British agent and Netaji as a Japanese agent in a blog.

In *State of Karnataka vs. State of Tamil Nadu*[75], Supreme Court ordered Karnataka to release 15000 cusecs of water to Tamilnadu, later on a plea by state of Karnataka, it was modified to 12000 cusecs. Supreme Court also held that the jurisdiction to hear appeals filed by Karnataka, Tamilnadu and Kerala against 2007 award of the Cauvery water dispute tribunal.

In *Shyam Narayan Chousky vs. Union of India*[76] , The Supreme Court made it mandatory for all Cinema Theaters to play the national anthem before a movie begins during which the national flag is to be shown on the screen. A bench of Justice Deepak Misra and justice Amitabha Roy also said that everyone present in cinema hall should rise and pay respect to the anthem when it is played.

CONCLUDING OBSERVATIONS

Judicial activism is a *sine qua non* of democracy because without an alert and enlightened judiciary, the democracy will be reduced to an empty shell. The activist role of the Judiciary is implicit in the power of judicial review which is recognized as part of the basic structure of the Indian Constitution. In the contemporary India, Judicial activism with the active assistance of social activists and public interest litigators figures prominently for vindication of the governmental commitment to welfare and social justice.

Adjudication of dispute is not the sole purpose of creation of the institution of the courts. It often indicates normative principles which institutions are bound by. These principles are not merely formulated, but frequently redefined and adapted to suit changing times, even while ensuring that the core Constitutional values are affirmed.

Present Judge Strength is an alarming problem in the face of judiciary. Increase of cases per day on one hand and pendency of litigation on the other urge for Additional judicial manpower and support staff, as well as infrastructure to handle the situation. The role of a robust judiciary in a

[70] CIVIL APPEAL NO. 3453/2002.
[71] Civil Appeal No.3253 of 2008.
[72] WP (Civil) no. 857 of 2015.
[73] WP (Civil) no. 98 of 2012.
[74] WP (Civil) No. 504 OF 2015.
[75] Civil Appeal No 2456/2007.
[76] WP(s)(Civil) No(s). 855/2016.

nation's development is pivotal. With development and a corresponding growth in litigation, more judges will certainly be required to handle the same so that justice is done in its truest possible sense.

An activist Court is surely far more effective than a legal positivist conservative Court to protect the society against legislative adventurism and executive tyranny. When our chosen representatives have failed to give us a welfare state, let it spring from the Judiciary.

But at the same time it is also required that judicial creativity even when it takes the form of judicial activism should not result in rewriting of the Constitution or any legislative enactments. Reconciliation of the permanent values embodied in the Constitution with the transitional and changing requirements of the society must not result in undermining the integrity of the Constitution.

Judicial activism characterized by moderation and self-restraint is bound to restore the faith of the people in the efficacy of the democratic institutions which alone, in turn, will activate the executive and the legislature to function effectively under the vigilant eye of the judiciary as ordained by the Constitution

To conclude, Judicial Activism is not a permanent solution for any problem. It can only be used as a last resort remedy. While judicial activism may be a good thing on certain special occasions, there should not be too frequent use of it.