IS JUDICIAL ACTIVISM THREAT TO THE DOCTRINE OF SEPARATION OF POWERS??

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ABSTRACT

Indian Democracy has three wings the legislatures which devise the law, the Executives which enforces the law and the Judiciary which elucidate the law. It is believed that the Judiciary under the guise of interpreting the law goes a step beyond and ends up giving the country new binding law which is usually different from the existing one. This is known as the Judicial Activism. This paper contains the meaning of Judicial Activism, its historical evaluation in first part then being followed by the evolution in India supporting with the judicial pronouncements of Apex Court and Different High Courts and their ratio decidendi, obiter dicta and recommendations with respect to the acceptability and admissibility of Judicial Activism in the second part of the paper and the third part discusses about the issues regarding over activism (judicial overreach), basically called as Judicial Restriction and the short comings which are faced due to Judicial Activism. This paper helps to understand the evolution of judicial Activism and it’s advancement in the present scenario in the country. How judiciary can go a step forward and provides a new binding law which is usually different from the existing law, resolve the overlapping powers of administrators of the nation which can cause serious troubles by interpreting the public policies according to his political and social perception to serve to the greater good.

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INTRODUCTION

The expression `Judicial Activism’ signifies the consternation of courts to find out suitable remedy to the aggrieved and the indignant by formulating a new rule to settle the colliding questions in the event of lawlessness or uncertain laws. The Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court under Article 32 and Article 226 of the Constitution particularly in Public Interest Litigation. Justice P. N. Bhagwati in a speech has invigorated Judicial Activism has said “The Supreme Court has developed a new normative regime of rights and insisted that a state cannot act arbitrarily but must act reasonably and in public interest on pain of its action being invalidated by judicial intervention.

Merriam-Webster’s Dictionary of Law defines judicial activism as "the practice in the judiciary of protecting or expanding individual rights through decision that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent.

Judicial activism describes judicial ruling suspected of being based on personal or political considerations rather than on existing law. It is sometimes used as an antonym of judicial restraint. The question of judicial activism is closely related to constitutional interpretation, statutory construction, and separation of power.

The great contribution of judicial activism in India has been to provide a safety valve and a hope that justice is not beyond reach. Law professor and leading constitutional scholar, David A. Strauss, has given his point of view comprising the act of judicial activism in three forms that are:

1. The act of toppling of established laws as unlawful and unconstitutional.
2. Overruling judicial point of reference.
3. Ruling contrary o formerly issued established interpretations.

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. As per Black’s Law Dictionary, judicial activism is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions in legislative and executive measures. The expression judicial activism means different things to different people. It might mean dynamism to the Judges, judicial creativity to some,
judicial legislations to some others, while there may be some who view it as a tool for social engineering.³

**EVOLUTION OF JUDICIAL ACTIVISM**

The abstraction of Judicial Activism is not of recent past rather it can be traced long way back in 1608, when England was ruled by the Stuart King James I. The King claimed that he could remove any case from the courts, and decide it in his Royal person. Chief Justice Coke replied that he could not do so since the cases are to be adjudged by courts as per law and customs of England; and that the King should not be under man but should be under God and law. This was an affirmation of the judicial power while upholding the rule of law against arbitrary decisions of the sovereign. This was judicial activism at its finest.

In 1801, in the celebrated case of **Marbury v. Madison⁴**, the supremacy of judiciary could be seen when Chief Justice John Marshall highlighted and reaffirmed the power of the American Supreme Court to go against the State and invalidate an act of Congress.

Thereafter, in 1857 when the American Supreme Court headed by Chief Justice Taney ruled in **Dred Scott v. Sandford⁵** that Negros were not equal to whites and the rights guaranteed under the Constitution were not available to them, the decision had accelerated the civil war between the Northern and Southern States ultimately resulting in the abolition of slavery and strengthening of the Union.

Since the mid Sixties, another era of English Judges, preferences of Lord Reid, Lord Denning and Lord Wilberforce, with their precept of "purposive translation" gave new significance to English Administrative Law, restoring and expanding antiquated standards of regular equity and reasonableness, applying them to public authorities and to private bodies that exercise public power, and dismissing cases of free administrative discretion.⁶ In his acclaimed address on the Judge as legislator, Lord Reid, in 197², saw: "Some time ago it was thought practically revolting to recommend that judges make law - they just announce it. Those with a desire for tall tales appear to have felt that in some Aladdin's give in there is concealed the Common Law in all its magnificence and that on a judge's arrangement there plummets on him information of the enchantment words Open Sesame. Terrible choices are given when the

³ S.P.Sathe, Judicial Activism, Journal of Indian School of Political Economy, Volume 10, Number 3 (July-September), 1998, p. 399.
⁴ 5 U.S.137 (1803)
⁵ 163 U.S. 537 (1896)
judge obfuscates the secret key and the wrong entryway opens. Be that as it may, we don't have faith in fairy tales any longer.”

As to legal activism in India, the previous Chief Justice of India A.H Ahmadi saw that, “Judicial Activism is important extra of the legal capacity since the assurance of open enthusiasm instead of private intrigue happens to be its principle concern”.⁸ Presently, it is acknowledged all around that a legitimate framework depends on judiciary with such a pivotal capacity as legal system of enactment and organization activity, it definitely makes the judge a legislator.⁹

Our constitution producer deliberately made the content of the constitution as itemized and particular so to dodge any caution with respect to the Indian Judiciary. Pt. Nehru in constituent assembly level headed discussion said that the court could indicate out us on the off chance that we turn out badly. Yet in matter of policy the parliament was incomparable. Indeed, even in 1950 where the court ruled against the land change policy of the legislature, the constitution was revised to prohibit judicial review for such strategy matter. The court played a restricted and technocratic part and anticipated as a traditionalist, branch of the legislature. The SC in A. K. Gopalan case¹⁰ itself characterized its restricted part and regarded the tenet of partition of power and authority. It is just in 1965 in Sajjan Singh case¹¹ two judges raised uncertainty about the skill of the legislature to amend the constitution so as to take away the fundamental rights. But the majority held that the power of parliament to amend the constitution was unlimited and since then it was the accepted model of judicial review.¹²

In 1967 in case of Golak Nath Case¹³ SC overruled the past choice of the court and held that the parliament had no authority to correct the constitution as to encroach the principal rights. This choice stunned the whole group of the judges, advocates, lawmakers. Indeed, even

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⁸ Ibid.
¹¹ Sajjan Singh vs State Of Rajasthan, 1965 AIR 845; Justice Hidayatullah, and Justice J.R. Mudholkar, concurred with the opinion of Chief Justice Gajendragadkar upholding the amendment but, at the same time, expressed reservations about the effect of possible future amendments on Fundamental Rights and basic structure of the Constitution. Justice Mudholkar questioned that “It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of the Article 368?” (The Ninth Schedule Judgement, Outlook, January, 2007).
legitimate academicians, for example, Seervai, Tripathi, Jain and Sathetook the position that how a court can say that constitution couldn't be revised. Different instances of SC which made its picture as pro-rich were bank nationalization case¹⁴ and de-acknowledgment of princes.¹⁵ Indeed, even Indira Gandhi in its declaration for 1971 elections guaranteed that she will roll out some fundamental improvements in the constitution and she secured two third seats in the Lok Sabha that was truly a command against the SC. Again in 1973 in Kesavananda Bharti case¹⁶ the SC found the gadget of essential structure to maintain a strategic distance from head-to-head showdown with the administration. This fight between these two organs finished in Minerva Mill case.¹⁷

In the initial stages, only in respect of substantive laws, the doctrine of due process was applied but later the procedural laws also were brought within its purview between 1898 and 1937.

Reasons for the growth of Judicial Activism can be divided in broad categories these are:

1. The executive and the legislature both fails to discharge their respective functions competently and there is overlapping of the administrative power among both. When legislature fails to make laws to cope up with the fast changing conditions and demands of the society and government authorities fails to render the administrative functions this affects the democracy o the country. Hence this is one broadly accepted reason for the growth of Judicial Activism.

2. People look up to the judicial system of the country for the protection of their fundamental rights and freedom or if some other rights are being transgressed of the citizens. Simply the judiciary can’t just be silent spectator of the wrong happening to the people. The judges, in such have to act as responsible members of the society and provide relief to the grievances. Hence, the Activism is accepted to get proper remedy.

3. It is pointed out by Professor Upendra Baxi, many individual players are responsible for activating judicial activism,¹⁸ They are for example civil right activists, people

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¹⁴ R.C Cooper v. Union of India, 1970 AIR 564.
¹⁵ H. H. MaharajadhirajaMadhav Rao vs Union Of India 1971 AIR 530.
¹⁷ Minerva Mills Ltd. and Ors. v. Union of India AIR 1980 SC 1789.
right activists, consumer right grouts, bounded labour groups, citizens for environmental action, women rights groups and assorted lawyer–based groups etc. The same jurist goes on to point out that although judicial activism is a collective venture, some individual justices have also played a foundational role. For instance without Krishna Iyer, P.N. Bhagwathi, O. Chinappa Reddy and D.A. Desai, JJ, in the formative years of social action litigation, without these people the Judicial Activism must have not been into existence. As these the people who have devised the concept.

4. To fulfil the vacuum which created by any of the organ of the administrative of the country by its inactivity, incompetence and disinterest in working then the other organs expand their jurisdiction of working to fulfil that gap or vacuum which is created because without the proper functioning of the administrative system of the country, a country will collapse. Thus Judiciary is left with no other option rather to act outside its domain to fulfil the gap.

5. For the social transformation if the executive and the legislature couldn’t cope up and fail to provide the pathway in the current situations due to lack of understanding or negligence, incompetence of the other organs. Hence, the judicial activism has emerged to avoid the non-activism of the legislature and the executive.

6. Rightly said by Upendra Baxi, as he highlighting the need of judiciary for the citizens of India and has expressed Indian nation to be obsessed with the judicial salvation. People are versed to look upon the judicial system for all their miseries and sufferings expecting to get aid or subvention. This has shepherded the Judiciary to take the role of an Activist.

JUDICIAL ACTIVISM IN INDIA

The Supreme Court of India is looked upon as a protector of the Indian Constitution. It is constitutional obligation of the Judiciary to strike down the law made by the legislature and acts done by the executive found to be unconstitutional or transgress the rights of individual guaranteed by the constitution. In the first few years of the working of the Constitution, the Courts more or less lived up to the expectations of the Constituent Assembly, which had

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19 Upendra Baxi, (born November 9, 1938) is a legal scholar, since 1996 professor of law in development at the University of Warwick, United Kingdom. He has been the vice chancellor of University of Delhi (1990–1994), prior to which he held the position of professor of law at the same university for 23 years (1973–1996). He has also served as the vice chancellor of the University of South Gujarat, Surat, India (1982–1985). In 2011, he was awarded the Padma Shri, the fourth highest civilian award in India, by the Government of India.
envisioned a limited role for the Apex Court? It did not indulge in much ‘activism’ or ‘law-making’, thus living up to the positivist notion that Judges do not make the law. In State of Madras v. Champakam Dorairajan\textsuperscript{20} though the decision would prima facie seem to be against the Government, it was in reality an instance of affirmation of the limited role of the Judiciary which it was assigned to. It was for the first time in A.K. Gopalan v State of Madras\textsuperscript{21} the court discussed and expanded the importance of fundamental rights. In the Nehruvian era, the Parliament held the initiative and the Court merely responded. During this period the parliament could amend the Constitution easily through special majority under Article 368. The Constitution was amended 17 times and in such a situation, it would have been injurious to the Judiciary had it taken up the baton of judicial activism. A few of the amendments gave rise to a debate on the scope of amending power of Parliament. It also gave a chance for the Judiciary to break out of its docility. In 1951, the Court held unanimously in Shankari Prasad Deo v. Union of India\textsuperscript{22} that the amending power was unlimited, the Parliament could use its constituent power to take away or abridge the fundamental rights which was affirmed in Sajjan Singh v. State of Rajasthan\textsuperscript{23}, but that was only a majority decision and not unanimous. However, in L.C.Golaknath v. State of Punjab\textsuperscript{24}, the Court declared that Parliament could not amend the Constitution so as to take away or abridge the fundamental rights. This decision was a watershed in the history of the Supreme Court of India’s evolution from a positivist court to activist Court. Subsequently, the Court by a majority of 11:2 in Kesavananda Bharati v. State of Kerala\textsuperscript{25} held that the above case was wrongly decided, but propounded the theory of Basic Structure. It was held that the constituent power of the parliament could not be exercised so as to destroy or take away any of the basic features of the Constitution, which was to be determined by the Court from time to time. The court held that a constitutional amendment duly passed by the legislature was invalid as damaging or destroying its basic structure. Through this landmark judgment the Court set a benchmark of basic structure of the Constitution and made it apparent that any law infringing the basic structure of the Constitution would be held void. This decision made it apparent that activist courts have taken steps against the Parliament and defended the public rights for larger societal benefits. This was a gigantic innovative judicial leap unknown to any legal system.

\textsuperscript{20} AIR 1951 SC 226.
\textsuperscript{21} AIR 1950 SC 27.
\textsuperscript{22} AIR 1965 SC 845
\textsuperscript{23} 1965 SCR (1) 933.
\textsuperscript{24} 1967 SCR (2) 762.
\textsuperscript{25} (1973) 4 SCC 225.
Then in the time period of post emergency in the case of *Maneka Gandhi v Union of India*\(^\text{26}\), the Court achieved fruitful and beneficial activism by reinterpreting Article 21 that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law introducing the principle of due process of law therein. It was stated that life and personal liberty had wider meanings and would interpret these terms from time to time. The said case is the most important example of judicial activism.

Judicial Activism was made possible in India by means of Public Interest Litigation (PIL) and the concept of PIL was first introduced by Justice Krishna Iyer in 1976 in *Mumbai Kamagar Sabha vs. Abdul Bhai*.\(^\text{27}\) Then in early 1980’s Judges like Justice V.R.Krishnalyer, Justice P.N. Bhagwati and Justice O. Chinnappa Reddy nurtured the new concept of Public Interest Litigation. The Courts expanded various provisions of law, interpreted statutes and gave decisions from humanist view point and betterment of the public as before the Judiciary was having positivist approach. In *PUDR v Union of India*\(^\text{28}\) it was stated that PIL is intended to bring justice within the reach of poor masses who constitute low visibility area of humanity. Their violations of constitutional or legal rights should not go unanswered and unnoticed.

Beginning with the *Ratlam Municipality*\(^\text{29}\) case the sweep of PIL encompassed a variety of causes.\(^\text{30}\) Ensuring green belts and open spaces for maintaining ecological balance;\(^\text{31}\) forbidding stone-crushing activities near residential complexes;\(^\text{32}\) earmarking a part of the reserved forest for Adivasis to ensure their habitat and means of livelihood;\(^\text{33}\) compelling the municipal authorities of the Delhi Municipal Corporation to perform their statutory obligations for protecting the health of the community;\(^\text{34}\) compelling the industrial units to set up effluent treatment plants;\(^\text{35}\) directing installation of air-pollution-controlling devices for preventing air pollution;\(^\text{36}\) directing closure of recalcitrant factories in order to save the community from the hazards of environmental pollution and quashing of a warrant of appointment for the office of Judge, High Court of Assam and Guwahati\(^\text{37}\) are some of the later significant cases displaying judicial activism.

\(^{26}\) *AIR 1978 SC 597.*

\(^{27}\) *1976 SCR (3) 591.*

\(^{28}\) *1983 SCR (1) 456.*

\(^{29}\) *1981 SCR (1) 97.*

\(^{30}\) See discussions in Justice M.N. Rao: Random Reflections on Law and Allied Matters 211-212.


\(^{34}\) B.L. Wadehra (Dr) v. Union of India, (1996) 2 SCC 594.

\(^{35}\) Satish Chander Shukla (Dr) v. State of U.P., 1992 Supp (2) SCC 94.

\(^{36}\) M.C. Mehta v. Union of India, 1994 Supp (3) SCC 717.

\(^{37}\) Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428
However, in recent cases there has been a change in Supreme Court in its approach towards PIL and judicial activism. The Court has adopted a narrow view in some cases. In *Common Cause (A Regd. Society) v Union of India*[^38] the Court was asked to direct a legislation to ensure safety of the people on the road but it was refused stating that directing a legislation was not within its power whereas the same Court in the earlier case of *Vishaka v State of Rajasthan*[^39] formulated the guidelines to prevent harassment of women at workplace. In the case of *Vishal Jeet v Union of India*[^40] the Court asked the legislative to act in certain manner as regards sexual exploitation of children.

"Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present. Judges must reconcile liberty and authority; the whole and its parts."

As the time passes the situation changes, society changes, demands changes and by the passing of the time the need of law changed according to the surroundings the laws made then were sufficient for that time but in the present scenario the judiciary will have to take steps not as positivist but as activists. Every country has to work out its Constitution according to its problems, needs and demands. As Justice Krishna Iyer once said: “Every new decision, on every new situation, is a development of the law. Law does not stand still. It moves continually. Once this is recognised, then the task of the judge is put on a higher plane.” The new jurisprudence of Judicial Activism that has emerged in the recent times has undoubtedly contributed in a great measure to the well-being of the society. People, in general, now firmly believe that if any institution or authority acts in a manner not permitted by the Constitution, the judiciary will step in to set right the wrong.

The courts cannot remain mute spectators when laws are not enforced and consequently, fundamentally rights are violated. If the Judiciary does not intervene, it would be an inactive Judiciary. Political democracy without proper functioning of the Judiciary can be compared to a body without a brain.[^42]

The Supreme Court has taken many Suo Moto cognizance’s of various political matters, media reports affecting the public as a whole. Such matters where the common people are

[^38]: AIR 208 SC 2116.
[^39]: AIR 1997 SC 3011.
[^40]: AIR 1990 SC 1412.
[^41]: Wallace Mendelson: “Supreme Court Statecraft : The Rule of Law and Men”, p. ix
weary and has given up. The Apex court has taken suo-motto cognizance pulling the senior politicians, the police, bureaucrats, ministers and many others for their actions. This is another way of fostering Judicial Activism. Recently Supreme Court has shown its enthusiasm in putting the culprits behind the bar in the matter of “coal-gate”. This is one path to nurture judicial activism but because of the over burdening of the courts, they are not vehemently taking the suo-motto apprehension of the matters.

The forms of Judicial Activism other than PIL include expansion of scope of fundamental rights. (Art 21), Interpretation of DPSP as fundamental rights, basic structure theory, creamy layer concept, environmental, prison and human rights jurisprudence etc.

**RECENT MATTERS RELATING TO JUDICIAL ACTIVISM**

In the year 2016 latest matter of NEET National Eligibility-cum-Entrance Test, Supreme Court gave the ruling that it would be the only test conducted for the admission to the medical field in India, though this decision was criticised by many ad even the Finance Minister Arun Jately has said that the Judiciary should not encroach into the matter of Executive. Many states are also facing the problems as the syllabus of the state board and CBSE is different hence how will the students cope up moreover language barriers but the supreme court has explained it as it is step to bring the uniformity and to bring all the students on an equal footing.

In another recent Supreme Court has ordered the government to create a new policy to deal Drought after the precarious condition of farmers in Maharashtra after the drought. It has ordered the government to abandon the current system and form a new policy which must be transparent with a standard fixed for declaring drought.

Supreme Court has also directed to form a National Disaster Mitigation which was criticised again by the finance minister of the government saying that the judiciary is now interfering the matters of legislature. However, Apex Court has the right to tell the government to construct new policies.

The major instance of judicial Activism, three Judges case, the Supreme Court is curtailing the president’s constitutional right to appoint the judges. This was done after consulting the Chief Justice and now the power is appropriated in the bench of four judges and the Chief Justice of India.
Supreme Court has ordered the union to set up a panel called the bad loans. And a committee has been formed regarding the same though RBI counsel is saying that the issues are already being dealt with.

SC has even issued a notice to Arunachal Pradesh Government but it was recalled on the grounds of Art 361, in which the Governor and the President are not answerable to the court in rendering their power and duties while holding the office.

Supreme Court of India has said to the government that there should be a process to audit the government. Which was being questioned, whether such action can be taken which was cleared by the Chief Justice TS Thakur that he has said in the context of NDA Government because there has been a huge delay on the part of it.

As of late in the year 2012, in 2G case - Centre for PIL and Ors v Union of India, certain administration strategies were tested. The Supreme Court wiped out 122 2G range licenses, attempting to adjust the circumstance as best as the legal could on account of its results. The court held that it could positively examine and strike down arrangement choice which are illegal. The judgment was reprimand as judicial overreach since the courts can't meddle with official strategies and choices even by legitimizing that bigger open intrigue is included. But the Supreme Court justified its order of weeping out 122 licenses for the 2G- spectrum matter, stating that it was mandate to cancel that license as it was against the constitution principles hence infringing the rights of public at large. Supreme court bench stated it was necessary to “ensure that the institutional integrity is not compromised by those in whom the people have reposed trust and who have taken oath to discharge duties in accordance with the Constitution and the law without fear or favour, affection or ill will and who, as any other citizen, enjoy fundamental rights but is bound to perform duties”

Janata Party Chief Subramanian Swamy on referring to the filed PILs by the center has said in favour of such actions, he said “When matters like these are brought before the judicial constituent of the State by public spirited citizens, it becomes the duty of the Court to exercise its power in larger public interest…”

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43 Writ petition (Civil) No. 423 of 2010 Dated 02nd February 2012.
In Noida land acquisition case\textsuperscript{44} Apex court has cancelled all the acquisition of land and ordered the builders to return the land to the farmers from whom they have acquired the land for industrial purposes.

JUDICIAL RESTRAINT

"The line between Judicial activism and judiciary overreach is a thin one ... A takeover of the elements of another organ may turn into an instance of over-reach" - Dr. Manmohan Singh\textsuperscript{45}.

The judiciary's over-activism was not a guaranteed control but rather an expected power which was oppositely inverse to what the Constitution maintains in the Ninth Schedule, where it doesn't enable the courts to intercede or challenge the legitimacy of the demonstrations gone by the assembly or so far as that is concerned moves made up by the official. While a dynamic judiciary is both vital and in addition to guarantee an appropriate arrangement of administration, "activism" can't legitimize an imprudent infringement into the domain of the executive or the legislature.

The BHOPAL Gas Tragedy choice Kesub Mahindra v. Condition of Madhya Pradesh\textsuperscript{46} is an instance of judicial overreach. The Superior courts went past the 'lakshmanarekha' and conveyed what they saw as just. The Apex Court expressed the liability of Kesub Mahindra and others blamed for the situation is just for carelessness according to Section 304 An of the Penal Code (which is a minor offense and conveys most extreme discipline of two years with fine) and not an instance of murder according to Section 304 of the Penal Code (which is a wrongdoing with a maximum discipline of detainment of 10 years and fine). The court chose that a negligible demonstration of putting away toxic chemicals wouldn't imply that the charged knew about the outcomes, something that would call for discipline under Section 304 of the Penal Code. In any case, there are numerous previous cases in which the directors were thinking about the capacity of such chemicals in their organizations. The judgment is an occurrence of legal exceeds on the grounds that the trial of the case was advancing and it was too soon for any remark on obligation of the denounced; and the Apex court is not lawfully defended to vindicate or convict anybody without breaking down the confirmation.

\textsuperscript{44} Available at http://www.hindustantimes.com/noida/court-directs-up-to-pay-revised-compensation-to-land-acquired-by-yamuna-eway-authority/story-kJh8dvrQU4rUicYtreXz4K.html (last accessed on 26/7/2017)

\textsuperscript{45} Speaking at the Conference of Chief Ministers and Chief Justices held in New Delhi in Apr 08, 2007

\textsuperscript{46} 1996 Supp. (6) SCR 287.
The Judicial System is not anticipated that would over stride its limits and meddle in the matter of executives and the legislature for the sake of PIL. The previous decade had seen the disintegration of the law based esteems, the official lack of care, formality, debasement, misbehaviours and infringement of human rights achieving their pinnacle. This has black-top the route for new vistas of judicial intercession of extending its arm to battle out these illnesses. The Judiciary began requesting not just the "what" and "when" of its headings to be conformed to by the official additionally the "how" of them. In *A.K.Roy v. Union of India*\(^\text{47}\) the Supreme Court issued orders in the matter of how the preventive detunes are to be dealt with, while they are kept in confinement. In *VineetNarain v. Union of India*\(^\text{48}\), the Supreme Court had set out various rules for the arrangement, exchange, residency, status, and so on., of the head of the exploring offices like the Central Bureau of Investigation (CBI), the Central Vigilance Commission, the Enforcement Directorate, and so on. The most recent delineation of the Judiciary violating itself and enacting in the appearance of directions in the guidelines issued to the Election Commission on account of *Union of India v. Association for Democratic Reforms*\(^\text{49}\) obliging possibility to give on the testimonies data about themselves, for example, regardless of whether they had any past feelings, criminal bodies of evidence pending against them, their pay, their instructive capabilities, and so forth, in an endorsed organize, coming up short which their designation ought to be rejected.

In a Seminar on 'Over-Activism of Judiciary is an utter detestation to Constitutional Structure', Congress representative *Abhishek Manu Singhvi*\(^\text{50}\) opined that 'India happens to be the main nation where Judicial Activism is at the most elevated amount. The Judicial Activism has flourished in India and has procured colossal authenticity with the Indian open. He said that it was a verifiable malice that the Judiciary has infringed upon the region of alternate organs of the Government. The previous Chief Justice of India-Justice AM Ahmadi credited the claimed over activism to the way that the official and administrative had neglected to address open grievances. It was conceded by Justice Ahmadi that the scourge of Justice over activism surely exists. He worried on the requirement for all to distinguish the explanation behind this claimed transgression of energy and encouraged everybody worried to share the onus for such an adjustment in the framework.

\(^\text{47}\) 1982 SCR (2) 272.
\(^\text{48}\) (1998) 1 SCC 226.
The judgment of Supreme Court in the case of *Kailas and others v State of Maharashtra*\(^5^1\) is a classic example of judicial mis-adventurism and much of the observation in the judgment is in the realm of ‘obiter dicta’ and it was wholly needless to decide the case before the court, even without those observation, the court could have expressed the plight of Scheduled tribe in their own land. Not long ago the Supreme Court reminded itself in the case of *Divisional Manager, Aravali Golf Club v. Chander Hassnder Hass and Anr (Aravali)*\(^5^2\), the need for judicial restraint by reminding itself of oft-quoted words of Chief Justice Neely of the West Virginia Supreme Court. In the case of Aravali, the court observed that “*Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors.*”

In Kailas’s case, the accused persons were convicted for the offence of beating a young Schedule Tribe woman, belonging to Bhil Tribe, for stripping her naked and parading her in public. The High Court had exonerated them only of one charge under Section 3 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on a hypocritical ground that the caste certificate of victim was not produced before the court and maintained convictions under various Section of Penal Code. The Supreme Court while dismissing the appeal of the accused made the following observations and indulged into judicial research mode, an area that is not in its domain: It went into the question as who was the original inhabitant of India. Whether the claim of Dravidians of being original inhabitants of India is correct; it condemned Dronacharya, a charter in the epic Mahabharat, “this was as shameful act on the part of Dronacharya” for asking the thumb of Eklavya as “guru Dakshina”; it remarked that “tribals of India have generally (though not invariably) retained in higher level of ethics than non-tribals in our country”; it opined that “they (tribals) normally do not cheat, tell lies, and do other misdeeds which many non-tribals do; and that “they (tribals) are generally superior in character to the non-tribals”. The above issues were totally irrelevant to the case that was before the Supreme Court.

The Supreme Court must practice judicial restraint, while deciding cases before it, which it constantly advises the lower courts to do so.

In July 2011, Black Money overreach cry-government sought review of Supreme Court order for ex-judges to helm investigation. The Government cited judicial overreach to challenge the Supreme Court’s order appointing two former judges to oversee the probe into black money.

\(^5^1\)(2011) 1 SCC 793.
\(^5^2\) Available at http://lex-warrier.in/2013/11/judicial-activism-need-hour-requirement-checks-balances/ (Assessed on 1\(^{st}\) June, 2017)
stashed in foreign banks. The Centre’s demand for review came after the apex court criticise those who raised the bogey of judicial overreach every time the courts step in on behalf of the silent majority to act on a PIL.

_Delhi Jal Board v National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others_53, while composing the judgment for a situation identified with sewerage laborers, Justice Singhvi said that "the most appalling piece of the situation is that at whatever point one of the three constituents of the State i.e. the judiciary issues bearings for guaranteeing that the privilege to equality, life and freedom at no time in the future stays virtual for the individuals who experience the ill effects of the impediment of destitution, lack of education and numbness, and headings are given for usage of the laws authorized by the legislature for the advantage of the poor, a hypothetical verbal confrontation is begun by raising the intruder of judicial activism or overreach." The Supreme Court dismissing the criticism of judicial activism said the Judiciary has ventured into give headings simply because of official inaction what with laws sanctioned by legislature and the State executive over the most recent 63 years for poor people not being executed legitimately. The Bench called attention to that the requests issued for the advantage of weaker areas were perpetually tested in the higher courts. In countless, the sole question of this activity is to tire out the individuals who really uphold the reason for the feeble and poor people. The Bench legitimized the bearings issued by the Delhi High Court for insurance of sewerage specialists on an open intrigue case request. The Bench illuminated that it considered it important to eradicate the impression and hesitations among a few people that the unrivalled courts, by taking into account the PIL petitions for embracing the reason for the poor who couldn't look for security and vindication of their rights, surpassed the unwritten limits of their jurisdiction. The judges said it was the obligation of the legal, similar to that of the political and official constituents of the state, to secure the privileges of each national and guarantee that everybody lived with pride.

As respects, Sen Impeachment whether parliamentary over-reach - the movement for the evacuation of a judge turned into a reason to execute the Judiciary for playing out its constitutional functions in an unmistakable instance of 'Parliamentary Overreach'. Additionally, In the occurrence of cases of both Judges, Justice V. Ramaswami and Justice

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Sen, the Judiciary did all that it could do to secure the expulsion. Along these lines, no accuse lies at the doorsteps of the Judiciary making all criticism in such manner unreasonable.

As respects Jharkhand cases, most likely there is judicial excessivism. The Jharkhand cases wrongly attacked administrative independence. Justice Katju is definitely right when he reprimands the Jharkhand situations where the Supreme Court forcefully checked and looked for report once again from the State Legislature. This was violative of separation of forces, an oversight that ought to never be rehashed.

Justice Ganguly said that under the Constitution legal audit is one of its fundamental components and in exercise of such legal survey, the court can positively examine and even strike down arrangement choices of the official when such choices are unlawful. The exertion in the point of interest decision was to adjust the circumstance as best as the Judiciary could on account of its outcomes. The said judgment was the one which could shake the multi-billion telecom advertise. The privilege to condemn a judgment is basically part of one's right to speak freely ensured under the Constitution yet the criticism must be bona-fide and on legitimate grounds.

CONCLUSION

In recent times the country has seen the benefits of the judicial activism regarding the rights and interest of public at large. The common people often face the wrongs committed to them due to the judicial tardiness and incompetence but Judicial Activism is step or a process to remove such occasional aberrations. However, the Judiciary can’t remove other institutions as India is a democracy and the Judiciary must not interfere in the functioning of the legislature and the executive in the name of Judicial Activism as none is above the constitutional principles. Hence, they cannot be amended. The members of each institution sworn to uphold the constitution, which alone is supreme. Judicial pronouncement must respect each other’s boundaries as it separates them from each other. Judiciary should avoid overreaching their unwritten boundaries.

Judicial Activism has provided a ray of hope for the downtrodden to fight against the corrupt bodies in power, the politicians, bureaucrats and others. This trend is supported by many Hon’ble Judges such as Justice Krishna Iyer, Justice Bhagwati, Justice Reddy and others. The court renders service as the guardian of the fundamental rights and various other rights with the help of Judicial Activism and PILs. The Judiciary have contributed immensely after 1980
for the rights of the weaker section of the society. PILs and Judicial Activism is developing to shape it and make it consistent some uniform principles must be laid down as many judges following the positivist approach don’t call for judicial activism. The judges should have an activist approach to render orders in favour of the society at large even when calls for overstepping their boundaries and stepping into the boundaries of the executive and the legislature.