

## Judicial Activism and Good Governance

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### INTRODUCTION

Judicial activism in its literal meaning can be termed as to pursue a cause, especially in politics and other socio- economic areas as well. But with the passage of time this term has acquired new dimensions, which is kind of deviation from the ordinary cause of action, this cause of action normally do not belong to the person but to other common interest at large. Due to this sense, it has to some extent acquired some bad odour to the term because of the reason it has raised suspicion about legitimacy of the act. (Dey 2002: 136)

In its dictionary meaning it stands for the activity, energetic, vigorous spirit of activity, with a values neutral approach. Judicial activism is both qualitative and quantities term. Primary notion of judicial activism is based upon public interest process of court. The area of judicial activism ranges from interpretation of law, constitutional provisions and legality of any executive function. (Ibid.)

The term judicial activism was first coined by the Prof. Shapiro and he classified the judges into two broad groups. First one is judicially modest and second one judicially activist, on the basis of their tendency while discharging their judicial functions. Similarly put by Justice Hidayatullah that task of judiciary is to keep two other organs of the state within the ambit and scope of the Constitution. It is termed as judicial activism when judiciary step beyond the limit or scope of its jurisdiction to deal issues of social-justice or other important social issues of public importance. (Prasad 2002: 191)

Development of judicial activism in the form of public interest litigation is the outcome of acute social- justice, exploitation, denial of human rights, corruption in every organ of the State and other co-related issues of public importance. This approach of judiciary has been justified on the bedrock of judicial review as part of the Indian Constitution. Judicial activism has got legitimacy and strength from the support of people because of their disenchantment from other organ of the state while performing their duties. (Kashyap 2003: 57) This judicial approach has opened new door for the public for the redressal of their grievances ranging from every walk of life. Judicial activism has checked the menace in public administration; more particularly helped the functioning of public institutions to ensure good governance.

Indian Constitution is one of the detailed Constitutions of the World and every organ of the state has defined area and to remain in that domain in order to avoid transgression. The Apex court of the country is bestowed with the power to judicial review legislation passed by the parliament and action of the executive. This power of the Apex court is called judicial review and judicial activism is the extension of judicial review and which results into coming out of its traditional role to become active in order to ensure protection of rights, weaker section of the society and liberty of the citizen. Judicial activism is the extension of judicial review to innovatively

interpret the provisions of Constitution as best known as judicial activism. (Singh & Murari 2019: 217)

Power of judicial review provides teeth to the Supreme Court of India to review legislation passed by the legislature and executive organ of the state. It also encompasses acts and orders of the institutions. By the expression of judicial review Supreme Court can declare any law, any other actions of the legislature and executive to be unconstitutional, if it is in conflict with basic principles of the constitution. Not only has this Supreme Court while exercising its judicial power can limit both wings of the government in case they go beyond the permissive domain of their authority. Judicial power put check on them and directs to act within their respective domain. This power is exercised without any prejudice or confrontation in the interest of public and welfare of the society. (Tyagi 2000: 4)

Due to inaction, corruption, laziness, lack of responsibility and accountability by the government and its instrumentalities resulted into creation of vacuum in governance. Formation of this vacuum may result into disaster for the democratic setup of the country. Vacuum created by incompetency on the part of government left the judiciary with no other option except to step in and fill the gap. Thus, judicial activism is the result of filling of the vacuum created by the non- activism of other organ of the state. Besides this doctrine of social want emerged as guiding factor for judicial activism due to failure of government to deal with problems and provide solutions. To achieve this end judiciary interpreted the legislation so as to serve the greater good to the society. (Vandana 2019: 11-12)

In fact purpose of judicial review to act as a watchdog while exercising its judicial power with a view to ensure check on other organs of the state and to keep them confined to their prescribed limits. Thus, power of overseeing other organs is known as judicial review. (Sathe 2002: 1) It was chief justice of the United States of America who actually for the first time expounded the concept of judicial review in ***Madbury V. Madison (1803)***. Unlike the Indian and British Constitution, the American Constitution rests on the principle of separation of powers and coupled with checks and balance. (Jain 2013: 48)

Judicial review is possessed with power to declare any law passed by the legislature as null and void if it goes against the spirit of the constitution and such law cannot be imposed by the state. Thus, judicial review can be categorised in three following categories:

- Judicial review of Constitutional Amendments.
- Judicial review of legislation passed by the parliament and other State legislation.
- Judicial review of administrative actions of the state.

Constitution is the supreme law of the land and it deals with all the questions including based on the political background while court discharging its judicial function. No system or organ of the state cannot stay in static form, it has to undergo change and innovate new ideas with the passage of time. Supreme Court of India have played pivotal role for the last five decades in entertaining complaints from all walks of life. Supreme Court and High Courts have enlarged their traditional jurisdictions and widened the scope while interpreting constitutional provisions. (Vandana 2019: 30) Supreme Court changed its traditional approach which was primarily based upon

the technocratic view of functioning just to deal with rules and statutes as what ought to be their exact meaning to activist role to meet the aspirations of people based upon the notion of social want due to the failure of other organs to perform their duties.

Supreme Court of India while interpreting the constitutional provisions changed its stance from traditional notion to activist court which resulted in to the change of guard regarding jurisdiction pertaining to *locus standi* with a view of public participation in the judicial process. Concept of *locus standi* pertains to adjudication if dispute between the private parties but contrary to this notion rule of *locus standi* has been liberalised in public interest litigation. (Sathe 2002: 16)

Thus, *locus standi* remained one of the vital decisive factor in the admission of a case in a court of law because of its traditional strict constructionist approach that, what injury petitioner has suffered to gain relief in his case. No person would be in position to approach unless he is able to satisfy court that his legal rights have been infringed. (Jain 2013: 70) Departure from the traditional role based upon the dispute between the parties is the outcome of judicial activism in the form of Public Interest Litigation by the Supreme Court to make participation of public in judicial process to which large section of society had very limited access.

#### ➤ **Public Interest Litigation**

Public Interest Litigation is a dynamic concept in the field of judicial activism. Concept of public interest litigation resulted in to weapon in the hands of public spirited person to secure human rights, environment degradation issues and addressing the issues of poor and downtrodden section of the society. While adjudicating the issues of public importance honourable Supreme Court rendered the following judgments to interpret the scope of public interest litigation.

**In Peoples Union for Democratic Rights v. Union of India** (AIR 1978 SC, 1473), while dealing with issues related to labour laws in relation to workmen Justice Bhagwati observed in Para 2 that:

*"We wish to bring up with all the accentuation at our command that public interest litigation which is planned to bring equity within the compass of the unfortunate masses, who comprise the low perceivability are of humankind, is a very surprising sort of litigation from common customary prosecution which is basically of an enemy character where there is a dispute between two contesting parties, one making guarantee or opposing such alleviation. Public interest prosecution is brought under the steady gaze of the court not to authorize the right of one person against one more as occurs on account of common suit, however it is planned to advance and justify public premium which requests that infringement of protected or lawful freedoms of enormous number of individuals who are poor, oblivious or in a socially or monetarily impeded position shouldn't go unrecognized and unredressed. That would be disastrous of the Rule of law which structures one of the fundamental components of public interest in any democratic form of government. The Rule of law doesn't imply that assurance of the law should be accessible just to a lucky few or that the law ought to be permitted to be undermined by the interests for securing and maintaining of authorization of their common and*

*political privileges. The poor also have common and political freedoms and the Rule of Law is intended for them likewise, however today it exists just on paper and not actually. Public interest litigation, as we consider or cooperative exertion with respect to the applicant. The State or public power and the court to get recognition of the established or legitimate freedoms, advantages and honours gave upon the weak segments of the local area and to arrive at civil rights to them. The State or public authority against whom public interest litigation is brought ought to be as much keen on guaranteeing basic human rights, constitutional as well as legal, to the individuals who are in a socially and monetarily distraught position, as the candidate who brings the public interest under the steady gaze of the court. The state or public authority which is exhibited as a respondent in public interest litigation ought to, as a matter of fact, welcome it, as it would offer it a chance to right a wrong or to review a treachery done to poor people and more fragile areas of the local area whose government assistance is and should be the prime concern of the State or the public authority."*

**In Fertilizer corporation Kamgar Union V. Union of India** (AIR (1981) SC 344), the question before the Supreme Court was pertaining to challenge the legality of sale of certain plants and equipments and relief sought by the petitioner was to direct the respondents not to sell the same. Besides this question was raised regarding maintainability of the writ petition. Justice Krishna Iyer observed in Para 41 as:

*" Law, as I conceive it, is a social evaluator and this review capacity can be set into action just when somebody with genuine public interest touches off the locale. We can't be frightened by the dread that one and all will be prosecution cheerful and waste through their time and money and the time of the court through bogus and silly cases. In a general public where opportunities experience the ill effects of decay and activism is fundamental for participative public equity, some risks must be accepted and more opportunities opened for the public disapproved of resident to depend on the lawful interaction and not be repulsed from it by restricted meticulousness presently encompassing locus standi."*

**In D. S. Nakara v. Union of India** (AIR (1983) SC 130), the question before the court was pertaining to pension scheme and govt of India made it applicable to those who retired before a specific date. This cause was raised by registered society, non-political organisations, and public spirited persons. While dealing with issue court observed that question of *locus standi* is unquestionable as matter pertains to enforce the rights available to a large section of the society.

**In Janta Dal v. H.S. Chowdhary** (AIR SC 893), while elaborating the concept of Public Interest Litigation Supreme Court observed in Para no. 66.

*"Though we have, in our country, we recognised a departure from the strict rule of locus standi as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the court for*

*enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of PIL”*

While elaborating and expanding the scope of Public Interest Litigation to redress the cause of society and to make people to participate in judicial process, Supreme Court also cautioned the frivolous and private motive litigation in Para 107.

*“It is in this way certain that only a person acting bona fide and having adequate interest in the procedure of PIL will alone have a locus standi and can move toward the court to clear out the tears of poor people and penniless, experiencing infringement of their fundamental rights, yet not an individual for individual increase or private benefit or political thought process or any angled thought. Also, a vexatious appeal under the shade of PIL brought under the steady gaze of the Court for justifying any private complaint, merits dismissal at the edge.”*

**In Sheela Barse v. Union of India** (AIR 1988 SC 221), in Para no 6 Supreme Court Observed that:

*“In public interest litigation, not at all like customary debate goal component, there is no assurance or adjudication of individual rights. While in the normal customary adjudications the party structure is just bi-polar and the discussion relates to the assurance of the lawful results of previous occasions and the cure is basically connected to and restricted by the rationale of the variety of the parties, in a public interest litigation action the procedures cut across and transient these conventional structures and restraints. The impulses for the legal advancement of the procedure of a public interest action is a constitutional guarantee of a social and financial change to introduce a populist social request and a welfare State. Successful answers for the issues particular to this change are not accessible in the traditional judicial system.”*

**In S.P.Gupta V. Union of India and Others** (AIR 1982 SC 149), in Para 14 of the judgment Supreme Court observed:

*“The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born.”*

Thus, Supreme Court relaxed the traditional concept of locus standi which was primarily based upon the concept of private law and legal injury caused to person. But



with the passage of time Supreme Court devised the new tool to meet the changed circumstance, which resulted in to Public Interest Litigation to make things possible for common people to participate in legal process to redress public issues at large.

- **Conclusion**

Principle behind the innovation of new dimension in dispensation of justice in the form of judicial activism is primarily based upon the idea of social justice. Idea of social justice is not limited only for upliftment of the weaker sections of the society but it has a wide spectrum which covers the entire society where is suffering, deprivation and discrimination. (Jain 2013: 105) Judicial activist approach of the court help the weaker and deprived sections of the society for their upliftment, these sections of the society remained for long as neglected from the executive approach but with the intervention of the court legislature started taking measures to redress their problems. Above mentioned are the dimensions of judicial activism in different area where it acted to uphold the baton of social justice.

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