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Role of Indian Judiciary in Promoting Judicial Activism

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Abstract :

The present article will highlight the importance of Indian judiciary in promoting judicial activism. How the Indian court has over the years expanded and extended the role in interpreting various laws and provisions of the constitution and maintain rule of law. The judiciary played an important role in interpreting and bring new laws into existence with change in need of the society. More over as an activist it has over the years become the custodian and guarantor of rights of the poor and under priveleged sections of the society and made them access to justice by issuing various writs.

Meaning of Judicial Activism

The term 'judicial activism' has not been defined anywhere in the Constitution of India nor it has been defined in any Indian statute. It is the power by which the judiciary examines or determines the unconstitutionality of the legislative and executive orders. In other words judicial activism also means re-interpreting the existing laws or any constitutional provisions to meet the current requirement and to keep both executive and legislature under control, by preventing it from under exercising or over exercising of power. According to Justice Markendey Katju "The judicial activism is use of judicial power to articulate and enforce what is beneficial for the society in general and people at large."

From Socrates‟ point of view, a just man is one who will, among other things, recognize his obligation to the state by obeying its laws". The state is the morally and politically most fundamental entity, and as such deserves our highest allegiance and deepest respect. Just men know this and act accordingly. Justice, however, is more than simply obeying laws in exchange for others obeying them as well. Justice is the state of a well regulated soul, and so the just man will also necessarily be the happy man. So, justice is more than the simple reciprocal obedience to law, as Glaucon suggests, but it does nonetheless include obedience to the state and the laws that sustain it.

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The expression *'Judicial Activism'* signifies the anxiety of courts to find out appropriate remedy to the aggrieved by formulating a new rule to settle the conflicting questions in the event of lawlessness or uncertain laws. The Judicial Activism in India can he 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.

At the conference of Chief Justices of High Courts and Chief Ministers in the previous

the Prime Minister, Dr Manmohan Singh, said:

"There is growing dissatisfaction regarding the functioning of the executive and the legislature and their ability to deliver effective governance to meet the needs and challenges of our times.

In this background, it is a matter of great satisfaction that the public at large continues to hold our judiciary in high esteem. The judiciary as custodians and watchdogs of the fundamental rights of our people has discharged its responsibility very well indeed."

A noted constitutional lawyer and former Solicitor General of India, Mr T R Andhyarjuna, wrote: ...*"whilst the Indian higher judiciary is perhaps the most powerful judiciaries in the world today and the socialist perception of it is very high, accountability mechanisms particularly in the disciplining of judges of superior court and the representative character of the courts have not matched with the power and esteem".*[1]

Historical Background of Judicial Activism

In a modern democratic set up, judicial activism can be looked upon as a mechanism to curb legislative adventurism and executive tyranny by enforcing Constitutional limits. That is, it is only when the Legislature and the Executive fail in their responsibility or try to avoid it, that judicial activism has a role to play. In other words, judicial activism is to be viewed as a "damage control" exercise, in which sense, it is only a temporary phase. Recent times have seen judiciary play a intrusive roles in the areas of constitutionally reserved for the other branches of governments. Issues in judicial activism arise, when governance is apparently done by Mandamus.

The concept of judicial activism which is another name for innovative interpretation was not of the recent past; it was born in 1804 when Chief Justice Marshall, the greatest Judge of the English-speaking world, decided *Marbury* v. *Madison*. Marbury was appointed Judge under the Judiciary Act of 1789 by the U.S. Federal Government. Though the warrant of appointment was signed it could not be delivered. Marbury brought an action for issue of a writ of mandamus. By then, Marshall became the Chief Justice of the Supreme Court having been appointed by the outgoing President, who lost the election. Justice Marshall faced the

1 Judicial activism and overreach in India by R Shunmugasundaram

imminent prospect of the Government not obeying the judicial fiat if the claim of Marbury was to be upheld. In a rare display of judicial statesmanship asserting the power of the Court to review the actions of the Congress and the Executive, Chief Justice Marshall declined the relief on the ground that Section 13 of the Judiciary Act of 1789, which was the foundation for the claim made by Marbury, was unconstitutional since it conferred in violation of the American Constitution, original jurisdiction on the Supreme Court to issue writs of mandamus. He observed that the Constitution was the fundamental and paramount law of the nation and "it is for the court to say what the law is". He concluded that the particular phraseology of the Constitution of the United States confirms and strengthens the principle supposed to be essential to all written Constitutions. That a law repugnant to the Constitution is void and that the courts as well as other departments are bound by that instrument. If there was conflict between a law made by the Congress and the provisions in the Constitution, it was the duty of the court to enforce the Constitution and ignore the law. The twin concepts of judicial review and judicial activism were thus born.

Justice Holmes of the U.S. Supreme Court observed in *Towne vs. Eisner 245 U.S. 418 (1918)*: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought, and may vary greatly in colour and content according to the circumstance and time in which it is used."

According to Nehru Whoever captures power will not be free to do whatever he likes with it. In the exercise of it, he will have to respect these instruments of instructions what are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in the court of law. But he will certainly have to answer for them before the electorate at election time.

Definition of Judicial Activism

Black's Law Dictionary defines the term 'judicial activism' in the following words: "A philosophy of judicial law-making whereby judges allow their personal views about public policy among other factors to guide their decisions; usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent."

According to Merriam -Webster's Dictionary of Law:"Judicial activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from the established precedent or are independent of or in opposition to supposed constitutional or legislative intent"

Agarwal's legal dictionary defines judicial activism or judicial creativity as: "Apparent power of the judges to modify the scope and pattern of existing offences and to create new offences resulting in judge–made law."

The phenomenon of judicial activism has been observed both under the Constitution of India and under different

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Indian statutes. In the absence of a constitutional definition and a statutory definition, different Indian jurists have made an attempt to define the term 'judicial activism'.

Justice Jackson of the U.S. has aptly said: "The doctrine of judicial activism which justifies easy and constant readiness to set aside decisions of other branches of Government is wholly incompatible with a faith in democracy and in so far it encourages a belief that judges should be left to correct the result of public indifference it is a vicious teaching." Unless the parameters of PIL are strictly formulated by the Supreme left to correct the result of public indifference it is a vicious teaching." Unless the parameters of PIL are strictly formulated by the Supreme Court and strictly observed, PIL which is so necessary in India, is in danger.[2]

In the words of Justice J.S. Verma: "Judicial activism must necessarily mean the active process of implementation of the rule of law essential for the preservation of a functional democracy." In *S. P. Gupta Vs. Union of India*, it was held that: "He [the judge] has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it with a meaning which will harmonize the law with the prevailing concepts and values and make it an effective, instrument for delivery of justice."

In India, Public Interest Litigation (PIL) or Social Action Litigation (SAL) are the main strategies for developing 'Judicial activism'. According to K.L. Bhatia: "Judicial activism in India is a movement from personal injury to public concern by relaxing, expanding and broadening the concept of locus standi. Judicial activism in India, is a progressive movement from "personal injury standing" to "public concern standing" by allowing access to justice to pro bono public that is public spirited individuals and organizations on behalf of "lowly and lost" or "underprivileged" or "underdogs" or "little men" who on account of constraints of money, ignorance, illiteracy has been bearing the pains of excesses without access to justice."

According to Prof. Sathe in India, judicial activism is classified into two types. Judicial activism can be positive as well as negative. In positive sense, court engaged in altering the power relations to make them more equitable is said to be positively activist and in negative sense a court using its ingenuity to maintain the status quo in power relations is said to be negatively activist.

According to Prof. Upendra Baxi Indian judicial activism is either as reactionary judicial activism or as progressive judicial activism. He cites the Nehruvian era activism on issues of land reform and right to property and the pro-emergency as a manifestation of reactionary judicial activism. On the other hand, he describes *Golak Nath* and *Kesavananda* as the beginning of progressive judicial activism. Baxi further says that 'Progressive judicial activism' extends the frontiers of

2 THE HINDU, August 6, 2012 "Disturbing trends in judicial activism", T. R. ANDHYARUJINA

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that which is judicially doable in time and place, both in terms of political and social transformation. "But there can be no form of reactionary judicial activism.

A Non activist judge is subject to the powers of the other two organs – the executive and the legislature. Secondly, he neither indulges in policy–making nor in policy–execution. Thirdly, he does not believe in revolution of the present social order. In contrast, to this an Activist judge regards himself as holding judicial power in fiduciary capacity for civil and democratic rights of all people, especially the disadvantaged, the dispossessed and the deprived." Secondly, unlike a non-activist judge, an activist does not subject himself to the powers of the other two organs – the executive and the legislature. She does indulge in policy-making and policy-execution. Thirdly, an activist judge through the exercise of her powers tries to cope with the present social
and political problems of the society. In brief, she promotes 'change' over stability.

A non-activist judge prefers to exercise its power as an agent of the Government whereas an activist judge exercises its power as an agent of the people. As an agent of the people, an 'activist' judge has the ability not only to determine the legal relations of the Government with its people but also the ability to determine its own relation with the other two organs of the Government. Thus, a non-activist court stands for the 'legal' and 'political sovereign' whereas an activist court stands for the 'popular sovereign'.

Judicial Activism: The Indian Scenario:-

In the case of *Keshavanada Bharathi* case the Supreme Court held for the first time that a constitutional amendment duly passed by the legislature was invalid for damaging or destroying its basic structure. This was a gigantic judicial leap unknown to any legal system. The supremacy and permanency of the constitution was ensured by this pronouncement, with the result that the basic features of the constitution are now beyond the reach of Parliament. The criticism of this judgment by the Supreme Court is that since the court has not exhaustively defined what these basic features are, the judicial arm can be extended any distance at will. Article 21 of the Constitution of India provides that no person shall be deprived of its life and liberty except according to the procedure established by law has become the most dynamic article in the hands of the Indian courts. A whole new set of rights which were not explicitly provided by the constitution were read into Article 21.

The doctrine of separation of powers was propounded by the French Jurist *Montesquieu*. It has been adopted in India as well since the executive powers are vested in the President, Legislative powers in the Parliament and State Legislative Assemblies and the judicial powers in the Supreme Court and subordinate courts. However, the adoption of this principle in India is partial and not total. This is because even though Legislature and the Judiciary are independent yet Judiciary is entrusted with implementation of the laws made by the legislature. On the other hand, in case of

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absence of laws on a particular issue, judiciary issues guidelines and directions for the Legislature to follow.

The executive also encroaches upon judicial power, while appointing the judges of Supreme Court and High Courts. Similarly the Judiciary, by its review power examines the law passed by legislature and the legislature on the other hand intervenes in respect of impeachment of the President of India, who is a part of the Union Executive.

As stated earlier, the Judicial Activism in India can he witnessed with reference to the review power of the Supreme Court under Art. 226 of the Constitution particularly in public interest litigation cases. The Supreme Court played crucial role in formulating several principles in public interest litigation cases. For instance, the principle of *"ABSOLUTE LIABILITY"* was propounded in *Oleum Gas Leak case*, "*PUBLIC TRUST DOCTRINE"* in Kamalnath Case etc.

The Indian Constitution, promulgated in 1950, largely borrowed its principles from Western models – parliamentary democracy and an independent judiciary from England, the Fundamental Rights from the Bill of Rights, and federalism from the federal structure in the U.S. Constitution, and the Directive Principles from the Irish Constitution. These modern principles and institutions were borrowed from the West and then imposed from above on a semi-feudal, semi-backward society in India. Whereas in Western countries such as England, the modern democratic principles and institutions were a product of historical struggles from the 16th to 19th Centuries in those countries. In India, on the other hand, these modern principles and institutions were not a product of our own struggles. They were imported from the West and then transplanted from above on a relatively backward, feudal society, the aim being that they will pull India forward into the modern age. The Indian judiciary, being a wing of the State, has thus played a more activist role than its U.S. counterpart in seeking to transform Indian society into a modern one, by enforcing the modern principles and ideas in the Constitution through Court verdicts.

In the early period of its creation the Indian Supreme Court was largely conservative and not activist. In that period, which can broadly be said to be up to the time Justice Gajendragadkar became Chief Justice of India in 1964, the Indian Supreme Court followed the traditional British approach of Judges being passive and not activist. There were very few law creating judgments in that period. Justice Gajendragadkar, who became Chief Justice in 1964, was known to be very pro-labour. Much of the Labour Law which he developed was judge made law e.g. that if a worker in an industry was sought to be dismissed for a misconduct there must be an enquiry held in which he must be given an opportunity to defend himself.

Courts of today are not remaining passive, with the negative attitude of merely striking

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down a law or preventing something being done. The new attitude is towards positive affirmative actions, and issuing orders and decrees directing remedial actions. In the estimation of an ordinary Indian citizen the legislature and the executive have failed miserably in their cherished duties towards the general public. The executive and the legislators are made accountable for their actions. Their nearness to the people generates high expectations from the public and attracts sharp criticism whenever their actions do not follow the expected lines. The common citizen feels that the administration has become so apathetic and non-performing that they have no other option except to approach the judiciary to redress their grievances. It is under this situation that the judiciary has taken an activist approach. Judicial activism has flourished in India and acquired enormous legitimacy with the Indian public. However, this activist approach by the judiciary is bound to create friction and tension with the other organs of the state. Such tension is natural and to some extent desirable. Judicial activism earned a humane face in India with the liberalizing of access to justice and granting of relief to disadvantaged groups and the have-nots through public interest litigation (PIL). A postal letter or even a postcard addressed to the court is accepted for the purpose of initiating prerogative writs, with courts disregarding the technicalities. The Supreme Court of India relaxed the traditional concept of locus by allowing public-spirited citizens to bring public causes to the court. Thus, the number of PIL actions has increased since 1977. The growth of PIL post 1977 is mainly attributed to incidents which happened during emergency rule between 1975 and 1977. One can see the marked differences between the judicial approach prior to 1977 and post emergency rule in India. This change of approach was in response to the changing times and aspirations of the people.

The Indian Constitution does not envisage a rigid separation of powers, the respective powers of the three wings being well-defined with the object that each wing must function within the field earmarked by the constitution. The Supreme Court of India took all this into account in the judgment reported in (1986) 4SCC 632 in the case of *State of Kerala v A Lakshmi Kutty*, stating that *"Special responsibility devolves upon the judges to avoid an over activist approach and to ensure that they do not trespass within the spheres earmarked for the other two branches of the State."*[3]

The judges should not enter the fields constitutionally earmarked for the legislature and the executive. Judges cannot be legislators, as they have neither the mandate of the people nor the practical wisdom to understand the needs of different sections of society. They are forbidden from assuming the role of administrators; governmental machinery cannot be run by judges as that is not the intention of our constitution makers. While interpreting the provisions of the constitution the judiciary often rewrites them without explicitly

3 R. Shunmuga Samundaram *"Judicial activism and overreach in India" Amicus Curie Issue 72 Winter 2007, p.22-25*

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stating so. As a result of this process some of the personal opinions of the judges crystallize into legal principles and constitutional values.

Supreme Court declared in *P Ramachandra Rao's* case that: *"The primary function of the Judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. But they cannot entrench upon in the field of legislation properly meant for the legislature. It is no difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law – the field exclusively reserved for the legislature."*

In the words of Justice J S Verma (former Chief Justice of India): *"...the judiciary should only compel performance of duty by the designated authority in case of its inaction or failure, while a takeover by the judiciary of the function allocated to another branch is inappropriate. Judicial activism is appropriate when it is in the domain of legitimate judicial review. It should neither be judicial 'adhocism' nor judicial tyranny.*[4]

Justice Markandey Katju in Minor Priyadarshini's case (2005 (3) CTC 449) has explained thus: *"Under the Constitution, the legislature, the executive and the judiciary have their own broad spheres of operation. It is, therefore, important that these three organs of the state do not encroach upon the domain of another and confine themselves to their own, otherwise the delicate balance in the Constitution will be upset... The judiciary must therefore exercise self-restraint and eschew the temptation to act as a super legislature. By exercising restraint, it will only enhance its own respect and prestige... Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the state. It accomplishes this in two ways. First it not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary... Second, it tends to protect the independence of the judiciary... If judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. The touchstone of an independent judiciary has been its removal from the political and administrative process... Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers."*

According to Shunmugasundaram, *For the progress of the nation, however, it is imperative that all the three wings of the state function in complete harmony. "A judicial decision either 'stigmatises or legitimises' a decision of the legislature or of the executive. In either case the court neither approves nor condemns any legislative policy, nor is it concerned with its wisdom or expediency. Its concern is merely to determine whether the legislation is in conformity with or contrary of the provision of the Constitution. It often includes consideration of the rationality of the*

[4] Ibid,p.27

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statute. Similarly, where the court strikes down an executive order, it does so not in a spirit of confrontation or to assert its superiority but in discharge of its constitutional duties and the majesty of the law. In all those cases, the court discharges its duty as a judicial sentinel."

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EARLY CASES OF JUDICIAL ACTIVISM

The following Supreme Court cases provide a useful insight into the growth and development of judicial activism in independent India. In the Privy Purse case *Madhav Rao Jivaji Rao Scindia v Union of India* the broad question was whether the President rightly exercised his power in derecognizing the princes. In this case, the court ruled that by virtue of Article 53 of the constitution, the executive power of union vested in the President must be exercised "in accordance with law". That power was intended to be exercised in aid of, not to destroy, the constitution. An order merely "derecognizing" a ruler without providing for the continuation of the institution of his rule – an integral part of the constitutional scheme – was therefore plainly illegal.

In *R C Cooper v Union of India*, the legislative competence of Parliament to enact the Banking Companies (Acquisition and Transfer of Undertakings) Act, known as the Bank Nationalisation Act, was in question. The court struck down the Act primarily on the ground of unreasonableness, explaining that the restriction imposed on the banks to carryon "nonbanking business" in effect made it impossible for the banks, in a commercial sense, to carry on any business at all. In *Golaknath v State of Punjab*, the Supreme Court while dealing with the constitutional validity of the 17 Amendment to the constitution evolved the concept of "prospective overruling" and held that Parliament had no power to amend Part III of the constitution, or take away, or abridge any of the fundamental rights.

In *VC Shukla v Delhi Admin* (1980), the court while dealing with the legislative competence of the state to pass a law establishing special courts for dealing with offences committed by persons holding high public office, held such courts to be valid. It also held that the court could strike down an administrative act if bias or mala fides was proved. The court in this case clarified that the theory of "basic structure" would apply only to constitutional amendments and not to an ordinary law passed by the Parliament or the state legislature.

In the *Bhagalpur Blinding case* Khatri v State of Bihar, it was held that

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Article 21 included the right to free legal aid to the poor and the indigent and the right to be represented by a lawyer. It was also held that the right to be produced before a magistrate within 24 hours of arrest must be scrupulously followed. In *Fertilizer Corporation Kamgar Union v Union of India,* the petitioners of a public enterprise challenged the sale of the plant and machinery of the undertaking, as it resulted in their retrenchment. The Supreme Court held that sale resulting in retrenchment had not violated their rights under Article 19(1)(g) of the constitution, and likened it to termination of employment due to abolition of posts. The court ruled that the petitioner did not have the locus standi to petition under Article 32. While reiterating that the jurisdiction of the Supreme Court under Article 32 was part of the "basic structure" of the constitution, the court violated, a petition under Article 32 was not maintainable even though one under Article 226 may be permissible.

In *T V Vaitheeswaran v State of TN,* the Supreme Court held that a delay in the execution of the death sentence for two years would entitle the prisoner to commutation of the death sentence to one of life imprisonment. However, in *Sher Singh v State of Punjab* this view was overruled. In the latter case, the delay was due to the conduct of the convict.

In 1967 the Supreme Court in *Golakh Nath v. State of Punjab, AIR 1967 SC 1643* 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 v. State of Kerala, AIR 1973 SC 1461 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 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.

In *A.K. Gopalan v. State of Madras, AIR 1950 SC 27* 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 v. Union of India, AIR 1978 SC 597* 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. Another great arena of judicial activism was begun by the Indian Supreme Court when it interpreted the word 'life' in Article 21 to mean not mere survival

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but a life of dignity as a human being. Thus the Supreme Court in *Francis Coralie vs. Union Territory of Delhi* held that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The Court held that: "… the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and comingling with fellow human beings."

The 'right to privacy' which is a new right was read into Article 21 *in R. Rajagopal Vs. State of Tamil Nadu* . 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 right to sleep was held to be part of Article 21 vide In re *Ramlila Maidan (2012) S.C.I.1.* In *Ajay Bansal vs Union of India , Writ Petition 18351/2013* vide order dated 20.6.2013 the Supreme Court directed that helicopters be provided for stranded persons in Uttarakhand.

In a subsequent decision, *Bhagwan Dass Vs. State (NCT) of Delhi, 2011(5) Scale 498*, again authored by the writer, 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 the case of *P Ramachandran Rao v State of Karnataka,* reported in (2002) 4 SCC 578, has observed that *"The Supreme Court does not consider itself to be an imperium in imperio or would function as a despotic branch of the State."* a judicial statesman (the late Chief Justice Ismail Mohamed of South Africa) said: *"The independence of judiciary and the legitimacy of its claim to credibility and esteem must in the last instance rest on the integrity and the judicial temper of the judges, the intellectual and emotional equipment they bring to bear upon the process of adjudication, the personal qualities of character they project, and the parameters they seek to identify on the exercise of judicial power. Judicial power is potentially no more immune from vulnerability to abuse than legislative or executive power but the difference is this: the abuse of legislative or executive power can be policed by an independent judiciary but there is no effective constitutional mechanism to police the abuse of judicial power. It is therefore crucial for all judges to remain vigilantly alive to the truth that the potentially awesome breath of judicial power is matched by the real depth of judicial responsibility. Judicial responsibility becomes all the more onerous upon judges constitutionally protected in a state of jurisprudential solitude where there is no constitutional referee to review their own wrongs."*

A former Solicitor General of India, Mr Dipankar P Gupta, wrote (*Hindustan Times*, June 15, 2007): *"There is a real danger that the activism of the courts may*

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aggravate the activism of the authorities. Today, inconvenient decisions are left by the executive for the courts to take.
Extensive use of judicial powers in the administrative filed may well, in the long-run, blunt the judicial powers themselves. This is not a healthy situation.

What is the solution*?* The task of the court should be to compel the authorities to act and to pass appropriate executive orders rather than substitute judicial orders for administrative ones. They must be told how their duties are to be properly discharged and then commanded to do so. For this, they must be held accountable to the court. Every organ must work within the constitutional limits and should not override each another. But a higher position is given to the judiciary to make the other organs Legislature and executive to stay within their limits. As judiciary is the custodian of rights and guarantor of fundamental rights. Only judiciary has power to decide whether any law made by the Legislature is according to the provision of the Constitution or not or any act done by the executive is as per law or not. Any contrary law made by the Legislature can be declared null and void by the Judiciary. Supreme Court in India over the years has been proved to be working to protect and prevent the violation of rights affecting larger public interest. To promote speedy justice it started organizing Lok Adalats, Legal Aid Clinics, Mediation centre, Consumer Court to cater different interests of the people. Moreover it has asked the lower courts to provide free legal aid to the poor in order to get speedy justice, who cannot approach the court due to poverty, ignorance and illiteracy. The litigants do not had to wait too long for justice. Apart from Legal Aid , Mediation Centre , Lok Adalat and Consumer Court there are Labour Court, National Green Tribunal, Administrative Tribunal, Court Martial working simultaneously to deal with different types of cases.

The Supreme Court recently noted in *Indian Drugs & Pharmaceuticals Ltd v Workmen (2007) 1 SCC 408 that: "the Supreme Court cannot arrogate to itself the powers of the executive or legislature… There is a broad separation of powers under the Constitution of India, and the judiciary, too, must know its limits"*

Conclusion

Judicial activism has been criticised by many critics stating that it is violating the principle of separation of power. But as judiciary being protector and guardian of rights and final interpretor of constitution , it has vested with ultimate power to struck down or expand various provisions of the constitution and existing laws. The judges should not enter the fields constitutionally earmarked for the legislature and the executive. Judges cannot be legislators, as they have neither the mandate of the people nor the practical wisdom to understand the needs of different sections of society. They are forbidden from assuming the role of administrators; governmental machinery cannot be run by judges as that is not the intention of our constitution makers. While interpreting the provisions of the constitution the judiciary often rewrites

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them without explicitly stating so. As a result of this process some of the personal opinions of the judges crystallize into legal principles and constitutional values. At present judicial activism has been very widely used in India for interpreting various existing laws and constitutional provisions. Judicial activism in India as compared to other countries of the world is very powerful and is recognized by large section of society. At present Article 21 has been interpreted which has included right to right to live with dignity, right to privacy, right to fair trial, education, right to health, right to food etc. We can say that over the years the role of Indian judiciary in promoting judicial activism is on increase and continuously trying to check and control the arbitrary actions and laws made by executive and legislature and to keep them intact. In other words we can say that interference of the judiciary is must for the enforcement of law in the country. Over the time the judiciary has grown in power and functions with increasing the complexities of problem. It is not the case that when executive or legislature overrides or not working according to the Constitutional provisions , judiciary can interefere and limit them but also during the failure of the State Machinery or even a private organization ,it can come forefront to correct, restrict, direct or forbid them.

Lastly we know that even the judiciary is not above the law. Judicial Accountability Act has came into being, to make the judges accountable for the acts or decisions they had made. Other instrument is Right to information Act which fixes the responsibilities and duties of every authorities both high, medium and low category and their functioning is made very transparent. Nothing can be done in secret every act and omission must be brought in the sunlight. As the people have every right to know how the government is functioning. Law is not for one person , it is for every citizens as wells as authorities and nobody can ever deny or refuse it. Law is living and supreme , it is essential for smooth functioning for democratic country like India.

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