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**EMERGING TRENDS IN
HUMANITIES & COMMERCE**



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This is to certify that Prof./Dr./Mr./Mrs./Ms. Dr. Mahendra L. Pachadkar.....

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Judicial Activism & Indian Judiciary- A Study

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Abstract:

The Judiciary has been deals with an aggressive and important part under the Indian Constitution. Legal activism is a factor that encourage innovativeness, and down to business acumen .The concept of The judiciary performs an positive role to uphold constitutional values and ethics under the constitutional scheme. For confronting civic difficulty, the judiciary applies its intellect and creativity to fill the hiatus between the positive and normative aspects of legislations. But, the embracement with judicial overreach can menace the good governance. Judicial activism is in this manner the perfect opposite of legal limitation.

Keywords: Judiciary, legal precedent, citizen, legislation, ethics

INTRODUCTION

The objective behind the research paper is to attract the attention on the extension of judicial activism in Indian democracy. The judicial activism in India had touched almost each and every facet of life to provide conclusive justice. Many a times the right to judicial review and judicial activism act as a benefaction for the weaker section of society in protecting their rights by mere filling of a social interest litigation or a public interest litigation. Many a times judicial intervention into the matter of executive and legislature have provided society with the upper hand in getting justice. Judicial system is a medium of providing 'JUSTICE 'to all, and also to take all relevant and possible steps to protect the interest of society and common civilians.

Definition of the Judicial Activism:-

On general approach, the term "Judicial Activism" refers the court's decision, based on the judge's personal wisdom or political affiliation that do not go rigidly within the text of the statutory passed by legislature and the use of judicial power broadly to provide remedies to the wide range of social wrongs for ensuring proper justice. Paul Mahoney narrated that, "Judicial activism exists where the judges modified the law from what was previously stated to be the

⁴ 2 Paul Mahoney, "Judicial Activism and Judicial Self-Restraint in the European Court of Human Rights: Two Sides of the Same Coin" (1990) 11 Yale Human Rights & Development Law Journal 57 3 Durga Das Basu, Constitutional Remedies and Writs (2nd edn, Kamal Law House, 2009) 38



existing law which often leads to substituting their own decisions from that of the elected representatives of the people.⁵

METHODS OF JUDICIAL ACTIVISM

⁶The concept of "Judicial Review" refers to a mode of court's proceeding by which the judges act for eliminating unlawful and unruly decisions or actions by a public official exercising public duties to protect the constitutional rights and to protect the laws of the land, where there is no other efficient remedy to challenge. The judicial scrutiny of parliamentary powers cannot stop especially when breach of other constitutional provisions has been alleged and the court can use its power against any such violations. This is why higher judiciary can be treated as 'Savior of the Constitution'.

Public Interest Litigation

⁶Apparently, PIL indicates a legal action for indemnifying common interest or for protecting from civic grievance in which individuals have interest and by which their legal rights are infringed. As PIL allows any person without being actually aggrieved to activate the judicial method, it should be considered as device by which public participate in judicial review of administrative action. ⁷Even though the court can take PIL case on sou moto role and can entertain its duties through judicial activism.

Constitutional Interpretation

Various justification systems of the constitutional interpretation are introduced as more democratic. The judge may show their judicial intellectual to interpret that might go inverse the contexts or contents of the legislature, though judicial words have no self-enforcing powers. For interpretation of the statutes, the judges have forced by objectives and by apparent sources. On the basis of jurisprudential view, the methods of judicial interpretation are not so easy. The judges always seek to find out the intent of the legislature.

Accessing International Statutes

⁵ IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 23, Issue 8, Ver. 3 (August, 2018) PP 45-53 e-ISSN: 2279-0837, p-ISSN: 2279-0845.

⁶ Stephen Holmes, „Precommitment and the Paradox of Democracy“ in Douglas Greenberg (ed), Constitutionalism and Democracy: Transitions in the Contemporary World (Oxford University Press 1993) 195-240 32Awal Hossain Mollah, „Judicial Activism And Human Rights In Bangladesh: A Critique“ (2014) 56 (6) International Journal of Law and Management 475

⁷ State v Deputy Commissioner, Satkhira and Others [1993] 45 DLR 643 (HCD)



Constitutional Interpretation are influenced by international policies and norms which includes customary law, fundamental rights etc. The sole objectives of the judiciary should be that the precedents and statutes should not override or inconsistent to the constitutional provisions. International Conventions or Covenants should be consistent with the spirit of fundamental rights and with harmony of the civilian. Furthermore, in **Vishaka v State of Rajasthan case**, the Court set forth new regulations for enforcing the Convention on the Elimination of All Forms of Discrimination against Women (hereafter referred as "CEDAW"), to which the India was a signatory member and hence, narrated that sexual harassment violated the right of gender equality and the right to life and liberty under the Constitution.

⁸Five cases of judicial activism that has put the government on the spot:

Supreme Court has interfered with legislative actions in the following recent matters.

Supreme Court orders Centre to create a new policy to handle drought: While there is no doubt about the precarious condition of farmers in drought-hit Maharashtra and some other places, with farmer suicides on the rise, the question, however, is whether the Supreme Court has the right to order the government to frame policies. It has ordered the government to look into drought management, abandon the current and existing system and form a transparent policy - with a set time-frame for declaring drought and a standard methodology. The apex court has also directed the Union government to set up a **National Disaster Mitigation Fund** within three months.

Supreme Court orders government to set up a bad loans panel: It can be debated whether the apex court even has the authority to decide how the banks with collect their dues or even with respect to write-offs. But the Supreme Court has ordered the government to appoint a committee to look into the issues pertaining to bad loans and the huge write-offs by public sector banks. This, despite the Reserve Bank (RBI) counsel saying that systems are already in place for most of the issues raised.

Supreme Court issues notice to Arunachal Pradesh governor: Recently, the Supreme Court had issued a notice to Arunachal Pradesh governor Jyoti Prasad Rajkhowa, which was later recalled. The decision to recall the notice was taken under Article 361, according to which the

⁸ https://www.business-standard.com/article/current-affairs/five-cases-of-judicial-activism-that-has-put-govt-in-a-spot-116051700587_1.html accessed on 4th September, 2019



governor and the President are not answerable to any court in the exercise of powers and duties of office. Their conduct can however be reviewed by court.

IMPACTS OF THE JUDICIAL ACTIVISM

Judiciary More Creative.

In recent years, the judiciary has been denounced for its aptitude to surpass the boundaries of other constitutional bodies. The judges have applied the judicial creativities as judicial mariners to form the laws by departing from previous decisions.

Judiciary gains the confidence of the public.

Potential resistance of judiciary is based upon the public reliance and faith this can be treated as an ideal benefits to the judiciary for maintaining immense and quick or proper justice

⁹Collapse the Responsible Government.

The constitutional structure has provided an appropriate opportunity for judicial activism. When the State's organs cannot maintain their responsibilities, entrusted by the constitution, it causes collapse of the good governance which is prerequisite for democratic constitutionalism and hence, the justification for the judicial activism comes from the crisis.

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CONCLUSION:

For maintaining the constitutionalism it is the primary condition that one must keep balance among the State benches. Under the common law adversarial jurisprudence, the judges are deemed as an autonomous adjudicator and they serve for promoting values and dignity. The judiciary should be an exclusive organ with judicial dispute resolving and political law making functions and should work for the fulfillment of the statutory incision for upholding public longing without overlapping the power of others. Factually, the judicial activism has a very effective approach to almost every difficulty in the present time, but it is never desirable dominion of the judiciary. Moreover, the cripple of constitutional principles of the separation of powers is not advisable. "Therefore, this double-edged sword should be used with caution and discernment tactics."

⁹ State v Deputy Commissioner, Satkhira and Others [1993] 45 DLR 643 (HCD).
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