



A STUDY OF JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION IN INDIA

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Abstract:

In today's context judicial activism is playing very vital and important role to protect and preserve the Fundamental Rights, Human Rights and Other Rights. It is one of the main instruments as the most effective remedy of the Hon'ble apex Court and High Courts of states. Hon'ble Supreme Court under article 32 and High Courts under article 226 of Constitution of India having the most effective power to issue orders, directions or writs including Habeas Corpus, Mandamus, Prohibition, Quao Warranto and Certiorari whichever may be appropriate for the enforcement of Fundamental Rights, Human Rights, Legal Rights and Other Rights also on filing petitions or movements or the Court also take cognizance by suomoto, hence the Court plays the most important role as a watchful sentinel. Judiciary is independent and independent judiciary is one of the contents of basic structure of Constitution of India which cannot be destroyed, amending by parliament of India under article 368 therefore this research paper has been focused on the Judicial Activism and Public Interest Litigation in India which is helpful for research scholars, students, Professors, teachers, institutions or organizations or establishments, commissions, governments, NGOs, trusts, Colleges, Universities, person individually or group, society and other required persons relating to conduct research and do the needful as per requirements, time & circumstances.

Introduction:

The distribution of power or business of executive, legislature and also judiciary duly has been vested in the Constitution of India namely these are three organs of our governments; when so ever any organ of government function ultra viresly, against law arbitrary, in violation of fundamentals rights, constitutional rights and etc. then the aforesaid courts intervenes or interferes or on movement or petitions or by suomoto, such intervention or interference is called judicial activism. The power of judicial activism has been vested in the Supreme Court and High Courts of India. There has been contemporary emergence of public interest litigation and judicial activism in India. Rather, present day developments of public

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interest litigation are mainly the result of the activist approach adopted by the Supreme Court of India, since late seventies. Public interest litigation has also been referred to as a Silent Revolution.³ It added a new chapter in the Indian Jurisprudence. The creative Judges captured the mood of change and interpreted the law to give meaning and direction to that change. The Supreme Court through newly acquired jurisdiction⁴ provided relief to the poor languishing in jail, for the prolonged contract labour, child workers, rickshaw pullers, slum dwellers, fishermen etc. The court also examined the questions of land entitlement⁵ to poor peasants and environmental issues⁶ under the public interest litigation. This jurisdiction not merely remained confined to the issues of the disadvantaged class but it dealt with a range of public causes including the manner in which High Court Judges could be transferred⁷ and investigation and trial of cases of corruption by politicians⁸ and environment issues etc. It is true that public interest litigation and judicial activism go hand in hand and public interest litigation itself is the result of judicial activism. Under Article 32 of the Constitution of India, the Supreme Court can be moved for the violation of fundamental rights but through judicial activism, the Supreme Court allowed that this remedy can be invoked even through public interest litigation by the persons who do not allege the violation of their own fundamental rights but the violation of fundamental rights of some impoverished group of the society.⁹

The meaning of right to life and personal liberty enshrined in Article 21 of the Constitution has been given liberal interpretation.¹⁰ In *Francis Coralie v. Union Territory of Delhi*,¹¹ the Supreme Court has held that right to life includes the right to live with human dignity and all that goes along with it. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live. The basic necessities of the life such as adequate nutrition, clothing, shelter and facilities for reading, writing, expressing oneself etc. are included in this right. The apex court elevated the immunity from torture to the status of fundamental rights under Article 21 of the Constitution, though it is not specifically enumerated as a fundamental right in the Constitution.¹² The right to life is held to include not merely animal existence but to have a much wider meaning to include the finer graces of the human civilization, viz., efficient and safe means of communication.¹³

³ G. Mukhoty, 'Public Interest Litigation; A silent Revolution, ISSC Journal 1 (1985).

⁴ The epistolary jurisdiction where PIL can be initiated by a mere letter. The Court liberalized rules of standing.

⁵ *Banwari Sewa Ashram v. State of U.P.*, (1986) 4 SCC 753.

⁶ *M.C. Mehta v. Union of India*, (1986) 2 SCC 176; *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC, 295; *M.C. Mehta v. Union of India*, (1987) 4 SCC 46; *Chhetria Pradushan Mukti Sangrash v. State of Kerela*, AIR 1990 SC 273 & 1480.

⁷ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

⁸ *R.S. Nayak v. A.R. Antulay*, AIR 1981 Born 422; *News Item The Tribune Nov. 9, 1996* 'Sheela Kaul told to pay 60 lakh.

⁹ *Ajay Gulati & Dr. Jasmeet Gulati: Public Interest Lawyering, Legal Aid and Para-Legal Services: Central Law Publications Allahabad: Edition 2013, Page 36.*

¹⁰ Article 21 of the Constitution of India, 'No person shall be deprived of his life or personal liberty, except by procedure established by law.

¹¹ AIR 1981 SC 746 at p. 753 and See also *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

¹² *Khatra v. State of Bihar*, AIR 1981 SC 928.

¹³ *Re, Dr. P.N. Thampy There*, AIR 1984 SC 74.

The Supreme Court in *Nila Bati Bahera v. State of Orissa*,¹⁴ explained the extent of jurisdiction under Article 32 to award compensation for custodial death. The court said that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is the acknowledged remedy for enforcement and protection of such rights. The Supreme Court said that it is not helpless and the wide powers given to it by Article 32, which itself is a fundamental right, imposes a Constitutional obligation on it to forge new tools which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution.¹⁵ Professor Upendra Baxi,¹⁶ has observed that compensation and rehabilitation for victims deprived of their fundamental rights now constitutes a Constitutional right. The Supreme Court undertook a detailed monitoring of the rehabilitation of the blinded prisoners of Bhagalpur and since then fashioned many a measure of compensation and rehabilitation. It has ordered the administration of the sulphate injections to the Bhopal victims and upheld the Constitutional validity of the Bhopal Act¹⁷ by reading into it the obligation to provide monthly interim relief. It has provided elaborate directions for treatment of prisoners and under trials in jails; it has given specific directives for humane and just conditions for work for migrant workers¹⁸ and forced labourers in *Bandhua Mukti Morcha* case.¹⁹ Justice Bhagwati (as he then was) has observed in this case that the State can certainly be obligated to ensure observance of such legislation, for in action on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21 of the Constitution. He held that the Government could be obligated by writ petition under Article 32 to ensure observance of various social welfare legislation and labour laws. Similarly in *Neerja Choudhary v. State of M.P.*,²⁰ it was held that Articles 21 and 23 of the Constitution would require not only identification and release of bonded labourers but also their rehabilitation on release. Specific directions were issued to chalk out programmes for rehabilitation and their supervision by a vigilance committee.

In *Rural Litigation and Entitlement Kendra v. State of UP*,²¹ a letter was allowed to be treated as a writ petition under Article 32 of the Constitution, though there was no allegation of violation of fundamental right of any specific person. The Court ordered the closure of lime stone quarries and observed that this would undoubtedly cause hardship to them but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air water and environment. This shows that Court recognized the

¹⁴ AIR 1993 SC 1960.

¹⁵ Ajay Gulati & Dr. Jasmeet Gulati: Public Interest Lawyering, Legal Aid and Para-Legal Services: Central Law Publications Allahabad: Edition 2013, Page 37.

¹⁶ Upendra Baxi, Judicial Discourse; Dialects of the Face and the Mask 35 JILI (1993) 1 at p. 8.

¹⁷ The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (Act No. 21 of 1985).

¹⁸ Peoples' Union for Civil Liberties v. Union of India, AIR 1982 SC 1473.

¹⁹ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802. See also *Ranjangain v. Secy. District Beed Works Union*, (1992) 1 SCC 221.

²⁰ AIR 1984 SC 1099.

²¹ AIR 1985 SC 652.

right of the people in general which should be protected through a writ of the Court. Surely this is a further expansion of enforceable rights under the Constitution because of the activist approach adopted by the Supreme Court of India. In its zeal to protect the environment the Court did not stick to the old procedural niceties; rather it evolved innovative techniques and concept to protect the environment which if expanded consistently; would go a long way towards compensating and regaining the lost environment. Also the court did not close its eyes after handing down the order but remained responsive for its proper execution which reflects an after caring judicial approach.²² In pursuit of its activist approach, the Supreme Court continued hearing of public interest litigation rebating to controversial issues. It did not have any difficulty in examining the effect of vehicular pollution environment in Delhi and issued directions to the Ministry of Environment to carry out appropriate experiments to test the effectiveness of the device brought out by National Environment Engineering Research Institute Nagpur within time bound limits.²³

Conclusion:

The concept of judicial activism is increasing day by day which is very helpful and beneficial for weaker and vulnerable group of people. Judicial activism and Public Interest Litigation are co-related with each other as a compliment, so both are having very significant and remarkable role in Legal-Aid & Para-Legal Services in administration of justice. The Judicial activism and Public Interest Litigation have gone down the history which highly worth appreciating and the most beneficial for all in India.

²² C.J. Jariwala, 'Mining And Environment—Indian Law Scenario', 37 JILI (1995) 431 at p. 441.

²³ M.C. Mehta v. Union of India, AIR 1991 SC 1131. See also M.C. Mehta v. Union of India, (1991) Supp 1 SCC 181 (Pollution by tanneries on the River Ganga).