Chapter - 5

JUDICIAL ACTIVISM IN INDIA: NECESSITY, CAUSES, CASES OF JUDICIAL INTERVENTION IN GOVERNMENT WORK

Parliament is the supreme law making body; judiciary is the final authority for interpreting the constitution and the law passed by the legislative institutions. Need to maintain balance between judiciary, legislature.¹ In any system of government, the Judiciary plays a major role in the quality of governance of the country. Courts are important for the working and consolidation of democratic regimes.² With the idea of constitutionalism based on the principle of limited and responsible government, an independent judiciary has become the *sine qua non* of democracy. If the judiciary is given real independence and full freedom to scan executive decisions and policies in the light of the constitution, it makes for good governance and prevents exploitation of the poor and weaker sections of society. In a federal polity with two sets of government, where powers of government are limited *vis-à-vis* citizens, disputes between Union and States or among States need to be resolved by independent agency. The framers of India’s Constitution, who were much concerned with the consolidation of democracy, therefore, were committed to an independent and strong judiciary which is pro-active to scrupulously and overzealously guard the fundamental rights.

The makers of Indian constitution enacted several provisions designed to secure the independence of judiciary by insulating it from executive or legislative control. Due to an independent judiciary, the area of judicial intervention steadily expanded through concepts of judicial activism, public interest litigation etc. Problems relating to environmental issues and natural resources of India, which ought to have been tackled on a priority basis by the executive and the legislature are recently brought up through PIL to be handled
by the superior judiciary. Shedding its *pro-status quo* approach, judiciary has taken upon itself the duty to enforce the basic rights of the poor and vulnerable sections of society. It has also vowed to actively participate in the socio-economic reconstruction of society, by “progressive interpretation” and “affirmative action.” In the forthcoming paragraphs we will try to understand as to how India’s judicial system functions especially in light of increasing judicial activism.

With the advent of modern state system the function of government has increased vehemently, people now expect from government to take care of all their physical needs from cradle to grave, with government child care programs, social security, education, healthcare, employment etc. Thus, functions of judiciary are also bound to increase as law cannot afford to be static and so is the case with judiciary. The purpose of giving justice cannot be solved by simply interpreting the laws in modern times particularly in a divergent society like India. Law should be interpreted in such a way so as to satisfy the needs of our society. In an exemplary judgment, Delhi High Court legalized the knot of wed-lock of an underage (17 year) girl with her lover, asserting that no law in India prohibits love marriage and the girl would not have been safe at her parental home. Would it be proper for courts to allow an underage couple ‘madly in love’ to marry, turning a blind eye to the law prohibiting marriage of a girl aged below 18? This question was put before the Supreme Court by the National Commission for Women (NCW) and Delhi Commission for Women (DCW) citing two recent judgments by the Delhi High Court (October 5, 2005) and the Andhra Pradesh High Court (February 1, 2006) allowing underage girls to marry their beaus. The court kept in mind the atrocities perpetrated on the couples who run away from their homes. If the goal had only interpreted the law then it could have easily invalidated the marriage on the ground that the girl was not an adult, but that would have served no purpose. The judiciary should see what is in the best interests of the
society. This is perhaps the basis of judicial activism. On these bases, judiciary is overstepping its limits by adopting an activist approach.

It is no wonder that the judiciary gets legitimacy from the public when it willingly accepts its interpretations. In common law system, it is not easy to interpret the law. Even lawyers at times find difficulty in understanding the basis of many decisions. Further, loads of legislations and complicated procedures, often pose as hindrances in getting proper explanations of judicial decisions. However, through media and modern techniques of information technology, people are getting the required information to view a particular decision to form their own independent opinion on the verdict. Finally, the question of accountability of judiciary is also an important area for discussion. Just like other two organs of government, judiciary need also be made accountable; to prevent it from becoming arbitrary because “power corrupts and absolute power corrupts absolutely.” Though, judiciary should be made accountable to the people, but its independence and integrity should not be touched. Some people regard it as a cause for concern because through judicial activism the courts have played the role of legitimizing and channeling various movements for social change and social justice. This, it is contented, may jeopardize the process of delivering justice.

**SCOPE OF JUDICIAL ACTIVISM**

Judicial activism in India can be broadly divided in to two periods, the first period is from 1950 to 1975 i.e., pre-emergency and second period begins from 1975 i.e., post emergency. There was hardly any judicial activism during the first period, courts were very conservative and activism was confined to a few cases especially on the issue of the right to property. On the other hand, courts were extremely positivist in cases regarding personal liberty. Since the end of 1970s, we do not even find judicial activism on the right to property because it was removed from the list of fundamental rights given in Part III of the Constitution. From the late 1950s, however, the court started perceiving the
larger dimensions of its constitutional role. This movement from a positivist court to an activist court was slow and imperceptible initially and it came to be noticed only during the late 1970. The Supreme Court is one of the most extraordinary institutions in our system of government. At the end of 1950s, charged with the responsibility of interpreting the Constitution, Indian judiciary played a larger role in protecting democracy. But even in these cases, courts found it bound by the limitations of the text of the Constitution. Courts never tried to claim that they had authority to oppose the positivist approach to constitutional interpretation. Amendments of Indian Constitution started soon after its enforcement. However, the amendments passed during Nehru era were less controversial than those passed during the tenure of his daughter and grandson. None of the amendments under the Nehru government affected the fundamental rights of the citizen to the same extent. This required the analysis of the amending power of the Parliament. One of the major instances of judicial activism in India was Kesavananda Bharati case. Kesavananda ruling overruled the judgement given in Golaknath case and held that the amending power of Parliament cannot be limited to fundamental rights but also ruled that there are implied limits which could not be used to alter the basic structure of the Constitution. The theory of implied limits in the amending power with reference to the basic features of the Constitution propounded in Kesavananda case was the first great act of judicial activism by the Supreme Court of India.

Another area of judicial activism in India is in establishing rule of law. The Constitutional scheme regarding the rule of law, as an essential feature, was judicially recognized from an early stage. Right to equality was combined with the English doctrine of rule of law in Basheshwar Nath case. It was held that the rule of law is an essential feature of the Constitution of India; and absolute discretion in matters affecting the rights of the citizens is repugnant in the rule of law.

In India, one of the favourite areas of the hyper active judiciary has been the interpretation of fundamental rights, particularly right to equality in Article 14,
right to freedom in Article 19 and right to life and personal liberty in Article 21. The meaning of words ‘life’, ‘liberty’, and ‘law’ in Article 21 have been considerably amplified by judicial decisions. Anything which is not ‘reasonable’, ‘just’ and ‘fair’ is not treated to be equal and is, therefore, violative of Article 14. The word ‘life’ has been construed to mean life with dignity and not mere physical existence. Liberty has been construed in the manner envisaged in the preamble, that is, liberty consistent with the social norms. The word ‘law’ means a law which is fair in content and procedure. It has been held that the validity of a law contemplated by Article 21 must satisfy the test of Articles 14 and 19.\(^\text{11}\)

It is required that every state action must satisfy the test of fairness; consideration of every legitimate expectation in decision-making is necessary to satisfy the rule of non arbitrariness; and absolute power in any individual is anti democratic, are judicially evolved principles which form part of the constitutional law.\(^\text{12}\) Right to speedy trial has been held to fall within the guarantee of Article 21.\(^\text{13}\)

Similarly, domiciliary visit by the police without authority of law, was held to be violative of Article 21, assuming right to privacy as a fundamental right derived from the freedom of movement under Article 19 (1) (d) ‘to move freely throughout the territory of India’, as well as personal liberty under Article 21. Abolition of child labour has been held to be the obligation of the State and the practice of child labour has been held to be a violation of human rights.\(^\text{14}\)

The doctrine of public trust has been introduced by judicial decisions wherein the Fundamental Rights guaranteed in the Constitution have been construed to require protection from arbitrariness and misfeasance of public authorities in exercise of public power.\(^\text{15}\) Another major area of judicial activism is ordained through Public Interest Litigation (PIL). PIL is the major facilitator of judicial activism which owes its popularity to PIL. The traditional view regarding *Locus Standi* gradually got liberalised in response to changed social, economic
and political environment.\textsuperscript{16} A letter or even a post card can be accepted by court as PIL. Landmark judgments have been delivered and social improvement has come about through PIL. This issue will be discussed in detail under some separate headings of this chapter.

Public Interest Litigation has come to stay in India. PIL means a legal action initiated in a court of law for the enforcement of laws related public interests with or general interests in which the public or a particular class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.\textsuperscript{17} Prior to 1980s, only the aggrieved party could personally approach the court and seek remedy for his grievance. Whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury.\textsuperscript{18} In course of time there has been a wave of environmental litigations.

The concept of public interest litigation took a clearer shape through the remarkable judgement in what is popularly known as the case of the judges’ transfer. Justice Bhagwati said that the traditional rule was of ancient vintage and arose during an era when private law dominated the scene. He observed that there is an urgent need to innovate new methods and devise new strategies for the purpose of providing access to justice to the large masses of people who are denied their human rights and to whom freedom and liberty have no meaning.\textsuperscript{19} The courts have a duty to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for general or group interest.

In \textit{Aisad Case}, where a writ petition brought by way of public interest litigation in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. An organisation, People’s Union for
Democratic Rights brought the matter to the attention of the Court by means of a letter addressed to the bench of justice Bhagwati. The letter was based on a report made by a team of social scientists who were commissioned by the petitioner for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the various Asiad projects were working. Since the letter was treated as a writ petition on the judicial side and notice was issued upon it inter alia to the Union of India, Delhi Development Authority and Delhi Administration which were arrayed as respondents to the writ petition. These respondents filed their respective affidavits in reply to the allegations contained in the writ petition and an affidavit was filed on behalf of the petitioner in rejoinder to the affidavits in reply and the writ petition was argued before the bench on the basis of this pleadings.\(^\text{20}\)

By considering the letter as a petition, justice Bhagwati further developed the idea of social justice through courts observed that “the time has now come when the courts must become the court for the poor and struggling masses of this country. They must shed their character as upholder of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. It is through public interest litigation that problems of poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future.”\(^\text{21}\)

**NECESSITY OF JUDICIAL ACTIVISM IN INDIA**

There is a confrontation with the issue of judicial activism and its necessity for Indian society. All jurists and political commentators have given various distinctive arguments in favour or against it. While some apprehended that by making inroads into the executive and legislative domains without restraint, the judicial activism had upset the constitutional system of checks and balances, while others welcomed the manner in which the judiciary was re-defining its role in a corruption-ridden system.\(^\text{22}\) The reason for which judicial activism has
emerged in the Indian society will be discussed under some forthcoming headings. Here is an attempt to examine the views of those two groups of people who are confronted over the necessity of judicial activism in the context of Indian system.

These are some analyses of that segment of the society which postulates judicial activism as an unnecessary practice for Indian social system. The first notion they have is that, the judicial activism will have a detrimental effect on our democratic order. They opine that the people are losing their faith in their political leadership, bureaucracy and governmental mechanism. No one is spared of a serious suspicion, not even the Prime Minister of the country.\textsuperscript{23} This promising notion will prove decisive for the basic democratic norms. This judicial intervention in each domain of governmental policy has been jeopardising the system of checks and balances and has proved to be the main threat to the system of separation of powers in India.

On the other hand, they indicate some ambiguity in judicial system. They say that the judicial activism is the outcome of the judiciary’s zeal to be in the limelight. Moreover, there are similar flaws and shortcomings in judicial administration as in other administrative systems. There is not merely a tremendous amount of filtration but also distortions galore at the chambers of advocates, and in the court premises; it is corruption all the way, not merely monetary any more, but corruption in all its Indian manifestations.\textsuperscript{24} Justice Kuldip Singh, former judge of the Supreme Court of India, felt that ‘although the judiciary is independent, there may still be found skeletons in its cupboard.’\textsuperscript{25} Judges are also prone to the kinds of biases and risk-decision errors exhibited by the populace.

Justice Sawant’s remarks are more appropriate in this direction that ‘autocracy of the judges - the judiciary - is to be more dreaded than that of the politicians, for there is no recourse against it. The healer becomes the killer, the saviour the captor.’\textsuperscript{26} Further, the critics point out the abuse of PIL. Question arises
whether it is a blessing or a curse. Even the Chief Justice of the Supreme Court cautioned the legal community against misuse of PIL and emphasized the need for its proper regulation. The abuse of PIL is also increasing along with its extended and multifaceted use. The cases of Janata Dal v. H.S. Chowdhari, Krishna Swami v. Union of India and Simranjit Singh Mann v. Union of India are some illustrations where the petitioners tried to abuse PIL to achieve political ends. It is clear that the misuse of PIL in India, which started in the 1990s, has ulterior purposes for which PIL was not initially introduced. Ultimately the dark side is slowly outshining the bright side of the PIL.

Therefore, judicial activism has been subject to reproach. Firstly, it has become evident that judicial activism has provided stimulation to the judiciary, as well as the executive and legislature. Several new legislations have come into existence because of hyperactive judiciary. Judicial activism has exhumed several scams and scandals e.g. Hawala Scam, Fodder Scam, St. Kits Case, Illegal Allotment of Government Houses and Petrol Pumps Case, Fertilizer Import Scam etc. Hence, it has created an environment of transparency and accountability. It engenders greater trust between government and citizen. Therefore, judicial activism is an ardent need of a segmented socio-cultural system like India.

Indeed, one of the motives of democracy is to maximize public welfare. In order to realise this goal, even if one wing of government takes upon itself the responsibility that is supposed to be carried out by the other coordinated wings, there requires no eyebrows to be raised. Thus, the democracy-related apprehension of the critique seems to be over stressed in India.

The second contention raised by the reviewer is reasonable to some extent. But the counter-argument is that the judiciary, like the legislature, is also manned by human beings who come from the same social milieu and are subject to same human frailties and social constraints. No institution has monopoly rights to weaknesses or to making mistakes. Courts may also go wrong, overstep the
limits of judicial discretion and restraint and make mistakes. Even the Supreme Court recognizes that it is not infallible. However, it cannot be denied that there is an emergent necessity of judicial reform in the contemporary era. In exercising judicial review actively judges must constantly guard against the dangers of judicial populism and generation of hero worship. There should be no hankering after press publicity. No judge should assume the role of a knight-errant in quest of individualistic notions of justice.

Judicial activism through PIL emerging as a need, but the apex court itself has framed some parameters to regulate the abuse of PIL in many cases. The Court has held in some cases that the petitioners have no locus standi to file the petition and thus declared their petitions cancelled. After the illustration of PIL’s positive and negative functions, as a matter of fact the hyper active judiciary has done a great assignment to ameliorate the human sufferings. Those who oppose the growing judicial activism of the higher courts do not realize that it has proved a boon for common man. It has set right a number of wrongs committed by the states as well as individuals. Therefore, there should be no fear from judicial activism, rather the common people, very often denied of the protection of the law because of the delayed functioning of the courts, have long been fed up with what may be called judicial inertia or judicial tardiness. Judicial activism has started the process to cut through the red tape in the judicial process and enable the citizen to intervene in defence of a reasonable active judiciary.

Though, the public attraction is that many of the judgments do make a difference in the history of judicial decision making, there is a need of honest and candid judicial activism. In under lying the need for judicial activism to end class and ethnic exploitation, the recent International Workshop on ‘Role of the Judiciary in Plural Societies’ has echoed the emerging sentiment in favour of PIL. The workshop adopted a report calling upon the judiciary to give up its traditional self-restraint and passive interpretation and to take a direct and active interest to ensure human rights and socio-economic welfare for the
exploited classes. The workshop felt that judiciary was seen to be a wayward exercise of judicial power.

The independence of the judiciary is one of the cardinal features of Indian Constitution, that the Constitution has made elaborate provisions to secure the freedom of the judiciary from the executive and the legislature. The independence of judiciary has been held by the Supreme Court to be a fundamental feature of the Constitution. Therefore, it cannot be encroached upon by legislation and even by constitutional amendment. The hyper-active judiciary acting in a dictatorial style should go, without any hindrance. The under mentioned prophesy of Justice V.R. Krishna Iyer is penetrating and time alarming: What human hunger has precedence over the quest for justice? What forensic process is not robed fraud if it is overawed by authoritarian power or faces the firing squad for ruling against might in favour of right? What system of government deserves to be called civilized where justice to the humblest and the highest is not free and fair and dispensed by judges without fear or favour, affection or ill will? This vulnerable yet impregnable value of independence of the judiciary is not the pampered privilege of elite brethren but the people’s dearest in desideratum in societies where imperilled human freedoms still matter.

Supreme Court Judge P. Sathasivam commented that people are the most effective watchdog in a democratic system of governance. Institutions function better when the public is vigilant. Institutions help when the public is vigilant. The greatest asset and the strongest weapon in the armoury of the judiciary is the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even-handed justice and keep the scales in balance in any dispute. Judiciary in India has by and large enjoyed immense public confidence. Nevertheless; the judicial authorities are not immune to public scrutiny. Even former Chief Justice of India, Adarsh Sen Anand has realized that the real source of strength of the judiciary lies in the public confidence in it and the judges have to ensure that this confidence is not lost. It is the fear of
groundswell of public opinion that will prevent the democracy from judicial over-stepping.\textsuperscript{43}

**CAUSES OF JUDICIAL ACTIVISM**

Faith of the people in the quality, integrity and efficiency of governmental institutions stands seriously eroded.\textsuperscript{44} While dealing with the scope and causes of judicial activism J.S. Verma, the former Chief Justice of India and also former Chairman of National Human Rights Commission, handled the question of the causes of judicial activism. He explains that the primary cause of judicial activism is the inaction of the authorities. On the same line Prof. Khan and Prof. Farooq noted that the inaction on the part of governmental agencies and the statutory authorities has been noticed with concern. The court has invoked their inherent and writ jurisdiction and passed regulatory and other kind of orders through the process of judicial activism.\textsuperscript{45} However, the exercise being for public good, it generally has public support. Many of the judges subscribe that judicial intervention is increasing because the legislature and executive are not performing their duty properly. A survey of public interest petitions shows that people have gone to courts because there was no other means available. Unfortunately the governments are no longer responsive to protests expressed by the people.\textsuperscript{46}

Now-a-days corruption is rampant in Indian society. In almost all Indian States, lethargy, inefficiency and corruption in government departments has been a nuisance which large numbers of people in this country are facing and no state government has so far been able to eradicate them from the corridors of their administrative offices. Corruption in Regional Transport Offices in various States in India is known to be a routine phenomenon. State governments have not been able to curb this despite periodic complaints and disclosures in the print media.\textsuperscript{47}

The limits on the majority will are said to be indispensable with the purpose to protect the position of individuals and minorities. Sathe stated that the
Constitution of India also provides for the rights of minorities to conserve their distinct identity.\textsuperscript{48} Judicial Activism is a delicate exercise involving creativity. Great skill is required for innovation. Caution is needed because of the danger of populism imperceptibly influencing the psyche.\textsuperscript{49} The main reasons for the growth of judicial activism, is change in the outlook of judges and the functions they perform.\textsuperscript{50}

Judicial activism again finds right place to grow, at times, courts limit the functioning of government, when it exceeds its power and to stop any abuse or misuse of power by government agencies. Many a time public power harms the people, so it becomes necessary for the judiciary to check misuse of public power. A simple illustration of this is \textit{Indira Gandhi v. Raj Narain case},\textsuperscript{51} where Mrs. Ghandi had the requisite majority in both Houses of Parliament to pass any Act to amend the Constitution and decided to change the election laws and the Constitution to protect her office of prime minister. In this case clause (4) of Article 329-A was incorporated by the 39th amendment, which made election to the post of PM beyond any judicial review. That amendment was obviously passed with a view to preventing scrutiny of Mrs. Gandhi’s election to the Lok Sabha by the Court.\textsuperscript{52} This was the best example of ill use of public power by the government. The amendments were struck down by the Supreme Court as violative of basic structure of Constitution.

We summarise the basic motives mentioned in the analysis. (i) The legislations which are not properly drafted provide sizeable powers to the government which tends often to use public power arbitrarily. (ii) Parliament is virtually under the control of executive when it was supposed to correct any governmental injustice to individual or to protect individuals from executive tyranny, the Supreme Court took a bold stand against executive tyranny. (iii) Activist judiciary contemplates law not as fixed rules but as a set of values designed, above all, to protect democracy and human rights. Activist judges do not confine themselves to their fixed sphere. They show their changed outlook while interpreting the Constitution in modern times. The transgressing of
borders laid down by the doctrine of separation of powers by the judiciary is because of the people’s perception that judicial intervention is the only feasible correctional remedy available. (iv) There are also changes in perception of the people which brings the acceptance of judicial activism in India as the pragmatic means of realizing the full promise given by the guarantee of Fundamental Rights and the mandate of the Directive Principles in the Constitution of India.⁵³

Post-emergency judicial activism probably inspired by the Court’s realization that its elitist social image would not make it strong enough to withstand the future onslaught of a powerful political establishment.⁵⁴ The Emergency of 1975 and its aftermath constituted defining moments for judicial activism in India. This was perhaps because looking at the excesses of the emergency.⁵⁵

With a view of enforcing the fundamental rights of citizens judiciary adopted an activist approach and issue directions to the State and Union governments and other governmental organisations and take positive action. Judiciary cannot ignore the fact that judges generally do not exist simply as isolated figures of magisterial splendour.

Judicial review started getting legitimacy when the courts started listening PIL against government mayhem. In Vineet Narain v. Union of India,⁵⁶ court directed as to how the Vigilance Commission should be appointed, it was certainly beyond its power. Judicial intervention appeared as a ray of hope to those who were fed up with corruption and misuse of power by persons holding positions of power.⁵⁷ The denial of natural justice doctrine is also another reason for the judges being active. Justice Krishna Iyer observed “Natural Justice is a distillate process” in Maneka Gandhi v. Union of India.⁵⁸

Thus, over time, the common citizens discovered that the administration had become so apathetic and non-performing and corruption and criminality so widespread that they had no recourse except to move the courts through PIL,
enlarging the field for judicial intervention.\(^5\) It is for this reason that PIL and judicial activism have touched almost every facets of public life. It may be said that the Supreme Court had come to the rescue of workers (People’s Union for Democratic Rights v. Union of India, 1982), bonded labour (Bandhua Mukti Morcha v. Union of India, 1984), prisoners (Sunil Batra v. Delhi Administration, 1978), pavement dwellers (Olga Tellis v. Bombay Municipal Corporation, 1985), under-trial detainees (Hussain Ara Khatoon v. State of Bihar 1979), inmates of protection homes (Upendra Baxi v. State of Uttar Pradesh, 1983), and victims of Bhopal Gas Disaster (Union Carbide Corporation v. Union of India, 1991). All these cases indicate that judicial activism has its own importance.\(^6\)

It is only because of the fact that the State and its agencies are not so sensitive to the print media’s exposures even though they are expected to take prompt action, the Courts have to come forward to respond to the exposures. Most of the newspapers and periodicals in the country are periodically exposing malpractices and public grievances through investigative stories and it is now high time that courts should take initiative to record PILs in larger public interests. Editors are also expected, and now encouraged, to be bold enough to throw light on cases of illegal deals and corruption in public bodies and government departments with new zeal by giving scope to their reporters to be investigative in their approach while covering stories of public interest. Thus, judicial activism seems to be the only corrective way to curb corruption in India which has of late been described as one of the most corrupt countries in Asia.\(^6\)

In India, High Courts have taken many cases as PIL on the basis of newspaper reports. Normally, PIL is to be heard at the level of High Courts or the Supreme Court and, not at the level of the District Courts. Later on, even District Courts were allowed to conduct cases under the PIL. Media already is reporting and exposing lots of public grievances and misuse of power by way of news and investigative newsletters at national and regional levels. Even
some exposures having nationwide significance go to the credit of such regional editions and if District and Sessions Courts are given the power to proceed *suo moto*, cases against the erring and corrupt administration, justice under the PIL will be available to the aggrieved people in small cities and adjacent rural areas of a vast country like India.°

**LEGITIMACY OF JUDICIAL ACTIVISM**

Court interventions have been widely seen as legitimate or at least tolerated, because the representative institutions are widely seen as being immobilised, self-serving, corrupt, and incapable of exercising either their basic policy prerogative, or their powers of enforcement. Even in comparative terms, the exercise of judicial power is not being seen as a threat to effective majoritarian rule, but as a response to its ineffectiveness. A serious disaffection with majoritarian institution of accountability makes the exercise of judicial power almost necessary.°°

Supreme Court interprets the existing statutes or formulates new rules for unforeseen problems and issues on which Parliament was unable to pass legislation. The court has produced case laws. Conceptual meaning of legitimacy can be understood under three headings viz. **a. legal validity b. widely shared feeling among people that they have a duty to obey the rule c. actual obedience of law by a large number of people.**°°° The public trust is important for smooth functioning of the judiciary. If people’s faith is lost, judiciary would cease to exist. So, it is public in democracy who gives legitimacy to any judicial decision. Therefore, the third meaning of legitimacy is a widely shared feeling among people that they have a duty to obey the rule, cannot be achieved until and unless people do not have faith in the decisions of Court. Public trust is also a good mechanism to check judicial misconduct and misbehaviour. The judiciary is the weakest of the three organs of the State since it has neither force nor will but only the force of judgment. It is people’s faith which makes it strong. Such faith of people constitutes legitimacy of the
Court and judicial activism. Courts have to continuously strive to sustain their legitimacy. What sustains legitimacy of judicial activism is not its submission to populism but its capacity to withstand such pressure without sacrificing impartiality and objectivity. Courts must not be only fair, but they must appear to be fair. Such inarticulate and diffused consensus about the impartiality and integrity of the judiciary is the source of Court’s legitimacy. People know that at times Courts can also give wrong decisions, can exceed their powers or may not always be fair but their experience tells them that such instances are exceptional. This widely shared belief in the fairness of the courts is what we mean by the legitimacy of judicial activism. Since, the power of the court is derived from the social legitimacy; a court sustaining its legitimacy is in effect accountable to the people. The legitimacy of judicial decisions depend upon a shared perception that it is independent and non-political. ‘Independent’ means free from any influence, political, social or economic. Legitimacy is sustained by a feeling among people that it is independent, objective, principled and fearless.

LEGAL VALIDITY

Courts in India have drawn the legality of their judicial activism from Constitution of India itself. For the sake of legal realism there are enormous differences of opinion regarding the extent to which judges do rely, or ought to rely, on their beliefs and preferences and their perceptions of society’s beliefs and preferences, in their decision making. The framers of the Constitution of India provided powers to the judiciary in Articles: 32 for the Supreme Court of India and 226 for the High Courts and armed them with powers to issue directions, orders or writs and these powers include the powers in the nature of habeas corpus, mandamus, certiorari, prohibition and quo warranto. Supreme Court in Basappa v. T. Nagappa clarified that the Supreme Court through Article 32, and High Courts through Article 226 are bestowed with enormous powers to exercise in issuing the writs in the nature of habeas corpus etc., depending upon the need of the case for the enforcement of fundamental rights.
In addition to these, the Constitution bestowed a special power in the High Courts to entertain petitions for ‘other purposes’ too. The veil of limitation on the exercise of powers under Article 32 is raised by arming the Supreme Court with Article 136, giving more and wider powers, which are hitherto not found in Article 32. By virtue of the powers conferred on the Supreme Court it can entertain petitions by way of granting Special Leave to appeal. In Sanvat Singh v. State of Rajasthan\textsuperscript{70} and Kanaialal v. Income Tax Commissioner\textsuperscript{71} Supreme Court held that the power of the Supreme Court under Art 136 could not be exhaustively defined. Articles 32, 124, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 214, 215, 216, 217, 220, 221, 222, 223, 224, 225, 226, 227, 229 pave way for the exercise of judicial powers and functions under the Indian Constitution.

**CASES OF JUDICIAL INTERVENTION IN GOVERNMENTAL WORK**

The task of the government is to work for the betterment of the population of the country. The cornerstone of a democracy is transparency in the governing process. This principle was clearly reflected in the rulings of the Supreme Court, which fought for accountability in the governing process through judicial activism, using PIL as a tool. Today, this notion of accountability has grown to encompass the judiciary as well. It is no longer only the legislature which is sought to be held accountable, but the entire machinery of the state. Although our system is by no means perfect, we should pride ourselves for being citizens of a democracy in which public interest is valued and transparency in the working of the state is fought for at all levels.

The scope of judicial intervention in India is limited, while in USA it is up to the court to review, whether due process has been followed in restricting life, liberty and property.\textsuperscript{72} In the last 20 years or so, the Supreme Court and High Courts have entertained various cases under the PIL and tried to enforce the policy protecting public interest. Some of the cases of judicial intervention under PIL decided by the Supreme Court are: Bihar Under Trial Prisoners,
Agra Protection Home Case, Mumbai’s Pavements Dwellers’ Case, Bundhua Mukti Morcha Case, etc. Earlier, it was common view of masses that the Parliament is the sovereign body and it can override not only the executive vis-à-vis the judiciary but also the Constitution. This was the prevalent view in the days of the landmark case of Golaknath v. Union of India. However it was in the twin cases of Maneka Gandhi v. Union of India and Kesavanand Bharati v. State of Kerala that the judiciary changed its stance and formulated new interpretations of laws based on the principles of humanity, morality, reason, liberty, justice and restraint along with the wholesome spirit of the Constitution.

The judgement of Kesavananda Bharati case is an innovative decision of the Supreme Court of India because it fettered the extent to which Parliament could restrict the right to property, in pursuit of land reform and the redistribution of large landholdings to cultivators. The case was a culmination of a series of cases relating to limitations to the power to amend the Indian constitution this was the case in which the concept of basic structure was evolved. The basic structure doctrine applies only to the constitutionality of amendments and not to ordinary Acts of Parliament, which must conform to the entirety of the constitution and not just to its basic structure. The petitioners including Kesavananda have challenged the validity of the Kerala Land Reforms Act 1963. But during the pendency of the petition the Kerala Act was amended in the year 1971 and was placed in the Ninth Schedule by the 29th Amendment Act. The petitioners were permitted to challenge the validity of 24th, 25th and 29th amendment to the constitution. During the pendency of the writ petitions, Parliament passed the three constitutional amendments, namely, 24th, 25th and 29th Amendments. As the petitioner apprehended that he would not succeed in view of the above amendments he also challenged the validity of these amendments.

It was argued that though Parliament’s power is wide but it is not unlimited. Power to amend under Article 368 does not empower the Parliament that it can
alter the basic structure of the Constitution under Article 368. In contrast, respondent argued that Parliament has unlimited powers to amend any law under Article 368.

In the court, the majority judgement ruled that the declaration clause of Article 31C as unconstitutional because it was damaging basic structure of the constitution. However, the first part of the clause was held to be valid. The majority judgment clearly held that any law enacted by the parliament for giving effect to the directive principles contained in clauses (b) and (c) of Article 39 cannot be declared void on the ground that it violets any of the rights conferred by the Articles 14, 19 or 31.

Consequently, Constitution added Article 31 (C) by 25th Amendment Act, 1971. The new Article empowers the Parliament as well as state legislatures to enact laws towards securing the directive principles specified in Article 39 (b) and (c) of the Constitution. Article 31 (c) thus gives the directive principles in Article 39 (b) and (c) primacy over the fundamental rights guaranteed by Articles 14 and 19 of the constitution.

*Kesavananda Bharati Case* rejected this stance that Parliament is sovereign. The case also constituted the defining moments for the concept; ‘doctrine of basic structure’ which formed an impenetrable structure against all the despotic and whimsical actions of the executive or for that matter, the legislature. This indeed is a far-reaching development in the annals of Indian jurisprudence for meeting the challenges of troubled times and issues confronting our democratic and secular Republic. Hence, in troubled times, the poor and the helpless sections of the society always have had the firm stance of the pro-active judiciary on their side. Not only that, the NGOs, the advocates and other people have come forward *pro bono publico* and the judiciary has always been very co-operative in devising newer rights as part of basic human rights.
In the case of *Sunil Batra v. Delhi Administration*, the petitioner, Sunil Batra *etc*, through a letter to the Court alleged that torture was practised upon another prisoner, Prem Chand by a jail warder, to extract money from the victim through his visiting relations. The letter was converted into a habeas corpus proceeding. The Court issued notice to the State and the concerned officials. It also appointed *amicus curiae* and authorised them to visit the prison, meet the prisoner, see relevant documents and interview necessary witnesses so as to enable them to inform themselves about the surrounding circumstances and the scenario of events.

The *amicus curiae* after visiting the jail and examining witnesses reported that the prisoner sustained serious anal injury because a rod was driven into that aperture to inflict inhuman torture and that as the bleeding had not stopped, he was removed to the jail hospital and later to the Irvin Hospital. It was also reported that the prisoner’s explanation for the anal rupture was an unfulfilled demand of the warder for money, and that attempts were made by the departmental officers to hush up the crime by overawing the prisoner and the jail doctor and offering a story that the injury was either due to a fall, or self-inflicted or due to piles. In this case, the bench headed by Justice Krishna Iyer held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from barbarous and inhuman treatment.

*M. C. Mehta v. State of Tamil Nadu* is a famous child labour case, in which M.C. Mehta brought a petition before the Supreme Court by a way of a PIL, under article 32 of Constitution of India. The petition was related to the problem of employment of children working in the factories manufacturing safety matches in Kamraj District of Tamil Nadu. From the affidavit of the state, it appears that as on 31 December, there were 221 registered factories making safety matches in the area employing 27338 workers of whom 2941 were children.
Mr. Mehta brought this matter of child employment before the court for receiving judicial consideration. In this case, Supreme Court realised that the work in the factory is hazardous one, in spite of prohibiting the employment of children asked the employer to 60% of wages of an adult workmen working in the same unit. Realizing hazard of employment, the Court further asked the employer for introducing the insurance scheme for which the contribution will be given by the employer alone.

In another case of *M.C. Mehta v. State of Tamil Nadu*, 81 again the petitioner was Mr. Mehta told the court about the plight of the child labour engaged in Sivaski Cracker Factories. Though, the Constitution provides in Article 24 that the children should not be subjected to exploitation and the law prohibits the employment of children in factories, etc, and casts a duty on the state to endeavour to provide free and fair education to them under Article 41. Planning Commission estimated that there are 17 million children working in the organised sector.

The Court directed setting up Child Labour Rehabilitation Welfare Fund (CLRWF) and asked the offending employer to pay for each child a compensation of Rs.20,000 to be deposited in the Fund. 82 Further the Court ruled out the employment of children in factories manufacturing safety matches as it is hazardous and declared various measures aiming at child welfare in some other cases. 83-84

Thus, unique model of public interest litigation that has evolved in India not only looks at issues like consumer protection, gender justice, prevention of environmental pollution and ecological destruction, it is also directed towards finding social and political space for the disadvantaged and other vulnerable groups in society. The Courts have given decisions in cases pertaining to different kinds of entitlements and protections such as the availability of food, access to clean air, safe working conditions, political representation, affirmative action, anti-discrimination measures and the regulation of prison
conditions, among others. For instance, in *People’s Union for Democratic Rights v. Union of India*,\(^{85}\) a petition was brought against governmental agencies which questioned the employment of underage labourers and the payment of wages below the prescribed statutory minimum wage-levels to those involved in the construction of facilities for the then upcoming Asian Games infrastructure in New Delhi. Both the cases have already been discussed earlier. The Court took serious exception to these practices and ruled that they violated constitutional guarantees. The employment of children in construction-related jobs clearly fell afoul of the constitutional prohibition on child labour and the non-payment of minimum wages was equated with the extraction of forced labour.

Similarly, in *Bandhua Mukti Morcha v. Union of India*,\(^ {86}\) the Supreme Court’s attention was drawn to the widespread incidence of the age-old practice of bonded labour which persists despite the constitutional prohibition. *Bandhua*, a forced labourer is a person, who gets a remuneration which is less than the current notified minimum wage under the Minimum Wages Act, 1984 for the particular scheduled employment, the labour or service provided by that person clearly falls within the ambit of the term ‘forced labour’ under Article 23 of the Constitution, or a person is made to provide forced labour, he / she is presumed to be a bonded labourer in terms of the Bonded Labour System (Abolition) Act. 1976.

The petitioner, Bandhua Mukti Morcha (BMM) or Bonded Labour Liberation Front (BLLF), an organisation, dedicated to the cause of release of bonded labourers in the country, addressed a letter to justice Bhagwati, alleging that there were a large number of labourers from different parts of the country, who were working in some of the stone quarries situated in Faridabad, a district of Haryana, under inhuman and intolerable conditions, and most of them were bonded labourers. They alleged that the provisions of the Constitution and various social welfare laws passed for the benefit of the said workmen were not being implemented in regard to these labourers. The petitioner also mentioned
in the letter the names of the stone quarries and particulars of labourers who were working as bonded labourers and prayed that a writ be issued for proper implementation of the various provisions of the social welfare legislations, such as, Mines Act, 1952, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Contract Labour (Regulation and Abolition) Act, 1970, Bonded Labour System (Abolition) Act, 1976, Minimum Wages Act, Workmen’s Compensation Act, Payment of Wages Act, Employees State Insurance Act, Maternity Benefits Act etc. applicable to these labourers working in the sandstone quarries with a view to ending the misery, suffering and helplessness of these victims of the most inhuman exploitation.

The Court treated the letter as a writ petition and appointed a commission to inquire into the allegations made by the petitioner. The commission while confirming the allegations of the petitioner, pointed out in its report that (i) the whole atmosphere in the alleged stone quarries was full of dust and it was difficult for anyone to breathe; (ii) some of the workmen were not allowed to leave the stone quarries and were providing forced labour; (iii) there was no facility of providing pure water to drink and the labourers were compelled to drink dirty water from a nullah; (iv) the labourers were not having proper shelter but were living in jhuggies with stones piled one upon the other as walls and straw covering the top which was too low to stand and which did not afford any protection against sun and rain; (v) some of the labourers were suffering from chronic diseases; (vi) no compensation was being paid to labourers who were injured due to accidents arising in the course of employment; (vii) there were no facilities for medical treatment or schooling.

At the direction of the Court, a socio-legal investigation was also carried out and it suggested measures for improving the conditions of the mine workers.

The court explained the philosophy underlying PIL, where a person / class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court for judicial redress on account of poverty
or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the court for relief under Article 32 and a certiorari also under Article 226, so that the fundamental rights may be meaningful for the large masses of people, who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress.

An exemplary case of court intervention is Shriram Food and Fertilizer Industries case which is also known as Oleum Gas Leak Case. The Petitioner, M. C. Mehta in the Supreme Court, sought the closure of Shriram Foods and Fertilizers Industries producing caustic soda, chlorine, hydrochloric acid, stable bleaching powder, super phosphate, vanaspati, soap, sulphuric acid, alum anhydrous sodium sulphate, high test hypochlorite and active earth. All units of the industry were set up in a single complex of approximately 76 acres and they are surrounded by thickly populated colonies such as Punjabi Bagh, West Patel Nagar, Karampura, Ashok Vihar, Tri Nagar and Shastri Nagar and within a radius of 3 kilometres from this complex there is population of approximately 2,00,000.

Following the disastrous consequences of a leakage of Oleum gas from the plant on 4th & 6th December 1985, as a result of which several suffered serious harm while one person died, who was an advocate practicing in the Tis Hazari Courts, the District Magistrate acting under Section 133 of the Criminal Procedure Code, granted the management of the company seven days to remove the dangerous substance from the company’s premises. Subsequently, the Inspector of Factories ordered the closure of the chlorine and sulphuric acid plants. The closure of the plant affected 4000 employees and was firmly opposed by the management and the labour unions. The question before the court was whether the chlorine plant should be allowed to re-start operations.

Considering the large scale unemployment and the shortage of products manufactured by this industry, the Supreme Court was of the view that the
plant should be permitted to re-start subject to detailed conditions. These conditions would pertain to weekly inspection, periodic health checks for the workers, setting up of safety committees comprising workers’ representatives, training of workers in safety measures, etc.

At this juncture M.C. Mehta moved the Supreme Court to claim compensation by filing a PIL for the losses caused and pleaded that the closed establishment should not be allowed to restart. The applications for compensation raised a number of issues of great constitutional importance and the Bench of three Judges, therefore, formulated these issues and asked the petitioner and those supporting him as also Shriram Industries to file their respective written submissions so that the Court could take up the hearing of these applications for compensation. When these applications for compensation came up for hearing it was felt that since the issues raised involved substantial questions of law relating to the interpretation of Articles 21 and 32 of the Constitution, the case should be referred to a larger bench of five judges and thus the case stood in the court of the Hon’ble bench consisting of P. N. Bhagwati, C.J.I., Ranganath Misra, G. L. Oza, M. M. Dutt and K. N. Singh. Justices Bhagwati stated that, “We hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has
undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity.

If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate
vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.”

These examples of judicial interventions show that the level of intervention by courts grew in the governmental work, with the passage of time. Among other interventions, one we have discussed above, the Shriram Food & Fertilizer case, where the Court issued directions to employers to check the production of hazardous chemicals and gases that endangered the life and health of workmen proved to be a landmark judgement. It is also through the vehicle of PIL that the Indian courts have come to adopt the strategy of awarding monetary compensation for constitutional wrongs such as unlawful detention, custodial torture and extra-judicial killings by state agencies.

PRO-ENVIRONMENTAL STANCE OF THE JUDICIARY

The judiciary has always taken a very active and responsive role in the protection of the environment. Various PILs over the past two decades have paved the way for the development of Indian environment. The Supreme Court has interpreted the right to environment as a fundamental right and a right guaranteed by the Constitution of India. Before 1980s, only the affected party could personally knock the doors of justice and seek redressal for his grievance and any other person who was not personally affected could not do so as a proxy for the victims or the aggrieved party. But after 1980, the Indian legal system, particularly in the field of environmental law, underwent a substantial change in terms of discarding its stagnant approach and instead, charting out new horizons of social justice. This period was characterized by not only administrative and legislative activism but also judicial activism. The Indian judiciary has taken a very active stance in protecting the environment for the welfare of the people. Many environmentalists have thanked the judiciary for the pro-environment standing it has taken in some of the recent cases.

The Indian judiciary towards environmental issues has now become very sensitive and prompt in the matter of environmental policies. Due to the Bhopal
Gas Tragedy, Constitution incorporated some pro-environmental points by declaring right to healthy environment as a fundamental right guaranteed under Article 21 of the Constitution. The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement. In the Bhopal Gas case, the Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industries by interpreting the scope of the power under Article 32 to issue directions or orders which ever may be appropriate in appropriate proceedings. According to the Court, this power could be utilized for forging new remedies and fashioning new strategies.

Justice Jagannath Mishra while delivering the judgement in Rural Litigation and Entitlement Kendra v. State of U.P. observed, “Prevention of environment and keeping the ecological balance unaffected is a task, which not only governments but also every citizen must undertake. It is his fundamental duty as enshrined in Article 51-A (g) of the constitution.” The judiciaries’ anxiety for combating environmental assaults has already been well elucidated. Its concern for the maintenance and preservation of forests, one of our depleting natural resources has also been highlighted. The Court has also directed several companies to take necessary measures to protect the environment and reduce the pollution. In some recent cases, the Supreme Court has shown its concerns over the pollution-ridden monuments, heritage buildings, rivers etc.

Thus, in the arena of environmental preservation and protection, many of the exemplary judgements have been given in actions brought by renowned environmentalist M.C. Mehta. He has been a tireless campaigner in this area and his petitions have resulted in orders placing strict liability for the leak of Oleum gas from a factory in New Delhi (earlier discussed), directions to check pollution in and around the Ganges river, the relocation of hazardous industries from the municipal limits of Delhi, directions to state agencies to check pollution in the vicinity of the Taj Mahal and several afforestation measures.
In 1985, environmental activist and lawyer M. C. Mehta filed a public interest petition asking the Supreme Court of India to order the closure of industries which violated the Air Pollution Act of 1981, as well as Delhi’s Master Plan. In 1992, the court agreed—but this was not the end of Mehta’s petitioning. He also asked the court to move 1200 polluting industrial units away from Delhi, arguing that, since many of them were located in residential and commercial areas, they violated the Master Plan’s zoning provisions. This category of ‘nonconforming’ factories (those that violated urban zoning regulations) was to become a major bone of contention in struggles against pollution in Delhi. Finally, in yet another petition, Mehta approached the court to act on the issue of the pollution of the Ganga and its tributaries, including the Yamuna which passes through Delhi.

The Supreme Court issued direction periodically, but little definitive action was taken until 1994, when the court took *suo moto* notice of a newspaper report about the pollution of the Yamuna. The Central Pollution Control Board and Delhi government were made parties in the matter. In 1995, the court asked the Delhi Pollution Control Committee (DPCC), a state-level unit under the Delhi government to categorize all industrial units in the city according to the pollution hazard they posed, using a classificatory system employed in the Master Plan. It also ordered the Municipal Corporation of Delhi, the agency responsible for licensing commercial activities in the city, not to renew the licenses of polluting industries. In February 1996, the court ordered the Delhi state government to construct Common Effluent Treatment Plants (CETPs), which the industries were required to pay for, to reduce water pollution and it appointed the National Environmental Engineering Research Institute as a consultant to this process. It stipulated that industries that tailed to install effluent treatment plants by January 1, 1997, would have to close. In April 1996, the court ordered the relocation of all factories away from residential areas. A remarkable decision was delivered in a petition that raised the problem of extensive vehicular air pollution in Delhi. The Court was faced with
considerable statistical evidence of increasing levels of hazardous emissions on account of the use of diesel as a fuel by commercial vehicles and use old automobile technology. The SC intervened in this matter and ordered DTC buses to shift to the use of Compressed Natural Gas (CNG), an environment-friendly fuel.\textsuperscript{102} This was followed some time later by another order that required privately-run ‘auto rickshaws’ (three-wheeler vehicles) to shift to the use of CNG.

On 28 July, 1993, in response to a Public Interest Litigation, the Supreme Court of India ruled that all eight-year-old buses and pre-1990 three-wheelers and taxis would have to be converted to use Compressed Natural Gas (CNG) by 31 March 2000. For the rest of the buses, three-wheelers and taxis, 31 March 2001, was fixed as the deadline. This order, however, was difficult to implement. However, the Supreme Court took a strong stand and forced the Delhi Administration to implement the programme of converting the diesel-run buses to use CNG fuel, and despite opposition by various lobbies and reluctance by the government, the programme had to be implemented. Thus, the judiciary instead of the executive took the onus of implementing pollution control measures.\textsuperscript{103} In the pursuit of guaranteeing the fundamental rights of citizens, the courts are often in a situation, where they have to decide not on question of law but of science. The best example of this is the Court’s order that all public transport in the capital is to be run on CNG.\textsuperscript{104}

At the time, this decision was criticized as an unwarranted intrusion into the functions of the pollution control authorities, but it has now come to be widely acknowledged that it is only because of this judicial intervention that air pollution in Delhi has been checked to a substantial extent. Another crucial intervention was made in Council for Enviro- Legal Action v. Union of India.\textsuperscript{105}

The Supreme Court has issued directions in various types of cases relating to protection of the environment and prevention of pollution, in order to ensure a safe and clean environment along with development and to deal with issues like
the local conditions. The case *Indian Council for Enviro-Legal Action v. Union of India*, relates to pollution created by private industrial houses and governments agencies, and authorities had not taken any action to prevent the same.

The coasts are the preferred destination for infrastructure projects. With development along the coast and the banks of tidal water bodies being restricted, there was pressure from industrialists, hoteliers and developers to have the provisions relaxed. Environmentalists and fisher folk, on the other hand, wanted the provisions to continue as it protected the coastal environment. The justification of the government for the amendments is that difficulties are being faced by the inhabitants of the areas falling within the CRZ (Coastal Regulatory Zone) and there is a need for infrastructural facilities in these areas.

The first amendment, dated August 18, 1994, was the result of the intense pressure the hotel and tourism lobby put on the Government of India regarding the Notification. Their contention was that the restrictions under CRZ severely limited their scope of work. As a consequence, the B. B. Vohra Committee was set up by the Central Government.

Acting on the recommendation of the Vohra Committee the government relaxed the 1991 notification. The amendment:

- a) Significantly reduced the mandatory CRZ (Coastal Regulatory Zone) of 100 metres for rivers, creeks, etc. to 50 metres.

- b) Gave expansive powers to the Central Government, which could now grant permission for construction on the landward side within 200 metres from HTL (High Tide Line) according to its discretion.

When it was challenged in *Indian Council for Enviro-Legal Action v. Union of India Case*, the Supreme Court held that the amendment reducing the width of the zone from 100 metres to 50 metres in respect of rivers, creeks and
backwaters was contrary to the object of the EPA (The Environment (Protection) Act 1986) and may lead to serious ecological damage. Also it did not contain any guidelines as to when the discretion was to be exercised and gave unbridled power. The court struck down the amendment as being violative of Article 21.

In the judgement delivered in this case on 18 April 1996, the Supreme Court observed that authorities under whose jurisdiction the implementation of the CRZ Notification has fallen were overworked and had limited control. It directed that Coastal Zone Management Authorities (CZMAs) be set up, in order to supervise the implementation of the CRZ Notification and also provide advice to the Ministry of Environment and Forest and the Government of India on issues of coastal regulation. Consequently, by Government order dated 26 November 1998, the National Coastal Zone Management Authority (NCZMA) and the various State Coastal Zone Management Authorities (SCZMAs) came into existence.

In a modern welfare state, justice has to address social realities and meet the demands of time. Protection of the environment throws up a host of problems for a developing nation like India. Administrative and legislative strategies of harmonization of environmental values with developmental values are a must and are to be formulated in the crucible of prevalent socio-economic conditions in the country. In determining the scope of the powers and functions of administrative agencies and in striking a balance between the environment and development, the courts have a crucial role to play. Principle 10 of the Rio Declaration of 1992 specifically provides for effective access to judicial and administrative proceedings, including redress and remedy. It reads: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making
processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

At present most environmental actions in India are brought under Articles 32 and 226 of the Constitution. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. Nevertheless, class action suits also have their own advantages. The powers of the Supreme Court to issue directions under Article 32 and that of the High Courts under Article 226 have attained greater significance in environmental litigation. Courts have made use of these powers to remedy past mala-fides and to check immediate and future assaults on the environment.

These directions were given by courts for disciplining the developmental processes, keeping in view the demands of ecological security and integrity. In one of the earlier cases, Rural Litigation Kendra, that posed an environment development dilemma, Supreme Court gave directions that were necessary to avert an ecological imbalance, such as constitution of expert committees to study and to suggest solutions, establishment of a monitoring committee to oversee afforestation programmes and stoppage of mining operations that had an adverse impact on the ecology.

The social consequences of environmental protection are also very grave. On the one hand, the large segment of our population has been left out of industrial development, whereas, on the other, hundreds of thousands of poor and downtrodden citizens are being forced to pay the cost of environmental protection through involuntary removal from industries, workplace and their jobs, depriving them from their resources of livelihood. However, it becomes essential in view of the fundamental duty imposed and guarantee of right to life under Article 21 of the Constitution, which was interpreted by the Supreme
court and High Courts in a series of judgements that right to clean water, fresh unpolluted air etc, are within the ambit of Article 21 of the Constitution. The Supreme Court in its judgements directed the removal of hazardous and polluting industries from Delhi and Agra because of air pollution and also the industries which were spoiling the water of Rajasthan and other places. The Supreme Court, thus, gave a new dimension to interpreting the law of environment which was not even anticipated by our Constitution-makers.  

**GENDER JURISPRUDENCE**

We have universal gender jurisprudence applicable to India and beneficial to Indian women consisting of international instruments, Indian statutes and case-law which are judicially binding. Indian constitutional jurisprudence has emphatically accepted equality of status and opportunity and prohibits discrimination on the basis of sex. Gender jurisprudence has emerged in India due to pro-active steps taken by the judiciary in this regard. There have been various provisions in the Constitution as well as other enactments to prevent atrocities against women and gender inequality. However, these legislations remained confined to text books and nothing could be done till the time the judiciary became active and decided to remove all atrocities against women by implementation of the prevailing legislations. The Court has laid down elaborate guidelines to prevent sexual harassment of women at workplaces.

The Supreme Court guidelines evoked in the case of *Vishaka and others v. State of Rajasthan and others* owing to the gang rape of Bhanwari Devi, a social worker (saathin) by a group of Thakurs as she attempted to stop a child marriage in their family. Bhanwari tried to stop Ramkaran Gujjar’s infant daughter’s marriage. For her efforts to stop child marriage, she was subjected to social boycott, and was gang raped by five men including Ramkaran Gujjar in front of her husband in September 1992. The only male doctor in the Primary Health Centre refused to examine Bhanwari and the doctor at Jaipur
only confirmed her age without mentioning rape in medical report. At police station, policemen asked Bhanwari to leave her lehenga behind as evidence. She was left with only her husband’s bloodstained dhoti to wear.

The trial court set free the accused Ramkaran Gujjar with others. Bhanwari with other social workers and women’s groups launched a combined campaign for justice. On December 1993, the High Court stated, “it is a case of gang-rape which was committed out of vengeance.” A petition filed in the Supreme Court under the name ‘Vishaka’, asking the court to give certain directions regarding the sexual harassment that women face at the workplace. Consequently, the Supreme Court issued the Vishaka guidelines to prevent sexual harassment of working women on 13th August 1997.\textsuperscript{111}

The judgement, in this case where the Court invoked the text of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and framed guidelines for establishing redressal mechanisms to tackle sexual harassment of women at workplaces. Though the decision has come under considerable criticism for encroaching into the domain of the legislature, the fact remains that till date the legislature has not enacted any law on the point. It must be remembered that meaningful social change, like any sustained transformation, demands a long-term engagement. Even though a particular petition may fail to secure relief in a wholesome manner or be slow in its implementation, litigation is nevertheless an important step towards systemic reforms. A recent example of this approach was the decision in \textit{People's Union for Civil Liberties v. Union of India},\textsuperscript{112} where the Court sought to ensure compliance with the policy of supplying mid-day meals in government-run primary schools. The mid-day meal scheme had been launched with much fanfare a few years ago with the multiple objectives of encouraging the enrolment of children from low-income backgrounds in schools and also ensuring that they received adequate nutrition. However, there had been widespread reports of problems in the implementation of this scheme such as the pilferage of food grains. As a response to the same, the Supreme Court
issued orders to the concerned governmental authorities in all States and Union Territories, while giving elaborate directions about the proper publicity and implementation of the said scheme.

The provision of cooked mid-day meals in primary schools is an important step towards the right to food. Supreme Court issued orders on mid-day meals. The court stated that “We direct the State Governments / Union Territories to implement the Mid Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days.”

Most of the State Governments took much longer time when it was supposed to be done within six months. A series of orders were issued on 20th April 2004, to expedite the implementation of initial orders, make better the quality of mid-day meals, and deals with other issues noted in the Commissioners’ reports. These orders include the following:

1. Timely compliance: “All such States and Union Territories, which have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory… not later than 1st September 2004.”

2. No charge: The meal is to be provided free of cost. Money for the meal is not to be collected from parents or children under any circumstances.

3. Priority to SC/ST cooks and helpers: “In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.”

4. Extension to summer vacations in drought-affected areas: “In drought-affected areas, mid-day meal shall be supplied even during summer vacations.”

5. Kitchen sheds: The Central Government was directed to “make provisions for construction of kitchen sheds” and also to contribute to the cooking costs.
6. Quality improvements: “Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.”

7. Fair quality of grain: The Food Corporation of India (FCI) is to “ensure provision of fair average quality grain” for mid-day meals. Joint inspections of the grain are to be conducted by the FCI and State Governments. “If the food grain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting.”

8. Extension to Class 10th: On 20th April 2004, the Government of India was directed to file an affidavit within three months, “stating as to when it is possible to extend the scheme up to 10th Standard in compliance with the announcement made by the Prime Minister.” In response to this, an affidavit was filed by the Department of Elementary Education (Ministry of Human Resources Development) in 2004, but the Court is yet to examine it.

Though constituting half the population of the world and often referred to as the ‘better half of man’, women throughout history have had the worst deal at the hands of the society. The Indian judiciary has taken an active role in protecting the human rights of women and in maintaining gender equality. In C. B. Muthamma v. Union of India,114 the Supreme Court held that the compulsory resignation of women as foreign service officials after marriage amounts to gender discrimination.

SOCIAL UPLIFT OF LOWER CASTES

Though the emancipation of the Shudras and the lower castes from the different forms of oppression and social discrimination had been thought of long ago by the legislature and necessary legislations had been framed to achieve the same, yet the goal could not be achieved due to poor
implementation and laid-back attitude of the executive. It was at this situation that the judiciary took an active step and came ahead with Dalit jurisprudence to end the pitiable conditions of the Dalits. Several judgments have been delivered by the Supreme Court for the betterment of Dalits and their ranking on equal footing in the society with the other castes.

The scheduled castes (SCs) and scheduled Tribes (STs) (Prevention of Atrocities) Act 1989, is based on hard crime model for prevention of atrocities on SCs. The legal measures for prevention of atrocities on the SCs are mainly the provisions of the Act under study. The term ‘atrocity’ has not been defined so far. It is considered necessary that not only the term atrocity should be defined but also stringent measures should be introduced to provide for harsher punishment for committing such atrocities. It is also proposed to enjoin the States and the Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and the Scheduled Tribes from being victimised and, where atrocities are committed, to provide adequate relief and assistance to rehabilitate them.

The first case in which constitutional validity of the Act was challenged is Jai Singh and another v. Union of India and others. The Rajasthan High Court held the Act as valid and constitutional. But the Madhya Pradesh High Court did not agree with this view and contrarily held in Dr. Ram Krishna B alothia v. Union of India and others that sec.18 of the Act is violative of Arts. 14 and 21 of the Constitution as provisions of this section did not conform to the norms of justice and fair play besides, prescribing unfair and unreasonable procedure.

In an appeal, the Supreme Court, in the case of State of M. P. and another v. Ram Krishna B alothia, overruled the above decision and held that the court was agreed with the view taken by full bench of Rajasthan High Court in Jai Singh case and held that looking to the historical background relating to practice of ‘untouchability’ and the social attitude which leads to the commission of such offences against SCs and STs, there is justification for an
apprehension that if benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Sec. 18 has been incorporated in the Act and it cannot be considered in any manner as violative of Articles 14 and 21 of the Constitution. 117

HUMAN RIGHTS

In the field of basic human rights too, the judiciary has been consistently building new linkages of a new egalitarian democratic and free society in consonance with new universal socio-political and economic order by evolving some rights as Fundamental Rights under Part III of the Constitution. Some of them are worth mentioning e.g. right to information,118 right to work,119 right to get minimum wages,120 right to speedy trial,121 right to secrecy,122 right against inhuman treatment,123 etc. Above all, judicial activism itself is the saviour of one basic human right, as Justice Krishna Iyer states that, “the access to justice is the first among human rights.” The phenomenon of judicial activism has made easy the cumbersome procedure of the court that creating hindrances between public justice and the courts.

Thus, during the last few decades, judicial activism has played a major role in protecting the rights and freedoms of individuals, as guaranteed under the constitution. After the landmark decision in the Maneka Gandhi case, courts have assumed an activist posture and have come forward to the rescue of aggrieved citizens. In a number of cases, subsequent to the Maneka Gandhi case, the judiciary interpreted the constitutional provisions in its wider possible meaning to protect basic civil liberties and fundamental rights.

During this period, our judiciary developed the concept of social action litigation and public interest litigation by discarding the traditional and self-imposed limitations on its own jurisdiction. In 1975, Justice VR Krishna Iyer for the first time in the Bar Council of India case advocated the liberal
interpretation of *locus standi* in public interest litigation. He observed that in a developing country like India, public-oriented litigation better fulfils the rule of law if it is to run close to the rule of life.

Public interest litigation and judicial activism have touched almost every aspect of life. Be it the case of bonded labour, rehabilitation of freed bonded labour, payment of minimum wages, protection of pavement and slum dwellers, juvenile offenders, child labour, illegal detentions, torture and maltreatment of woman in police lock-up, the implementation of various provisions of the constitution, environment problems, the courts took cognisance of each case and laid down various judgements to protect the basic human rights of each and every member of society.

**CONCLUSION**

The analysis whether judicial intervention in the functioning of other two organs of government is a necessity and legitimate or not has become a routine affair in the legal fraternity. Undoubtedly, judicial extra intervention in the functioning of other two organs is only due to the fact that judiciary is compelled to do so when these organs fail to perform their duty properly. Legislature and executive are no more sensitive to the urges and aspirations of the people. Politics has become too much constrained with vote bank. In these conditions, common man finds judiciary as the only saviour. And Courts too have been able to uphold their faith in this institution. The most significant contribution of judiciary has been in establishing the rule of law in the society. By judicial creativity to suit the Indian conditions the recent phase of judicial activism has advanced the cause of justice, attempted to achieve the constitutional purpose in accordance with constitutional scheme and thereby ensured the implementation of the rule of law.

Judicial activism is an attempt to realize hope and aspirations of the people and to strengthen the foundations of rule of law which is the bedrock of democracy. Secondly, judicial activism has been able to fill the vacuum made by
legislation, executive and even Constitution in many cases. Take for instance, apex court in *Vishaka v. State of Rajasthan*\(^{124}\) even laid down proper guidelines in the absence of any statutory legislation. In the era of falling social values, judiciary especially Supreme Court of India, has been able to maintain its dignity. But question arises, should this so called weakest organ of democracy which is growing powerful day by day be left without any check.

No doubt, we have doctrine of checks and balances in our country, but it will not be wrong to say that it has totally failed to check the power of apex court. Reason for this is simply because both executive and legislature indulge in corrupt practices and are not in a position of checking power of Courts. For instance, in the reservation for backward classes’ case, the apex court came very close to declaring that legislature cannot pass the bill until it is not scrutinized by the apex body. If this type of attitude will prevail, undoubtedly it will create problems for the democratic set up of this country. The apex court will have to understand that rule of law does not mean rule of judges. Parliamentarians are elected by the people to frame laws to govern the country and they are accountable to the public at least once in five years. The judiciary is accountable to whom? This pertinent question is still to be answered by the Honourable Supreme Court. Who is Supreme in a democratic country like India? Are people of India Supreme or is it the judiciary supreme?

On the other hand, it cannot be denied that judicial activism has played an important role in protecting human rights. In other words, it has indeed proved to be a boon to the victims of arbitrary, illegal and unconstitutional actions of state as well as of public servants. Right to life and personal liberty have been given a broader meaning to include all the essential rights for human life with dignity and those rights are easily made available through the channels of an activist judiciary. The right to life and personal liberty was elevated to the status of fundamental rights, which could not be abridged, defeated or taken away by the state.
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79. AIR 1978 SC 1675

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89. Blackburn formulated the rule in Rylands v. Fletcher case in England, in the following terms “the person who for his own purposes brings onto his hand, and collects or keeps there, anything likely to do mischief if it escapes, must keep it at his own peril and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of the escape.”

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