CONCLUSION

Judicial Activism is one of the most topical issues with the accusation that judges have exceeded their area of functions. The American Bar Association (ABA) Journal published that a random survey of 1016 Americans finds half of the respondents who believe that there is a ‘judicial activism crisis’. The Supreme Court has become more active in measuring test of administrative actions in recent times. It is alleged that judges should stick to applying the law only instead of making it. Judicial activism and problem of governance recently became a source of heated debate, especially in the light of hyper activity witnessed in the judicial branch of government throughout the states with federal structures. It has touched almost every aspect of life in global society, including India. 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 women 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.

Today, with the vast change in judicial process, the traditional rule of ‘locus standi’ is replaced by ‘group action litigation’ popularly known as ‘public interest litigation’ in India. No doubt, law regulates the society, but sometimes, society also regulates law. Changing aspirations of people also affect law. Constitutions, courts and other parts of the judicial system are made for people. In the seventies, Justice Yeshwant Vishnu Chandrachud observed, “It is really the poor, starved and mindless millions who need the court protection for securing the enjoyment of human rights.” (See chapter one)

In the way of securing good governance, 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 has 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 rights to life and personal liberty were elevated to the status of fundamental rights, which could not be abridged, defeated or taken away by the State.

The study is an attempt to investigate the norms and trends of Judicial Activism and its impact on the governance of India. Hopefully, this may add to our knowledge of contemporary socio-political and administrative culture of the country under study. After an analysis of the first chapter titled “Functional Distribution of Governmental Work in the Constitution of India- The Three Branches of Government and the Parliamentary Set-up”, we found that the Government of India was established by the Constitution of India, and it is the governing authority of a federal union of 28 states and 7 union territories, collectively called the Republic of India. Like the United States, India has a federal form of government, however, the central government in India has greater powers in relation to its states, and its central government is patterned after the British parliamentary system. Each of the regional administrative divisions has an elected government headed by a chief minister. A governor is appointed by the President of India, as the representative head of the federal authority in each state. Locally, the Panchayati Raj system has several administrative functions in rural areas whereas for urban areas, there are local governments to perform these functions, and are known as Municipalities, Municipal Corporations; Notified Area Committees etc. Democratic state plays a crucial role in maintaining order and reconciling conflicts in a civil society. Being a modern state, India has three important bodies - legislature, executive and judiciary that try to accomplish the political goal of the society, thus endorsing the credentials of democracy.

In the second chapter, a detailed study has been made of the concept of governance, its origin and diversified definitions. The study finds that the term
‘governance’ has variance in its nature according to time, place, situation and context of the study. As for as performance appraisal of government is concerned, the researcher finds that there is a major shift from or even collapse of core values of freedom movement based on the ideas of equity, justice, democracy, secularism and plurality, are making adverse impact on institutions of the republic and functioning of government. The republic of India was based on the socialist pattern of economy, which includes three basic features that are; central planning, self-sufficiency (no international trade) and State owned industrial enterprises. All of these features are against the economic principle of liberalization. It was not a capitalist economy. Therefore, it was expected that State will maintain hegemony over the market by generating a system of control so that it produced a result that it would not have produced itself.

In the era of capitalist innovation that leaves lots of people out from their habitat, the market laws have even threatened to dominate natural environment. Although, a return of ‘license-permit’ era has been ruled out forever, as State is concerning more to the notion of good governance that people needed in order to improve their lives. Therefore, State should start working on some development programs with the aim of poverty alleviation. Towards these, poor people need to be directly involved. ‘Public Expenditure Review’ meets should be organized periodically at village, sub-district and district levels to ensure proper utilization of funds and ownership of development programmes by the people. Public service delivery system should be improved at all levels of government. Such persons, who are charge-sheeted by a competent court or convicted in a case of corruption, should be barred from holding public office for life.

At present, the civil society in governance is playing a very important role in India. Civil groups like NGO’s, women’s groups, trade unions, cooperatives, professional and other guilds, faith organizations are all essential to the building of inclusive growth. Without representation of the people, any programme can only be implemented mechanically. There is a need of
innovators in livelihood programmes. These livelihood programmes have become the cornerstone of poverty alleviation schemes.

Livelihood should relate to social economy and local resources as well. Its initiatives should aim to protect and promote food security, where feasible, through agricultural production, small businesses and employment. It should also mean upgrading of existing and traditional skills that people have possessed from the times immemorial in agriculture, in animal husbandry, in fishing, in textiles and so on. Investment in upgradation of such skills would lead to harmonious relationships with nature. In view of the deep-rooted social and economic inequities of centuries, India can’t blindly follow capitalist model of growth that puts excessive reliance on market forces. For, such a model would fail to provide stability to Indian polity. And yet, rapid economic growth is essential to meet aspirations of the Indian youth. It also stresses the need to devise institutions that can adequately balance the goals of effectiveness and representation in governance.

The nature and content of good governance would undergo changes in tune with rising expectations and fresh demands of the people. Democratic governance would expect and secure from its leadership to be alive to such aspirations and to continually tune institutions of polity to be effective instruments of citizen’s welfare.

As a result of analysing theoretical framework of parliamentary versus judicial supremacy in the third chapter, we have found that although judicial review is a key feature of the separation of powers doctrine, yet, it has created a tension between judiciary and representative government. The issue has been a subject of heated scholarly debate over the last few years. It has exercised the minds of legislators, jurists, politicians, and non-professionals as well throughout the world. The supporters of absolute independence of the judiciary argue that in the absence of an impartial, independent and sovereign judiciary democracy cannot succeed. In contrast to this view, supporters of parliamentary supremacy
pursue that judicial supremacy which is expressed in the form of judicial review is incompatible with democratic government because the importance of majority rule lags behind by the unelected few judges who are not directly accountable to people. However, it would be better if parliament sits to codify the powers, privileges and immunities of the legislature and its members.

The fourth chapter reads that since the hoary past, there has been a lively debate on the role of judiciary in the society and governance of the country. ‘Judicial Activism’ has emerged as the pivot around which such debates revolve. Despite the term’s prominence, due to one or the other reason, the controversy about its definition has not been resolved and its meaning is still obscure. Some politicians would like to call it ‘Judicial Anarchy’, ‘Judicial Over-activism’ and ‘Judicial Despotism’.

The term ‘judicial activism’ is generally used by scholars of social sciences to describe a tendency by judges to consider outcomes, attitudinal preferences, and other public policy issues in interpreting applicable existing law. One of the meanings of judicial activism is that the function of the court is not merely to interpret the law but to make it by imaginatively sharing the passion of the constitution for social justice. Therefore, judicial activism is formally considered the opposite of judicial restraint, but it is also used pejoratively to describe judges who endorse a particular agenda. Although, alleged activism may occur in many ways, the most debated cases involve courts exercising judicial review to strike down statutes as unconstitutional. Views about constitutional interpretation abound, ranging from strict constructionism to the living constitution, and therefore, in practice, any controversial decision striking down a statute may be labelled by the decision’s critics as judicial activism.

Judicial activism occurs when a judge or justice decides an issue based on personal or political ideology or pressure from special interests instead of abiding by the constitution or previous precedent. The United States has a
system of checks and balances to insure that one branch of the federal
government will not become too powerful. Under the separation of powers
doctrine, only Congress has the power to legislate. Judicial activism violates
that separation of powers by effectively creating new laws that often affect the
entire nation instead of settling the particular case at hand. It means that the
judiciary, which is appointed rather than elected and held accountable by the
people, does not have the ability to legislate. In other words, judicial activism
means justice oversteps the jurisdiction of the Court or creates a ruling that
radically diverges from common law, jurisprudence, and the intent of the
constitution. Judicial activism may also be a case of judges or justices over-
ruling existing law or creating legal doctrines without precedent or support,
which undermine or recreate policy, usually, social policy.

In a democratic society, there are perhaps two approaches to any judicial role,
performance and perception. The judiciary can adopt a pro-active approach or
it can act within the boundaries of self-restraint. Before peeling away the layers
of the past of judicial activism, we must go through the historical background
of the phenomenon which caused the emergence of a pro-active judiciary. The
researcher finds that the doctrine of judicial activism in the Indian democracy is
worth a study compared to that vogue in the U.S.A. and it will become clear
after peeping through the historical background of the concept.

Thus, judicial review in Indian context is a highly complex and developing
subject. It has its roots in the long past and its scope and extent varies from
case to case. It is considered to be the basic feature of the Constitution. The
court in the exercise of its power of judicial review would zealously guard the
human rights, fundamental rights and the citizens’ rights of life and liberty as
also, many non-statutory powers of governmental bodies as regards their
control over property and assets of various kinds, which could be expended on
buildings, hospitals, roads and the like, or overseas aid, or compensating
victims of crimes. The limit on the power of judicial review is a recurring
theme in the evolution of the Constitution of India. In some of its distinguished
judgments, the Supreme Court has defined the outline of sovereign power as distributed amongst the three branches of government namely, the legislature, the executive and the judiciary.

There is a compelling case that the power of judicial review delegated to superior courts in various provisions of the Constitution of India; itself is as much by the command of the people. But, scholars who are in favour of this view argue that judicial inquiry of the validity of legislation is a necessary protection against the oppression of majorities that when the judges do not check the people, the Constitution does and since the Constitution itself is popularly ratified, there is nothing undemocratic in the power of judicial review.

However, the power of judicial review is a part of the basic structure of the Indian Constitution, permanent even by a constitutional amendment as affirmed by the Supreme Court in Kesavananda Bharti case. (See chapter four) Similarly, representative democracy as an expression of the people’s will, speaking through their elected representatives, is a non-negotiable principle of our republican agreement which itself is the product of an exercise of the unbroken sovereign power. The Supreme Court of India as the guardian of democratic morality will, without a doubt, remember that the exercise of constitutional power is persistent in the final analysis by the intellectual integrity, independence and fearlessness of judges.

The last chapter emanates that due to an independent judiciary, with time, the area of judicial intervention steadily expanded through concepts like judicial activism with the help of an apparatus of public interest litigations etc. Problems relating to environmental issues and natural resources of India, which ought to have been tackled on a priority by the executive and the legislature are presently brought up through public interest litigations to be handled by the Supreme Court and High Courts. 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.” (See chapter five)

In fact, with the advent of modern state system the functions of government
have increased vehemently, people now expect from government to take care
of all physical needs from cradle to grave. Thus, function of judiciary is also
bound to increase as law cannot afford to be static and so the judiciary. The
purpose of giving justice cannot be solved by simply interpreting law 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. 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.

The analysis whether judicial intervention in the functioning of other two
organs of the 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 duties properly. The
judiciary seems to abhor a vacuum. Legislature and executive are no more
sensitive to the urges and aspirations of the people. Politics has become too
much constrained with development of vote banks. In these conditions,
common man finds judiciary as the only saviour. And courts too have been able
to uphold their faith. 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
the constitutional scheme and thereby ensured the implementation of the rule of
law.
Therefore, 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 the constitution in many ways. Take for instance, the apex court in *Vishaka v. State of Rajasthan* (see chapter four for details) 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 whether this so called ‘weakest organ of democracy’ which is growing powerful day by day be left unchecked?

No doubt, we have the doctrine of checks and balances in our country, but it will not be wrong to say that it has totally failed to check the powers of the apex court. Reason for this is simple, both executive and legislature indulge in corrupt practices and are not in a position of checking powers of courts. We can take most recent instance of the reservation for backward classes’ case, the apex court came very close to declare 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 problem for the democratic set-up of our 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.

However, it cannot be denied that judicial activism has played an important role in protecting human rights and thereby promoting good governance in the country. 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 has 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. Thus, in order to
promote good governance in the country by eliminating corrupt practices of the administrators from top to bottom, the judiciary must be active in its process of adjudication. In a federal democracy where fragmented socio-cultural population lives together, only an active judiciary can protect the rights and liberties of minorities and weaker sections of society, by erecting a few checks points on activities of the other branches of government.

It is now clear that the relative strengths and weaknesses of both the organs of government; legislature and judiciary, should adopt a central path concerning judicial activism. At present, some degree of judicial activism is definitely needed in India but some restraint is also necessary to regulate the phenomenon of judicial activism to avoid it to be hyper activity of the judicial branch.