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CHAPTER VI
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CHAPTER VI

JUDICIAL APPROACH REGARDING SOCIAL JUSTICE

The role of judiciary is to achieve the dream of social Justice in the preamble of the constitution of India. Because the apex court has explained the Idea of Social Justice Consist of diverse principles essential for the orderly growth and development of personality of every citizen. "Social Justice is an integral part of Justice in the generic sense. Justice is the genus of which Social Justice is one of its species. Social Justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribal, and deprived sections of the society and so elevate them to the level of the equality to live a life with dignity of person418.

Social Justice is not a simple or single goal of a society but is an essential part of complex social change to relieve the poor from handicaps, Penury, toward off distress and to make their life livable, for greater good of the society at large. The aim of social Justice is to attain substantial degree of social, economic and Political equality which is the legitimate expectation and constitutional419. The concept of social Justice thus takes within it sweep the objective of removing all inequalities and

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418 Air India Statuary Corporation v. United Labour Union A.I.R 1997 SC 645.
419 Dr. Panday Mayuri "Social Justice; a Dream or Reality? AIR may 2009 Journal. 79.
affording equal opportunities to all citizens in social affairs as well economic activities\textsuperscript{420}.

Because Art. 38 (2) direct the state to strive "to minimize the inequalities in income" and endeavors "to eliminate inequalities in status, facilities and opportunities, not amongst individuals but also groups of people residing in different areas or engaged in different vocations". The apex court has explained the concept of equality envisaged by art 38 as equality before the Law is dynamic concept having many facets. Thus the apex court has contributed a lot of to achieve the goal of Social Justice. The first and foremost tool that Judiciary device is public interest litigation to promote the Social Justice\textsuperscript{421}. The courts in the country did everything to help the poor and to break every procedural Barrier to deliver justice to the poor. The Supreme Court has given a very broad connotation to Art 21 so as to include there in". The Right to live with human dignity". The concept "derives its life breath from the directive principles of state policy\textsuperscript{422}. So Right to Education is a fundamental right the state is under a constitutional mandate to provide educational institutional at all levels for the benefit of the citizens\textsuperscript{423}.

Because the apex court has developed the concept of distributive justice out of the Art. 46 of the constitution and observed that the constitutional mandates the state to provide socio-economic justice to

\textsuperscript{421} Sri Srinivasa Theatre v. Govt of Tamil Nadu A.I.R 1992 SC 999. 1004.
\textsuperscript{422} Bandhua Mukti Morcha v. Union of India, A.I.R 1984 SC 802.
minimize inequalities in income and in opportunities and status. It positively charges the state to distribute its largess, to the weaker sections of the society envisaged in Art 46 to make Socio-economic Justice a reality meaningful and fruitful so as to make life worth living with dignity of person and equality of status and to constantly improves excellence\textsuperscript{424}.

Thus we can say that the Supreme Court has played a pivotal role to make India a welfare state and to make the dream of Social Justice a reality. The Supreme Court has acted as Instrument of social Justice and has given adequate support to causes of weaker sections of Society. The Judiciary virtually enforced Directive principles through the doors of fundamental rights by the dynamic instrument of Interpretative power\textsuperscript{425}.

\textbf{Contribution of Indian Judiciary to social, Justice: The Role of Judiciary} with respect to certain unremunerated rights such as, the right to shelter, right to rehabilitate, right to food, right to livelihood and right to medical aid is quested; the Judiciary through its activism has transgressed into rates reserved for legislature and executive. It was held that there in that the fundamental rights are not islands but have to be read along with the other rights. Hence reading Article 21 with 14 and 19, It was held that procedure established by law" under Article-21, of the Constitution means not Just any procedure but a \textbf{Just, fair, and reasonable procedure}. The right to life includes the right to live with

\textsuperscript{424} Ahmadabad municipal corporation V. Nawab Khan GulabS Khan A.I.R 1997 SC 152.

\textsuperscript{425} Dr. Panday Mayuri,; social Justice A dream or Reality' A.I.R may 2009 journal p. 80.
human dignity and all that goes along with it namely. The bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and exposing oneself in diverse form freely moving about and mixing and commingling with fellow human beings.  

An Important Inspiration for social Justice can be drawn from the preamble, fundamental Rights, fundamental duties and Directive Principles of state policy of the constitution which states that the people of India have under taken to secure Justice "Social, economic and Politician and the mandate by Article 39A of the Constituted which Imposes, a duty on the state to ensure that opportunities for Securing Justice are not denied to any citizen by reasons of any economic or other disabilities."

It was recognized that the right to livelihood Under Article 21, Could not be extended so far as to require that everyone be provided with a Job Art 41 The Directive principle of state policy the state shall seek to secure the rights to work to its citizen and even the Directive Principle lays down that the duty of the state would be within the limits of its economic capacity and development.

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428 Indian Drugs Pharmaceutical Ltd. v. workmen - (2007) (1) SCC 408.
The Court Directed the State Governments to Implement the mid day, meal schemes by providing every child in every Government and government assisted primary school with a prepared mid day meal with the minimum content of nutritional contents each day.\(^{429}\)

Judicial Approach regarding Social Justice. We should mention following four pillars.

1. Social justice through the public Interest Litigation
2. Social justices through the Judicial Activism.
3. Social justices through the Judicial Review.
4. Social justices through the Curative Petition.

**1. Social justice through the Public Interest Litigation:**

Indian Public Interest Litigation is improved version of PIL of U.S.A. According to **Ford Foundation" of U.S.A.** Public Interest law is the name that has recently been given to efforts that provide legal representation to previously unrepeated groups and interests. Such efforts have been undertaken in the Recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. During the emergency 1975-77 state repression and governmental Law less ness was Undesired. Thousands of Innocent people including political opponents were sent to Jail and there was complete deprivation of civil and political rights.

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\(^{429}\) R. Khera. Midday Meals in Rajasthan (The Hindi Bangare-2002)
post emergency period provided and occasion for the Judges of the Supreme Court to openly disregard the Impediments of Anglo-sexon procedure in providing access to Justice to the poor\textsuperscript{430}.

**Justice V.R. Krishna Ayer and P. N Bhagwati recognized.** The possibility of providing access to Justice to the poor and the exploited people by relaxing the rules of locus standi. The first reported case of PIL in 1979 focused on the in human conditions of prisons and under trial prisoner's. The PIL was filed by an advocate on the Basis of the news item published in Indian Express, highlighting the plight of thousands of under trial persons languishing in various Jails in Bihar. These proceeding led to the release of more than 40,000 Under Trial prisoners. Right to Speedy Justice emerged as a basis fundamental right which had been denied to these, prisoners. The same at pattern was adopted in subsequent cases\textsuperscript{431}.

A new era, of the PIL movement was heralded by Justice P.N. Bhagawati. It was held that "any Member of the public or social action group acting bonafied can invoke. The writ Jurisdiction of the High Court or the Supreme Court Seeking against the Violation of a Legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the court. By this judgment PIL become

\textsuperscript{430} Dr Jasvinder Singh ", Legal essays, Articles for completions 2009P403.

\textsuperscript{431} Hussainara Khatoon v. State of Bihar AIR 1979 SC 1360.
a potent weapon for the enforcement of "public duties" where the executed in action or misdeed resulted in public Injury.\textsuperscript{432}

\textbf{A. THE Concept of public interest litigation (PIL)} The public in interest litigation is a strategic arm of the legal aid movement and is intended to bring justice within the reach of poor masses. It is a device to provide justice to those who individually are not in a position to have an access to the courts. Public Interest Litigation is not a new phenomenon but in U.S.A. It has been invoked largely for the purpose of improving the life conditions of Blocks and insuring human Right to them. It was initiated for the benefit of the class of the people, who had been denied their constitutional and legal rights. Because they were unable to have access to the courts on Accounts of their Socio-economic disabilities.\textsuperscript{433}

\textbf{B. The Meaning of public interest litigation.} The concept of PIL as follows 'where a legal wrong or legal injury is caused to person or to a determinate class of persons by reasons of violation of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is the atoned and such person or determinate class or persons by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or write, in the High Court Under Article 226

\textsuperscript{432} S.P. Gupta v. Union of India AIR 1982 SC 149
\textsuperscript{433} Aspopa-Sunil "public interest litigation and public health January-2008P. 125.
and in case any breach or fundamental rights of such persons or determinate class of persons, in this court Under **Article 32 Seeking** Judicial redress for the legal wrong or legal injury caused to such person or determinate class of person a ccess to Justice is an intrinsic problem facing a majority of third world countries today. Poverty, ignorance and inaccessibility of vast masses in these countries posed a problem of Justice before them forcing the Judiciary to evolve a new statement as it was realized that unless Justice was ensured to them by the society freedom will have no relevance and social Justice will be meaningless. Taking Inspiration from the sociological school. The emergence of a new concept of Access to the Justice was a Judicial Answer to egalitarian ideals and to the complex question of providing social Justice.

The philosophy, in common, for liberalization of principle of locus standi giving rise to the dynamics of public Interest litigation may be catarised under the following heads-**Poverty, Ignorance, and Lack of Legal Knowledge and exploitation of the vast masses. High Cost of Litigation, Democratization of Justice.**

Public Interest Litigation is a part of legal aid movement which is intended to bring Justice with the reach of the poor masses that constitute the low visibility area. In our country thus the public interest litigation the court tries to fulfill a constitutional obligation that, the large masses of

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people belonging to the deprived and exploited section sections of humanity may be able to realized and enjoy the socio-economic rights granted to them.

**High cost of Litigation:**

It is a naked truth that due to high cost of Litigation a majority of masses and deprived of their Rights of access to the courts and court become a medium for enforcing rights of people barn with a "golden spoon". Public Interest litigation extends the benefit of the system to the poor. The indigent, most of who are not even aware of their rights. By Liberalization of the rule of Standing a large number of people belonging to the deprived and the exploited sections of humanity are able to realize and enjoy their socio-economic basic, human and fundamental rights.435.

The seed to the concept of Interest was first shown by Krishna Ayer J.436.

**C. Subject matter or the scope of public Interest Litigation:** Although PIL is no magic wand to redress all wrongs in society, It has made a begin contribution in many areas as given below such as-

The Matters of Public interest generally they include-

❖ Protection of bonded, contract and child labour.

❖ Prisoner's rights and administration or custodial Death.

❖ Amplifying the scope of Right to life.

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 Protection of environment.
 Protection of Atrocities on women in Harassment of Bride Burning, Rape murder and kidnapping etc.
 Political corruption and crime.

I. Protection of bounded contract and child labour:
PIL cases have addressed the plight of the lab our class from time to time. Bonded labour, contract labour, child Labour cases, and such other maladies have been dealt with in a catena of cases and appropriate relief granted, ensuring better enforcement of various lab our laws\textsuperscript{437}.

II. Prisoner's Right and Administration and custodial death:
The Supreme Court has upheld parishioners and detunes:-

\begin{itemize}
\item Right to speedy trail.
\item Free legal aid.
\item Dignified Treatment.
\item Right against illegal detention.
\item Custodial death and Torture etc.
\item Imprisoning of non-criminal insane persons was held invalid and was held invalid and Unconstitutional.
\end{itemize}

Detailed guidelines cum requirements for arrest and detention of persons have been laid down by the Supreme Court recently.

III. Amplifying the scope of right to life:

Declaring that right to life includes finer graces of human civilization. The Supreme Court has virtually rendered this fundamental right a Repository of various human rights. Thus it includes right to live with human dignity; Right to healthy environment, free education up to 14 years of age, emergency medical aid, privacy, A grave violation of any such right might entail liability for compensation or/and an exemplary penalty438.

IV. Life and Liberty, Article 21 of the constitution:

The liberal interpretation of the words life and liberty used in Article 21 of the constitution of India. A most remarkable feature of this expansion of article 21 of the constitution is that many of the non Judicial Directive principles embodied in part-IV of the constitution have now been resurrected as enforceable fundamental rights, by the magic wand of Judicial Activism, playing on the said Article e.g. Right to pollution free water and air, Right to reasonable residence, right to food, clothing, decent environment, etc. The Supreme Court in various cases has also imposed a positive obligation. Upon the state to take steps for ensuring to the individual a better enjoyment of his life and dignity e.g. maintenance

and improvement of public health, rehabilitation of bonded laborers providing human condition in prisons and protective homes\textsuperscript{439}.

\textbf{V. Promotion of educational and economic Interests of scheduled castes, scheduled Tribes and other weaker sections:}

The state shall promote with special care. The educational and economic Interests of the weaker sections of people and in particular, of the scheduled castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation\textsuperscript{440}.

\textbf{VI. Provision for free and compulsory education to the children:}

The state shall Endeavour to provide within a period of ten years from enforcement of this constitution in force and compulsory education for all children until they complete the age of fourteen years\textsuperscript{441}.

\textbf{VII. Right to life with human dignity:}

Article 21 of the constitution of India guarantees that no persons shall be derived of life by Judges, to consider the intent of public at large. Although the main and only four of such litigation are only public interest there are various areas, where a PIL can be filed for e.g.

1. Violation of basic human rights of the poor.

2. Content or conduct of government of policy.

3. Compel municipal authorities to perform a public duties and.

\textsuperscript{440} Constitution of India Article 46 P. 47
\textsuperscript{441} Constitution of India Article 45P. 79.
4. Violation of religious rights or order basic fundamental rights.

Deprived of his life of personal liberty except According to the procedure established by Law. On interpretations of this article by the Supreme Court, it is now well established that the right to life, enshrined in Article 21 means something. More than survival or animal existence. It would include all those aspects of life which go to make a man life meaningful, complete and worth living\textsuperscript{442}.

**Concept of equality between male and female:**

Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference. They have been the victims of violence and exploitation by the male dominated society all our world. Ours is a traditions bound society where women have been socially economically physically, psychologically and sexually exploited from time immemorial, Sometimes in the name of religion, some time on the pretext, of writings in the scriptures and some times . The enactment of the constitution of India of course, the preamble of the constitution which the supreme law of the land, seeks to secure to its citizens including women folk Justice, Social, Economic and political, Liberty of thought, expression belief, faith and worship equality of status and opportunity and permote fraternity assuring the dignity of the individual The Indian constitution has incorporated all the human rights.

\textsuperscript{442} State of Maharashtra v. Chandrabhan AIR 1983 SC 803.
The preambles fundamental rights and Directive principles together reflected the basic principles of the universal declaration of human rights and the covenants on the civil and political rights and economic, social and cultural rights. Supreme Court observed that "Half of the Indian Population is women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities indignities, inequality and discrimination. The court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and was therefore, clearly violative of Art. 14 of the Constitution.

**Judicial Approach right against sexual harassment:**

When sexual harassment occurred in the workplace, it was an abuse of both economic and sexual power. By requiring and employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacked the dignity and self-respect of the victim both as an employee and as a human being.

The Judgment of the court was delivered by the Honorable Mr. Justice J.S. Verma on a writ petition filed by Vishaka, a nongovernmental
organization working for gender equality by way of public interest litigation seeking enforcement of fundamental rights of working women under Art. 14, 15 and 21 of the Constitution. The immediate cause for filing the petition was alleged brutal gang rape of social worker of Rajasthan. The Apex Court observed that gender equality included from sexual harassment and right to work with dignity which was universally recognized basic human right447.

The Supreme Court applied the principle laid down in the Vishaka case and upheld the dismissal from service of a superior officer who was found guilty of sexual harassment of subordinate female employee at the place of work on the ground that it violated her fundamental rights guaranteed by Art. 21 of the Constitution448. In this case laid down 12 guidelines in this regard and declared that these would constitute the law of the land until the legislature took further action. Ironically, Parliament took almost 10 years after the Vishaka judgment to prepare a draft bill on sexual harassment. The draft bill, the protection of Women against Sexual Harassment at Workplace Bill 2007, is yet to be introduced in parliament.449

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449 Front Line January (4) 2008 at 23.
IX. Against whom public Interest Litigation can be filed:

A public Interest Litigation can be filed against a state/central government, municipal authorities and not any private party. The Definition of state is the same as given under article 12 of the constitutions of India state Government and Legislature of each the status and all local and other authority.

X. Aspects of Public Interest Litigation:

- Remedial in Nature.
- Representative Standing.
- Citizens Standing.
- Non Adversarial Litigation.
- Investigative Litigation.
- Crucial Aspects.
- Relaxation of strict rule of locus standi. 450.

XI. Public Interest Litigation is weapon which has to be used with great care and circumspection and the Judiciary has to be extremely careful-

Public Interest litigation is weapon which has to be used with great care and circumspection and the Judiciary has to be extremely careful to see that under the guise of redressing a public grievance. It does not encroach

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450 Dr. Jasvinder Singh "Legal essays & Article for Competitions Public Interest Litigation 2006. P. 411
upon the sphere reserved by the constitution to the executive and the legislature\textsuperscript{451}.

**XII. Strength and weakness of public Interest Litigation:**

PIL has become an integral part of our legal system. It is the most powerful branch of our Public law capable of affecting the structural pattern of the governance of the state and due to the reason; it has become highly controversial\textsuperscript{452}.

Because PIL has become a powerful Instrument for enquiring into matters, concerning dissipation of public property by state functionaries for issuing suitable direction for release of children detained in prisons in different states for laying down guidelines regarding adoption of Indian children by foreigners\textsuperscript{453}.

The Supreme Court has laid down guidelines specifying 23 categories in respect of which letters or telegrams. Sent by individuals could be treated as write petitions.

1. Atrocities on women,
2. Custodial deaths.

Thus the impact of PIL is not only in ameliorating. The condition of down trodden masses but also in protecting The Human life and liberty while entertaining the PIL the supreme court and High Courts have pronounced numinous glorious Judgment pertaining to different aspects

\textsuperscript{451} H.P. v. A Parent of Student of Medical College Simla AIR 1985 SC 910
\textsuperscript{452} Justice - M.N. Roa” Strength and weakness of public interest law “2006 AIR p.10
\textsuperscript{453} Lakshmikanth Pandey v. Union of India 1987(1) SCC 66.
of our human life and put a great impact in Social Change. Every person has two sides. The PIL is not free from criticisms in Gupta Case. Justice Bhagwati emphatically pointed out that the relaxation of the rule of locus standi in the filed of PIL does not give any right to busy body or meddlesome interloper to approach the court. Under the guise of public interest litigations .It has been said the public interest litigation is a weapon which has to be used with great care and circumspection454.

Art. 39-A provides. "The State shall secure that the operation of legal system promotes justice, on a basis of equal opportunity and shall, in particular provide free legal aid by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities". This article promises justice to the masses, to the poor and the down trodden and not to a selected few with golden keys. The doctrine of Public Interest Litigation as enunciated by our Supreme Court in so many cases, which shall be discussed below, has made the masses the beneficiaries of the Social justice. The poor also will now share the benefits of the Rule of Law which was mostly the preserve of a selected few. Most of the people having no means could not claim the benefits of the Rule of law so far. There are some social imperatives which are necessary to give social justice to the masses. Our welfare State as guaranteed by our Constitution

has to enact much socio-economic legislation to achieve the goal of Social Justice\textsuperscript{455}.

A recent example of this approach was the decision in where the court caught to ensure compliance with the of supplying mid-day, meals in governments run primary schools the mid-day meals scheme had been launched with much fanfare a few years ago with the multiple objections of encouraging the enrolment of children from Law: income Backgrounds 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 response to the same, the Supreme Court issued order to the concerned governmental authorities in all status and Union Territories while giving elaborate directions about the proper publicly and implementation of said scheme\textsuperscript{456}.

(B) **Social justices through the judicial activism.**

*If fact Judicial Activism and public Interest litigation* are two sides of the same coin, they go hand in hand public Interest litigation which is the result of Judicial Activation is indeed the most striking feature of the Justice delivery system of the recent decades. It is an Instrument to ensure even handed Justice to the poor, ignorant and downtrodden who has been

\textsuperscript{455} Article 39—A Inserted by 42\textsuperscript{nd} constitutional amendment of the India

\textsuperscript{456} Srivastave D.K. "Sexual Harassment and Violence against women in India Constitutional and legal perspective in Raj Kumar. Human Rights, Justice and constitutional empowerment (UP), 2007 SCC 728."
neglected lot of for all these years. In India public interest litigation is a major breath through in the delivery of social Justice\textsuperscript{457}.

1. Meaning of judicial activism; Judicial Activism must necessarily mean "The active process of implementation of the rule of Law, essential for the preservation of a functional democracy. It means, different things to different people while some may exalt the by describing it as Judicial creativity dynamism of the Judges bringing a revolution in the field of human rights and social welfare through enforcement of public duties etc. Other has criticized the term by describing it as judicial extremism, Judicial Terrorism. Transgression into the domain of the other organs of the State negating the constitutional Spirit etc. The Apex Court has activated the Administrative Machinery when they failed to perform their legal obligation. The Judicial process has achieved not merely initiation of Action in case of inaction, but also monitored and channelized the Action in the proper direction\textsuperscript{458}.

Admitting all these aspects, it is acknowledged that Judicial Activism is welcomed not only by individual and Social Activists, who, take recourse to it but also by government’s political parties’ civil servants constitutional authorities. Such as the president, the election commission, National Human Right Commissions or regulatory bodies

\textsuperscript{457} Dr. V.N Pranjapai – ”Social Justice and Public Interest Litigation “AIR 1991 P. 203.

\textsuperscript{458} Rat Ram Municipality v. Virdichand AIR 1980 SC 1622.
and other political players have protested against judicial instrument into matters that essentially belonged to the executive.459.

II. Evolution of Judicial Activism in India: Judicial Activism is a concept that original in the US. It is the process in which the judiciary uses the concept of Judicial Review, to point out the unconstitutionality of legislative and executive orders. In the US, it was derived from the "due process of law" clause from its Constitution. It is a fact the Supreme Court has become more powerful in recent times, mainly, due to the failures of the legislature and the executive. The Supreme Court has ruled out the powers of the Parliament to amend the basic structures of the Constitution. Sometimes, the executive is referring various policy matters to the Supreme Court for its advisory opinion.460

III. Position of judicial activism before emergency period:

Before the emergency period of the judiciary was not to aggressive to work beyond the provisions prescribed by the constitution. The SC of India faced its first case of judicial review. The Judiciary will continue to respond to the changing needs of the times, that is how activism has evolved. Let us dispel the popular impression that Judicial Activity, began less than two decades ago. We can in fact come across this term in U.S.A. in 1857. In India, the truth is, way back in 1893

460 Foot note N. 444
Justice Mehmood of Allahabad High Court delivered dissenting judgment which sowed the seed of Activism in India\textsuperscript{461}.

Seventeenth Amendment Act 1964, had Amended Art 31-A of the constitution and included two enactments viz the Punjab Security of land Tenures Act 1953 and Maysoor land reforms Act 1962 in 9th Schedule to the constitution and had placed them beyond attack, Article 31-A deals with saving of laws providing for acquisition of estates etc. even though they are in consistent with or take away any of the Rights conferred by Article 14 Art 19 or 31\textsuperscript{462}.

**IV. Post Emergency Judicial Activism:**

According to Rajeev Dhawan the higher. Judiciary has come to play a pivotal role in asserting an Independent status forcing other Institutions of governance to take steps to do what they are supposed to be doing. The Judiciary which was an institution of state during the colonial period interpreting the meaning of laws first changed its character during the Nehru years Chief Justice Subba Rao exhibited a very rare. Judicial activism in the instant case to enable the fundamental rights to attain supremacy in the Indian Constitution and in the process

\textsuperscript{461} Dr. Subra Maniyam A - Judicial Activism : A Panacea for achieving Socio Economic Goals" Nov. Journal AIR 2001 Vol 88

had overruled two long outstanding judgments on that topic viz. Sankari Prasad, and Sajjan Singh.463

In **Keshavanand Bharti case** popularly known as the **Fundamental Rights case**, a 13-judges Bench of the Supreme Court dealt with the validity of the Constitution 24th Amendment, 25th Amendment, and The Constitution 24th Amendment Act, 1971 was passed to get so far as it was held that (I) the 'law' under Article 13(2) includes a Constitution but did not confer on the Parliament any power to do so. The 24th Amendment expressly empowered the Parliament to amend any provisions of the Constitution including those relating to Fundamental Rights and further made Article 13 of the Constitution inapplicable to an amendment of the Constitution under Article 368.464

Article 21 has been broadly interpreted by the court not only in relation to bill of rights but also socio-economic right to adequate means of livelihood, right to primary education (Unnikrishnan Case) in place of Article 45, which is a directive principle dealing with the provision of free and compulsory education to children up to the age of 14 years. After so many years of discourse and struggle, after the Judgment in Unnikrishnan Case the 86 constitutions Amendment Act has been approved by the president in Dec. 2002 making education a fundamental right for children of the age of six to fourteen years, by

463 G.B Raddy. Judicial Activism In India 1st Ed. 2001 P. 136
Introducing a new Article 21A. The existing Article 45 has also been suitably modified to provide for early childhood case and education for all children Until They complete the age of six years.\textsuperscript{465}

\textbf{FOR EXAMPLE:}

It the case of adoption of children by foreigners or in laying down guideline for the prevention of sexual harassment of working women the court has not only been pro-activist, It has virtually created new laws and has become a quasi-legislative body on the basis of Article 141 of the constitution. To what extent is the expanded role of the Judiciary desirability of stepping into the shoes of the legislature, but has stated that its directions, where only intend to provide temporary relief. Thus we can say that after the emergency period the Judiciary becomes more active as it earlier was- main significant aspect by which all the parameters have been changed in the case of Menka Gandhi.\textsuperscript{466}

After the discussing all the facts in Menka Gandhi case the Supreme Court held that art 21 is not an absolute. But it requires the following conditioned to be fulfilled before a person is deprived after from life and personal liberty.

1. These must be valid Law.

2. The Law must provide a procedure.

3. The procedure must be Just, fair, and reasonable.

\textsuperscript{465} Foot Note NO.455
\textsuperscript{466} Maneka Gandhi v.Union of India AIR 1978 SC 59
4. The Law must satisfy the requirements of Art 14 and 19, i.e. it must be reasonable.

The concept of Judicial Activism the supreme court in case\textsuperscript{467} held that under Art 32 court can enforce fundamental rights even against private bodies or individuals and also award compensation for violation of fundamental rights. The court can exercise its power suo-moto or on the basis of P.I.L. in absence of personal approach by the victims\textsuperscript{468}. Analytical Approach of Judicial Activism and find that compensation can be given to the victim of the rape even through, the accused had been punished through the departmental proceedings. In particular case a compensation of Rs. 1, 00, 000 (One lack) has been given to the victim of rape\textsuperscript{469}.

**V. Manka Gandhi case is a mile stone in the way of judicial activism:**

The Manka Gandhi’s case is a land mark case of the post emergency period. This case show how liberal tendencies have influenced. The supreme court in the matter of the fundamental rights. Interpretation particularly Art 21A great Transformation has come about in the judicial attitude towards - the protection of personal liberty

\textsuperscript{467} Dr. V. N. Panday "Constitutional Law of India 41 Ed. P. 21
\textsuperscript{468} Bodhisatawa Gautam v. Suphra Chakrabarty 1996 SCC. 490
\textsuperscript{469} Nil Bati Behra v. State of Assam and others (2005) 25 AIC 592
after the great experience of emergency period\textsuperscript{470}. The procedure prescribed by law should be \textbf{just, fair and reasonable} the most Important Concept of Natural Justice was also emerged by this case. In menka Gandhi Case. It was held that an appropriate opportunity shield be given to every person who is prosecuting in any court of law or Administrative Authority\textsuperscript{471}.

\textbf{VI. Expanding horizons of article 21 and role of judicial activism before manka Gandhi case:}

The Supreme Court of India exhibited judicial activism in many cases. Cases on property from the days of Subba Rao, J. to the days of J.C. Shah, J. are eloquent testimony in this behalf. But, judicial, activism in the realm of right to life and personal liberty is a recent phenomenon. The beginning of this tendency can be traced to the minority Judgment of Fazl Ali. J. in Gopalan’s case, but, a positive assertion in this behalf is discernible in Menka Gandhi case, the Court explained the ambit of protection guaranteed by Art. 21. The Article reads as follows: "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The approach of the Court was to expand the reach and ambit of the fundamental rights rather than attenuate their meaning\textsuperscript{472}.

\begin{flushleft}
\textsuperscript{470} M.P. Jain "Indian Constitutional Law 5th, Ed. P. 1085. \\
\textsuperscript{471} Maneka Gandhi v. Union of India AIR 1978. \\
\textsuperscript{472} Tope T.K. "Judicial Activism and the Right to life and personal liberty" AIR 1979 journal P. 91.
\end{flushleft}
The Court has sown the seeds of the doctrine of 'unremunerated rights' in a different form in the interpretation of the Constitution. Turning to Art. 21, the Court relied upon the judgment in Bank Nationalization case, (R.C. Cooper, and lay down that Art. 21 is controlled by Art. 19. Hence the ambit of the protection guaranteed by Article 21 is to be determined in the light of the protection guaranteed by Art. 19. The court also linked Art. 21 with Art. 14 and observed, "Article 14 strikes at the arbitrariness in State action and ensures fairness and equality of treatment."

**VII. Judicial Behavior of Supreme Court towards article 21 post manka Gandhi case:**

In order to ascertain the actual impact of the Supreme Courts, Judicial Activism on the enforcement of the right to life and personal liberty under Article 21. It has been observer that the Supreme Court has interpreted Article 21 to include a wide variety of positive and Negative Right. These rights include social rights economic rights, human rights and legal rights of many manifestations. That is essential for making a man life meaningful and worthwhile and which enable him to live his life with basis human dignity. For the purpose of brevity the judicial behavior has been disused under the following heads-

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473 A.I.R1970s.c 564
(a)-RIGHT TO PRIVACY- Right to privacy' is not guaranteed right under our constitution: Subbarao, J - Held that Right to privacy is an essential ingredient of personal liberty\textsuperscript{475}. The Supreme Court declared that telephone tapping violates the right to privacy which is a part of Article 21, only with Article 19(1) (a)\textsuperscript{476}

(B) RIGHT TO SHELTER: The Judicial Activism of the Supreme Court has contributed in making the right to shelter is a fundamental right under Article 21.

(C) RIGHT TO FREE LEGAL AID: Article of 39A of the constitution of India which is part a of II1, IV of the constitution enshrining the Directive principles of state policy provides that the shall secure that the operation of the legal system promotes Justice, on the basis of equal opportunity, shall in particular, provide free legal aid by suitable legislation- The Supreme court has established that right to free legal aid at the cost of the state to an accused who cannot afford legal services for reasons of poverty, indigence or in Communicated situation is part of fair, just, and reasonable procedure under Article 21\textsuperscript{477}.

(D) RIGHT TO EDUCATION: A constitution bench of SC has drawn the parameters, of the right to education from Articles 41 and 45 fallowing these Article in that order the supreme court held that every

\textsuperscript{475} Karak Singh v. State of U.P. AIR 1963 SC 1295
\textsuperscript{476} P.U.C.L. v. Union of India AIR 1997 SC 568.
citizen of this country has a right to free education until the completes the age of 14 years. The right to primary education only is a fundamental right implicit under Article – 21-A of the constitution478.

**(E) RIGHT TO LIVELIHOOD.** The Supreme Court has clearly held that right to livelihood is included in the right life because no can live to without the means of living that is the means of livelihood479

**(F) RIGHT AGAINST CRUEL AND IN HUMAN PUNISHMENT:** In the matter of inhuman treatment in custody Supreme Court held that the use of third degree method by police is violative of Art 21 and directed the government to take necessary steps to educate the police so as to include a report for the human person.480.

**(G) RIGHT TO PRISONERS:** There are many Rights to prisoner such as-

A. Right to speedy Trial.
B. Right to fair Trial.
C. Right against illegal detention.
D. Right against Torture and custodial Death.

of the pioneering decisions awarding monetary compensation for violations of fundamental rights of the Supreme Court held that the illegal detention of a person after his acquittal in Trial for 14 long years.

Violated his fundamental Right Under Article 21 of the constitution of Indian. Any person, whose fundamental rights have been violated by state action, can move either the High Court under Article 226 or Supreme Court Article 32 for monetary compensation 481.

(H) RIGHT AGAINST SEXUAL HARASSMENT OF WORKING WOMEN:
In a landmark judgment The Supreme Court has laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work. Until a legislation is enacted for the purpose. The court held that it is the duty of the employer or other responsible person in work place or other institution. Whether public or private, to prevent sexual harassment of working women 482.

1. JUDICIAL ACTIVISM a PANACEA FOR AN ACHIEVING SOCIO-ECONOMIC GOALS:

Justice is not for Justice’s sake only, but includes social, Justice, Socio-economic Justice and distributive Justice anything done without Jurisdiction is a nullity. Judicial Activism is a person to Lawlessness of the state, which is the most intransigent problem of the people of India 483. The supremacy of each of three organs of the state i.e. legislature, executive and judiciary in their respective field of operation needs to be

482 Vishaka v. State of Rajasthan AIR 1997 SC 3011
483 Subrahmanyam A Judicial Activism A Panacea for Achieving Socio - Economic Goads' AIR 2001 Journal No. 300 Vol 88
emphasized. The power of Judicial Review of the executive and legislative action must be kept within the bounds of constitutional schemes so that there, may be not any occasion to entertain misgiving about the role of Judiciary in out stepping its limits Unwarranted Judicial Activism being very after talked of in these days484.

(J) JUDICIAL ACTIVISM THE NEED FOR CAUTION:

Former chief Justice A.S. Anand in his power millennium Law Lectures while defending Judicial Activism, emphasized the need for caution to ensure that activism does not become "Judicial Adventurism" otherwise he warned It might lead to chaos and people would not which origin of the state to look for to stop Abuse and misuse of power485. The court has the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the constitution to accommodate the challenged violation486. The people of India look upon the Supreme Court as an Instrument of Social Justice and a guarantor of the great ideals enshrined in the constitution487.

484 Ostwald Dilip "Abhay Kumar" Judicial Activism versus Doctrine of separation of power AIR Sept. 2009 Journal143.
(C) **SOCIAL JUSTICE REGARDING JUDICIAL REVIEW:**

Judicial review is an essential component of the rule of law, which is a Basic feature of the Indian constitution. Every state action has to be tested on the anvil of rule of Law and exercise is performed, when occasion arises, by reason of a doubt raised in that behalf in the courts. This well established constitutional principle of the existence of the power of Judicial Review and its need was indicated by Chief Justice Marshall.488.

1. **Meaning of Judicial Review:**

When the validity of an act is challenged before a Court of law, the Judiciary is required to consider the constitutionality of the statute on the touchstone of the parameters fixed by the constitution. It is no refection either on the government or on the parliament that their views as to constitutionality are again being reviewed by the Judiciary this is a legitimate exercise by the Judiciary of its Constitutional obligation by virtue of the role assigned to it in the constitutional scheme. The gaps in the existing law, which are filled by updating the law, result in evolution of Juristic principles, which in due course of time get incorporated in the land and there by promote the growth of Law489.

488 Marshall in marbury v. Madison 2L 1803 Ed. 60 137
489 justice B N.SHRI Krishna-Innovation by supreme court of India to accesses to justice .10no 2003p.12
II. *Background of Judicial Review:*

A. **England:** In England, there prevails parliamentary Supremacy Under which parliament can make any law. It can exclude Judicial control altogether. But the Judicial Trend in England is more in favour of judicial review than administrative finality\(^{490}\).

b. **America:** In America Absolute Exclusion of Judicial Review by statute is impossible as regard the rights to judicial.

c. **INDIA.** The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of Law would become a Tensing illusion and a promise of unreality. If there one feature of our Constitution which than any ether, is basic and fundamental to the maintenance of Democracy and rule of Law. It is the power of Judicial Review and it is unquestionably part of the basic structure of the constitution. The judicial Review is conferred on the judiciary by Article 32, and 226 of the constitution\(^{491}\).

III. **Judicial Review is an essential compound of Rule of Law:**

The most significant segment of Administrative Law is that pertaining to judicial review of administrative Action. The whole law of judicial control of Administrative action is based on the assumption that real Kernel of Democracy lies in the courts enjoying the Ultimate authority.


\(^{491}\) Bhagwati J. "In Minerva Mills v. Union of India AIR 1980 SC 1789 1825.
To restrain the exercise of Absolute and Arbitrary power. The Absence of some kind agencies, there is danger that they commit excesses and degenerate into democratic constitution and the concept of rule of Law\textsuperscript{492}.

**IV. Judicial Review is not an Unguided Missile:**

Judicial Review is not an unguided missile. Court does not interfere in policy matters. The Supreme Court has held that court will not interfere unless the government policy is inconsistent with the constitution or Arbitrary. But in a country where there is a written constitution; judicial review means supremacy of the constitution. In a rule of Law society the law has always recognized the power of the Judiciary to review legislative and executive Acts. In each society, there exists conflict between power and Justice. Whenever there is power, there are excesses in the exercise of power. It is on this assumption that the validity of statutes and decisions of the executive authorities and Administrative Tribunals have incessancy to review by the Judiciary so as to ensure adequate protection in safeguarding the rights of citizens.\textsuperscript{493}

**V. Reasons for growth of judicial review:** While some strands of Judicial Activism in India could be observed since the early onwards through the debate that persisted between the precedence of fundamental right part III of the Indian constitution and the Directive principles of state policy of part IV, which pronounced through various Judgment VIZ.

\textsuperscript{492} Foot note 482 P. 12
\textsuperscript{493} Federation of Railway officers Association v. Union of India AIR 2003 SC 1344.
Ajar Kumar VI state of Rajasthan case 1954; Golak Nath v. State of Punjab 1967 Keshavananda Bharti v. State of Kerala - 1973 Minerva Mills v. Union of India 1980. The result of all these Supreme Court Judgment is that Directive principles of state policy article 39(b), (c) would have precedence over the fundamental rights in matter of socio-economic measures; also the purview of Judicial Review has been declared to be a basic feature of the constitution.

- The progress of the society is dependent upon proper application of law-
- Responding to the changing times and aspirations of the people.
- Free Legal service to the poor and needy was an essential element of the reasonable fair and Just procedure.
- The courts have thus, been making judicial intervention in case concerning violation of human rights as an ongoing judicial process.
- The court where the infringement of fundamental right is established.
- In view of the operations by the courts on wider canvass of Judicial Review a potent weapon was forged by the supreme court by way of PIL also known as Social Action Litigation

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Judicial Creativity of this kind has enabled realization of the promise of socio-economic Justice made in the preamble to the constitution of India.

VI. The scope of Judicial Review in India:

The scope of Judicial Review generally speaking is in three specific areas-

1) Judicial Review of Legislative Action.
2) Judicial Review of executive or administrative Action.

Under our Constitution distribution of legislative powers between the parliament and the states. Various heads of legislations are contained in three lists Union, State, and concurrent contained in seventh schedule to the constitution. The enactments of legislatures can be challenged on the ground that they are in the conflict with the chapter III of the constitution or are otherwise Ultra wires the constitution.495

Article -13. In fact for provides for the Judicial Review' of all legislations in Indian past as well as future. This power has been conferred on the High Courts and Supreme Court of India; Article (226, Article 32) which can declare a Law unconstitutional if it is inconsistent with any of the provisions of part III of the constitution.496

Judicial Review” has become an integral part of our constitutional system and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of the provisions of statutes. If the provisions of the statutes, are found to be violative of any of the Articles of the Article of the constitution which is the Touchstone for the validity of all laws. The supreme court and High Courts are empowered to strike down the said provisions. It has been held that Judicial Review is the basic features of the Indian Constitution and therefore. It cannot be damaged or destroyed by Amending under Article 368 of the Constitution.497. Because the power of Judicial review of legislative action as vested in the High Court under Article 226 and in the Supreme Court under Article 32 is the part of Basic structure of the Constitutions.498 A divided verdict on an undivided social justice measure is about the validity of the central educational Institutions (Reservation in Admission) Act 2006 and the constitution (Ninety third 93rd Amendment Act 2005 which Introduced clause (5) in Article 15.

Article 15(5) reads-Nothing in this Article or in Sub-clause (g) of clause (1) of Article 19 shall prevent the state from making any special provision by Law, for the Advancement of any socially or educationally backward classes of citizen or for the Advancement of any socially or educationally backward classes of citizen or for the schedule castes or scheduled tribes

in so far as such special provisions relate to their admission to the educational Institutions, whether aided or unaided by the state, other than minority educational institutions referred to in clause (1) of Article 30.499.

Supreme Court upholding the Basic structure Doctrines and authority of the Judiciary on Review any such laws which destroy or damage the basic structure as indicated in Art 21 read with art 14, 19 and the principles underlying there under even if they have been put in 9th Schedule after 24 APR. 1973. The date of the Judgment in Kesavananda Bharti's case. The Judgment Upholds the Right of Judicial Review and the supremacy of Judiciary in interpreting the laws. Which have been constantly under threat500?

The supreme court without foreclosing the list of Basic Structure found following to be life and Blood of the constitution -

- Supremacy of the constitution.
- Rule of Law.
- The principles of separation of powers.
- Judicial Review Art 32, 226.
- Freedom and dignity of the individual.
- The concept of Social and economic Justice to build a welfare state part IV in Toto.
- Effective access to Justice.

499 Ashoka Kumar Thakur v. Union of India. AIR 2007 S.C
500 I.R. Coelho v. State of Tamilnadu 2007 SC 861
Judicial review of executive or administrative action:- Judicial Review of administrative action under Art 32 and 226 of the Indian constitution is valid; Judicial Review of Administration action is an essential part of the rule of law\textsuperscript{501}.

The judicial review of Administrative action and Judicial Review of legislation stand on a different footing what is permissible for the court in case of judicial review of Administrative action may not be permissible while exercising the power of judicial review of legislation\textsuperscript{502}.

\textbf{VII. Social Justice Dimensions of Judicial Review:}

Judicial review in a democratic constitution must also not supplant the normal processes of government in which the representatives, of the people make choices and policies which may not be deal or correct. But which can be the people themselves what is not within the bounds of Judicial Review by courts cannot be within their reach because its comes under description of public interest litigation before it once these fundamentals of Judicial review are born in mind by courts in exercising PIL Jurisdiction, It can be a useful Judicial process benefit of the public particularly of the poor, the indigent and marginalized section of society. Whose fundamental rights are to be protected court orders? It is the constitutional duty of the courts to safeguard and enforce the basic

\textsuperscript{501} State of Bihar v. Subhas Singh AIR 1997 SC 1390
the liberties and rights of individuals. Thus judicial review implies the power of the courts to examine the legality and constitutionality of administrative acts of the officials and also the executive orders and the legislative enactments. This is very important method of Judicial Control.

VIII. Exclusion of Judicial Review:

Judicial review of administrative action may be excluded by legislation. It is commonly understood that any judicial review is bound to delay or impede the prompt execution of legislative policy. Executive is the only machinery to initiate administrative action and since it is the only body responsible for administrations, it is naturally May not like much judicial interference. For a very smooth functioning of the executive it, therefore, becomes necessary that some statutory or otherwise provisions are made to exude Judicial Review in suitable case. The usual modes of statutory exclusion are twofold.

1. Where the statues provide an administrative act, or decision as final or conclusive.

2. Where the same result, is sought to be achieved more directly, by Negative provision barring particular remedies or providing that the administrative decision shall not be liable to be questioned in any court or in any legal proceedings.

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503 Tehmtan R. Andhyarjina "Judicial Activism in Public Interest Litigation Halsbary's Law monthly 21/1/009 P1
504 Dr. U.P.D. Kesari - Administrative Law C.L.P. edition - 17 2008 P. 361
3. are expected to function harmoniously within their Boundaries the Supreme Court checkmates them however the parliament has the power of the constitutional amendment to nullify of judicial review, if it feels that social and economic Justice to the people demand.

(E) Social Justice Throught The Curative Petition:

A Judgment for reaching consequence a five judge constitutions bench of the Supreme Court has unanimously held that in order to rectify gross miscarriage of Justice in its final Judgment which cannot be challenged again the court will "allow" curative petition by the victim of miscarriage of justice to seek a second review of the final of the court. This judgment was given in a Bench of petitions on the question whether a petitioner could question a final judgment even after the dismissal of a review petition.

A curative petition under its inherent power to prevent flood gates of unnecessary petitions seeking their second review-  

1. Court reaffirms that litigants are barred on challenging final decisions.

2. But In cases of miscarriage of Justice it would be its legal and moral obligation to rectify the error.

3. The curative petition must accompany certification by a senior lawyer relating to the fulfillment of the regiments.
4. The petitioner will have to establish that there was genuine violation of the principles of Natural Justice and fear of the bias of the Judge and Judgment that adversely affected him.

5. The petition is to be sent to the three Judges of the Bench who passed the Judgment affecting the petition.

6. If the majority of the Judges this bench conclude that the matter needed hearing before the same bench as for as possible which may pass appropriate order it should be listed.

7. They could also impose exemplary costs of petitioner if his pleas lacked merit.\textsuperscript{505}

**Constitution of India 1950 Article 32.** - Decision of Supreme Court which has attained finality could not be subjected to Judicial Review under Article 32-Found that the petitioner, Appearing in person has not been able to make out any specific grievance in respect of relief could be granted to him. Criminal miscarriage, petition as well as the write petition dismissed. Access to Justice, basic to the implementation of every human right, makes the judicial role Pivotal to constitutional functionalism. Now that public interest litigation has broad based democratized and people oriented viz a locus standi and affirmative Action, the Judges have to be vigilant, well informed about International treaties and double speak globalization and privatization processes and

\textsuperscript{505} Dr. J. N Pandy J”Constitutional of India Edition 43 P. 344.
pretences which are in compatible with the human rights and social Justice norms of our constitutions must be flushed out by creative writs of the courts\textsuperscript{506}.

Social Justice through public interest litigation and Judicial Activism, Judicial Review and curative petition or second Review is the phenomenal success story of our time. Because No society can survive without a fair justice system. Social Justice in plural dimensions is the signature tune of the constitutional order\textsuperscript{507}.

\textsuperscript{506} Justice V.R. Krishna Ayer, "Legally speaking Judicial Activism" progressions and Transgressions at P.