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CONCEPTS OF JUDICIAL ACTIVISM

SUPRITA ANAND, STUDENT, NOIDA, INDIA

ABSTRACT

“The role of judiciary in interpreting the existing laws according to the needs of the times and filling the gaps appears to be the true meaning of judicial activism”

- Justice J.S. Verma

The above quote indicates that the judicial activism is the process that has to be a continuous never ending process which necessarily has to be practiced in the widest interest of the citizens. The research paper explores the idea of judicial activism and its function in India's judicial system and justice administration in the country. The Indian Supreme Court's ruling on. The Supreme Court of India from being a court of positivist ideology has evolved and transformed into an activist court over the last seventy four years of its establishment. The pertinent point here is to note that the apex court has not suddenly started operating and acting as an activist court, but it took a long journey for the apex court to acquire the current position, it cannot be denied that in the journey of it being an activist court, the Supreme Court of India has to go through several stress and strain. The walk from a positivist court to an activist one was slow and undetectable one, the political changes in the Indian democracy has worked in the synchronisation with the transformative role of the court. Judicial activism is not an exception but a common phenomenon and judicial activism is the ultimate by-product of the judicial review, the functioning of the judicial activism shall always be in the limits of the democracy. These limits are drawn by the institutional feasibility, the legality of the intervention by judiciary and the limitations of the court's resources. Since through the concept of judicial activism, the court transforms the power relations between the different organs of the government, through the judicial activism the constitutional court becomes a significant democratic centre of power.

KEYWORD: JUDICIAL ACTIVISM, ARTICLE 131, 32& 226.

INTRODUCTION

The term 'justice' has no end to it from which it can be inferred that every individual has right on justice irrespective of it being rich or poor, strong or weak. Since the 1970s, most social movements in India have actively used the courts particularly the Supreme Court of India as the part of their struggles. This has been possible due to the activism of the constitutional courts, specifically talking about their active consideration regarding the matters in the form of public interest litigation, using it as one of the instruments the court freed itself from the old age traditional constraints of it being a court which only participates in the democracy in a technocratic manner and reached out to the vulnerable and disadvantaged sections of the society. The Supreme Court of India has adopted a forward looking approach over the years, especially with regard to the socio-economic conditions prevailing in the country. There are in fact two approaches which characterise the functioning of the Supreme Court in every democracy, either the court adopts a proactive approach or opt for a passive role in the democracy. In India like country, the judge's approach is a proactive one to bring about social and economic change in the society, bring improvements in the living conditions of the people, and provides people with basic human rights and to administer justice in the society. With a view to make the basic human rights a meaningful and effective to the people, who are deprived and exploited the Supreme Court propounded a new principle of Judicial Activism. Judiciary is the third branch of the government which is authorised to provide justice to the citizens of India. Courts are the saviours of a citizen when his fundamental and legal rights are violated; the traditional method of justice delivery has made it difficult for the disadvantaged and poor of the society to access justice which led to the deprivation of millions of people from the justice administration and in this dark reality the concept of judicial activism acted to be a ray of hope for such vulnerable sections and it gave new dimensions to the judicial process and greatly impacted the administration of justice in the country.

Judicial activism is the idea that the Supreme Court can and should interpret the constitution and other statutes creatively. Judicial activism holds that the judges assume a role in which they can act as an independent policy or as the trustees of a society which is beyond their traditional positivist role.

*"Acc. to former Chief Justice of India A.M. Ahmadi, Judicial Activism is a necessary adjunct function since the protection of public interest as opposed to private interest happens to be its main concern."*¹

¹ A.M Ahmadi , 'Judicial Process: Social Legitimacy and Institutional Viability' (1996) as cited in the Sathe, S.P, "Judicial Activism in India", Oxford University Press, 2007, pno.25

a. Origin of Judicial Activism

Arthur Schlesinger Jr. for the first time introduced The term “judicial activism” in a January 1947 Fortune magazine article, “The Supreme Court: 1947”. The phrase has been controversial since its inception. An article by Craig Green, “An Intellectual History of Judicial Activism”, is critical of Schlesinger's use of the term: “Schlesinger's original introduction to judicial activism was doubly hazy: not only did he fail to explain what activism meant but he also refused to even comment on whether the idea of activism is good or bad”. Even before the phrase was first introduced, the general concept for activism already existed. For instance, Thomas Jefferson noted the “*despotic behavior*” of the federal judges, in particular manner.

In ‘*Marbury vs. Madison 5 U.S. (1 Cranch) 137 (1803)*’ the US Supreme Court for the first time strike down the action of congress by upholding it to be an unconstitutional action, Though the US Constitution has not mentioned it explicitly that the Supreme Court of US in its power can invalidate any act of congress if they contradict to any of the constitutional provisions of US. In the case of Marbury vs. Madison, the Chief Justice in US, *Marshall* held that these powers are the implied power of the Supreme Court, though the particular power assertion was severely criticized back then. According to the critics it amounted to grabbing of power by the court. Laws made by an elected legislature to be censored by an institution which is an unelected one, which is the court was the main thrust of the criticisms made. *Hamilton* and *Jefferson* were in the favour of application of such power by the court. *Hamilton* defended the court’s power in a manner which means that: *The judiciary ought to regulate the decision of the legislature in which the legislature attempts to declare its will, which are in contradiction to the will of people, which are declared with the help of constitutional provisions, the judges are to be governed by the constitutional provisions rather than the will of legislature and shall take decisions in sync with the fundamental law of the land rather than which are not the fundamental ones.*² Speaking on the inclusion of the Bill of Rights in the Constitution *Thomas Jefferson* said:

*‘In the arguments in favor of the Declaration of Rights, you omit one which is very important to me; Legal scrutiny which it puts in the hands of the Judiciary. It is a body which, if made independent and kept strictly within its department, deserves great confidence in its learning and integrity.’*³

Judicial activism has no permanent ‘*essence*’ and its history is only a history of contingency. ‘Judicial activism’, in my view, is a reservoir of emergent judicial, and judicial, reactions. Indeed, in my perception it is a judicious response to diverse narratives of routine as well. The story of judicial activism can be said by modes which are enabled by the constitution of uncertainty, this inherent ‘uncertainty’. Put another way, what we consider as ‘judicial activism’ is not simply reducible to theoretical narratives of judicial performance, as important as these

² 5 U.S. (1 Cranch) 137 (1803)

³ Thomas Jefferson on Democracy, ed Saul K. Padover, A Mentor Book Published by the New Library, 1939, pno. 49 as cited in the Sathe, S.P, “Judicial Activism in India”, Oxford University Press, 2007, pno. 33

are. Judicial activism is not a matter of gradual affirmation of judicial power over other domains and instruments of state power; it is also about the development of new constitutional cultures of power. Not a panacea for the country's constitutional ills just like this cancerous body offers a kind of chemotherapy for politics and with changing contexts of domination and resistance, the remedial uses of judicial power also change.

The following trends were the reason for the emergence of court as an activist or the concept of judicial activism which includes the rights to be heard in the administrative process to be expanded, limitless delegation, Administrative actions to be brought under the purview of judicial review, open government to be promoted, contempt power to be exercised indiscriminately, exercising the jurisdiction where it not existed, standard rules of the interpretation to be modified and given new paradigm so that the objective of social, political and economic justice is achieved. The judicial activism is a mechanism to review the actions of the state in a democracy, the power of review is dwelled on the court under several articles like 32, 226, under 131-136, 143 and 246.

CONCEPTS OF JUDICIAL ACTIVISM

Law making by the courts can be said to be as one of the many forms of the concept of judicial activism, totally differing from the passive role played by the judiciary. The proactive approach to judicial legislation suggests interpreting constitutional and statutory provisions in such a way as to meet the then contemporary requirements or laying down a new law, whether procedural or substantive, through laying down the guidelines or directing orders. In contrast of its old conservative or traditional roles in which the courts were following the technocratic approach of not entering into the law making domain by providing a new dimensions to its role of interpretation of any constitutional provisions or any statute ignoring the need of the hour.

It has to be said that the concept of Judicial Activism has to be functioned mainly on two theories:

- a. Theory of Social Want.
- b. Theory of Vacuum Filling.

1.2 THEORY OF SOCIAL WANT

Legislature to make and enact laws is the constitutional prerogative. There can be instances in which the enactments of the legislative organ prove not to be sufficient or are inadequate in the process of justice administration. Agreed or not it is said practically that the needs of a society where change is the only constant the laws will still be inadequate to it even though the law making bodies like Parliament and state legislature makes law without stopping for 24 hours a day and 365 days a year.

The theory of *social want* comes into play if the legislature through its enactments fails to cater the problems arising in the society and laws are not sufficient in providing the mitigation to it, then judiciary comes into the picture and it undertakes the duty of catalyzing the transformation in the society and provides justice administration to the parties aggrieved. The beauty of social mobilization through the judiciary made laws is that the aim of it is evolutionary and developmental and not revolutionary in nature and that is why it is accepted widely. The problems in forms of various cases which comes in front of the judiciary needs the approach of an economist, sometimes the problems are scientific in nature, or at times it needs an insight which is to be political in nature or of an historian; there cannot be a singular approach towards the matter and this sometimes works in addition of legislative duties to the organ of judiciary. In the performance of its legislative duty the judiciary various times has rewritten the constitution virtually and has infused the existing enactments and laws with the necessarily required lifeblood through its own way of interpretations. The Supreme Court in following ways took up the role of an activist in response to the social wants generated in the country:

a. CCTVs installation in the Police Stations

The Supreme Court of India in order to set up an effective mechanism to prevent the custodial violations of the civil rights, death and tortures happening in the police stations, directed the Union Home Ministry and all the states along with the Union Territories about the need to set up CCTVs of high resolution and equipments for video recording, which the direction states to be functional in all the police stations across the country for 24 hours a day. Various activists working in the public spirit believes that these guidelines have an impact which will be far reaching on the various agencies and will hold them accountable in events of violation of rights of the victims who face the custodial violence.

In 2018 in response to the case of '*Shafiqi Mohammad vs State of Himachal Pradesh*' the Supreme Court in the above mentioned case directed the MHA to set up committee suggesting to take steps for the introduction of the concept of videography in the process of investigation of the crime scenes in order to strengthen the *rule of law* in the country. The MHA committee suggestions to be implemented as Plan of action regarding the crime scene investigation videography by setting up of COB, the suggestion was also made to set up a body which is independent in nature in every state to consistently studying the camera footage and to publish its report in a periodic manner⁴.

The Ministry of Home Affairs constituted the CoB on May 9, 2018, "to oversee the implementation of the use of photography and videography in crime scenes by the State/UT Government and other central agencies, to suggest the possibility of setting up a "Central Server for implementation of videography, and to issue appropriate guidelines to ensure that the use of videography becomes a reality in a phased manner". It directed

⁴ 2018, 2 SCC 801

all central agencies, states and union territories that they should effectively implement the guidelines for use of photography and videography at crime scene and submit report on the action taken.

In the judgment of '*Paramvir Singh Saini vs. Baljit Singh & Ors,*' Bench of Justice R.F. Nariman, K.M. Joseph and Aniruddha Bose released a 20-point charter of guidelines on 2 December, detailing the importance of installing CCTV cameras in all police stations to prevent misuse. The bench also issued directions on the issue of status and quality and storage capacity of such cameras and video recording of crime scenes, besides ordering formation of monitoring committees at various levels including districts.

According to the court, the State Level Monitoring Committee (SLOC) should consist of the chairperson or member of the State Commission for Women, besides top officials of the home and finance departments and the director general and inspector general of police. The District-Level Monitoring committee (DLOC) should consist of senior district officers, district magistrates, superintendents of police and mayors or heads of district panchayats.

The court directed that the SLOCs be mandated to facilitate the procurement, distribution and installation of CCTVs, obtain budgetary allocations, monitor and inspect the maintenance of CCTVs and equipment, and redress grievances, in addition to the Supreme Court's mandate in these matters. Instructions must be followed, and get monthly reports from DLOCs.⁵

The abovementioned judgment of the Supreme Court came out to be an important and necessary one in order to prevent custodial torture and to provide the surety of no impartiality and abuse of power during the process of investigation. In furtherance to it directions have been made applicable to all the agencies which have the power to conduct inquiries and to arrest along with the police stations. The agencies include agencies like CBI, NIA, ED, DRI, SFIO, NCB etc.

b. 'Right to Die' made easier by the apex court

In the case of '*Aruna Ramchandra Shaug vs Union of India*' the apex court held that under Article 21 which provides the right to life does not cover the right to die and hence the concept of active euthanasia by injection of any lethal substance was vehemently rejected by the Supreme Court, however the court allowed the withdrawal of life support of a person in permanent vegetative state and passive euthanasia was allowed and Supreme Court laid down several guidelines for the passive euthanasia.⁶

'Whenever an application for passive euthanasia is filed in the High Court, the Chief Justice of the High Court shall constitute a Bench of at least 2 judges to decide the issue. The opinion of a committee of 3 eminent doctors will be taken by the Bench. The doctors in the committee are to be nominated by the Bench after

⁵ (2021) 1 SCC 184

⁶ AIR 2011, S.C 1290

holding discussions with the appropriate practitioners. It is the duty of the Court to issue notices to the State, relatives, relatives and friends and also provide them with a copy of the report made by a committee of doctors. After all these processes, the court should pronounce the verdict. These guidelines will be followed until the legislature takes the matter into its own hands'.⁷

In the judgment of '**Common Cause, A Registered Society vs. Union of India**' the 2018 judgment noted that unlike other countries, 'there was no legal framework in our country with regard to advance medical directives'. However, a bench headed by the then Chief Justice Dipak Misra said, it was the constitutional obligation of the court to protect the right of the citizens under Article 21 of the Constitution. Therefore, it was held, '*An advance medical directive would serve as a useful instrument to facilitate the flourishing of the sacred right to life with dignity. The said directive, we feel, during the relevant time of need but it will remove many doubts. Besides, it will strengthen the mind of the treating doctors as they will be in a position to be satisfied that they are acting legitimately*'.⁸

The Supreme Court in a 2018 judgment amended the directives relating to advance medical directives, or living wills, to recognize the right to die with dignity as an inalienable aspect of the right to live with dignity under Article 21 of the Constitution. Recognition was granted and accordingly, upheld the legal validity of passive euthanasia. Justice K.M. Joseph had admitted in January 2023 that the earlier order had resulted in 'insurmountable' hurdles which prevented the directions from being implemented. For example, the court required advanced directives to be countersigned not only in the presence of two attested witnesses, preferably independent witnesses, but also by a Judicial First Class Magistrate. 'This clause has led to diluting if not completely defeating the very purpose of issuing the directions of this Court,' the bench said. Several other aspects were also highlighted in the application, in response to which the court issued a detailed order suitably modifying the existing legal requirements for withdrawal of treatment being given to terminally ill patients.

c. Guidelines laid down on the issue of Honor Killing

'**Lata Singh vs. State of UP & Ors**' was one of the earliest cases where a Division Bench of the Supreme Court found that no offense was committed by a couple marrying outside their caste because there is no prohibition on inter-caste marriage under Hindu personal law i.e. the Hindu Marriage Act 1955. Genocide Act or any other law interestingly, the court said that if parents do not approve of the choice of partner of their children, the maximum recourse they can take is to cut off social relations with them. It directed police personnel throughout the country to ensure that inter-caste couples are not subjected to any form of violence and, in such a situation, to initiate criminal proceedings against such persons⁹. Later, '**Arumuga Sarval vs. In**

⁷ Aruna Ramchandra Shaubaug vs Union of India, AIR 2011, S.C 1290

⁸ AIR 2018, SC 1665

⁹ (2006) 5 SCC 475

State of Tamil Nadu’ dealing with a caste conflict case, the SC held that ‘Khap Panchayats are similar to kangaroo courts which are issuing decrees against inter-caste couples’ and is totally illegal And it should be ruthlessly abolished in an appeal filed by an accused against his conviction for murder.¹⁰ In the case of his daughter, the Supreme Court in *‘Bhagwan Das vs. State (NCT of Delhi)’* held that honor killings fall in the rarest of rare category so that it acts as a deterrent to such dishonorable acts.¹¹

In *‘Vikas Yadav v. State of Uttar Pradesh & Ors.,’* while deciding the quantum in a case of honor killing of a sister for the partner of her choice, the Court categorically held that a woman’s liberty and freedom cannot be infringed upon by ‘self-imposed honour’.¹²

Honor killing is the part of honour crimes was held by the Indian Apex Court in the landmark case of *‘Shakti Vahini vs. Union of India,’* the court recognised that ‘torture of any form or any form of ill treatment which amounts to the exploitation of any person due to his or her choice in relation to the event of love or marriage by any assembly, whatever nomenclature the relation assumes is illegal in nature and cannot be allowed even for a moment’. The apex court relying on the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011*, expanded the definition of honor crimes, that cultural, religious, social or traditional norms or customs of proper behavior by a person- Any offense due to violation of customs is liable to be prosecuted. It recognized the individual's choice to choose each other as life partner as a distinct part of dignity under Articles 19 and 21 of the Constitution. The court in order to deal with the honour crimes issued detailed preventive, remedial and punitive guidelines, including the identification of districts where there is prevalence in honor killings, providing shelter to couples for a month, unlawful assembly to be banned, appropriate departmental action against officials has to be taken, law enforcement agencies to be sensitized, and a 24-hour helpline numbers has to be set up, among others.¹³

d. Guidelines laid down in respect to Smoking at Public Places

As the Act Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 and the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001 aimed to deal with tobacco products and advertisements, the health effects of smoking in public places were discussed but failed to be banned. In an effort to protect the health of non-smokers, the Supreme Court banned smoking in public places, saying it was an indirect infringement of the right to life of passive smokers who are helpless to the air pollution caused by smoking.

¹⁰ (2011) 6 SCC 405

¹¹ (2011) 6 SCC 396)

¹² (2016) 9 SCC 541

¹³ 2018 7(SCC) 192

e. Liquor Vends near the Highways to be shut

In the decision of '*State of Tamil Nadu & Ors, vs. K. Balu & Anr*' considering the increase in the number of road accidents due to driving under the influence of alcohol and its negative effects on both individuals and society, the Supreme Court observed that no amount of compensation through monetary means can mitigate the loss and pain. Issued directions for closure of all liquor vends such as bars, restaurants, shops etc. located within 500 meters of the outer edge of national/state highways and the ban extended to highways passing through cities/towns. Along with this, the states were barred from granting new licenses under Article 142 of the Constitution. In consideration to the various issues of drunken driving and its social, economic and legal consequences the apex court justified its decision.¹⁴

f. The 'caged parrot' to be freed: Supreme Court's guidelines

In the year 1991, Ashfaq Hussain, an alleged official of a terrorist organization named Hizbul Mujahideen, was arrested and questioned about his source of funds. He disclosed details of the involvement of a person named Surendar Kumar Jain and his brother, later when the Central Bureau of Investigation (CBI) raided his house and seized Indian and foreign currency along with two diaries. But the investigation remained incomplete due to political interference and pressure. In 1993, a PIL was filed by Vineet Narayan demanding an honest inquiry into the hawala affair, which had dangerous consequences for the country's security and finances.

The Supreme Court derisively referred to the CBI as a "caged parrot" and directed that the Central Vigilance Commission (CVC) should be given a supervisory role over the CBI. The Court, in exercise of the power under Articles 32 and 142 of the Constitution of India, issued certain guidelines to the CBI and the Enforcement Directorate and "invented the procedure for continuance of mandamus to bring the investigation on their proper track and proceed expeditiously, so that the culprits are brought to book. In addition, directions were issued to set up a nodal agency and prosecution agency for coordinated action in cases of political-bureaucratic criminal nexus.

A check was being kept on these government agencies by the Supreme Court to ensure that the agencies fulfill their part of the legal obligation and work towards eradicating corruption and upholding the law of the land.

g. Guidelines for Public distribution Schemes

People's Union for Civil Liberties filed a PIL stating that food grains in storage, especially in Food Corporation of India (FCI) godowns and which are in abundance should not be wasted and Below poverty line (BPL) should be distributed. The Supreme Court had asked the government to distribute the food grains rotting in government godowns to the poor and the hungry for free. In addition to which the apex court suggested:

¹⁴ (2018) 13 SCC 129

- that the government should increase the quantum of food supply to people living below the poverty line (BPL):
- the government should open shops of fair price for all 30 days in a month;
- The Government should set up at least one large Food Corporation of India godown in each State and if it is not possible to do so in each district, consider the possibility of setting up one godown in each circle of each State.

1.3 THEORY OF VACUUM FILLING

This idea contends that inaction, passivity, ineptitude, apathy, indiscipline, a lack of moral character, corruption, avarice, and disregard for the law on the part of the legislative branch and/or executive produce a power vacuum. Nature forbids a vacuum to last, thus the court, which is the only remaining organ must expand its authority and fill the gap.

The Constitution is not a temporary legal instrument that contains a set of laws that apply only to the present moment. It lays out guidelines for a brighter future and is designed to stand the test of time. As a result, it can be modified to address the numerous crises that face human affairs. A constitutional provision must be interpreted broadly and liberally rather than narrowly and restrictively in order to anticipate and account for changing circumstances and goals and prevent the provision from becoming rigid and incapable of adapting to new issues and challenges. When interpreting a constitutional provision, the judiciary's legislative role is of utmost importance since a constitution is written with a view towards the future and serves as a framework for the legal exercise of governmental authority. Its clauses are difficult to change or repeal. Therefore, it must be able to expand and change through time to adapt to new social, political, and historical circumstances that were frequently unanticipated by its creators.

According to the Supreme Court's ruling in **Vishaka vs. State of Rajasthan**, "we lay down the guidelines and norms specified herein for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose to ensure the effective enforcement of the fundamental human right to gender equality and guarantee against sexual harassment and abuse, more specifically against sexual harassment at work places". It is further stressed that this would be treated as the law declared by this Court under Article 141 of the Constitution. This is being done in the exercise of the power afforded under Article 32 of the Constitution for enforcement of the fundamental rights. Vishakha sparked a revolution.¹⁵ The Sexual Harassment Act was passed and put into effect after the women's movement worked tirelessly for sixteen years. The Supreme Court's Vishakha recommendations set the precedent for this legislation. It's true that sexual harassment in India continued to be a coded, taboo topic before Vishakha. On September 2, 2012, the Lok Sabha approved the

¹⁵ AIR 1997 SC 3011

Sexual Harassment at Workplace Bill. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 is the official name of the legislation.

In the case of *'Kalyan Chandra Sarkar v. Rajesh Ranjan AIR 2005 SC 972'*, the court acknowledged the significance of Article 142 of the Indian Constitution and stated that, in the absence of any statute, it has the authority to give directives and instructions for implementing and defending the fundamental rights. The court reaffirmed that any such directive, which fills the absence of legislative action, constitutes the supreme law of the land. However, such directives may be replaced by the Parliament.¹⁶

The Court has maintained that it only enacted laws through directives to fill in the gaps left by the legislature or the executive, and that its directives could be replaced by legislation passed by the legislature or, in the absence of legislation, by the executive, whose authority was coterminous with the legislature. Chief Justice Verma reaffirmed the following in *'Vineet Narain v. Union of India'*:

*'Since the executive's jurisdiction overlaps with that of the legislature, it is the executive's responsibility to fill any voids with executive orders. However, when the executive is unable to act for any reason, the judiciary must exercise its constitutional powers under the aforementioned provisions [Article 32 and Article 142 of the Constitution] to provide a remedy until the legislature fulfils its constitutional duties by passing appropriate legislation to overcome the legislative deficiency'.*¹⁷

a. Guidelines provided by the judiciary to fulfill legislative deficiency

In a letter to the Supreme Court, attorney Lakshmi Kant Pandey accused social organizations and private adoption agencies that helped place Indian children with foreign parents of negligence and fraud. His letter was based on an empirical examination done by The Mail, a foreign publication. The Court had to consider Section 8 of the Guardians and Wards Act, 1890, because there is no Indian statute governing the adoption of Indian children by foreign parents. The normative and procedural safeguards that must be observed in child adoption situations were spelled down in this. The ruling in *'Lakshmi Kant Pandey v. Union of India'* placed a strong emphasis on policies aimed at protecting young children from abuse and safeguards that can stop them from being forced into professions that are inappropriate for their ages and physical capabilities. The judgment was written by Bhagwati, and specific protections and processes have been mentioned in order to protect the youngster from abuse and human trafficking. He believed that only biological parents could provide children with a comfortable environment, but in the event that a kid is abandoned, efforts should be taken to identify the biological parents. Finding adoptive parent's within the child's country of origin would be the following step. The ideal option is to search for adoptive parents outside of the child's native country if such parents cannot be located within a maximum of two months. Before adopting a child to foreign parents, the social and child

¹⁶ AIR 2005 SC 972

¹⁷ AIR (1998) 1 SCC 226

welfare organization recognised by the government is required to take care of a number of other protections that are also stated.¹⁸The Court also went back to *Rasikal Chhaganlal Metha, In Re*, AIR 1982, where it was mandated that the Indian Council of Child Welfare or the Indian Council of Social Welfare have a copy of the home study report for comprehensive investigation of the social and financial standing of foreigners.

The court established rules for the River Ganga water pollution in the case of *'M.C. Mehta v. Union of India'*; attorney M.C. Mehta filed a writ petition in the manner of a mandamus to prevent leather tanneries from disposing of household and commercial waste and effluents in the River Ganga. In order to increase public awareness, the Supreme Court consented to the request that environment be declared a graded topic in schools and universities. It also established rules for preventing Ganga river pollution.¹⁹

The Supreme Court noted in the case of *'Union Carbide Corporation v. Union of India'* that the legal framework following the Bhopal tragedy in 1984 was insufficient to conduct a fair trial for Union Carbide. By passing the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985³¹, the Union of India overcame this obstacle by designating the Union of India as the victim's representation in accordance with the *parens patriae theory*. After that, the Supreme Court heard an appeal of this. The court ordered Union Carbide to pay \$470 million in compensation for all the damage caused by the industrial facility's discharge of the gas methyl isocyanate (MIC).²⁰In his well-reasoned ruling, Pathak, J. stated that it was the court's responsibility to seek urgent redress for the victims. He used the polluters pay principle to determine the amount of compensation, which amounted to US \$470 million.

The Supreme Court has received several petitions from both people and organizations in relation to the effects of Covid-19. Some prayers were trivial, while others called for advanced degrees of knowledge in the medical or other fields. To reduce mortality, the Supreme Court has issued some extremely audacious directives. These Supreme Court directives/orders for the control of the COVID-19 epidemic were also judicial law. The Supreme Court would eventually have to deal with it despite the fact that numerous petitions had been filed that either dealt with legislative or executive issues. In these petitions, different guidelines on issues like setting prices for testing and kit prices in the case of *'Shashank Deo Sudhi vs. Union of India'*, guidelines for equitable distribution of essential goods and services, preventing hoarding and illicit trade, ensuring the safety and well-being of children protection homes.²¹100 healthcare professionals in the case of *'Jerry Banait vs. Union of India'*²², and orders to the States/UTS to release prisoners; In the case of *'Odisha Vikash Parishad vs. Union of India (2020) 7 SCC 264'*, concern related to the Puri Jagannath Rath Yatra was raised.

¹⁸ (1984) 2 SCC 244

¹⁹ (1988) 1 SCC 471

²⁰ (1989) 2 SCC 540

²¹ (2020) 5 SCC 132

²² AIR 2020 SC 357

CHAPTER 5

CONCLUSION

The significance of judicial activism in any context truly has a big impact on how social, economic, judicial, and political life are shaped and can also have an impact on a specific society. This reality or authenticity, it seems, plays a particular function in relation to the common, impoverished people in general and the judicial system and the authorities therein in particular. The judiciary system is crucial to ensuring that everyone in the nation is treated fairly in the case of those with the history of India. The right to seek justice at all costs is guaranteed by the constitution. Justice must be served to all groups of people in the society as soon as possible because, as the adage goes, 'justice delayed is justice denied'. If this is the case, then justice must be served to all groups of people as soon as possible. Justice for the ordinary and poor people can still be delivered swiftly and quickly thanks in part to the idea of judicial activism in the legal process.

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