ROLE OF JUSTICE BHAGWATI IN JUDICIAL ACTIVISM

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"Life means not only physical existence. It means the use of every limb or faculty through which life is enjoyed. The right to life includes the right to healthy environment." -Justice P.N. Bhagwati.

Abstract

The Judicial Activism is use of judicial power to articulate and enforce what is beneficial for the society in the general and the people at large. *Black's Law Dictionary;* defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." This paper traces the evolution of judicial activism since Independence through pronouncements of the Supreme Court. After the independence, the judicial restraint was observed. In M.C Mehta v. Union of India, Supreme Court took keen interest in preservation and protection of the environment and concept of Absolute liability evolved; In Hussainara Khatoon v. Home Secretary, where the Supreme Court extended its reach into the socio-economic arena and the Maneka Gandhi v. Union of India, when issues of transparency and probity in governance led to interventions by the Supreme Court. In this research, researchers have gone through various secondary sources as well as cases decided by the Hon'ble Supreme Court, Law journals, etc.

KEYWORDS: Justice P.N. Bhagwati, Judicial Activism, Public Interest Litigation, Judicial Intervention, Judicial Overreach.

OBJECTIVES:

1. To study and analyze the development of Judicial Activism in India.
2. To study and analyze regarding the new dimensions of the concept of "*Locus Standi".*

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INTRODUCTION:-

In the dynamism of society and the rigidity of the codified laws, the judicial activism plays an important role to solve the problems of the society. The term "Judicial Activism" has a very wide scope and it is very difficult to define it in few words. The term "Judicial Activism" can be understood by studying the origin and historical development of the judicial activism. Although, the Constitution of India doesn't expressly provided the power of judicial activism to the judiciary. We saw that Indian judiciary has taken up a new route or adopted or carved out a new dimension, from its express powers implicit in the constitution, for solving out new challenges before it, for the sake of justice and equity.

Way back in 1893 Justice Mahmood of Allahabad High Court delivered a dissenting judgment which sowed the seed for Judicial Activism in India. In that case which dealt with an under trial who could not afford to engage a lawyer, Justice Mahmood held that the pre condition of the case being "heard" would be fulfilled only when somebody speaks.[3]

As Parliament enacts laws to heal the wounds of the society but in some circumstances the technicality of the codified laws, enacted Laws may scratch it instead of healing, and when judiciary acts in a active mode and give judgment on the basis of justice, rather than technicality of law, that activeness is known as Judicial Activism. Where the technicality bars those relief in particular cases ,where those cases demands justice, Sec. 482 of Code of Criminal Procedure,1973 or Sec. 151 of Code of Civil Procedure ,1908 empowers court to exercise inherent powers to serve justice, here the Parliament provides residuary powers to the judiciary to give judgments for the sake of justice, by using the inherent powers, the court can set aside all the provisions in which the power is provided, the context of the section states *"Nothing in this code shall be deemed to limit or otherwise affect the inherent power of the court"* empowers judiciary to take decisions to meet the ends of the justice.

In India, there are a lot of activist judges who gave their landmark judgments by way of interpreting, gave rulings on the basis of their personal opinion for the welfare of the society, to

[3] Bal Krishna, Ref. to the Article, When seed For Judicial Activism sowed, "The Hindustan times" (New Delhi) Dated: 01-04-1996, p.9.

name a legend, Justice Prafullachand Natwarlal Bhagwati who had contributed a lot in the society by giving landmark judgments in various aspects. He has introduced the concept of Public Interest Litigation, Absolute Liability and a lot of various rulings in their tenure according to the need and circumstances of the society. As society is developing day by day there are a lot of conflicts between the traditions and the modernity of the society, Justice Bhagwati never missed a chance for actively eradicating the problem faced in the society by considering the traditions as well as necessity of society.

He is also known as the pioneer of Judicial Activism, Father of Public Interest Litigation. He himself said that, he practically wrote the Chapter- III & IV of Indian Constitution.[4]

Origin of Judicial Activism in India

To trace the footprints of judicial activism in India, it is necessary to study its origin. The term "Judicial Activism" was introduced by Arthur Schlesinger Jr.[5] Later on it was criticized by Craig Green,[6] as follows: "*Schlesinger's original introduction of judicial activism was doubly blurred: not only did he fail to explain what counts as activism, he also declined to say whether activism is good or bad"*

After independence, India was largely influenced by the laws of British and the best instance of influence of British over Indian judiciary was observed in the case of **A.K. Gopalan v. The State of Madras**[7] it was a significant decision because it represented the first case where the court meaningfully examined and interpreted key fundamental rights enlisted in the constitution including article 19 and 21. A writ of habeas corpus was filed. The contention was whether under this writ and the provisions of The Preventive Detention Act, 1950, there was a violation of his fundamental rights which were Article 13, 19, 21 and 22. The counsel of the

[4] Mylaw.net interview on youtube:- https://www.youtube.com/watch?v=7AdgzBgNki8 Last accessed on 27-10-2017

[5] "Judicial activism" in a January 1947 Fortune magazine article titled "The Supreme Court: 1947.

[6] "An Intellectual History of Judicial Activism" Craig Green, August 2008, p. 4

[7] 1950 AIR 27, 1950 SCR 88

petitioner further argued the Preventive Detention Laws doesn't provide any kind of chance of being heard to the petitioner, which is the direct violation of the principle of *Jus Naturale,* i.e, the principle of natural justice, as in America, the phrase *"Due process of Law*" is provided under the Bill of Rights. In India, the phrase "*Procedure established by law"* should be treated as the phrase stated in American Bill of Rights. The Supreme Court in A.K Gopalan case took a narrow view regarding Article 21 and states that the phrase *"Procedure established by law"* shall not be treated as the phrase used in American constitution. The bench of Judges states, that the phrase used in Article 21 of The Constitution of India is merely talks about the procedure, It doesn't include any checkpoint over it because in India the natural justice doesn't furnish as such.

As, the case was held in 1950 the influence of British rule can be seen at that time. As there is a phrase *"Judges doesn't come from heaven they are also human beings"* So the influence of British rule can be traced over the Indian judiciary, as in England there is parliament supremacy the Judiciary of England only give decisions on the laws made by British Parliament even they are arbitrary in the nature.

In 1975 the emergency was imposed over the India under Article 352 of Constitution of India it is known as the "*darkest phase of independent India*" all the Constitutional machinery was failed at that point of time and Judiciary was criticized, the faith over the Judiciary was totally destroyed because of the Judgment held in the case of **ADM Jabalpur v. Shivkant Shukla**[8] Popularly known as Habeas Corpus Case, the respondents filed applications in different High Courts for the issue of writ of habeas corpus, The Proclamation of Emergency by the President under Article 352 of the Constitution made on 25 June, 1975. They challenged the legality and validity of the orders of their detention in all the case. On 27 June, 1975 in exercise of powers conferred by clause (1) of Article 359 the President declared that the right of any person including a foreigner to move any Court for the enforcement of the rights conferred by Article 14, Article 21 and Article 22 of the Constitution and all proceedings pending in any Court for the enforcement of the above mentioned rights shall remain suspended for the period during which the Proclamations of Emergency made under clause (1) of Article 352 of the Constitution on 3 December, 1971 and on 25 June, 1975 are both in force. The Presidential Order of 27 June, 1975

[8]1976 AIR(SC)1207

further stated that the same shall be in addition to and not in derogation of any Order made before the date of the aforesaid Order under clause (1) of Article 359 of the Constitution. It was held by the Court "In view of the Presidential Order dated 27th June 1975 no person has any *locus standi* to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by *mala fide*s factual or legal or is based on extraneous considerations".

In this case where all the detenues who were detained by *"mala fide"* intention the decision of non enforceability of Fundamental Right under Article 21 faces criticism in the societal strata and the faith over judiciary was started diminishing. Later on, the judiciary realized its mistake after the huge criticism this era is known as the darkest era of Indian Judiciary.

Justice P.N. Bhagwati was one of judge who gave Judgment in this case, later on, He apologized for his mistake, *mea culpa*, of Judgment given at the time of emergency[9].

Contribution in the scope of Article 21

In 1978, the landmark judgment had been given by the constitutional bench of C.J.I., Y.V. Chandrachud, P.N. Bhagwati, V.R. Krishna Iyer, N.L. Untwalia, S. Murtaza Fazl Ali and P.S. Kailasam, JJ., in the case of **Maneka Gandhi v. Union of India [10]**, the principle of " *jus naturale"* was introduced in India for the first time. The expression personal liberty in Article 21 is of the widest amplitude and it covers variety of rights which go to constitute the Personal Liberty of a man and some of them have been raised to the status of distinct Fundamental Rights and gives additional protection under article 19 the court further states that *"the attempt of the court should be to expand the reach and ambit of the fundamental rights, rather than attenuate their meaning and content by a process of Judicial construction".* In this case the court has given the widest definition of Article 21 of the constitution of India and court further states that Article

[9] Mylaw.net interview on youtube:- https://www.youtube.com/watch?v=7AdgzBgNki8 Last accessed on 27-10-2017

[10] 1978 AIR (SC) 597

14, 19 and 21 are mutually connected but not mutually exclusive and law cannot be merely procedure, it should be fair and reasonable and should not be arbitrary in the nature, the judiciary have to interpret laws according to its object set by the parliament while enacting the law, but it is subject to the principle of Equity and Justice.

Practically, the expression *"procedure established by law"* is interpreted as the expression *"due process of law"* as stated in American Constitution, which includes the principle of natural justice. After this Judgment it was the main topic of debate, some of the people were appreciating the decision of judiciary by giving the name of Judicial Activism, some people were criticizing the judgment in the name of judicial overreach. But the colors were added to the colorless Article 21.

Presently, the Article 21 includes various aspects and it is upon the judiciary to interpret this Article as per the societal needs. Now the Article 21 Includes:

- *Right to Live with Human Dignity*
- *Right to Privacy*
- *Right to go Abroad*
- *Right to Speedy Trial*
- *Right to Fair Trial*
- *Right against Custodial Violence*
- *Right to live in unpolluted Environment. etc.*

  The scope of Article 21 is illustrative and not exhaustive.

The concept of Public Interest Litigation

Public interest litigation is based on the principle ***salus populi est suprema lex*** **(regard for public welfare is the highest law):** According to the traditional view of *"locus standi"*, the right to move to the court for judicial redressal. Is available only to those, whose legal right and legally protected interest, has been infringed. This rule results in the denial of equal access to justice to those who are unaware of their rights and cannot engage a lawyer due to

their economic disadvantageous position. The Supreme Court took a dynamic approach and pioneered the concept of **Public Interest Litigation (PIL),** permitting litigation at the instance of *"Public spirited persons"* for the enforcement of rights of any other person.[11]

In **Hussainara Khatoon & Others v. Home Secretary, State of Bihar[12],** P. N. Bhagwati, J. has observed that *"today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to (sic) about changes in their life conditions and to deliver justice to them. The poor in their contact with the legal system have always been on the wrong side of the line. They have always come across "law for the poor" rather than "law of the poor". The law is regarded by them as something mysterious and forbidding always taking something away from them and not as a positive and constructive social device for changing the social economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker section of the community.*

In the words of **Justice P.N Bhagwati**:-

"We wish to point out with all the emphasis at our command that public interest litigation which, is a strategic arm, of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief".[13]

In the case of **S.P Gupta v. Union of India[14],** Justice P.N Bhagwati defined the scope of Public Interest Litigation *"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or*

[11] Narender Kumar's CONSTITUTIONAL LAW OF INDIA ninth edition 2015, Reprint 2016, p. 472
[12] Patna AIR 1979 SC 1369
[13] People's Union for Democratic V. Union of India & Others 1982 AIR 1473, 1983 SCR (1) 456
[14] AIR 1982 SC 149

without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of personal is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction, order or writ in the High Court under Article 226[15] *and in case of breach of any fundamental right of such person or determinate class of persons, in this court under Article 32*[16] *seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."*

[15] (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32

[16] Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

A Paradigm shift in the Judicial Approach regarding the Environmental related disputes: Doctrine of Absolute Liability propounded

There are situations when a person may be liable for some harm even though he is not negligent in causing the same, or there is no intention to causing the harm, or sometimes he may even have made some positive efforts to avert the same. In other words, sometimes the law recognizes 'No Fault' liability. In this connection, the rule laid down in two cases, *Firstly*, in the decision of House of Lords in **Rylands v. Fletcher**[17]**,** (1868) and, *Secondly*, in the decision of Supreme Court of India[18]

In **M.C Mehta v. Union of India**[19] originated in the aftermath of oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi. This gas leak occurred soon after the infamous Bhopal gas leak and created a lot of panic in Delhi. One person died in the incident and few were hospitalized. The case lays down the principle of absolute liability and the concept of deep pockets.

The Supreme Court evolved a new rule creating a Absolute liability for the harm caused by dangerous substances as was hitherto not there. The following statement of Bhagwati, C.J., Which laid down the new principle may be noted: *"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engage must be conducted with highest standards of safety and*

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

[17] (1868) L.R. 3 H.L 330
[18] R.K. Bangia's THE LAW OF TORTS, Twenty-Third, 2013 Reprint 2013,14 p.320
[19] 1987 (SC) 1086, at 1098-1099

if any harm results on the account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part"[20]

Jurisprudential Aspect of Speedy Justice

The *"Right to Speedy Justice"* though not specifically enumerated as a fundamental right but the court had interpreted it to be implicit in the broad sweep and content of Article-21.[21] Article-21 requires that a person can be deprived of his liberty only in accordance with *"procedure established by law"* which should be just, fair and reasonable procedure. A procedure cannot be reasonable, fair or just unless it ensures the speedy trial for determination of the guilt of the person deprived of his liberty. It has been rightly said that , *"Justice delayed is Justice denied"*

Concept of Justice

To understand the concept of speedy justice, *firstly*, we have to understand the concept of justice because speedy justice doesn't means fast disposal of cases. In the concept of "*Natural Justice",* Both the parties must be heard by the court without any impartiality.

According to Lord Wright…..

"The justice is what appears just and fair to a reasonable man"[22]

In fact, the justice should be in such manner that all the parties related to the case should be given equal opportunity to be heard and there should be proper appraisal along with the analytical approach towards evidences is to be done and every single fact must be considered relating to the case. This maxim cardinal principle of Natural Justice *"Justice Hurried is Justice buried".* Hence, there should be balance between the speedy trail and proper analytical approach towards facts and evidences.

[20] M.C Mehta v. Union of India ,1987 (SC) 1086,
[21] Maneka Gandhi v. Union of India AIR 1978 (SC) 597
[22] Keeton 'Elementary Principles of Jurisprudence', 1954 p 105

A court of law is a temple of justice where people go with the hope and belief that justice will be done to them as justice delayed is justice denied, justice must be done with in a reasonable time. Due to various technicalities and complexities of the procedure, delay in trial is an inherent defect of the criminal justice system. This results in a large number of cases pending before the court and great sufferings & harassment to the accused & due to this prolonged trial the parties to dispute in India were in fact denied justice.

In **Hussainara Khatoon (I) v. Home Secretary**[23], a habeas corpus petition was filed on the ground that several under trial prisoners were awaiting their trials for long. In some cases the pretrial detention has exceeded the maximum term of sentence imposable for the offences charged. In some cases the trial had not even commenced and in others even the investigation had not been completed. In view of the peculiar facts and circumstances of the case, the court ordered their release forthwith on personal bonds. The importance of the case lies in the fact that instead of defining the effects of fundamental right to speedy trail, the court asserted its judicial power to secure the release of such accused but it did not mean acquittal. In which Justice Bhagwati established that the defendant had under Article 21 of the Indian Constitution, the defendant had the fundamental right to speedy trial.

The above case and in the Maneka Gandhi's[24] case led the apex court to conclude that the due process of trial is a fundamental aspect of personal liberty, and thus a fundamental right under Article- 21.

Overtime, this right of personal liberty has increased its scope. It now includes right against Hand-cuffing.[25]

Justice P.N. Bhagwati always contributed actively in the development and flourishment for the concept of Judicial Activism within the Constitutional framework for the preambular objective as he did in the cases of Hussainara Khatoon v. Home secretary, and Maneka Gandhi v. Union of India.

[23] 1979 AIR 1369, 1979 SCR (3) 532
[24] 1978 AIR 597
[25] Shukla v. DelhiAdmin.,(1980)3S.C.R.855

The Bench of Justice P.N Bhagwati while allowing the Writ of the Habeas Corpus, issued a notice of direction for the State of Bihar to file an affidavit stating the names of the prisoners, who were abandoned in the jails of the Bihar for several years without being their trial been commenced. In this case, Justice Bhagwati held that,

"A procedure prescribed by Law for depriving a person of his liberty cannot be considered as reasonable, fair, and just unless that procedure ensures speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably speedy trial, cannot be regarded as reasonable, just and fair & it would be an infringement of Article 21. Therefore expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21**."**

Doctrine of Rarest of the Rare cases

Prior to 1955, under the old Code of Criminal Procedure, 1898, s 367(5) of the Code stipulated that the court had to give reason, if the sentence of death was not imposed in a case of murder punishable under sec 302 of IPC. In other words imposition of death sentence for the offence of murder was the rule, if the court desired to sentence imprisonment for life, it was required to give reasons for the same[26].

In 1955, Sub section 5 of Section 367 was deleted. The Code of Criminal Procedure was further amended in 1973, making life imprisonment the normal rule. Section 354(3) of the new Code Provides:

"When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

In the Code, the discretion of the judge to impose death sentence has been narrowed, for the court has now to provide special reasons for imposing the sentence of death. It has now to

[26] PSA Pillai's Criminal Law, 12th Edition, p.620

provide special reasons for imposing the sentence of death. It has now made imprisonment foe life a rule and death sentence an exception, in the matter of awarding punishment for murder. In **Bachan Singh v. State of Punjab**[27], the Supreme Court, while upholding the constitutional validity of death sentence,

"Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898… according to which both the alternative sentences of death or imprisonment for life provided for murder and certain other capital sentences provided under the Penal Code, were normal sentences. Now, according to this changed policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.

During the hearing of Bachan Singh's case, it was suggested that the following circumstances may be considered as guidelines for determining aggravating circumstances which would warrant the imposition of death penalty**:**

1. If the murder has been committed after previous planning involves extreme brutality; or
2. If the murder involves exceptional depravity; or
3. If the murder is of a member of any of the armed forces of the Union or of member of any police force or of any public servant and was committed-
   i) While such member of public servant was on duty; or
   ii) In consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as much member or pubic servant whether at the time of murder he was such member or public servant, as the case may be or had ceased to be such member of public servant; or
4. If the murder of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under section 37 and 129 of the said code.[28]

[27] AIR 1980 (SC) 898. However,Justice P.N. Bhagwati, in his dissenting opinion, held Sction 302,IPC unconstitutional, being violative of Article 14 and 21 of the Constitution, as it provides no legislative guidelines for opting for either of the alternative punishments (death sentence or life imprisonment)

[28] Ibid, para 200.

FINDINGS:

During the course of study, it has been found that, in past 70 years the Judiciary has changed its outlook as well as working due to needs of society. Change in the working of judicial system of democratic countries, like, U.K., U.S.A. etc, has put a great impact upon day to day functioning of Indian Judiciary. Researchers has gone through various judgments delivered by the Hon'ble Supreme Court of India, Law Journals, several books on the topic and Articles published either in newspapers or obtained:-

1. Where there is failure and arbitrariness in execution, there is need of Judiciary to work in active mode. In the case of Maneka Gandhi v. Union of India, The Supreme Court has become active and judgment becomes historical, in this case there was no reasonable opportunity has been given to the aggrieved party, as the executive becomes arbitrary in nature.
2. There are two modes of changing, first is, "Society changed by law" it means that law compels the society, to be changed and second is, "Law changed by society" it means society compels the legislature to change the laws, the best instance, in 2013 the criminal law was amended, because of revolt after the Damini Rape case.
3. As in the case of, ADM Jabalpur v. State of Madras, the supremacy of judiciary can be observed, there is nowhere accountability of Judiciary is provided under the Constitution.
4. Societal dynamism and Judicial dynamism are two sides of one coin, as society develops, judiciary has taken dynamic approach, the best instance of it, A.k. Gopalan to Maneka Gandhi's era.

CONCLUSION:

Here we want to conclude by the following words said by, The Pioneer of Judicial Activism, Justice **Prafullachand Natwarlal Bhagwati,**

"Government alone will never be able to do it. … It is only the people themselves who must utilize law for the purpose of bringing justice at the doorsteps of the large masses of people of the country."

It can be clearly observed that, Judicial Activism is nowhere expressly provided under the Constitution of India, but there are certain hinted provision regarding it.

Article 142 of Constitution of India, empowers Supreme Court to pass orders, decrees only on the basis of justice.

- The Scope of *"Locus standi"* has been widened and changed to 'group action litigation' popularly known as Public Interest Litigation. At that point of time the Society changed the law and now it is a need, for protecting certain interests and human rights of deprived sections.
- The capitalist innovation of economy, has established various kinds of factories and industries, which can be very harmful to our environment due to use of hazardous substances and by the concept of absolute liability and deep pockets laid by Justice Bhagwati, presently no polluter can escape from his liability.
- Article 147 of Constitution, empowers Judiciary to interpret law according to the societal needs, by which judiciary has evolved new concepts and also widen the scope of various existing laws.
- Judiciary acts as a Protector of Constitution of India, Article 131 of the Constitution empowers judiciary to solve the disputes, between the Government of India and one or more States; or between the Government of India and any State or States on one side and one more other States on the other; or between two or more States.

The major strength of Indian judiciary is that it is not elected by people, and it is independent from the governmental control. On the other hand, government is elected by the citizens to rule over the country. So, the influence can be seen over the decisions of the government and sometimes the minority sections are neglected who can't fill the vote banks. In these situations the Judiciary is obligated to come in an active mode to provide justice to

those deprived sections. As in Hussanaira khatoon's case, Judiciary took an active mode to serve justice to the prisoners. Thus, Judicial Activism is the need of a Democratic Country and to protect Human rights.

There being no express provision recognizing the doctrine of separation of powers in its absolute form, but the Constitution makes such provisions for a reasonable separation of powers and functions between the three organs of government. When, there is failure in the working of legislature and executive then there is need of judicial activism.

But Judicial Activism should be in limits, it should not affect the powers and functions of the legislature and executive provided by the Constitution.

Scope of Further Research:

In Democratic system, Judicial Activism is the necessary to provide justice. As judiciary in India is independent, sometimes Judiciary can exceed the power of Judicial Activism and affect the functions of legislative and executive which is provided under the Constitution. The manner and extent to which apex court should interpret the laws is a matter of great debate with varying views on a correct approach. A question which is often asked is as to, what would be appropriate role of the Supreme Court on the view of governance. So we would like to draw attention towards the Judicial overreach, a critical analysis should be done to find the narrow gap between Judicial Activism and Judicial Overreach.

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