JUDICIAL EXCESS, PARLIAMENTARY DISTRESS: THE RISE OF JUDICIAL ACTIVISM IN INDIA

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Republic of India, a former British colony has always taken pride in in its idea of Parliamentary sovereignty which can be deeply imbibed through the roots of its constitution. However, the recent trends indicating the upsurge in judicial ascendancy reflect otherwise. A landmark example of judicial perusal to perforate the dominion of "exclusivity" relished by the parliament was that of Keshavananda Bharti, wherein the Supreme Court of India in toto stated that the executive had no right to alter the fundamental provisions of the constitution. A one of its kind judgement, it received immense criticism from both the Parliament as well as a large section of judicial experts for its undue trial to limit the Parliamentary freedoms. Another disturbing instance of the court's unruly intervention was the Jharkhand legislative Assembly case, wherein the Supreme Court ordered the Assembly to conduct a motion of confidence and directed the Speaker to function according to the prescribed agenda. This paper aims to provide a critical analysis of the origin and proliferation of judicial activism in India and the extent to which it is justified under the ambit of "Larger Public interest".

INTRODUCTION

On the 1st of June,2016,amidst the perfervid dissention on the proposed draft of GST, with the ceaseless demands of the opposition in seeking a court monitored dispute redressal mechanism with regard to the above mentioned, Mr. Arun Jaitley, the Hon'ble Finance Minister of India, articulated that "Step-by-step, brick-by-brick, the edifice of India's legislature is being destroyed".[1]The statement, though appears politically actuated, deeply condenses the reality of judicial intercession transcending its ambit to an unimpeded extent. While the provenance of judicial activism isn't contemporary in nature, its unobstructed proliferation in the past decade has led to certain disturbing trends revolving around the same. While there is no explicit date which can mark the inception of this process, a landmark case of 1893, of the Allahabad High Court, wherein the dissenting judgement delivered by Justice Mahmood created a huge turmoil in large parts of the country, can be recalled to trace back the historical roots of Judicial activism within the Indian subcontinent. In that case, which highlighted the dilemma of an under trial who could not afford a lawyer due to his economic limitations, it was held that that the pre-condition of the case being heard would be fulfilled only when somebody speaks.[2]The substratum of the

[1] T. R. Andhyarujina, *Going Beyond the Ambit*, Times of India, June 1,2016.
[2]Balakrishna, *When Seed for Judicial Activism was Sowed*, Hindustan Times, April 1,1996.

Indian Constitution mounts on the idea of separation of powers, which is also reflected through the judgement of *I.C. Golak Nath v. State of Punjab*, Subha Rao, wherein the expressly stated that ""The constitution brings into existence different constitutional entitles, namely the union, the state and the union territories. It creates three major instruments of power, namely the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function with the spheres allotted to them.[3]However, with a plethora of instances in which the courts have gone beyond their legitimate purview to perforate the dominion of the other state functionaries, the aforementioned concept seems to be evidently diluting. Dr. Durgadas Basu, quoting judicial authorities says, "A written Constitution by its very nature, involves a distribution of powers, though the legislative and executive powers are not vested by the Constitution in the legislature and judiciary expressly, it is clear from the different provisions of the Constitution that, barring specified exceptions, the power of making laws shall be exercised by Parliament and the legislatures of states, and power of adjudication and interpretation of the Constitution shall be exercised by the Courts. This is a Constitutional trust imposed by the Constitution upon the legislature and the courts which they cannot themselves delegate to others[4]The Parliament of India, which is termed as the "Apex legislative authority "of the country, has been the recipient of excessive intrusion by the Judiciary under the garb of "judicial review". The power of the court to declare legislative enactments invalid is expressively provided by the Constitution under Article 13, which declares that every law in force, or every future law inconsistent with or in derogation of the Fundamental Rights, shall be void. Other Articles of the Constitution (131-136) have also expressively vested in the Supreme Court the power of reviewing legislative enactments of the Union and the States.[5]However, the courts have periodically used this proviso in order to consolidate unbridled powers in their own hands. A conspicuous example of the same was the historic Inamdar case[6] in which the court was encountered with the issue of the extent of quotas in private institutions as well as the regulation of fee. The major focus of contention was the restraint put by the state in determining who could take up half of the seats in schools for higher education. This was held to be "Unconstitutional" as the court suggested that the allowance of the same would enable the state to directly interfere in the working of the private institutions, which would be in complete infringement of the rights of these institutions. Another instance was the Jharkhand Legislative Assembly case, which served as a direct attack of the ascendancy of the Parliament, wherein the Supreme court ordered the speaker to conduct a composite floor test on the Assembly to ascertain who enjoyed the majority. A one of its kind, this judgement received immense criticism from the political community across the globe. Somnath Chatterjee, a highly erudite lawyer as well as a veteran Parliament, a day post the judgement made his comments in deep anguish

3 I.C. Golaknath and Ors. vs State of Punjab and Anrs. 1967 AIR 1643
4 G. L. Batra, Indian Governance: Separation of Powers with Checks and Balances, SPEAKING THREADS
5 Negi Mohita, Judicial Review in India: Concept, Provisions, Amendments and Other Details
6 Shri P.A. Inamdar and Ors. vs State of Maharashtra and Ors, 2005 (5) BomCR 52

in the house by stating ""Today, unfortunately, because of the interim order of the Hon'ble Supreme Court, the contours of the area of supremacy of the different organs, specially of the legislature (apart from that of the executive authority under Article 361, which provides for complete immunity to the President and the Governor from being answerable to any court in the matter of discharge of their duties), have got blurred which, if not pondered over and corrective steps taken, will totally upset the fine Constitutional balance and the democratic functioning of the state as a whole. The legislatures should seriously consider the consequences of, what may be termed as, encroachment upon their authority and jurisdiction. It is necessary that the legislatures' supremacy as enshrined in the Constitution should be clearly asserted. This is a matter which should be looked into transcending all political formations and topical developments. As such, I appeal to all to consider the important issue with all seriousness and concern, so that the Constitutional balance can be and is restored. In my opinion, as has been suggested by many Hon'ble Leaders, to resolve all questions, the respected President may be requested to seek the opinion of the Hon'ble Supreme Court under Article 143 of the Constitution".[7] Justice A.S. Anand former Chief Justice of India, in a public lecture cautioned that with a view to see that judicial activism does not become "judicial adventurism", judges need to be circumspect and self- disciplined in the discharge of their judicial functions. The worst result of judicial activism is unpredictability. Unless judges exercise self-restraint, each judge can become a law unto himself and issue directions according to his personal fancies, which will create chaos". However, the courts continue to committee excesses under the garb of their supremacy and have often been held to cause intentional overlap with the powers of the legislature.

REASONS FOR THE RISE OF JUDICIAL ACTIVISM IN INDIA

1) **LEGISLATIVE INEFFICIENCY**: The void created by the legislature by showing oblivion towards the dynamism within the society and its inadequacy in keeping pace with the changing societal needs has been one of the most significant contributors leading to global outreach. While the Parliament has always blamed the judiciary for intervening in its working, in a number of cases, the judiciary has actually stepped into the shoes of the legislature for enabling the formation of an able criminal justice system. A notable example of the same is the case of Prakash Singh[8]in which the Supreme court issued directives for bringing the much needed reforms in the working of the Police force. A classic example of the judiciary deciding on the working of the executive, this judgement proved to be a historic event in the history of this country. The directives issued by the Supreme Court in the aforementioned matter are as follows:[9]

[7] http://www.frontline.in/static/html/fl2318/stories/20060922002108700.htm
[8] Prakash Singh & Ors vs Union Of India And Ors, Writ Petition (civil) 310 of 1996
[9] Supreme Court directives on police reform. The Supreme Court takes the lead on police reform, Commonwealth Human Rights Initiative (http://humanrightsinitiative.org/old/index.php?option=com_content&view=article&catid=54%3Aprogrammes&id=199%3Asupreme-court-directives-on-police-reform&Itemid=98

Directive One

Constitute a State Security Commission (SSC) to:

(i) Ensure that the state government does not exercise unwarranted influence or pressure on the police;

(ii) Lay down broad policy guidelines, and;

(iii) Evaluate the performance of the State Police.

Directive Two

Ensure that the DGP is appointed through merit based transparent process and secure a minimum tenure of two years.

Directive Three

Ensure that other police officers on operational duties (including Superintendents of Police in-charge of a district and Station House Officers in-charge of a police station) are also provided a minimum tenure of two years.

Directive Four

Separate the investigation and law and order functions of the police

Directive Five

Set up a Police Establishment Board (PEB) to decide transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of Deputy Superintendent of Police.

Directive Six

Set up a Police Complaints Authority (PCA) at state level to inquire into public complaints against police officers of and above the rank of Deputy Superintendent of Police in cases of serious misconduct, including custodial death, grievous hurt, or rape in police custody and at district levels to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct

Directive Seven

Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) with a minimum tenure of two years.

2) **DYNAMISM IN THE SOCIETY:** With the unobstructed transition the society is undergoing, the needs of the individuals also seem to be evolving at an extremely high

rate. Thus, in order to prevent the society from becoming stagnant, the judiciary often performs roles greater than that of a "regulator". With the advent of Public Interest litigation, the judiciary has now become more accessible to the masses. Simplification of procedure to approach the courts has also enabled individuals to voice their grievances in order to seek redressal. Often, the Parliament, as a measure to ensure its political ascendancy tends to create an atmosphere of injustice for the citizens. In order to prevent the same from taking place, the judicial branch of the constitution enables its overreach to a much higher extent. A classic example of the same is the Golaknath case[10] in which the Supreme court clearly asserted that the "Parliament under no provision had the authority to curtail the fundamental rights of the individuals. "while, this judgement created a large stir within different parts of the society, it also signified the valiant approach of the judiciary on matters of public importance. The same was further reaffirmed in the landmark case of Raj Narain[11] which is contained as one of the most historical cases of India. The matter which dealt with the validity of clause 4 of the 39th amendment put a huge dilemma in the judicial minds in order to determine the extent to which political freedom could be exercised. Justice H.R Khanna, while holding the above mentioned clause unconstitutional also remarked on the implied limitations which the legislature must recognize in pursuance of its duty. He stated:

> *"I find it impossible to subscribe to the view that the preamble of the Constitution holds the key to its basic structure or that the preamble is too holy to suffer a human touch. Constitutions are written, if they are written, in the rarefied atmosphere of high ideology, whatever be the ideology. Preambles of written Constitutions are intended primarily to reflect the hopes and aspirations of people. They resonate the ideal which the nation seeks to achieve, the target, no the achievement. In parts, therefore, they are metaphysical like slogans. For example, the concept of fraternity which is referred to in our preamble is not carried into any provision of the Constitution and the concept is hardly suitable for encasement in a coercive legal formula. The preamble, generally, uses words of "passion and power" in order to move the hearts of men and to stir them into action".*

3) **CONSTITUTIONAL LIMITATIONS:** The Constitution of India, though a highly detailed document, shows constraints in terms of signifying clarity with regard to the extent of judicial ascendancy in India. While the scope of "Judicial review" finds its mention in the apex authority of law under several provisions. One of the most controversial cases of its time, the Champakam Dorairajan[12] the Supreme Court slammed caste-based reservations as a violation of the Constitutional prohibition of discrimination. However, with the advent of the first constitutional amendment

[10] I.C. Golaknath and Ors. vs State of Punjab and Anrs. 1967 AIR 1643
[11] Indira Nehru Gandhi vs Shri Raj Narain & Anr , 1975 AIR 2299
[12] State of Madras v. Champakam Dorairajan (AIR 1951 SC 226)

stipulating that the general prohibition of discrimination could not prevent the state from making any special provision for the advancement of SCs, STs and OBCs, the judgement had little impact. However, it opened the horizon of judicial outreach, asserting the potential powers which the judiciary shall enjoy in the years to come. In *J.P.Bansal v State of Rajasthan* [13]the Supreme Court observed: "*It is true that this court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute. It endangers continued public interest in the impartiality of the judiciary, which is essential to the continuance of rule of law, if judges, under guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matters come consider to be injurious to public interest. Where the words are clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or to take upon itself the task of amending or altering the statutory provisions. In that situation the judge should not proclaim that they are playing the role of lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so.*" Thus, it is extremely significant the while the power of judicial review must prevail, it should be open to certain limitations, which would enable the curtailing of arbitrary actions by the judiciary.

JUDICIAL ACTIVISM IN INDIA: CRITICAL ANALYSIS

While the roots of judicial freedom in India are deeply rooted in the very basis of its structure of governance, the overreach is a rather new notion. The courts are conferred with the duty of "regulation", but it has been observed that in today's era they have to a great extent transformed into "crusaders" to meet larger public interests. It has been emphatically observed in the case of Bandhua Mukti Morcha v. Union of India,[14] wherein the Supreme Court declared that the scope of judicial power could be expanded on the basis of societal aspirations. It observed" "It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs in the nature of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The

[13] J.P. Bansal vs State of Rajasthan & Anr, Appeal (Civil) 5982 of 2001
[14] Bandhua Mukti Morcha vs Union of India & Others, 1984 AIR 802

Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right.". Another significant case which reaffirmed this belief was that of Vishaka & Ors. v. State of Rajasthan & Ors, the court suggested that" In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution." This judgement served a highly significant purpose in terms of clarifying that the judiciary can also become a "law maker" in the scenario of parliamentary stagnation. The case of Supreme Court Bar Association v. Union of India, the court re-established its above mentioned position by stating that "indeed this Court is not a court of restricted jurisdiction of only dispute- settling. It is well recognized and established that this court has always been a law maker and its role travels beyond merely dispute settling. It is a problem solver in the nebulous provisions dealing with the subject matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject." The thin line between "review" and "activism" is often crossed by the judiciary, thus putting the Parliament in vexation. Justice A.S. Anand former Chief Justice of India, in a public lecture cautioned that with a view to see that judicial activism does not become "judicial adventurism", judges need to be circumspect and self- disciplined in the discharge of their judicial functions. The worst result of judicial activism is unpredictability." So, while the Judges must exercise their "regulatory function", undue intervention in the work of the Parliament is highly discouraged. The same ideology has been further reaffirmed in the case of S.R. Bommai v Union of India, wherein Justice Ahmadi made a highly assertive statement on the extent to which judicial review must apply. In his judgement, he stated, *"In other words, only cases which permit application of totally objective standards for deciding whether the constitutional machinery has failed, are amenable to judicial review and the remaining cases wherein there is any significant area of subjective satisfaction dependent on some imponderables or inferences are not justiciable because there are no judicially manageable standards for resolving that controversy; and those cases are subject only to political scrutiny and correction for whatever its value in the existing political scenario. This appears to be the constitutional scheme."* Thus it has been constantly in the past been explained by several legal experts that while judicial revision is a constitutional mandate, its overreach rather negates the idea of separation of powers suggested by the Constitution. However, despite the same being extensively propagated, judges continue to supersede the legislature in an unruly manner. The following cases depict the unobstructed use of judicial activism over the past several decades". The seven

judge bench of the Supreme Court declared in *P Ramachandra Rao's* case that: "*The primary function of the Judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. But they cannot entrench upon in the field of legislation properly meant for the legislature. It is no difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law – the field exclusively reserved for the legislature*."

1) In case of Sakal Newspaper Private Ltd v. Union of India[15], a company and a reader of the newspaper filed a writ petition challenging the daily newspaper (price and page) order, 1960, under Art 19(1)(a) laid down how much a newspaper could charge for a number of pages was being violation of freedom of press. The Court observed that *"All the consequences which have been visualised in this behalf by the petitioners, viz., the tendency to curtail circulation and thereby narrow the scope of dissemination of information, fetters on the petitioners'freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid..... etc. would be remote and depend upon various factors which may or may not come into play. Unless these were the direct or inevitable consequences of the measures enacted in the impugned Act, it would not be possible to strike down the legislation as having that effect and operation" having conceptualized a doctrine of giving preferred position to freedom of speech and expression, which includes freedom of the press, over the freedom to do business. This provided a great relief for the newspaper as against curtailing it's freedom of speech and expression."*

2) In the well- known Keshavananda Bharti case[16], two years before the proclamation of emergency, the apex court observed that "Chief Justice refused to express an opinion on the contention that, in exercise of the power of amendment, Parliament cannot destroy the fundamental structure of the Constitution but can only modify the provision thereof within the framework of the original instrument for its better effectuation." The judgement validated the idea that while legislature had inherent powers granted by the virtue of the constitution, it cannot misuse the same in order to suit its convenience. However, this judgement could not prevent the declaration of the emergency Mrs. Indira Gandhi and it was only at the end of it that the Supreme Court and the Lower courts began to ceaselessly intervene in executive as well as legislative areas. However, it came to be regarded as one of the most landmark cases in judicial history of the country.

3) As per the 2004 judgment of the Patna High Court in *Jan Chaukidar v Union of India* [17]upheld by the Supreme Court — all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand for election. The judges relied on the Representation of the People Act (RPA), which says that one of the qualifications for membership of Parliament or State legislature is that the contestant must be an elector. Since Section 62(5) of the Act prevents those in lawful custody from voting,

[15] Sakal Papers (P) Ltd., And Others vs. The Union of India, 1962 AIR 305
[16] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225
[17] Jan Chaukidar (Peoples Watch) vs Union of India and Ors., 2004 (2) BLJR 988

the reasoning goes, those in such custody are not qualified for membership of legislative bodies.

4) In the case of Balaji v. State of Maysore the Supreme court held that Backward Classes are entitled to get reservations and such reservations should not contradict the concept of right to equality and equal protection of law. The judgment given by the judges that backwardness could not be determined by the caste itself it also included other criteria too that is poverty, socially and economically backward and many others and caste will be one of them.

5) In the Godavaram case, the court with regard to forest protection, made the state government obligated to perform its duty with regard to the same. A classic example of judicial overreach, the court observed *"In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith."*

6) The decision in Sebastian M. Hongray v. Union of Indi[18]a involved the failure of the Government to produce two persons in the court. In fact, the truth was that these two persons who were taken into custody by the military had met unnatural death. The Court, in the circumstances, keeping in view the torture, the agony and mental oppression undergone by the wives of the persons directed to be produced, instead of imposing fine on the Government for civil contempt of the Court, required that "as a measure of exemplary costs as is permissible in such cases", the Government must pay rupees one lakh to each one of the aforesaid two women.

7) Nilabati Behera v. State of Orissa[19], is yet another case of custodial death where the deceased was taken into police custody and the next day his body was found on the railway tracks with multiple injuries. The Supreme Court once again reiterated that in case of violation of fundamental rights by State's instrumentalities or servants, the Court can direct the State to pay compensation to the victim or his heir by way of "monetary amends" and redressal. The principle of "sovereign immunity" shall be inapplicable in such cases. Having regard to the age and income of the deceased, the State was directed in this case to pay Rs 1,50,000 as compensation to the deceased's mother. The court stated tha*t "We respectfully concur with the view that. the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award*

[18] Sebastian M. Hongray vs Union Of India & Ors , 1984 AIR 1026

[19] Smt. Nilabati Behera Alias Lalit vs State Of Orissa And Ors, 1993 AIR 1960

of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf The contrary view would not merely render the court powerless and the constitutional guarantee a mirage but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. It the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have not, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate. compensation in civil law or criminal law could still be claimed in addition to this". The Court clarified that "public law proceedings" are different from "private law proceedings" and the award of compensation in proceedings for the enforcement of fundamental right under Articles 32 and 226 of the Constitution is a remedy available in public law.

ADVENT OF PUBLIC INTEREST LITIGATION: A STEP TOWARDS "POSITIVE ACTIVISM"

Black's Law Dictionary defines "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected." The conventional approach followed by the Indian judiciary could be termed as inflexible with a large number of cases ignored under the garb of "lack of *Locus Standi*". This created a large sense of injustice in the society amongst the general public. However, while this is a relatively newer practice in India, it has witnessed monumental presence in the country ever since its inception. The 1960's saw excessive usage of the term "Public interest law", wherein advocates could be seen excessively engaging in issues which affected the "larger public". The landmark case of Hussainara Khatoon v/s State of Bihar [20]could be termed as the "launch pad" of the practice of Public Interest litigation in India. The case, which as opposed to the general practice being followed at that time, was filed by various prisoners of the Bihar Jail regarding the condition of prisoners in the jail. However, it was only in 1981 that the concept of PIL gained popularity with the case of SP Gupta v/s Union of India, in which Justice P.N Bhagwati articulated that , "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 without authority of law or any such legal wrong or legal injury or illegal burden is

[20] Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, 1979 AIR 1369

threatened and such person or determinate class of persons by reasons 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 writ in the High Court under Article 226 and in case any breach of 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 persons. Since then, India has witnessed a large upswing in the number of cases filed under public interest. his Court in Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India & Others[21], held that our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through `class actions', `public interest litigation', and `representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concepts of `cause of action', `person aggrieved' and individual litigation are becoming obsolescent in some jurisdictions. Municipal Council, *Ratlam v. Vardichand*,[22] the Court recognized the *locus standi* of a group of citizens who sought directions against the local Municipal Council for removal of open drains that caused stench as well as diseases. The Court, recognizing the right of the group of citizens, asserted that if the: "…*centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men. However, the excessive use of the same has increased the burden on the courts wherein, a large amount of frivolous PIL's are being filed, which is primarily increasing the load on the judges. However, in order to avoid the same,* the Supreme Court has compiled a set of Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL. The Guidelines, which were based on the full-court decision of December 1, 1988, have been modified on the orders/directions of the Chief Justice of India in 1993 and 2003.

PIL has also found its roots in the branch of environment protection, with M.C Mehta being the torch bearer in bringing the attention of the authorities to the constant degradation of the environment. One of the most historic cases, also known as the Tanneries case[23] saw an unparalleled support of the judiciary with the judge lashing out at the civil authorities allowing untreated sewage from Kanpur's tanneries making its way into the Ganges. With the courts become more accessible to the public, and arrange of issues being brought in front of the judicial sensitivities, PIL often serves as a challenge for the courts to ensure that while it is necessary to ensure such petitions, they may not serve as a hindrance to the large amount of cases which still await a verdict. The last decade can be

[21] Akhil Bharatiya Soshit ... vs Union Of India And Ors , 1981 AIR 298
[22] Municipal Council, Ratlam vs Shri Vardhichand & Ors, 1980 AIR 1622
[23] M.C. Mehta vs Union Of India & Others, 1988 AIR 1115

effectively termed as an "Era of Public interest litigations", and the inclination of the courts to accommodate the same also deserves immense appreciation.

CONCLUSION

After analysing the inception, evolution and expansion of judicial activism in India, it has been notably observed that while overreach by judiciary has been subjected to immense amount of criticism, it has also been a source of unobstructed transition of the society in a holistic sense. Though the judges have time and again breached the constitutional mandate by intervening in the work of the legislature, some outcomes have changed lives for the good. While one cannot simply restrict the judiciary to large barriers in terms of exercising its powers, certain limitations are a necessity. Thus, one can safely say that outreach sometimes becomes a necessity and the judiciary cannot keep a blind eye to the plight of individuals. However, this in no manner justifies the ascendancy which has been reflected by the judiciary in quashing legislative decisions. Hence, one could simply describe the activism in today's era as a "self- proclaimed" power of the judiciary. Thus, the current Indian scenario sees the judiciary more as a "law maker" than a "regulator".

