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JUDICIARY AS PRIMARY ACTOR FOR CONSTITUTIONAL RIGHT-BASED REVOLUTION*

ABSTRACT

Framers of our constitution have presented every citizen of India with different sets of enforceable fundamental rights and non-enforceable directive principles to be achieved by state contingent to state's social & economic ability. Judiciary has played crucial role in giving effect to this constitutional rights-based revolution going beyond its functional domain of judicial review. Courts have time and again acted beyond its power of judicial review and have assumed role as an independent policy maker on behalf of general public. Through the phenomenon of judicial activism, judges have laid down various guidelines & interpreted rights to enforce Directive Principles of State Policy.

Since inception, the approach of Indian judiciary had experienced several transformations. The transition of judiciary from the positivist era (formalist approach) to the activist era (naturalist approach) can be manifestly graphed by reference to various case laws with their analysis. This paper is an attempt to understand the concept of Judicial Activism, its instruments under the constitution and role of judiciary in the law making. It seeks to reason the activist attitude of court to do complete justice by analysing the shift of judiciary from strict positivist approach in Gopalan's case to naturalist view by court in Maneka Gandhi's case. The dissertation concludes with positive insight to the phenomenon of judicial activism after examining widened scope of protection flowing from Article 21 & Article 142 of Indian Constitution.

INTRODUCTION

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Adoption of the Constitution of India by the people of India, in 1950, led to formation of a country with equality among its citizens within the national territory of India (Bharat).¹ The feature of Citizenship required attribution of rights with correlative duties on the part of state to bring about necessary amendments for the effective exercise citizens rights. Citizens are rewarded with bundle of rights distinguished as political rights and socio-economic rights, former are promptly part of the web of popular government while the latter are the components of the social life.²

The Constitution of India classified between enforceable fundamental rights under Part III, which were essential to be protected from state's invasions, and on the other hand non-enforceable directive principles under Part IV, which were further goals and duties of the state to be included within social and cultural rights contingent on the economic capacity of state such as rights to food, health and basic education.³ However, the legislature has vehemently failed to implement this right-based revolution as anticipated by constituent assembly. The absence of enactments on various pertinent issues and ambiguous provisions have driven the courts to give their own connotation & interpretations on the modern contemporary issues that sometimes widen the scope of prevailing provisions or lay down altogether new guidelines to be followed. In such scenarios, judiciary assumes the role of primary actor in implementation of right based revolution as envisioned under the constitution.

CONCEPT OF JUDICIAL ACTIVISM

Black's Law Dictionary defines judicial activism as "*philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.*"⁴

Judicial Activism refers to court exercising beyond its allocated function of judicial review. Constitution of India (supreme law of land) defines the power and functions of three limbs of

¹ SUMIT SARKAR, INDIAN DEMOCRACY: THE HISTORICAL INHERITANCE, 23-46 (Cambridge University Press 2001).

² THOMAS JANOSKI, CITIZENSHIP AND CIVIL SOCIETY: A FRAMEWORK OF RIGHTS AND OBLIGATIONS IN LIBERAL, TRADITIONAL AND SOCIAL DEMOCRATIC REGIMES, 103 (Cambridge University Press, 1998).

³ S. SHANKAR & PRATAP MEHTA, COURTS AND SOCIOECONOMIC RIGHTS IN INDIA, 146-182 (Cambridge University Press 2008).

⁴ B.A. GARNER, BLACK'S LAW DICTIONARY, 922 (9th Ed. Thomson Reuters 2009).

State Machinery i.e. the legislature (law making body), the executive (law enforcement body) and the judiciary (reviewing authority). Under the Constitutional scheme, the principal role of the legislature is law-making, principle function of executive is its enforcement and judiciary aims to review/interpret it in case of any dispute. Judicial activism enforced by judicial awards is believed to be founded upon individual or biased contemplations instead of established legal principles. The Constitution does not empower the courts with any authority for 'activism' per se. It is criticised to be interference by the judiciary into the respective domains of the Legislature and Executive contrary to principle of separation of powers. Judicial activism is based upon the premise that dispute resolvers/interpreters usurps the function of policy makers independently which is function of legislature being representative of common public which is outside of their conventional duty as the interpreters of laws of land.

INSTRUMENTS OF JUDICIAL ACTIVISM

The concept of judicial activism entails exercising beyond the general judicial restraints and surpassing power conferred by the Constitution to review legislations or rule on the constitutional parameters and quash the enactment to the extent of its inconsistency with the provisions of the constitution, if any. The inoperative and unproductive attitude of the other organs of the state have prompted the Judiciary taking these radical measures.

The infringement of essential human rights, abuse and misuse of basic Constitutional principles and general unresponsiveness in the administration of nation demanded Judicial Activism in India. These have drawn the consideration of the courts and they have endeavoured to cure them through the mediums of Public Interest Litigation and suo moto activity.

The role of Judiciary in bringing rights based revolution has been significant by enforcing DPSP's enshrined under Part IV Indian Constitution. Courts justifies its invasion into the ambit of legislature by widening ambit of fundamental right to life & personal liberty protected by virtue of Article 21 and inherent power of higher judiciary to do complete justice afforded under Article 142 of Constitution of India. The various connotations, interpretations and guidelines that have been derived from these articles which comprise right to privacy, liberty, food, education, clean & healthy environment, prisoner's rights, vishakha guidelines against sexual harassment in the work place, banning liquor vends in close proximity to national &

state highways and so forth. These have been a consequence of Judicial Activism in the elucidation of these articles.

FROM FORMALIST JUDICIARY TO ACTIVIST JUDICIARY

Courts in India initially begun as technocratic courts during 1950's but later on widened scope of its powers through wide interpretations of constitutional provisions gradually. Its renovation towards an activist court has been progressive and gradual.

The conventional and prevalent Anglo-Saxon view confined the function of the judiciary to the extent of declaration of law only, the idea that judges may bring about changes or additions to the legislated law was incomprehensible. Lord Reid, rightly pointed out that, "At a time, it was almost filthy to propose law making function of judiciary. But over the years it has become necessary for judges to abandon this restricted role and widen their scope during deciding cases. Judicial Activism has been instrumental in widening the scope of this fundamental right and appending to the meaning it has in contemporary society."

In response to oppression of 1975-77 political emergency, Indian courts opted its activist form to value the quality of life of citizens by advancing their socio economic rights. The courts began incorporating second tier rights provided under part IV the constitutional scheme such as rights to clean environment, health, food, sound sleep & education etc. into the enforceable fundamental rights to life & personal liberty (Article 21) and equality (Article 14) protected under Part III of the Constitution.⁵ In their transforming approach of decisions, a clean environment, potable water and sanitation were included to be fundamental to the right to life & liberty while directing large scale industries like rice mills, brick kilns and stone crushing units to be shifted out of residential areas was regarded crucial to its quality. The courts considered themselves to be primary actors for carrying out rights-based revolutions envisioned in the constitution.⁶

The pre and post-emergency judgements are believed to have an incredible contrast between them; the emergency led to such an outright infringement of rights that post it the Judiciary stood firm and satisfied its duty as the protector of the constitution. For example, in the

⁵ S. SHANKAR & PRATAP MEHTA, *supra* note 3, at 149.

⁶ K. Sivaramakrishnan, *Environment, Law, and Democracy in India*, 70(4) THE JOURNAL OF ASIAN STUDIES, 905-928 (2011). Retrieved from <http://www.jstor.org/stable/41349969>.

landmark case of *A.K. Gopalan v. State of Madras*⁷ dealing with constitutional validity of Preventive Detention Act 1950. Main contentions of the case were:

- i) That the word 'law' in article 21 incorporates principles of natural justice i.e. fairness and reasonableness in itself.
- ii) That the detention ought to be checked on the test of Article 19.
- iii) That the expression 'procedure established by law' in India is derived from American concept of 'procedure established by law'.⁸

Supreme Court rejected these arguments and laid down two principles- 1) That Article 19, 21 and 22 were mutually exclusive and independent of each other and a law affecting personal liberty can not be tested in context of Article 19. 2) The word 'law' is used in the sense of *lex* (state-made law) not *jus*. The 'procedure established by law' would mean the procedure laid down in an enacted law.⁹

The expression "procedure established by law" was given limited translation and was restricted to procedure established by any statute. It established the premise that procedure need not be fair to deprive life & liberty of a person. It took 28 years of change of positivist approach of court and approach taken in Gopalan's case to overrule in Maneka Gandhi's case. The Court witnessed that restriction imposed on arrangement of laws denied people of life and liberty, the procedure prescribed by the law ought to likewise fulfil the criteria of reasonableness, justice and fairness. This case highlighted the need to construe Article 21 in wider sense to safeguard rights of citizens in true sense and to avoid arbitrary & uncanalised powers in the hands of the state authorities. Court has widened its interpretation to infer many more fundamental rights. This widening the scope of Article 21 has proved to be a valuable source of protection with the passage of time.

The contrast among both the approach shows the conversion of judicial approach of courts from a positivist to natural law school. Gopalan's case was immediately after the inception of Constitution. At that time, the society had a lot of faith on the procedurally codified statute.

⁷ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁸ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 1179 (6th Ed. LexisNexis 2011).

⁹ *Id* at 1183.

Judicial Approach looked at law as commands and its strict wording can't be interpreted widely even if it leads to miscarriage of justice.

Positivist approach implies that decisions can be concluded coherently from pre-decided standards resort to social aims, policy or morality. Law, according to Analytical positivism, is the expertise of political authority whose compel is not reliant on their ethical temperance, historic sources, or sociological impacts. Austin, a positivist scholar, characterizes law as a command of sovereign. On the basis of works of Austin, H.L.A. Hart expanded the idea of positivism and said that rule of recognition is above legal system. A law is deemed to be valid if the procedure behind it is valid.¹⁰ Constrained approach to strictly comply the plain text of constitution remained in practice till the society was encountered with adverse consequences of this approach and judiciary started to address back to ancient ideas of natural morality, dharma, karma etc.

SEEDING OF NATURAL APPROACH IN MANEKA GANDHI'S CASE

Law is a dictate of reason as according to Naturalistic approach. Natural law is dig up rather than created by man. It is the idea or belief that only natural forces and laws operate in the world. A number of progressive philosophers/ theorists/ jurists (John Rawls, Ruddolf Stammler & Immanuel Kant etc.) have fused the idea of Natural Justice in their workings. In Maneka Gandhi's case court opposed to principles laid down in Gopalan's case, by combining 'reasonableness' and 'fairness' in the essence of 'procedure established by law' indicated in Article 21 of Constitution on the grounds of natural justice. This was the consequence of evaluating ill effects of positivist approach as seen in Ram Singh's Case, Shivkant Shukla's case and numerous different cases amid the season of three decades which required the natural law approach of court.

Chain of cases in extend of three decades showcased the adverse results of principles in the Gopalan's case and need for reform in judicial approach of Court. The positivist approach of judiciary rested in Gopalan's case lead to huge aftermath in many cases. In *Kharak Singh v.*

¹⁰ Sheela Rai, '*Hart's Concept of Law and Indian Constitution*' SCC Online [accessed from SCC online: (2002) 2 SCC (Jour) 1]

State of Uttar Pradesh,¹¹ petitioner approached the court under Article 32 of constitution challenging the Uttar Pradesh Police Regulations (Chapter XX) being violative of fundamental right guaranteed under Article 19(1)(d) and Article 21. The argument of Kharak Singh was that many a time Police Officials used to enter his house at any time and compel him to go to Police Station without stating any reason for the same. The Court held that fundamental rights are mutually exclusive and thus if he intends to challenge upon his right to privacy under Article 21 then he cannot contend his freedom to right to movement guaranteed under Article 19(1)(d).

Further, the Court in *Naranjan Singh v. State of Punjab*¹² held that the procedure to deprive a person's liberty must be strictly complied with in its words & spirit and must not be deviated in disadvantage to the person deprived.¹³

This principle directed to inconsistent conclusion in *Ram Singh v. Delhi*,¹⁴ where a person was detained under Preventive Detention Act for making speeches that disrupt public order. The court held that the detention can't be assessed on the restriction mentioned in Article 19(2) and can only be invalidated if it is inconsistent to the legally established procedure.¹⁵

Supreme Court in its landmark decision of *R.C. Cooper v. Union of India*,¹⁶ widely referred to as Bank Nationalization Case, re-established the Gopalan's minority view. The Supreme Court modified its approach towards mutual exclusivity of Fundamental Rights and tested validity of law enacted under Article 31(2) on the parameters of 19(1)(f). Previously, these articles dealing with fundamental rights were established to be mutually exclusive from each other. The Court further recognised this lucidity that fundamental rights are interlocked to each other after analysing the practicality by looking into various cases.

In *State of West Bengal v. Ashok Dey*,¹⁷ the Supreme court drew nexus between article 19, 21 and 22 and checked the validity of Preventive Detention Act, 1930 with relation to Article

¹¹ Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

¹² Naranjan Singh v. State of Punjab, AIR 1952 SC 106.

¹³ *Supra* note 8 at 1183.

¹⁴ Ram Singh v. Delhi, AIR 1951 SC 270.

¹⁵ *Supra* note 12.

¹⁶ R.C. Cooper v. Union of India, AIR 1970 SC 564.

¹⁷ State of West Bengal v. Ashok Dey, AIR 1972 SC 1660.

19(1)(d).¹⁸ Further, in *Bennett Coleman case*,¹⁹ the policy attempting to limit newspaper circulation by regulating the news-print paper (raw material) was alleged to be violating freedom of speech & expression in addition to abridging right to freedom of business protected under Article 19(1)(g). Hon'ble court assessed the reasonableness of policy with reference to Article 19(2) though effect on freedom of speech was indirect.²⁰

This completely oppose the view taken by Supreme Court in A.K. Gopalan's case that fundamental rights are exclusive and Article 19 can only be contended just when a law was passed specifically in regard of issue falling under it. Court to look the law just at coordinate result and not on its further ramifications never again supported after Bennett Coleman case.

In *Haradhan Saha v. State of West Bengal*,²¹ while testing legitimacy of the Maintenance of Internal Security Act 1971 [MISA], the Court assessed reasonableness with Article 14, 19 and 21. The infringement of Article 14 was fought on the ground that the Act gives confers drastic discretionary and arbitrary powers. The court rejected the contention to test legitimacy of act on grounds of either Article 19 or Article 14.

Bhagwati J. in *Khudiram Das v. State of West Bengal*²² categorically observed that every law of preventive detention within Article 22 is required to meet the mandatory requirements of Article 14 and Article 19.²³

The noticeable criticism of positivist approach by Supreme Court in landmark judgement of *ADM Jabalpur v. Shivkant Shukla*²⁴ additionally persuaded the court to disagree with Gopalan's situation that the expression 'technique set up by law' in Article 21 as inferring 'procedural due process' importance along these lines that no individual could be condemned

¹⁸ *Supra* note 8 at 1184.

¹⁹ *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 1425.

²⁰ *Supra* note 18.

²¹ *Haradhan Saha v. State of West Bengal*, AIR 1974 SC 2154.

²² *Khudiram Das v. State of West Bengal*, AIR 1975 SC 550.

²³ *Supra* note 2 at 1185.

²⁴ *A.D.M. Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

unheard, a standard very much perceived in present day legal framework. This case demonstrated that the fundamental question of Article 21 is crushed because of strict positivist/formalist approach of court.

SCOPE OF ARTICLE 21

Post the national emergency of 1975, the expression 'personal liberty' under Article 21 was very wide connotation. The courts started to emphasise upon the protection under Article 21 by widening the ambit of expression 'personal liberty' protecting a variety of rights which comprise to the personal liberty of a citizen. The protection should not to be limited to exclude even those traits of personal liberty that are expressly referred under Article 19. Courts should attempt to widen the scope of fundamental rights through the process of judicial construction.²⁵

The right to life under article 21 does to extends to mere human existence rather implies to live with human dignity with access to all its attributes starting from the basic necessities of life i.e. food, shelter & clothing to upgraded facilities of writing, reading, playing and expressing oneself, freely moving about and mixing and commingling with fellow human beings.²⁶

The interpretation of phrase 'personal liberty' under Article 21 is the primary instrument of judicial activism. Where prisoner, who was condemned to death, was shifted to solitary confinement, court extended protection under Article 21 to prisoners and held that their fundamental rights can not be restricted beyond the nature of the punishment as awarded.²⁷ Even the prison rules can not stand in violation to the prisoner's inherent fundamental rights such as equality, right to life & personal liberty. Inhumane torture in prison is against his basic human rights. Prisoners are also afforded with protection of other rights not expressly restricted under nature of imprisonment such as freedom of religion.²⁸ Further, Supreme Court in *Charles Sobhraj v. Supdt., Jail, Tihar*²⁹ ruled that courts can intervene into prison administration in case constitutional rights of prisoner are transgressed by the authorities arbitrarily.

²⁵ *Supra* note 8 at 1186.

²⁶ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, A.I.R. 1981 S.C. 746.

²⁷ Sunil Batra (I) v. Delhi Administration, AIR 1978 SC 1675.

²⁸ S. P. Sathe, *Judicial Activism: The Indian Experience*, 6 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 29 (2001).

²⁹ Charles Sobhraj v. Supdt., Jail, Tihar, AIR 1978 SC 1514.

Supreme Court in *Prem Shankar Shukla v. Delhi Administration*³⁰ stopped routinely handcuffing observing handcuffing to be *prima facie* “inhuman, and, therefore unreasonable, is over-harsh and at the first flush arbitrary” referring to Article 5 of the Universal Declaration of Human Rights 1984. The court established that a person should not be generally handcuffed who is under trial for a non-bailable offence. Hon’ble Supreme Court while exercising epistolary jurisdiction allowed a writ petition on the basis of concern raised through letter from Kuldip Nayar informing about the inhumane treatment to seven TADA detainees in Guwahati.³¹

The Court taking into account the duty of jail authorities & police to prevent prisoners from escaping from the custody recommended to maintain a balance between adequate measures to prevent detainees escaping and protection of prisoners’ rights under the Constitution. Unguided powers in the hand of authorities to use fetters or chain are bad in law. Handcuffs or fetters can’t be used on a prisoner, whether convicted or under-trial, without prior authorisation of a magistrate. This authorisation should only be granted in exceptional cases concerning such circumstances pointing towards a strong inference of prisoner escaping out of custody.³²

In one of the famous judgement of Hussainara Khatoon’s,³³ the right to speedy trial was established to be a component of fundamental right guaranteed under Article 21. It headed towards prison reforms which led to birth of *half-prison rule*³⁴ that no under-trial prisoner can be kept in prison for more than one half the maximum punishment for the offence alleged for. Further in *Sher Singh v. State of Punjab*,³⁵ court observed that there would be no equality of the accused if there will be speedy trial of the accused. Thus, in *Nilabati Behra v. State of Orissa*,³⁶ the issues like custodial violence, rights of prisoners and police brutality were given much attention and compensation was provided in a case for the same.

³⁰ Prem Shankar Shukla v. Delhi Administration, 1980 SCC 526.

³¹ Citizens for Democracy v. State of Assam, (1995) 3 SCC 743.

³² Mandeep Tiwana Edited by Maja Daruwala, *Human Rights And Policing: Landmark Supreme Court Directives & National Human Rights Commission Guidelines*, CHRI (2005) retrieved from (Aug 8, 2017, 03:49 pm) http://www.humanrightsinitiative.org/publications/hrc/humanrights_policing.pdf .

³³ Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1977 SC 1277.

³⁴ §.436A, Code of Criminal Procedure 1973.

³⁵ Sher Singh v. State of Punjab, AIR 1983 SC 465.

³⁶ Nilabati Behra v. State of Orissa, AIR 1993 SC 1960.

Later, in *Khatri v. State of Bihar*,³⁷ a prisoner was firstly blind folded and then tortured by prison authorities, the Court strictly held that the government cannot emit the obligation of providing legal relief by pleading for monetary and administrative instability. It's significance was seen in cases where parties were unaware of its rights, or rural or illiterate or were not in a position to pay counsel.

The issue of custodial death and violence was addressed in *D.K. Basu v. State of West Bengal*³⁸ wherein Hon'ble Court prescribed specific guidelines providing procedure for arrest of person taking into consideration the facts of torture to the extent of taking prisoners life in custody.

Indian Judiciary has always showed pathway to legislature for necessary reforms required in modern trends of society. Increase in the crime rate of misconduct & sexual violence against women in modern professional arenas mandated requirement for necessary regulation of modern professional culture to this regard. Court addressed this issue in *State of Punjab v. Ramdev Singh*³⁹ wherein court emphasized the need to deal with such sensitive issue with great seriousness since such acts of misconduct or sexual violence is directly encroachment upon right to dignity of life protected under Article 21. Thereafter, court in the landmark judgement of *Vishakha v. State of Rajasthan*⁴⁰ wherein court was encountered with instance of sexual violence against a female Anganwadi worker, the Supreme Court held it to be infringement of her right to life and laid down a list of guidelines enforceable as a statutory law until a specific comprehensive legislation is enacted to address the same. The need for specific legislation was recommended again in *Apparel Export Promotion Council v. A.K. Chopra*.⁴¹ These activist decisions proved to be reason for enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 to protect women from sexual harassment of any form at their workplace.

Proceeding with the practice of defending women's rights, in *Sheela Barse v. State of Maharashtra*,⁴² a journalist addressed letter to Supreme Court that she had a conversation with

³⁷ *Khatri v. State of Bihar*, AIR 1981 SC 928.

³⁸ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

³⁹ *State of Punjab v. Ramdev Singh*, AIR 2004 SC 1290.

⁴⁰ *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

⁴¹ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁴² *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

15 women prisoners in Bombay Central Jail and one-third of them confessed that they have been assaulted therein. The Court conceded the letter as writ petition looking at the gravity of the allegations, and ordered the College of Social Work, Bombay to witness the situation at Central Jail & report the validity of allegations addressed. SWC, Bombay submitted an extensive report affirming the allegation that overabundances against women were taking place and absence of mechanism providing legitimate help to women prisoners. The Court gave instructions that safeguarded the safety of women prisoners, they ensured that were held in only women prisons, defended by female constables and the interrogation should take place only in the presence of female constable. Then in the case of *Neera Mathur v. L.I.C.*,⁴³ the Court held that being asked about pregnancies or menstrual cycles and such information was infringement to person's right to personal liberty.

Also, in another petition admitted on the basis of letter revealing the transportation of hundreds of unwanted new born babies Kolkata slums to abroad leading to death of these new babies because of different physical conditions. Taking note of this the Apex Court laid down various guidelines in the matter of foreign or inter-country adoptions.⁴⁴ Thereafter in, *Lakshmi Kant Pandey v. Union of India*,⁴⁵ Supreme Court made some clarifications and modifications in those guidelines as certain agencies faced difficulties in implementing the same. Further, in 1987, these guidelines were again amended for more certainty. After that, separate CARA Guidelines had been issued for inter country and in country adoptions.

Right to Education was further added to wide ambit of Article 21 by 86th Constitutional Amendment in December 2002. Before the amendment, it was only a Directive Principle. In *Mohini Jain v. State of Karnataka*,⁴⁶ Hon'ble Supreme Court of India established that Right to Education has its roots from fundamental right to life under Article 21 and it's the duty of the State to provide the adequate facilities of educational institutions for the welfare of its citizens. The outcome lead to Right to Education Act of 2013 where 21A was added saying:

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

⁴³ *Neera Mathur v. L.I.C.*, AIR 1992 SC 392.

⁴⁴ *Lakshmi Kant Pandey v. Union of India*, AIR 1984 SC 468.

⁴⁵ *Lakshmi Kant Pandey v. Union of India*, AIR 1986 SC 272.

⁴⁶ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

With progression of life into plastic era, Judicial Activism proved to be only recourse to deal with modern issues relating to environment pollution. Court widened the scope of right to life under Article 21 to incorporate right to clean/ pollution-free environment in *Subhash Kumar v. State of Bihar*.⁴⁷ The courts have established two principles in furtherance of sustainable development on the basis of which environmental jurisprudence has developed in India:

1. Polluter pays principle and
2. the precautionary principle⁴⁸

Supreme Court revolutionised environmental jurisprudence through its landmark decision in *M.C. Mehta v. Union of India*⁴⁹ which was filed in reaction to the Oleum gas leak disaster from Shriram Food & Fertilisers Ltd. complex in the capital region of Delhi. Court propounded the principles of “absolute liability” & “deep pockets” to prevent any further environmental damage by commercial activities.

Hon’ble court recognised the principle of “absolute liability” making the enterprise absolutely liable for any damage caused due to the activity performed by it on account of reason that the enterprise has absolute duty to ensure that hazardous or inherently dangerous activity performed by it do not result into any harm or damage to others. In case of such disaster, the enterprise should compensate the loss and corporate can’t take excuse of reasonable care or no negligence on their part.

Further in *M.C. Mehta v. Kamal Nath*,⁵⁰ public trust doctrine was applied for preservation & protection of natural resources. Court established that natural resources are property of general public and owes great importance to them. State has been entrusted with these natural resources for their sustainable use in the best interest of general public and it would be breach of trust if these resources are used for benefit of private ownership. Supreme Court also banned vehicle, not compatible to Euro II fuel norms, to ply in the jurisdiction of national capital.⁵¹

⁴⁷ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

⁴⁸ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

⁴⁹ *M.C. Mehta v. Union of India*, 1987 SCR (1) 819.

⁵⁰ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

⁵¹ *M.C. Mehta v. Union of India*, (2003) 10 SCC 561.

Hon'ble Supreme Court in two more litigations by M.C. Mehta directed for regulation of water pollution caused through effluents from tanneries and framed provisions for operation of industries & vehicles in the vicinity of Taj Mahal considering the degrading value of monument due to rising levels of air pollution.

A short time ago in December 2016, Supreme Court ordered removal of liquor vends situated within a distance of 500 metres from national or state highways by taking into consideration increasing number of accidents caused by drink driving. Thus, judiciary in India through its continuous activity has been making attempts to conserve the ecosystem of the country and safeguard that legislations are passed with same intention.

CONCLUSION

The main aim of the judiciary is to make justice accessible to everyone and strict interpretation of words of law sometimes defeats the main purpose of law. A perfect democracy or state is only an ideal concept, these activist decisions of judicial courts through the phenomenon of judicial activism attempts to give effect to right-based revolution as imagined by the constituent assembly. Judicial Activism in addition to laying new interpretations & connotations to the constitutional provisions also shows pathway to legislature for necessary reforms required in modern trends of society that are the need of the hour. The Judiciary is, was and continues to be one of the most respected institutions of the nation and has taken its responsibility to protect rights of citizens seriously.

