



FOUNDATION *for* RESTORATION of NATIONAL VALUES

ॐ सर्वे भवन्तु सुखिनः। सर्वे सन्तु निरामयाः॥
सर्वे भद्राणि पश्यन्तु। मा कश्चिद्दुःखभाग्भवेत्॥

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<https://twitter.com/ValuesandUs>

frnv@outlook.com

011-26686630

NEWSLETTER

April 2017

Judicial Activism



Message from CEO

On many occasions when the Government and elected leaders fail the society, Judiciary has had to step in and ensure that the right course of action is taken for the benefit of all concerned. In some cases when the Judiciary adopted a different method for interpreting laws, taking the larger social context into account, it brought about changes that were in the interest of the larger sections of people. Their role was lauded by people. In fact, many rights that we have today, as citizens of this country, would not have emanated had the judges remained conservative, limiting themselves to the exercise of their own powers.

However, lately it has been felt that judiciary has started interfering in policy-planning. From ordering the government to set up a Bad Loans Panel to setting up a National Disaster Mitigation funds, there have been several instances of judicial over-reach. So much so that it is increasingly felt that while judiciary appropriates the power of executive and legislature, the judges themselves don't want to be held accountable.

Judiciary in India has been vested with a lot of power. Hence they must exercise their power with great caution. It has to be remembered that the primary function of the judiciary is to interpret and express law and not declare it. Judicial activism is something that should be rarely used. If it transgresses on the power of other organs of the government, people may lose faith in them. The strength of Judiciary lies in the faith reposed by people in them.

All said and done, Judiciary continues to be the institution of highest credibility in the country. However, the intellectual society is worried at the intransience of Judiciary to make it transparent and accountable on equal footing, as the executive and legislature. If Judges do not shy away from declaring their assets or exposing themselves to RTI, then its credibility will go up even more, not only in our country but worldwide.

Anupama Jha

Judicial Activism or Judicial overreach?

- Swati Chawla, Project Director, FRNV

Many instances in the last one year have witnessed turf wars between the executive and the judiciary. Supreme Court's recent orders on drought management, BCCI, appointment of judges, bad loans panel, ban on liquor shops on highways and ban of vehicles have had people fuming overreach. In one of his articles, Fali Nariman quotes Lord Anthony Lester, one of England's leading lawyers, to say: "Judicial power is wonderful, and absolute judicial power is absolutely wonderful." To say that this is an exaggeration of judicial supremacy is debatable.

But, judicial activism in India has had many phases and faces. The time of the 50s when the Supreme Court struck down many laws passed by Parliament with judgments such as *Romesh Thappar v. State of Madras*, *Brij Bhushan v. State of Delhi* and *Champakam Dorairajan v. State of Madras*, to be consequently quashed later. The second phase of the 70s, when, fresh from the emergency, the Courts had taken upon the 'equity' role, as comprised under the Chancery Courts of England and entertained complaints from social activists. Surely, this was the time when the courts did play a positivist role. Much of the credit for this goes to Justice P.N. Bhagwati for bringing the Public Interest Law to the public. Many exemplary cases of judicial activism followed.

The move, however, metamorphosed into a course correctional path where the courts had taken over almost all aspects of executive and legislature. What was set out to be a supplementary role by courts to assist in the access of justice to the poor and disadvantaged, it took overtones of a watchdog body that would reprimand and course correct government departments. Come the 90s, and the interesting *Hazratbal Case* where Supreme Court's order changed the course of a military operation, though obnoxious, was righteous in the light of the human rights perspective. Judgments and orders to protect the environment is good activism. Because, clearly there is an aspect of the legislative and the executive that have not been able to create and enforce laws to protect the environment. But when and why does it become overreach? When the parameters and bounds are breached, activism becomes overreach. Micro management and course correction by courts is an example of overreach.

In the words of Hon'ble Dr. Justice A.S. Anand, former Chief Justice of India: "Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred

duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive.

The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter-productive and undermine the credibility of the institution. Courts cannot “create rights” where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become “judicial adventurism”, the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties.”

NEWS AND EVENTS

□ On April 25, an event on Earth Day was organised at Delhi University Social Science School, Maurice Nagar, University of Delhi. The objective of the event was for raising environmental consciousness by organizing poster making and slogan writing competitions.



□ On April 28, the same message was taken beyond the school boundary and an event was organized at Sangam Park as majority of the students of DUSC School come from Sangam Park. The purpose was to sensitize people about caring for our mother earth. The parents and children created craft materials out of waste materials from their homes.



□ To test the strength of the reforms made during the 73rd and 74th Amendments, we took the opportunity of the upcoming MCD elections to advocate and propagate our beliefs of ensuring probity in governance. We conducted a survey based on personal face-to-face interviews with the people of Delhi divided under the three MCD Zones- East, North, South. Areas in these zones were identified on pre-determined indicators that weighed factors such as diversity of the population- migrants, working class, white collared, etc; economic indicators such as posh areas, regularized colonies, unauthorized colonies; and, a diverse electoral roll- a motley crowd comprising of labourers, rikshaw pullers, college students, housewives, office goers, RWA members, etc. A major part of the Opinion Poll was to ascertain if MCD had been successful in delivering its duties as per its mandate. Apart from specific questions on health, sanitation, hospitals, education and other civic amenities, we also wanted to ascertain the corruption index indicating petty corruption, maladministration, Councilors' availability and accessibility, dereliction of duty and absenteeism. The findings of the Opinion Poll highlight an array of gap areas- from sweepers not disposing garbage properly, to not having enough sweepers, to the need of cleaner parks, hospitals, schools, public toilets, roads, dustbins on roads, better drainage and garbage disposal system, the focus remained on cleanliness. Interesting suggestions aimed at reducing corruption amongst officials by maintaining honesty, transparency and personal accountability in dispensing duties.

□ On May 8, Supreme Court passed a judgment in the PIL filed by FRNV seeking comprehensive implementation of Disaster Management Act of 2005. FRNV was represented by Shri Ravi.P.Mehrotra. The Court contended that while there have been sufficient compliance with the provisions of the Act, it was imperative that the disaster management agencies at the national and state level should be ever vigilant. . Should there be any disaster, there should be total preparedness and minimum standard of relief be provided to the victims.

The Challenges of Judicial Activism in India

- Shreyan Acharya, Volunteer, FRNV

The advent of judicial activism in India can be traced back to the 20th Century. In general sense, it reflects the power of the judiciary to broaden the parameters of justice by making justice more accessible to the common man. In India, the powers of the three organs, i.e. Executive, Legislature and Judiciary, are exercised separately and the doctrine of intervention in the functioning of each other's responsibility is not recognized. But, the doctrine of separation of power is not considered in the literal sense under the Indian Constitution, which gives the power to the one organ to check upon the power of the other organ if one exceeds the authority, or if their action violates the Fundamental Rights of the citizens enshrined under Part III of the Constitution of India.



The critiques of judicial activism often quote it as judicial overreach. Taking the recent example of the issue of BCCI, the judgment of the Hon' Supreme Court of India gained both applause and condemnation. Some referred to it as judicial activism, while others termed it as judicial overreach. The Judiciary having the role to interpret the statute and make their decisions as per the courtroom submissions by relying upon the arguments submitted, played a critical role by broadening its sphere in exercising its power to reform the cricket administration. In another example, the Supreme Court has also played a vital role in environmental protection. The Court, has made a strong distinction between development and environment degradation, and emphasized upon the need to protect the right of the citizens to have an access to clean and pollution free environment.

The power of Public Interest Litigation has its own potentials and challenges. At times, it is also coined as Publicity Interest Litigation, which may also be used as a tool for personal interests and for causing interruptions. But, this should not undermine the importance it has in making justice accessible to the poor and downtrodden people unaware of their basic rights. The doctrine of PIL has empowered the citizens to approach the court on behalf of the socially-disadvantaged sections of the society to invoke necessary writs to protect their fundamental

rights.

The social workers, lawyers, and public-spirited citizens belonging to different fields of life feel the power sanctioned by the judiciary to take up issues affecting the rights of the citizens in the court of law. By this, justice has been made accessible to the bigger lot who were deprived of it and lived in the state of misery. Therefore, the concept of judicial activism is not restricted to any one issue, but has been duly exercised since a very long time, and has retained the faith of the people in the system by having far-reaching implications.



**The Foundation for
Restoration of National Values
(FRNV)**

cordially invites you to its 9th Foundation Day
on Saturday, June 10, 2017 at 9:30 a.m

Theme for the Event
"Swachh Bharat"



Shri. M. Venkaiah Naidu, Hon'ble Minister for Urban Development, GoI,
has kindly consented to be the Chief Guest.

Venue
DMRC Auditorium, Metro Bhawan, Fire Brigade
Lane, Barakhamba Road, New Delhi - 110 001

RSVP : +91 9599697643; 011-26686630

Dear Readers,

FRNV invites stories from its readers on deep-rooted values that have helped us in our everyday lives. Some of these stories will be featured in the next issue of our newsletter. So put your thinking caps on, recall the values integral to your life which you cherish and write to us at shilpi@valuefoundation.in.