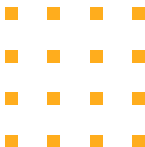
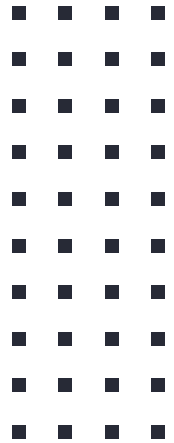




Judicial Activism through Public Interest Litigation



Objectives of the Session

The Objectives of the session are to:

- **examine the meaning of Judicial activism;**
- **trace the development of judicial activism in India; and**
- **examine the procedural innovations done by judiciary to give relief to people.**

Traditional Role of Judiciary

- Adjudication of disputes
- Interpretation of Constitution & Laws
- Determination of Controversies

Based on:

- Doctrine of Separation of Powers
- Theory of Checks and Balances



“It ... is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”

Lord Hewart, CJ

Objectives of the Session

The objectives of the Session are to:

- **Understand the concept of natural justice;**
- **Describe the principles of natural justice; and**
- **Highlight the applicability of the Principles of natural Justice to administrative actions**



Judicial Activism –Meaning

- Judicial activism is a *“philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions.”*
- When a Court takes some legislative power away from legislators.
- To define broadly, is the assumption of an active role on the part of the judiciary
- Herein judges assume a role as independent policy makers or independent "trustees" on behalf of society that goes beyond their traditional role as interpreters of the Constitution and laws.

Evolution of Judicial Activism-Theories

Theory of Vacuum Filling- the vacuum is created by the inactivity, incompetence, disregard of law, corruption, indiscipline within legislature and the executive

the judiciary is left with no other alternative but to expand its horizons and fill up the vacuums

Theory of Social Want which states that judicial activism emerged due to the failure of the existing legislations to cope up with the existing situations and problems in the country

- Prior to 1970, the view that existed among the common mass was that the Parliament is the sovereign body and can override not only the executive vis-à-vis the judiciary but also the Constitution.
- In twin cases of *Maneka Gandhi 1978* and *Keshvanand Bharati 1973* judiciary formulated new interpretation of law upholding Constitution as supreme law of land.
- In case of *Keshvanand Bharati* Supreme Court rejected the stance that Parliament is sovereign
- And formulated the **‘doctrine of basic structure’** which formed an impenetrable structure against all whimsical actions of executive or legislature.

Keshavananda Bharti v/s Govt.of Kerala(1973)

- **Court declared a constitutional amendment duly passed by the legislature invalid as damaging or destroying its basic structure.**
- **This was a gigantic innovative judicial leap unknown to any legal system.**
- **The masterstroke was that the judgment could not be annulled by any amendment to be made by Parliament because the basic structure doctrine was vague and amorphous.**

- After these developments, the poor and the helpless sections of the society started looking towards the proactive judiciary for relief .
- Not only that, the NGOs, the advocates and other people started coming forward *pro bono publico* and the judiciary devising newer rights as part of basic human rights
- The two most prominent figures whose names are the most inter related with judicial activism and birth of PILs- Justice P. N Bhagwati and Justice V.R.Krishna Iyer

- **PIL has become the most convenient vehicle for bringing public grievances before courts and one of the mode of judicial activism**
- **Origin of the Public Interest Litigations has involved**
 - **Modifying the traditional requirements of *locus standi*,**
 - **liberalizing the procedure to file writ petitions**
 - **Creating or expanding fundamental rights,**
 - **Overcoming evidentiary problems,**
 - **Evolving innovative remedies.**

Relaxation of Requirement of *Locus Standi*

- In Public Interest Litigation the courts have relaxed the requirements of *locus standi*
- where constitutional or legal rights of persons have been violated and due to social or economic condition, they are unable to approach the court for judicial redress,
- Any public spirited citizen can move the court for the public cause by filing a petition in the Supreme Court under Article 32 or High Court under Article 226
- It is *not necessary that the person filing a case should have a direct interest or involvement in the matter of litigation*
- A person in Mumbai can file a Public Interest Litigation for malnutrition deaths in Orissa or protection of environment in Tamil Nadu



Phases of Development of PIL

Let's start with the first set of slides

Three Phases of PIL

First phase –1970s
1980s

PIL cases were generally filed by public-spirited persons
Mostly related to the rights of disadvantaged sections of society

Second Phase- 1990s

Filing of PIL cases became more institutionalized
several specialized NGOs and lawyers started bringing PIL on a much regular basis.

Third Phase- 21st century—

Anyone could file a PIL for almost anything.
Changes in judicial attitude at the cost of the sympathetic gesture

The response of judiciary much bolder and unconventional.



Suo Motu cognizance by courts

- the courts have also taken the “**Suo Motu cognizance**” of matter
- Initiated proceedings on the basis of letters or reports - described as ‘**epistolary jurisdiction**’
- It is a special power of High Courts and Supreme court to initiate a hearing by itself without anybody filing writ petition
- when court feels that a matter requires serious and immediate legal intervention

Fact Finding Commissions

- PIL is filed straightaway at the level of Supreme Court or High Court
- Parties do not have a meaningful opportunity to present evidence on record before the start of the court proceeding.
- To overcome this problem, our Courts have developed the practice of **appointing 'fact-finding commissions'** on a case by case basis.
- In matters involving complex legal considerations, the Courts also seek the services of senior counsels by appointing them as amicus curiae on a case-by-case basis.

Award of Compensation

- The PILs have also witnessed the award of compensation by the Court to victims of human rights violations , custodial deaths case, etc.
- the Court has explained that the Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 is a remedy available in public law
- Since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved.

Some Strategic Areas where PILs' Impact has been seen include

- Protection of Human Rights of the vulnerable-
- Economic , social and cultural rights
- Multifarious issues relating to environmental degradation/rejuvenation
- Police accountability
- Accountability of public authorities



Thanks!

Any questions?