

## How Judicial Activism affects the lives of migrant workers during COVID 19 Pandemic and Women in general in India?

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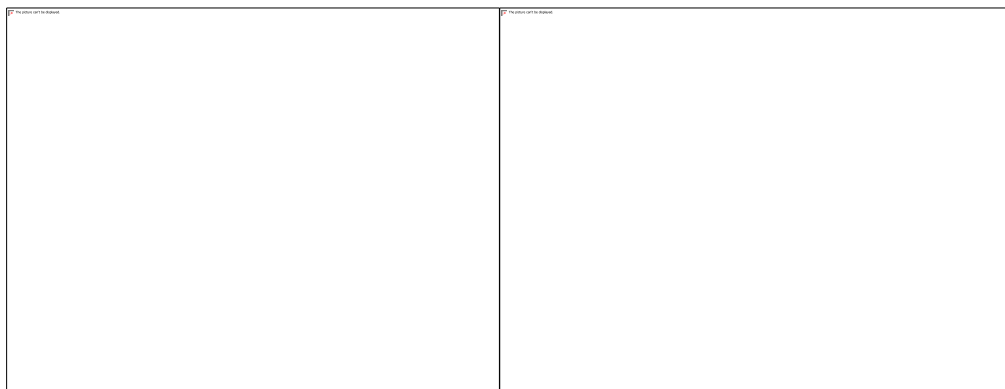
**ABSTRACT-** The concept of Judicial Activism acts as the source of defining the equity and natural rights. In India, the root of judicial activism has been found to be difficult. For a long period of time, the approach of orthodox has been adapted to understand the Judicial Activism. It has been based on the way of determining the number of rights associated with the women, migrant workers as well as with the normal citizen rights. The proper implication of Judicial Activism leads to determine the higher level of success and development of legislative as well as the judiciary system of country. To have the proper understanding of judicial activism concept, the proper analysis as well as the evaluation of literature sources has been done. This has been further supported by applying the most relevant research defined majorly in terms of the primary as well as the secondary method. In support of this, the implication as well as the analysis of data has been done with that of relating to the concept of Judicial Activism. The in-depth analysis as well as the implication of effective source has been done to define the relevant form of data being gathered as per that of defining the number of equality based laws related to that of defining the recommendations as well as the future needs to define the judicial activism system.

**Keywords:** Judicial Activism, migrant workers, COVID 19

### I. INTRODUCTION

The judiciary plays a vital part in a country's people's rights being upheld and promoted. Judicial activism refers to the judiciary's active role in safeguarding citizens' rights and protecting the country's constitutional and legal structure. This implies, on sometimes, intruding into the executive's domain (Petersen, 2017). Judicial overreach is a more extreme kind of judicial activism, and candidates should be aware of this.

The entire report has been conducted to determine the number of laws and policies that leads to determine the new and effective set of values that helps the citizen to live an equal and healthy life. The judicial activism acts as an important concept in determining the equality among citizens of country. It has been linked with the concept of defining equity and natural rights. The aim of evaluating the judicial activism system is to analyze the number of rights associated with that of determining the women rights, human rights, environmental rights and other such rights that leads to define the healthy and active standard of living. To have the proper understanding of judicial activism with that of determining the equality among the citizen of country, the evaluation of necessary concepts and abilities would be done.



**Figure1** (a) Migrant workers moving during Covid 19 Pandemic

Source: [www.npr.org](http://www.npr.org)

(b) Illustration by Javier Jaen Statue: Inga Dronsutaviciene/iStock, via

### **Judicial Activism**

According to Subhalakshmi (2020), the judiciary is the most important pillar of democracy, and the protection of society's sects is a fundamental responsibility of any democratic structure. According to government records, more than 35 thousand people are incarcerated. In the country, ill-treatment of prisoners and denial of fundamental rights are very common. Many inmates are incarcerated solely due to a lack of legal representation or financial resources. The prison administration does not provide basic necessities such as the right to religion, shelter, food, clothing, recreation, and other necessities that are necessary for inmates to maintain physical and mental balance in their lives.

### **Indian Institution and Judicial Activism**

In support of this, Jaswal & Singh (2017) evaluated the fact that the State has the primary responsibility under the Indian Constitution to ensure justice, liberty, equality, and fraternity in the country. Individuals' fundamental rights must be protected, and the Directive Principles of State Policy must be implemented by each state. To prevent the government from evading its responsibilities, the Indian Constitution has given the courts inherent powers to review the government's actions. The Indian judiciary has been regarded as the guardian and protector of the Indian Constitution in this context. The Indian judiciary has played an active role in protecting individuals' fundamental rights against the State's unjust, unreasonable, and unfair actions/inactions, in accordance with its constitutional obligations. Judicial activism is defined as "a philosophy of judicial decision-making in which judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to disregard precedent," according to Black's Law Dictionary. [According to Singh (2018)]

### **Lives of Migrant Workers during Covid19 Pandemic and Women in general**

The Indian government has passed numerous labour legislation since independence. In addition, the government implemented a number of labour reforms to enhance pay and working conditions for both organised and unorganised workers. In India, we need to talk about the quality of living and labour norms for migrant workers. In terms of pay policy in India, it has been noticed that migrant employees, both male and female, are paid less than the minimum wage. They do not receive the minimum pay required by the Minimum Wages Act of 1948. The majority of seasonally migrant workers in India describe long and flexible working hours mixed with low wages. Migrant labourers do not have a set schedule; they work more than 12 hours per day instead of 8 hours per day. Sugarcane harvesters, cutters, transporters, and brick kiln employees all work for 12 or more hours each day. In terms of salary rates for women workers, it has been found that in some businesses, migrant women workers are paid less than male workers.

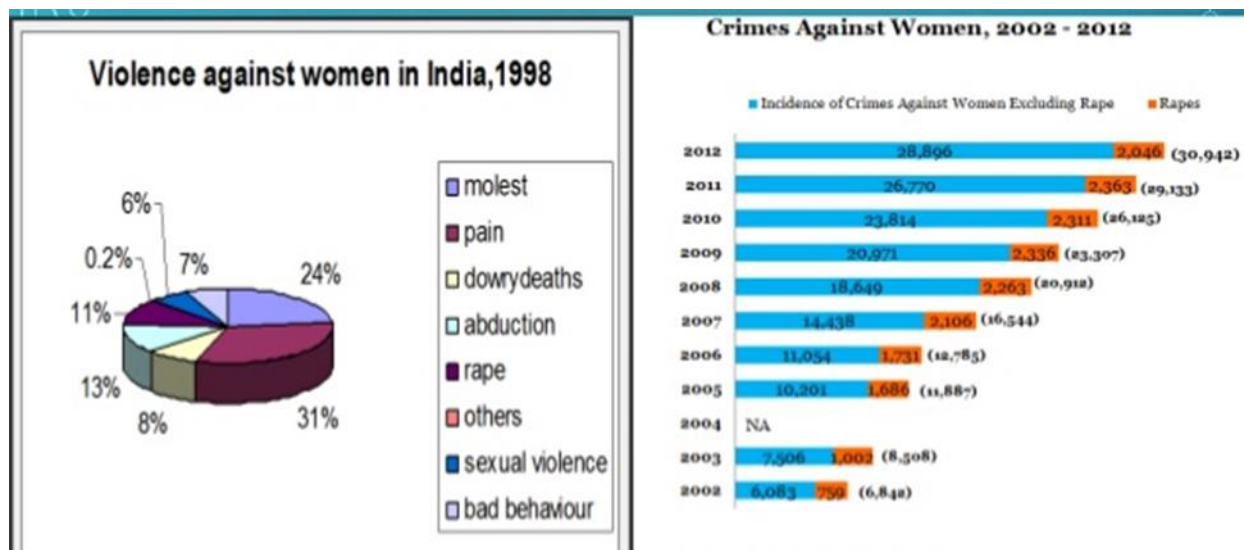
### **Migrant Workers Rights in India**

The Government of India imposed a state wide lockdown in India beginning at midnight on March 24, 2020, to prevent the Corona virus from spreading throughout the country. Millions of migrant labourers have been affected by India's lockdown. Lack of food and basic necessities, job loss, fear of the unknown, and a lack of social support were all key factors in this large population's struggle. More than 300 deaths have been reported as a result of the lock-down, with causes ranging from malnutrition to suicides, exhaustion, road and train accidents, police abuse, and denial of prompt medical care. Eighty migrants died on the Shramik Special trains on their way home. Several incidences have been reported across the country, including viral films of police misbehaviour and brutality (including cane-charged beatings) on migrant labourers.

The Indian judiciary has also not done itself any favours by failing to protect the rights and dignity of migrant workers, citing non-interference in policy as an excuse. Since 1922, India has been a permanent member of the ILO Governing Body, having been a founder member of the organisation. Six of the eight core/fundamental ILO conventions have been ratified by India. The two most important foundational conventions have not been ratified by India (Convention No 87,98). Important components of labour standards and labour rights (Migrants Rights) must be preserved with the goal of developing a system with no hurdles to the Rule of Law's smooth operation.

### **Women Rights in India**

A women in India faces number of issues such as rape, sexual harassment, kidnapping, domestic violence and dowry death.



**Figure 2.** Data showing violence against women in India (Source: Agarwal et al 2021)

To overcome the number of harassment and illegal treating of women, the judicial activism provides the number of laws for women that could help them to live a healthy lifestyle. In recent years, Indian women have faced the problem of getting raped, they bear the acid attacks that has led to motivate the government to take some strict acts and make strict laws against the criminals. One of the most recent case is of Nirbhaya who was a 23 years old girl categorized as the paramedical student who was raped by a group of men in moving bus in Delhi on 16 Dec 2016. In addition to this, a 19 years old girl died in Safdarjung Hospital, Delhi. She was gang raped and tortured in Uttar Pradesh (Niaz, 2020). On analyzing the number of incidents, the need to define the concept of judicial activism has been focused within India. In support of this, the number of laws and acts have been made for women of the country.

Articles	Description	Analysis
Article 14	This laws leads to assure the fact of defining equality before law.	As our Indian Constitution states, the security of our liberty is solely the duty of our law. As we can see,
Article 15(1)	As per this law, the state has been empowered to for making the special provision to woman.	the Supreme Court is the defender of India's Constitution. As a result, the Supreme Court's sole duty,
Article 21	This law helps to provide the protection against life and personal liberty.	according to this court, is to protect and guarantee fundamental rights. As an Indian resident, we have all of the basic
Article 21(A)	It has been associated with the motive of defining the right to education.	rights guaranteed by statute. As a result, we will use the Supreme Court to enforce it if our constitutional rights are violated.

In terms of Judicial Activism, there are two categories of privileges in Article 21:

### Right to Life

Every individual is entitled to life, liberty, and personal protection. In India's constitution, the right to life is a basic right. Human rights apply only to living things. The right to life is one of the most important rights that people have. If Article 21 had been read in its original context, there would have been no Fundamental Rights worth noting. The right to life is examined in this article, as it has been defined by the Supreme Court of India in a number of cases (Mahadevia, & Vyas, 2017).

### **Right to Personal Liberty**

The right to life is a fundamental aspect of life without which we will be unable to exist as humans. It encompasses all facets of life that contribute to making a human being's life meaningful, complete, and worthwhile. Only one clause of the constitution has been given the broadest reading possible. The right to shelter, development, and nourishment is stated in Article 21 of the Indian Constitution. That it is the absolute minimum, minimum and fundamental provisions for a person's right to life and other rights that are necessary and inevitable.

### **Objective of Study**

The objective of study is to evaluate the impact of judicial activism on the women rights and migrant workers of country.

### **Scope of Study**

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## **III. METHODOLOGY**

With the motive of regulating the concept of judicial activism with that of assuring the equality of rights, the methods that are applied within the report are defined as the quantitative and qualitative methods. The quantitative method is defined as the form of evaluating the outcomes based on the statistical analysis of the relevant data and information. It leads to assure that the most effective information has been gathered. It is majorly evaluated by defining the number of questionnaires, online surveys defined by the number of participants selected on the basis of random sampling. Within this report, the online survey of questionnaires has been done with selection of about 50 participants on random basis. On the other hand, the qualitative method has been used to evaluate the previously gathered data by the scholars and based on this data the further evaluation of methods and information has been done. The accurate implication of this method leads to have the proper understanding of concepts and legal rights associated with that of defining the term of judicial activism.

The need of defining methodology is termed as the specific set of procedures and techniques that are used to identify, select and regulate the information about topic. In the current report, the methodology that has been applied to evaluate the equality under judicial activism is termed as quantitative and qualitative methodology.

The quantitative strategy is frequently used by researchers who follow the scientific method. The goal of this method is to collect data and generalize findings from a subset of a target population. It employs a methodical data collection procedure that culminates in the production of numerical data. To conduct critical analysis in quantitative research, computational methods are frequently used.

The qualitative analysis approach would be used by a researcher to provide a complete and accurate explanation of their findings. Rather than making predictions or providing causal explanations, the qualitative approach contextualises and interprets the data collected. Because this method of research is subjective, it requires a smaller number of respondents who have been carefully chosen.

## **IV. DATA ANALYSIS**

With the aim of focusing over the women rights, with that of determining the judicial activism, the number of legislative measures have been taken to assure that the equal rights are provided to women for countering the social discrimination as well as the variation defined in form of violence and atrocities that leads to provide support to women majorly focused for working women. The number of crime identified under the Indian Penal Code (IPC) includes the crime such as the rape that is defined under the Sec 376 IPC with the punishment of 7 years. The crime of kidnapping and abduction for different purposes has been define under Sec 363-373 IPC that involves 10 years of punishment, the crime for homicide for dowry and dowry deaths has been defined under Sec 302/304-B IPC with the punishment of 7 years (Chaudhary, 2017). In addition to this, crime of torture defined in terms of mental and physical state has been defined under Sec 498-A IPC with the punishment of 3 years. The overall analysis of these facts has led to define the fact that the overall implication of rights in an effective way leads to assure the fact that

the Indian Judicial Activism leads to actively contribute towards the aim of protecting the rights for women. In support of this, the number of acts associated with environmental and safety protection of an individual has been processed under the concept of judicial activism system. In support of this, it has been also identified that due to the COVID 19 situation, the majority of laws has been made for the migrant workers who have faced the huge difficulty in terms of being migrated from one place to another in search of food and to earn the daily living standards (Malik & Sharma, 2019).

## V. RESULTS

It has been defined that due to judicial activism, the number of migrant workers has high potential to ameliorate the human development. In India, the inter state migrants are not yet treated opportunely and no development of policies has been done to integrate the workers with the development of country. The type of treatment provided to migrant workers and to women of nation defines the overall value of the nation. During the crisis of COVID 19, majority of workers lost their jobs due to the implication of lockdown period. To help the workers in this situation, Sir Ratan Tata, the chairman of Tata Group provided the daily wages and shelter to workers who were in need. This was being supported by determining the Industrial Dispute Act (Fischer, 2020). The Indian Home Ministry provided the notification to companies to pay the full wages to their workers in this tough situation on March 29, 2020. However, due to the implication of judicial activism, the improper treatment of women has been found to be decreased due to the implication of various laws and acts and laws launched against the women. The number of migrant workers are also provided with the equal number of wages based on defining and following the number of laws made by the government of country including convoluted convey policy. This policy was introduced on 29 April 2020. This was issued by government to sanction the migrants to return home by trains and buses.

## VI. IMPLICATION

In terms of discussing of the number of rights defined over migrant workers, the concept of migration is not taken positively in India. The migrant workers in India needs to access the healthcare facilities, ration facilities, and other requirement. It has been defined that Indian Government failed to provide the best number of facilities to the migrant workers within the COVID 19 situation. On the other hand, in case of focusing over the women rights and policies developed for women, the essential legal rights for every women right to equal pay defined under the Equal remuneration act has been deployed. This has been supported by that of deploying the right against harassment at work defined as Sexual harassment of women at workplace act (Petersen, 2017). The proper implication of such acts leads to regulate the way of protecting the legal rights of women. These acts have been useful in regulating the progress and safety of women within the society. The overall analysis of number of acts and laws defined for women as well as for the number of migrant workers has led to improve the working ability as well as the efficiency of women and the workers. It could be overviewed that the proper implication of laws leads to assure timely implication of Judicial Activism within the legislation of nation.

## VII. LIMITATIONS AND FUTURE STUDIES

Judicial advocacy does not imply that the judiciary is in charge. Judicial advocacy must also work within the confines of the legal system. Within those bounds, it has the dual purpose of stigmatising and legitimising the acts of other government bodies—legitimizing more often than stigmatising. The state's weakest body is the judiciary. It only becomes effective when people believe in it. The legitimacy of the Court and judicial advocacy is founded on such confidence. Courts must work to maintain their dignity on a continuous basis. Courts should not have to bend to public pressure; instead, they should stand firm in the face of it. Not submission to populism, but the ability to withstand such pressure without sacrificing impartiality and objectivity is what gives judicial activism legitimacy. Not only must courts be fair, but they must also appear to be fair. The basis of the Court's legitimacy is an inarticulate and diffused consensus regarding the judiciary's impartiality and honesty.

## VIII. CONCLUSION

In India, judicial activism has been taken in positive form as when judges believe they can cure all of society's problems and begin performing legislative and executive functions, a slew of issues will inevitably surface. Judges can, without a doubt, intervene in extreme circumstances, but they lack the

competence and resources to handle big societal issues. Furthermore, any intrusion by the judiciary into the legislative or executive sphere will almost always be met with significant opposition from politicians and others.

To have the proper understanding of judicial activism concept, the proper analysis as well as the evaluation of literature sources has been done. The in-depth analysis as well as the implication of effective source has been done to define the relevant form of data being gathered as per that of defining the number of equality based laws related to that of defining the recommendations as well as the future needs to define the judicial activism system. The entire report has been conducted to determine the number of laws and policies that leads to determine the new and effective set of values that helps the citizen to live an equal and healthy life.

#### REFERENCES

1. Agarwal, B., Anthwal, P., & Mahesh, M. (2021). How many and which women own land in India? Inter-gender and intra-gender gaps. *The Journal of Development Studies*, 1-23
2. Chaudhary, V. (2017). Role of Judiciary in Good Governance and Administrative reforms.
3. Fischer, A. (2020). *The Judicialisation of Politics in India: Origins and Consequences of the Power of the Indian Supreme Court* (Doctoral dissertation).
4. Jaswal, N., & Singh, L. (2017). Judicial Activism in India. *Bharati Law Review*, (1), 1-11.
5. Mahadevia, D., & Vyas, S. (2017). 8 Claiming urban space through judicial activism. *Rebel Streets and the Informal Economy: Street Trade and the Law*, 105.
6. Malik, R. K., & Sharma, M. A. (2019). Justice Delivery System in India: Emerging Issues and Challenges. *Journal of the Gujarat Research Society*, 21(6), 1185-1195.
7. Niaz, I. (2020). Judicial activism and the evolution of Pakistan's culture of power. *The Round Table*, 109(1), 23-41.
8. Petersen, N. (2017). *Proportionality and judicial activism: fundamental rights adjudication in Canada, Germany and South Africa*. Cambridge University Press.
9. Rajan, S. I., & Sukendran, S. (2020). Understanding female emigration: experience of housemaids. In *Governance and labour migration* (pp. 182-195). Routledge India.)
10. Singh, V. K. (2018). Compensatory Justice Jurisprudence in INDIAN Public Law—An Analysis. *NLUA Law and Policy Review*, 3.
11. Subhalakshmi, G. (2020). JUDICIAL ACTIVISM. *Upholding Justice: Social, Psychological and Legal Perspectives*.