

**THE COMPARATIVE STUDY OF JUDICIAL ACTIVISM IN MALAYSIA
AND INDIA**

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Submitted in Partial Fulfilment of the Requirements
for the Degree of Bachelor of Legal Studies (Hons.)

Universiti Teknologi MARA

Faculty of Law

December 2013

The students or authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

Abstract

This research was conducted to find out whether the practice of judicial activism is possible in Malaysia. The reason why this topic was chosen is due to the fact that each judgments made by judges are unique in its own way. From this research we are able to see that certain judges apply strict interpretation of the law while some inserted a hint of creativity in making a decision. Besides that, we are able to identify the advantages of applying judicial activism and also the implications of improper practice and over practice of judicial activism.

India was chosen as a benchmark for our research because of its practice of judicial activism that is a few decades more advanced than Malaysia and has more legal occurrences that can be compared with Malaysia. Besides that, from the resources that we have gathered, we have seen that the judges in India have actively participated in judicial activism to the extent that they also get involved in law making process.

This research was conducted by way of perusing the decided cases and articles written by various academicians, lawyers and judges. Besides that, we also attained our sources by conducting interviews with the judges from the Court of Appeal and the High Court.

From this research, we have managed to identify the benefits of judicial activism and its effects. Besides that, we have managed to create a simple guideline that can be referred in practicing judicial activism.

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CHAPTER ONE:

INTRODUCTION TO RESEARCH

1.0 RESEARCH BACKGROUND

It is trite law that the role of judiciary is to interpret the law made by the Parliament. The statute and clauses of the constitution made by the Parliament are often static, hence, the interpretative function of the court requires judges to interpret them in such a way as to give them life and meaning. The judges are responsible to remove any ambiguities of the law by the multiple rules of interpretation. Interpretation is influenced by the judges' perception of his role at the heart of the legal system. In addition, the judge need to clarify what is merely implicit in the law and they are able to make the law suitable and to accommodate the ever changing society. Hence, it is crucial for a democratic country to have an independent and powerful judiciary to protect the rights of the people.

According to Justice AM Ahmadi,¹ the concept of judicial activism involves the proactive role of the judges in ensuring that the rights and liberties of the citizens are protected. He added that, the court moves beyond its normal role of a mere adjudicator of disputes and becomes a player in the system of the country, laying down principles and guidelines that the executive must carry out. According a prominent lawyer, Karpal Singh:

Judges should exercise judicial activism. Public expectation demands it. The primary function of the judiciary is not only to punish wrong doers and to decide disputes between private individuals and the individual against the State but also to interpret the law abreast of the times for social and common good. Judges must have moral fibre to be effectively the guardians of our liberty and fundamental rights.²

¹ "Dimensions of Judicial Activism" in http://www.iosworld.org/J_ahmedi.htm, accessed on 14 May 2013.

² "Speeches and Publications: Strengthening The Independence And Efficiency of The Judiciary" in <http://www.aseanlawassociation.org/legal-malaysia.html>, accessed on 28 November 2013.