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Activism-wary judges wash hands of case

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New Delhi, Dec. 11: The first casualty of yesterday's Supreme Court warning against "judicial activism" was a welfare scheme for some of society's most vulnerable women.

A two-judge apex court bench was to rule today — with the Centre's consent — on a plan to rehabilitate women rescued from traffickers. But Justices S.B. Sinha and H.S. Bedi refused to pass the orders, shaken by Monday's ruling that rapped judges for encroaching on the executive and legislatures' functions.

They referred the issue of whether the "court has the power to entertain such questions in public interest litigations" to a three-judge bench.

"There is no consistency.... We don't know the parameters within which we have to function," the bench said referring to the observations in the judgment by Justices A.K. Mathur and Markandey Katju who warned judges not to try to run the government.

The rescued women, most-

ly minor girls, receive a one-time Rs 500 allowance at protective homes. NGO Prajwala has been fighting in the apex court since 2004, trying to get them a better deal.

Now the matter will be frozen for years as a larger bench hears it all over again.

Apex court lawyer Prashant Bhushan said courts cannot refuse to take up matters and the Supreme Court's decision was "grossly improper".

"Justice Katju's observations are only... that the judiciary should not overreach, but he hasn't said (it) can't interfere with any executive or legislative action however improper it might be."

Justices Mathur and Katju had criticised many recent rulings, including several by larger apex court benches. Some related to Assembly procedures and angered the Houses; some were on executive matters like autorickshaws overcharging.

Yesterday's two-judge ruling can be overturned by a three-judge bench. But lawyers said that wasn't neces-

sary since the observations were non-binding. Yet, the seriousness with which the apex court seems to be taking them may be sending confusing signals to lower courts, as reflected by a Delhi High Court decision today.

Justice Mukul Mudgal deferred a case relating to begging till February 8. He said he did not want to hear the case till he had seen the Mathur-Katju judgment. Several of the verdicts criticised by Mathur-Katju were Delhi High Court rulings, including some on begging, nursery admissions and demolitions.

Lawyers dismayed at yesterday's judgment said the courts had done a lot of good work on social schemes. Most cited the smooth switchover to CNG in Delhi.

Supreme Court Bar Association president R.H. Parekh said the theory of strict separation of powers no longer held in practice. The common man now often approaches the courts for relief. Sometimes, even the executive leaves certain decisions to courts.