



THE ROLE OF JUDICIAL ACTIVISM IN SHAPING CONSTITUTIONAL LAW OF INDIA

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ABSTRACT

"It is for the judge to give meaning to what the legislature has said and it is this process of interpretation which constitutes the most creative and thrilling function of a judge."

Chief Justice P.N. Bhagwati¹

Judicial activism has an active and transformational role in shaping India's constitutional law. Researcher discusses the essential features of this effect, highlighting the judiciary's proactive application and interpretation of the Constitution in light of changing societal requirements. Judicial activism in India has broadened the scope of fundamental rights, supported public interest litigation (PIL), tackled environmental issues, promoted social justice and protected human rights. The court has served as an important check on the jurisdiction of other arms of government, establishing a balance of power and upholding constitutional ideals. While judicial activism has played an important role in changing the Constitution to modern concerns, it has also been criticized for possible abuse. This paper captures the diverse influence of judicial activism, demonstrating its significance as a driving force in transforming India's constitutional landscape. Doctrinal study or secondary data will be used in this paper.

KEY WORD: - Judicial Activism, Judicial Restraint, Constitution, Transparence, Judiciary

1. INTRODUCTION

Judicial activism applies to the judiciary's proactive role in interpreting and modifying the law, particularly in constitutional matters. In India judicial activism has had a considerable impact on the formation of constitutional law. The court especially the Supreme Court of India has actively participated in interpreting the Constitution increasing rights and ensuring justice.

Judicial activism is a phenomenon in which judges block laws proposed by various branches of the government.

According to Prof. Sunstein judicial intervention is the practice of judges overruling policy decisions made by other members of the legislature or institutions that the Constitution doesn't clearly forbid. In his book "Judicial Activism in Comparative Perspective," Kenneth M. Holland² claimed that judicial review, which includes the subsequent phase of policymaking is a necessary but inadequate requirement for judicial activism.³

From the 1950s till the 1960s, the judiciary's primary function was to interpret laws. In the decade of the 1970s, "the Supreme Court evolved to challenge legislative and executive slowness and inefficiencies. The Indian courts began to intervene in the name of court involvement in an effort to limit the spirit of authoritarianism in both the legislative and executive spheres of government. Cases like *Maneka Gandhi v. Union of India*⁴ and *Bandhua Mukhti Morcha v. Union of India* are key milestones on the path to empowering the Indian judiciary. All of these changes created a fresh role for the Supreme Court. With this decision, the right to life and liberty as an Individuals under Article 21 have increasingly achieved the status of repositories in the realm of liberty and human rights. likewise, both articles 32 and 226 of the Indian Constitution give the judicial system the authority to issue writs and orders not only to enforce fundamental rights, additionally for other reasons."⁵

During the emergency, "Justices V.R. Krishna Iyer and P.N. Bhagwati sowed the seeds of judicial activism. A new phenomena known as Public Interest Litigation (PIL) emerged, expanding the

¹ Chief Justice P.N. Bhagwati, "Judicial Activism in India" https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf accessed 15 January 2024.

² Kenneth, M., Holland. (1991). *Judicial activism in comparative perspective*. doi: 10.1007/978-1-349-11774-1

³ Social Work Education, "Module 27: Public Action and Judicial Activism in India" https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000032SVV/P001730/M021712/ET/15016519121-Module27PublicActionandJudicialActivism accessed 15 January 2024

⁴ *Maneka Gandhi v. Union of India* [1978] SC 853

⁵ M. Laxmikanth, *Indian Polity* (6th edn. 2019)



judiciary's role in public affairs. Justice Iyer stated, Law is a social auditor, and only someone with the public interest can ignite this."⁶

During the beginning of the 1990s, the Indian judiciary started to oversee investigations into crimes affecting the wealthy and important segments of society. Due to a lack of trust in national investigative organizations that include the CBI, "the Supreme Court of India has decided to take on a supervisory role in various corruption cases involving people who believe they are the law of the land. The Supreme Court's ruling in the Jain Hawala case was a historic event in this regard. In the Jain hawala case, some of that the nation's senior MPs were accused of taking rewards from a money laundering agent who worked on a dairy farm. The Supreme Court then asked the CBI not to share any information regarding the case with the then-PMO, which was directed by Prime Minister P.V. Narashimha Rao. Only until the Supreme Court entered in 2009 did the CBI launch its investigation into the 2G telecom crisis, which resulted in the conviction of the Telecommunications Minister and other employees."⁷

2. JUDICIAL ACTIVISM VS JUDICIAL RESTRAINT

The difference between "judicial activism" ("loose constructionist") and "judicial restraint" ("strict constructionist"). These are techniques of interpreting the Constitution. A hard constructionist judge may rule on cases by interpreting the Constitution technically or depending on the framers' actual meaning. A judge whose work is a judicial activist can decide in broad strokes, taking into consideration and acknowledging the changes that have occurred since 1787. Judicial activity and restrictions by the judiciary are diametrically opposed approaches. The Supreme Court activism and judicial restraint, both are especially important in the United States, are connected to a country's court system and operate as a Check for inappropriate use of administrative or legislative power under the constitution. These approaches are closely linked to nation' court system.

1. Judicial activism refers to the application of the constitution to advance contemporary opinions and circumstances. Conversely, judicial restraint restricts judges' capacity to overturn legislation.
2. Under judicial constraint, the court ought to publish all activities by Parliament and state legislatures until they breach the country's constitution.
3. In regards to judicial restraint and judicial activism, judiciary must utilize their authority to rectify unfairnesses, particularly

when other constitutional authorities do not take action. This implies that judicial activism is critical in shaping social policy on issues involving individual rights safeguards, civil rights, moral standard, and political injustice.

4. Both Judicial activism and judicial restraint serve separate purposes.⁸

3. PROMINENT CASES ON JUDICIAL ACTIVISM

The era of judicial activism, also known as PIL, "began with the case of S.P. Gupta v. Union of India,"⁹ which defined and established that any member of a public or social action group can use their right to submit a writ.

Not only has this been shown in previous instances, such as Sheela Barse v. the State of Maharashtra,¹⁰ where the court treated the letter itself as a case, and the court used its jurisdiction to bring a suo moto action. We succeeded to get rights against violence against female inmates as a result of this litigation and the use of judicial activism.

Another notable case is Vishaka Singh v. the State of Rajasthan,¹¹ which, despite being a criminal case, prompted the court to develop the Vishakha Guidelines, which led to the court creation of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013." All of these outcome were result of judicial activism and the separation of powers, whereby the judiciary's independence drove the legislature to enact such legislation.

Custodial fatalities soared during the 1990s, yet no one has been held accountable. Because of this, in 1981 a PIL was filed in the case of Anil Yadav v. State of Bihar,¹² during which 33 suspected offenders has been blinded, based on a newspaper story. The hon'ble Supreme Court ordered the government to cover the costs of medical care.

In Golakh Nath v. State of Punjab (1967)¹³, the Supreme Court declared that the basic rights in Part III of the Indian Constitution could not be amended, despite the fact that Article 368 simply needed a majority of two-thirds in both Houses of Parliament. In Keshavanand Bharti v. State of Kerala,¹⁴ a 13-judge the hon'ble supreme court panel overruled the Golakh Nath decision while stating that the Constitution's essential foundation could not be amended. Despite later attempts to clarify what 'fundamental structure' means, the definition remains vague. It is worthwhile noting, nonetheless, that Article 368 contains no mention of the core structure remaining unaltered. As consequence, the ruling

⁶M.M. Semwal & Sunil Khosla, 'Judicial Activism' (2008) 69 (1) TIJPS
⁷Social Work Education, "Module 27: Public Action and Judicial Activism in India"

https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000032S/W/P001730/M021712/ET/15016519121-

Module27PublicActionandJudicialActivisim accessed 15 January 2024.

⁸Kamalnath Nayak. Judicial Activism Vs. Judicial Restraint : Judicial Review. (4(2): 2016; 107) International Journal Social Science

⁹S.P. Gupta v. Union of India [1982] SC 149

¹⁰Sheela Barse v. State of Maharashtra [1983] SC 378

¹¹Vishakha and other v. State of Rajasthan [1997] SC 3011.

¹²Anil Yadav and Ors. v. State of Bihar [1991] (39) BLJR 1290

¹³Golakh Nath v. State of Punjab [1967] SC 1643

¹⁴Keshavanand Bharti v. State of Kerala [1973] SC 1461



essentially modifies Article 368. A substantial number of Indian Supreme Court judgments whereby it has taken an active role are linked to the 21st articles of the Indian Constitution, thus we will address it individually.

As a result of the judiciary's activist role, the Supreme Court helped shape progressive laws including the Right to Food, the Right to Education, and the Right to Information. Judicial activism has provided birth to a new type of social action in India. The Supreme Court's role in the 2G the spectrum and mining block usage fraud, as well as the landmark National Food Security Act 2013's instruction to states to provide midday meals to schoolchildren, are examples of how the Indian judiciary has stepped outside of its customary duty of interpreting laws and stood up to injustice.¹⁵ In National Legal Services Authority v. Union of India (2014) the Supreme Court recognized the right to self-identify one's gender. It led to enacting the Transgender Persons (Protection of Rights) Act, 2019.¹⁶

4. CAUSE FOR THE RISE IN JUDICIAL ACTIVISM

“Dr. B.L. Wadehra addressed the many reasons for judicial activism. There was a time when people respected the Constitution and government. There appeared to be a legislative vacuum, which meant that no laws or regulations existed. In such circumstances, judicial activism was just one option. Judicial activism has helped to promote public-interest lawsuits and liberalize the 'locus standi' premise.

We understand that our nation has a system of checks and balances structure in place, enabling the three organs to operate independently while keeping them answerable to one another. It guarantees that no organ dominates others and exercises its power without restraint. The judiciary is responsible for interpreting laws made by the legislative body and to make sure no unconstitutional legislation are approved.”¹⁷

Judicial activism reflects the following trends:

- (i) Expanding administrative hearing privileges.
- (ii) Excessive delegation with no restrictions.
- (i) Increased judicial monitoring of discretionary powers.
- (ii) Increased judicial scrutiny over the government.
- (iii) Promoting open government.
- (iv) Inconsistent application of the contempt authority.

¹⁵ Krishnadas Rajagopal, 'Judicial activism is our duty against legislative adventurism: SC Judge' *The Hindu* (New Delhi, 4 May 2015)

¹⁶ What is meant by Judicial Activism and Judicial Overreach? <https://vajiramandravi.com/quest-upsc-notes/judicial-activism-and-overreach/> accessed 25 January 2024

¹⁷ -Tanishka Jangid, "Is Judicial Activism a key to justice?" <https://probono-india.in/blog-detail.php?id=212> accessed 18 January 2024.

5. JUDICIAL ACTIVISM IS OUR DUTY AGAINST LEGISLATIVE ADVENTURISM

In an atmosphere of anxiety produced by the president and legislature's jabs at judicial activism, a sitting Supreme Court justice said that judges had a sacred duty to limit "legislative adventurism and executive excesses."

Justice Kurian Joseph underlined the need of judicial activism in the midst of a low-intensity struggle between the judiciary, legislative, and government over a range of topics, especially the National Judicial Appointments Commission statute and the long-stalled Judicial Integrity and Accountability Bill.¹⁸

6. HERE ARE SOME IMPORTANT FEATURES OF JUDICIAL ACTIVISM IN ESTABLISHING CONSTITUTIONAL LAW IN INDIA

6.1 Expanding Fundamental Rights

Judicial activism has been critical in broadening the scope of fundamental rights protected by the Indian constitution. The judiciary has acknowledged additional rights and freedoms through progressive interpretations that, while not specifically stated, are considered fundamental in the constitutional framework. "In Sunil Batra v. Delhi Administration,¹⁹ the Court declared that a writ of habeas corpus can be issued not only to liberate a person from unlawful incarceration, but also to protect detainees from barbarous and inhumane treatment."

6.2 Public Interest Litigation (PIL)

Judicial activism in India is directly linked to the emergence of Public Interest Litigation. The judiciary has permitted people or groups to approach the courts on behalf of those who are unable to do so themselves, therefore addressing matters of public concern. This has been an effective tool for achieving social justice and enforcing accountability. The Court has issued detailed recommendations to combat "Sexual harassment of women at work (Delhi Democratic Working Women's Forum v. Union of India,²⁰ Vishaka v. State of Rajasthan).²¹ The Supreme Court has also issued detailed guidelines for the safeguarding of female prostitutes and their kids Gaurav Jain v. Union of India."²²

6.3 Protecting Minority Rights

The judiciary has played a critical role in defending minorities' rights in India. The courts have defended the principle of equality and non-discrimination in several decisions, ensuring that minority communities are not denied their constitutional rights.

¹⁸ Krishnadas Rajagopal, *Judicial activism is our duty against legislative adventurism: SC judge*

<https://www.thehindu.com/news/national/judicial-activism-is-our-duty-against-legislative-adventurism-sc-judge-kurian-joseph/article7168036.ece>, accessed 18 January 2024

¹⁹ Sunil Batra v. Delhi Administration [1978] SC 1675

²⁰ Delhi Democratic Working Women's Forum v. Union of India, [1995] 1 SCC 14;

²¹ Vishaka v. State of Rajasthan. [1997] SC 3014.

²² Gaurav Jain v. Union of India [1997] SC 3021).



Even though the legislature had been interested in releasing the Shudras and members of lower castes from different kinds of discrimination and racial prejudice, and while the necessary legislation was prepared to accomplish this goal,²³ it was unable to be understood because of inadequate execution and the executive's lax attitude. At this moment, the judiciary played an active role in establishing Dalit laws to put an end to the Dalits' dire circumstances. The Supreme Court has provided various verdicts to enhance Dalits and their status on a level playing field in society among the other castes. *State of Kerala v. N.M.Thomas*²⁴

6.4 Environmental Protection

Judicial activism has been prevalent in environmental issues. The judiciary has taken a proactive role in resolving environmental challenges, establishing norms and laws to safeguard the environment and promote sustainable development. "the Bhopal Gas Tragedy by including pro-environmental measures in the Constitution and declaring the right to preserve the environment as a fundamental right protected by Article 21 of the Constitution of India."

6.5 Checking Executive and Legislative Actions

The judiciary serves as a check on the acts of the legislative and executive branches by ensuring that they follow constitutional norms. This includes evaluating laws and practices to ensure they do not infringe fundamental rights or the Constitution's core framework.²⁵

6.6 Judicial Review

The judiciary can assess the legality of laws and executive actions. The judiciary has used this power to overturn laws that violate constitutional restrictions.

6.7 Dynamic Interpretation

Judicial activism entails a dynamic and growing interpretation of the Constitution to address society's changing demands. The judiciary applies constitutional ideas to contemporary issues, ensuring that the Constitution remains relevant and applicable in various contexts. In "*Keshvanand Bharati v. State of Kerala*,²⁶ the judiciary changed its stance and produced new interpretations of laws based on the ideals of humanity, morality, reason, fairness, liberty, and restraint, in addition to the wholesome spirit of the constitution."

²³Saha, Arpita, *Judicial Activism in India: A Necessary Evil* (July 8, 2008). Available at

SSRN: <https://ssrn.com/abstract=1156979> or <http://dx.doi.org/10.2139/ssrn.1156979>

²⁴*State of Kerala v. N.M.Thomas* [1976] SC 490;

²⁵S. C. Kashyap, "Judiciary-Legislature Interface", Subhash C. Kashyap (ed.), *Judicial Activism and Lokpal*, Uppal Publishing House, New Delhi, 1997, pp. 60-76, at p.71.

6.8 Global Influence

The Indian judiciary's activism has also been impacted by international legal ideas and precedents. Judges frequently rely on foreign legal norms and rulings to shape their interpretation of constitutional provisions.

6.9 Political Reforms

The judiciary has made significant political reforms, such as electoral reforms, disqualifying politicians with criminal records, and decriminalizing certain political activity.

7. ARGUMENTS OPPOSING JUDICIAL ACTIVISM

1. Opposition of judicial activism claim that activist judges write laws rather than interpreting them," which go against their power as outlined the Constitution. They contend that the question is not how social issues need to be addressed, but rather whether the courts need to be engaged. Critics of judicial activism argue that by choosing how to handle prisons or schools, the courts are taking on powers that only be exercised solely by the legislative and executive branches of government.
2. Criticism of judicial activism assert that judges lack the required abilities to manage complex obligations such as managing prisons, controlling schools, and making employment decisions for firms. Judges are not social workers, but rather legal experts.²⁷
3. Those opposed of judicial activism use the fundamental rights of the division of powers and federalism to justify judicial restraint. Arguments in favor of judicial activism. Followers of judicial activism argue that it is necessary to rectify injustice and bring about significant societal advances.
4. Supporters of judicial activism claim that courts routinely intervene when governors and state legislatures refuse to solve an issued.
5. Judicial activists argue that courts do not make policy, but legislators do. However as judges construe the law, they inevitably affect policy. They also think that courts have responsibility for implementing the law.
6. Lastly, judicial activists argue that the framers of the Constitution intended for courts to constantly construe the Constitution in response to changing circumstances."²⁸

8. CONCLUSION

Finally, judicial activism has played a key and revolutionary role in establishing India's constitutional law. The judiciary's

²⁶*Keshvanand Bharati v. State of Kerala* [1973] SC 1641,

²⁷*Kamal Nath Nayak. Judicial Activism Vs. Judicial Restraint : Judicial Review. Int. J. Rev. and Res. Social Sci. 4(2): April - June, 2016; Page 107-111.*

²⁸ *Kamal Nath Nayak, "Judicial Activism Vs. Judicial Restraint : Judicial Review "http://www.answers.com/topic/judicial-activism-and-judicial-restraint#iXZZ1jjWnDZXU*



aggressive interpretation of the Constitution has resulted in important advances in several areas of Indian law. By broadening the scope of fundamental rights, instituting mechanisms such as Public Interest Litigation (PIL), and focusing on pressing social issues, the court has played an important role in adapting constitutional values to society's evolving requirements.

Judicial activism has shown to be particularly effective in promoting environmental protection, human rights, and social justice. The judiciary's interventions have frequently served as a spur for legislative and executive action, ensuring that constitutional ideals are not just inscribed on paper but actively implemented for the benefit of citizens.

Nonetheless, judicial activism has significantly contributed to the durability and versatility of India's constitutional system. As the country evolves, the judiciary's role as a custodian of constitutional values is expected to remain critical in developing the legal landscape and protecting individuals' rights. The ongoing interplay between activism and restraint shall continue to define the judiciary's role in establishing Indian constitutional law.