
JUDICIAL ACTIVISM IN INDIA: A CONSTITUTIONAL NECESSITY OR DEMOCRATIC OVERREACH?

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ABSTRACT

This paper explores the concept of Judicial Activism in India and focuses on whether it is truly a constitutional necessity or an avoidable democratic overreach. It reviews the growth and development of Judicial Activism from the post-Emergency era and assesses how different constitutional mechanisms enable Judiciary with extraordinary powers of judicial review, through Fundamental Rights and interpretations of Constitution through Article 32 and 226 of Constitution. Moreover, the study focuses on development of concept of Public Interest Litigation (PIL) to make justice and equality accessible to poor and suppressed sections of society. On the other hand, it also attempts to analyse the delicate thin line between judicial activism and judicial overreach by holding up various supported judgements and ongoing debates on issues like separation of powers, lack of democratic legitimacy and judicial over intervention in the matters of policy making. This study concludes with argumentative approach that despite everything, judicial activism is surely significant for constitutional safeguard, but its true legitimacy is determined by the balance maintained between activism and restraint.

INTRODUCTION

Black's Law Dictionary definition of Judicial Activism as “philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions”¹, reflects a much panoptic understanding of judicial activism as a phenomenological approach in which courts (the Marble Temple) assume an active role in building up constitutional meaning, particularly where legislative action remains inadequate or executive institutions fail to discharge constitutional obligations.² The Indian Constitutional system is founded upon delicate balance between the legislature, executive, and judiciary, each entrusted with delegated singular functions and authority. The Constitution, in its very nature, seeks not only to distribute authority among the Three Pillars, but also to make sure that such power is exercised within constitutional limitations. However, in practice, failures in institutional justice, legislative inaction and executive shortcomings often raise serious yet unanswered questions regarding the Constitutional Rights Protection and the smooth functionality of governance.³ In this context, the judiciary has emerged predominantly as a constitutional institution, frequently intervening in matters extending beyond conventional adjudication. Over time, judicial decisions have influenced areas such as public governance, individual rights, environmental protection and administrative accountability. Through several interpretations of the constitution, the court have often addressed certain issues and problems where state institutions have failed to respond adequately to public needs.

The paper reflects the same understanding, argues and examines that while judicial activism has emerged as a significant constitutional safeguard in India, the legitimacy of it often depends upon maintaining a balance between judicial intervention and democratic restraint. The paper also analyses certain distinction between judicial activism and judicial overreach and discusses the overall impact of judicial activism on Indian democracy.

EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

During the initial years of its formation, the Indian judiciary in its very form adopted a posture of strict judicial restraint, by preserving constitutional boundaries and avoiding any overreach into the domain of public policymaking. However, during the Emergency, when the civil

¹ Bryan A. Garner ed., *Black's Law Dictionary* 982 (11th ed. 2019).

² Upendra Baxi, *The Indian Supreme Court and Politics* 121–28 (E. Uppal Publ'g House 1980).

³ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 308–15 (Oxford Univ. Press 1999).

liberties stay curtailed, restrictions on fundamental rights exposed certain institutional vulnerabilities, and further, compelled a rethinking of the judiciary's constitutional role. The surge of Public Interest Litigation (PIL) during the late 1970s and 1980s fundamentally reconfigured the legal landscape by rendering that judicial machinery be directly accessible to the marginalized communities to ensure fair and equal justice for all. Several eminent figures such as Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, who alongside several of their contemporaries, utilized progressive interpretations to vastly widen the horizons of Articles 21 and 32 of the Constitution⁴. Over time, “Judicial activism” became a thread into the very fabric of Indian democracy, thus, allowing the judiciary to address administrative inaction, maintain rule of law, and secure certain accountability within the constitutional framework.

CONSTITUTIONAL BASIS OF JUDICIAL ACTIVISM

The legitimacy of judicial activism in India derives itself from several express and implied constitutional provisions that gives the judiciary an authority to interpret the Constitution, enforce fundamental rights, and maintain constitutional governance. It is not an extra - constitutional practice but something deeply rooted in the structural framework of the Indian Constitution, particularly through judicial review, enforcement of fundamental rights, and interpretation of constitution within the doctrine of separation of powers⁵.

Judicial Review under the Constitution

Judicial review is one of the most significant foundations of judicial activism. It empowers the Supreme Court and High Courts to examine the constitutionality of legislative enactments and executive actions. If any course of law or action is found to be inconsistent and unconstitutional, it can be struck down, thereby, ensuring that all organs of the State should function within their constitutional limits and should act as a safeguard against arbitrariness. In India, “judicial review” in its very nature derives implicitly from the Constitution and through this power, courts have expanded their role from mere dispute resolution to the active protection of constitutional principles, thus, strengthening the judicial activism.

⁴ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India); INDIA CONST. arts. 21, 32.

⁵ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th ed.)

Fundamental Rights and Article 32&226

Part III of the Constitution defines Fundamental Rights as the core of “judicial activism” as they are the enforceable rights guaranteed to individuals. While, Article 32 states that the Supreme Court should act against every violation of Fundamental Rights, Article 226 gives the High Court the authority to grant relief or dismiss an application. Article 32 has also been referred to as the “heart and soul” of the Constitution by Dr. B.R Ambedkar because of its importance in protecting constitutional rights and ensuring access to justice.⁶

Separation of Powers and Constitutional Interpretation

The doctrine of separation of powers distributes government authority among the legislative, executive and judicial branches to prevent any sort of concentration of power and safeguard liberty. Judicial Activism too works within its framework by ensuring that other branches do not exceed their constitutional limits. At the same time, the courts have also adopted a very dynamic approach to the interpretation of the constitution by moving beyond literal interpretation to progressive readings of the Constitution. The flexibility of this interpretivism has allowed the judiciary to adapt constitutional principles to changing social and political realities, thus, by reinforcing the activists' role while still respecting the institutional boundaries.

PUBLIC INTEREST LITIGATION (PIL) AND JUDICIAL ACTIVISM

In the Second edition, Vol. XII, of the Oxford English Dictionary, the term “*Public Interest*” means *the larger interests of the public, general welfare and the interest of the masses*⁷. The word, “Litigation” means “a formal judicial process, initiated in a court of law with the purpose of enforcing a right or seeking a remedy.” Taken together, the expression ‘Public Interest Litigation’ means, “legal proceedings initiated in a court of law to enforce, protect and defend the general welfare and legal rights for the benefit of public.” In layman’s language, public interest litigation is a type of petition that is filed by a person with bona fide intentions to attain justice for a group of people, who are socio-economically disadvantaged or legally unaligned, and lack both the awareness of their constitutional rights and resources to enforce their legal rights, in case of violation by the government or any other government institutions. Such

⁶ Constituent Assembly Debates, remarks of B. R. Ambedkar on Article 32.

⁷ *Oxford English Dictionary*, 2nd ed., Vol. XII (Oxford University Press).

litigation can be initiated only for redressal of a public injury, enforcement of a public duty or advocating for the public interest. It is necessary that the petition is not filed for private motive or based on immaterial considerations and is filed bona fide in Public Interest⁸.

The Conceptual Development of PIL

The idea of Public Interest Litigation (PIL) which was born and developed in the USA during the 1960s was mainly influenced by the Civil Rights Movement, environmental activism and social justice movements. Public Interest Litigations in the USA have given landmark decisions in areas like racial discrimination, environment law and criminal justice reform. The early case of *Brown v. Board of Education* (1954) heralded a major legal shift that led to the desegregation of public schools across the country and provided the eventual structural blueprint for later PIL campaigns.⁹

The development of India's Public Interest Litigation (PIL) journey was formed in the late 1970s and 1980s conceptually motivated by the American model of PIL. The emergence of PIL in the late 1970s and 1980s, and not before or after, was primarily a deep institutional response to the constitutional crisis of the National Emergency (1975-77). Prior to this period, the Indian Supreme Court had adopted a position of strict judicial restraint, respected the clear demarcation of constitutional boundaries and abstained from any encroachment into the domain of policy-making. In the late-1970s to early-1980s two judges of the Indian Supreme Court, Justice P.N. Bhagwati and Justice V.R. Krishna Iyer laid the foundation for the emergence of PIL in India. This entailed the relaxation of the normal requirements of locus standi. Modification of the traditional requirement of standing, was an essential element for the evolution of PIL. In the past, courts have only heard cases from people who were directly affected by an issue. For ages, only the privileged people had the opportunity to go to the court to demand justice. But, since the inception of PIL, it changed the very way of the judiciary to a much extent by allowing passionate activists, concerned citizens and organizations to fight for the marginalized people who did not have the adequate resources to seek justice back then.

Role of The Judiciary in Promoting PIL

Public Interest Litigation has thrived chiefly due to the Judiciary's aggressive involvement.

⁸ *S.P. Gupta v. Union of India*.

⁹ *Brown v. Board of Education*.

Judicial bodies frequently intervene in the absence of legislative or administrative action, positioning PIL as a judicial mechanism for engagement in societal matters.

The court's broad reading of fundamental rights, particularly the right to life, under *Article 21*, gave rise to PILs as a way to safeguard socio-economic and environmental rights¹⁰. Through Judicial Activism, the courts have actively stepped in to protect the rights and dignity of humans. As seen in the *Olga Tellis v. Bombay Municipal Corporation*, the courts have stepped in to defend the right of livelihood for the residents living in slums and pavements. Through PIL, the Judiciary has addressed issues like environmental pollution, women's rights and human rights violations, often where the legislative and executive branches have been ineffective.

LANDMARK JUDGEMENTS

The gradual development of PILs in India, is marked by several landmark judgements. Throughout the years, PILs have broadened their scope into various distinct categories. One prominent type involves human rights and fundamental freedom, where petitions mainly focus on prisoner rights, custodial violence, women's rights, and eradicating forced labour. Another vital category concerns, environmental protection, industrial pollution, deforestation and the preservation of natural resources. Furthermore, PILs have frequently targeted governance and corruption, thus, urging for more transparency in public administration.

1. **Hussainara Khatoon v. State of Bihar (1979):**

In India, PILs have significantly contributed to protect the rights of the citizens and ensure a free, reasonable justice to women, children, and workers. One of the most significant landmark cases is *Hussainara Khatoon v. State of Bihar (1979)*¹¹, which is also formally recognized as the first PIL case in India. In this case, the Supreme Court held that the Right to a Speedy Trial is a fundamental right under Article 21 of the Constitution and ordered the immediate release of thousands of undertrial prisoners languishing in jail for the want of judicial delays.

2. **M.C. Mehta v. Union of India (1987)**

The PIL has played a very important role in protection of environment and enforcement of the

¹⁰ Constitution of India, art. 21.

¹¹ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

Right to Healthy Life under Article 21. e.g. *M.C. Mehta v. Union of India (1987)*¹² famously known as Ganga Pollution Case. In this case, the Supreme Court ordered closure of many polluting Tanneries and Factories located on the banks of Ganga River. The Court stressed that public health and the protection of the environment are worth more than the economic profits of polluting industries.

3. Association for Democratic Reforms v. Union of India (2024)

Public Interest Litigation (PIL) has contributed significantly to ensuring transparency, reducing political corruption and making the government institutions more accountable to the public. It has also contributed to better the electoral system and curb the abuse of executive power. An example is *Association for Democratic Reforms v. Union of India (2024)*¹³. In this case, the Supreme Court ruled by striking down the Electoral Bonds Scheme, which allowed for a more anonymous political donation. The Court held that the voters have a Right to Information under Article 19(1)(a) of the Constitution and stated that transparency in political funding is necessary for free and fair elections.

4. People's Union for Civil Liberties (PUCL) v. Union of India (2001)

PIL has also protected the basic human needs and promoted social justice by ensuring that government welfare schemes reach to the poor and disadvantaged people. A notable example is *People's Union for Civil Liberties (PUCL) v. Union of India (2001)*¹⁴. In this case the Supreme Court held that the Right to Life under Article 21 of Constitution includes the Right to Food. The Court also made the Mid-Day Meal Scheme compulsory in government primary schools across the country and directed the government to properly implement food welfare schemes.

JUDICIAL ACTIVISM VS JUDICIAL OVERREACH: THE THIN CONSTITUTIONAL LINE

The distinction between judicial activism and judicial overreach in India lies on a razor-thin line. While the former plays an essential part in protecting the rights and correcting any wrongs made by the government in governance, the latter violates the core principle of separation of

¹² *M.C. Mehta v. Union of India*, (1988) 1 SCC 471.

¹³ *Ass'n for Democratic Reforms v. Union of India*, (2024) SCC OnLine SC 113.

¹⁴ *People's Union for Civil Liberties v. Union of India*, (2001) 5 SCC 577.

powers.¹⁵

JUDICIAL ACTIVISM IN INDIA

Judicial activism refers to an activist philosophy under which the judiciary actively intervenes to ensure that the basic rights of individuals, institutions, and the constitutional value system are upheld.

For India, the era of judicial activism came into existence in the post-Emergency era towards the end of the 1970s following the rise of Public Interest Litigation (PIL). Traditionally, the Indian judiciary only allowed litigations by people who had a direct stake in the case. But with the evolution of PIL, the Indian judiciary became more liberal and has started allowing citizens, activists, and other concerned parties to bring forth litigation on behalf of the disadvantaged segments of society who cannot do it for themselves.¹⁶

As a result, judicial activism has earned a great deal of respect and moral authority for the Indian judiciary, and has made the court the preferred forum for citizens to defend themselves from any form of high-handedness from the state.

The ambit of judicial activism is confined to the doctrine of necessity, which implies that judicial activism must remain just a safety valve for the problems of governance, and not governance itself.

JUDICIAL OVERREACH

Judicial overreach refers to the overstepping done by the judiciary in the areas that belong to the legislature and the executive branch of the government.

Whereby judges take up the role of making policies and developing public policies, they blur the line between judicial activism and governance, which results in inefficiency and eventually disturbs the constitutional balance through violation of the separation of powers doctrine.

¹⁵ *Asif Hameed v. State of Jammu & Kashmir*, 1989 Supp. (2) S.C.C. 364 (India).

¹⁶ *People's Union for Democratic Rights v. Union of India*, (1982) 3 S.C.C. 235 (India); *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

THE BLURRED BOUNDARY WHERE ACTIVISM AND OVERREACH OVERLAP

The blurry line between judicial activism and overreach ensures that the two concepts structurally overlap each other. According to constitutional theory, judicial activism is a welcome move, while judicial overreach is not. However, in reality, judicial activism and overreach often overlap because they both involve judges' interference in areas where they should have no business in the first place. The reason for their overlapping is because both actions are initiated due to the same crisis, i.e., the failure of the executive or the legislature to discharge its functions. There is no set mathematical formula that can be found in the Indian constitution to determine the extent of judicial intervention.¹⁷

CRITICISMS AND CHALLENGES

Although, Judicial Activism is primarily responsible for maintaining and preserving the fundamental rights of the citizens, by ensuring social justice, equity, dignity and inclusivity, but even with all the advantages and usefulness, it carries its share of drawbacks.

FIRST, Judicial Activism is often highly criticized for allowing courts and machinery to enter into the areas reserved only for legislature and executive, and thus, disturbing the institutional balance and equilibrium of the Constitution.¹⁸

SECOND, the judges are often unelected, therefore, the extensive intervention in public policy can raise serious and unanswered concerns about the legitimacy of the democratic institution and accountability of the citizens.

THIRD, Court may issue forward thinking mandates, but the implementation of it, often depends on the executive machinery and thus, creating challenges in effective enforcement.

FOURTH, Courts, many a times, issues directions in respect to environmental regulation, education and governance policy. Critics often argue that while such intervention may address some urgent issues, but it can also shift policymaking from elected institutions to judiciary and hence, as a result, can cause to judicial overreach¹⁹.

¹⁷ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company).

¹⁸ *Divisional Manager, Aravali Golf Club v. Chander Haas*, (2008) 1 S.C.C. 683 (India).

¹⁹ *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India).

FIFTH, there has been a lot of misuse of Public Interest Litigation (PIL) by the use of private motives, political rivalry, and publicity. The misuse often weakens the objective of PIL.

SIXTH, judicial activism can lead to subjective individualism among the judiciary itself many a times. Part of the problem is that the constitutional interpretation retains a lot of individual judicial reasoning. The same issues might be addressed differently by different benches. This creates uncertainty. Sometimes inconsistency too.

SEVENTH, the constitutional organs are expected to work hand and hand and not in constant overlap. Judicial overreach can lead to imbalance within the legislature and executive branches when courts are regularly supervising the political governance.

Though, Judicial activism has played a pivotal role in protecting the fundamental rights, ensuring social justice, dignity and equity among the citizens, but excessive judicial intervention may disturb the balance between the three organs and pillars of the government. Hence, judicial activism is an important instrument for safeguarding democracy and citizens' rights, it must be used within reasonable restrictions.

IMPACT ON INDIAN DEMOCRACY

India's judicial activism has exerted a particularly prominent impact on the country's democracy. India's judiciary has long moved beyond its traditional function of merely resolving disputes, and has proactively intervened in three categories of public affairs: governance, accountability, and the protection of constitutional principles. It both underpins democracy by safeguarding citizens' rights and upholding constitutional principles, while also triggering core concerns over judicial overreach and the unbalanced distribution of power among democratic institutions. And, hence, the very role of judicial activism in India remains as significant as it is controversial.²⁰

Strengthening the Constitutional Governance

The courts have stepped in many times when the government or lawmakers haven't done their jobs properly. This is the result of the power of judicial review, which empowers the courts to stop the government from doing things that are not allowed. By doing this, the courts ensure

²⁰ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 3–5 (2d ed. 2003).

that, the government does not overstep its boundaries while maintaining transparency and accountability. This has helped in making the system fairer and more transparent, hence, people tend to trust the courts even more to protect the Constitution, than the other branches of the government. But again, some people believes that the government and lawmakers should be the only ones in charge, and that courts should stay out of it. They worry that if the courts get overly involved, it could mess up the balance of power between different branches of the government.

The Influence of Judiciary on Democratic Institutions

Judicial activism has significantly and rapidly influenced the democratic institutions in India. Courts have intervened in matters related to electoral reforms, administrative functioning, legislative conduct, and executive policies. In many cases, such interventions resulted because of the constitutional duties either being ignored or democratic processes failed to function properly. The judiciary thus acted as a corrective mechanism to restore constitutional balance and protect democratic rights.²¹

Even so, this growing influence of judicial activism, has also raised serious concerns about the separation of powers. Critics argue that, when courts become excessively involved in policy-making or administrative matters, they may step into areas which are reserved solely for the legislature and executive. This creates confusions about democratic legitimacy, since judges are not directly elected by the people.

Judicial activism has really changed India's democracy for the better, ensuring that, the government follows the constitution and protects people's rights. But as it grows, some serious and genuine questions arise about whether the courts are overstepping their bounds, if they have the right to make these decisions, and that if they're disrupting the balance of power. Sometimes, judicial activism is necessary in extreme conditions, but that simply does not mean, it can take the place of the democratic process, because that would change the whole foundation of the constitution and the democratic process would be in question. The courts need to be cautious, they must not overreach, and make sure, that they're working within the system, not trying to replace it. This is a delicate balance, and one that's necessary to preserve the health of

²¹ *Vineet Narain v. Union of India*, (1998) 1 SCC 226; *Ass'n for Democratic Reforms v. Union of India*, (2024) SCC OnLine SC 113.

India's democracy.²²

CONCLUSION

“Judicial Activism in India: A Constitutional Necessity or Democratic Overreach?”

remains one of the most significant and continuing constitutional debates within Indian democracy. The growth of Judicial Activism particularly through Public Interest Litigation (PIL) has fundamentally reshaped the rules of Indian jurisprudence by transforming the courts into a proactive shield for the vulnerable. Throughout the evolution of Judicial activism through PIL, it has consistently ensured institutional accountability, environmental safety, fundamental rights and socio-economic welfare, giving a vital voice to those, locked out of the legal system²³. This entire structural transformation, has been driven by judicial activism, where the courts have boldly stepped in whenever the legislative or executive branches failed to act, and ensured that constitutional promises translated into real-world relief²⁴.

Yet, sustaining this mechanism's integrity demands a delicate equilibrium. As proactive courts are imperative in safeguarding constitutional rights, the judiciary must temper its intervention to ensure PILs are employed strictly for the greater public good, rather than private grievances or political persecution.

In a nutshell, judicial activism remains both a constitutional necessity and also a potential source of democratic tension. When the legitimacy of it is exercised with constitutional restraint and guided by genuine public interest, judicial activism continues to serve as an essential tool for preserving constitutional governance, social justice, and the rule of law in India.²⁵

²² *Divisional Manager, Aravali Golf Club v. Chander Hass*, (2008) 1 SCC 683.

²³ *People's Union for Democratic Rights v. Union of India*, (1982) 3 S.C.C. 235 (India); *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

²⁴ *S.P. Gupta v. Union of India*, 1981 Supp. S.C.C. 87 (India); *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India); *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India).

²⁵ M.P. Jain, *Indian Constitutional Law* 1456–60 (LexisNexis, 8th ed. 2018); Uppal Baxi, *The Indian Supreme Court and Politics* 121–28 (E. Uppal Publ'g House 1980).

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