
JUDICIAL ACTIVISM IN INDIA: ORIGINS, EVOLUTION, AND THE BALANCING ACT OF DEMOCRACY

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ABSTRACT

This comprehensive study aims to explore the evolution of judicial activism in India, tracing its origins and development through key historical, philosophical, and legal influences. The narrative encompasses significant cases that marked distinct stages in the judiciary's role, from maintaining a classical position to actively participating in shaping legal decisions. The Supreme Court of India has played a crucial role in responding to societal issues, protecting fundamental rights, and shaping legal interpretations. The court has often taken a proactive stance to address matters of public concern, ensuring justice and equity. In the contemporary era of democratic governance, judicial activism stands as a pivotal determinant influencing legal dynamics. It's essential to note that while judicial activism can be a powerful tool for ensuring justice and upholding constitutional values, there are ongoing debates about the extent to which the judiciary should play an activist role. Critics argue that excessive judicial activism might lead to judicial overreach and interfere with the domain of the executive and legislative branches. Striking the right balance remains a subject of ongoing scrutiny. This research focuses on the constitutional powers of the Courts in India and a shift from a strict locus standi to Public Interest Litigation.

I. INTRODUCTION

Judicial activism, the practice of the judiciary actively shaping and interpreting the law, has been instrumental in India's legal and political evolution. This discussion explores the origin and development of judicial activism, the constitutional powers enabling it, and the transformation from a strict locus standi to Public Interest Litigation (PIL). However, it also

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delves into the contentious issue of judicial overreach, where the judiciary is accused of overstepping its role. This distinction is crucial for understanding the complex interplay between the judiciary, Parliament, and the preservation of democratic institutions in India.

II. HOW TO DEFINE JUDICIAL ACTIVISM?

Black's Law Dictionary defines judicial activism as: “a philosophy of judicial decision-making whereby 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 ignore precedent”. Judicial activism is sometimes defined by reference to a certain implicit conception of the relationship between the judicial and political branches. More precisely, judges are considered to be activists when they lack deference to political branches and pass judgment on matters which are deemed normally to be reserved to those political branches. Legal academics often describe judicial invalidation of legislative enactment as "judicial activism." As one scholar has written, "At the broadest level, judicial activism is any occasion where a court intervenes and strikes down a piece of duly enacted legislation”

III. ORIGIN AND DEVELOPMENT OF JUDICIAL ACTIVISM

The concept of judicial activism is rooted in the broader field of jurisprudence and the evolving role of the judiciary within a legal system. While it's difficult to pinpoint a specific "origin" for judicial activism, we can trace its development and conceptualisation through key historical and philosophical influences. Here are some factors that contributed to the origin of judicial activism:

- **Common Law Tradition:** Judicial activism finds its roots in the common law legal tradition, particularly in countries like the United Kingdom and its former colonies (e.g., the United States). In the common law system, judges play a significant role in shaping and interpreting the law through their decisions and precedents. The development of legal principles through case law is inherently dynamic and can be seen as a form of judicial activism.
- **John Marshall and Marbury v. Madison:** A significant turning point in the development of

judicial activism in the United States was the case of *Marbury v. Madison*² (1803). Chief

Justice John Marshall's opinion established the principle of judicial review, which allows courts to determine the constitutionality of laws and executive actions. This decision vested the judiciary with a substantial role in interpreting and shaping the U.S. Constitution and legal precedent, contributing to the concept of judicial activism.

- **Evolution of Constitutionalism:** The emergence of written constitutions and the practice of constitutional interpretation by the judiciary played a crucial role in shaping judicial activism. The idea that courts have a duty to protect and interpret fundamental rights and constitutional provisions became a cornerstone of judicial activism.

- **Political Philosophy and Legal Realism:** The early 20th century saw the rise of legal realism,

a movement that rejected the idea of a purely mechanical and apolitical judicial decision-making process. Legal realists argued that judges could not divorce their decisions from societal and political influences, which laid the foundation for the concept of judges actively shaping the law.

- **Civil Rights and Social Justice Movements:** In the mid-20th century, the U.S. Supreme

Court, particularly under Chief Justice Earl Warren, made landmark decisions advancing civil rights and liberties. These decisions, such as *Brown v. Board of Education (1954)*,³ were seen as judicial activism in the pursuit of social justice, equality, and individual rights. They had a profound impact on the concept of the judiciary as a vehicle for societal change.

- **Comparative Constitutionalism:** Comparative constitutionalism, the study of how different

countries interpret and apply their constitutions, has also contributed to the understanding of judicial activism. Scholars and legal experts have compared judicial roles and decisions across different legal systems, shedding light on the varying degrees of activism.

² *Marbury v. Madison* 5 U.S. (1 Cranch) 137 (1803)

³ *Brown v. Board of Education of Topeka* : 347 U.S. 483 (1954)

It's important to note that the term "judicial activism" is often used differently by different individuals and can carry both positive and negative connotations. Some view judicial activism as a necessary means to protect rights and promote justice, while others see it as judges overstepping their bounds and making law rather than interpreting it. The origin of judicial activism is complex and multifaceted, influenced by legal, political, and philosophical developments over time.

IV. EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

The evolution of judicial activism in India is a fascinating and multifaceted journey that reflects the changing dynamics of the Indian legal system and its societal and political context. Judicial activism in India has often been seen as a means of addressing social and political issues, protecting fundamental rights, and ensuring the rule of law. The evolution of judicial activism in India can be classified broadly into three stages:

1. *1950-1970*: During this period, the judiciary maintained a classical role and refrained from engaging in activism of any kind.
2. *1970-2000*: This era witnessed the emergence and popularisation of judicial activism, with judges actively participating in shaping legal decisions.
3. *2000-present*: Judicial activism has continued to thrive, encompassing a wide range of issues. However, it has also encountered challenges related to judicial overreach.

Some of the early cases of judicial activism in India are:

1. **Sakal Newspapers v. Union of India, 1962⁴**

In this case, the government aimed to control the page count of newspapers relative to their price, based on the Newspaper Act of 1956 and a 1960 order. The Supreme Court, in its judgment, established that newspapers couldn't be subjected to the same regulations as regular businesses. This was because newspapers served as a platform for the exchange of ideas and information. As a result, this ruling expanded the safeguards for freedom of speech as outlined in Article 19(1)(a) of the Constitution.

2. **Balaji v. State of Mysore, 1963⁵**

⁴ Sakal Papers Ltd., &Ors v. The Union of India, A.I.R. 1962 S.C.R. (3) 842

In this case, the Supreme Court articulated that economic disadvantage was the fundamental cause of social disadvantage. The Court made a clear distinction between caste and class, asserting that caste should not be the sole determinant for evaluating social backwardness. Furthermore, the Court established that the reserved category's share of the total positions should not exceed 50%. The Court also emphasised the need for compliance with Article 14 and the relevant clauses of Articles 15 and 16. A similar stance on reservation limitations was reiterated in the case of *Chitrlekha v. State of Mysore*.⁶

3. *Golaknath v. State of Punjab, 1967*⁷

The doctrine of prospective overruling first appeared in the American legal system. The principle of "prospective overruling" was introduced by the Supreme Court of India in the case of *Golaknath v. State of Punjab*. This concept entails that a decision made in a particular case will only impact future instances and will not apply retroactively to previous decisions. The case specifically dealt with the constitutional validity of the 17th Amendment to the Constitution. The 17th Amendment prohibited the acquisition of land used for personal agriculture unless a price equal to the property's market value was paid. In this judgement, Justice Subba Rao came to the conclusion that the 17th Amendment violated the fundamental rights of acquiring any land and indulging in any lawful profession granted to Indian citizens by the Constitution. Nevertheless, employing the Doctrine of Prospective Overruling, the Supreme Court's judgment did not impact the legitimacy of the 17th Amendment and consequently the 1953 law. Justice Subba Rao further emphasised that henceforth, Parliament would be devoid of the authority to enact any amendments to Part III of the Constitution, which pertains to the fundamental rights of citizens.

4. *Kesavananda Bharati v. State of Kerala, 1973*⁸

In this case, the Supreme Court delivered a judgement that established the Doctrine of Basic Structure in Indian constitutional law. When examining the extent of the amending authority granted to the Parliament by Article 368 of the Constitution, the Court

⁵ M. R. Balaji And Others vs State Of Mysore, A.I.R.1963 S.C. 649

⁶ Chitrlekha v. State of Mysore, 1964 S.C.R. (6) 368

⁷ I.C. Golaknath and Ors. vs State of Punjab and Anrs., A.I.R 1967 S.C. 1643

⁸ Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr., (1973) 4 S.C.C. 225

introduced the concept of the "basic structure." In a majority decision of 7 to 6, comprising a bench of 13 judges, it was determined that while Parliament possessed significant powers to amend the Constitution, these powers should not be exercised in a manner that undermines or destroys the essential framework or foundational principles of the Constitution.

5. ADM Jabalpur v. Shivkant Shukla, 1976⁹

This case, also known as the "Habeas Corpus Case," occurred during the Indian Emergency (1975-1977). The case revolved around the suspension of fundamental rights, particularly the one guaranteed under Art 21, by the government during the Emergency. The Supreme Court, in a controversial 4-1 decision, ruled that individuals could not seek habeas corpus relief against unlawful detention. It effectively denied citizens the right to challenge their detention, leading to widespread criticism for undermining civil liberties. The judgment was eventually overruled in the *Maneka Gandhi v. Union of India*¹⁰ case (1978), reasserting the primacy of fundamental rights in India's constitutional framework.

V. CONSTITUTIONAL POWERS OF THE SC AND HCs IN INDIA

Constitutional powers of the Supreme Court and High Courts in India Judicial activism happens when the courts have the power to review the State's action. Article 13, in conjunction with Articles 32 and 226 of the Indian Constitution, empowers the higher judiciary with the authority of judicial review. This authority allows the judiciary to declare any legislative, executive, or administrative action null and void if it is found to be in violation of the Constitution. The power of judicial review is part of the basic structure of the Indian Constitution¹¹

ARTICLE 32

Every individual has the right, under Article 32 of the Indian Constitution, to directly approach the Supreme Court of India for the enforcement of their fundamental rights. This article is a fundamental right in itself. Article 32 confers power on the Supreme Court to

⁹ ADM Jabalpur v. Shivkant Shukla, A.I.R. 1976 S.C. 1207.

¹⁰ Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597

¹¹ Indira Nehru Gandhi (Smt.) vs Raj Narain & Anr, A.I.R. 1975 S.C. 1590

issue any order or writ for the enforcement of any of the fundamental rights. The Supreme Court of India in the verdict of *Fertilizer Corporation Kamgar Union v. Union Of India*¹² held that the power of the Supreme Court under Article 32 is an integral part of the basic structure of the Indian Constitution because providing fundamental rights without an effective remedy for enforcement renders them meaningless when violations occur.” It cannot be suspended even during emergency. A suitable writ or order under Article 32 can be issued against a private individual for the enforcement of Articles 17, 23, and 24. The Supreme Court has increasingly interpreted Article 32 liberally in various cases, extending its application to enforce fundamental rights even against private entities engaged in public functions.

ARTICLE 226

Under Article 226 of the Indian Constitution, High Courts are empowered to issue any necessary order or writ to enforce fundamental rights and other legal rights. This article is a constitutional right and not a fundamental right. In this context, the jurisdiction of the High Court under Article 226 seems wider than the jurisdiction of the Supreme Court under Article 32. When the administrative action is declared as final by a statute, it can still be challenged under Article 226 since it applies not only to violations of fundamental rights but also to violations of legal rights.

This article gives the High Court discretionary power, which means it is up to the High Court to decide whether or not to issue a writ.

In the case of *Bandhua Mukti Morcha v. Union of India*¹³, it was established that Article 226 possesses a broader scope compared to Article 32. This is because it empowers High Courts to issue orders, directions, and writs not only for the enforcement of fundamental rights but also for the enforcement of legal rights granted by statute to the disadvantaged, which are deemed as crucial as fundamental rights. In *Veerappa Pillai v. Raman and Raman Limited (1952)*,¹³ it was ruled that the writs mentioned in Article 226 were explicitly intended to enable the High Court to issue them in cases where subordinate bodies or officers act without jurisdiction, in excess of jurisdiction, in violation of

¹² Fertilizer Corporation Kamgar Union v. Union Of India, 1981 S.C.R. (2) 52

¹³ Bandhua Mukti Morcha vs Union Of India & Others, 1984 S.C.R. (2) 67

principles of natural justice, or refuse to exercise a vested jurisdiction, leading to obvious errors on the face of the record resulting in injustice. Despite the expansive jurisdiction, it does not seem extensive enough to transform the High Court into a Court of Appeal, allowing it to independently assess the accuracy of contested decisions and determine the correct position or order to be issued.

ARTICLE 136

Furthermore, Additionally, under Article 136 of the Indian Constitution, the Supreme Court possesses the authority to provide special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter issued by any court or tribunal. The Supreme Court employs its special authority in instances characterised by severe injustice or the presence of a significant legal question. The discretionary power under Article 136 allows the Court to determine cases based on principles of justice, equity, and good conscience. Nevertheless, it is imperative to exercise this power with due care and caution. In the case of *Pritam Singh v. The State*,¹⁴ the Supreme Court emphasised that the broad discretionary power granted under Article 136 should be sparingly employed and reserved for exceptional cases. In *Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar*,¹⁵ the Supreme Court clarified that Article 136 does not confer an inherent right of appeal to a party but rather vests extensive discretion in the Supreme Court, to be exercised based on considerations of justice, duty, and the rectification of injustice. Additionally, the concept of a curative petition has been introduced by the higher judiciary as a mechanism to prevent the abuse of legal processes or address egregious miscarriages of justice. This avenue is also applicable in cases involving a violation of the principles of natural justice.¹⁶ In the 2002 Rupa Hura judgment, the Supreme Court stated that the panel responsible for reviewing curative petitions should comprise the three senior-most judges of the Supreme Court.

ARTICLE 142

Article 142 of the Indian Constitution stands as a crucial constitutional provision, endowing the Supreme Court with extraordinary authority. This provision empowers the

¹⁴ Pritam Singh v. The State, A.I.R. 1950 S.C. 169

¹⁵ Tirupati Balaji Developers (P) Ltd. ., State of Bihar, (2004) 5 S.C.C. 1

¹⁶ Rupa Ashok Hurra v. Ashok Hurra & Anr, A.I.R. 2002 S.C. 1771

Supreme Court to issue appropriate decrees or orders to achieve complete justice in any ongoing matter before it. While legislative authority in India primarily rests with the Parliament, the Supreme Court is granted the ability to legislate under Article 142 of the Indian Constitution. This provision is instrumental in facilitating judicial legislation in India, a process typically undertaken only in the absence of existing legal provisions on the relevant subject matter. The directions or rules issued by the Supreme Court under Article 142 would remain in force until the Parliament makes proper legislation on the subject matter. It means that the court understands the fact that the appropriate law-making body is the Parliament only. Parliament has more resources than the Supreme Court to pass suitable legislation on the subject matter.

Considering the importance of Article 32 read with Article 142, it becomes necessary for the judiciary that it should perform its constitutional obligation where there is no legislation on a certain field and implement the rule of law.¹⁷ In the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan*,¹⁸ the Supreme Court once again recognised the significance of Article 142 in the Indian Constitution. The Court affirmed that under Article 142, it possesses the authority to issue directions and guidelines to enforce and safeguard fundamental rights in the absence of specific legislation. It emphasised that such directions, when addressing legislative gaps, constitute binding law. However, the Parliament retains the power to replace such directions with enactments; for instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 superseded the Vishakha Guidelines for the prevention of sexual harassment issued by the Supreme Court in 1997.

V. SHIFT FROM LOCUS STANDI TO PIL

In numerous landmark rulings, the Supreme Court of India has acknowledged that the right to access justice is a fundamental entitlement. The Indian Judiciary has been actively involved in guaranteeing access to justice for individuals facing financial constraints, those from socially and educationally disadvantaged backgrounds, victims of human trafficking or begging, transgender individuals, and others. Since Independence, the Courts in India have been adopting innovative ways to redress the grievances of disadvantaged persons. In numerous instances, the Supreme Court has exercised its epistolary jurisdiction, initiating

¹⁷ Vineet Narain v. Union of India, A.I.R. 1998 S.C. 889

¹⁸ Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 S.C.C. 528

suo motu actions based solely on postal letters revealing instances of human rights violations in society. Human rights violations, which were published in the newspapers, were taken into judicial consideration. The court entertains the petitions which are being filed by the public-spirited persons in the public interest. By doing so, the superior courts have liberated themselves from the shackles of the principle of locus standi and given birth to the Public interest litigation in India.

One of the landmark cases relating to public interest litigation was *Hussainara Khatoon (I) v. State of Bihar*.¹⁹ A series of articles exposing the plight of under-trial prisoners in the State of Bihar was published in a prominent newspaper. Many of the under-trial prisoners had already served the maximum sentence without even being charged for the offence. A writ petition drawing the Court's attention to the issue was filed by an advocate. While accepting it as public interest involved, the Supreme Court held that the right to a speedy trial is a fundamental right under Article 21 of the Indian Constitution. The court directed the State to provide free legal facilities to those under trial so that they could get bail or final release.

A notable example of public interest litigation is found in the case of *S.P. Gupta v. Union of India*.²⁰ In this instance, the court acknowledged the locus standi of bar associations to file writs through public interest litigation. The court asserted that challenging the executive's policy of arbitrarily transferring High Court judges is a matter of public interest. Emphasising the significance of public interest litigation, the court stated: "It must now be considered well- established that when a person who has suffered a legal wrong or injury, or whose legal right or legally protected interest is violated, is unable to approach the court due to some disability or it is impractical for him to do so for other valid reasons, such as his socially or economically disadvantaged position, another person can seek the court's assistance to provide judicial redress to the aggrieved party. This ensures that the legal wrong or injury suffered by such a person is not left unaddressed, and justice is served."

VI. METAMORPHOSIS FROM JUDICIAL ACTIVISM TO JUDICIAL

¹⁹ *Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar*, 1979 S.C.R. (3) 532

²⁰ *S.P. Gupta v. Union of India*, 1981 Supp (1). S.C.C. 87

OVERREACH

Parliament has often accused the judiciary of engaging in excessive interference, claiming that the judiciary is exceeding its constitutional mandate. This overstepping of judicial bounds, referred to as "judicial overreach," occurs when the courts excessively and without reasonable cause encroach upon the legislative and executive domains. While the distinctions between judicial activism and overreach are subtle, their societal impacts are drastically different. Unlike the well-intentioned nature of judicial activism, judicial overreach is characterised by ulterior motives and can hinder the proper functioning of democratic institutions. Chief Justice J.S. Verma emphasised that judicial activism is suitable when it falls within the realm of legitimate judicial review, avoiding judicial tyranny and arbitrary decisions.

VII. CONCLUSION

In conclusion, judicial activism in India has been a powerful force in shaping legal and political evolution. It has its origins in the common law tradition, significant court cases, and evolving constitutionalism. The judiciary's powers to review state actions, as outlined in Articles 13, 32, and 226 of the Indian Constitution, have played a pivotal role in enabling judicial activism. This evolution has transitioned from a strict locus standi to Public Interest Litigation (PIL), expanding access to justice. However, the fine line between judicial activism and judicial overreach is a matter of concern, with critics arguing that the judiciary sometimes exceeds its constitutional role. Striking the right balance between an active judiciary, the legislative branch, and preserving democratic institutions remains a complex challenge for India's legal and political landscape.