



Judicial Activism: A Comparative Study between Indian Judicial Activism and UK, US Judicial Activism

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1. INTRODUCTION

1.1 WHAT IS JUDICIAL ACTIVISM.?

Judicial activism refers to the decisions or the judgements made or passed by the judges following the laws and the directions given by the constitutions with more clarity of the provided written provisions in the constitutions. Judicial activism reflects the reviews and course of action of the judges. It reflects how the judges think or what he believes while giving any particular judgement. Judges interpret the laws in such a way so that it can be easily understood by the lawyers and also in a way that can avoid confusions and contradictions with the other laws. Judicial activism refers to the behaviour of judges when they interpret and apply laws in a way that goes beyond what is clearly written in the Constitution or other legal documents.

Judicial activism means that a judge is more likely to decide on constitutional issues. He may reject government actions. It can describe how a judge reviews cases or makes decisions. Judicial activism often involves challenging laws made by the government. Judicial activism can be seen as a way for judges to bring about change and promote justice. Judges play a crucial role in our legal system. They interpret laws and make decisions in court cases. But sometimes, they go beyond just applying the existing laws. They may take a more active role and make decisions that have a bigger impact on society. This is known as judicial activism. They might interpret the law in a broad and flexible way to address new and evolving challenges. For example, they could protect the rights of marginalized groups.

Understanding judicial activism is important because it affects how laws are made and how they impact our lives. In the following sections, we'll delve deeper into the concept of judicial activism and its implications.

Judges play an important and active role in transforming the practice of judicial activism in India. Some of the functions acted by the judges are as follows:

- Judges interpret the Constitution broadly and adapt it to changing times.
- Judges may make new laws or change existing ones to address societal issues.
- Judges actively intervene in matters of public policy and social change.
- Judges have a more flexible approach and may challenge existing precedents.
- Judges are more likely to protect individual rights and promote equality.
- Judges play an active role in shaping laws.
- It aims to protect rights and promote justice.
- It ensures a balance of power among branches of government.
- It interprets laws in a broader and more flexible manner.
- It is seen as an important aspect of the judicial role.

1.2 HISTORY AND EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

Here are the key points about the evolution of judicial activism in India:

The Indian judiciary was largely passive in the early years of independence. It had a very limited role to play.

With time, the judiciary started taking a more active approach, especially during the 1970s and 1980s.

In the 1970s, many judges began to take a more active role in shaping the law and public policy.

The Supreme Court of India began interpreting the Constitution in a broader way. It gave importance to fundamental rights and social justice.

Public Interest Litigation (PIL) was introduced in the 1980s. This allowed people to go to court on behalf of those who were treated unfairly.

One of the most famous examples of judicial activism in India is the case of [Keshvananda Bharati v. State of Kerala \(1973\)](#).

The decision, in this case, marked a turning point in the evolution of judicial activism in India. Since then, the Indian judiciary has become active in shaping the law and public policy.

Judicial activism has been a controversial issue in India. However, there is no doubt that judicial activism has played a significant role in shaping the law and public policy in India.

Some famous case laws related to judicial activism are:

Year	Court Case	Ruling
1973	Kesavananda Bharati v. State of Kerala	Supreme Court gave power to strike down unconstitutional laws
1980	Maneka Gandhi v. Union of India	Supreme Court ordered free legal aid for the poor
1993	Naz Foundation v. Government of NCT of Delhi	Supreme Court decriminalized homosexuality
2002	MC Mehta v. Union of India	Supreme Court ordered cleanup of the Ganges River
2012	Right to Education Act	Supreme Court ordered universal access to education

2. IMPORTANCE OF JUDICIAL ACTIVISM

Protecting rights: Judicial activism helps ensure that people's rights are upheld and that everyone is treated fairly.

Promoting equality: Judges play an active role in interpreting laws. This helps to prevent discrimination and unfair treatment.

Adapting to change: Judicial activism allows the court system to address new challenges. It adapts laws to fit the current circumstances.

Balancing power: Judges help maintain a balance of power among different branches of government. They prevent any one branch from becoming too powerful.

Checks and balances: Judicial activism serves as a check on the actions of the government. It ensures that it respects the rights of individuals and follows the law.

Caution needed: Activism may lead to decisions based on personal opinions rather than the law itself. Hence, some argue that judges should stick to the original meaning of laws and the Constitution.

3. ADVANTAGES AND DISADVANTAGES OF JUDICIAL ACTIVISM

Some of the advantages of judicial activism include the following:

- Judicial activism helps ensure that people's rights are upheld and that everyone is treated fairly.
- It helps prevent discrimination and unfair treatment, promoting equal rights for all.
- Judicial activism allows the court to address new challenges. It helps it to adapt laws to fit the current circumstances.
- It helps maintain a balance of power among different branches of government. This prevents any one branch from becoming too powerful.
- Judicial activism holds the government accountable for its actions. It ensures that the government follows the law and respects the rights of individuals.

Some of the disadvantages of judicial activism include the following:

- Judges may go beyond their role and make decisions based on personal opinions instead of the law itself.
- Judicial activism might interfere with the democratic process. It allows judges to make decisions instead of elected representatives.

- Some believe that judges should stick closely to the original meaning of laws and the Constitution. Activism may result in decisions without proper checks and balances.
- Judicial activism may lead to delays in the legislative process. Courts intervention in policy matters potentially hinders effective governance.
- When judges play an active role, there is a risk of inconsistency in their decisions. Different judges may interpret laws differently.

4. JUDICIAL ACTIVISM IN UNITED KINGDOM

4.1 BRIEF INTRODUCTION TO UK APEX COURT

The Supreme Court is the UK's final court of appeal for all civil cases, and for criminal cases in England, Wales and Northern Ireland. It also hears constitutional cases and ones that have the most far-reaching consequences for the public. The Constitutional Reform Act 2005 provided for the establishment of a UK Supreme Court. It started sitting in October 2009. Before this, the UK's final court of appeal and constitutional court was based in the House of Lords. Twelve judges, often referred to as 'Law Lords', had previously carried out the functions of the Supreme Court as the Appellate Committee of the House of Lords.

However, by the early 2000s, the view that this longstanding arrangement might not be in keeping with the independence and impartiality expected of the judiciary had gained ground. There were concerns that it was not appropriate for the Law Lords to both sit in the legislative chamber that helped make the laws and act as the final interpreters of those same laws. It was worried that this model might not provide enough separation between the legislative and judicial branches of the constitution. Furthermore, it could be in breach of Article 6 of the European Convention of Human Rights, which guarantees the right to a fair trial before 'an independent and impartial tribunal'. It was also thought that the old arrangements were confusing and unclear for the public, making it seem like the House of Lords was deciding cases, rather than a committee of the UK's most senior judges.

4.2 WHAT IS THE MEANING OF JUDICIAL REVIEW ACCORDING TO UK.?

Judicial review refers to the process by which the public can ask judges to review the exercise of a power by a public authority. There are a number of reasons for which a decision can be ruled to be unlawful by the courts; for example, if the procedures that led to it were unfair or if it is irrational. Whilst judges cannot overturn primary legislation, they can declare secondary legislation to be void if it is found to be *ultra vires*. This means it is beyond the scope of the powers that have been granted to the authority by primary legislation.

Judicial review can be a powerful tool through which citizens ensure that ministers and other public officials are not abusing their power. It allows them to call on judges to review whether the decisions that affect them are legitimate and lawful. It is therefore one of the key mechanisms of accountability in the UK constitution. Judicial activism is a judicial philosophy holding that the courts can and should go beyond the applicable law to consider broader societal implications of its decisions. It is sometimes used as an antonym of [judicial restraint](#). The term usually implies that judges make rulings based on their own views rather than on [precedent](#). The definition of judicial activism and the specific decisions that are activist are controversial political issues. The question of judicial activism is closely related to [judicial interpretation](#), [statutory interpretation](#), and [separation of powers](#).

British courts were largely deferential towards their attitudes against the government before the 1960s. Since then, judicial activism has been well established throughout the UK. One of the first cases for this activism to be present was the *Conway v Rimmer* (1968); a [Public-interest immunity](#), previously known as Crown privilege. Previously, a claim like this would be defined as definitive, but the judges had slowly begun to adopt more of an activist line approach. This had become more prominent in which government actions were overturned by the courts. This can inevitably lead to clashes between the courts against the government as shown in the *Miller* case consisting of the 2016 Conservative government. The perceptions of judicial activism derived from the number of applications for judicial review made to the courts, which led to *R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland* in 2019, joint landmark constitutional law cases on the limits of the power of royal prerogative to [prorogue](#) the Parliament of the United Kingdom. This can be seen throughout the 1980s, where there were about 500 applications within a year. This number dramatically increased as by 2013, there were 15,594 applications. This trend has become more frequent as time passes along, possibly pointing to a greater influence in the UK courts against the government. Along with the number of applications submitted to the courts, in some instances it has attracted media attention. For instance, in 1993, [William Rees-Mogg](#) had challenged the Conservative government to ratify the [Maastricht Treaty](#) (a legislation that self described as "a new stage in the process of European integration"), which eventually had formed into the European Union and initiated the [Eurodollar](#). This was rejected by the Divisional Court and attracted large amounts of media attention to this case. Through these components it is largely evident that judicial activism should not be exaggerated. Ultimately, judicial activism is greatly established throughout the UK as the courts are becoming more prone to scrutinise at their own will, and at times, reject government legislation that they deem to be not within balance to the UK constitution and becoming more visible doing so.

Obviously since the United Kingdom's judiciary powers do not come from electoral methods, they differ in strengths, weaknesses, opportunities, and threats compared to a free and democratic system. [Baroness Hale of Richmond](#) raises the popular concern that this system operates on a fundamentally different playbook to the United States of America's court of law, and personal bias can be inherited, through an 'old boys' club'.

TYPE OF JUDICIAL SYSTEM DOES ENGLAND HAVE

England and Wales share a unified code system, based on common law principles, which originated in medieval England. Scotland and Northern Ireland each have their own judicial systems.

Judicial activism, an approach to the exercise of judicial review, or a description of a particular judicial decision, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions.

5. JUDICIAL OVERREACH

Judges exceed their authority and make decisions beyond their role.

It involves judges making decisions based on personal preferences rather than the law.

It disrupts the balance of power by encroaching on the authority of other branches of government.

It interprets laws in a way that goes against their original intent or the Constitution.

It is viewed as exceeding the limits of the judicial role.

6. JUDICIAL ACTIVISM IN UNITED STATES OF AMERICA (USA)

In the United States, judicial activism is usually used to indicate that the speaker thinks judges have gone beyond their proper roles in enforcing the Constitution and have decided a case based on their policy preferences. However, there is little agreement as to which decisions fit this description.

Judicial activism is a product fabricated solely by the judiciaries and not backed by the Constitution. When the judiciary surpasses the line of the powers set for it in the name of judicial activism, it could be rightly said that the judiciary then begins to invalidate the concept of separation of powers set out in the Constitution. If judges can freely decide and make laws of their choices, it would not only go against the principle of separation of powers but will result in chaos and uncertainty in the law as every judge will start writing his own laws according to his fads and quirks. Judicial exercise has to be respected to maintain a clear balance.

Making laws is the function and duty of the legislature, to fill the gap of laws and to implement them in a proper manner. So that the only work remaining for the judiciary is interpretations. Only a fine equilibrium between these government bodies can sustain the constitutional values.

6.1 WHAT IS THE MEANING OF JUDICIAL ACTIVISM IN USA.?

- Judicial activism signifies the proactive role of the Judiciary in protecting the rights of citizens.
- The practice of Judicial Activism first originated and developed in the USA.
- In India, the Supreme Court and the High courts are vested with the power to examine the constitutionality of any law, and if such a law is found to be inconsistent with the provisions of the constitution, the court can declare the law as unconstitutional.
- It has to be noted that the subordinate courts do not have the power to review constitutionality of laws.

The U.S. Supreme Court has always been a political institution. Early in its history, Chief Justice Marshall's opinion in *Marbury v. Madison*¹ was as overtly political as any decision in the Court's history. While politics can never be neatly separated from key Court decisions, the Court has traditionally operated under constitutional and self-imposed restraints that limit its intrusion on the policy decisions of democratically elected legislators and officials. The meaning of the term "judicial activism" is elusive. As former Senator Al Franken said, politicians who complain about judicial activism usually are speaking of a judge "who votes differently than [the politician] would like. Judicial activism is used here to describe a Court that acts in away that unnecessarily infringes on the powers of the democratically elected coordinate branches—the Congress and the President—or elected state and local legislatures and officials. Members of the Court seem increasingly comfortable with activism provided it conforms to their own biases. Such conduct is usually associated with particular social or political norms shared by a Supreme Court majority. During the *Lochner* era that ended in the 1930s, it was the conviction that the Constitution, through the due process clause, protected freedom of contract (a form of "substantive due process"). During the Warren Court's flirtation with populism in the 1960s, it was a strong conviction that the Constitution protected individual rights of criminal defendants and the relatively powerless.

7. JUDICIAL ACTIVISM CRITICISM

Judicial activism has also faced criticism several times. In the name of judicial activism, the judiciary often mixes personal bias and opinions with the law. Another criticism is that the theory of separation of powers between the three arms of the State goes for a toss with judicial activism. Many times, the judiciary, in the name of activism, interferes in an administrative domain, and ventures into judicial adventurism/overreach. In many cases, no fundamental rights of any group are involved. In this context, judicial restraint is talked about.

8. Judicial Activism VS Judicial Restraint

As mentioned earlier, Judicial Activism is the role played by the judiciary to uphold the legal and constitutional rights of the citizens. Judiciary exercises its own power to implement or strike down the laws and rules that infringes the right of the citizens or is for the good of the society at large, whatever the case may be.

While, on the other hand, Judicial Restraint is the second face of the coin. It is the polar opposite of activism which puts obligations on it to follow constitutional laws while implementing its duties. It encourages the judiciary to respect the laws or rules set out in the constitution.

Judiciary has gained power with judicial activism as the judges can take up issue suo-motu wherever they think that constitutional laws are being violated. However, with judicial restraint, the same judiciary has to abide by the executive who is given the sole power to legislate for the public.

9. DIFFERENCE BETWEEN JUDICIAL REVIEW AND JUDICIAL ACTIVISM

Judicial review and judicial activism are two distinct but interconnected concepts in the legal and judicial landscape. Judicial review is primarily concerned with ensuring that laws and actions conform to the constitution and its established legal precedents, while judicial activism takes a more policy-oriented and proactive approach, often involving the personal beliefs and values of judges. Both concepts have their roles and implications in shaping the legal and political fabric of a nation and their distinctions are essential for understanding the dynamics of the judiciary in any legal system.

10. CONCLUSION

Judicial activism is when judges play an active role in making decisions that shape the law. Some people think it's good as it helps protect people's rights and bring about change. Others argue that judges should stick to interpreting laws, not making them. Judicial activism can have both positive and negative effects on society. Protecting people's rights and at the same time respecting the role of other branches of government is necessary. It's important to strike a balance between them. Judicial activism can be a powerful tool for change, but it's crucial for judges to be fair and follow the Constitution.

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