



## **The Evolving Outlook of the Indian Judiciary through the Lens of Judicial Activism**

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### ABSTRACT

Judicial activism refers to when judges are willing to interpret laws and legal precedent broadly to address societal issues, even if it means going beyond the strict text of the law. It's often contrasted with judicial restraint, where judges adhere closely to the literal interpretation of laws and defer to legislative or executive decisions. Judicial creativity and judicial activism are related but distinct concepts in the legal world. Judicial creativity refers to the ability of judges to interpret laws and legal principles in innovative or imaginative ways to address novel or complex issues. It involves finding new solutions within the existing framework of laws and legal precedent. While judicial creativity can involve innovative interpretations within the existing legal framework, judicial activism specifically refers to judges actively shaping public policy or societal norms through their rulings, often by interpreting laws broadly or even expanding their scope beyond what might be considered traditional legal boundaries. In essence, judicial creativity is about finding inventive legal solutions within the bounds of the law, while judicial activism involves judges taking a more proactive role in shaping the law and public policy. This paper delves into the advantages and drawbacks of judicial activism.

Keywords: Judicial activism, Judicial restraint, Judicial creativity, Interpretation, Societal issues.

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### Introduction:

Justice is not only a necessity of the state, but is also the test of the superiority of any government, because the safety and welfare of all citizens depend on the belief in prompt and fair justice. The Indian judicial system has also changed in the last few years. Considering the demand of time and the needs of the people, the Indian judiciary has accepted that the nature of justice is not only legal but also social and economic. The judiciary is playing an active role in improving the lives of the common people and providing them fundamental rights. Due to the adoption of this active approach, the nature of the justice system has become constructive instead of restrictive. This form has emerged in the form of judicial activism. Judicial activism means the active role of the judiciary in forcing the other two organs of the government (legislature and executive) to discharge their constitutional duties. Judicial activism motivates judges to adhere strictly to judicial precedent in favor of innovative social policies. Judicial activism is a judicial philosophy that encourages judges to move away from traditional decisions in favor of progressive and innovative social policies.

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### Evolution of Judicial Activism –

Judicial activism is a dynamic approach adopted by the judiciary to address evolving societal needs. Coined by Arthur Schlesinger Jr. in 1947, the term gained prominence as the judiciary began interpreting laws beyond their literal text. In India, judicial activism finds its roots in the power of judicial review, a cornerstone of democracy that not only upholds the rule of law but also instills confidence in citizens. Enshrined in the Indian Constitution, fundamental rights empower the judiciary to provide constitutional remedies under Article 32, fostering a proactive stance in safeguarding citizens' rights. The Indian judiciary's emphasis on fundamental rights and social justice burgeoned in the 1970s, exemplified by landmark cases like 'A.K. Gopalan vs. State of Madras' in 1950 and the rejection of Indira Gandhi's candidacy by the Allahabad High Court in 1973. Notably, the 1973 case of 'Keshavananda Bharati vs. State of Kerala' epitomized judicial activism, laying the groundwork for justices like V. Krishna Iyer, P.N. Bhagwati, O.Chinnappa Reddy, and Desai to champion the cause in India. Thus Justice V. Krishna Iyer, Justice P.N. Bhagwati, Justice O.Chinnappa Reddy and Justice Desai laid the foundation of judicial activism in the country.

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### Public Interest Litigation and Judicial Activism-

Judicial activism has an important relationship with Public Interest Litigation. PIL is derived from American jurisprudence, where it was used to provide legal representation to the poor, racial minorities, unorganized consumers, citizens passionate about environmental issues, and unrepresented groups. In 1975, the Supreme Court started providing justice to the common people in public interest matters by making the traditional right to be heard

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flexible and liberal. Encouraged by the efforts of the Indian Judiciary, NGOs and various institutions started the process of providing justice to the common people by filing public interest litigation in the courts against the administrative officers for non-performance of their duties, which not only quickly became popular but also the suffering people found a medium against the government and administrative officials. As a result of this judicial activity, the Dalits, neglected and resourceless people of the society started getting proper justice. Taking inspiration from the Preamble of the Constitution of India, Justice Krishna Iyer of the Supreme Court, in the decision of *Mumbai Kamgar Sabha vs. Abdul Bhai*, while accepting the representative petition by a workers' organization, took a liberal and flexible approach towards the rule of 'locus standi' in relation to the right to be heard. While adopting, gave importance to the creative role of judges. It was from here that public interest cases started in India, which over time was expanded into judicial activism by the judges of the Supreme Court. In India, the Supreme Court considered only the complaints published in newspapers and sent by post as petitions and gave decisions after hearing them. It is from here that a new judicial technique was initiated, moving away from the rule of right to be heard, which should be considered as the beginning of public interest matters. Any citizen can write a letter to the Supreme Court under Article 32 of the Constitution and to any High Court under Article 226 without taking the help of a lawyer in any matter related to public interest and request for judicial action to be taken on the basis of that letter, similar to a petition. Is. An important achievement of public interest cases is that it has made possible the democratic enforcement of judicial relief and the poor can easily get the latest judicial remedies related to basic human rights.

Article 21 of the Indian Constitution asserts that no individual shall be deprived of their life or personal liberty except through lawful procedures. In '*A.K.Gopalan vs. State of Madras*', the Supreme Court emphasized that deprivation of life and personal liberty must adhere to established legal procedures. '*Maneka Gandhi vs Union of India*' further elaborated on Article 21, incorporating the concept of due process. Similarly, in '*Francis Coralie vs Union Territory of Delhi*', the Court broadened the notion of the right to life beyond mere animal existence, encompassing essential needs like nutrition, clothing, shelter, education, and the freedom to express oneself. '*Kharak Singh vs. Uttar Pradesh*' highlighted that personal freedom under Article 21 encompasses a wide array of rights, collectively constituting an individual's personal freedom. In the '*Pragati Varghese vs. Cyril George Varghese*' case, the Mumbai High Court found Sections 10, 17, and 20 of the Indian Divorce Act unconstitutional, stating that they impede the right of Christian women to live with dignity as guaranteed by Article 21. The court emphasized the violation of rights. In the '*National Human Rights Commission vs. State of Arunachal Pradesh*' case, the court asserted that it is the state's responsibility to safeguard the 'life and personal liberty' of every individual, regardless of citizenship status. In '*Rajagopal vs. Tamil Nadu*,' the court recognized the right to privacy as part of Article 21, affirming individuals' ability to safeguard their privacy regarding family, marriage, and other personal matters. In '*Kapila Hingorani vs. Union of India*,' the Supreme Court highlighted the state's obligation to ensure adequate means of livelihood for those unable to afford food, interpreting the right to life expansively. The court affirmed that the right to earn a living is a fundamental right under Article 21, subject to reasonable restrictions. Finally, in '*Subhash Kumar vs. State of Bihar*,' it was established that the right to access pollution-free water and air falls under the 'Right to Life' in Article 21, empowering citizens to advocate for a clean environment through public interest litigation under Article 32.

In the '*Centre for Environment Law vs Union of India*' case, the Supreme Court integrated environmental protection into Article 21, mandating the establishment of a second habitat for Asiatic lions. In '*Ajay Bansal vs Union of India*,' the Court ordered the provision of helicopters to rescue stranded individuals in Uttarakhand. Additionally, in '*Bhagwan Das vs. NCT Delhi*,' the Supreme Court mandated the death penalty for "honor killings." Notably, in the landmark '*Aruna Shanbaug Mumbai case*,' the Court permitted only passive euthanasia. Furthermore, through public interest litigation, the judiciary has extensively interpreted Article 21 to include rights such as access to safe drinking water, fair trial, protection of water bodies, forests, and ponds, ensuring life. Other rights affirmed through this process include the right to family pension, legal aid, protection against sexual harassment, medical aid in accidents, protection against police brutality and custodial violence, adherence to imprisonment regulations, access to visitors and interviews, minimum wage, and adequate sleep.

Indeed, the activism of the Indian Supreme Court has led to the inclusion of many rights within Article 21 and 22. However, some criticize judicial activism, arguing that it can encroach upon the democratic process, as policymaking is primarily the responsibility of elected representatives. Critics also contend that judicial activism may reflect personal biases of judges. Despite these criticisms, the judiciary remains committed to upholding the Constitution and ensuring justice for all. As Justice Bhagwati stated in the '*Bandhua Mukti Morcha vs Union of India*' judgment, the judiciary must fulfill its duty of protecting the Constitution and delivering justice to the people. Judge B. R. Gavai emphasized in his lecture at Harvard Kennedy School that the judiciary in India plays a crucial role in ensuring that constitutional objectives are met, without usurping the functions of other branches of government. The judiciary has developed innovative mechanisms like Public Interest Litigation to uphold the Constitution as a living document, adaptable to the evolving needs of society. However, there is criticism of judicial overreach, which has several negative impacts on the state machinery. Firstly, it can undermine the separation of powers and upset the balance among branches of government, essential for a healthy democracy, potentially leading to a breakdown of checks and balances. Secondly, it can cause delays in the justice delivery system, contributing to a backlog of cases and prolonged legal proceedings. Thirdly, it may overburden the judiciary, leading to burnout among judges. Moreover, it could foster a lack of accountability, as there may be no clear mechanism for holding the judiciary accountable for its actions. Additionally, judges may lack expertise in complex policy matters, resulting in uninformed decisions. Furthermore, judicial overreach can create confusion and uncertainty about the law and the role of courts, reducing certainty and predictability in the legal system. Finally, it may undermine public trust in the courts and the legal system if perceived as partisan or biased, further diminishing confidence.

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## The Concept of Judicial Activism in the USA

Judicial activism in the USA involves judges interpreting laws and the Constitution broadly to address societal issues. Its position varies; some view it as essential for progress, while others criticize it for overstepping judicial bounds. The debate revolves around the balance between judicial discretion and adherence to original intent or text. Here are a few notable cases that illustrate the concept of judicial activism in the USA:

1. *Brown v. Board of Education* (1954): The Supreme Court ruled that racial segregation in public schools was unconstitutional, overturning the "separate but equal" doctrine established in *Plessy v. Ferguson* (1896). This decision is often cited as an example of judicial activism, as the Court went beyond the literal text of the Constitution to address societal inequality.
2. *Roe v. Wade* (1973): The Supreme Court legalized abortion nationwide by ruling that state laws prohibiting it violated a woman's right to privacy under the Due Process Clause of the Fourteenth Amendment. Critics argue that the Court engaged in judicial activism by creating a new constitutional right not explicitly mentioned in the Constitution.
3. *Obergefell v. Hodges* (2015): The Supreme Court held that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. This decision extended marriage equality nationwide, and while celebrated by many, it was also criticized by those who viewed it as an example of judicial overreach.

These cases demonstrate instances where the judiciary played an active role in shaping social policy and interpreting the Constitution beyond its literal text, sparking debates about the appropriate role of the courts in a democratic society.

The study emphasizes the importance of judicial self-discipline to mitigate the negative consequences of judicial activism, particularly its potential unpredictability and tendency towards personal biases. To achieve judicial restraint, the study suggests several measures. Firstly, ensuring accountability through transparent decision-making and judicial review processes. Secondly, adhering to codes of conduct and ethics to maintain impartiality and integrity. Thirdly, promoting diversity in the judiciary to reflect the community it serves and enhance transparency in the selection process. Ultimately, striking a balance between judicial activism and restraint requires careful consideration of each case's context and the judiciary's role as a check on government branches while remaining responsive to societal needs. The recent Supreme Court order in the case of *Anoop Baranwal vs Union of India* (2023) regarding the appointment of the Chief Election Commissioner and Election Commissioners has stirred controversy by encroaching into the legislature's territory. This action potentially threatens the foundational principles of Indian democracy, which hinge on the separation of powers among the branches of government and the Supreme Court's avoidance of acting as a legislative body. The court, through a five-judge bench, proposed the formation of an independent committee involving the prime minister, the opposition leader (or the leader of the largest opposition party in the Lok Sabha), and the Chief Justice of India to advise the President on these appointments until Parliament crafts a new law. The judgment was based on the absence of specific laws in the Constitution regarding the functioning of the Election Commission, the necessity for its independence in a healthy democracy, concerns about perceived biases within the Commission, and the Supreme Court's authority to ensure "complete justice" under Article 142 of the Constitution. The Court's argument centered on the belief that the Election Commission's effectiveness is hindered by the Executive's exclusive authority in appointments.

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## Conclusion –

Indeed, the judiciary has emerged as a vigilant guardian of the rights of marginalized and oppressed communities, often viewed as a catalyst for social change. Through its interventions, the judiciary has sought to ensure that the voices of the poor and vulnerable are heard and their rights protected. This role has positioned the judiciary as an agent of social transformation, working to uphold justice and equality for all members of society.

In conclusion, the study delves into the intricate evolution of the Indian judiciary, highlighting the pivotal role of judicial activism in shaping its outlook. Through a comprehensive analysis of landmark cases and judicial interventions, it becomes evident that judicial activism has emerged as a catalyst for social change, ensuring the protection of fundamental rights and fostering judicial innovation. However, amidst its transformative impact, concerns regarding judicial overreach and the delicate balance of power between the judiciary and other branches of government persist. Moving forward, a nuanced approach that acknowledges the dynamic nature of judicial activism while upholding the principles of constitutional governance is imperative to sustain the integrity and effectiveness of the Indian judiciary.

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