



Judicial Activism: An Overview

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ABSTRACT

This abstract explores the concept of judicial activism, examining its definition, characteristics, and implications within the realm of law and governance.

Judicial activism refers to the proactive role of courts in shaping and interpreting laws, often surpassing traditional judicial bounds. This phenomenon has sparked debates regarding the balance of power among branches of government, the role of courts in democracy, and the limits of judicial discretion. By analysing various perspectives and case studies, this abstract aims to shed light on the complexities and controversies surrounding judicial activism, providing insight into its significance on temporary legal systems.

Research Methodology

This research paper explores the nuances of judicial activism in India, tracing its historical development, analysing its impacts, and considering the various perspectives surrounding this phenomenon.

INTRODUCTION

Judicial activism, a term frequently bandied about in legal and political discourse, encapsulates the dynamic and often contentious interaction between the judiciary and other branches of government. At its core, judicial activism

signifies a departure from the traditional role of courts as passive arbiters, instead portraying them as active participants in the policymaking process. This proactive stance enables courts to interpret laws expansively, fill gaps in legislation, and even strike down statutes deemed unconstitutional. However, this assertiveness has not escaped criticism, with detractors decrying it as judicial overreach and an affront to democratic principles. This introduction sets the stage for a deeper exploration of judicial activism, delving into its origins, manifestations, and ramifications within legal frameworks worldwide. Through this investigation, we seek to unravel the complexities surrounding judicial activism, discern its impact on governance and the rule of law, and evaluate its role in fostering social change and upholding constitutional values.

Against this backdrop, this paper endeavours to develop deeper into the contours of judicial activism, examining its manifestations across different legal systems, its impact on governance and policy making, and its implications for democracy and the rule of law. By critically analysing landmark judicial decisions, theoretical frameworks, and empirical evidence, we aim to unravel the complexities surrounding judicial activism and foster a nuanced understanding of its role in shaping contemporary legal and political landscapes.

Historical Evolution of Judicial Activism in India

The history of judicial activism in India is intriguing, reflecting the ever-changing relationships between the judiciary, government, and legislative. It demonstrates how the Indian bench, notably the Supreme Court, has steadily taken a more aggressive role in interpreting and implementing the law to defend citizens' rights and promote justice. Judicial activism in the pre-independence era of India marked a significant phase in the evolution of the country's legal and political landscape. During this period, the judiciary played a crucial role in challenging colonial oppression, safeguarding fundamental rights, and laying the groundwork for constitutional governance. One notable example of judicial activism during this era is the case of *R vs. Secretary of State for India*, commonly known as the Ilbert Bill controversy¹. In 1883, the British colonial government introduced the Ilbert Bill, which sought to allow Indian judges to preside over cases involving European defendants. However, European settlers vehemently opposed the bill, fearing loss of their perceived superiority. In response, Indian judges, notably Justice Romesh Chunder Mitter, voiced their dissent, advocating for equality before the law and challenging the discriminatory practices of the colonial administration.

Additionally, the pre-independence judiciary played a pivotal role in advancing civil liberties and fundamental rights. In cases like *A.K. Gopalan v. State of Madras (1950)*², the hon'ble Supreme Court of India asserted its authority to review laws and executive actions, laying the groundwork for judicial review and the protection of individual rights. Similarly, in cases such as *Romesh Thappar vs. State of Madras (1950)*³, the judiciary demonstrated a commitment to freedom of speech and expression, striking down censorship laws and upholding the principles of democratic governance.

One significant aspect of judicial activism in the post-independence era is the judiciary's role in upholding fundamental rights enshrined in the Indian Constitution. Landmark cases such as *Maneka Gandhi v. Union of India (1978)* and *Kesavananda Bharati v. State of Kerala (1973)*, underscore the judiciary's commitment to protecting individual liberties and ensuring governmental accountability.⁴ The Indian judiciary has played a crucial role in addressing social and environmental challenges through public interest litigation (PIL).

¹ Saha, Ruchira. "The Ilbert Bill Controversy and the Making of the Colonial Indian Legal Profession." *Modern Asian Studies* 47, no. 3 (2013): 782-813.

² *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

³ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124

⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC

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Cases like *Vishaka vs. State of Rajasthan* (1997) and *M.C. Mehta vs Union of India* (1986) exemplify the judiciary's proactive approach in addressing issues such as gender discrimination and environmental degradation⁵.

Changing Perspectives on Judicial Activism

Freedom of the press is a cornerstone of democracy, ensuring transparency, accountability, and the dissemination of diverse viewpoints. In the Indian context, freedom of the press has been both enshrined in the Constitution and fiercely defended by the judiciary, playing a crucial role in upholding democratic values and promoting public discourse. Article 19 (1) (a) of the Indian Constitution guarantees the freedom of speech and expression, which includes freedom of the press. Over the years, the Indian judiciary has interpreted this right expansively, recognizing the pivotal role of the press in fostering informed public debate and holding the government accountable. In cases like *Romesh Thappar vs. State of Madras* (1950) and *Brij Bhushan v. State of Delhi* (1950), the Supreme Court of India upheld the freedom of the press as an essential component of democratic governance⁶.

Moreover, the Indian judiciary has been vigilant in protecting press freedom against encroachments by the state or other powerful entities. In cases such as *Sakal Papers vs. Union of India* (1962) and *Indian Express Newspapers vs. Union of India* (1985), the courts struck down laws and regulations that unduly restricted the freedom of the press, reaffirming its status as a fundamental right⁷. Additionally, the judiciary has played a crucial role in safeguarding journalists' rights and ensuring their safety in the face of threats and attacks. Cases like *Committee for Free and Fair Elections vs. Union of India* (2002) and *PUCL vs. Union of India* (2017) highlight the judiciary's commitment to protecting

⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011; *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

⁶ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

⁷ *Sakal Papers v. Union of India*, AIR 1962 SC 305; *Indian Express Newspapers v. Union of India*, AIR, 1986, SC 515

journalists' freedom of expression and ensuring their safety in the performance of their duties⁸.

RESERVATION POLICY

The reservation system in India traces its origins to the Constitution, which envisaged affirmative action measures to uplift historically disadvantaged groups, including Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). Articles 15(4) and 16(4) of the Constitution empower the state to make special provisions for the advancement of these communities in education and public employment.

Over the years, reservation policies have evolved and expanded to include various groups based on socio-economic criteria, geographic considerations, and gender. The Mandal Commission report in 1980 recommended reservations for OBCs in government jobs and educational institutions, leading to significant changes in India's reservation landscape.

Reservation in India remains a complex and contentious issue, reflecting the country's ongoing struggle to

reconcile the principles of equality and social justice with the realities of historical injustice and social inequality. While reservation has undoubtedly made significant strides in advancing the interests of marginalised communities, its long-term sustainability and effectiveness continue to be subjects of debate and deliberation.

DOCTRINE OF BASIC STRUCTURE

The doctrine of basic structure, a cornerstone of Indian constitutional jurisprudence, emerged from the landmark case of *Kesavananda Bharati v. State of Kerala* (1973). This doctrine holds that while Parliament has the power to

⁸ *Committee for Free and Fair Elections v. Union of India*, (2002) 5 SCC 294; *PUCL v. Union of India*, (2017) 10 SCC 1.

amend the Constitution, it cannot alter its "basic structure" or essential features that form the foundation of India's democratic governance.

The doctrine of basic structure has since been invoked in numerous cases to safeguard the integrity and stability of the Indian Constitution. For instance, in *Indira Nehru Gandhi v. Raj Narain*⁹ (1975) the Supreme Court invalidated amendments that sought to immunise the Prime Minister from judicial scrutiny, affirming the supremacy of the Constitution over parliamentary sovereignty. Furthermore, in *Minerva Mills v. Union of India* (1980)¹⁰, the Supreme Court reiterated the significance of the basic structure doctrine in preserving constitutional principles, striking down amendments that undermined the independence of the judiciary and the balance of powers between the legislature and the judiciary.

PUBLIC INTEREST LITIGATION

Public interest litigation (PIL) has emerged as a powerful tool for promoting social justice, accountability, and the protection of fundamental rights in India. PIL allows citizens and non-governmental organisations (NGOs) to seek judicial intervention on behalf of marginalised communities or in matters of public concern. This innovative legal mechanism has enabled the Indian judiciary to address systemic issues, remedy injustices, and uphold the rule of law. The roots of PIL can be traced back to the Indian Supreme Court's landmark decision in *S.P. Gupta vs. Union of India* (1982), where the court recognized the expansive scope of the right to approach the courts for the enforcement of public duties¹¹. Subsequently, the Supreme Court liberalised the rules of locus-standi and procedural requirements, making it easier for individuals and organisations to file PILs on behalf of the public interest.

⁹ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299. ¹⁰ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789. ¹¹ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

PIL has been instrumental in addressing a wide range of social, environmental, and governance issues in India. Cases such as *Hussainara Khatoon v. State of Bihar* (1979), which dealt with the rights of undertrial prisoners, and *Vishaka v. State of Rajasthan* (1997), which addressed sexual harassment in the workplace, exemplify the

transformative impact of PIL in promoting social justice and human rights.¹² Furthermore, PIL has played a crucial role in environmental conservation and sustainable development. Cases like *M.C. Mehta v. Union of India* (1986), which led to the closure of polluting industries in Delhi, and *Subhash Kumar v. State of Bihar* (1991), which addressed the preservation of historical monuments, highlight the judiciary's proactive stance in protecting the environment and cultural heritage¹³.

PROTECTION OF FUNDAMENTAL RIGHTS

The protection of fundamental rights is a cornerstone of constitutional governance, ensuring the preservation of individual liberties and safeguarding against governmental abuse of power. In India, the Constitution enshrines a comprehensive framework of fundamental rights, providing citizens with legal protections against arbitrary state action.

Article 32 of the Indian Constitution empowers the Supreme Court to issue writs, including writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of fundamental rights. Similarly, Article 226 confers similar powers on the High Courts, allowing individuals to seek redressal for violations of their fundamental rights at both the federal and state levels.

Over the years, the Indian judiciary has played a pivotal role in interpreting and enforcing fundamental rights, ensuring their effective protection against

¹² *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360; *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

¹³ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086, *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420. encroachments by the state or other entities. Landmark cases such as *Maneka Gandhi vs. Union of India* (1978), which expanded the scope of the right to personal liberty, and *Vishakha vs. State of Rajasthan* (1997), which addressed sexual harassment in the workplace, underscore the judiciary's commitment to upholding fundamental rights¹⁴.

Furthermore, the Indian judiciary has demonstrated a proactive stance in protecting fundamental rights during times of crisis or emergency. In cases like *ADM Jabalpur vs. Shiv Kant Shukla* (1976), the Supreme Court grappled with the tension between national security concerns and individual liberties, affirming the supremacy of fundamental rights even during emergencies.¹⁵ Additionally, public interest litigation (PIL) has emerged as a potent tool for protecting fundamental rights in India..

RIGHT TO LIFE

The right to life, enshrined in Article 21 of the Indian Constitution, is one of the most fundamental and cherished rights guaranteed to every citizen. It encompasses not only the right to physical existence but also the right to live with dignity and basic human rights. The Indian judiciary has played a crucial role in interpreting and expanding the scope of the right to life, recognizing it as a dynamic and evolving concept that encompasses various socio-economic rights and environmental protections.

In *Maneka Gandhi v. Union of India* (1978), the Supreme Court of India held that the right to life under Article 21 is not limited to mere animal existence but includes the right to live with dignity, personal liberty, and freedom from arbitrary state action¹⁶. This landmark judgement broadened the understanding

¹⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011

¹⁵ *ADM Jabalpur v. Shiv Kant Shukla*, AIR 1976 SC 1207.

¹⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

of the right to life, emphasising its intrinsic link to other fundamental rights and freedoms.

Furthermore, the right to life has been invoked in numerous cases to address issues such as environmental pollution, access to healthcare, and protection of marginalised communities. Cases like *Olga Tellis v. Bombay Municipal Corporation* (1985)¹⁷, which dealt with the rights of pavement dwellers, and *Subhash Kumar v. State of Bihar* (1991)¹⁸, which addressed environmental pollution, underscore the judiciary's commitment to protecting the right to life in its various dimensions.

Moreover, the right to life has been extended to include the right to a clean and healthy environment. In cases like *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* (1985)¹⁹ and *Vellore Citizens Welfare Forum vs. Union of India* (1996)²⁰, the hon'ble Supreme Court recognized environmental protection as an integral component of the right to life, highlighting the importance of environmental sustainability for human well-being.

The transformation from activism to overreach

Where the judiciary, while initially celebrated for its role in advancing social justice and upholding fundamental rights, has faced criticism for overstepping its bounds and undermining democratic principles. Cases like *Vishaka vs. State of Rajasthan* (1997)²¹ and *M.C. Mehta vs. Union of India* (1986)²² exemplify instances of judicial activism, where the judiciary intervened to address social injustices and environmental degradation, respectively. However, critics argue

¹⁷ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180;

¹⁸ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420

¹⁹ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, AIR 1985 SC 652;

²⁰ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

²¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011;

²² *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

that in some cases, the judiciary has gone beyond its proper role, engaging in what they perceive as judicial overreach.

The Supreme Court's decision in the 2G spectrum case (2012), where the court cancelled 122 telecom licences

and effectively dictated policy decisions, drew criticism for judicial overreach²³. Similarly, the court's intervention in matters of governance, such as the appointment of the Central Vigilance Commissioner and the imposition of a ban on diesel vehicles in Delhi, raised concerns about judicial overreach and the erosion of the separation of powers.²⁴

CHECKS AND BALANCES

One of the key mechanisms of checks and balances in India is the separation of powers among the legislative, executive, and judicial branches of government. Each branch has distinct powers and responsibilities, and they are intended to act as checks on one another to prevent abuse of power. The legislature, consisting of the Lok Sabha (House of the People) and the Rajya Sabha (Council of States), exercises oversight over the executive branch through mechanisms such as parliamentary debates, question hour, and parliamentary committees. Parliament holds the executive accountable for its actions, scrutinises legislative proposals, and approves budgets, ensuring transparency and accountability in governance.

The executive branch, headed by the Prime Minister and the Council of Ministers, is responsible for implementing laws and policies enacted by the legislature.²⁵ However, the executive is subject to oversight by Parliament, the judiciary, and independent institutions such as the Comptroller and Auditor General (CAG) and the Election Commission. Furthermore, independent institutions such as the Election Commission, the CAG, and the Central

²³ Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1

²⁴ Common Cause v. Union of India, (2011) 4 SCC 1; M.C. Mehta v. Union of India, (2015) 6 SCC 1

²⁵ The Constitution of India.

Information Commission (CIC) play a crucial role in maintaining checks and balances in India. These institutions act as watchdogs, ensuring free and fair elections, auditing government expenditures, and promoting transparency and accountability in governance.

CONCLUSION

The principles of judicial activism, protection of fundamental rights, social justice, and checks and balances are integral to India's democratic framework. The Indian judiciary, through its proactive engagement and jurisprudence, has played a crucial role in advancing social justice, upholding fundamental rights, and ensuring accountability in governance. It is essential to strike a balance between judicial activism and judicial restraint, ensuring that the judiciary operates within its constitutional limits and respects the separation of powers. The protection of fundamental rights and social justice requires not only judicial intervention but also concerted efforts from all branches of government, civil society, and the public.

Ultimately, the evolution of India's democratic governance depends on a robust and dynamic interaction between the judiciary, the legislature, the executive, and civil society, guided by the principles of justice, equality, and the rule of law. One such challenge is the need to address persistent socio-economic inequalities and disparities. Despite progress in certain areas, India continues to grapple with issues such as poverty,

inequality, and discrimination. Achieving true social justice requires concerted efforts to address these systemic issues through inclusive policies, targeted interventions, and equitable distribution of resources. India's democratic governance faces a range of challenges and opportunities in the 21st century.

