

**THE ROLE OF JUDICIAL ACTIVISM IN PROTECTING THE PUBLIC
INTEREST**

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ABSTRACT

The scope of judicial activism, however, is not limited. It can be used to investigate cases and to benefit society at large. There is no end to the word "justice", and even by karma to do justice to the king and queen, justice is to all, 'rich or poor, strong or weak'. Assigned. The purpose of the research paper is to focus on expanding legal activism in Indian democracy. Justice activism in India touches almost every aspect of life in order to provide positive justice. The social welfare petition or the public interest litigation often serves as a boon to the underprivileged in society in the protection of their rights by judicial review and judicial activism. At times, judicial interference in the executive and legislature has gained the upper hand injustice to society. A judicial system is a tool to provide 'justice A' for all and to take all relevant and possible measures to protect the interests of justice. The legal framework for judicial activism in the Constitution of India is the integration of fundamental rights.

Introduction

Democratic government is on three pillars, namely the legislature, the executive and the judiciary. The three pillars of government constitute the organs of government. Powers and functions are vested in the Constitution of India which constitute or constitute the supreme law of the land. The primary function of the Legislature is to legislate and enforce legislation drafted by the Executive Legislature and to ensure that justice is obtained. The Constitution of India assigns three roles to the highest judicial system. They are as follows:

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1. To resolve any ambiguity in the language of any provision of the Constitution, the Constitution must be interpreted and various statues should be clarified.
2. As a protector of fundamental rights guaranteed to its citizens under the Constitution.
3. To settle cases transferred from Subordinate Courts, Appeals, etc.

Judicial activism can be described as suspicious judicial regimes based on personal or political views rather than existing law. Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision," which allows judges to dictate their own opinions, among other things, about public policy.

"Judicial activism means the active role of the judiciary in promoting justice⁵ and Limits the plug in.⁶

Justice J.S.Verma's term describes judicial activism as "an active process of law enforcement that requires the protection of functional democracy."

In the modern democratic world, the functioning of the judiciary can be defined as the mechanism by which legislative deficiencies can be avoided and the exercise of executive power through the exercise of constitutional boundaries. When the Executive and the Legislature fail in their duty, the Constitution of India happily harmonizes with the auxiliary elements of the Executive and the Legislature. But to be truly great, the judiciary that exercises democratic power must enjoy a high degree of freedom. Without constitutional discipline with good conduct and rules of accountability, liberty can be dangerous and undemocratic: without them, the bandits can prove arrogant. The rationale behind judicial activism is that judges can act as independent "trustees" or as independent policymakers. Judicial activism states that judges take on the role of independent policymakers or independent "trustees" on behalf of society beyond their traditional role as lecturers of the constitution and laws. The concept of judicial activism contradicts judicial restraint. The failure of

⁵Iosrjournals.org (2020), <http://www.iosrjournals.org/iosr-jhss/papers/Vol19-issue2/Version-4/C019242025.pdf> (last visited Apr 19, 2020).

⁶ChaterjiSusanta, " 'For Public Administration' Is judicial activism really deterrent to legislative anarchy and executive tyranny ? ", The Administrator, Vol XLII, April-June 1997, p9, at p11

government legislative and executive departments to provide 'good good governance' necessitates judicial activism.⁷

Mr Sartable said the Institute for Public Interest Litigation (PIL) had helped "protect fundamental rights as a right to life for some sections of society." "However, a senior Supreme Court lawyer has warned that the PL" cannot be considered. Every pill is a pill, and some say it wants to use blackmail and harassment as a tool. Simply put, judicial activism is a practice by judges that does not balance the law but, rather, hinders it. In judicial activism, the judge makes his final decision with his heart and mind, which is emotionally controlled.⁸

The Evolution Of Judicial Activism

The origins of judicial activism can be traced back to the unwritten constitution of Britain during the Stuart period (1603-1688) in the eyes of judicial review. The power of judicial review in the year 1610 was first expressed by the activism of Justice Coke in Britain. Chief Justice Coke declared that if the law drafted by Parliament violates the principles of 'common law' and 'reason', the courts can review it and treat it as null. Coke's theory of judicial review was repeated in 1615 by Sir Henry Hobart and in 1702 by Sir John Holt. Marbury v. US SC in Madison (1803): The first US Supreme Court case to declare congressional action unconstitutional in Marbury v. Madison. Since that time, federal courts have exercised the power of judicial review.

The US Supreme Court has ruled that federal courts have a duty to review the constitutionality of congressional actions and declare them void if they are contrary to the constitution.

Judicial Activism in India

Judicial activism in India means that the non-jurisdiction of the Supreme Court and High Courts is unconstitutional and not on the Subordinate Courts to declare if it violates one or more of the provisions of the Constitution. Not in favour of this. According to SP Sathe, "an active court is a court that provides a new definition of

⁷Judicial appointments &disappointments, TheHindu(2020),
[Http://www.thehindu.com/opinion/lead/article3785898.ece](http://www.thehindu.com/opinion/lead/article3785898.ece) (last visited Apr 20, 2020).

⁸ Judicial Activism in India ,SatyaranjanPurushottamSathe, Oxford University Press, 2002

this grant based on a social or economic change or to extend the concept of individual rights".

Development of judicial activism in India

The history of judicial activism in 1893 when the Allahabad High Court handed down the controversial decision of Justice Mahmood Under Trial, a judgment of activism in India, without money to engage a lawyer. The seed is shown.

By 1950 the Supreme Court but gradually began to gain greater power through constitutional interpretation. Its exchange to the activist court was gradual and unstable. Indeed, the origins of judicial activism must recognize the court's initial argument about the nature of judicial activism. The Supreme Court reached its zenith in 1973, arguing that the constitutional amendment was invalid on the original grounds. As the eminent lawyer wrote, since 1974, the importance of the court has shifted to overhauling the executive functions of government, especially their inability to govern.⁹

Historical decision

In *Keshavanand Bharti V. State of Kerala*, AIR 1973 SC 1461 Justice Khanna, Judicial Review has become an integral part of our Constitution, and the Supreme Court and the High Courts have the right to withdraw the provisions of the laws for the valid touchstone of all laws if the provisions of the Act can be found to violate any Article of the Constitution.

In the case of *Sajjan Singh v. Rajasthanir* 1965 SC 845, two dissatisfied judges raised doubts about whether the fundamental rights of the citizens in Parliament could become a majority party role. The judges are of the opinion that the law passed by the Legislature may be declared void if it violates fundamental rights.

In the case of *Minerva Mills v. Union of India*, Bhagwati, J., observed:

⁹Andhyarujina, T.R: Judicial Activism & Constitutional Democracy in India, (Bom.: 1992) at p.29

"The justice system is to uphold legal values and enforce constitutional limits. It is the essence of the rule of law, between 'exercising the power of a state by a legislature or by a body or other authority. ... Basic Constitutional Structure in Events."

The Separation Of Power And Judicial Activism

The principle of separation of powers concerns the interrelation of the three organs of government: the legislature, the executive, and the judiciary. The origin of this theory dates back to the time of Plato and Aristotle. Aristotle first classifies government functions into three categories. Intentional, Magisterial and Judicial Locks categorize governmental powers into three parts: persistent executive power, unsatisfactory legislative power, and federal power. MONTESQUIUE For the first time in his book, *The Esprit des Lois* (Spirits of Loss) was published in 1748. Accepted the principle of separation of powers. The principle of separation of power in its true sense is found to be very rigorous and is one reason why many countries in the world disagree. According to Montesquieu in the principle of separation of powers, the government of law should be in place of the will of the officer. Another very important feature of the theory is that the judiciary must have independence, that is, it must be liberated from the other organs of the state, and if so, justice is properly distributed. The principle of separation of powers has no place in the strict sense of the Indian constitution, but the functioning of the various organs of government is sufficiently isolated so that one part of the government does not affect the work of another.

The first major decision on the principle of separation of judicial power lies in the case of *State of Ram Jawaia vs. Punjab*¹⁰. In the above case, the court held that the principle of separation of powers in India was not fully accepted. Later, in the case of *Icy Golaknath v. State of Punjab Subaru, C. J*¹¹. observed that the Constitution enacts special constitutional amusements in the Union, State and Union Territories. It consists of three major power tools - the Legislature, the Executive and the Judiciary.

Judicial review and documentation of powers

¹⁰AIR 1955 SC 549

¹¹ 1967 AIR 1643.

There are occasions when the judiciary has faced challenges in upholding and defending the principle of separation of powers, and in this process of preservation it has made historical decisions that speak clearly about the independence of the judiciary and the success of the judiciary in India. The last six decades.

In today's scenario, this rule of separation of power is not working properly. This principle is perceived for a new and better implementation, which serves the interests of the present democratic needs, whether parliamentary or presidential. Given the backdrop of major countries such as UASA, U.K., India, Russia, France, Germany, Spain and the UAE, it is clear that Montesquieu is otherwise a complete separation of advocacy power. Government organs are subject to scrutiny and balance based on each other. Therefore, it is better for all organs of government to behave in a manner that does not violate the main law or rule of law of the country and to retain it in all circumstances for the better protection of rights., The liberty and liberty of the citizens. This is the principle of self-restraint, under which all organs seek to fulfill the aspirations of the nation and to uphold the rule of law, without interfering with the other territory. The Constitution must be regarded as supreme in all circumstances and the legislation drafted by the Legislature must approve the logic and objectives of the Constitution.

The separation of power is a necessary force

Defining judicial activism is not an easy concept. It means different things to different people. Critics declare themselves activists when they disagree with the judicial decisions. In India, the public interest litigation, as is well known in the public interest litigation, is opening up access to courts for the poor, illiterate and disadvantaged sections of the country, incompetent legal activism. Since 1979, the Supreme Court-led judiciary in India has been concerned with the country, which was not considered by the constitution-makers and has been actively involved in providing social justice to the people. Over the years, the original, beneficial and indispensable feature of the court's activism in public interest litigation has largely been transformed into a general supervisory jurisdiction to adjust the policies and procedures of public, public,

and authorities. It is a kind of legal activism, which is unique in the other judicial system.

For Fundamental Rights

The PL's jurisdiction was underestimated in 1979 when the Supreme Court drew attention to the grievances of social workers in cases where certain sectors or institutions were deprived of their fundamental rights.

In 1979, the Supreme Court's lawyer, Kapila Hingorani, drew the court's attention for a series of articles in a newspaper, exposing Bihar's impoverished prisoners, many of whom had been jailed for more than a year. Prisoner Sunil Batra wrote a letter to Supreme Court Justice Krishna Iyer saying that torture in prisons and the prison administration drew his attention to the prison situation. Taking this as a petition, the court issued orders for humanitarian conditions in the jail. In 1980, two professors wrote to a newspaper editor explaining the conditions of detention at the Agra Protective House for Women, based on a writ petition in the Supreme Court. The Supreme Court has come to the attention of a letter of exploitation of workers in construction sites in violation of labor laws. A social worker's organization brought to the court's attention a slave-like situation in the mines. A journalist has resorted to court against eviction of pavement residents in Bombay.

To address such cases, the court has developed a new regime of citizens' rights and responsibilities and devised new methods for its accountability. In 1982, Justice P.N. Bhagwati correctly stated the purpose of the public good. He stressed that the PIL was "a strategic branch of the legal aid movement, which aims to bring justice to the hands of the poor. They are a less visible area of humanity. This is a case different from the usual traditional litigation." "

Now the principles of the court have not come from the landlords, the merchants, the corporations and the rich. In addition to the PIL, ordinary people, the poorest of the society and even the marginalized sections of society were able to reach the court with the help of social workers.

New intervention

The size of the PIL's social action is diluted and mediated by another form of "public cause litigation" in the courts. In this type of litigation, court intervention is not sought to enforce the rights of the depressed or poor sections of society, but only to correct the actions or shortcomings of executive or government officials or sections of government or public bodies. For, there are plenty of examples of this kind of intervention by the court. In the interest of curbing pollution, the Supreme Court has ordered the regulation of automobile emissions, air and noise and traffic pollution, parking fees, wearing helmets in cities, cleaning of housing colonies, garbage disposal, traffic in New Delhi Control. , Mandated wearing seat belts, mandated action plans to control and prevent monkey threats in cities and towns, prevent accidents at the unmanned railway level, prevent college students from ragging, collect and store blood in blood banks, and control loudspeakers. And restrictions on fireworks.¹²

In recent orders, -the Supreme Court has ordered the most complex engineering of rivers interlinking in India. A court order has been issued banning the admission of black film on automobile windows. The Delhi court's ruling in the case of the forcible removal of Baba Ramdev from Ramlila Ground has been canceled by the court. The court ordered the tourists to be included in the tiger care center. These administrative practices have been executed by judicial pegs suspected of exercising fundamental rights under Article 32 of the Constitution. In fact, there are no fundamental rights or legal issues of individuals in such cases. The court can only be transferred for better governance and administration, which does not include proper judicial activities.

In its most active and controversial interpretation of the Constitution, the Supreme Court has deprived the constitutionally respected authority of the President of India to appoint judges after consultation with the Chief Justice, and the Chief Justice of India and the four collegium. This is the power. No constitution in the world has the power to elect and appoint judges.

The court is made to monitor the conduct of investigative and prosecution agencies that have failed to investigate and prosecute ministers and government officials.

¹² Justice, Judicacy and Democracy in India: Boundaries and Breaches Hardcover – Import, by SudhanshuRanjan (Author), 25 Sep 2012

Investigation and investigation of Jain Hawala case, fodder scam, Mayawati in Taj corridor case, former Bihar chief minister Lalu Prasad Yadav, former chief minister of Uttar Pradesh, and most recently ministers and officials involved in the Supreme Court. The telecom minister and officials are investigating the 2G telecom scam case.

The activities of the legislatures are also regulated by the court. In the case of the Jharkhand Legislative Assembly, the Supreme Court has directed the legislature to maintain a confidence motion and instruct the speaker to act according to the prescribed agenda and not to entertain other businesses. Its trial was ordered to be recorded in court. The order was made despite Article 212 of the Constitution, stating that courts should not inquire into any proceedings of the legislature.

US Justice Jackson aptly states: "The doctrine of judicial activism, which justifies easy and sustained readiness to set aside the decisions of other branches of government, is completely contrary to the belief in democracy, and now promotes the belief that judges should be left to correct the consequences of public apathy." If the Supreme Court does not strictly adhere to the parameters of the PIL which are so essential in India, its indiscriminate use threatens to invade the functions of other departments. Is at present, judicial activism is gaining prominence. In the form of Public Interest Litigation (PIL), citizens have access to justice.

The judiciary has become a hotbed of controversy in recent years due to sudden interference. The field of judicial intervention is constantly expanding through the tool of public interest litigation.

The judiciary has adopted its positive position and has undertaken the task of enforcing the fundamental rights of the poorer and weaker sections of society through progressive commentary and affirmative action.

The Supreme Court has developed new ways of providing justice to the common people through public interest litigation. Former Chief Justice P.N. Bhagwati, under whose leadership PIL has gained a new dimension, "The Supreme Court has developed many new commitments.

The term 'judicial activism' is intended to refer to and cover court action that goes beyond and beyond the power of judicial review. From one perspective it is said to be a function with or without jurisdiction. The Constitution does not exercise any power or jurisdiction for 'activism' in court.

Judicial activism refers to judicial intervention in the legislative and executive spheres. This is because the other organs of government are dysfunctional.

In short, judicial activism means that instead of judicial restraint, the Supreme Court and other lower courts become activists, forcing the authorities to act and sometimes direct the government to matters of policy and governance.

Judicial Activism Manufacturer

Legal activism arises mainly due to: -

Judicial activism arose mainly from the dysfunction of the executive and legislatures. This also arose because there was suspicion that the legislature and the executive had failed to deliver the goods. It occurs because the entire system suffers from inefficiency and inactivity.

Fundamental human rights violations have also led to increased judicial activism. Finally, misuse and misuse of certain provisions of the Constitution has given importance to judicial activism.

- (i) In the event that the Government hangs a very weak and unstable Parliament.
- (ii) When governments fail to protect the fundamental rights of citizens or fail to provide an honest, efficient and judicial and administrative system;
- (iii) Finally, the Court seeks to extend its jurisdiction and to grant greater functions and powers.

Areas Of Judicial Activism

Over the past decade, many cases of judicial activism have come to prominence. Areas where the judiciary has become active are health, child labor, political corruption, the environment, education and so on.

The judiciary has been committed to the principles of participatory justice, procedural justice, prompt access to justice and unilateral states through a variety of matters relating to Bandhua Mukti Morcha, Bihar Under-Trial, Punjab Police, Bombay Pavement Dwellers, Bihar Care Home Cases.

RIGHT TO LIFE AND DECISIVE ACTIVITY

Judges evaluate the elements of Article 21 and break down their ways. The idea of the procedural process of the US Constitution is finalized in "Technology established by law." The current subject is driving the development of the system. Among the changes made by Maneka Gandhi. The great General P.N. As Bhagwati said, the idea of the PL began to emerge and, under certain circumstances, the public interest litigation could be filed by the court itself (suomoto), which was opposed. Abused a party or other outsider. After the case of Menaka Gandhi, the Supreme Court held that it was little more than a clear right to a constitutional right in view of the ultimate goal of the great critical right. Political, social and economic changes in the country are about accepting new rights. Law is evolving to meet the demands of a rapidly growing society. Therefore, the Supreme Court has sought Article 21 for the purpose of evacuating real areas, for example, the destructive, poor economic open doors and, in addition, the socially difficult. One of the biggest aspects of the enlargement of Article 21 is that many of the invalid mandate standards have been made in the hands of judges as enforceable central rights. Various judgments of protection against economic opportunity and social support are established here:

- a. Quality of life
- b. Livelihood rights
- c. Right to medical care
- d. Right to die
- e. Sexual harassment
- f. Ecology and Environment

The Right To Privacy

While the Constitution does not specifically give and express any authority to be protected, it is believed to be a right to privacy, which is not an obstacle to the

Constitution's fundamental right. If so, such a power has been won by the Supreme Court since Art 21 and a somewhat different constitutional system is read with Directive Principles of State Policy. Kharak Singh, as stated, was the first to introduce the possibility of "protection", which raised issues relating to the granting of the power of protection from fundamental rights here, for example, between Articles 19 (1) (d) and 19 (1) (e) and 21. J. Subbarao commented, "The right to personal liberty takes away not only the right to be free from restrictions, but also the invasion of one's personal life." Express "In 1965, the Supreme Court of India heard and decided the UP vs. VI case. status In his choice, the Supreme Court lost its justification that "the practice of a prostitute in a certain area is so." Handle Sprinkle "sensitive limits" on its development. The fascinating point has been achieved in the famous NAZ Foundation case. Some of the private, conservative sex (gays) given by section 377 IPC under Article 21 refer to the power of protection and arrogance within the ideal of life and liberty [which] is confined to a conspiracy of state conspiracy, wherein its accommodation is not gradually 'ambitious' Interesting point is the 'leadership' at the end of section 377 IPC The Naz Foundation's Case Completed Covenant Prisoners of certain private, conservative sexual orientations (homosexuals) arise under the purview of Article 21 of the Right to Life and Opportunity (which may be for the benefit of the persuasive state, which, for its convenience, is requested here) No. However, Section 377 of the Indian Penal Code, supra The case ended with great difficulty when the Court upheld the affirmative action of the Delhi High Court in order to avoid and take responsibility for appropriate action from the legal entity concerned with the termination of this particular arrangement. Therefore, Section 377 is a safeguard for anyone who commits an offense under compliance. Justice PatanjaliShastri said that Article 21 was not made for the executive or the individuals to bear. The cost of protection against infringement.

Judicial activism has significantly influenced the relationship between the executive and the judiciary.

1. When an executive fails in his or her duties, curb executive tyranny by enforcing constitutional restrictions.

2. Although the concerns of the people are well addressed by the principle of compassion, it displaces existing laws and creates greater legal uncertainty than is necessary.
3. Consequences of jurisprudence governing juggling based on personal or political sentiments.
4. The result is diversion of institutional resources rather than constitutionally assigned goals.
5. Increasing government responsibility towards popular people strengthens the causes of various groups of people.

Impact of judicial review on government orders

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4. The result is the diversion of institutional resources for purposes other than constitutionally assigned goals.
5. Increasing government responsibility towards popular people strengthens the causes of various groups of people.

The positive impact of judicial activism: - Introduction and access to social and economic justice outlined in the DPSP. - broadening the scope of justice.

- 1) 2G corruption case
- 2) Coal Block Allocation
- 3) Special prison for female inmates
- 4) Gangs, CNG, Green Bench pollution.
- 5) Electoral Reforms

Negative Impact Judicial Adventure -

- 1) Although clearly stated against Article 212 of Jharkhand - Interference in the performance of the Legislature.
- 2) Interfering in the 1993 military war operation in Jammu and Kashmir.

Conclusion

Judicial activism philosophy is that courts should take an active role in solving social, economic and political problems. The court must uphold the "guardianship ethic" when acting as guardians of the public.

Examples of legal activism:

1. States need to provide legal aid to the poor.
2. The prison needs modernization.
3. States need to raise awareness for unspecified aliens.
4. Establish the 'one man, one vote' principle for evaluation.

The question of judicial activism is closely related to constitutional interpretation, legal structure and separation of powers. There is a fine line between hyperactivity and redundancy. Although judicial activism is positively associated with executive downfall, too much reliance on the executive domain is seen as an intrusion on the proper functioning of democracy.