

Judicial Activism And Governance: A Comprehensive Analysis of Constitutional Principles

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Abstract:

The research examines the evolving role of the judiciary in shaping and influencing public policy, emphasizing the delicate balance required to maintain the separation of powers while ensuring effective governance. The study encompasses a broad spectrum of constitutional doctrines and judicial decisions to provide a comprehensive understanding of the dynamics between the judiciary and the other branches of government and it also acknowledges the potential benefits of judicial activism in addressing societal issues. It not only helps in protecting fundamental rights but it also scrutinizes the concerns surrounding overreach and the erosion of democratic principles. A central focus of the paper is the intricate relationship between judicial review and the separation of powers. The analysis evaluates how judicial activism can serve as a check on the legislative and executive branches, ensuring that constitutional rights are safeguarded. However, it also underscores the need for judicial restraint to prevent the judiciary from encroaching on the policymaking domain reserved for elected representatives. The paper discusses the evolving nature of constitutional interpretation and the potential impact on governance, with a specific emphasis on how judicial decisions can influence the legal landscape and societal norms. Furthermore, the analysis considers the role of judicial activism in addressing contemporary challenges such as social justice, environmental protection, and technological advancements. In conclusion, this comprehensive analysis provides a nuanced understanding of the relationship between judicial activism and governance, emphasizing the importance of striking a balance that upholds constitutional principles while respecting the roles of the other branches of government. The paper contributes to the ongoing discourse on the evolving nature of judicial power and its implications for effective and accountable governance within a constitutional framework.

Keywords: judicial activism, judicial review, constitutional principles, public interest litigation, governance

Introduction to Judicial Activism:

In the dynamic landscape of constitutional law and governance, the concept of judicial activism stands as a pivotal and often contentious element. This research endeavors to undertake a comprehensive analysis of the intricate interplay between judicial activism and governance, with a specific focus on constitutional

principles¹. Judicial activism, a phenomenon wherein courts actively interpret and apply the constitution beyond its literal text, has been both praised for its role in safeguarding fundamental rights and criticized for potentially encroaching upon the legislative and executive domains².

Judicial activism refers to the active role played by the judiciary in interpreting and shaping the law, especially when it involves the protection of fundamental rights, justice, and the promotion of social change. In India, judicial activism has become a significant aspect of the legal landscape, with the judiciary often taking proactive steps to address social issues and protect constitutional values³. Conceptually, judicial activism involves judges going beyond a strict interpretation of the law to ensure justice, fairness, and the protection of constitutional rights⁴. This approach allows judges to take a more interventionist role, particularly in situations where the legislature or executive may be perceived as failing to address social issues adequately.

Judicial activism is closely associated with the development of Public Interest Litigation (PIL) in India. PIL allows individuals or organizations to approach the court on behalf of those who may not be able to seek legal redress themselves⁵. This mechanism has been instrumental in addressing issues related to the environment, human rights, and social justice⁶. In some instances, the judiciary takes on a role in formulating policies, especially when it perceives a legislative vacuum or a failure of the executive to address pressing social concerns. This involves the court giving directions to the government to implement specific policies or measures⁷.

The judiciary actively engages in reviewing the constitutionality of laws and government actions. This involves examining the actions of the legislative and executive branches to ensure they conform to constitutional principles⁸.

Historical Development and Evolution of Judicial Activism:

The historical development and evolution of judicial activism in India can be traced through various phases:

Pre-Independence Era: During the colonial period, the judiciary in India operated under the British legal system. The focus was primarily on the strict interpretation of laws, and the judiciary's role was limited to adjudicating disputes. However, some landmark cases before independence, like the Kesavananda Bharati case (1973), laid the foundation for the later development of judicial activism by recognizing the supremacy of the Constitution and the power of the judiciary to interpret it⁹.

Post-Independence Period (1950s-1970s): In the initial years after independence, the Indian judiciary adopted a restrained approach, showing deference to the legislative and executive branches. The Golaknath case (1967) marked a turning point, as the Supreme Court held that Parliament could not amend fundamental rights. This decision indicated a departure from the earlier trend of judicial restraint¹⁰.

¹ <https://byjus.com/free-ias-prep/judicial-activism/>

² <https://www.geeksforgeeks.org/role-of-judicial-activism-in-fundamental-rights/>

³ https://www.law.cornell.edu/wex/judicial_activism

⁴ <https://byjus.com/free-ias-prep/judicial-activism/>

⁵ <https://cleartax.in/s/public-interest-litigation>

⁶ <https://byjus.com/free-ias-prep/judicial-activism/>

⁷ https://www.law.cornell.edu/wex/judicial_activism

⁸ <https://www.drishtiiias.com/to-the-points/Paper2/judicial-activism-restraint-overreach>

⁹ <https://judgments.ecourts.gov.in/KBJ/?p=home/intro>

¹⁰ <https://unacademy.com/content/upsc/study-material/polity/golaknath-vs-the-state-of-punjab/>

Emergency Period (1975-1977): The declaration of a state of emergency in 1975 by then-Prime Minister Indira Gandhi led to a suppression of civil liberties. The judiciary, particularly during the famous habeas corpus case (*ADM Jabalpur v. Shivkant Shukla*), faced criticism for not actively protecting individual rights during this period. However, the aftermath of the Emergency saw a resurgence of judicial activism as the judiciary sought to protect fundamental rights and check the abuse of power¹¹.

Different Perspectives on Judicial Activism - Critics v/s Proponents:

Judicial activism is a concept that refers to the tendency of judges to interpret the law and the Constitution in a way that advances their own beliefs and values. In India, the debate over judicial activism has been ongoing, with both critics and proponents expressing their views¹². Critics argue that judicial activism often leads to an encroachment on the domain of the legislative and executive branches, violating the principle of separation of powers. They believe that the judiciary should stick to its role of interpreting laws rather than making or implementing them. Some critics express concerns about the democratic legitimacy of judicial decisions. Since judges are not elected representatives, they argue that decisions made through activism might not necessarily reflect the will of the people. Critics argue that judges should focus on adjudicating disputes rather than making policy decisions. They believe that the policy-making function should be left to the elected representatives who are accountable to the people. Critics contend that some judicial decisions go beyond the constitutional mandate, resulting in overreach. They argue that this could undermine the balance of power and create a situation where the judiciary becomes too powerful. Example: Critics argued that the Supreme Court's decision striking down the NJAC Act and upholding the collegium system was an example of judicial overreach into the domain of the executive¹³. Proponents argue that judicial activism is necessary to protect and uphold fundamental rights guaranteed by the Constitution. Activist judges can intervene to ensure justice and prevent the violation of individual rights by the state or other entities. Supporters of judicial activism believe that it is necessary when the legislative and executive branches fail to address critical issues. Activist judges can step in to fill the void and ensure that justice is served, especially in cases of human rights violations or systemic failures¹⁴. Proponents argue that judicial activism is essential in addressing social justice issues and promoting equity. Courts can play a role in correcting historical injustices and advancing the rights of marginalized communities. Supporters believe that the Constitution is a living document and should be interpreted dynamically to adapt to the changing needs of society. Judicial activism allows for an evolving interpretation that reflects contemporary values. Example: Proponents hailed the Supreme Court's recognition of the right to privacy as a fundamental right as a positive instance of judicial activism, protecting individual liberties against potential government intrusion¹⁵.

Constitutional Principles:

Examining the constitutional principles relevant to judicial activism involves looking at the key provisions and doctrines within the Indian Constitution that shape the role of judiciary¹⁶. For example; Article 50 of

¹¹ <https://timesofindia.indiatimes.com/readersblog/the-lawyers-leaflet/adm-jabalpur-v-shivkant-shukla-an-analysis-44890/>

¹² <https://byjus.com/free-ias-prep/judicial-activism/>

¹³ <https://cjp.org.in/an-overview-of-dissent-in-the-njac-case/#:~:text=However%2C%20the%20Supreme%20Court%20in,members%20object%20to%20the%20name.>

¹⁴ <https://www.drishtiias.com/to-the-points/Paper2/judicial-activism-restraint-overreach>

¹⁵ https://www.law.cornell.edu/wex/judicial_activism

¹⁶ <https://byjus.com/free-ias-prep/judicial-activism/>

the Indian Constitution directs the State to take steps to separate the judiciary from the executive in the public services of the State. Critics argue that judicial activism may violate the separation of powers by allowing the judiciary to encroach upon the domains of the executive and legislative branches¹⁷.

Similarly, Part IV of the Constitution contains Directive Principles of State Policy, which are non-justiciable principles guiding the state in policy-making. Proponents argue that the judiciary can use these principles as a guide to interpret laws in a manner that aligns with constitutional values and principles, especially in cases related to social justice, environmental protection, and economic equality¹⁸.

On the other hand, Part III of the Constitution guarantees fundamental rights to citizens. Judges often invoke fundamental rights, such as the right to equality, freedom of speech, and right to life, to strike down laws or government actions that are deemed unconstitutional¹⁹.

Article 21 guarantees the right to life and personal liberty, and the Supreme Court has interpreted it expansively to include various aspects of human dignity and Judicial activism has been seen in cases where the court protects individual liberties and rights, such as the right to privacy, right to live with dignity, and protection from torture²⁰.

Article 32 empowers the Supreme Court to issue writs for the enforcement of fundamental rights. Judicial activism often finds expression through Article 32, where the court takes suo motu cognizance of issues and ensures the enforcement of fundamental rights. Similarly, the Supreme Court, in the Kesavananda Bharati case, established the basic structure doctrine, holding that certain features of the Constitution are immutable. The basic structure doctrine acts as a limitation on parliamentary power, allowing the judiciary to strike down constitutional amendments that violate the basic structure, thereby preventing potential abuse of power²¹. In the case of S. R. Bommai v. Union of India, the issue was the misuse of Article 356 (President's Rule) by the Central Government. The Hon'ble Supreme Court, in this case, laid down guidelines to prevent arbitrary use of Article 356, emphasizing the importance of federalism and democratic principles²². In the case of Vishaka v. State of Rajasthan, the issue was pertaining to sexual harassment at the workplace. The Supreme Court, in the absence of legislation, issued guidelines to address sexual harassment, invoking the principles of gender equality and the right to life and dignity²³.

Thus, understanding these constitutional principles helps in evaluating the legitimacy of judicial activism in India. While critics may argue for strict adherence to the separation of powers, proponents emphasize the judiciary's role in upholding fundamental rights, promoting justice and ensuring that constitutional values are not compromised²⁴.

Judicial Review and its Role in Constitutional Governance:

Judicial review is a process through which the judiciary examines the constitutionality of legislative and executive actions and ensures that they align with the provisions of the constitution. In India, judicial

¹⁷ <https://www.drishtias.com/daily-updates/daily-news-analysis/doctrine-of-separation-of-powers-1>

¹⁸ <https://www.drishtias.com/to-the-points/Paper2/judicial-activism-restraint-overreach>

¹⁹ <https://aklegal.in/critical-appraisal-of-judicial-creativity-with-reference-to-part-iii-of-constitution/>

²⁰ <https://theamikusqrae.com/expansion-of-the-scope-of-article-21-by-the-judiciary/>

²¹ <https://vajiramandravi.com/quest-upsc-notes/judicial-activism-and-overreach/>

²² <https://frontline.thehindu.com/politics/india-at-75-epochal-moments-1994-s-r-bommai-judgment/article65725686.ece>

²³ <https://ilearncana.com/details/Judicial-Activism-in-India/2073> <https://ilearncana.com/details/Judicial-Activism-in-India/2073>

²⁴ <https://byjus.com/free-ias-prep/judicial-activism/>

review plays a crucial role in constitutional governance, acting as a check and balance to prevent the abuse of power and uphold the supremacy of the constitution²⁵.

The power of judicial review in India is derived from Articles 13, 32, and 226 of the Constitution. Article 13 declares that any law inconsistent with or in derogation of the fundamental rights shall be void. Articles 32 and 226 empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights. The judiciary in India, especially the Supreme Court, is often referred to as the "Guardian of the Constitution." It has the authority to interpret the Constitution and ensure that laws and executive actions conform to its provisions²⁶.

Key Judicial Activism Cases:

Judicial review in India is not limited to traditional cases but also extends to Public Interest Litigation. Through PIL, the judiciary can take suo moto cognizance of matters affecting public interest, ensuring that issues of societal importance are addressed, and justice is delivered. Judicial review in India plays a crucial role in maintaining the federal structure by adjudicating disputes between the center and states²⁷. The judiciary acts as a final arbiter, ensuring that the distribution of powers between the center and states adheres to constitutional principles.

Some of the cases showcasing Judicial Activism are:

Kesavananda Bharati Case: In this landmark case, the Supreme Court asserted its authority to review and strike down constitutional amendments that violated the "basic structure" of the Constitution. This decision emphasized the judiciary's role in safeguarding the core principles of the Constitution²⁸.

Maneka Gandhi Case: The Supreme Court, in this case, expanded the scope of Article 21 (right to life and personal liberty) by interpreting it broadly. The court held that the procedure established by law must be fair, just, and reasonable, marking a significant example of judicial review protecting individual rights²⁹.

Indira Gandhi v. Raj Narain Case: In this case, the Supreme Court declared the election of then Prime Minister Indira Gandhi as void on the grounds of electoral malpractices. The court's decision showcased its willingness to review and nullify actions of the executive that violated legal and constitutional norms³⁰.

Vishakha v. State of Rajasthan: The Supreme Court, through this case, laid down guidelines to address sexual harassment at the workplace. The court's intervention highlighted its role in filling legislative gaps and protecting the rights of individuals against violations in areas not covered by specific laws³¹.

Impact of Cases on the Development of Constitutional Principles:

Several landmark cases in India have significantly influenced the development of constitutional principles. These cases have played a crucial role in shaping the interpretation and understanding of the Indian Constitution. The case *Keshavananda Bharati v. State of Kerala*, primarily dealt with the question of whether the Parliament had the power to amend the Constitution, including the fundamental rights. The Supreme Court, in a landmark decision, established the "basic structure doctrine," asserting that while

²⁵ <https://www.drishtias.com/daily-news-analysis/judicial-review-1>

²⁶ <https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=The%20Constitution%20of%20India%20provides,in%20line%20with%20the%20Constitution.>

²⁷ <https://www.instituteforgovernment.org.uk/explainer/judicial-review>

²⁸ <https://unacademy.com/content/clat/study-material/legal-reasoning/kesavananda-bharati-v-s-state-of-kerala/>

²⁹ <https://testbook.com/ias-preparation/maneka-gandhi-case-upsc-notes#:~:text=Maneka%20Gandhi%20vs.,upheld%20the%20illegal%20passport%20seizure.>

³⁰ <https://blog.ipleaders.in/emergency-indira-gandhi-v-raj-narain/>

³¹ <https://vajiramandravi.com/quest-upsc-notes/judicial-activism-and-overreach/>

Parliament had the power to amend the Constitution, it could not alter its basic structure. This decision laid down a fundamental principle safeguarding the core principles of the Constitution³².

The *Maneka Gandhi* case focused on the right to travel abroad and the procedure established by law, as provided in Article 21 (right to life and personal liberty). The Supreme Court expanded the scope of Article 21, declaring that the procedure established by law must be fair and reasonable. This decision emphasized that personal liberty could not be curtailed arbitrarily, leading to a broader understanding of the right to life³³.

The *Minerva Mills* case examined the constitutional validity of certain amendments that sought to dilute the power of judicial review. The Supreme Court struck down parts of the amendments, emphasizing the significance of the basic structure doctrine. The judgment reinforced the judiciary's role as a protector of constitutional principles and prevented excessive legislative interference with the judiciary's powers.

On the other hand, the *Vishaka* case addressed the absence of laws to deal with sexual harassment at the workplace and sought to establish guidelines for preventing and redressing such complaints. The Supreme Court, through this decision, recognized the right to work with dignity as a fundamental right under Articles 14, 19, and 21. It set the groundwork for legislative action and led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013³⁴.

The *S. R. Bommai* case dealt with the dismissal of state governments on the grounds of failure to comply with the constitutional mandate. The Supreme Court emphasized the federal structure and the importance of secularism. The judgment established that the power to dissolve a state government is subject to judicial review and can be exercised only under specific constitutional provisions, preventing arbitrary dismissal of state governments. The *Puttaswamy* case focused on the right to privacy in the context of Aadhaar and other government initiatives. The Supreme Court recognized the right to privacy as a fundamental right. This decision not only affirmed individual autonomy but also influenced subsequent cases related to data protection and surveillance³⁵.

These cases illustrate how judicial decisions have had a profound impact on the development and interpretation of constitutional principles in India, shaping the legal landscape and ensuring the protection of fundamental rights and democratic values.

Role of Judiciary in Governance:

The judiciary plays a crucial role in ensuring good governance in India by upholding the rule of law, protecting citizens' rights, and holding the executive and legislative branches accountable. The judiciary acts as a guardian of fundamental rights enshrined in the Constitution. By safeguarding the rights of citizens, the judiciary ensures that the government operates within the constitutional framework³⁶.

For example, the *Kesavananda Bharati* case (1973) in which the Supreme Court established the doctrine of basic structure. This decision ensures that fundamental rights, which form the basic structure of the Constitution, cannot be amended or abrogated. The power of judicial review allows the judiciary to

³² https://www.drishtias.com/daily-updates/daily-news-analysis/doctrine-of-separation-of-powers-1/print_manually#:~:text=The%20'basic%20structure'%20doctrine%20has,elections%2C%20welfare%20state%2C%20etc.

³³ <https://www.lawctopus.com/academike/judicial-activism-article-21/#:~:text=Maneka%20Gandhi%20Vs%20Union%20of,fundamental%20rights%20from%20Article%2021.>

³⁴ <https://www.legalserviceindia.com/legal/article-236-vishaka-case-1997.html>

³⁵ <https://www.ebc-india.com/lawyer/articles/94v3a1.htm>

³⁶ <https://www.legalmaxim.in/s-r-bommai-vs-union-of-india-a-presidents-rule-under-article-356/>

examine the constitutionality of laws and executive actions. This ensures that government actions are consistent with constitutional principles.

For example, in the Maneka Gandhi case (1978), the Supreme Court expanded the scope of Article 21 (right to life and personal liberty) and emphasized that any law or procedure must be fair, just, and reasonable. The judiciary, through PIL, allows citizens to approach the court for the protection of public interest. This empowers the judiciary to address issues related to governance, corruption, and the violation of rights³⁷.

For example, in the Hawala case (1996), based on a PIL, the Supreme Court ordered an investigation into allegations of corruption and money laundering involving prominent politicians. The judiciary holds the executive accountable by reviewing administrative decisions and actions. This helps in preventing abuse of power and ensuring that public officials act within the limits of their authority³⁸.

For example, In the Vineet Narain case (1996), the Supreme Court directed investigations into corruption cases, leading to the establishment of the Central Vigilance Commission (CVC) to oversee vigilance and anti-corruption activities³⁹.

Checks and Balances Between the Judiciary and Other Branches of Government:

Checks and balances are a fundamental aspect of a democratic system, ensuring that no single branch of government becomes too powerful and that each branch can monitor and limit the actions of the others. In India, the three branches of government—executive, legislative, and judiciary—have distinct roles and powers, and there are mechanisms in place to maintain a balance among them. The judiciary in India has the power of judicial review, allowing it to examine the constitutionality of laws and executive actions⁴⁰. The Kesavananda Bharati case (1973) is a landmark example where the Supreme Court established the basic structure doctrine, asserting the authority of the judiciary to review and strike down amendments that violate the core principles of the Constitution. The executive and legislative branches play a role in the appointment of judges, ensuring a system of checks and balances⁴¹. For example, The Collegium system, despite criticisms, involves the Chief Justice of India and other senior judges in the appointment of judges, providing a check on executive influence. The legislature has the power to enact laws and holds the executive accountable through mechanisms like debates, questions, and committees. While the Parliament has the power to amend the Constitution, there are limitations to prevent arbitrary changes that may undermine its basic structure⁴².

For example, the Supreme Court, in the Indira Gandhi v. Raj Narain case (1975), struck down parts of the 39th Amendment, emphasizing the judiciary's role in preventing amendments that violate the Constitution's basic structure. The President of India can seek the Supreme Court's opinion on legal matters, providing an avenue for constitutional guidance. For example, the system of checks and balances between the judiciary and other branches of government in India is crucial for ensuring good governance.

³⁷ <https://www.lloydlawcollege.edu.in/blog/maneka-gandhi-vs-union-of-india.html>

³⁸ <https://www.indiatoday.in/magazine/cover-story/story/19960315-jain-hawala-scam-politicians-proved-innocent-after-the-trial-could-still-die-a-political-death-834773-1996-03-14>

³⁹ <https://legalvidhiya.com/vineet-narain-vs-union-of-india-1996-2-scc-199/>

⁴⁰ <https://timesofindia.indiatimes.com/readersblog/ajayamitabhsumanspeaks/judicial-activism-how-to-strike-a-balance-53347/>

⁴¹ <https://www.indiatoday.in/magazine/nation/story/19961231-judicial-activism-upsets-constitutional-system-of-checks-and-balance-834254-1996-12-30>

⁴² <https://www.legallore.info/post/indira-gandhi-v-raj-narain-and-anr>

These mechanisms help prevent abuse of power, maintain constitutional principles, and uphold the rule of law in the democratic framework of the country⁴³.

Judicial Restraint v/s Judicial Activism in Governance:

Judicial restraint and judicial activism represent two contrasting approaches that judges can adopt in interpreting and applying the law. Both these approaches have implications for governance and can influence the quality of governance in a country like India. Judicial restraint refers to a judicial philosophy where judges limit the exercise of their own power and defer to the decisions of the elected branches of government⁴⁴. It involves a more cautious and conservative approach to interpreting laws, with an emphasis on avoiding interference with the policy decisions of the executive and legislative branches. Judicial restraint is often seen as promoting stability and respecting the separation of powers⁴⁵. Judges, under this philosophy, are hesitant to strike down laws or executive actions unless there is a clear violation of constitutional principles⁴⁶.

Judicial activism, on the other hand, involves judges actively interpreting laws and the Constitution to address societal issues, protect individual rights, and promote justice. Activist judges may be more willing to intervene in matters traditionally left to the executive or legislative branches⁴⁷. Judicial activism can play a crucial role in ensuring good governance by holding the government accountable, protecting fundamental rights, and addressing systemic issues. It is often associated with a proactive approach to justice and the judiciary's role in addressing societal challenges⁴⁸.

Conclusion:

The intricate relationship between judicial activism and governance is a nuanced aspect of constitutional principles that requires ongoing scrutiny and thoughtful analysis. While judicial activism can play a crucial role in safeguarding individual rights and upholding constitutional values, it is essential to strike a balance that respects the separation of powers and democratic processes. The key lies in finding a balance between judicial restraint and judicial activism⁴⁹. A pragmatic and balanced approach ensures that the judiciary upholds the rule of law, protects constitutional values, and contributes to good governance without unduly intruding into the policy-making functions of the executive and legislative branches. It's important for the judiciary to be responsive to the evolving needs of society while respecting the democratic process and the principle of separation of powers. The analysis of judicial activism and governance underscores the ongoing challenge of maintaining a delicate equilibrium between the judiciary's duty to protect constitutional principles and the imperative of preserving democratic governance⁵⁰. It is through a continuous commitment to constitutional values, dialogue, and adaptability that we can navigate these complexities and build a legal system that truly serves the interests of justice and the well-being of society as a whole⁵¹.

⁴³ <https://www.legalserviceindia.com/legal/article-11982-judicial-review-and-judicial-activism-in-india.html>

⁴⁴ <https://www.indiatoday.in/magazine/nation/story/19961231-judicial-activism-upsets-constitutional-system-of-checks-and-balance-834254-1996-12-30>

⁴⁵ <https://www.drishtiiias.com/to-the-points/Paper2/judicial-activism-restraint-overreach>

⁴⁶ <https://www.vedantu.com/political-science/judicial-activism>

⁴⁷ <https://byjus.com/free-ias-prep/judicial-activism/>

⁴⁸ <https://www.drishtiiias.com/to-the-points/Paper2/judicial-activism-restraint-overreach>

⁴⁹ <https://byjus.com/free-ias-prep/judicial-activism/>

⁵⁰ <https://byjus.com/free-ias-prep/judicial-activism/>

⁵¹ <https://www.drishtiiias.com/to-the-points/Paper2/judicial-activism-restraint-overreach>

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