

Judicial Activism in India: Constitutional Foundations and Expanding Dimensions of Judicial Power

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Abstract

In India, judicial activism is a prominent example of the judiciary taking an active role in enforcing constitutional rights and principles by actively participating in cases. Judicial activism has its origins in the constitutional structure, including Articles 32, 226, 136, and 142. Its purpose is to hold the executive and legislative departments to account. In situations where the state's actions are deemed arbitrary, unreasonable, or in violation of basic rights, this article delves into the constitutional provisions that grant the power to the Supreme Court and High Courts to step in. A number of landmark court decisions have increased the reach of judicial review and fortified safeguards for civil liberties; they include *Vishaka*, *Kesavananda Bharati*, and *Maneka Gandhi* cases. Public Interest Litigation's (PILs) evolution has greatly broadened the concept of *locus standi*, making justice more accessible to society's most vulnerable and oppressed members. However, discussions about the possibility of judicial overreach and the intricate balance that exists within the separation of powers have been sparked by the increasing scope of judicial authority. Although judicial activism is crucial in constitutional administration, the study argues that it must be applied with moderation to maintain democratic principles' equilibrium.

Keywords: *Judicial activism, Constitutional provisions, Public Interest Litigation, Separation of Power, Organs of Government.*

1. Introduction:

The Indian Constitution delineates that the State bears the primary responsibility to uphold justice, liberty, equality, and fraternity for all citizens.¹ It is not enough to just protect fundamental rights; the duty also includes carrying out the state's policy directives in order to attain social and economic fairness. The power of judicial review is conferred to the judiciary by the Constitution to guarantee that the state does not exceed its jurisdiction and abides by its constitutional duties. By exercising this power, the judiciary can determine whether or not executive and legislative actions are constitutional.

The democratic separation of powers states that in a representative democracy, the three branches of government the legislature, the executive, and the judiciary—are each responsible for different aspects of the lawmaking process. Any authority that wants to use its power must be able to prove it has

¹ The Constitution of India, 1950, The Preamble.

constitutional backing. Also, the Constitution specifically grants the judiciary certain authorities; judicial activism is not an attempt to usurp those powers but rather their lawful exercise. Courts are able to step in when the state's acts are seen as illogical, unjust, or a breach of basic rights, according to provisions that confer writ jurisdiction and review authority.²

Meaning of Judicial Activism:

In India, the term “judicial activism” describes the way the court system actively fights for social justice and the rights of its residents. To rephrase, it implies that the court must take initiative to guarantee that the administrative and legislative departments meet their constitutional duties..³

Furthermore, Black's Law Dictionary defines judicial activism as: “*a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent*”.⁴

Various aspects of judicial activism are discussed and contested within the context of India's constitution. Although critics point out the danger of courts substituting personal policy preferences for legislative purpose, proponents of this approach say it will protect basic rights and promote social fairness. It is clear from the Indian example that judicial activism has historically developed in response to presidential indifference, legislative shortcomings, and structural inequalities, rather than as an expression of preeminence. Because of the judiciary's expansive interpretation of basic rights, relaxation of locus standi criteria, and introduction of creative remedies within constitutional frameworks, marginalised and underprivileged people now have easier access to justice.⁵

The caution expressed in Black's Law Dictionary necessitates meticulous examination. Judicial decision-making must continuously conform to the constitutional language, established principles, and the idea of institutional restraint.⁶ Judicial overreach, in which courts interfere in domains explicitly reserved for the legislative or executive departments, must not develop into activism. The delicate balance between democratic accountability norms and the duty of constitutional guardianship is crucial to the legality of judicial activism. Maintaining the rule of law and ensuring that government policies are compatible with justice, liberty, equality, and dignity can be achieved by judicial activism when done so with care, clarity, and commitment to constitutional values.⁷

Constitutional Powers:

“Judicial activism” is the situation when State legislators allow courts to investigate their actions. Any

² Jaswal, N., & Singh, L., “*Judicial activism in India*”, Bharati Law Review, (2017). Online available at: <https://docs.manupatra.in/newsline/articles/Upload/OBD8AAF5-4031-484F-AB92-2B84EFE0ABCA.pdf>

³ Jaswal, Nishtha & Lakhwinder, Singh, “*Judicial Activism in India*”, (2020). Online available at: https://www.researchgate.net/publication/345576264_Judicial_Activism_in_India/citation/download

⁴ Garner A. Bryan, *Black's Law Dictionary*, 7th Edn., West Group Publication, 2002

⁵ Pradhan Rashmi, “*Doctrine of Judicial Review in India: Relevancy of defining contours*”. Online available at: https://www.legalservicesindia.com/article/1679/Doctrine-of-Judicial-Review-in-India:-Relevancy-of-Defining-Contours.html#google_vignette

⁶ Ibid.

⁷ Ibid.

action by the Indian government that violates the Indian Constitution may be declared null and invalid when interpreted with Article 32 and 226 of the Constitution. Rights to judicial review and other constitutional principles are deeply ingrained in Indian law.⁸

There were challenges to India's First Amendment on the grounds that it infringed upon basic rights. This legislation must incorporate the constitutional amendment statute, as stated in the argument in **Shankari Prasad v. Union of India**⁹, as per Article 13(3) of the Constitution. Amendments made in accordance with Article 13(3) are exempt from Article 13(3) as the Supreme Court ruled that the term "law" in Article 13 means rules or regulations enacted as a result of the exercise of constitutional authority.

As stated in Article 32 of the Indian Constitution, every citizen may seek the protection of their basic rights by submitting a petition to the Supreme Court. The Supreme Court can make any order to protect a basic right according to Article 32 of the Constitution. Since it is pointless to guarantee fundamental rights without a mechanism to enforce them when they are violated, the Supreme Court of India determined **Fertilizer Corporation Kamgar Union v. Union of India**¹⁰, that Article 32 of the Indian Constitution is an essential component of the constitution's framework. Not even a natural disaster can interrupt it. An suitable writ or order for the execution of Articles 17, 23, and 24 can be served on a private person under Article 32.¹¹

The case of **Keshvananda Baharti v. State of Kerala**¹², was brought before the Supreme Court in 1972 to determine whether the 24th, 25th, and 29th Amendments were constitutional. The case was won by the Supreme Court because it established the Basic Feature Doctrine and sustained its institutional role in constitutional powers in relation to parliament. In the time after, the concept of the essential feature became the bedrock of constitutional interpretation in India. The Supreme Court has been increasingly lenient in its interpretations of Article 32 to safeguard basic rights in situations when private companies are carrying out governmental duties.

It is possible to enforce basic rights and other legal rights by writs and orders issued by the High Courts of India, as stated in Article 226 of the Indian Constitution. Article 226 of the Constitution grants the High Court more authority than Article 32 of the Constitution grants to the Supreme Court. The foundation for India's administration is laid out in Articles 32 and 226 of the country's constitution. Additional authority to supervise all lower courts, special courts, and tribunals is granted to the High Court by Article 227.

Decisions may be made in accordance with principles of fairness, equality, and good conscience using the discretionary power conferred by Article 136. But it needs to be handled with care and wisdom. In the case of **Pritam Singh v. The State**¹³, the Supreme Court established that the application of Article 136's vast discretionary authority should be done with caution and only in very rare cases. Although the

⁸ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261

⁹ AIR 1951, SC 458

¹⁰ AIR 1981 SC 344

¹¹ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235

¹² AIR 1973 SC 1461

¹³ AIR 1950 SC 169

Supreme Court has no appeal right under Article 136, it has considerable discretion to act fairly, responsibly, and to prevent injustice.¹⁴

The Court stated in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan**¹⁵, in outlining the authorities granted by Article 142, that the protection of citizens is a crucial fundamental authority assigned to this court. Under Article 142 of the Constitution, the court has the authority to provide remedies in cases where the legislation is insufficient. “Fill the vacuum” with the court’s Article 142 orders, the Supreme Court argued, until the government passes substantive legislation. For the purpose of protecting, implementing, and advancing fundamental rights in the absence of explicit legal mandates, it has, on multiple occasions, provided guidelines and instructions.

Therefore, the Supreme Court was given the authority to remove any obstacles to the administration of justice under Article 142 of the Constitution. This power might be viewed as a means of dispensing justice on an individual basis. A recent ruling established that the Court’s authority to “do perfect justice” under Article 142(1) is distinct and of a higher order. In each situation, the Court would weigh the specific demands of substantive law and its own discretion to determine if full justice is required. No regular law can ever curtail the Supreme Court’s constitutional authority. In order to provide “complete justice,” this Court can issue any order or direction once it has taken possession of the matter or topic at hand.

Until new legislation is enacted, all organisations are required to adhere to the principles and criteria set forth by the Supreme Court.¹⁶ In order to ensure the preservation of basic rights, this Court, exercising the authority granted by Article 32, declares that it will be considered a law under Article 141.

In light of the significance of Article 32 in conjunction with Article 142, the court is obligated to fulfil its constitutional duty to enforce the rule of law in jurisdictions without relevant legislation.¹⁷ Article 142 of the Indian Constitution grants the Supreme Court the power to prescribe the implementation and maintenance of fundamental rights, even in the lack of explicit legislation, as stated in the *Kalyan Chandra case*¹⁸. To fill a legal loophole, the court emphasised again that any order is lawful. It is still within Parliament’s purview to revise such orders, like the POSH Act, 2013, even though the Indian Supreme Court published the Vishakha Guidelines for the Prevention of Sexual Harassment of Women in 1997.¹⁹

The Public Interest Litigation and Judicial Activism:

In India, the conventional norm of locus standi has been relaxed thanks to public interest litigation (PIL), which has greatly increased access to justice. When individuals were unable to seek redress through the traditional legal channels, the Supreme Court granted the authority to concerned citizens to do so. The judiciary tackled obstacles including poverty, illiteracy, prejudice, and a lack of a robust legal system

¹⁴ *Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar*, AIR 2004 SC 2351

¹⁵ AIR 2005 SC 972

¹⁶ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011

¹⁷ *Vineet Narain v. Union of India*, AIR 1998 SC 889

¹⁸ *Supra* note 16.

¹⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

because it understood that access to justice was an essential part of the rule of law.²⁰ Constitutional government and social justice were fortified when the Court, using novel approaches including responding to letters and news stories, safeguarded the rights of oppressed groups, exploitation victims, and underprivileged communities.²¹

In the case of **Sheela Barse v. State of Maharashtra**²², a petitioner wrote to the highest court in the land, claiming that female inmates had been victims of physical abuse while incarcerated. Inmates who were female were interviewed for the material. A directive was sent to the relevant authorities by the Supreme Court, which served as an intervention. The Supreme Court accepted a prisoner's appeal letter in the case of **Sunil Batra v. Delhi Administration**²³, by utilising its epistolary power. The inmate claimed in his letter that another inmate had been savagely abused by the facility's Head Warden. No matter how complicated a case may be, the Supreme Court has decided that it will uphold the rights of the people regardless of the details.

A case that impacts the public interest is **S.P. Gupta v. Union of India**.²⁴ This ruling upheld the ability of bar associations to use PIL to initiate writs of habeas corpus. Those in favour of the random selection of High Court judges contended that doing so would serve the public interest by calling into question the executive branch's appointment process. The rule that another party may ask the court to help them file a lawsuit in the event that a victim of a legal wrong or injury has their right or protected interest violated but is unable to do so because of a handicap or other valid reason, like being socially or economically disadvantaged, is now well-established.

In addition, those who exploit the public interest lawsuit system ought to be held accountable. Using this device in a way that disrupts or impedes the administration of justice is strictly forbidden.

Fundamental Rights Jurisprudence: Judicial Activism

With the liberalisation of the Indian judiciary, fundamental rights like "the right to life and personal liberty" have become more popular.²⁵ Based on rulings from the Supreme Court²⁶, prisoners have access to justice systems, including the ability to see loved ones, express themselves freely, receive restitution, maintain their mental privacy, and more.

It is the responsibility of the Indian judiciary to protect fundamental environmental rights, including the Precautionary and Polluter Principles, the concept of public trust, and other ideas of sustainable development.²⁷

²⁰ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494

²¹ *Imtiyaz Ahmad v. State of Uttar Pradesh*, AIR SC 2012 642

²² AIR 1983 SC 378

²³ (1978) 4 SCC 494

²⁴ *S.P. Gupta v. Union of India*, (1980) 4 SCC 162

²⁵ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

²⁶ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746; *Prabha Dutt v. Union of India*, (1982) 1 SCC 1; *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086.

²⁷ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*, AIR 1985 SC 652

In the case of **J.P. Unnikrishnan v. State of A.P.**²⁸, the Apex Court in India reviewed the right to education from a constitutional perspective. The court ruled that Article 21 of the Indian Constitution, as stated in Part IV, should be interpreted in this way. When a citizen or minor reaches the age of 14, his or her entitlement to an education is expanded, but only up to the extent that the state can provide it.

In the case of **Mohini Jain v. State of Karnataka**²⁹, the Supreme Court ruled that Articles 21, 38, 39(a) and 39(b), 41, and 45 compel the state to ensure that all of its residents receive an education. The right to life and the right to an education are inseparable, says the Supreme Court. The right to life and dignity guaranteed by Article 21 cannot be safeguarded without the right to education. The state government, as a whole, has a responsibility to ensure that its citizens have equal opportunity to pursue higher education, as emphasised by the Supreme Court.

The Supreme Court's mandate to end the employment of children in circuses was an effort to ensure that all children could attend school. The government was directed to conduct raids in order to rescue children from these travelling shows. A court order mandated that the government provide safe haven and rehabilitation for all rescued children in residential care facilities until they turned eighteen.³⁰

Judicial intervention or judicial activism:

There have been multiple accusations that the court has meddled with the operations of Parliament. The legislative branch claims that the court has overstepped its authority in this matter.

The Supreme Court's decision in **Swaraj Abhiyan-(I) v. Union of India & Ors.**³¹, came after Finance Minister Arun Jaitley voiced concern about the establishment of a third fund, in addition to the "*National and State Disaster Response Fund*" even though the Appropriation Bill had already been passed. He brought attention to his worry over the way India's budget is being handled.

On October 16, 2015, the Constitutional Bench of India's highest court ruled that the NJAC Act and its amendment were invalid due to the threats they posed to the independence of the judiciary. The justices proclaimed that the current arrangement of the Court will restore collegium appointments and transfers to "functioning" status. Justice Khehar argues that the separation of powers in the government ensures the protection of individual rights.³²

It was pointed out in **Divisional Manager, Aravali Golf Course v. Chander Haas**³³ that separation of powers can only be maintained if the judge exercises restraint and follows constitutional boundaries.

In **Tirith Kumar v. Daduram**³⁴, the Supreme Court demonstrated judicial activism by strictly interpreting Articles 341 and 342, affirming that Scheduled Tribes, like the notified Sawara tribe, remain outside the Hindu Succession Act's purview unless de-notified by Presidential order, overturning lower

²⁸ *J.P. Unnikrishnan v. State of A.P.*, AIR 1993 SC 2178

²⁹ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858

³⁰ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1

³¹ (1998) 1 SCC 226

³² *Supreme Court Advocates-on-Record-Association v. Union of India*, AIR 2015 SC 5457

³³ (2008) 1 SCC 683

³⁴ 2025 AIR(SC) 119

courts' "hinduisation" findings. This preserved constitutional lists' sanctity while invoking equity for a 1951 intestate succession, applying "justice, equity, and good conscience" under historical law to partially favor female heirs. Expanding judicial power, the Court reiterated directives to the Central Government to reconsider exemptions, amend the Act for tribal women's equal inheritance rights under Articles 14 and 21, bridging legislative gaps for gender parity. Appeal dismissed, showcasing proactive constitutional guardianship.

In the landmark case of **Amaragouda L Patil v. Union of India**³⁵, the Supreme Court demonstrated judicial activism by striking down the nomination of the National Commission for Homeopathy's Chairperson. The chairperson had not met the statutory eligibility requirements laid out in Section 4 of the NCH Act, which required a minimum of 20 years of experience in homoeopathy, with a minimum of 10 years of leadership in the field.

The Court reviewed secret records and files and found no indication of necessary expertise or procedural errors, such as unrecorded fulfilment of requirements, even though a high-level Search Committee had recommended otherwise. It stepped in on cases of "malice in law," or wilful ignorance of necessary standards that reject deference to experts, and violations of eligibility requirements, so affirming the function of judicial review in public employment under Articles 14 and 16. Courts have a responsibility to rigorously execute constitutional obligations, and thus increased supervision by judges guarantees equity, stops public fraud, and requires new selection.

The Supreme Court's decision in **Sonu Agnihotri v. Chandra Shekhar**³⁶ limits judicial activism by outlining the limits of inherent powers (section 482 CrPC/section 528 BNSS) and constitutional supervisory authority (Art. 227). Personal comments about a judge's behaviour or quality weaken independence and should be avoided, even though higher courts can fix mistakes in lower court rulings by critiquing them focused on shortcomings.

The Court maintains judicial morale in the face of court overburden by distinguishing order critique from officer condemnation and holding that misconduct justifies administrative action by the Chief Justice rather than judicial strictures. Removing the "judicial misadventure" designation from a Sessions Judge's record, the High Court reaffirms activism's growing role in supervision by requiring sobriety to protect hierarchy free of "subordinate" overtones and putting aside incorrect directives and unnecessary remarks. This prevents overreach by balancing corrective authority with the fallibility of humans.

Conclusion:

Therefore, it may be concluded that Judicial activism in India has developed into an important tool for protecting basic rights and maintaining the supremacy of the constitution. The power to safeguard constitutional principles is bestowed upon the court by this clause, which finds its foundation in Articles 32, 226, 136, and 142 of the Constitution. This authority is especially manifested when the executive or legislative branches fail to act. In landmark cases like *Vishaka*, *Kesavananda Bharati*, and *Maneka*

³⁵ 2025 AIR(SC) 1156

³⁶ 2025 AIR(SC) 62.

Gandhi, the Supreme Court has expanded the scope of basic rights and introduced innovative solutions to address societal inequalities. By changing the traditional rule of locus standi, the development of public interest litigation has greatly increased the number of people who can seek legal remedies, especially those from marginalised groups.

Thus, judicial activism must adhere to the well-established boundaries of the idea of separation of powers. While the judiciary's proactive role is to promote accountability and support constitutional government, the danger of judicial overreach and the loss of institutional equilibrium exists when the judiciary meddles too much. Therefore, judicial activism can only be legitimate if it is carried out with great care, according to strong principles, and with good judgement. When guided by democratic duties and constitutional principles, judicial activism serves to uphold the rule of law and protect justice, liberty, equality, and dignity for all citizens, rather than usurping the authority of other branches.