

Perspectives of Judicial Activism in India: An Interplay of Law, Politics, and Public Policy

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Abstract

This paper investigates the diverse dimensions of judicial activism in India through an interdisciplinary approach, emphasizing the interactions between law, politics, and public policy. Judicial activism has become a critical component of Indian governance, frequently intervening to address deficiencies in legislative and executive functions. It delves into the perceptions and implications of judicial activism across political, legal, and public policy perspectives. By examining key theories, significant cases, and policy outcomes, the paper elucidates the judiciary's intricate role in influencing democratic governance, maintaining the rule of law, and shaping policy frameworks. The comparative analysis uncovers both the harmonies and conflicts among these perspectives, providing a thorough understanding of the advantages and challenges posed by judicial activism in India. The findings highlight the importance of a measured approach to judicial intervention, ensuring it supports democratic processes and public welfare without exceeding its constitutional boundaries.

Keywords: Judicial activism, Governance, public policy, judicial intervention, democratic process.

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Introduction:

Judicial activism has emerged as a significant and often debated element of governance in India. Broadly, it refers to the judiciary's active role in interpreting and enforcing laws to tackle social and political issues, extending its influence beyond traditional adjudication to impact legislative and executive actions. This paper aims to dissect the intricate nature of judicial activism in India by exploring it through Political perspectives, legal perspectives, and public policy perspectives. Each perspective provides a distinct viewpoint on the drivers, impacts, and outcomes of judicial activism.

The political perspective examines how judicial decisions affect democratic processes and power structures. Legal focus on how judicial activism shapes and is influenced by legal doctrines and precedents. Public policy looks at the broader societal consequences, particularly the effects of judicial interventions on policy creation and implementation.

By synthesizing these perspectives, a need for a comprehensive understanding of judicial activism in India, assessing both its advantages and potential drawbacks. It emphasizes the judiciary's vital role in maintaining the rule of law and addressing deficiencies in governance, while also warning against excessive judicial overreach. research highlights the importance of a balanced approach to judicial activism that ensures judicial independence while maintaining democratic accountability.

Historical Overview of Judicial Activism in India:

Judicial activism in India refers to the judiciary's active role in interpreting and applying laws to address various social, economic, and political challenges, often extending beyond traditional adjudication. This proactive approach allows the courts to influence and sometimes direct legislative and executive actions to uphold constitutional values and public interest. After a long struggle and period of colonial rule, when India gained independence, the newly sovereign country faced numerous challenges. One of these was to maintain democratic values and protect individual rights. There was also a fear regarding how the government would function democratically to avoid new forms of dependency and control over the lives of its citizens. In response, India established provisions to maintain checks and balances: constitutionalism to control centralized power, separation of powers to limit the authority of different branches, and a free and independent judiciary to provide oversight. The significance of democratic values led to the separation of governmental powers to prevent anarchy. As stated about the constitutional state, "a constitutional state is one in which the power of governance and the rights of the people and the relationship between them are adjusted."ⁱ All these key concepts must stand under the protection of an independent judiciary as the custodian of the constitution. However, a very long and well-defined constitution may have been sufficient at the time when it was framed, but over time, new challenges arose that required interpretation beyond traditional techniques and remedies. Judicial activism, although recognized later, began to take shape in the early years of the republic, gaining significant traction during the 1960s under Chief Justice Subba Rao. A landmark moment was in 1973 with the *Kesvanand Bharati v. State of Kerala* caseⁱⁱ, where the Supreme Court established its authority to review and invalidate constitutional amendments that contravene the "basic structure" of the Constitution, reinforcing judicial oversight of constitutional integrity. Another crucial development occurred with the 1978 *Maneka Gandhi v. Union of India* case, which broadened the interpretation of Article 21 to encompass various human rights aspects,ⁱⁱⁱ thus widening the scope for judicial activism. This expansion enabled the judiciary to engage with a broader array of issues. The 1980s and 1990s marked a significant increase in judicial activism, particularly through Public Interest Litigations (PILs). These allowed individuals or groups to seek judicial intervention on matters of public concern, leading to judicial engagement in areas such as environmental protection, anti-corruption measures, human rights, and social justice.

While judicial activism has been lauded for advocating for marginalized communities and ensuring government accountability, it has also faced criticism for potentially overstepping its bounds and infringing on legislative and executive powers. This nuanced interaction between judicial activism and governance in India provides a rich area for analysis within the perspectives of political, legal, and public policy.

Significance of Judicial Activism in India from the perspectives of Political, Legal, and Public Policy:

Judicial activism in India holds profound significance, intersecting critically with political, legal, and public policy. In a political view, it serves as a crucial mechanism for maintaining the balance of power among the legislative, executive, and judicial branches. By acting as a check on potential abuses of power, judicial activism upholds democratic principles and ensures accountability within governance. From a legal perspective, judicial activism plays a pivotal role in interpreting the Constitution and expanding legal frameworks to safeguard fundamental rights and uphold justice. through landmark decisions, the judiciary reinforces the rule of law and establishes enduring legal precedents that shape the country's legal landscape. In the realm of public policy, judicial activism influences the formulation and execution of policies by addressing gaps left by legislative and executive actions. It champions social change by mandating policies that promote equity, environmental sustainability, and human rights protection. this proactive stance of the judiciary often results in significant policy adjustments, fostering government responsiveness and prioritizing public welfare.

In essence, judicial activism in India is indispensable for sustaining democratic governance, driving legal reforms, and shaping policies that address pressing societal challenges. this multifaceted role underscores the judiciary's integral position within India's socio-political and legal framework.

Theoretical Frameworks of Judicial Activism in India

Separation of Powers: This theory divides government authority among three branches the legislature, the executive, and the judiciary, each with distinct functions and powers to prevent dominance by any single branch. it is well applied in India; the judiciary leverages this theory to justify its role in interpreting and reviewing laws made by the legislature and actions taken by the executive. Judicial activism acts as a necessary check to maintain balance among the branches of government. When either the legislature or executive is seen as overreaching or neglecting their responsibilities, the judiciary steps in to address these issues.

Checks and Balances: This concept ensures that each government branch has the power to limit the actions of the other branches, preventing any single branch from becoming too powerful,

In India, judicial activism often functions as a check on the legislature and executive through mechanisms like Public Interest Litigations (PILs), the courts can address power abuses, ensure government actions comply with the Constitution, and protect citizens' rights. this framework supports the judiciary's role in overseeing other branches and maintaining government accountability.

Judicial Review: Judicial review allows the judiciary to interpret the Constitution and invalidate any laws or government actions that are found unconstitutional. Indian courts frequently use judicial review to determine the constitutionality of legislative and executive actions. this power is fundamental to judicial activism, allowing courts to strike down laws and policies that violate constitutional principles. this ensures that all government actions are subject to constitutional scrutiny and protecting individual rights.

Public Interest Litigation (PIL): PILs are a distinctive feature of the Indian judicial system, allowing individuals or groups to file petitions on behalf of those unable to approach the court, particularly in matters of public interest. PILs have become a key tool for judicial activism in India. they enable the judiciary to address various social, economic, and environmental issues affecting the public. this mechanism allows courts to intervene in matters of public concern and drive policy changes that might not be addressed by the legislature or executive.

Constitutional Morality: Constitutional morality involves adhering to the core principles and values enshrined in the Constitution, beyond its literal interpretation. Indian courts often invoke constitutional morality to justify judicial activism, focusing on the Constitution's spirit and principles. this approach enables the judiciary to interpret laws and constitutional provisions in ways that promote justice, equality, and democratic values, even if it means going beyond a strict textual interpretation.

Judicial activism in India is underpinned by theories like separation of powers, checks and balances, judicial review, public interest litigation, and constitutional morality. these frameworks give the judiciary the authority and justification to actively intervene in legislative and executive matters, ensuring government actions align with constitutional values and protecting citizens' rights, through these theories, the Indian judiciary plays a crucial role in maintaining power balance, promoting accountability, and driving social and policy changes.

Political Perspective of Judicial Activism in India:

In India, judicial activism from a political standpoint represents the proactive involvement of the judiciary in shaping governance and policy through legal interventions. this practice is firmly

grounded in the constitutional framework, where the judiciary acts as a crucial counterbalance to the powers of the legislative and executive branches.

Role in Democratic Governance:

Judicial activism functions as a safeguard for democratic governance by ensuring adherence to constitutional principles and safeguarding individual rights through its rulings, the judiciary often interprets laws to promote governmental accountability, transparency, and fairness. This includes scrutinizing legislation and policies to align them with constitutional values, thereby averting potential infringements on citizen rights.

Impact on Power Dynamics:

The judiciary's assertiveness through judicial activism influences the distribution of power among governmental branches by adjudicating cases challenging legislative or executive actions, the judiciary reaffirms its authority to review and invalidate laws inconsistent with constitutional provisions. This role is crucial in maintaining a balance of power and preventing any branch from becoming overly dominant.

Addressing Socio-Political Issues:

Judicial activism in India extends beyond legal disputes to tackle critical socio-political issues. Courts intervene in matters of public concern, such as environmental conservation, corruption, human rights abuses, and social equity through mechanisms like Public Interest Litigations (PILs), the judiciary drives policy reforms and societal improvements by compelling legislative and executive action when necessary. As in the Kesavanand Bharti case 1973, the Supreme Court ruled a historical decision although no part of the constitution including part 3 was beyond the parliament amending power, the basic structure of the constitution could not be amended even by a constitutional amendment. Similarly, in Sheela Barse v. State of Maharashtra 1983, the Supreme Court acted on a writ petition about custodian violence, in such type of many cases, the Supreme Court took decisions in favor of public welfare matters and reinforced individual rights against arbitrary state actions.

Public Perception and Accountability:

The judiciary's active engagement in shaping public policies and governance also shapes public perception and trust in institutions. While judicial activism is often commended for upholding constitutional principles and filling gaps in governance, it also faces scrutiny for potential judicial overreach or policymaking beyond its conventional role. This nuanced interplay underscores the intricate relationship between judicial activism and democratic governance in India. So judicial

activism from a political perspective in India underscores the judiciary's vital role in upholding democratic governance and maintaining a balance of power. Through landmark rulings and proactive interventions, the judiciary ensures governmental accountability and protects citizen rights, shaping the political landscape within the constitutional framework.

Legal Perspective of Judicial Activism in India:

The legal perspective on judicial activism in India involves a proactive judiciary interpreting and enforcing the Constitution and laws to address societal issues and uphold justice. Judicial activism often arises when traditional adjudication and existing legal frameworks are insufficient to address emerging challenges.

Interpreting Constitutional Provisions:

Judicial activism in India involves the proactive interpretation of constitutional provisions to protect individual rights and liberties through landmark decisions, courts have expanded the scope of fundamental rights, such as the right to life and personal liberty under Article 21, to encompass broader human rights dimensions. this interpretation has shaped legal precedents and reinforced the judiciary's role in defending constitutional values from arbitrary state actions.

Addressing Legislative Gaps:

Another facet of judicial activism is its role in addressing gaps in legislation through innovative interpretations and judgments. Courts often intervene where laws are insufficient or absent, tackling issues such as environmental protection, gender equality, and socio-economic rights. This proactive stance ensures that legal protections evolve with societal needs, promoting fairness and equality. A pivotal example is the Environmental Protection Act of 1986, particularly in cases like *Mehta vs. Union of India (1986)* on Ganga River pollution, where courts actively interpreted and enforced environmental legislation. similarly, *Mehta vs. Union of India (1986)* has been a pivotal instrument in India's judicial activism, with courts actively interpreting and enforcing environmental legislation. other key cases where the judiciary has leveraged the Indian Council for “Enviro-Legal Action vs. Union of India (1996)” Addressed the impact of chemical industries in Bichhri, Rajasthan, in this case, the Supreme Court ordered the polluting industries to compensate for the environmental damage and undertake cleanup efforts, reinforcing the "polluter pays" principle and highlighting the importance of strict adherence to the Environmental Protection Act. “Vellore Citizens Welfare Forum vs. Union of India (1996)” Concerned with pollution from tanneries in Tamil Nadu, the Supreme Court asserted that sustainable development is part of customary international law, emphasizing the precautionary principle and the polluter pays principle. the court invoked the Environmental Protection Act to compel industries to adopt pollution control measures

and provide compensation for environmental harm. “S. Jagannath vs. Union of India (1997)” Case Involved environmental damage due to shrimp farming, The Supreme Court regulated and restricted shrimp farming in coastal areas to protect the environment and the livelihoods of local communities, using the Environmental Protection Act as a key legal reference. “M.C. Mehta vs. Kamal Nath (1997)” related to the unauthorized diversion of the Beas River to benefit a private motel, the Supreme Court ruled against the river diversion and emphasized the “Public trust Doctrine”^{iv}, asserting that natural resources are held in trust by the government for public use. the court ordered the restoration of the riverbank and referred to the Environmental Protection Act in its decision. and key legal principles established “Polluter Pays Principle”^v Polluters are responsible for the costs associated with pollution precautionary principle preventative measures should be taken when there is a risk of environmental harm. these landmark cases demonstrate the proactive approach of the courts in safeguarding the environment through the principles enshrined in the Environmental Protection Act, which was not initially legislated with these specific outcomes in mind.

upholding the Rule of Law:

Judicial activism strengthens the rule of law by holding government actions accountable to constitutional standards. Courts scrutinize executive decisions and legislative enactments to ensure compliance with constitutional mandates and prevent abuses of power. this oversight enhances legal certainty and preserves the legal system's credibility, bolstering public trust in judicial independence. An example of this is the case “Vineet Narain vs. Union of India (1997)” which dealt with issues of corruption and accountability within government agencies, in this case, the Supreme Court established guidelines to ensure the independence and effectiveness of the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED). these directives were aimed at promoting transparency and accountability in investigations, thereby upholding the rule of law. In another significant case, “D.K. Basu vs. State of West Bengal (1997)” focused on custodial violence and deaths in police custody, the Supreme Court issued detailed guidelines to be followed during arrests and detention to prevent custodial torture and deaths. these measures were designed to protect individuals' rights and ensure compliance with the rule of law. another landmark case “Aruna Shanbaug vs. Union of India (2011)”, addressed the issue of euthanasia for patients in a persistent vegetative state, the Supreme Court permitted passive euthanasia under strict guidelines, recognizing the right to die with dignity as part of the right to life under Article 21. this ruling exemplified judicial activism in interpreting constitutional rights to uphold the rule of law.

Establishing Precedents and Legal Clarity:

Courts establish enduring legal precedents through judicial activism that guide future interpretations and applications of the law. Landmark cases like “Kesvanand Bharati v. State of

Kerala (1973”) and “Maneka Gandhi v. Union of India (1978)” have significantly shaped constitutional jurisprudence in India, delineating the boundaries of governmental authority and expanding individual rights. this role in clarifying legal principles promotes consistency and predictability in judicial decisions. In the case “Mohini Jain vs. State of Karnataka (1992”) and “Unnikrishnan vs. State of Andhra Pradesh (1993)”, the Supreme Court ruled that the right to education is a fundamental right under Article 21 of the Constitution on the issue of capitation fees charged by private educational institutions. these landmark decisions set a precedent for the state's responsibility to provide free and compulsory education to children, eventually leading to the implementation of the Right to Education Act.

Public Interest Litigations (PILs):

Public Interest Litigation (PIL) emerged in India in the late 1970s and early 1980s, heavily influenced by judicial activism. PILs exemplify judicial activism in responding to public grievances and advancing societal interests. PILs empower individuals and organizations to seek judicial redressal for marginalized communities or issues of public concern, prompting judicial scrutiny of governmental policies and actions. However, this approach is not presented in the Indian Constitution directly. the Supreme Court took an innovation to creatively interpret articles 32 and 226 which provide the right to constitutional remedies, to accommodate PILs. This broadened the locus standi, allowing any public-spirited citizen to file a petition for those whose rights are violated but who cannot approach the court due to poverty, ignorance, or social and economic disadvantages. A landmark PILs “Hussainara Khatoon vs. State of Bihar (1979),” brought attention to the condition of undertrial prisoners, resulting in significant reforms in the criminal justice system, particularly emphasizing the need for speedy trials and safeguarding prisoners' rights.

so, from a legal perspective, judicial activism in India plays a pivotal role in interpreting the Constitution, addressing legislative gaps, upholding the rule of law, and establishing precedents that guide legal practice. Its impact extends beyond adjudication to shaping legal principles essential for democratic governance and safeguarding fundamental rights

Public Policy Perspective of Judicial Activism in India:

Judicial activism involves judges taking an active role in interpreting the constitution, statutes, and other legal texts to align with contemporary values and social needs. the perspective of public policy often analyzes judicial activism in terms of its effects on the legislative process and the balance of power among government branches. In a way, it is a necessary approach to advancing justice and protecting rights when the legislative or executive branches fail to act. conversely, another way it criticizes for overstepping judicial boundaries and undermining democratic principles is by allowing unelected judges to make policy decisions.

Policy Impact: Influence on Policy Formulation and Implementation

Judicial activism can significantly shape policy formulation and implementation through various mechanisms:

Addressing Policy Gaps: Courts can fill gaps in existing laws or address issues the legislature has not resolved, ensuring important matters are not ignored due to legislative inaction. As an instance, it has been proved, that the Supreme Court's ruling in "Vishaka vs. State of Rajasthan case (1997)" addressed the absence of specific legislation on workplace sexual harassment. The court's guidelines filled this gap, leading to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013.

Protecting Rights of citizens: Courts often safeguard minority rights and enforce constitutional principles, resulting in policy changes that might not be achievable through the legislative process alone. As an example, the landmark case "Navtej Singh Johar vs. Union of India case (2018)"^{vi} saw the Indian Supreme Court decriminalize homosexuality by striking down Section 377 of the Indian Penal Code. This decision protected LGBTQ+ rights and facilitated more inclusive policies and social acceptance, which legislative action might not have accomplished.

Prompting Legislative Action: Judicial decisions can drive legislative action by highlighting deficiencies or ambiguities in existing laws, prompting legislatures to update or create new laws. As an example, the Supreme Court of India's ruling in "M.C. Mehta vs. Union of India (1986)" regarding environmental pollution led to significant legislative changes. The court's directives spurred the government to pass the Environment Protection Act in 1986 and establish regulatory frameworks for environmental protection.

Reviewing and Shaping Policy: Courts review and sometimes invalidate policies or laws that they find unconstitutional, thereby shaping the policy landscape and ensuring compliance with constitutional standards. As an instance, the Supreme Court's decision in "Minerva Mills Ltd. vs. Union of India (1980)" invalidated constitutional amendments that were seen as infringing on the Constitution's basic structure. This landmark judgment reinforced the principle of judicial review and emphasized the judiciary's role in protecting the Constitution's integrity, significantly impacting future policy formulation and implementation.

Judicial activism plays a crucial role in influencing policy formulation and implementation by addressing policy gaps, protecting rights, prompting legislative action, and reviewing policies for constitutionality. These judicial interventions ensure that legal and policy frameworks evolve to meet contemporary challenges and uphold constitutional values, ultimately contributing to a more just and equitable society.

Comparative Analysis of Judicial Activism in India: Similarities and Differences across the Three Perspectives

Judicial activism in India is commonly understood as the judiciary's active involvement in interpreting the Constitution to address social issues and uphold fundamental rights. This approach, similar to other countries, involves judicial decisions that influence policy. However, a distinctive feature in India is the use of Public Interest Litigations (PILs), enabling individuals and groups to seek judicial intervention in public matters. This is somewhat different from other countries where the judiciary may be more reserved. Another distinctive feature is in the area of policy impact; Indian courts have been instrumental in shaping policies, especially in areas such as environmental protection, human rights, and anti-corruption efforts. The judiciary's impact on policy formulation and implementation is more pronounced in India due to the frequent use of PILs. In contrast, judicial activism in other nations might primarily focus on constitutional interpretation without directly influencing policy. The social and economic effects of judicial activism in India include significant progress in environmental law, social justice, and anti-corruption initiatives. These changes often result directly from court orders rather than legislative actions, leading to immediate policy impacts. In other countries, the effects may be more indirect, with judicial decisions prompting legislative adjustments over time. Comparing judicial activism in India with other countries can identify unique features and common trends. Understanding these similarities and differences can guide best practices and potential reforms in judicial systems globally.

ⁱ Strong C.F. modern Political Constitution, Ganga Prasad and Sons agra, 1965, second edition no. 13.

ⁱⁱ <https://indiankanoon.org/doc/257876/> access on 6/07/2024.

ⁱⁱⁱ <https://indiankanoon.org/doc/1766147/> access on 06/07/2024.

^{iv} https://www.legalserviceindia.com/articles/ptdoc.htm#google_vignette access on 07/07/2024.

^v https://thefactfactor.com/facts/law/civil_law/environmental_laws/polluter-pays-principle/1503/ access on 10/07/2024.

^{vi} <https://indiankanoon.org/doc/1836974/> access on 11/07/2024.

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