

## THE ROLE OF JUDICIAL ACTIVISM IN ADVANCING HUMAN RIGHTS IN INDIA: A CRITICAL ANALYSIS

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### Abstract

Judicial activism has significantly influenced the promotion and protection of human rights in India, serving as a crucial mechanism for ensuring justice, equality, and dignity in governance. This paper critically analyzes the evolution, scope, and impact of judicial activism, focusing on its role in addressing societal inequalities, governance gaps, and human rights violations. It examines the origins of judicial activism, its constitutional basis, and its methods, including Public Interest Litigations (PILs) and landmark rulings.

The paper highlights how judicial activism has expanded the interpretation of fundamental rights under Article 21, facilitated access to justice for marginalized groups, and integrated environmental protection into the domain of human rights. However, the paper also addresses the criticisms of judicial activism, including concerns about judicial overreach, delays in justice, and potential misuse of PILs. It compares India's approach to judicial activism with practices in the United States and South Africa, offering insights for improving balance and accountability in the judiciary. While judicial activism has played a transformative role in advancing human rights, it must strike a balance with judicial restraint to preserve the separation of powers and institutional integrity. Recommendations include clearer guidelines, enhanced accountability mechanisms, and prevention of PIL misuse to ensure judicial activism remains a constructive force in achieving constitutional justice.

**Key Words:** Equality, Fundamental Rights, Human Rights, Judicial Activism, Justice, Public Interest Litigation (PIL)

### Introduction

The Constitution was established as the 'Suprema Lex' on January 26, 1950, to fulfill the aspirations of its framers. The three branches of government—Judiciary, Executive, and Legislature—have a constitutional duty to collaborate effectively to achieve the goal of implementing socio-economic reforms in

society, in line with the principles outlined in the preamble.

Alexander Hamilton points out that the judiciary only possesses the power of judgment, unlike the legislature and executive, which wield the sword (force) and the purse (wealth). The judiciary lacks both 'Force' and 'Will,' making it reliant on the other two branches of

government, which can compromise its ability to make decisions based on facts and reality. Fortunately, the constitution designates the court as the highest authority to review the actions of the legislature and executive through various constitutional articles. This framework ensures a constitutional check, validates activities, and interprets the constitution according to contemporary needs, leading to the emergence of judicial activism in India.

Opponents of judicial positivism, who primarily advocate for judicial restraint, argue that judicial interference or overreach should not be viewed as a safeguard against inadequate laws, but rather as an obstacle to the development initiatives outlined by legislation.

Judicial Activism has been crucial in the development of the Indian legal system, especially in protecting and promoting human rights. As an active component of judicial operations, it enables courts to interpret laws in ways that foster justice, equality, and fundamental rights. In India, where social inequalities and governance issues continue to exist, judicial activism has emerged as an important means of tackling human rights abuses. This paper provides a critical analysis of the role of judicial activism in enhancing human rights, exploring its origins, methods, landmark rulings, and the challenges it faces.

### Judicial Activism: An Overview

Judicial activism is not explicitly defined in the constitutions of either India or the USA.

**Justice Bhagwati** – “The father of public interest litigations in India, observes that ‘judicial activism is a central feature of every political system that vest adjudicatory power in a free and independent judiciary. The term judicial activism is not the term of fashion or popularism but a term signifying an important source of judicial power, which judges should use for the realization of willed result”.

**Professor Sathe** – “Judicial activism is not an aberration. It is an essential aspect of the dynamics of a constitutional court. It is a

counter-majoritarian check on democracy. Judicial Activism, however, does not mean governance by the Judiciary. It also must function within the limits of judicial process. Within those limits, it performs the function of legitimizing or, more rarely, stigmatizing the actions of the other organs of government”.

Judicial activism involves the judiciary taking an active role in interpreting laws to promote justice and uphold constitutional rights. This approach allows the judiciary to address gaps left by the legislative or executive branches in safeguarding individual rights. In India, judicial activism arose as a reaction to shortcomings in governance and the inability of the legislature and executive to effectively protect citizens’ rights.

The idea became significant in the 1980s thanks to Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, who established Public Interest Litigation (PIL) as an effective tool for tackling public issues. Judicial activism is opposed to judicial restraint, which supports minimal judicial involvement in the functions of the legislature and executive.

### Evolution and Constitutional Basis of Judicial Activism in India

During the Colonial period, the Privy Council had the authority to examine the rulings of the Company Courts and the Crown Courts in India. The principle of “reasonable opportunity to be heard” was incorporated by the Privy Council into Section 240 (3) of the Government of India Act, 1935. This indicates that judicial review was in place long before India gained independence. In the post-independence period, there was a focus on integrating the judiciary and clarifying the powers of the Supreme Court during the constituent assembly discussions. The constitution was established under articles that grant individuals who are socially marginalized or discriminated against by the executive or legislature the right to be heard in high courts and the Supreme Court through writs. The primary aim of the constitution’s framers was to ensure the

separation and independence of the judiciary.

It was Prime Minister Nehru and other parliamentarians who believed in Supremacy of Legislature over Judiciary. Judicial restraint was practiced which led to judicial passivism as the judges were to uphold the legislature and interpret it in accordance with the legislature. Fortunately, the supreme court was staunch on its independent authority and gave activist decisions in *Romesh Thapar Vs. State of Madras*, in *Brij Bhushan Vs. State of Delhi*. The first constitutional amendment act was passed in 1951 and added the 9<sup>th</sup> schedule which was not in the reach of courts even if it infringed the fundamental rights such as Article 14, 19 and 31, giving legislature a supreme hand without interference of judiciary.

The Indian Constitution establishes a strong foundation for safeguarding human rights. The Fundamental Rights outlined in Part III (Articles 12-35) ensure various rights, including Equality (Article 14), Freedom of Speech (Article 19), and the Right to life and personal liberty (Article 21). These rights can be upheld through the judicial system, which serves as the protector of the Constitution.

Furthermore, the Directive Principles of State Policy (Articles 36-51) found in Part IV, while not legally enforceable, support fundamental rights by directing the government to foster socio-economic justice. Judicial activism frequently helps connect these principles with enforceable rights, thereby ensuring comprehensive protection of human rights.

### Role of Judicial Activism in Advancing Human Rights

Legal Realism has made a significant impact on the Indian Constitutional system. The judiciary's primary function is to deliver justice. When individuals are affected by the actions of the executive or legislature, which often overlook personal or specific societal issues, they turn to the judiciary for resolution. The judicial system serves as a final recourse. Judicial activism by the courts not only

interprets the fundamental responsibilities of the state and its institutions but also addresses various additional fundamental rights, based on a broad interpretation of the constitution's basic structure on a case-by-case basis.

While the constitution does not explicitly define judicial activism, it is reflected in mechanisms such as Writ Petitions under Articles 32 and 226, Public Interest Litigation, Special Leave Petitions to the Supreme Court under Article 136, and Curative Petitions aimed at rectifying significant injustices in Supreme Court rulings. Other examples include guidelines, legal aid, decisions regarding judicial appointments, the interaction between the collegium system and the National Judicial Appointment Commission, the standing of the Reserve Bank of India, and issues concerning the environment, political parties, and health and safety. These instances illustrate the expanded scope of judicial activism in India since 1947.

***“Good Governance attracts the world to invest, it is Judicial Activism that converts such attraction into unquestionable Trust”.***

#### 1. Public Interest Litigation (PIL): A Tool for Human Rights

Public Interest Litigation (PIL) has significantly improved access to justice in India. Through PILs, the judiciary has reached out to marginalized groups who typically do not have the means to seek legal recourse.

- In the case of *Hussainara Khatoon v. State of Bihar* (1979), the Supreme Court highlighted the issues faced by undertrial prisoners and underscored the right to a speedy trial as outlined in Article 21.
- Likewise, in *M.C. Mehta v. Union of India* (1986), the Court recognized environmental protection as a vital component of the right to life, demonstrating its dedication to addressing public concerns.

PILs have turned the judiciary into a platform for social justice, prioritizing public interest over procedural formalities.

## 2. Expansion of Fundamental Rights

Judicial activism has greatly broadened the interpretation of fundamental rights, especially Article 21, which ensures the right to life and personal liberty.

- In the case of *Maneka Gandhi v. Union of India* (1978), the Supreme Court determined that the right to life encompasses a dignified existence, thus expanding its meaning beyond just survival.
- In *Justice K.S. Puttaswamy v. Union of India* (2017), the Court recognized the right to privacy as a fundamental right, underscoring its importance in today's digital age.

These rulings demonstrate the judiciary's capacity to adapt constitutional provisions to modern challenges, maintaining their relevance in safeguarding human rights.

## 3. Protection of Marginalized Groups

Judicial activism has been essential in protecting the rights of marginalized and vulnerable groups.

- The significant case of *Vishaka v. State of Rajasthan* (1997) led to the creation of guidelines to combat sexual harassment in the workplace, empowering women nationwide.
- In the case of *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalized homosexuality by amending Section 377 of the Indian Penal Code, affirming the LGBTQ+ community's rights to equality and dignity.

Through these rulings, the judiciary has made sure that the voices of marginalized individuals are acknowledged and their rights upheld.

## 4. Environmental Justice and Human Rights

Judicial activism has connected environmental protection to human rights, acknowledging that a clean and healthy environment is vital for living with dignity.

- In the case of *Subhash Kumar v. State of Bihar* (1991), the Court recognized that the right to a pollution-free environment is inherent in Article 21.
- The judiciary's involvement in cases such as the *Tehri Dam Case* and the *Narmada Bachao Andolan* highlights its role in reconciling developmental objectives with environmental sustainability.

These actions have played a significant part in the development of environmental justice jurisprudence in India.

## 5. Judicial Activism During Emergencies

The judiciary's active role in emergencies has been vital for maintaining human rights. For example, throughout the COVID-19 pandemic, courts took action to tackle concerns such as the rights of migrant workers, healthcare access, and vaccine distribution. These measures showcased the judiciary's capacity to address extraordinary challenges, safeguarding fundamental human rights during times of crisis.

## Critical Analysis

### ➤ Positive Contributions

Judicial activism has played a crucial role in promoting human rights in India by:

- 1) Providing access to justice via Public Interest Litigations (PILs).
- 2) Supporting marginalized groups within society.
- 3) Holding the legislature and executive accountable.
- 4) Broadening the interpretation of fundamental rights to tackle new challenges.

These efforts have bolstered democracy and reinforced the judiciary's position as the guardian of constitutional principles.

## Challenges and Criticism

Although judicial activism has had a beneficial effect, it has also been criticized for several reasons:

- 1) **Judicial Overreach:** Detractors claim that too much judicial involvement in legislative and executive matters threatens the separation of powers.
- 2) **Delay in Justice:** The increasing number of Public Interest Litigations (PILs) has overloaded the judiciary, causing delays in other cases.
- 3) **Lack of Uniform Guidelines:** The lack of clear standards regarding judicial activism has resulted in inconsistent rulings.
- 4) **Potential for Misuse:** PILs are occasionally exploited for personal or political purposes, which undermines their intended function.

It is crucial to strike a balance between activism and restraint to preserve the credibility and effectiveness of the judiciary.

### Comparative Perspective

India's method of judicial activism is similar to that of other democratic nations, including the United States and South Africa.

- In the United States, judicial activism was crucial in significant cases such as *Brown v. Board of Education* (1954), which abolished racial segregation in educational institutions.
- South Africa's Constitutional Court has vigorously defended socio-economic rights, exemplified by the case *Government of the Republic of South Africa v. Grootboom* (2000).

India can learn from these examples to enhance its judicial practices, aiming for a balance between activism and the integrity of its institutions.

### Conclusion and Suggestions

Judicial activism has played a crucial role in promoting human rights in India by tackling important issues related to justice, equality, and dignity. Through innovative interpretations of constitutional provisions, the judiciary has addressed gaps left by the legislative and executive branches, keeping human rights at

the forefront of governance. However, excessive activism can result in judicial overreach, which can compromise the separation of powers. To mitigate this risk, the judiciary should adopt a balanced approach based on clear principles of judicial conduct. Enhancing accountability mechanisms and preventing the misuse of Public Interest Litigations (PILs) can further improve the effectiveness of judicial activism. Ultimately, judicial activism should support, rather than replace, the functions of the legislature and executive, ensuring that all branches of government work together to fulfill the constitutional promise of justice for everyone.

In a democratic nation dedicated to achieving socio-economic equality, the primary focus of law is not primarily on Legislatures, even though they create laws; nor on Courtrooms, despite judges interpreting and assessing the laws; nor on the offices of legal scholars, even though they develop jurisprudential principles that assist both legislatures and judges. Instead, the core of the law is fundamentally rooted in the unfulfilled yet rightful hopes and desires of the ordinary citizens.

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