



## Judicial activism: A boon or a challenge for Indian Democracy

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### Abstract

Judicial activism refers to the dynamic role of the judiciary in which the SC and HC have protected the rights of the deprived sections of the Indian society by giving liberal interpretation to the fundamental rights through public interest litigations. The role of the judiciary has evolved over time and has expanded from being limited to mere dispute resolution to social change and protection of constitutional values. Judicial activism has emerged as a powerful tool in this process. On the one hand, it has contributed significantly to the protection of fundamental rights, the establishment of social justice, and the accountability of governance.

This paper analyses the dual nature of judicial activism as a boon for empowering inclusive democracy, and as a challenge for institutional imbalance and advocates a restrained approach. Which works to strengthen Indian democracy through dialogue with the legislature. On the other hand, it has also been accused of violating the principle of separation of powers and judicial encroachment. This research article critically studies the concept of judicial activism, its constitutional basis, judicial development, its positive contribution to democracy and the challenges arising from it and emphasizes the need for a balanced judicial approach.

**Keywords:** Judicial overreach, Indian Democracy, separation of powers, Public Interest Litigation, judicial activism

### Introduction

In the Indian democratic system, various institutions are entrusted with the responsibility of faithfully discharging their constitutional obligations. To this end, the judiciary has been entrusted with the responsibility of protecting the Constitution. Judicial activism reflects the active role of this guardian, where the Supreme and High Courts, by giving a liberal interpretation of the Constitution, put a check on the decisions of the legislature and the executive through public interest litigations<sup>[1]</sup>. Because in practice, on many occasions, the rights of citizens have been adversely affected due to the inaction, failure or arbitrariness of the legislature and the executive. In such a situation, the active intervention by the judiciary has come to the fore in the form of 'judicial activism'. It has proven to be a boon for democracy, strengthening the rule of law by promptly intervening in legislative and executive failures (such as corruption and environmental degradation). This has strengthened inclusive democracy<sup>[2]</sup>.

In India, judicial activism has been considered a protector of democracy on one hand, while on the other hand it also appears to be a challenge to the democratic structure. Because the Indian Constitution has accepted the principle of separation of powers to establish a balance of power between the legislature, executive and judiciary<sup>[3]</sup>. However, the judiciary's activism appears to violate the principle of separation of powers. This dilemma is the central question of this research. Excesses in certain policy areas (electoral bonds, liquor policy) have sparked debates about "judicial tyranny." This article attempts to explore whether judicial activism is a boon or a challenge for Indian democracy.

**Why need for judicial activism:** Currently, legal and political discussions have intensified regarding the

increasing role of the judiciary. It has become necessary to clarify the difference between judicial activism and judicial overreach and to evaluate it in the context of democratic balance.

While the dual character of judicial activism in Indian democracy is giving rise to contemporary debates ranging from protection of fundamental rights to policy intervention, allegations of 'judicial autocracy' are increasing. Increasing interference by the judiciary in legislative-executive failures (such as corruption, environmental degradation) can threaten the democratic balance and hence its systematic scrutiny is necessary<sup>[4]</sup>.

Recent decisions such as the cancellation of electoral bonds or judicial directions in Governor-Government disputes have questioned the separation of powers, while PILs for disadvantaged sections (women, SC/ST) have ensured inclusive justice. In the absence of research, these trends could go unchecked, weakening institutional accountability. Here the researcher has adopted a balanced approach for the purpose of the study in which judicial restraint has been advocated and dialogue with the legislature has been promoted so that Indian democracy can become stronger<sup>[5]</sup>.

### Research Objectives

1. To examine the positive aspects of judicial activism, such as the contribution of PILs to combating corruption and environmental protection.
2. To analyze the constitutional basis of judicial activism in India.
3. To evaluate its positive contribution to democracy.
4. To critically examine the challenges of judicial overreach arising from judicial activism.
5. To underline the need for a careful balance to institutionalise the balance between judicial activism and judicial restraint.

**Research methodology adopted:** The present paper employs a theoretical and analytical research methodology. The study relied on the Indian Constitution, important decisions of the Supreme Court and High Courts, legal texts, research papers, and journal articles.

**Concept of Judicial Activism:** Judicial activism means active intervention by the courts through Public Interest Litigation (PIL), *Suo Motu* and Judicial Review. Under which the court gives a liberal, progressive and objective interpretation of the Constitution instead of a narrow interpretation of the law.

Inspired by the American concept, the Court prioritizes the rights of disadvantaged sections, mainly SC/ST and women, under Articles 32 and 226, where the judiciary issues policy directions in the absence of legislative action<sup>[6]</sup>.

Judicial activism is the dynamic role of the judiciary, in which the arbitrary actions of the legislature and executive are curbed by liberal interpretation of the Constitution. It goes beyond traditional judicial restraint and ensures social justice, protection of fundamental rights and public interest.

**Constitutional basis of judicial activism:** The constitutional basis of judicial activism lies in the fundamental structure of the Indian Constitution, which makes the judiciary the guardian of the Constitution. It is based on provisions and judicial principles such as Articles 13, 32, 21, 226 and 142. It is contained in the following provisions:

- **Preamble:** Establishment of social, economic, and political justice
- **Article 13:** Provides judicial review power to declare laws inconsistent with the Constitution, which is the basic foundation of activism.
- **Articles 32 and 226:** Power of Supreme and High Courts to issue writs (*habeas corpus*, *mandamus* etc.) for enforcement of fundamental rights, constitutional basis of PIL.
- **Article 21:** Liberal interpretation of 'life and personal liberty' in *Maneka Gandhi* case<sup>[7]</sup>, including life with dignity, environment, education, etc. Incorporation of 'Due Process' from *A.K. Gopalan*<sup>[8]</sup>.
- **Article 142:** Exceptional power of the Supreme Court to issue directions for the purpose of complete justice, such as interference in policy matters.
- **Integration of Parts III and IV:** Linking the Directive Principles of State Policy (DPSP) with fundamental rights in *Minerva Mills*'s case<sup>[9]</sup>.

**Growth of Judicial Activism in India:** The real growth of judicial activism in India is seen after the 1970s. Through the Doctrine of Harmony, the Court worked to establish harmony between Parts III and IV of the Constitution through the *Kesavananda Bharati* case<sup>[10]</sup>, as well as establishing the doctrine of basic structure. The fundamental principles of the Constitution which promote democracy and secularism are enshrined in Articles 14 (equality), 19 (liberty) and 21 which create rights for the underprivileged sections (women, SC/ST). At the same time, the work of

establishing constitutional values has been done through judicial review.

**Judicial Activism, A Boon for Indian Democracy:** The Indian Constitution has declared the judiciary as the guardian of the Constitution and in discharging this role, judicial activism has emerged as a boon for democracy. Judicial activism has strengthened Indian democracy not only institutionally but also ideologically and morally. When the legislature and the executive fail to protect constitutional values or ignore public interest, active intervention by the judiciary keeps the democratic system balanced and vibrant.

The Indian judiciary has, from time to time, made democracy strong, inclusive and rights-based through judicial activism. Many landmark judgments attest to the fact that when the legislature and the executive failed to discharge their constitutional obligations, the judiciary intervened and protected democratic values. The judicial decisions establish judicial activism as a boon to Indian democracy. The following points illustrate how judicial activism has acted as a guardian mechanism of democracy.

The basic structure doctrine propounded in *Kesavananda Bharati v. State of Kerala*<sup>[11]</sup> is the most influential example of judicial activism for democratic stability. Through this decision, the judiciary ensured that the core spirit of democracy the supremacy of the Constitution, the independence of the judiciary, and fundamental rights are not sacrificed to momentary political majorities. This decision shows that judicial activism is not against democracy, but is necessary for its long-term preservation.

Similarly, the decision in *Maneka Gandhi vs Union of India*<sup>[12]</sup> sets the ideological direction of judicial activism in Indian democracy. The Court's declaration of 'procedure established by law' as just, fair and reasonable shows that democracy is not merely a majority-based system of governance but a rights-based constitutional system. This decision strengthened judicial control over the executive power of the state and made civil liberties a central element of democracy.

The philosophy of the social dimension of judicial activism emerges clearly in cases like *Hussainara Khatoun v. State of Bihar*<sup>[13]</sup> and *Bandhua Mukti Morcha v. Union of India*<sup>[14]</sup>. In these decisions, the judiciary linked the interpretation of Article 21 to socio-economic reality and gave democracy a meaningful and inclusive form by not limiting it to political rights only. The protection of the rights of undertrials and bonded labourers demonstrates that judicial activism has brought democracy to the marginalised sections of society. Additionally, the development of the concept of public interest litigation by *S.P. Gupta v. Union of India*<sup>[15]</sup> reinforces the participatory character of democracy. By relaxing the traditional doctrine of *locus standi*, the Court provided citizens with the opportunity to directly participate in the democratic process. This judicial activism became a means of increasing accountability and transparency in democracy.

The guidelines issued in *Vishaka v. State of Rajasthan*<sup>[16]</sup> represent a positive form of judicial activism, where the judiciary established temporary standards to protect fundamental rights in the face of legislative vacuum. This decision underlines the role of constitutional morality in democracy and makes it clear that judicial activism does not weaken democratic governance but makes it more sensitive and accountable.

M.C. Mehta v. Union of India <sup>[17]</sup> issued landmark environmental protection directives, mandating the cleaning of the Ganga River, controlling pollution in Delhi, and the use of CNG vehicles. A clean environment was made a fundamental right under Article 21.

Navtej Singh Johar v. Union of India <sup>[18]</sup> declared Section 377 unconstitutional, granting full rights to the LGBTQ+ community, and strengthening inclusive democracy, becoming a symbol of social justice.

Taken as a whole, these judicial decisions lead to the conclusion that judicial activism has been acting as a corrective and balancing force for Indian democracy. It does not limit democracy to mere institutional structure but connects it with civil rights, social justice and human dignity. However, the legitimacy of this activism remains only to the extent that it operates in accordance with the basic structure of the Constitution and judicial discretion.

**Judicial Activism, A Challenge to Democracy:** Judicial activism becomes a challenge to democracy when the judiciary transcends the principle of separation of powers and enters the domain of the legislature-executive. The judiciary becomes the 'lawmaker' when it intervenes in policy matters of the elected legislature such as liquor policy, electoral bonds or agricultural laws. Populist decisions by unelected judges are considered undemocratic, weakening the mandate.

At the same time, the judiciary misuses Article 142 to issue binding orders to the executive, such as the directives in the Delhi Government-Governor disputes. On the other hand, taking suo motu cognizance of ordinary disputes burdens the court and delays the regular judicial process. The judiciary already has lakhs of pending cases. There is no direct democratic accountability of judges, leading to subjective decisions. There are accusations of "judicial autocracy," as seen in recent Supreme Court controversies.

The Indian judiciary has itself acknowledged on several occasions that excessive judicial activism can affect the democratic balance. In various judgments, the Supreme Court has made important observations on Judicial Overreach, Separation of Powers and Judicial Restraint, which make it clear how judicial activism can become a challenge to democracy.

Divisional Manager, Aravali Golf Club v Chander Hass <sup>[19]</sup> in this case, the Supreme Court issued a clear warning against judicial overreach. The Court stated, "Judges must not encroach into the domain of the legislature or executive." This decision underlines the limits of judicial activism and shows that over-activism can pose a challenge to democracy. The Court clarified that policy and administrative decisions are not the function of the judiciary. If the courts were to resolve every administrative issue on their own, it would undermine the democratic structure.

Common Cause v Union of India <sup>[20]</sup> in this case the Court intervened on administrative corruption, but also accepted that there is a limit to judicial intervention. The Court stated that if the judiciary consistently directs the actions of the executive, it could undermine democratic accountability. This decision highlights the need for a balance between judicial activism and democracy.

Asif Hameed v. State of Jammu and Kashmir <sup>[21]</sup>, a decision considered a landmark on judicial restraint. The Court stated, "The Court cannot usurp the functions assigned to

the executive." Here, the Supreme Court clarified that if the judiciary were to enter the domain of the executive, it would be contrary to the basic structure of the Constitution. This case demonstrates how judicial activism can pose a challenge to democracy.

Census Commissioner V R. Krishnamurthy <sup>[22]</sup> in this decision, the Supreme Court criticized judicial overreach and said that "Courts are not expected to run the government." The Court held that courts possess neither administrative expertise nor democratic legitimacy, and therefore, it is not their function to administer the government. This decision clarifies the limits of judicial activism in a democracy.

In the case of BALCO Employees Union v Union of India <sup>[23]</sup>, the Court refused to interfere in the disinvestment policy of the government, saying that economic and policy decisions are the domain of the government. The Court clarified that "Wisdom and advisability of economic policies are not for courts to decide." This decision reinforces that judicial activism in policy matters can pose a challenge to the democratic process.

The Supreme Court Advocates-on-Record Association and Others v. Union of India and Others <sup>[24]</sup> (also known as the NJAC case) is a key judgment that sparked the debate on judicial arbitrariness. The Supreme Court declared the National Judicial Appointments Commission (NJAC) Act, 2014 and the 99th Constitutional Amendment unconstitutional and restored the collegium system. The Court argued that the NJAC would allow the executive to interfere in judge appointments, which violates judicial independence (basic structure doctrine).

In Association for Democratic Reforms (ADR) and others v Union of India <sup>[25]</sup> and others (also known as the Electoral Bonds case), the Supreme Court declared the electoral bond scheme unconstitutional. The Hon'ble Court also ordered transparency in political funding under Article 19(1) (a).

This was interference in policy decisions, considered the domain of the legislature, which weakened the democratic will of the elected government.

Manish Sisodia v. Central Bureau of Investigation & Ors <sup>[26]</sup>. The High Court struck down the liquor policy, which was an overreach into the executive's domain, by intervening in the policy under Article 142. This limited the role of the legislature and led to accusations of 'judicial lawmaking'.

Repeal of the three farmer laws <sup>[27]</sup>, the government took suo motu cognizance of the PIL seeking repeal of the farm laws and suspended the central farm laws, demonstrating a disregard for parliamentary procedure. The dominance of an unelected court over the decisions of elected representatives challenges democratic legitimacy.

The State of Tamil Nadu v. Governor of Tamil Nadu & Ors <sup>[28]</sup>. In this case, Article 200 was interpreted and pocket veto was declared unconstitutional. Interference in a constitutional position disrupts the executive-legislature balance. These decisions, while protecting the rights of the marginalized, also create institutional imbalances where the judiciary becomes the policymaker.

**Conclusion:** Judicial activism is an essential constitutional feature of Indian democracy. It has played a vital role in protecting rights and establishing social justice. However, its over-activism can upset the democratic balance. A balance between judicial activism and judicial restraint is essential for the strengthening of democracy. Judicial

activism is essential where fundamental rights and constitutional values are seriously threatened, but judicial restraint in policy matters protects the democratic structure. Therefore, it can be said that judicial activism will prove to be a boon for democracy only when it is used in accordance with constitutional limits, the principle of separation of powers and judicial discretion.

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