

JUDICIAL ACTIVISM AND DEMOCRACY: BALANCING JUDICIAL INTERVENTION AND DEMOCRATIC GOVERNANCE

Sandeep Kaur

Assistant professor
G.S.S.D.G.S. Khalsa College, Patiala

ABSTRACT

The relationship between the judiciary, legislative, and executive has been altered by judicial activism, which has become a distinguishing characteristic of the Indian constitutional order. The changing role of judicial activism in India and its consequences for democratic government are examined in this essay. It investigates whether judicial involvement improves democracy by defending fundamental rights and constitutional ideals or whether it violates the separation of powers concept by invading the purview of elected institutions.

The study takes an analytical approach, referencing scholarly interpretations, historic rulings, and constitutional requirements. It charts the evolution of judicial activism in India throughout time, focusing on the growth of judicial review, Public Interest Litigation (PIL), and the introduction of the Basic Structure Doctrine in seminal rulings like *Kesavananda Bharati v. State of Kerala*. These events demonstrate the judiciary's growing responsibility for upholding accountability in government and defending fundamental rights.

The study makes the case that judicial activism in India has two sides. On the one hand, it has made a substantial contribution to environmental preservation, social fairness, and the upholding of constitutional decency. However, worries about institutional imbalance, democratic legitimacy, and judicial overreach have brought up significant issues surrounding the limits of judicial authority. The study comes to the conclusion that a balanced strategy is necessary, one in which judicial activism respects democratic processes while operating within constitutional bounds. In India's constitutional democracy, preserving judicial independence and democratic accountability requires bolstering institutional communication between the various parts of government.

Keywords: Judicial Activism; Democracy; Separation of Powers; Judicial Review; Public Interest Litigation (PIL); Democratic Governance; Judicial Overreach.

INTRODUCTION

As the judiciary's role in interpreting and upholding constitutional principles has grown, judicial activism has become a prominent characteristic of contemporary constitutional democracies. In the past, courts were supposed to interpret the law strictly and serve as impartial arbiters of conflicts. But over time, many judiciaries around the world started taking a more interventionist stance, especially in the post-World War II constitutional system. This change was prompted by the increasing understanding that traditional legislative procedures are not always adequate to uphold justice, safeguard fundamental rights, or resolve systemic injustices in society. Consequently, judges started to actively influence public policy through constitutional interpretation.

The expansion of judicial review and the creation of constitutional courts are two major factors that have contributed to the rise of judicial activism. Constitutional courts have grown to be strong institutions entrusted with defending constitutional supremacy, particularly in

nations with written constitutions. Courts have the authority to assess the legality of legislative and executive actions and invalidate those that contravene constitutional provisions through judicial review. The judiciary's role as a defender of constitutional principles has been reinforced by this process. Courts can impact governance by reading ambiguous or expansive constitutional clauses in ways that reflect current social and political circumstances, as proven by landmark constitutional interpretations in a number of countries.

Courts now play a bigger part in governance and public policy. This is especially true in fields like social justice, human rights, environmental preservation, and administrative accountability. Courts have addressed issues impacting underrepresented and underprivileged communities who might not otherwise have political representation and increased access to justice using tools like Public Interest Litigation (PIL). Judicial orders have frequently spurred governments to create new policies or enhance the execution of already-existing ones. Although this proactive judicial role has been commended for promoting justice and accountability, questions about the limits between judicial interpretation and policymaking have also been raised. As a result, the increasing role of courts in governance continues to spark a crucial discussion about how to strike a balance between judicial activism and democratic legitimacy.

CONCEPTUAL AND THEORETICAL FRAMEWORK

Generally speaking, judicial activism refers to the judiciary's proactive interpretation and application of constitutional provisions in order to promote justice, defend fundamental rights, and fill in any gaps left by the legislative or executive branches. Although legal experts have given several definitions, most concur that it entails court rulings that occasionally go beyond conventional interpretation and into the realm of policy-making. It is frequently contrasted with judicial restraint, in which judges scrupulously adhere to the wording of the law and respect elected branches' judgments unless there is an obvious constitutional breach. Judicial restraint places a higher priority on caution, stability, and respect for legislative meaning than judicial activism, which stresses purposive interpretation and extending the reach of constitutional rights. Much of the discussion about the legitimacy of judicial power in democratic regimes is based on the differences between the two methods.

In its broadest definition, democracy is a form of government where the people ultimately have the authority. In order to guarantee that political power is both representative and constrained, liberal democracies place a strong emphasis on individual rights, the separation of powers, and frequent free elections. By establishing the constitution as the ultimate law of the land and guaranteeing that all organs of government function within established legal bounds, constitutional democracy adds another level of complexity. This concept is further extended by participatory democracy, which emphasizes direct public participation in decision-making processes and promotes civic engagement outside of regular elections. Institutions like the court play a critical role in preserving equilibrium and defending democratic principles in each of these regimes. Liberal constitutionalism, which contends that courts are essential in defending individual liberties against majoritarian abuses, is frequently associated with the theoretical underpinnings of judicial activism. Constitutional courts use judicial review as a key tool to make sure that executive and legislative activities do not infringe upon basic rights. The separation of powers theory, which separates political authority among the legislative, executive, and judicial branches in order to prevent the consolidation of power, is another crucial foundation. This viewpoint raises problems when judicial activity seems to infringe on legislative or executive powers, even while it supports institutional independence.^[1]

HISTORICAL DEVELOPMENT OF JUDICIAL ACTIVISM

The idea of the rule of law, which maintains that constitutional primacy must be upheld and that all people and institutions are subject to the law, is closely connected. When other institutions of government are ineffective, judicial activism is frequently regarded as a way to uphold the rule of law. But it also calls into doubt the legitimacy and responsibility of the judiciary. This discussion is made more difficult by the counter-majoritarian challenge, which emphasizes the conflict between democratic desire and judicial rulings. Because it creates a democratic paradox by allowing unelected judges to overrule choices made by elected representatives, Alexander Bickel claims that judicial review is intrinsically counter-majoritarian. Ronald Dworkin, on the other hand, defends judicial activism by claiming that courts interpret constitutional ideas in a way that best embodies moral values and justice rather than merely superseding democracy. The philosophical foundation of discussions on judicial activism in contemporary constitutional systems is formed by these viewpoints, which collectively highlight the continuous conflict between judicial involvement and democratic government.^[2]

The history of constitutional governance and the progressive reinforcement of judicial review as a fundamental component of contemporary democracies are strongly associated with the historical development of judicial activism. The fundamental ruling in *Marbury v. Madison*, which solidified the idea of constitutional supremacy and the authority of courts to declare laws unlawful, is where judicial review got its start. By upholding the judiciary's position as the last interpreter of the Constitution, this case established the framework for constitutional adjudication. This power grew over time, enabling judges to actively shape constitutional meaning in response to shifting social and political circumstances, going beyond simple interpretation. In different countries, judicial activism has evolved in different ways. The judiciary has contributed significantly to the advancement of civil rights in the United States, especially through rulings that upheld individual liberty and increased equality. Although judicial review is restricted in the UK by the concept of legislative sovereignty, courts have increasingly used human rights jurisprudence and statutory interpretation to exert influence. The court is now an active player in governance in India thanks to the strong growth of judicial activism, particularly through Public Interest Litigation and broad interpretations of fundamental rights. Comparably, in South Africa, the Constitutional Court has demonstrated a strong commitment to substantive justice by playing a transformative role in upholding socioeconomic rights under the post-apartheid constitutional framework.^[3]

Public Interest Litigation (PIL) has been a significant factor in the rise of judicial activism, especially in nations like India. By enabling courts to consider lawsuits on behalf of underrepresented groups and address matters of public concern, PIL has greatly increased access to justice. The breadth of judicial involvement in governance has expanded as a result of this innovation, which has allowed the judiciary to get involved in issues pertaining to human rights, environmental protection, and governmental accountability. PIL has improved social fairness and democratic responsiveness, but it has also sparked worries about judicial authority and the shifting balance between democratic institutions.

JUDICIAL ACTIVISM AND DEMOCRACY: AREAS OF INTERACTION

The role that judicial activism plays in defending fundamental rights are one of the many intricate ways that it interacts with democracy. The protection of civil and political liberties including freedom of speech, expression, assembly, and equality before the law is one of the most important contributions of an active court. These rights serve as the cornerstone of democratic participation in many constitutional democracies, and judicial involvement makes

sure that majoritarian impulses and executive overreach do not weaken them. Minority rights, which are frequently at risk in electoral democracies because decisions are made by numerical majority, are also greatly aided by judicial activism. Courts contribute to ensuring that marginalized people enjoy equal protection under the law and are not shut out of the political process by interpreting constitutional provisions liberally. The idea of constitutional supremacy is another crucial area of interaction. The notion that the constitution is the ultimate legal authority in the state and that all government activities must abide by it is strengthened by judicial activism. Courts evaluate the constitutionality and legality of legislative and executive activities through judicial review, overturning those that go against constitutional principles. In order to prevent arbitrary rule and preserve the integrity of the constitutional system, this role is crucial. By doing thus, the court protects the constitution and makes sure that democratic authority is used within predetermined legal bounds.^[4]

Additionally, judicial activism helps hold the legislative and executive branches accountable. Judicial monitoring is a crucial safeguard against abuse of power in contemporary administration, when the extent of administrative power has greatly increased. Courts frequently examine legislative actions, policy implementations, and administrative judgments to make sure they adhere to legal and constitutional requirements. This inspection upholds the idea that all governmental institutions are subject to the rule of law and aids in the prevention of power abuse. Supporters see such involvement as an essential safeguard in complicated governance systems, despite detractors' claims that it may obfuscate the separation of powers. The promotion of social justice is another aspect of judicial activism. Courts in nations like India have broadened the definition of fundamental rights to encompass environmental protection, promoting environmental justice and holding public and private entities responsible for ecological damage. By tackling problems like labor discrimination, assault against women, and unfair societal practices, judicial interventions have also made a substantial contribution to gender justice. Furthermore, progressive judicial interpretations have increasingly acknowledged socio-economic rights including the right to livelihood, health care, and education, guaranteeing that democracy goes beyond nominal political equality to genuine social equality.^[5]

Lastly, by encouraging openness, sound governance, and anti-corruption initiatives, judicial activism strengthens democratic governance. Courts have been crucial in uncovering corruption, guaranteeing equitable administrative processes, and encouraging governments to use open decision-making procedures. The judiciary has improved governance's responsiveness and accountability to citizens through enhanced judicial review and public interest litigation. Judicial activism, when used within constitutional bounds, is a potent tool for strengthening democratic governance and guaranteeing that state authority is used sensibly and morally, despite ongoing worries about judicial overreach.

ARGUMENTS IN FAVOR OF JUDICIAL ACTIVISM

In a democratic society, judicial activism is frequently justified as a crucial tool for defending constitutional principles. Constitutions are living frameworks that incorporate core values like justice, equality, liberty, and dignity rather than just being legal papers. An engaged judiciary can intervene to maintain constitutional morality when elected branches fail to defend these principles or interpret them narrowly. Courts can adjust legal principles to evolving social realities and guarantee that democracy stays true to its core values by interpreting constitutional provisions in a progressive manner. Judicial activism thus acts as a corrective mechanism that keeps political expediency from undermining constitutional ideals. The role of judicial activism play in defending human rights is another compelling argument in favor of it. Vulnerable groups, including minorities, economically disadvantaged groups,

and socially marginalized populations, are frequently underrepresented in legislative procedures. In order to defend their rights and guarantee equal protection under the law, judicial action becomes essential in certain circumstances. Courts have often broadened the definition of fundamental rights to encompass socioeconomic rights like health, education, and environmental protection in addition to civil and political liberties. This broad interpretation guarantees that human rights are effectively enforced in practice rather than only being theoretical assurances.^[6]

As a crucial check on capricious government activity, judicial activism is also justified. Executive power has greatly increased in contemporary administrative regimes, raising the possibility of abuse, arbitrariness, and a lack of accountability. In order to ensure that government acts adhere to the standards of fairness, reasonableness, and legality, courts are essential in reviewing administrative judgments. The judiciary protects against authoritarian inclinations and guarantees that state authority is used within constitutional bounds by closely examining legislative and executive behavior. This scrutiny is especially crucial when institutional flaws or political pressure could otherwise result in misuse of power. Judicial activism is also justified by its capacity to close legislative and executive gaps. On new social, technological, or environmental challenges, legislatures can fail to pass legislation in a timely manner. In a similar vein, executive agencies might not have efficient execution strategies. Courts frequently intervene in these circumstances to offer temporary fixes or interpret current legislation in ways that address urgent public concerns. Supporters of this role contend that it maintains governance continuity and avoids legal voids that might be detrimental to the public interest, despite the fact that it is occasionally condemned as judicial overreach.^[7]

Lastly, judicial activism is frequently justified as a way to bolster the rule of law. All people and organizations, including the government, must be bound by the law in order to uphold the rule of law. Consistent application of the law and preservation of constitutional supremacy are guaranteed by an active judiciary. Judicial activism strengthens public confidence in the legal system by ensuring legal accountability and prohibiting arbitrary governance. It contributes to a more stable and equitable political system by ensuring that democracy is not simply about majority rule but also about the defense of rights, justice, and institutional balance.

CRITICISMS OF JUDICIAL ACTIVISM

Despite its accepted advantages, judicial activism has come under fire for causing judicial overreach. Critics contend that courts run the risk of going beyond their constitutional mission when they start influencing public policy in addition to interpreting the law. This increase in judicial authority could lead to judges essentially replacing elected representatives' preferences with their own. Because it can compromise the credibility of democratic decision-making processes and upset the institutional balance that the constitution intended, such interference is frequently viewed as harmful. Concerns about the courts' ability, experience, and institutional fitness to adequately manage complex socio-economic situations are raised when they give specific policy directives. The idea of the separation of powers is threatened by judicial activity, according to another complaint. The legislative, executive, and judicial branches of government in a constitutional democracy each have specific duties. These lines may be blurred by excessive judicial intervention, which would allow the court to infringe on the duties of the other branches. The legislature and executive may become less independent as a result, deterring them from carrying out their constitutional obligations. Such meddling may eventually lead to institutional conflicts and upset the equilibrium necessary for efficient democratic administration.^[8]

The democratic deficit brought about by judicial activism is another significant issue. Despite not being elected representatives, judges have the power to shape or even decide policies that have a significant impact on a wide range of societal groups. Since bodies answerable to the electorate have historically made policy, this calls into doubt the legitimacy of democracy. Opponents contend that the fundamental tenet of democratic governance—popular sovereignty—is compromised by permitting unelected judges to make important policy decisions. One of the most contentious aspects of judicial activism is the conflict between democratic accountability and judicial authority. The absence of sufficient accountability procedures is another criticism leveled at judicial activism. Judges have considerable institutional independence, which restricts direct responsibility, in contrast to elected officials who are subject to public scrutiny through elections. Fair adjudication requires judicial independence, yet too much protection from scrutiny might result in arbitrary or inconsistent decisions. Opponents argue that in the absence of strong limits, judicial power can grow uncontrolled, posing questions about accountability and transparency in judicial behavior.^[9]

Lastly, another grave critique of judicial activism is the politicization of the court. There is a chance that judicial rulings will be seen as being impacted by political beliefs or outside forces when courts deal with more politically delicate matters. The public's trust in the impartiality and neutrality of the judiciary may be weakened by this impression. The judiciary's credibility as an independent institution may be damaged when rulings seem to be in line with political agendas. As a result, detractors stress that in order to protect the legitimacy of the court and sustain public confidence in democratic institutions, boundaries must be clearly defined.

COMPARATIVE CASE STUDIES

Among constitutional democracies, judicial activism has grown to be one of the most widespread and significant types of judicial intervention in India. The Supreme Court's ruling in *Kesavananda Bharati v. State of Kerala*, which established the Basic Structure Doctrine, represents a significant turning point in this development. According to this theory, Parliament can amend the Constitution in many ways, but it cannot change its core principles. This ruling established the court as the supreme defender of constitutional identity and greatly reinforced judicial review. The rise of Public Interest Litigation (PIL), which has loosened traditional locus standi criteria and allowed courts to consider cases on behalf of oppressed groups, is another significant development. The judiciary has used PIL to become involved in matters ranging from environmental preservation and human rights breaches to prison reforms and bonded labor. Strong judicial activism is seen in Indian environmental jurisprudence in particular, where courts have issued comprehensive directives to regulate pollution, safeguard forests, and uphold sustainable development principles.^[10]

In the US, judicial activism has been crucial in influencing constitutional interpretation and civil rights. One famous example is the Supreme Court's ruling in *Brown v. Board of Education*, which ruled that racial segregation in public schools was unconstitutional. This ruling proved the judiciary's capacity to address systemic social inequities and signaled a sea change in the American civil rights movement. Through its interpretations of constitutional rights, the U.S. Supreme Court has continued to have an impact on public policy over time, especially in areas like equality, privacy, and freedom of expression. Nonetheless, originalism vs living constitutionalism is a more general paradigm that is frequently used to discuss judicial activism in the United States. Following the end of apartheid, a revolutionary constitutional system in South Africa has given rise to judicial activism. Housing, healthcare, and access to water are just a few of the socio-economic rights that the Constitutional Court has been instrumental in upholding. This strategy demonstrates a dedication to social justice

and substantive equality, making sure that the promises made in the constitution actually enhance people's lives. The court has established itself as a crucial player in the development of the country and the consolidation of democracy thanks to its progressive interpretation of rights.^[11]

The practice of judicial activism in various jurisdictions has both parallels and distinctions when compared. In order to uphold democratic governance and safeguard rights, courts in all three nations have broadened the scope of constitutional interpretation. However, the extent and type of judicial intervention differ greatly based on historical background, political situation, and constitutional architecture. While the United States exhibits a more rights-centric yet politically contentious paradigm, India and South Africa show more robust forms of rights-based engagement, especially in the socioeconomic and environmental spheres. Despite these variations, judicial activism has significantly impacted democratic institutions in all three systems by strengthening accountability, extending the protection of rights, and occasionally creating conflict with elected bodies. This comparative viewpoint emphasizes how each nation's constitutional culture and democratic requirements impact judicial activity, which is neither uniform nor absolute.^[12]

CONTEMPORARY CHALLENGES

In modern democracies, judicial activism faces a number of intricate obstacles that are a reflection of how governance and constitutional interpretation are changing. The judicialization of politics, where political and policy matters are increasingly subject to judicial examination, is one of the biggest worries. Courts today regularly hear cases that were formerly settled by legislative discussion or executive decision-making. Although this trend has the potential to improve accountability, it also runs the risk of overloading the judiciary and transferring policy-making authority from elected institutions to unelected judges. Important problems concerning the proper bounds of judicial action in democratic government are brought up by this blurring of institutional boundaries. The judiciary's function is further complicated by the conflict between independence and accountability. To guarantee unbiased decision-making free from political interference, judicial independence is crucial. On the other hand, extreme independence in the absence of sufficient accountability procedures may raise questions regarding the consistency and transparency of court rulings. Critics contend that when judicial power grows as a result of activism, there is an increasing need for systems that guarantee judges are held accountable in a way that upholds democratic values without sacrificing their independence.

Another new obstacle to judicial activism is digital governance. Concerns about data privacy, surveillance, artificial intelligence, and digital rights have grown in significance due to the quick development of technology. Nowadays, courts must interpret constitutional principles in light of intricate technical advancements that conventional legal frameworks did not foresee. This raises questions regarding institutional capacity and expertise and necessitates a more informed and dynamic judicial approach. Lastly, one important aspect of modern growth is the legal answers to new human rights challenges. Courts must interpret rights creatively in order to address issues like global migration, gender identity, internet freedom, and climate change. In these areas, judicial activism frequently closes gaps left by sluggish legislative responses, guaranteeing that constitutional protections continue to be applicable in a world that is changing quickly. These interventions, however, also spark discussions about the legitimacy of the judiciary and the degree to which courts ought to influence changing moral and social standards.

CONCLUSION

Judicial activism has emerged as a defining feature of modern constitutional democracies, playing a crucial role in shaping the relationship between the judiciary, legislature, and executive. The main points raised in this paper emphasize judicial activism's advantages as well as its drawbacks. On the one hand, it has guaranteed accountability of governmental institutions, increased access to justice through channels like Public Interest Litigation, and reinforced the preservation of fundamental rights. However, judicial activism is not without criticism, as seen by worries about judicial overreach, the democratic deficit, and the blurring of the separation of powers. Comparative examples from nations like South Africa, the United States, and India further show that although judicial activism functions differently in each jurisdiction, its influence on constitutional governance is both substantial and inevitable.

It is clear from analyzing the function of judicial activism in democratic governance that the judiciary protects and interprets constitutional ideals. Judicial activism serves as a crucial defense against arbitrary governmental action and legislative or executive failures when it operates within its constitutional bounds. It guarantees that democracy is enhanced by the values of justice, equality, and human dignity rather than being reduced to simple majority rule. However, there are justifiable worries about institutional overreach and the deterioration of democratic accountability when judicial action enters the policy-making sphere. Judicial activism must therefore be viewed as a dynamic tool that needs to be applied carefully and contextually.

The study highlights how important it is to preserve a balance between democratic legitimacy and judicial involvement. Maintaining constitutionalism requires a robust court, but it must cooperate with other departments of government. Maintaining this equilibrium requires institutional communication, respect between branches, and adherence to constitutional limits. Excessive restraint and unbridled activism are incompatible with democratic administration. Rather, a balanced strategy is needed to guarantee that judicial authority supports democratic processes rather than undermines them.

As governance becomes more complex, technology advances, and human rights concerns alter, constitutional democracies will probably see judicial institutions play an even bigger role in the future. New difficulties that call for creative interpretations of fundamental concepts will continue to confront courts. However, judicial activism's ability to uphold legitimacy, transparency, and restraint will determine how long it lasts. The strength of constitutional democracy ultimately rests in striking a precise balance such that judicial activism upholds democratic government without compromising its core values.

REFERENCES

1. Dicey AV. *Introduction to the Study of the Law of the Constitution*. 10th ed. London: Macmillan; 1959.
2. Bickel A. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. New Haven: Yale University Press; 1986.
3. Klug H. *The Constitution of South Africa: A Contextual Analysis*. Oxford: Hart Publishing; 2010.
4. Drishti IAS. Judicial Activism and Protection of Fundamental Rights. *Drishti IAS Mains Practice*. 2024

-
5. Khosla M. (2009) Addressing Judicial Activism in the Indian Supreme Court: Towards an Evolved Debate. 32 HASTINGS INT'L & COMP. L. REV. 55. Available at: https://scholarship.law.columbia.edu/faculty_scholarship/3344
 6. Kulaw R. (2023) Judicial Activism as an Essential Tool for Protection of Rights. *Journal article*. Available from: <https://kulawr.msal.ru/jour/article/download/196/196>.
 7. Chintala A. (2020) Introduction to judicial activism and judicial reforms. Symbiosis Law School, Hyderabad.
 8. Balmiki R. (2021) judicial encroachment into the executive domain: a word of caution. NALSAR University of Law.
 9. Kuehn R. R. at al. (2003). Legal Ethics of Interference. An Anthology of Interference in Law School Clinics.
 10. Iyer VR Krishna. (1980) *Social Justice and the Judiciary*. New Delhi: Eastern Book Company.
 11. Roux T. (2013) *The Politics of Principle: The First South African Constitutional Court, 1995–2005*. Cambridge: Cambridge University Press.
 12. Ginsburg T. (2003) *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge: Cambridge University Press.