

# Judicial Activism in India: The Guardian of Constitutional Morality and Democratic Justice

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## Abstract:

Judicial Activism in India has emerged as a cornerstone of constitutional democracy, bridging the divide between law and justice, and ensuring that the ideals of the Constitution—justice, liberty, equality, and fraternity—are realized in practice. Originating from post-Emergency judicial reforms, activism has transformed the judiciary from a passive interpreter of law into an active guardian of constitutional morality and democratic accountability. This article traces the evolution of judicial activism in India through distinct phases, from early judicial restraint to the rise of Public Interest Litigations (PILs) and modern interventions in governance, environment, and human rights.

It examines key tools such as PIL, epistolary jurisdiction, continuing mandamus, and creative interpretation, which have enabled courts to expand access to justice and uphold the rights of marginalized citizens. The paper further explores the impact of judicial activism on fundamental rights, social justice, environmental protection, and institutional accountability, while acknowledging the need for balance between activism and judicial restraint to preserve the separation of powers.

Recent trends—including digital rights, gender justice, and constitutional patriotism—reflect the judiciary's adaptability to contemporary challenges in a globalized, technology-driven society. The study concludes that judicial activism, when exercised with wisdom, restraint, and constitutional faith, strengthens democratic governance and reaffirms the judiciary's role as the sentinel of justice and moral conscience of the nation.

**Keywords:** Judicial Activism, Judicial Restraint, Constitution of India, Fundamental Rights, Public Interest Litigation, Constitutional Morality, Rule of Law, Democratic Governance.

## INTRODUCTION

In a vibrant democracy like India, where the Constitution stands as the ultimate guardian of justice, liberty, and equality, the judiciary has emerged as not just an interpreter of law but also a custodian of constitutional values. This proactive stance of the courts, where they step beyond traditional boundaries to protect the rights of citizens and uphold the spirit of justice, is known as Judicial Activism. It reflects the judiciary's dynamic role in breathing life into the Constitution, ensuring that its ideals are not confined to parchment but are translated into the lived realities of the people.

The concept of judicial activism in India gained prominence in the post-Emergency era of the 1970s, a period marked by political turbulence and erosion of civil liberties. During this time, the Supreme Court recognized the need to expand its role as a defender of democracy and people's rights. Judges began interpreting the Constitution not merely by its letter but by its spirit, making justice accessible to even the most marginalized sections of society. This marked a profound shift from the earlier phase of judicial restraint, where courts limited themselves to strict legal interpretation and deferred to the wisdom of the legislature and executive.

While judicial restraint emphasizes the separation of powers and the idea that courts should not interfere with policymaking, judicial activism celebrates the judiciary's duty to act when other organs of the state

fail to deliver justice. It is rooted in the belief that the Constitution is a living document, capable of evolving with the times, and that the judiciary must act as its moral compass.

The objective of this article is to critically examine the evolution, role, and implications of judicial activism in India's democratic framework. It seeks to explore how the judiciary has transformed from a passive interpreter of laws into an active agent of social change — balancing constitutional mandates, democratic accountability, and the pursuit of justice for all. **Concept and Meaning of Judicial Activism**

The idea of *Judicial Activism* traces its origin to American jurisprudence. The term was first coined by historian **Arthur Schlesinger Jr.** in his 1947 *Fortune* magazine article, where he categorized U.S. Supreme Court judges as either “judicial activists” or “advocates of restraint.” Since then, the expression has been widely adopted across democratic nations, including India, to describe the judiciary's assertive and reform-oriented role in governance.

In essence, **Judicial Activism** refers to the judiciary's creative and dynamic approach, wherein courts interpret laws and constitutional provisions not merely by their literal meaning but in light of justice, equity, and the evolving needs of society. It embodies the belief that the law must remain a tool of social good and that when rigid legal formalism obstructs justice, the judiciary has a duty to intervene and uphold constitutional morality.

Simply put, judicial activism means that courts go beyond the passive application of law to actively interpret, expand, and even formulate legal principles that address emerging social challenges. This often occurs when the executive or legislature fails to fulfill its constitutional obligations or when societal needs demand immediate redress.

A landmark instance of judicial activism in India was the **introduction of Public Interest Litigation (PIL)** during the late 1970s and early 1980s. Through PILs, the judiciary broadened access to justice, allowing individuals and groups to approach the courts on behalf of disadvantaged communities—even through letters or media reports. This innovation revolutionized the concept of *locus standi*, making justice more participatory and inclusive.

While closely linked, **Judicial Activism** must be distinguished from **Judicial Review**:

- **Judicial Review** is the constitutional power of courts to assess the validity of legislative and executive actions to ensure conformity with constitutional provisions. It serves as a mechanism of control and a safeguard for constitutional supremacy.
- **Judicial Activism**, in contrast, reflects the *philosophy* behind exercising that power. It involves a proactive judicial approach that fills legislative gaps, enforces fundamental rights, and drives social transformation when other branches of government remain inactive.

Thus, judicial activism represents the judiciary's evolution from a traditional adjudicator to a moral and constitutional innovator. It underscores the dynamic relationship between law and society, ensuring that justice in India remains not an abstract principle but a living reality for every citizen.

## EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

The growth of **Judicial Activism in India** is deeply intertwined with the nation's constitutional ideals and socio-political evolution. The Supreme Court has consistently interpreted the Constitution as a *living document*, adapting its provisions to the changing needs of society. Broadly, the development of judicial activism in India can be divided into three phases: the **era of restraint (1950–1970)**, the **era of transformation (1970–1990)**, and the **era of social justice and governance activism (1990 onwards)**.

### 1. Era of Judicial Restraint (1950–1970)

In the early decades after independence, the judiciary adopted a cautious and conservative approach. Courts confined themselves to the literal interpretation of laws, emphasizing parliamentary supremacy and the separation of powers. The landmark case **A.K. Gopalan v. State of Madras (1950)** reflected this narrow view, as the Supreme Court restricted the meaning of “personal liberty” under Article 21 to procedural fairness. However, growing social inequalities and unfulfilled constitutional promises gradually led to calls for a more expansive judicial role.

## 2. Transformative Phase: Rise of Activism (1970–1990)

The 1970s marked a turning point, particularly after the **Emergency (1975–77)**, when the judiciary began asserting itself as the guardian of constitutional rights. The historic **Kesavananda Bharati v. State of Kerala (1973)** judgment introduced the *Basic Structure Doctrine*, limiting Parliament's power to amend the Constitution. Soon after, **Maneka Gandhi v. Union of India (1978)** redefined Article 21, broadening "right to life and liberty" to include dignity and fairness. This era also witnessed the emergence of **Public Interest Litigation (PIL)**, allowing individuals to seek justice on behalf of the marginalized. Cases like **Hussainara Khatoon v. State of Bihar (1979)** and **S.P. Gupta v. Union of India (1981)** made justice more inclusive and accessible, transforming the judiciary into a people's court.

## 3. Era of Social Justice and Governance Activism (1990–Present)

From the 1990s onward, judicial activism expanded into areas of **human rights, environmental protection, and governance reforms**. The judiciary began addressing administrative lapses and policy gaps through landmark decisions such as:

- **Vishaka v. State of Rajasthan (1997)** – framed guidelines against workplace sexual harassment.
- **M.C. Mehta Cases** – established environmental jurisprudence and recognized the right to a healthy environment under Article 21.
- **Prakash Singh v. Union of India (2006)** – mandated police reforms to ensure accountability.
- **Navtej Singh Johar v. Union of India (2018)** – decriminalized homosexuality, affirming equality and dignity.

In recent years, the judiciary has actively engaged in issues like electoral transparency, climate change, and institutional independence, reinforcing its role as a sentinel of democracy.

## Significance

The evolution of judicial activism marks India's shift from **legal formalism to constitutional humanism**. It highlights the judiciary's transformation from a passive interpreter of law to an active guardian of democratic and social justice. Through this evolution, the courts have ensured that the ideals of liberty, equality, and justice are not confined to the Constitution's text but are realized in the everyday lives of the people.

## Tools of Judicial Activism

Judicial activism in India has evolved through innovative mechanisms that expanded access to justice and strengthened constitutional governance. The key tools include **Public Interest**

## Litigation (PIL), Epistolary Jurisdiction, Continuing Mandamus, and Creative Interpretation of Law.

### 1. Public Interest Litigation (PIL):

Introduced in the late 1970s by judges like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, PIL revolutionized access to justice by allowing any public-spirited citizen to approach the court on behalf of the marginalized. Landmark cases such as *Hussainara Khatoon (1979)*, *M.C. Mehta*, and *Bandhua Mukti Morcha (1984)* exemplify its role in promoting social and environmental justice.

### 2. Epistolary Jurisdiction:

This mechanism enables courts to treat letters or telegrams as petitions, ensuring that procedural technicalities do not block justice. First recognized in *S.P. Gupta v. Union of India (1981)*, it reflects the judiciary's humane and accessible approach, extending justice even to those unable to file formal cases.

### 3. Continuing Mandamus:

Through this tool, courts continuously monitor the execution of their orders until compliance is achieved. Used in cases like *M.C. Mehta (Ganga Pollution)* and *Prakash Singh (2006)*, it ensures that judicial directives translate into effective implementation.

### 4. Creative Interpretation of Law:

Judicial creativity has expanded constitutional rights, particularly under Article 21 — now encompassing the right to dignity, education, privacy, and a clean environment. Cases like *Maneka Gandhi (1978)* and *Vishaka (1997)* showcase how interpretative innovation keeps the Constitution responsive to changing social needs.

These tools have transformed the Indian judiciary into an active guardian of justice and democracy. By making justice accessible, participatory, and pragmatic, judicial activism has ensured that the ideals of the Constitution—justice, liberty, equality, and fraternity—become a lived reality for all citizens.

## ROLE AND IMPACT OF JUDICIAL ACTIVISM IN INDIA

Judicial activism has profoundly reshaped India's democratic and constitutional framework, transforming the judiciary into an active guardian of rights and justice. It has expanded the meaning of fundamental rights—especially under Article 21—to include the rights to dignity, livelihood, education, privacy, and a clean environment (*Maneka Gandhi, Olga Tellis, Unni Krishnan, Puttaswamy*).

Through **Public Interest Litigations (PILs)**, the courts have championed social justice and human rights, protecting marginalized groups and addressing issues like bonded labor, gender equality, and environmental protection (*Vishaka, Bandhua Mukti Morcha, M.C. Mehta*). Judicial activism has also ensured **accountability in governance**, curbing arbitrariness and corruption (*Vineet Narain, Prakash Singh*), and deepened **democratic values** by promoting transparency and institutional independence (*PUCL, ADR, NJAC*).

By broadening access to justice and awakening civic awareness, judicial activism has turned the Constitution into a living document, ensuring that democracy remains people-centered and responsive.

## CRITICISMS AND CONCERNS

Despite its achievements, judicial activism faces criticism for overstepping constitutional limits and encroaching upon legislative and executive domains, raising concerns of judicial overreach and weakening the separation of powers. Critics argue that unelected judges lack democratic accountability and that excessive intervention may lead to **judicial populism** or delay justice due to administrative overload.

The core debate lies between activism and restraint — whether judges should create social policy or simply interpret law. The balanced view holds that while judicial activism is vital to uphold rights and accountability, it must operate within constitutional boundaries to preserve institutional harmony.

## CONCLUSION

Judicial activism remains one of the strongest pillars of India's democracy. When guided by constitutional morality, prudence, and restraint, it upholds justice and strengthens democracy.

However, unchecked activism risks blurring institutional lines. The future of India's judiciary must thus rest on a delicate balance between activism and self-restraint, ensuring that the courts remain both dynamic and disciplined in their pursuit of justice.

## JUDICIAL ACTIVISM VS. JUDICIAL RESTRAINT

Judicial Activism and Judicial Restraint represent two complementary philosophies shaping the judiciary's role in India's democracy. **Judicial Activism** involves a proactive approach, where courts interpret the Constitution dynamically to uphold rights and correct institutional failures (*Kesavananda*



*Bharati, Maneka Gandhi, Vishaka*). It views the Constitution as a living document and the judiciary as a guardian of justice.

**Judicial Restraint**, in contrast, emphasizes judicial modesty and respect for legislative and executive domains (*A.K. Gopalan, ADM Jabalpur*). It upholds the separation of powers and cautions against judicial overreach.

The balance between the two is essential — excessive restraint may allow rights violations, while unchecked activism risks undermining democratic governance. As Justice J.S. Verma observed, “*Activism must not become adventurism*.” The ideal judiciary is **activist in purpose but restrained in action**, ensuring justice without disturbing institutional harmony.

### RECENT TRENDS IN JUDICIAL ACTIVISM IN INDIA

In the 21st century, judicial activism has expanded into new domains — **human rights, environment, governance, digital rights, and gender justice** — reflecting the judiciary’s adaptability to modern challenges.

- **Human Rights:** Expanded Article 21 to include privacy, equality, and autonomy (*Puttaswamy, Navtej Johar, Joseph Shine*).
- **Environment:** Upheld sustainable development and ecological balance (*M.C. Mehta, Vellore Citizens Welfare Forum*).
- **Governance:** Strengthened transparency and institutional accountability (*Vineet Narain, Election Commission Reforms 2023*).
- **Digital Rights:** Protected data privacy and internet freedom (*Aadhaar Case*, internet shutdown rulings).
- **Social & Gender Justice:** Advanced equality through landmark cases (*Shayara Bano, Sabarimala, NALSA*).

Modern judicial activism also embraces **constitutional patriotism**, emphasizing justice and dignity over majoritarianism, and moves toward **institutional reform** through transparency, e-courts, and self-accountability.

Judicial activism continues to be the moral and constitutional heartbeat of Indian democracy. Its evolving role—from defending rights to addressing modern governance and digital challenges—proves that the Constitution remains a living, responsive document. The future lies in maintaining the **balance between activism and restraint**, ensuring that the judiciary remains both **dynamic and disciplined** in preserving justice and democratic integrity.

### CONCLUSION AND WAY FORWARD

Judicial Activism in India has evolved into one of the most powerful guardians of constitutional democracy. It bridges the gap between the written law and the lived experience of justice, ensuring that the ideals of liberty, equality, and fraternity are not confined to the pages of the Constitution but reflected in the lives of citizens. Whenever governance falters or legislative inertia prevails, the judiciary has risen as the moral conscience of the Republic — defending rights, checking abuse of power, and restoring faith in the rule of law.

Over the decades, through bold interpretations, Public Interest Litigations, and human-rights jurisprudence, the judiciary has democratized justice and upheld constitutional morality. It has acted as a voice for the voiceless, a protector of the environment, and a promoter of transparency and accountability. In doing so, judicial activism has strengthened democracy rather than weakened it — keeping alive the spirit of the Constitution as a living, evolving document.

Yet, the enduring strength of judicial activism lies in **balance and responsibility**. The courts must act decisively when rights are threatened but remain restrained in matters of policy and administration. Judicial wisdom demands that activism never become adventurism; intervention must always be guided by constitutional principles and respect for institutional boundaries.

**Looking ahead**, the judiciary's role will be crucial in addressing new challenges of the 21st century — safeguarding digital and data privacy, ensuring environmental sustainability, promoting gender and social equity, and preserving democratic values amid rapid globalization and technological change. To remain effective, judicial activism must continue to evolve with wisdom, empathy, and self-restraint, ensuring that justice remains timely, accessible, and inclusive.

In essence, judicial activism is not a challenge to democracy but its strength. Guided by constitutional vision and moral conviction, it will continue to serve as the **torchbearer of justice**, ensuring that India remains true to its identity as a **Sovereign, Socialist, Secular, and Democratic Republic** — vibrant in spirit, humane in purpose, and steadfast in upholding the rule of law.

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