



# A Study of Judicial Activism in India

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**Abstract:** *The scope of judicial activism not a limited one. It is used to look in the matters and enforce what is beneficial for the society at large. The word "JUSTICE" has no end, this critically tells that justice is for all, 'rich or poor, strong or weak', even the king and queen were entrusted by karma to provide justice. The object behind the research paper is focused on the expansion of judicial activism in Indian democracy. The judicial activism in India had touched almost every aspect of life to provide positive justice. Many a times the right to judicial review and judicial activism act as a boon for the weaker section of society in protecting their rights by mere filling of a social interest litigation or a public interest litigation. Many a times judicial intervention into the matter of executive and legislature have provided society with the upper hand in getting justice. Judicial system is a means of providing 'JUSTICE' to all, and also to take all relevant and possible steps to protect the interest of JUSTICE. Judicial activism legal framework in Indian constitution integration towards fundamental rights.*

**Keywords:** India, Judicial system, Activism, Justice

## I. INTRODUCTION

The democratic government rests on the three pillars i.e. legislature, executive and judiciary. the three pillars of the government constitute the organs of government. The powers and the functions are provided in the constitution of India, which constitute or forms the supreme law of land. the primary function of the legislature is to make law and that of executive is to execute law made by legislature and judiciary is to enforce law and guarantee that justice is served. The Indian constitution has assigned three roles to the highest judicial system. They are as follow:

- Is to interpret the constitution to solve any ambiguity in language of any provision of the constitution, also to provide interpretation of various statues.
- As the protector of fundamental rights which are guaranteed under constitution for its citizens.
- To resolve matters transferred from the subordinate courts, appeals, etc.

Judicial activism may be described as judicial rulings suspected of being based on personal or political considerations rather than on existing law. Black's Law Dictionary defines judicial activism as a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial activism means active role played by the judiciary in promoting justice. Judicial Activism to define broadly is the assumption of an active role on the part of the judiciary. Ronald Dworkin, rejects a "strict



interpretation” of the constitutional text because it limits constitutional rights “to those recognized by a limited group of people at a fixed date of history.”

The word of Justice J.S Verma, describe Judicial Activism as “the active process of implementation of the rule of law, essential for the preservation of a functional democracy”.

The Indian constitution which was drafted in 1950 is one of the well compiled and well-planned constitutions. It is a constitution which defined powers and functions of the organs of the government, which are meant for a safe and fair indirect parliamentary democracy in India. Hence supremacy of parliament is the essential feature of our political system. The Supreme Court acts as the guardian and the protector of the constitution. It prevents parliament from enacting any legislation against the spirit and letter of the constitution. Courts in India respected reputation for creatively and genuinely discharging their assigned duty conscientiously.

The Indian constitution consists of all essential requisites for the exercise of judicial review as a written and rigid constitution, federation having division of powers and fundamental rights. Judicial review is the power conferred upon the apex court by constitution, the power to hold any law, official action based on a law, any other action by a public official that deems to be in conflict with constitution. The power of judicial review enables the Supreme Court to review the acts and the orders of the legislative and executive wings of the government. They are directed to act within their ambit for fair and smooth administration. A complete harmony between judicial review and parliamentary supremacy is an outstanding achievement of the architects of the Indian constitution.

## **II. JUDICIAL ACTIVISM: ADDING TO THE DYNAMICITY OF THE SOCIETY**

The simplest and the greatest example of judicial activism is *Marbury v. Modison*<sup>3</sup> which is landmark case in the United States of America. It formed the basis of judicial activism in America. This conflict raised the important question of what happens when an Act of Congress of United States of America conflicts with the Constitution. Chief Justice Marshall answered that Acts of Congress that conflict with the Constitution is not law and the Courts are bound instead to follow the Constitution, affirming the principle of judicial review. In support of this position Marshall looked to the nature of the written Constitution—there would be no point of having a written Constitution if the courts could just ignore it.

"To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?" Chief Justice Marshall also argued that the very nature of the judicial function requires courts to make this determination. Since it is a court's duty to decide cases, courts have to be able to decide what law applies to each case. Therefore, if two laws conflict with each other, a court must decide which law applies. Finally, Chief Justice Marshall pointed to the judge's oath requiring them to uphold the Constitution, and to the Supremacy Clause of the Constitution, which lists the “Constitution” before the “laws of the land.”

Thus, in the first time in the modern history it was recognized that judicial activism makes the law as the living law. Judicial activism is nothing more than judicial creativity which emphasizes upon evolving new juristic principles for the development of law remaining alive the reality.



### III. IMPLICATIONS OF JUDICIAL ACTIVISM

The far-reaching perspective of the new Supreme Court judgement has provided some sensational discernment into the reformation of judicial activism in India. Judicial activism in India has now provided the people with an impassioned face. The Supreme Court's eyes have exceeded and surpassed the protection of the economically and socially deprived, and the public administration. The opinions of the apex court of India, however, frequently bear a resemblance to aspirations instead of standing by judgements. Taking a look at the afteremergency legal action, it is evident that the Supreme Court has excelled and transcended legal positivism.

The Supreme Court, with the help of a generous reading of the constitutional specification, develops and expands the rights of the citizens in accordance with the state of affairs and constraints of the 'right to personal liberty' and the 'right to equality.' The apex court offered a comprehensive meaning of 'liberty, life, and personality' as per Article 21 of the Constitution of India. As far as the concept of inventive interpretation of the Indian Constitution is concerned, the Supreme Court, after seeking advice from the Chief Justice of India, eliminated the constitutionally conferred authority on the President to appoint judges, and handed over the authority to the Collegium of four judges and the Chief Justice. This describes the impact of judicial activism in India as seen nowhere else such that the authority to appoint judges is held with the judges themselves.

### IV. REASONS FOR JUDICIAL ACTIVISM

It is an uphill task to identify clear-cut reasons for judicial activism. Moreover, universal acceptance of all these reasons may not be guaranteed. But the following reasons are well accepted under Indian conditions which enforce judiciary to become hyper active during execution of judicial functions.

- (I) Judicial enthusiasm
- (ii) Legislative vacuum
- (iii) Moral pressure on judiciary
- (iv) Near collapse of responsible government
- (v) The Constitutional provisions
- (vi) Guardian of Fundamental Rights
- (vii) Public confidence
- (viii) Enthusiasm of the individual players.

The above reasons are indicative and not exhaustive. There may be so many other reasons based on the prevailing situation which alert the judiciary to become catalyst of change.

### V. REVIEW OF LITERATURE

*Justice J. S. Verma, 1996* - "Judicial activism is a sharp-edged tool which has to be used as a scalpel by a skillful surgeon to cure the malady. Not as a Rampuri knife which can kill." The three pillars of Indian democracy are the Executive, the Legislature and the Judiciary. The Legislature frames the law which is interpreted by the Judiciary and the Executive executes it. When there are lapses on the part of the Executive and/or the Legislature, when the Legislature becomes



adventurous and the Executive becomes autocratic, careless and insensible, judicial activism becomes imperative to deliver justice.

**A. M. Ahmadi**, has rightly said, “In recent years, as the incumbents of Parliament have become less representative of the will of the people, there has been a growing sense of public frustration with the democratic process. ... This is the reason why the (Supreme) Court had to expand its jurisdiction by, at times, issuing novel directions to the executive; something it would never have resorted to had the other two democratic institutions functioned in an effective manner”

**Tanenbaum, 2005**-In India judicial activism has become a subject of debate. To the critics it is the encroachment into the functions of the other organs of democracy, it is judicial terrorism. It is argued that judicial activism is “legislating from the bench” in the name of interpreter of the law. Sometimes it is accused that the judges are giving ruling on the basis of their political affinity and personal emotion. Some are decrying that judiciary is destroying legislature “step by step, brick by brick”.

**Cardozo, 1927**- According to this theory inactivity, laziness, incompetence, indifference, indiscipline, lack of integrity, corruption, greed and disrespect of law by the legislature and/or the executive create a power vacuum. Nature never allows vacuum to continue and it becomes necessary for the remaining organ i.e., the judiciary to widen its purview and to fill in the vacuum. In this regard it is again pertinent to quote the statement of Benjamin Cardozo. “He (the judge) legislates only between gaps. He fills the open spaces in law. How far he may go travelling beyond the walls of interstices cannot be staked out for him on a chart”.

**Justice Mahmud, 1893**- Law is originated from two sources. The primary source is through legislature and the secondary source is the judge-made law through judicial interpretation of the existing legislature. Judicial activism emerges out of these judge-made laws. The evidence of judicial activism in India can be traced back in 1893. Allahabad High Court judge S. Mahmud held that the pre-condition for hearing a case would be accomplished only when someone speaks. In the case, the under trial was not in a position to afford a lawyer.

**Article 13**-The power of judicial review has been expressly provided in the Article 13 of the Indian Constitution. Article 13 of the Indian Constitution prevents legislatures to make any law which “may take away or abridge the fundamental rights” guaranteed by the Constitution. Any law is declared as void if it is “inconsistent with or in derogation of the fundamental rights”. Constitutional basis of the judicial review has been provided by Article 13 as it entrusts the Supreme Court and the High Courts the power to interpret the pre-constitutional laws and to settle whether they match with the values and principles of our present constitution. If there is any conflict, they become deemed ineffective until their adoption through amendments. But they must be constitutionally compatible, otherwise any deviation makes them void.

**Gopalan case, 1950** - The Supreme Court of India started as a technocratic Court when traditions of British courts were followed but gradually started following the path of activist court. The first landmark case in this regard is the A.K. Gopalan v. State of Madras. The contention of the writ was to ascertain whether detention without trial (under Preventive Detention Act 1950) was not violation of fundamental rights under Articles 14, 19, 21 and 22. Preventive Detention Act was held



valid by four judges but two judges inferred contrary conclusions. The challenge failed but this case set up a new legal trend which was noticeable in subsequent years.

**Daniel Latifi's case (2001)**- is the best instance of judicial activism where five judges bench of the Supreme Court interpreted only the section 3(1)(a) of the Muslim Women's (Right to Divorce) Act that obliged the husband to pay maintenance and future provisions within the period of iddat and thus saved the deviation of the Act from the Articles 14, 15 and 21. The recent Singur case (2016) is a good example of judicial activism when the apex Court cancelled the acquisition of land and ordered to revert back to the farmers as it was not for public purpose.

## VI. OBJECTIVE

The present study is taken up with the aim of identifying Judicial Activism in India. The following are the specific objectives of the study.

- To present an overview of the Judicial Activism in India.
- To understand the Judicial Activism in India.
- To study the act related to Judicial Activism in India. written in the constitution

## VII. RESEARCH METHODOLOGY

The Research has been based on conceptual research work. A depth study was carried out. This paper discusses the legal aspects related of study on Judicial Activism in India. to understand the depth of the concept behind study on Judicial Activism in India. the values that Judicial Activism in India holds and to understand the importance of Judicial Activism in India.

Secondary data has been used and studies from the previous researchers to identify various aspects related to the topic. Literature review and introduction has been preparing with the help of research paper publications, article, and other internet sources.

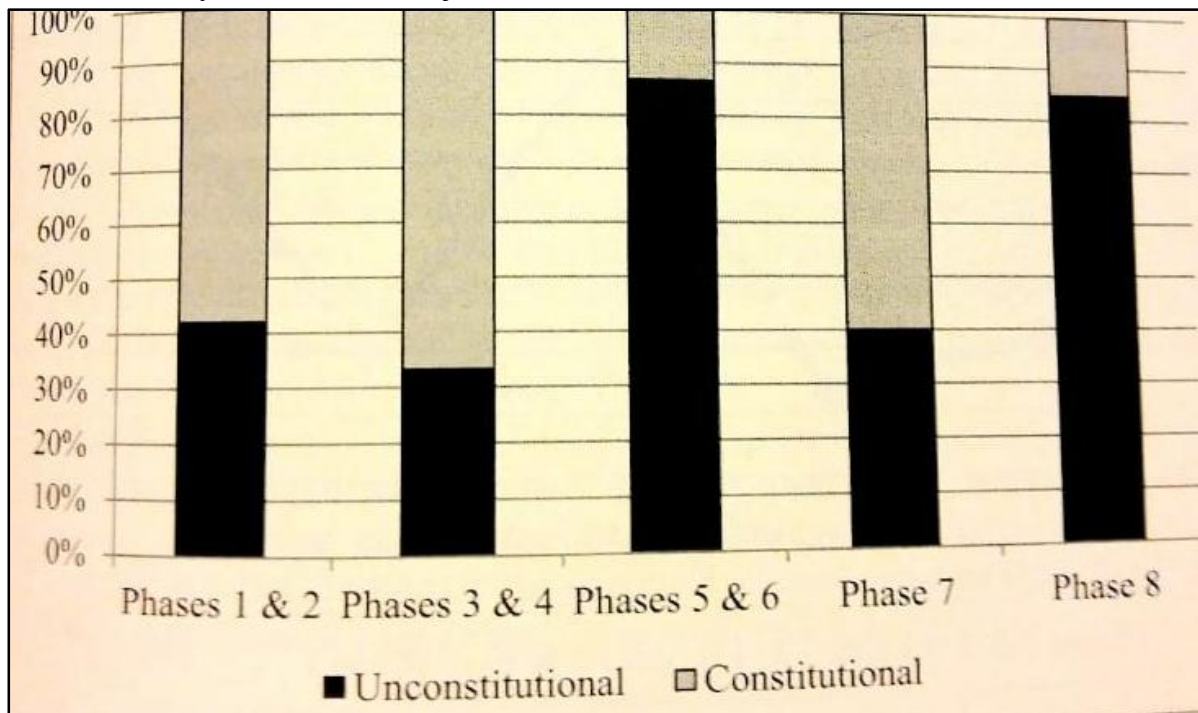
## VIII. FINDINGS AND DISCUSSION

### 8.1 MAJOR FINDINGS

- Public Interest Litigation (PIL), which is seen as a relaxation on the traditional rule of locus standi. Judicial activism has primarily arisen due to the failure of the executive and legislatures to act. As a result of that, judicial activism is triggered when the courts become activists and compel the relevant authority to act. This has led lawmaking in India to assume new dimensions.
- Frequent interventions by the judiciary, which sometimes borders on judicial adventurism, tend to weaken the functioning of the other two branches of the constitution. Judicial activism is the use of judicial power to articulate and enforce what is beneficial for society whereas judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative and executive, thereby encroaching upon the legislature and executive's domains.
- The understanding of the difference between the two is critical for the smooth functioning of a constitutional democracy with separation of powers as its central characteristic and supremacy of the constitution as the basis of our nation.



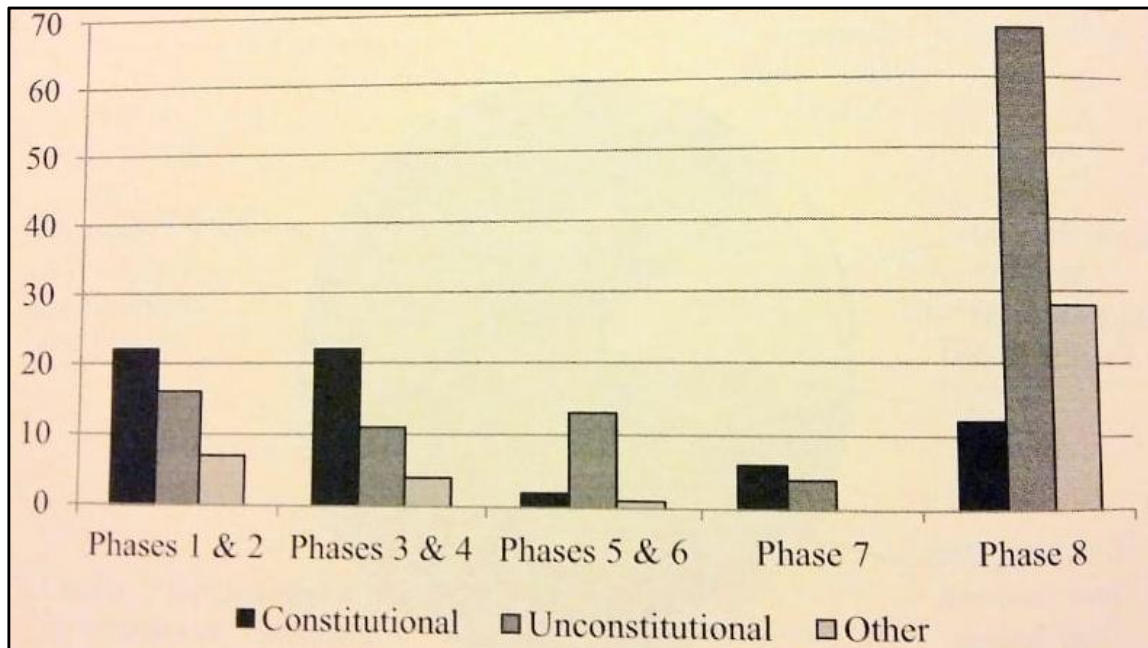
- Judicial overreach challenges the doctrine of separation of powers, which should be considered a basic structure of our constitution. The task of the courts should be to act in a way that compels the authorities to act and to pass executive orders rather than substitute judicial orders for administrative ones.
- After all, unlike the other two branches of the constitution, the judiciary as an institution is not directly accountable to people. This very lack of accountability requires the judiciary to practice self-restraint, act responsibly within the ambit of its constitutional powers. Judiciary, like all other institutions in a democracy, should know and understand its limits. Our country cannot be run on judicial decrees.



**FIGURE 1: THE RATIO OF REPORTED UNCONSTITUTIONAL TO CONSTITUTIONAL RULINGS IN DIFFERENT PERIODS**

**SOURCE: <https://www.lprn.org.pk/?p=2539>**

Figure Seven indicates the ratio of reported unconstitutional to constitutional rulings in different periods. It is interesting that in the first wave of judicial activism (Phases 1 and 2), the ratio of unconstitutional rulings vis-à-vis constitutional rulings was roughly 1:1, whereas in the second (Phases 5 and 6) and third waves (Phase 8), the ratio increased to 5.5:1. Clearly, judicial activism in the first wave was much more balanced and restrained than in the subsequent waves.



**FIGURE 2: SHOWS THE RELATIVE FREQUENCY OF REPORTED RULINGS ACCORDING TO THREE GENERAL CATEGORIES**

**SOURCE:** <https://www.lprn.org.pk/?p=2539>

Figure shows the relative frequency of reported rulings according to three general categories: (1) constitutional—those that uphold the constitutionality of executive action or challenged legislation; (2) unconstitutional—those that declare executive action or legislation unconstitutional, including interim orders, rolling reviews, and declaratory or directory cases that indicate a clear posture of the court toward a ruling of unconstitutionality; and (3) other—cases that have been admitted or registered for hearing, are at an initial inquiry stage, are interim judgments, or are limited to setting out guidelines, but in which the court reserves its opinion on the merits

## IX. CONCLUSION

Judiciary is the weakest organ of the State. Judges do not have the power of the sword or the purse. Their strength rests on the public confidence, public faith. This faith establishes the constitutionality of the court and judicial activism. It is not the judicial governance but it is working within the limits of Constitution to authenticate the reasonableness or unreasonableness of the functions of the other organs of the government with an aim to provide justice to the common people. In doing so the judiciary must be fair, faceless, impartial, impassive and humble interpreter of law.

But the problem arises when the judges become overactive and overenthusiastic to invade into the peripheries which are no pasdaran for them and this has become a fashion in recent times. Exceptional powers should be retained for exceptional occasions, overuse devaluates its efficacy and results in incongruous effect. There must be fine line between the judicial activism and judicial overreach. If activism becomes overreach institutional balance is bound to be destabilized. Courts are not for running the country; it is the job of the other wings of the government. Courts must be sympathetic to the people into every decision of the government. The apex Court should draw the



attention of the other wings to solve the problems rather than it emerging as a single savior of the entire society.

Judicial activism works in a manner such that the courts, subsequent to listening to both the sides, advance from their traditional position of decisiveness to the place of the legislature and develop new legislations, new policies, and new rules. This authority of judicial review bestowed on these Courts, to announce orders and legislations as violative of the Constitution, is referred to be a fragment of the fundamental arrangement of the Indian Constitution. The far-reaching perspective of the new Supreme Court judgement has provided some sensational discernment into the reformation of judicial activism in India. Judicial activism in India has now provided the people with an impassioned face. Judicial Activism has a great impact on the legal front and taking a look at the after-emergency legal action, it is evident that the Supreme Court has excelled and transcended legal positivism.

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