



Original Article

An Analytical Study of Judicial Activism and Judicial Independency

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Abstract

This research undertakes an analytical study of judicial activism and judicial independence, two foundational pillars of a democratic judiciary. Judicial activism refers to the judiciary's proactive role in upholding constitutional values, expanding fundamental rights, and addressing socio-political issues through the progressive interpretation of laws. Judicial independence, on the other hand, ensures that the judiciary functions free from external pressures, especially from the legislature and the executive, thereby safeguarding the rule of law and doctrine of separation of powers. This study explores the evolution, significance, and implications of both concepts in the Indian constitutional framework with reference to landmark judicial pronouncements such as Kesavananda Bharati v. State of Kerala, Maneka Gandhi v. Union of India, and Vineet Narain v. Union of India. The research further examines the tensions that arise when activism is perceived as judicial overreach, potentially encroaching on legislative or executive domains. Using doctrinal methodology, supported by case law analysis and constitutional interpretation, this study aims to strike a balance between necessary judicial intervention and the preservation of institutional autonomy. The findings reveal that, while judicial activism has played a pivotal role in strengthening democracy and protecting citizens' rights, it must be exercised by restraining judicial independence and maintaining institutional credibility. This paper concludes with suggestions to ensure that both principles coexist harmoniously to uphold constitutional supremacy and justice delivery in India.

Keywords: Judicial Activism, Judicial Independency, Constitutional Interpretation, Separation of Powers, Rule of Law, Public Interest Litigation (PIL), Judicial Overreach, Fundamental Rights

Introduction

The judiciary in a democratic system serves as the guardian of the constitution, the protector of fundamental rights, and the ultimate arbiter in matters of legal and constitutional interpretation. Within this dynamic framework, two significant and often interrelated concepts emerged: judicial activism and judicial independence. While judicial activism reflects the judiciary's proactive role in ensuring justice and addressing social wrongs through innovative legal interpretations, judicial independence represents the essential freedom of the judiciary from external influences, particularly from the executive and legislature, ensuring impartiality and fairness in the justice delivery system.

In the Indian context, judicial activism has gained prominence since the post-emergency era, particularly through the expansion of Public Interest Litigation (PIL) and broadening of the scope of Articles 14, 19, and 21 of the Constitution. The judiciary has taken the role of a social engineer, striving to uphold constitutional morality and correct systemic failure. Landmark judgments such as Kesavananda Bharati v. State of Kerala, Maneka Gandhi v. Union of India, and Vishaka v. State of Rajasthan have showcased the judiciary's activist stance on defending democratic principles and human rights. Simultaneously, judicial independence remains the cornerstone of the rule of law. The doctrine of separation of powers necessitates a judiciary that can function without fear or favor, ensuring that justice is not only done but also seen to be done. The independence of the judiciary is guaranteed by various constitutional provisions, such as the security of tenure, fixed service conditions, and the power of judicial review.

However, the expansion of judicial power through activism has also raised concerns regarding judicial overreach, wherein the judiciary is perceived to be encroaching on the legislature and executive domains. This evolving debate invites a closer examination of the balance between activism and independence—how far courts can deliver justice without compromising neutrality and institutional integrity.

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This research aims to critically analyze the growth, relevance, and consequences of judicial activism and judicial independence in India. It also explores the intersection and possible conflicts between these concepts within the broader framework of constitutional governance. Through doctrinal research and case analysis, this study seeks to contribute to the ongoing discourse on the proper role of the judiciary in a vibrant democracy like India.

Review of Literature:

The concepts of judicial activism and judicial independence have been central themes in constitutional law research. Several scholars, jurists, and legal experts have examined these doctrines from historical, philosophical, and practical perspectives. This review surveys existing literature to identify gaps, trends, and key arguments relevant to the present study.

1. M.P. Jain – Indian Constitutional Law

Jain offers an in-depth analysis of the Indian constitutional framework and the evolving role of the judiciary. He outlines how judicial review has expanded over time, particularly through public interest litigation (PIL), which has become a key instrument in judicial activism. Jain emphasizes the balance between judicial restraint and activism and warns against judicial overreach.

2. Granville Austin – The Indian Constitution: Cornerstone of a Nation

Austin traced the constitutional history of India and highlighted the role of the judiciary in maintaining constitutional supremacy. He portrays the judiciary as a “sentinel on the qui vive” and praises its active interventions during moments of legislative and executive failure. However, he also questioned the limits of such activism in a democratic society.

3. H.M. Seervai – Constitutional Law of India

Seervai took a more conservative stance, criticizing excessive judicial activism. He warns that activism may compromise judicial neutrality and independence, particularly when the judiciary oversteps policy-making domains reserved for the legislature and executive. His analysis highlights the tension between activism and constitutional boundaries.

4. Upendra Baxi – The Indian Supreme Court and Politics

Baxi acknowledged the proactive role of the Indian Supreme Court in social justice and human rights, especially during the post-emergency era. However, he also emphasizes that activism should be grounded in constitutional morality and not be a substitute for legislative action.

5. S.P. Sathe – Judicial Activism in India: Transgressing Borders and Enforcing Limits

Sathe provided a detailed and balanced account of judicial activism in India. He categorizes different forms of activism ranging from legitimate intervention to transgressive overreach. Sathe supports judicial creativity in upholding rights, but stresses that such actions must be within the bounds of the Constitution to avoid undermining judicial independence.

6. Aharon Barak – The Judge in a Democracy

Although focused on Israel, Barak’s work has international relevance. He argued that judicial activism is essential in modern democracies, where legislatures may fail to protect minority rights. However, he also emphasized the need for judicial independence and accountability to coexist harmoniously.

7. Law Commission of India Reports (230th Report on Judicial Reforms)

This report addresses the need to maintain judicial independence through transparent appointment mechanisms, ensuring that judges are insulated from political pressure. This highlights how activism should not come at the cost of the credibility and neutrality of the judiciary.

8. Prashant Bhushan – The Case That Shook India

Bhushan critically examines the famous Kesavananda Bharati and ADM Jabalpur cases, illustrating how the judiciary can protect and compromise fundamental rights. He supports activism, but is critical of judicial inconsistency and the dangers of arbitrary interventions.

9. Rajeev Dhavan – Scholarly Articles on PIL and Judicial Accountability

Dhavan is a vocal critic of unchecked judicial activism, especially in the guise of PILs. He emphasizes the need for institutional accountability, fearing that activism may sometimes lead to populism rather than principled jurisprudence.

10. Justice V. R. Krishna Iyer – Judicial Writings

Justice Iyer pioneered judicial activism in India. His judgments reflect a deep concern for the poor and the marginalized. His writings advocate a progressive, activist judiciary but also underline the importance of independence from political and corporate influence.

Research Methodology:

1. Research Design

This study adopted a doctrinal and analytical research methodology, primarily focusing on the examination of legal principles, judicial decisions, constitutional provisions, and scholarly opinions. The aim is to critically analyze the concepts of judicial activism and judicial independence within the Indian constitutional and legal framework.

2. Nature of Study

The research is qualitative in nature and based on a descriptive-analytical approach. It involves interpreting legal doctrines, analyzing landmark judgments, and understanding the evolution of judicial thought in India. This study also incorporates comparative elements with other relevant jurisdictions.

3. Sources of Data

a. Primary Sources

Constitution of India – especially Articles 32, 50, 124-147, etc.

Judgments of the Supreme Court and High Courts, particularly those related to:

Judicial activism (e.g., Kesavananda Bharati, Vishaka, MC Mehta, Olga Tellis, etc.)

Judicial independence (e.g., S.P. Gupta, second and third judge cases, NJAC case, etc.)

Statutory provisions and amendments affecting the judiciary

b. Secondary Sources

Textbooks and legal commentaries on Constitutional Law
Research papers and journals (e.g., Indian Bar Review, Journal of Indian Law Institute).

Law Commission Reports

Articles from online legal databases like SCC Online, Manupatra, JSTOR, etc.

4. Methods of Data Analysis

The collected data is analyzed through:

Case law analysis: Interpreting judgments and understanding judicial reasoning

Comparative analysis: Comparing judicial trends across time and sometimes with other democratic nations

Doctrinal analysis: Understanding legal principles and their application

Critical analysis: Evaluating whether judicial actions adhere to or deviate from constitutional mandates

5. Scope and Limitations

The study is confined to the Indian context, with occasional references to other jurisdictions, such as the US and the UK, for comparative insights.

It does not involve empirical fieldwork or interviews.

The focus is on judicial decisions post-independence, with an emphasis on the post-1970 period, when judicial activism notably expanded.

Data Analysis

This section critically analyses key judicial pronouncements, trends, and constitutional interpretations that demonstrate the evolving balance between judicial activism and judicial independence in India. The analysis was based on doctrinal research from primary sources, such as judgments and constitutional texts, and secondary sources, including scholarly literature and law commission reports.

1. Judicial Activism through Landmark Judgments

The analysis of key cases reveals how the judiciary has assumed an increasingly proactive role, particularly during the post-emergency period.

a. Kesavananda Bharati v. State of Kerala (1973)

Introduced the Basic Structure Doctrine, limiting parliamentary power to amend the Constitution.

Marked the beginning of judicial creativity in interpreting constitutional provisions.

Reflected judicial independence in upholding constitutional supremacy.

b. Maneka Gandhi v. Union of India (1978)

Expanded the interpretation of Article 21 – Right to Life and Personal Liberty.

Introduced the concept of due process of law in India.

Showcased judicial activism in protecting individual liberties against executive arbitrariness.

c. S. P. Gupta v. Union of India (1981)

Highlighted the interference of the executive in judicial appointments.

The case favored executive primacy, which was later overruled in subsequent judges' cases.

It raised concerns over the independence of the judiciary.

d. Vishaka v. State of Rajasthan (1997)

The court created guidelines for the prevention of sexual harassment in the workplace in the absence of legislation.

A prime example of judicial legislation, showing how activism can fill legislative gaps.

Strengthened access to justice and rights for women.

2. Trends in Public Interest Litigation (PIL)

PIL has become a tool of judicial activism, often blurring the lines between the judicial and legislative domains.

It democratized access to justice (e.g., MC Mehta cases, Bandhua Mukti Morcha).

Courts addressed environmental, human rights, and corruption issues.

However, critics argue that some PILs led to judicial overreach as courts began to interfere with policy matters.

3. Analysis of Judicial Independence Safeguards

Constitutional provisions ensure judicial independence through:

Security of tenure (Article 124–125)

Fixed service conditions

Protection from arbitrary removal

Separation of powers (Article 50 – Directive Principle)

Judicial independence has been tested by:

Executive interference in appointments.

Delay in judicial appointments and transfers.

Pressure through contempt laws or legislative criticism.

4. Critical Balance: Activism vs. Overreach

Risks compromising judicial neutrality.

Raises questions about accountability mechanisms, since the judiciary is largely self-regulated.

Examples of perceived overreach:

National Anthem Case (2016): Mandating the playing of anthem in cinemas.

Ban on firecrackers, liquor ban on highways: intervention in policy without deep legislative consultation.

5. Comparative Jurisdictional Insights

In the US and UK:

Judicial activism exists, but is tempered by strong precedents, judicial restraint, and institutional norms.

Indian judiciary has shown greater willingness to engage in socio-economic policymaking.

Recommendations:

Based on an analysis of constitutional provisions, judicial precedents, academic scholarship, and comparative insights, the following recommendations are proposed to ensure a healthy balance between judicial activism and judicial independence in India:

1. Codification of Guidelines for Judicial Activism

There is a need for the Supreme Court or Parliament to frame the guiding principles that clearly define the scope and limits of judicial activism. This will help prevent arbitrary judicial interference in legislative and executive functions, while preserving the judiciary's power to intervene in exceptional cases.

2. Strengthening Judicial Accountability Mechanisms

To ensure that judicial activism does not lead to the overreach or misuse of power, judicial accountability must be institutionalized without compromising independence.

Discussions around the National Judicial Accountability Commission (NJAC) with proper checks and balances.

Judicial conduct is subject to review through internal ethical committees or an independent oversight body.

3. Reform of the Collegium System

Although the collegium system protects judicial independence from executive interference, it lacks transparency. Recommended reforms include the following. Public disclosure of selection criteria and reasons for judicial appointments and transfers.

Inclusion of non-judicial members, such as eminent jurists or academicians, to ensure broader representation and minimize bias.

4. Avoidance of Judicial Overreach in PILs

The judiciary must exercise restraint in public interest litigation (PILs), especially when they require deep policy or technical expertise. Before issuing wide-ranging orders.

Courts should consider consulting domain experts or amicus curiae.

Encourage legislative or executive solutions over judicial directives when appropriate.

5. Capacity Building and Judicial Training

Judges, especially at the lower levels, should be regularly trained in:

Constitutional interpretation and limitations

Socio-economic rights adjudication

Ethics and judicial independence: This reduces inconsistencies in judgments and improves the quality of judicial reasoning.

6. Encouragement of Judicial Restraint in Policy Matters

While the judiciary must protect its rights, it must avoid substituting its views with those of elected representatives in policy or budgetary decisions. Judicial activism must be used as a last resort when other democratic mechanisms fail.

7. Enhancing Transparency in Judicial Functioning

To promote public confidence and accountability:

Live streaming of constitutional bench proceedings (already recommended by the SC)

Publishing of performance and pendency statistics

Making judgments more accessible through summaries and translations in regional languages

8. Strengthening the Separation of Powers

The three organs of the state must respect the constitutional boundaries. Constructive dialogue and collaboration should replace conflict. Judicial independence is protected only when the legislature and executive function are within their mandates.

9. Promoting Public Legal Awareness

Many instances of judicial activism stem from the absence of public awareness or failure of other institutions. Empowering citizens through Legal literacy programs

Constitutional education in schools reduces the judiciary's burden as the first and last resort for public grievances.

10. Comparative Learning from Other Democracies

India can learn from the practices of other constitutional democracies such as the USA, the UK, Canada, and South Africa:

Judicial activism is tempered by strict adherence to judicial precedent

Clear standards exist for judicial ethics and independence

Courts often use declaratory judgments rather than enforceable directives

Conclusion:

This research critically examined the twin doctrines of judicial activism and judicial independence, analyzing their evolution, intersection, and significance in the Indian legal system.

Judicial activism has emerged as a powerful instrument in India, particularly in the post-emergency era, enabling courts to expand the scope of fundamental rights and address public grievances through Public Interest Litigation (PIL). Landmark judgments, such as *Kesavananda Bharati*, *Maneka Gandhi*, *Vishaka*, and *MC Mehta*, have demonstrated how judicial intervention can serve as a catalyst for social and environmental justice. Activism has allowed the judiciary to fill legislative gaps, uphold constitutional morality, and act as a protector of the marginalized.

Simultaneously, the independence of the judiciary remains the cornerstone of constitutional governance. The credibility of judicial decisions, especially in activist matters, depends on the institutional autonomy and impartiality of the judges. Mechanisms such as the collegium system, security of tenure, and separation of powers are the foundational safeguards against executive and legislative encroachment. However, growing concerns about judicial overreach, lack of accountability, and opacity in judicial appointments have raised important questions about the functioning of the judiciary and its long-term legitimacy.

The study finds that judicial activism and judicial independence are not inherently contradictory, but must be balanced. While activism allows the judiciary to respond to urgent public issues, unchecked use may erode public trust and upset the balance of power. Independence, on the other hand, is essential to ensure that judicial decisions are free from external influence, but should be complemented by mechanisms of transparency and accountability.

Therefore, the future of the Indian judiciary lies in maintaining this delicate equilibrium—being assertive when rights are at stake yet restrained when policy choices belong to the legislature or executive. A responsible, independent, and constitutionally bound judiciary is not only essential for the protection of individual freedoms, but also for the sustenance of India's democratic fabric.

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Reference:

1. Austin, G. (1999). Working a Democratic Constitution: A History of the Indian Experience. Oxford University Press.
2. Baxi, U. (1980). The Indian Supreme Court and Politics. Eastern Book Company.
3. Bhushan, P. (2018). The Case That Shook India: The Verdict that Led to the Emergency. Penguin Books.
4. Barak, A. (2006). The Judge in a Democracy. Princeton University Press.
5. Dhavan, R. (2008). Judicial activism and the future of Indian democracy. Indian Journal of Constitutional Law, 1(1), 35–60.
6. Jain, M. P. (2021). Indian Constitutional Law (8th ed.). LexisNexis.
7. Seervai, H. M. (2013). Constitutional Law of India: A Critical Commentary (4th ed.). Universal Law Publishing.
8. Sathe, S. P. (2003). Judicial Activism in India: Transgressing Borders and Enforcing Limits. Oxford University Press.
9. Sripati, V. (2001). Human rights in India: Fifty years after independence. Denver Journal of International Law and Policy, 29 (1), 93–142.
10. Jacobsohn, G. J. (2003). The Wheel of Law: India's Secularism in Comparative Constitutional Context. Princeton University Press.
11. Chandrachud, A. (2017). Republic of Rhetoric: Free Speech and the Constitution of India. Penguin Viking.
12. Krishna Iyer, V. R. (1985). Justice and Beyond. Deep & Deep Publications.
13. Mehta, P. B. (2007). The rise of judicial sovereignty. Journal of Democracy, 18(2), 70–83.
14. Singh, M. P. (2002). V. N. Shukla's Constitution of India (10th ed.). Eastern Book Company.
15. Law Commission of India. (2009). 230th Report on Reforms in the Judiciary. Government of India.