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The Impact of Judicial Activism on the Enforcement of Fundamental Rights in India

KARUNA¹

ABSTRACT

One prominent characteristic that characterizes the Indian legal system is the prevalence of judicial activism and the near institutionalization of governance through the court. This form of activism is frequently supported by legal professionals specializing in activism, individuals engaged in social activism, journalists, and various other contributors. The apex court of India has demonstrated a commendable ability to safeguard and advance fundamental rights through the application of inventive judicial power. This approach, commonly referred to as judicial activism, has proven to be effective in its endeavors. The judiciary enhances its function through the utilization of public interest litigation (PIL), employing various techniques and procedures. This study seeks to provide a comprehensive overview of the phenomenon of judicial activism & Public Interest Litigation (PIL) in their role of advancing the fundamental rights of marginalized and vulnerable populations.

Keywords: *judicial activism, fundamental rights, public interest litigation, judicial precedents.*

I. INTRODUCTION

The significant shift in the judicial function within contemporary welfare societies can be linked to the implementation of democratic mechanisms that serve as checks and balances. These mechanisms aim to successfully uphold the Bill of Rights or fundamental freedoms, while also ensuring the well-being of individuals who are oppressed or marginalized.² Despite the constitutional integration of the aforementioned principles, it is not uncommon for governments to exhibit dictatorial tendencies, resulting in the unfortunate plight of the marginalized and disenfranchised individuals. In recent times, the judiciary has taken on an activist role due to its obligation in preserving constitutional checks and balances & safeguarding the dignity of citizens in the face of a dominant administration.³ However, the legality of assuming an activist

¹ Author is a Research Scholar at School of Law, MVN University, India.

² Kavanagh, A. (2003). Participation and judicial review: a reply to Jeremy Waldron. *Law and Philosophy*, 22(5), 451-486.

³ Cepeda-Espinosa, M. J. (2004). Judicial activism in a violent context: The origin, role, and impact of the Colombian Constitutional Court. *Wash. U. Global Stud. L. Rev.*, 3, 529.

role has frequently been challenged based on democratic principles such as representation & responsibility. Moreover, it has been argued that the judicial system exhibits institutional ineptitude due to the judiciary's inherent limitations in legislating and making certain judgements.

During the developmental phase of Indian constitutionalism, the judiciary placed significant emphasis on political impartiality and upheld its conservative nature by prioritizing the protection of individual fundamental rights over the welfare of disadvantaged groups such as the poor and marginalized. The administration, in its pursuit of promoting the overall well-being of society, has expressed a desire to acquire further authority to restrict fundamental rights. This objective is to be achieved through proposed constitutional revisions that aim to constrain the extent of judicial scrutiny. The authority wielded by the parliament and the government experienced a notable expansion, accompanied by a corresponding rise in instances of misuse, ultimately reaching a climax during the period of 1975-77.⁴ The topic of discussion pertains to the intersection between emergency situations and political dictatorship. Subsequently, a decline in public trust towards democratic institutions prompted individuals to increasingly turn to the Court as an alternative avenue for redress. In response, the Court gradually adopted an activist stance.

II. THE PHENOMENON OF JUDICIAL ACTIVISM: AN ANALYSIS OF ITS EXPANSION AND EVOLUTION

Judicial activism can be defined as the broad utilization of judicial authority or the bold application of judicial power to bring about societal transformation by means of policy formulation. Initially, activism was commonly perceived as the judicial practice of invalidating legislative enactments because to their conflict with the requirements of a written constitution. However, this perspective has faced significant criticism throughout time. The foundations of judicial activism can be attributed to the constitutional system, which encompasses key elements such as the separation of authority, checks & balances, federalism, bicameralism, representation, an independent judiciary, and judicial review. Judicial activism is occasionally described as a gradual exertion of judicial authority or the utilization of judicial power to bring about socioeconomic and political transformations via the formulation of policies.

The phenomenon of judicial activism in the Indian context pertains to the proactive engagement of the nation's judiciary in the interpretation of laws, protection of fundamental rights, and

⁴ Sahgal, N. (2017). *Indira Gandhi: Tryst with Power*. Penguin Random House India Private Limited.

resolution of societal concerns.⁵ The use of this methodology, characterized by innovative and expansive analyses of constitutional provisions, has resulted in noteworthy societal, economic, and environmental transformations. Significant milestones encompass pivotal legal cases pertaining to environmental conservation, social justice, & human rights. Public Interest Litigation (PIL) has emerged as a pivotal mechanism facilitating the growth of judicial intervention in response to public concerns. Through PIL, the courts are empowered to directly engage with and redress issues of public interest. Nevertheless, persistent obstacles encompass issues related to judicial overreach and the successful execution of policies. However, it is important to acknowledge that judicial activism in India has had a profound and influential effect, playing a pivotal role in establishing the country's legal framework and making substantial contributions towards social advancement and the administration of justice.

III. SURGE IN ACTIVISM AT THE ENACTMENT OF THE CONSTITUTION

The judicial role in India, as articulated in the constitution, can be seen as a blend of the judicial systems in England and the United States. However, it is worth noting that the conception of individual rights as a constraint on government powers was not fully embraced, as Parliament was granted the authority to amend Part III of the Constitution. However, during its early stages, the legalist and conservative Supreme Court faced criticism for nullifying many progressive legislations that were intended to achieve social justice. This led to the perception that the courts were a significant obstacle in the socio-economic transformation of Indian society. This phenomenon occurred despite the judiciary's recognition of the Parliament's relative primacy and the imposition of three key constraints on the authority of judicial review: constitutional limitations, intrinsic limitations, and self-imposed limitations.⁶ During that period, it was noted that the judiciary shown a heightened level of engagement in safeguarding fundamental rights, particularly the right to equality and property. This resulted in the courts issuing stay orders to halt the execution of Zamindari abolition laws, citing a breach of Article 14 of the Constitution. In a similar vein, the Court rendered a verdict declaring the Madras Reservation scheme to be unconstitutional. These developments facilitated the introduction of the first amendment to the Constitution, which aimed to safeguard certain laws from being subject to judicial review. During his discussion on the first amendment, Nehru expressed his concern that the Constitution, which he described as a remarkable structure, was being appropriated by judges

⁵ Makam, G. (2023). Statutory Interpretation in the Age of Judicial Activism: Striking the Right Balance. *Available at SSRN 4475466*.

⁶ Cassels, J. (1989). Judicial activism and public interest litigation in India: Attempting the impossible? *The American Journal of Comparative Law*, 37(3), 495-519.

and lawyers. The aforementioned constitutional modifications significantly limited the authority of the judiciary, thereby supporting the claim that our Constitution is unique in requiring safeguards against its own potential drawbacks. Fortunately, Nehru shown effective restraint in refraining from engaging in any form of assault on the judiciary, instead choosing to uphold constitutional values and democratic principles. During the initial stage of judicial activism, the Supreme Court made a distinction between fundamental rights and directive principles, asserting that the former is subject to judicial review while the latter is not. As a result, the directive principles were given less prominence. The Court's actions resulted in the disapproval of the political establishment, and it is noted that in the Indian context, such differentiation would have a negative impact on the government's efforts to alleviate the suffering of the impoverished and marginalized individuals. The aforementioned approach remained dominant until the ruling in *Keshavananda*,¹⁵ which subsequently elevated the directing principles to a position of prominence. The rivalry between the judiciary and the political establishment arises from the courts' prioritization of fundamental rights and the regime's dedication to the welfare of the impoverished. This struggle has led to the implementation of various constitutional changes that restrict judicial review.

IV. THE PHENOMENON OF POST-EMERGENCY JUDICIAL ACTIVISM

The 1975-77 Emergency saw the political elites declare scorn for the sanctity of the constitution and the collapse of the Congress party due to it becoming a heaven for political opportunists seeking government employment. The presence of systemic corruption and governmental lawlessness is evident. The government, which professed its dedication to the well-being of the populace, was responsible for perpetuating acts of injustice. A significant number of individuals were detained in correctional facilities as individuals awaiting trial, while a considerable population of young individuals underwent castration procedures and were afterwards traded as eunuchs. Additionally, women & children were subjected to the practice of being bought and sold, while convicts were subjected to the act of having their vision impaired. The distribution of welfare benefits failed to effectively reach individuals in need, resulting in disproportionate enrichment of intermediaries. The practice of bonded labor persisted, and there was a lack of enforcement on minimum wage legislation.⁷ There is a growing trend among those who have lost faith in democratic institutions to seek recourse through legal channels, particularly by filing public interest litigations against government actions perceived as unlawful. The judiciary began to assume a prominent position in uncovering the absence of legal order, while

⁷ Benach, J., Muntaner, C., & Santana, V. (2007). Employment conditions and health inequalities.

simultaneously endeavoring to validate the practice of judicial activism. The phenomenon of post-emergency activism, initially focused on the stringent protection of prisoners' rights and the rights of other marginalized groups, gradually expanded to encompass the enforcement of socio-economic rights as outlined in Part IV Directive Principles of the Constitution.⁸ Moreover, it was subsequently expanded in order to protect the principles enshrined in the constitution and promote ethical conduct in the political sphere.

V. FACTORS OF JUDICIAL ACTIVISM

Judicial activism has primarily emerged as a result of the following factors:

- Judicial activism has arisen primarily due to the lack of action on the part of the executive and legislative branches.
- It has also emerged as a response to the perception that the legislature and executive have failed to fulfill their responsibilities.
- Judicial activism occurs because of a system that has been plagued by inefficiency and inaction.

The infringement upon fundamental human rights has additionally resulted in the phenomenon of judicial activism. Considering certain instances of constitutional provisions being misused and abused, the phenomenon of judicial activism has emerged as a consequential factor.

In the event of a hung parliament characterized by a government that exhibits significant weakness and instability.

(ii) In instances when governments are unable to safeguard the fundamental rights of their citizens or establish a fair, effective, and equitable system of law and administration,

(iii) Ultimately, the court may autonomously endeavor to broaden its jurisdiction and allocate more responsibilities and powers to itself.

VI. THE DOMAINS OF JUDICIAL ACTIVISM

Over the course of the last decade, numerous examples of judicial activism have garnered significant attention. The judiciary has expanded its involvement in other domains, including health, child labor, political corruption, environment, and education. The judiciary has demonstrated a strong dedication to principles of participatory justice, fair procedural standards, timely access to justice, and the prevention of arbitrary state action through its handling of multiple cases involving Bandhua Mukti Morcha, Bihar Under trials, Punjab Police, Bombay

⁸ Chowdhury, P. R. (2011). Judicial activism and human rights in India: a critical appraisal. *The International Journal of Human Rights*, 15(7), 1055-1071.

Pavement Dwellers, and Bihar Care Home cases.

VII. THE FUNDAMENTAL RIGHT TO LIFE AND THE CONCEPT OF JUDICIAL ACTIVISM

This study focuses on evaluating the performance of judges and their approach to modifying the provisions of Article 21. The concept of Due Process, as outlined in the American Constitution, was ultimately expressed as the phrase "procedure established by law." The current topic will oversee the implementation of the arrangement considering the changes brought about by the Maneka Gandhi Judgment. The concept of Public Interest Litigation (PIL) started to materialize under the leadership of the prominent jurist, Justice P.N. Bhagwati,⁹ who recognized that under certain circumstances, a PIL might be initiated by the court itself (Suo motu) rather than by the aggrieved party or a third party. Following the case involving Maneka Gandhi, the Supreme Court determined that the recognition of a fundamental right does not necessarily require explicit mention in the constitution. It was established that the protection of a fundamental right can be upheld even in the absence of specific constitutional provisions. The nation undergoes political, social, and economic transformations that necessitate the recognition of novel rights. The evolution of law is driven by the demands of an ever-progressive society. Therefore, the Supreme Court has interpreted Article 21 as incorporating substantive freedom, which serves as a means to eliminate significant areas of concern such as poverty, limited economic opportunities, and systematic social adversity.¹⁰ One significant aspect of the expansion of Article 21 is the conversion of some Non-legitimate Mandate Standards into enforceable central rights by judicial intervention. Various measures were enacted to establish assurances of economic possibilities and safeguards against social deprivations.

- Quality of life refers to the overall well-being and satisfaction experienced by individuals in various aspects of their lives.
- The right to livelihood pertains to the fundamental entitlement of individuals to engage in gainful employment or pursue economic activities necessary for their sustenance.
- The right to medical care encompasses the fundamental entitlement of individuals to access and receive appropriate healthcare services to maintain and improve their physical and mental well-being.

⁹ Sripathi, V. (1998). Toward fifty years of constitutionalism and fundamental rights in India: Looking back to see ahead (1950-2000). *Am. U. Int'l L. Rev.*, 14, 413.

¹⁰ Gupta, A. (2017). Poverty and child neglect—the elephant in the room? *Families, Relationships and Societies*, 6(1), 21-36.

- The right to die, also known as the right to euthanasia or assisted suicide, pertains to the ethical and legal considerations surrounding an individual's autonomy to make decisions regarding their own death in cases of terminal illness or unbearable suffering.
- Sexual harassment refers to the unwelcome and inappropriate conduct of a sexual nature that creates a hostile or intimidating environment, violating an individual's rights and dignity.
- Ecology and environment encompass the study and preservation of the natural world, including the interrelationships between organisms and their surroundings, as well as the sustainable management of natural resources.
- The right to privacy is not impeded as a fundamental right within the framework of the Constitution. However, it should be noted that the Supreme Court has limited this power by its interpretation of Article 21 and other provisions of the Constitution, in conjunction with the Directive Principles of State Policy.

As previously mentioned, the Kharak Singh case marked a significant milestone in introducing the concept of "security" and its implications on the entitlement to protection of fundamental rights, such as those outlined in Article 19(1)(d), Article 19(1)(e), and Article 21.¹¹ During that period, J Subba Rao made a notable statement asserting that "The right to personal liberty encompasses not only the freedom from limitations, but also the freedom from intrusions into one's private life." In 1965, the Supreme Court of India deliberated and rendered a verdict on the case of *State of Uttar Pradesh v. Kaushaliyaa*.¹² This case pertained to the question of whether women engaged in prostitution could be forcibly evicted from their residences and places of work, or if they were entitled, like other Indian citizens, to the fundamental right of unrestricted movement within the territory of India, as well as the right to reside and settle in any part of the country. The Supreme Court, in its decision, rejected the argument that "the activities of a prostitute in a particular area are so detrimental to public morality and pose a risk to public health that it is necessary, in the interest of the public, to remove her from that location." The Suppression of Immoral Traffic Act imposed legal restrictions on prostitutes, which were upheld by the Court as reasonable constraints on their activities. The Naz Foundation Case marked a significant milestone. The petitioners argued that the provision of Section 377 IPC, which criminalizes certain private and consensual sexual relations (specifically pertaining to gay individuals), unreasonably infringes upon the rights to privacy

¹¹ Oberoi, N. (2007). The Right to Privacy: Tracing the Judicial Approach following the Kharak Singh Case. *Indian J. Const. L.*, 1, 216.

¹² Shekhar, B., & Jaisalmeria, K. (2020). Emergence of Right to Privacy in India. *Issue 4 Int'l JL Mgmt. & Human.*, 3, 1445.

and dignity within the scope of the right to life and liberty under Article 21. They further contended that such infringement can only be justified if there is a compelling state interest, which is not present in this case. The famous Naz Foundation Case achieved an intriguing point. The candidates engaged in a dispute regarding the constitutional validity of Section 377 IPC, which criminalizes certain private, consensual sexual relations involving gay individuals.¹³ They argued that this provision unjustifiably restricts the right to protection and dignity within the scope of the fundamental rights to life and liberty under Article 21. They further contended that such restriction can only be justified if it serves a compelling state interest, which is not the case in this situation. Nevertheless, this particular case encountered significant challenges when the Supreme Court overturned the ruling of the Delhi High Court, which had condemned homosexuality, by affirming the legality of Section 377 of the Indian Penal Code. The Supreme Court further directed the legislative body to take appropriate measures towards the repeal of this specific provision. The provision of protection has been categorically withheld from any individual who commits an offense under Section 377. According to Justice Patanjali Shastri, it was determined that Article 21 does not intend to provide safeguards against violations committed by the executive branch or private individuals. The phenomenon of judicial activism has significant implications for the dynamic between the executive and judiciary branches.

1. To mitigate executive tyranny and uphold constitutional constraints, it is imperative to hold the executive branch accountable for its failures in fulfilling its obligations.
2. While the concept of compassion effectively answers the concerns of individuals, it also results in the displacement of established laws and generates an excessive number of legal uncertainties.
3. The outcome would lead to a situation of judicial dictatorship, wherein judges would make rulings influenced by personal or political passions.
4. The outcomes entail the allocation of institutional resources towards objectives that deviate from their constitutionally designated functions.
5. Enhancing governmental accountability towards the general populace would bolster the factors contributing to the empowerment of individuals from diverse segments of society.

VIII. PUBLIC INTEREST LITIGATIONS

(PILs) are legal actions initiated by individuals or organizations on behalf of the general public or a specific group of people. The Supreme Court has broadened the scope of fundamental rights

¹³ Mandal, S. (2018). Section 377: whose concerns does the judgment address? *Economic and Political Weekly*, 53(37).

by emphasizing that the state must not engage in arbitrary actions, but rather behave in a reasonable manner that aligns with the public interest. Failure to do so may result in the court invalidating such actions by judicial intervention. The Supreme Court has implemented the approach of public interest litigation (PIL) as a means to effectively uphold fundamental human rights for the vast population of the nation, enabling them to attain their social & economic entitlements. The consequences of judicial activism, which seeks to emancipate individuals from poverty and oppression by judicial action, resulted in a significant rise in the number of public law cases compared to private law disputes. Public law litigation has shifted its focus from resolving private disputes based on the principles of private law. Instead, it now addresses grievances of individuals or groups pertaining to the administration of public or quasi-public programs. Furthermore, it also deals with legal challenges related to public policies that are enshrined in governing statutes or constitutional provisions. Public interest litigation (PIL) refers to the legal actions taken by individuals or organizations to address concerns against the government and administration. Currently, PIL has become a prominent aspect of public law litigations in appellate courts. It has been argued that in the aftermath of the emergency period of 1975-77, a novel form of litigation emerged within the realm of constitutional adjudication in India. The acronym PIL was used to denote this particular term.¹⁴ The terminology originates from the United States, but the phenomenon it aimed to depict is particularly associated with India. In order to underscore its unique characteristics, proponents have emphasized the use of the phrase "social action litigation" as the appropriate designation for this phenomenon. It is encouraging to observe that Public Interest Litigation (PIL) was received and acknowledged in India by scholars, namely those in the field of law, social activists, and to some degree, the general public. There is a suggestion that Public Interest Litigation (PIL) encompasses the potential for a silent revolution, as it compels courts to acknowledge and address instances of suffering, so establishing a novel legal framework. The emergence of a "new jurisprudence" that was tailored to contemporary circumstances resulted in a significant advancement in the provision of social justice. This development was perceived as an establishment dedicated to dispensing socio-economic justice within India. The current discourse around Public Interest Litigation (PIL) in India is centered on the question of whether it represents a reformative measure or a revolutionary one. However, it is important to acknowledge that certain individuals have actively engaged in criticizing Public Interest Litigation (PIL), arguing that it represents an unconventional and contradictory development that deviates from their understanding of the

¹⁴ Sripathi, V. (1998). Toward fifty years of constitutionalism and fundamental rights in India: Looking back to see ahead (1950-2000). *Am. U. Int'l L. Rev.*, 14, 413.

principles of the rule of law. Furthermore, some individuals argued that Public Interest Litigation (PIL) posed a challenge to the established norms of judicial proceedings. This perspective may be based on the observation that significant distinctions exist between PIL cases and private legal actions.

IX. THE SCOPE OF PUBLIC INTEREST LITIGATIONS IN INDIA

The Public Interest Litigation (PIL) in India was established by the collaborative efforts of Supreme Court justices and social activists who were committed to advocating for the rights of the economically disadvantaged and marginalized individuals. This statement highlights the enduring commitment of the highest judiciary in India to ensure equitable access to justice for marginalized segments of the population. The initial stage of Prisoners' Inquiry of India (PIL) focused on the circumstances surrounding the confinement of individuals, including men, women, and children, within prisons and other detention facilities. The initial prototypical Public Interest Litigation (PIL) was initiated by an activist advocate, prompted by a sequence of stories published in a prominent national newspaper, the Indian Express. These pieces shed light on the dire circumstances faced by undertrial prisoners in the state of Bihar. It has been observed that the ultimate result of these writs did not lead to the Court establishing a criminal due process, although making significant progress in enhancing a more thorough examination of administrative activities. The second portion of the study focused on matters pertaining to social justice and welfare. The Court endeavored to administer justice in a range of matters pertaining to bonded laborers, the working conditions and wages of unorganized laborers, the hardships faced by impoverished peasants, those residing on pavements, street vendors, and several other marginalized groups. In the case of *Bandhua Mukti Morcha Vs. Union of India*, a significant issue of bonded labor was addressed by the Court. The Court issued a directive to both the national and state governments, instructing them to develop a program aimed at the liberation and reintegration of bound labourers, in compliance with the terms outlined in the Bonded Labour Abolition Act of 1976.¹⁵ However, it was also noted that the entity lacks the authority to formulate any program aimed at rehabilitation. In the case of *Neeraja Choundhary Vs. State M.P.*, Justice Bhagwati opined that not only does Article 21 and 23 of the Constitution need the identification and release of bonded laborers, but it also mandates their rehabilitation upon release. The instructions were issued to formulate programs or plans for rehabilitation and establish oversight through a vigilance committee, consisting of individuals recommended by the Court, who would serve as members. The case of *Olga Tellis Vs. Bombay Municipal*

¹⁵ Bhargava, A., & Sivadas, K. (2023). Case Comment: Bandhua Mukti Morcha V. Union of India (1984). *Journal of Legal Studies & Research*, 9(2), 316-320.

Corporation pertains to the eviction of those residing on pavements and in slums inside the city of Bombay. The Court, acknowledging the right to livelihood, has emphasized that in the pursuit of justice, the government should offer alternative housing or provide other forms of relief to slum dwellers prior to their eviction. In the case of *M.C. Mehta Vs. State of Tamil Nadu*, the Supreme Court took on the responsibility of supervising and directing efforts to improve the conditions of child laborers in the Shivakashi match industries. This endeavor can be considered rather successful. Lastly, in the case of *Unnikrishnan Vs. State of A.P.*, the Court established the existence of a fundamental right to primary education and issued a set of instructions aimed at enhancing accessibility to higher education. During this phase of Public Interest Litigation (PIL), the Court also scrutinized matters pertaining to the legal entitlements of impoverished individuals, as well as environmental concerns and similar matters. At this juncture, Public Interest Litigation (PIL) was perceived as being directly involved in addressing the plight of individuals who are economically disadvantaged and marginalized. However, Indian Public Interest Litigation (PIL) quickly surpassed its previous self-imposed constraints of solely addressing and advancing the interests of the underprivileged. It was expanded to encompass a variety of public concerns, such as the process of transferring High Court judges and addressing political corruption.

X. CONCLUSION

In conclusion, it can be inferred that the aforementioned points collectively support the notion that the phenomenon of judicial activism has gained significant attention and widespread acceptance in contemporary discourse. Regardless of the specific judicial role, it can be argued that activist judges of the Supreme Court have been rather successful in effecting transformations within Indian society. The phenomenon of judicial activism, initially initiated through the enforcement of human rights for marginalized segments of society, has since been expanded to address the plight of destitute individuals seeking relief from their hardships. Moreover, it was subsequently expanded to encompass all domains of government. Despite any potential limitations, judges have generally been successful in effecting social reform through the creative use of their judicial power. However, there is one aspect in which the court has not been entirely effective, despite its honest efforts, and that is in the realm of good governance. The failures observed within the judicial system cannot be solely attributed to the judges themselves, but rather can be attributed to the constitutional and other limitations imposed on the use of judicial power. Despite its limitations, the activist judiciary has been successful in promoting a stronger socio-political commitment to constitutional norms, commonly referred

to as "constitutional faith."¹⁶

¹⁶ Lerner, H. (2011). *Making constitutions in deeply divided societies*. Cambridge University Press.