

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 2

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Varieties of Juristic and Judicial Activism

KEERTHANA K¹ AND LAXMI PRIYA M²

ABSTRACT

Judicial activism has developed into a significant and evolving aspect of constitutional governance, especially within developing democracies. It reflects the judiciary's active role in interpreting laws and constitutional provisions to ensure justice, safeguard fundamental rights, and respond to gaps or inaction by the legislative and executive branches. This article explores the different dimensions of judicial activism and evaluates their influence on both the legal system and the broader socio-political environment.

The paper highlights several key forms of judicial activism. These include procedural activism, which enhances access to justice through tools like Public Interest Litigation (PIL); substantive activism, where courts employ expansive interpretations to extend the reach of fundamental rights; remedial activism, marked by innovative remedies and ongoing judicial supervision of enforcement; and structural activism, where the judiciary intervenes in governance to address deep-rooted institutional deficiencies. Together, these forms demonstrate the judiciary's expanding function as both an interpreter of law and a protector of constitutional principles.

Although judicial activism has played a vital role in promoting rights and ensuring accountability, it also raises important concerns regarding judicial overreach and the preservation of the separation of powers. The article concludes that maintaining a careful balance between judicial intervention and restraint is crucial for upholding democratic values and institutional credibility.

Keywords: *Judicial Activism, Public Interest Litigation, Constitutional Interpretation, Fundamental Rights, Judicial Review, Procedural Activism, Substantive Activism, Remedial Activism, Structural Activism, Separation of Powers*

I. INTRODUCTION

The predominant approach of the Indian Judiciary was positivist, to interpret the Constitution literally and to apply it the same restrictive canons of interpretation as are usually applied to the interpretation of ordinary statutes. This approach emanates from the basic traditional theory that a judge does not create law but merely declares the law and judicially the principle was laid

¹ Author is an Assistant Professor at Vels Institute of Science, Technology & Advanced Studies, Chennai, Tamil Nadu, India.

² Author is an Assistant Professor at Vels Institute of Science, Technology & Advanced Studies, Chennai, Tamil Nadu, India.

down in these words: “In interpreting the provisions of our Constitution, we should go by the plain words used by the Constitution Makers. The General rules which are about the Construction in the General Clauses Act also apply to the Constitution and interpretation of legislative enactments.³ The Judicial Activism is the process and by which the courts checks whether a law is valid or not and a law to be valid must conform with the Constitutional norms. The Constitutionality of a statute arises from various constitutional violations like:

1. Violation of the scheme of distribution of powers between the Centre and the States;
2. Infringement of a Fundamental Rights;
3. Violation of other Constitutional restrictions / limitations.

A statute which is not within the scope of legislative authority or which offends any of the provisions of Constitutional restriction or prohibition is said to be unconstitutional and hence void.

To struck down a statute from the statute books, the main importance is given to its Constitutionality tests and it is validity under the eyes of law and an onerous burden is placed on the Courts because a Statute is enacted by elected members which are the required aspirations of the people. Through the judicial activism it helps people to know about their rights and it paves way to get a clear view of judiciary. People trusted on judiciary when it is transparent they will easily get their justice without undoubtedly. Here it plays a pivotal role and judges usually interpret the law without any fear or favour when the judiciary interfering with the proper functioning of the legislative or executive organs of the government.

In the case *Vishaka vs State of Rajasthan* (1997) is an important case the need of judicial activism, here the Sc laid down guidelines that ought to be followed in all the workplaces to ensure proper treatment of women. It further stated that these guidelines should be treated as law until parliament makes a legislation for enforcement of gender equality

II. DYNAMIC APPROACH OF JUDICIAL ACTIVISM

The Supreme Court has now realized its proper role in a Welfare State, and it is using this new strategy not only or helping the poor by enforcing their fundamental rights of a persons but for the transformation of the whole society as an ordered and crime free society and the role of individuals and group of people in participating the government day to day issues and checks all the activities of the concerned authorities like Central Investigating Authorities to discharge

³ *State of Bihar v. Bihar Distillery Ltd.* – affirmed that principles of statutory interpretation apply to constitutional and legislative interpretation.

their legal obligations in the various scams cases, need for enactment of Uniform Civil Code, Pollution Control, Preservation of historical monument like Taj Mahal, cleaning and keeping the big cities more hygienic, ban of smoking in public places, removal of encroachments, interim compensation to rape victims, speedy trial, legal aid to all prisoners and economically backward people, puncturing the ego of Chief Election Commissioner T.N.Seshan and senior Karnataka IAS officer, Vasudevan are the notable approach by the Courts. Thus, the filing of Writ Petitions and Public Interest Litigations are the two eyes of the Courts which guards the Constitution from all kind of encroachments and this is the dynamic approach of Activism⁴.

After the emergence rule in India, there was a significant shift in the judiciary in 1997 the courts had a more conservative stance, even in reported violations of the fundamental human rights, however after the emergency rule, judicial activism in India gained a great thing. one the most important case of Keshavananda Bharathi (1973) in this case SC held that constitutional amendment, even if duly passed by the legislature could be deemed invalid if it damaged or destroyed the basic structure of the constitution, ensuring that its fundamental features were beyond the reach of parliament.

III. NEED OF JUDICIAL ACTIVISM AND CREATIVITY

It is widely acknowledged that having separation of powers among all these things is very essential and in today society the judiciary plays a significant in ensuring justice due to nature and structure of contemporary issues.

Judicial activism has primarily resulted from;

- Executive and legislatures failure to adequately protected people's rights has spurred judicial activism
- Violations of primary human rights have fuelled judicial activism& innovation.
- Moral pressure on the judiciary the intervene for the benefit of the populace.
- Judicial activism acquired prominence in bridging legislative voids.

Rule of locus standi – Liberalised

The traditional rule of Locus Standi is that a petition under Article.32 or Article.226 can only be filed by a person whose fundamental right is infringed has now been considerably relaxed by the Supreme Court in its recent rulings and the present scenario is that the Court now permits Public Interest Litigations or Social Interest Litigations, PIL or SIL, at the instance of 'public

⁴ S. Subramaniam Balaji v. State of Tamil Nadu – discussing judicial restraint and activism in governance matters.

spirited citizens' for the enforcement of Constitutional and Statutory rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief⁵.

IV. JURISTIC AND JUDICIAL ACTIVISM

The Supreme Court's pivotal role in making up for the lethargy of the Legislature and the inefficiency of the executive is commendable. Those who oppose to the growing judicial activism of higher courts do not know the value and boon of its importance and thus the Judicial Activism has set right several wrongs committed by the States in the following cases⁶:

Ban on smoking in public places: Murali S. Deora Vs. Union of India, AIR 2002

The Congress leader Murali S. Deora filed a PIL in the Supreme Court seeking orders for banning smoking in public places and the Supreme Court seeing the ill effects of smoking held that public smoking is banned and it directed all States and Union Territories to immediately issue orders banning the smoking in public and this ruling of the Court is to boost the public health. Thus, the Centre has introduced an Anti-Smoking Bill in the parliament and it is being implemented in many parts of the Country but not effective at present⁷.

Protection against inhuman treatment: Sunil Batra Vs. Union of India⁸

The Supreme Court on hearing the Petitioner about the inhuman and barbarous treatment made by the Jail authorities towards the prisoners of the Jail and they could not reach the Court and thus the issuance of writ of habeas corpus is prayed. The Court held that the rights of prisoner either under the constitution or under other laws are violated the writ power of the court can run and should run to rescue them and the dynamic role of judicial remedies imports the same vitality and utility of liberty even within the jails. Thus, the writ is issued and guidelines are laid down by the apex court to be followed in jails.

Child welfare: Sheela Barse Vs. Union of India⁹

The Supreme Court in this case has directed to release all children below the age of 16 years from jails in pursuance of Art.39 (f) but instead it also exhorted the States to set up remand homes and juvenile courts and the court held that the Child is a national asset and the State shall ensure fullest development of its personality and it directed Rs. 10,000/- to be paid to social

⁵ *State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12.4-Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal, AIR 1962 SC 1044.*

⁶ *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal, AIR 1962 SC 1044.*

⁷ *S.P. Gupta v. Union of India, 1981 Supp SCC 87.*

⁸ *Sunil Batra Vs. Union of India, AIR 1978*

⁹ *Sheela Barse Vs. Union of India, AIR 1986*

worker for her cause to highlight the problem of child's tortures and the provisions of Children Act.

Protection of ecology and environment: M.C. Metha Vs. Union of India,

The Supreme Court in this case has ordered for closure of tanneries at Jamaa near Kanpur, polluting the River Ganga water to prevent water pollution unless they take steps to set up treatment plants and thereby the Courts developed two environmental principles namely "Precautionary Principle" and "Polluter Pays Principle" Similarly in other case, the same petitioner prayed for closure of nearby industries in Agra and prayed for issuing directions in order to protect the Historical monument, Taj Mahal from deterioration on account of environmental pollution and emphasized Art.49 and also enabled Parliament to enact such law under Entry 67 and List I. The fundamental duty to preserve the rich heritage of our composite Indian culture enshrined in Art.51A of the Constitution is made enforceable by this writ petition.

Power to commute death sentence into life imprisonment: Harbans Singh Vs. State of Uttar Pradesh, AIR 1982

The Supreme Court held that under Article.32 very wide powers has been conferred on the Supreme Court for due and proper administration of justice and this inherent power is to be exercised in extraordinary situations in the large interests of administration and for prevention of manifest injustice. Accordingly, the Court commuted the death sentence of the petitioner into the imprisonment for life on the ground that one of his co-accused's sentences was commuted by the Court.

The Court recommended that the President should normally exercise his power under Art.72 to commute the death sentence because he has considered petitioner's mercy petition and rejected it and if he fails to do justice in particular case.

Under Art.32, the Supreme Court has the power to commute death sentence into life imprisonment if there is undue delay in execution of sentence of death. However, for this, no period can be fixed for making the sentence of death to be changed into life imprisonment. The Court will examine the nature of delay in the light of all circumstances of the case and then decide whether death sentence should be carried out or altered into life imprisonment.

V. CONCLUSION

Judicial activism empowers judges to render decisions in support of progressive social policies, facilitating social engineering. By adhering to constitutional constraints, judicial activism in a modern democratic framework serves as a check on legislative overreach and executive abuse

of power. Furthermore, it contributes to the safeguarding and amplification of individual rights. However, when judges exhibit excessive enthusiasm, they risk overstepping boundaries, disrupting the traditional functioning of the judiciary. Thus, it becomes imperative to distinguish between judicial activism and judicial overreach, as the latter poses a threat to judicial stability. In ensuring the nation's peace, prosperity, and rule of law, the government must operate efficiently and smoothly. Holding the judiciary solely responsible for rectifying governmental missteps and errors place an undue burden on its shoulders. It is evident that the Constitution does not designate the judiciary as a substitute for the legislature or executive in case of their failure. Rather, each branch must exercise its limited activism while being subject to oversight and restraint. Given the complexity of contemporary cases, the Indian judicial system necessitates judges to employ creativity and personal interpretation.
