



JUDICIAL ACTIVISM IN GOVERNANCE: CONSTITUTIONAL EXPANSION, DEMOCRATIC ACCOUNTABILITY, AND INSTITUTIONAL LIMITS IN INDIA

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ABSTRACT:

Judicial activism in India represents one of the most transformative developments in constitutional governance, redefining the judiciary's role from passive adjudicator to proactive guardian of constitutional morality, democratic accountability, and socio-economic justice. Through expansive judicial review, public interest litigation (PIL), and creative constitutional interpretation, Indian courts—particularly the Supreme Court—have intervened in legislative and executive domains to protect rights, enforce accountability, and address governance failures. This article critically examines the constitutional foundations, historical evolution, jurisprudential growth, governance dimensions, socio-political significance, criticisms, and contemporary challenges of judicial activism in India. It argues that while judicial activism has strengthened democracy and constitutionalism, concerns regarding judicial overreach, separation of powers, and democratic legitimacy require a balanced framework of constitutional restraint. Ultimately, judicial activism remains central to India's constitutional democracy but must function within institutional prudence.



KEYWORDS : Judicial Activism, Governance, Public Interest Litigation, Constitutional Law, Judicial Review, Fundamental Rights, Separation of Powers, Rule of Law.

I. INTRODUCTION

Judicial activism has emerged as a defining characteristic of India's constitutional governance, fundamentally reshaping the relationship between law, politics, and public administration. Traditionally, the judiciary was expected to function as an impartial adjudicatory institution confined to interpreting laws and

resolving disputes. However, in India, particularly since the post-Emergency era, the judiciary expanded its role significantly, responding to governance failures, legislative inertia, executive excesses, and widespread socio-economic injustice.¹ Judicial activism refers to the judiciary's proactive engagement in interpreting constitutional provisions expansively, enforcing rights dynamically, and

intervening in public policy where constitutional values are threatened. In India, this approach became necessary due to recurring political crises, administrative inefficiencies, corruption, and the inability of representative institutions to fully protect marginalized communities.²

Unlike classical separation-of-powers models, Indian constitutionalism has witnessed

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the judiciary assuming a governance-oriented role, often directing policy implementation, monitoring public institutions, and framing interim regulatory guidelines in the absence of legislation. The rise of Public Interest Litigation (PIL) further democratized access to justice, enabling vulnerable groups and public-spirited individuals to seek judicial remedies on broader social issues.

Judicial activism in governance has therefore functioned both as a mechanism of constitutional preservation and as a corrective response to institutional dysfunction. Yet its expansion has also raised concerns about judicial overreach, policy encroachment, and democratic accountability.³

This article explores the constitutional basis, historical evolution, major dimensions, landmark cases, socio-political implications, and criticisms of judicial activism in India, assessing its enduring significance in governance.

II. CONSTITUTIONAL FOUNDATIONS OF JUDICIAL ACTIVISM

The constitutional legitimacy of judicial activism in India derives from the Constitution's transformative design, which envisions the judiciary as the guardian of constitutional supremacy.

A. Judicial Review as Constitutional Safeguard

Judicial review is embedded within:

- * Article 13
- * Article 32
- * Article 226
- * Article 136
- * Article 141
- * Article 142

Through these provisions, courts possess the authority to invalidate unconstitutional legislative and executive actions.

Dr. B.R. Ambedkar described Article 32 as the "heart and soul" of the Constitution, emphasizing judicial protection of rights.⁴

B. Basic Structure Doctrine

The landmark judgment in *Kesavananda Bharati v. State of Kerala* established that Parliament's amending power is limited by the Constitution's basic structure.⁵ This doctrine transformed judicial review into a structural safeguard against authoritarian constitutional alteration.⁶

Basic structure components include:

- * Rule of law
- * Judicial review
- * Federalism
- * Secularism
- * Democracy
- * Separation of powers

C. Expansion of Fundamental Rights

Judicial activism significantly expanded Article 21:

- * Right to livelihood
- * Right to shelter
- * Right to education

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- * Right to health
- * Right to clean environment
- * Right to privacy

This transformative interpretation converted civil liberties into substantive socio-economic protections.⁷

III. HISTORICAL EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

A. Early Constitutional Conservatism (1950–1975)

Initially, Indian courts largely adhered to formalistic interpretations, emphasizing parliamentary supremacy and legal restraint. Decisions such as *A.K. Gopalan* reflected narrow rights jurisprudence.

B. Post-Emergency Constitutional Transformation

The Emergency (1975–77) exposed institutional vulnerabilities and judicial failures, particularly in *ADM Jabalpur v. Shivkant Shukla*, where the Supreme Court failed to adequately protect civil liberties.⁸

In response, post-Emergency jurisprudence embraced:

- * Expanded rights interpretation
- * Democratic vigilance
- * Constitutional morality
- * Accountability⁹

C. Emergence of Public Interest Litigation

Judges such as Justice P.N. Bhagwati and Justice V.R. Krishna Iyer pioneered PIL, relaxing procedural barriers and allowing epistolary jurisdiction.

PIL addressed:

- * Bonded labor
- * Prison reforms
- * Environmental protection
- * Women's rights
- * Child welfare

This marked a democratization of judicial access unprecedented in global constitutional systems.¹⁰

IV. PUBLIC INTEREST LITIGATION AND GOVERNANCE REFORM

PIL became the principal vehicle of judicial activism.

A. Governance Accountability

Courts intervened in :

- Corruption investigations
- Electoral transparency
- Administrative negligence
- Police reforms

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B. Socio-Economic Rights

PIL expanded governance into welfare :

- Mid-day meals
- Shelter homes
- Food security
- Education rights

C. Environmental Governance

Judicial intervention regulated¹¹ :

- Pollution
- Deforestation
- Industrial hazards
- Urban planning

D. Institutional Monitoring

Courts increasingly monitored implementation through¹² :

- Continuing mandamus
- Court-appointed committees
- Compliance audits¹³

IV. PUBLIC INTEREST LITIGATION AND GOVERNANCE REFORM¹⁴

Public Interest Litigation (PIL) represents perhaps the most innovative contribution of Indian judicial activism to democratic governance. Emerging in the late 1970s and early 1980s,¹⁵ PIL fundamentally transformed traditional legal procedures by relaxing rules of locus standi and enabling courts to address issues affecting disadvantaged communities, governance failures, and systemic injustices.¹⁶

A. Conceptual Foundation of PIL

The traditional adversarial legal model required an aggrieved person to approach the court directly. However, this framework excluded large sections of India's poor, marginalized, and illiterate population from effective justice.¹⁷ Judicial innovation under Justices P.N. Bhagwati and V.R. Krishna Iyer allowed public-spirited individuals and organizations to seek remedies on behalf of affected groups.¹⁸

This shift converted the judiciary into an accessible institution for social transformation and governance accountability.

PIL's objectives include:

- * Ensuring access to justice
- * Enforcing constitutional rights
- * Monitoring governance
- * Promoting administrative accountability

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* Protecting vulnerable populations¹⁹

B. PIL as an Instrument of Governance Accountability²⁰

Judicial intervention through PIL has directly addressed governance deficits in multiple sectors:²¹

1. Corruption and Administrative Transparency²²

Cases such as Vineet Narain v. Union of India strengthened investigative independence by insulating agencies like the Central Bureau of Investigation (CBI) from political interference.²³

2. Electoral Reforms

Judicial directions mandated disclosure of criminal records, assets, and educational qualifications of electoral candidates, thereby enhancing democratic transparency.

3. Police and Prison Reforms

In Prakash Singh v. Union of India, the Supreme Court introduced structural reforms to depoliticize policing.²⁴

C. Socio-Economic Welfare Through PIL

PIL has significantly expanded socio-economic governance by enforcing:

- * Mid-day meal schemes
- * Food distribution programs
- * Shelter rights
- * Labor protections
- * Child welfare

The Right to Food litigation transformed state welfare obligations into enforceable constitutional duties.

D. Continuing Mandamus

One of the judiciary's most powerful innovations has been "continuing mandamus," whereby courts retain ongoing supervisory jurisdiction to monitor policy implementation over extended periods.

This mechanism has been used in:

- * Pollution control
- * Food security
- * Prison reforms
- * Disaster governance

E. Critique of PIL Governance

Despite its transformative role, PIL has raised concerns:

- * Judicial overreach
- * Policy substitution
- * Frivolous litigation
- * Excessive burden on courts

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Nevertheless, PIL remains central to India's governance reform architecture.

V. JUDICIAL ACTIVISM IN RIGHTS PROTECTION

Judicial activism has profoundly expanded the substantive content of rights under the Indian Constitution, especially through dynamic interpretation of Part III.

A. Expansion of Article 21

Originally limited to procedural legality, Article 21 evolved into a comprehensive charter of human dignity through judicial interpretation.²⁵

The judiciary recognized:

- * Right to livelihood (Olga Tellis)²⁶
- * Right to shelter
- * Right to health
- * Right to clean environment
- * Right to privacy
- * Right to education

This jurisprudential evolution transformed India's constitutional framework into a more socially responsive rights regime.

B. Gender Justice

The judiciary played a pioneering role in advancing women's rights.

Landmark interventions:

- * Vishaka v. State of Rajasthan established workplace sexual harassment guidelines.
- * Triple talaq decisions promoted gender equality.
- * Expanded rape law interpretations strengthened victim protections.

C. LGBTQ+ Rights

Judicial activism corrected historical discrimination through:

- * Naz Foundation
- * Navtej Singh Johar

These judgments emphasized dignity, equality, and constitutional morality over majoritarian morality.

D. Prisoners and Undertrial Rights

Cases like Hussainara Khatoon recognized:

- * Speedy trial rights
- * Humane prison conditions
- * Legal aid obligations

E. Labor and Child Welfare

Judicial interventions addressed:

- * Bonded labour
- * Child exploitation
- * Minimum wage protections

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VI. JUDICIAL ACTIVISM AND SEPARATION OF POWERS

Judicial activism's expansion has triggered fundamental debates concerning constitutional structure.

A. Constitutional Justification

India's Constitution establishes checks and balances rather than rigid separation. Judicial intervention is justified where:

- * Fundamental rights are violated
- * Executive arbitrariness exists
- * Legislative gaps threaten constitutional governance

B. Positive Contributions

Judicial activism:

- * Preserves constitutional supremacy
- * Protects minorities
- * Prevents authoritarianism
- * Strengthens accountability

C. Judicial Overreach Debate

Critics argue that courts sometimes:

- * Dictate policy
- * Interfere with economic regulation
- * Administer public institutions
- * Exceed adjudicatory roles

Examples include:

- * Environmental bans
- * Administrative appointments
- * Educational regulation

D. Democratic Concerns

Unelected judges influencing policy raises legitimacy questions:

- * Lack of electoral accountability
- * Limited policy expertise
- * Potential institutional imbalance

E. Need for Judicial Restraint

Sustainable constitutionalism requires:

- * Respect for institutional boundaries
- * Policy deference where appropriate
- * Balanced intervention

VII. LANDMARK GOVERNANCE CASES

A. Anti-Corruption Jurisprudence

1. 2G Spectrum Case

Judicial cancellation of arbitrary spectrum licenses reinforced public trust doctrine.

2. Coal Allocation Cases

The judiciary invalidated illegal allocations, emphasizing transparency.

3. CBI Autonomy

Through Vineet Narain, judicial oversight strengthened investigative independence.

B. Electoral Reforms

Important decisions mandated:

- * Asset disclosure
- * Criminal background transparency
- * Voter information rights

C. Environmental Governance

Key cases:

- * M.C. Mehta
- * Taj Trapezium
- * Ganga pollution
- * Delhi CNG conversion

The judiciary became a central environmental regulator.

D. Gender and Workplace Governance

Vishaka guidelines served as law until parliamentary enactment.

E. Privacy and Technology

Aadhaar and Puttaswamy shaped governance in the digital age.

VIII. CRITICISM OF JUDICIAL ACTIVISM

A. Judicial Overreach

Frequent policy interventions may undermine constitutional equilibrium.

B. Governance Substitution

Courts risk replacing rather than regulating governance institutions.

C. Inconsistent Activism

Different benches may apply varying standards.

D. Docket Explosion

PIL proliferation burdens judicial capacity.

E. Political Instrumentalization

Courts may inadvertently become arenas for political contests.

F. Accountability Deficit

Unlike elected branches, judiciary lacks direct democratic oversight.

Scholarly Criticism

Some scholars argue that excessive activism may weaken long-term democratic institutionalization by discouraging legislative responsibility.

IX. CONTEMPORARY RELEVANCE OF JUDICIAL ACTIVISM

Judicial activism remains crucial in addressing emerging governance challenges.

A. Digital Rights and Surveillance

Modern governance increasingly involves:

- * Data privacy
- * AI regulation
- * Internet shutdowns
- * Digital identification

B. Climate Governance

Courts are increasingly involved in:

- * Environmental justice
- * Sustainable development
- * Climate resilience

C. Electoral Integrity

Judicial oversight remains central to:

- * Campaign transparency
- * Electoral fairness
- * Democratic accountability

D. Federalism

Centre-state disputes frequently require judicial arbitration.

E. Social Justice

Judicial activism continues to shape:

- * Reservation policies
- * Minority rights
- * Welfare governance

Future Challenges

The judiciary must navigate:

- * Institutional legitimacy
- * Political polarization
- * Technological complexity
- * Global constitutional trends

Judicial activism's future depends on balancing constitutional guardianship with democratic restraint.

XI. HISTORICAL BACKGROUND: PREDATING JUDICIAL ACTIVISM IN INDIA

To fully understand the rise and significance of judicial activism in Indian governance, it is essential to examine its historical foundations prior to its formal emergence in the post-Emergency era. Judicial activism did not arise suddenly; rather, it evolved gradually through constitutional developments, institutional experiences, and political transformations that shaped the judiciary's role in governance.

The origins of judicial activism in India can be traced to colonial legal structures, constitutional debates during the framing of the Indian Constitution, and the judiciary's early encounters with questions of rights, parliamentary sovereignty, and state power.

A. Colonial Judicial Legacy

India's judicial system inherited much of its structural framework from British colonial governance. Colonial courts primarily functioned as instruments of imperial administration rather than protectors of public rights. Judicial institutions emphasized:

- * Procedural legality
- * Administrative order
- * Property protection
- * Executive loyalty

While the colonial judiciary lacked democratic constitutional functions, it introduced:

- * Rule of law traditions
- * Judicial independence norms
- * Legal formalism
- * Institutional adjudication mechanisms

However, these courts rarely challenged executive power substantively.

Thus, at independence, India inherited judicial institutions structurally developed but normatively limited in rights-based activism.

B. Constituent Assembly Vision and Constitutional Design

The framers of the Indian Constitution consciously designed an independent judiciary as a guardian of constitutional supremacy. Dr. B.R. Ambedkar emphasized that constitutional remedies under Article 32 would form the "heart and soul" of the Constitution.⁴¹

The Constitution established:

- * Judicial review
- * Fundamental rights enforcement
- * Federal arbitration
- * Separation of powers
- * Rule of law

Unlike the British parliamentary supremacy model, India adopted constitutional supremacy, thereby empowering the judiciary to invalidate unconstitutional laws.

This constitutional architecture created the structural possibility for future judicial activism, even if early courts exercised caution.

C. Early Judicial Conservatism (1950–1967)

In the first two decades after independence, the Indian judiciary generally adopted a restrained and formalistic approach.

Key characteristics:

- * Deference to parliamentary sovereignty
- * Narrow interpretation of rights
- * Conservative constitutionalism
- * Limited socio-economic intervention

Example:

In *A.K. Gopalan v. State of Madras*, the Supreme Court interpreted personal liberty narrowly, focusing on procedural legality rather than substantive due process.⁴²

This period reflected judicial caution amid nation-building priorities and strong parliamentary leadership.

D. Property Rights and Constitutional Conflict

The first major tensions between Parliament and judiciary emerged over land reform and property rights.

Cases such as:

- * Shankari Prasad
- * Sajjan Singh
- * Golaknath

revealed growing judicial concern regarding constitutional amendment powers and rights protection.

I.C. Golaknath v. State of Punjab (1967)

The Supreme Court held that Parliament could not amend fundamental rights, marking an early activist assertion of judicial supremacy.⁴³

This decision signaled the judiciary's evolving willingness to confront political power.

E. Constitutional Crisis and the Basic Structure Doctrine

Political centralization under Prime Minister Indira Gandhi intensified institutional conflict.

The watershed moment came in:

Kesavananda Bharati v. State of Kerala (1973)

The Court established the Basic Structure Doctrine, holding that Parliament could amend but not destroy the Constitution's essential features.

This decision fundamentally transformed Indian constitutionalism by:

- * Limiting majoritarian power
- * Strengthening judicial review
- * Protecting democratic structure
- * Institutionalizing constitutional guardianship

This predated full judicial activism but laid its jurisprudential foundation.

F. Emergency (1975-77): Institutional Failure and Constitutional Shock

The Emergency period marked the gravest constitutional crisis in Indian democracy.

Features:

- * Suspension of civil liberties
- * Press censorship
- * Political imprisonment
- * Executive authoritarianism

In ADM Jabalpur v. Shivkant Shukla, the Supreme Court notoriously upheld suspension of habeas corpus rights.⁴⁴

This decision is widely regarded as a low point in Indian judicial history.

Consequences:

- * Institutional introspection
- * Public distrust
- * Recognition of judicial passivity dangers
- * Shift toward activist constitutionalism

The failures of the Emergency became the catalyst for post-1977 judicial transformation.

G. Post-Emergency Constitutional Renewal

After the Emergency, the judiciary consciously repositioned itself as:

- * Protector of democracy
- * Defender of civil liberties
- * Check on executive power
- * Facilitator of social justice

This period saw:

- * Expansion of Article 21
- * Development of PIL
- * Socio-economic rights jurisprudence
- * Governance intervention

Thus, modern judicial activism was born from constitutional crisis, institutional reform, and democratic necessity.

CONCLUSION TO HISTORICAL BACKGROUND

The rise of judicial activism in India was deeply rooted in historical experiences predating its formal emergence. Colonial legalism, constitutional design, parliamentary-judicial conflicts, the Basic Structure Doctrine, and the constitutional trauma of the Emergency collectively shaped the judiciary's activist orientation.

Judicial activism did not simply represent judicial ambition; it evolved as a constitutional response to governance failures and democratic vulnerabilities. Understanding this historical background is essential for appreciating why judicial activism became such a central feature of Indian governance.

The judiciary's activist role today is therefore not an institutional anomaly but the product of India's broader constitutional journey toward preserving democracy, rights, and constitutional morality.

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