

# **ANALYZE ARGUMENTS FOR AND AGAINST JUDICIAL ACTIVISM AND EXPLORE ITS IMPACT ON INDIA'S DEMOCRATIC SYSTEM**

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## **Abstract**

*This paper examines the effects of judicial activism on India's democratic system and critically evaluates the arguments made in favor of and against it. Judicial activism has drawn both acclaim and condemnation since it involves judges actively addressing social issues and influencing public policy. Supporters contend that it upholds fundamental rights, advances justice, and acts as a check on the authority of the government. On the other hand, detractors argue that judicial activism compromises the division of powers, intrudes upon legislative power, and could result in judicial overreach. Judicial activism has been crucial in achieving social justice, safeguarding minority rights, and encouraging responsibility within the framework of India's democratic system. Concerns regarding judicial activism's ability to elude democratic procedures and threaten elected institutions still exist, nevertheless. This study intends to expand knowledge of the significance of judicial activism for India's democratic governance and the balance of power among its branches of government by analyzing the intricacies of debates around it.*

*Keywords: Arguments, Judicial, Activism, India's Democratic System*

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## **1. INTRODUCTION**

"Judicial activism is a sharp instrument that requires a skilled surgeon to utilise it like a scalpel in order to heal the illness. Not like a deadly Rampuri knife, that is. Verma, Justice J. S. The Executive, Legislature, and Judiciary are the three pillars of Indian democracy. The Judiciary interprets the laws that the Legislature frames, and the Executive then puts them into effect. Judicial activism becomes necessary to administer justice when there are mistakes made by the Executive and/or the Legislature, when the Legislature becomes daring and the Executive becomes dictatorial, reckless, and insensible [1].

In this regard, it is appropriate to quote the former Chief Justice of India, A. M. Ahmadi, who stated, "There has been a growing sense of public frustration with the democratic process in recent years as the incumbents of Parliament have become less representative of the will of the people." Because of this, the (Supreme) Court has occasionally had to extend its jurisdiction by giving the administration new instructions; if the other two democratic institutions had operated well, it would never have needed to do so. Judicial activism is now a topic of discussion in India. Critics view it as judicial terrorism and the infiltration of the operations of the other democratic organs. Judicial activism is defined as "legislating from the bench" in the capacity of a legal interpreter. It is occasionally said that judges make decisions based on their personal feelings and political affiliation. Some are complaining that the legislative is being destroyed "brick by brick, step by step" by the judiciary [2].

In judicial activism, a judge makes decisions based on both his heart and head. His desire to provide "distributive justice" is driven by his feelings rather than acting as an impartial arbiter who never enters the discussion. But in India today, judicial activism has permeated every aspect of society and occasionally gone beyond the letter of the law to provide justice [3].

## **2. LITERATURE REVIEW**

Roux (2018) [4]. A comparative investigation of the political-legal processes of judicial review. Cambridge University Press. The work of Roux provides a thorough comparative analysis of the dynamics of judicial review, examining the complex interaction between political concerns and legal standards. Roux explores the different elements impacting judicial review, such as institutional architecture, legal traditions, and socio-political settings, through comparative case studies conducted across jurisdictions. Roux offers important insights into the nuances of judicial decision-making and its effects on governance and the rule of law by analysing the dynamics of judicial review.

Peschard et.al (2020) [5]. Legal activity about intellectual property in Brazil and India: taking Monsanto to court. 792–819 in *The Journal of Peasant Studies*, 47(4). The study by Peschard and Randeria explores the field of intellectual property rights legal action, with a particular emphasis on the well-known Monsanto case in Brazil and India. The writers examine how legal activism challenges corporate power and advances social justice through an interdisciplinary viewpoint. Through the analysis of grassroots movements and activist legal tactics, the research illuminates the relationship between law, power, and resistance concerning intellectual property rights.

Kuo et.al (2018) [6]. Hashtags used by racial justice activists: Counter publics and discourse dissemination. *Society & New Media*, 20(2), 495-514. Kuo's study investigates how using hashtags on social media platforms might support racial justice causes through digital activism. Kuo investigates the emergence of counter publics and the dissemination of discourse related to racial justice problems using qualitative analysis. Through examining how digital activism affects social movements and public discourse, Kuo's research advances our knowledge of the changing nature of activism in the digital era.

Smith et.al (2019) [7]. Global climate justice activism: "The new protagonists" and their just transition projects. *Ecologically unequal exchange: Historical and comparative perspectives on environmental injustice*, 245-272. Smith and Patterson's research explores the field of global climate justice activism by concentrating on the rise of new leaders who support a fair shift towards environmental sustainability. The writers examine the various tactics and initiatives used by climate justice advocates to redress environmental injustices through historical and comparative analysis. The study illuminates how social movements and environmental justice connect in a global setting by showcasing the voices and activities of marginalised groups.

Balkin et.al (2019) [8]. *The Reasons Behind Liberal and Conservative Reversals on Judicial Restraint: Judicial Review in the Constitutional Time Cycles*. 98, 215 *Tex. L. Rev.* In his article, Balkin traces the ideological and historical roots of judicial review in the United

States while examining the changing views of liberals and conservatives towards judicial restraint. Balkin examines the cycles of judicial activism and restraint through a sophisticated analysis of political dynamics and constitutional interpretation, emphasising the changing role of the judiciary in shaping constitutional norms and values. Balkin provides important insights into the larger processes of constitutional law and governance in the United States by analyzing the ideological variations in judicial philosophy.

### **3. CONCEPT OF JUDICIAL ACTIVISM**

The Supreme Court has introduced the idea of rationality to address the flaws of the old approach, in line with its current activist stance. New ideas have led to the correct consideration of numerous previously overlooked facets of the legal system. The following two ideas serve as the foundation for judicial activism [9]:

- i. Theory of vacuum filling
- ii. Theory of Social Want.

#### **THEORY OF VACUUM FILLING**

This idea holds that a power vacuum is created by the legislature and/or the executive branch's inaction, apathy, ineptitude, indiscipline, lack of integrity, corruption, avarice, and disregard for the law. Since nature never lets a vacuum last, the judiciary—the last surviving organ—must expand its jurisdiction in order to fill the void. It is appropriate to quote Benjamin Cardozo once more in this regard. The judge merely makes laws in between things. He fills the gaps in the legal system. He cannot have the distance he can travel outside the boundaries of interstices marked out on a chart.

#### **THEORY OF SOCIAL WANT**

According to this view, the judiciary must take up the mission of societal transformation in order to offer justice to the harmed parties when existing legislation is unable to address societal issues and bring about relief. Therefore, the court makes corrections where the legislative fails [10].”

### **4. REASONS FOR JUDICIAL ACTIVISM**

Finding a definite cause for judicial activism is a difficult undertaking. Furthermore, there's no guarantee that all of these arguments will be accepted by everyone. However, the following factors—which are widely acknowledged in India—force the judiciary to operate at an extremely high level when carrying out its duties.

- 1) Judicial enthusiasm
- 2) Legislative vacuum
- 3) Moral pressure on judiciary
- 4) Near collapse of responsible government
- 5) The Constitutional provisions
- 6) Guardian of Fundamental Rights
- 7) Public confidence

8) Enthusiasm of the individual players.

The explanations listed above are illustrative and not all-inclusive. Numerous other factors rooted in the current circumstances could prompt the judiciary to act as a catalyst for change [11].

## **5. ARGUMENTS FOR JUDICIAL ACTIVISM**

Arguments in support of judicial activism emphasise how crucial it is to the advancement of equality, social justice, and the defence of fundamental rights within a democratic framework. Judicial activism is primarily a powerful tool for proactive interpretation and application of the law, which addresses systemic injustices and inequities that disproportionately impact marginalised communities. The judiciary is essential to correcting historical injustices and promoting an inclusive society where everyone has equal access to justice and opportunities by getting involved in cases where laws or policies perpetuate prejudice or disadvantage.

Furthermore, supporters contend that judicial activism is necessary to protect the fundamental liberties guaranteed by the constitution, acting as defenders of both human rights and constitutional principles. The court contributes to the consolidation of democratic values and the rule of law by upholding the sanctity of fundamental rights through historic rulings and legal interpretations. Furthermore, judicial activism is an essential instrument for upholding executive power constraints and guaranteeing government accountability, which fortifies the system of checks and balances and safeguards the integrity of democratic governance. Arguments in favour of judicial activism essentially emphasise how important it is to achieving social fairness, defending fundamental rights, and guaranteeing governmental accountability within the framework of democracy [12].

## **6. ARGUMENTS AGAINST JUDICIAL ACTIVISM**

The possible harm that judicial activism may do to the rule of law and democratic governance is a major worry raised by those who oppose it. First of all, detractors frequently bring up worries about legislative intrusion and judicial overreach, contending that judges who are not elected should not go beyond their constitutional authority and make choices that are better left to elected officials. They argue that the separation of powers principle, which is essential to a democratic system's operation, may be compromised by judicial activism [13].

Judicial activism has the potential to undermine the democratic legitimacy of laws and policies passed by elected officials by usurping the authority of the legislative branch. This could lead to concerns about the process's representativeness and accountability. Furthermore, detractors contend that by enabling judges to impose their own ideological preferences and values on society, judicial activism may jeopardise democratic legitimacy and representation. This could stifle democratic debate and limit citizens' ability to influence public policy through their elected representatives. In conclusion, criticisms of judicial activism centre on worries that it could weaken institutional checks and balances, corrode democratic norms, and call into question the legitimacy of democratic rule [14].

## **7. IMPACT OF JUDICIAL ACTIVISM ON INDIA'S DEMOCRATIC SYSTEM**

Judicial activism has a significant and varied influence on India's democratic system, helping to advance social and economic rights, safeguard the rights of marginalised groups and

vulnerable populations, and fortify democratic institutions and governance. First off, by aggressively interpreting and enforcing the law to address structural injustices and inequities, judicial activism has been instrumental in the advancement of social and economic rights. The judiciary has championed causes linked to healthcare, education, environmental protection, and labour rights through historic rulings and legal pronouncements, thereby advancing social justice and equity. Second, judicial activism has played a significant role in defending vulnerable communities' and minority groups' rights against prejudice and oppression. Courts have stepped in to protect cultural autonomy, language rights, and religious freedoms, making sure that different viewpoints are acknowledged and upheld within the democratic framework. Thirdly, by serving as a check on legislative and executive power and guaranteeing accountability, openness, and respect for constitutional values, judicial activism has strengthened democratic institutions and governance. The judiciary strengthens the pillars of democracy by defending the rule of law and constitutional principles, which increases public confidence in the democratic process. Essentially, the effects of judicial activism in India highlight how crucial it is to the advancement of social justice, defence of human rights, and maintenance of democratic values within the country's democratic system [15].

#### **8. JUDICIAL ACTIVISM – SOME RECENT CASES**

- There is a great deal of confusion around the Supreme Court's decision to make the National Eligibility-cum-Entrance Test (NEET) the sole exam required for admission to medical and dentistry programmes (NEET, 2016).
- In a 2016 Swaraj Abhiyan case PIL, the Supreme Court ordered the Union and State governments to develop new drought-fighting policies.
- The Arunachal Governor was given notice by the Supreme Court to explain his recommendation for President Rule in the State, but he later recalled that governors are not subject to judicial review (The Hindu, 2016).
- In accordance with the Lodha Committee's recommendations, the Supreme Court is working to restructure the Board of Cricket Control of India (BCCI) (Espn cricinfo, 2016). Being a private organisation, BCCI is incredible. Given that the Tamil Nadu Societies Registration Act is the basis for the BCCI's constitution,
- The Supreme Court is unable to change the bylaws. The SC's invalidation of the NJAC bill on November 3, 2015, undermined the parliament's power. The Supreme Court affirmed on November 3rd that it will increase the collegium system's transparency. However, as of yet, little has changed; Justice J Chelameswar's recent uprising against the collegium system's perceived lack of transparency amply demonstrated this (The Hindusthan Times, 2016).

#### **9. CONCLUSION**

In conclusion, the examination of the reasons for and against judicial activism as well as how it affects India's democratic system highlights how intricate and varied this phenomenon is. Critics point to possible judicial overreach, dangers to the separation of powers, and

difficulties to democratic legitimacy and representation, while supporters view judicial activism as an essential tool for advancing social justice, defending fundamental rights, and guaranteeing government accountability. Upon closer inspection, judicial activism in India has demonstrated a great deal to advance social and economic rights, safeguard the rights of marginalized people and minorities, and fortify democratic institutions and governance. Nonetheless, concerns remain regarding the judiciary's responsibility, the distribution of authority among the three arms of government, and the possible dangers of overreaching judicial action. In the end, the discussion of judicial activism highlights the continuous conflict between democratic governance and judicial independence, emphasizing the necessity of constant discussion, examination, and contemplation to protect India's democratic, legal, and constitutional values.

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