



Comparison Of Judicial Activism Of India, U.K And U.S.A

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Abstract: The document provides an in-depth examination of judicial activism in India, the UK, and the USA. It discusses how judicial activism allows judges to interpret laws in ways that protect citizens' rights, adapting to societal changes, and challenges government actions that may infringe on constitutional principles.

The article first explores judicial activism in India, highlighting its historical roots and pivotal cases, such as Kesavananda Bharati v. State of Kerala and Maneka Gandhi v. Union of India. It discusses how activism has allowed the judiciary to safeguard fundamental rights and maintain the constitution's basic structure.

In the UK, judicial activism emerged with the establishment of the Supreme Court in 2009. Judicial review plays a crucial role in ensuring government decisions comply with the law, with notable cases emphasizing this power.

The article concludes with the USA, where judicial activism has shaped critical civil rights and social issues. The American approach often stirs debate, as some argue it disrupts democratic processes. Nonetheless, landmark cases like Brown v. Board of Education underscore activism's role in advancing civil rights.

The document also contrasts judicial activism with judicial review and highlights its advantages and disadvantages, emphasizing the need for a balanced judiciary that upholds the law while allowing progressive legal interpretations.

Index Terms; - judicial activism, citizens' rights, balanced judiciary

INTRODUCTION

JUDICIAL ACTIVISM

The judiciary plays a crucial role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in verifying the rights of citizens and safeguarding the constitutional and legal system of the country is known as judicial activism. Judicial activism refers to the behavior of judges when they interpret and apply laws in a way that goes beyond what is explicitly written in the constitution or the legal document.

Judicial activism means that a judge is more likely to decide on constitutional matters. He may reject government actions. It can represent how a judge reviews cases or makes decisions. Judicial activism many a times involves challenging laws made by the government. Judicial activism can be seen a way for a judge to bring about change and promote justice. Judges play a significant role in our legal system.

Understanding judicial activism is foremost because it impact on how laws are made and how they impact our lives.

Judges play an important and active role in changing the practice of judicial activism in India. Some of the functions acted by the judges are as follows:

- Judges interpret the Constitution and modify it to changing times.
- Judges actively intervene in the issues of public policy and social change like abortion law, civil rights and same sex marriage etc.
- Judges have a more bendable approach and may challenge existing precedents
- Judges are more likely to safeguard individual rights and encourage equality.
- Judges play an agile role in shaping laws.
- It makes sure a balance of power among branches of government.
- It explains laws in a broader and more flexible manner.
- Judges may make new laws or replace existing ones to address societal issues.

HISTORY AND EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

Throughout the rule and supremacy of British courts, the Supreme Court worked as a technocratic court, but it gradually began to take an activist attitude. The first landmark case in this regard was *A.K GOPALAN V STATE OF MADRAS* (1950), in which a writ was filed to determine whether detention without trial was a violation of fundamental rights under Article 14, 19, 21, and 22. The Supreme Court suggested that the written Constitution contains the authority for judicial review. Even though the challenge was unsuccessful, it also stated that article 368 gives the procedure to amend the constitution but does not confer on parliament the power to amend the constitution, it did start a new legal trend that became apparent in the years that followed.

The conception of judicial activism can be traced back to 1893 when Justice Mahmood of the Allahabad High Court provided an unconventional decision that put in the seeds of activism in India. The case involved an undertrial who couldn't present legal representation. In his dissent opinion, he criticized the rule that appeals should be dismissed solely on the basis that the petitioner is unable to pay for the translation and printing of the record in English. This amounted to some kind of activism meant to defend the severely injured undertrials. In spite of the fact it didn't sit well with the English judges on the bench, J. Mahmood was forced to resign for using this method in court.

Far away, the concept of judicial activism in India gained more power in the late 1960s or early 1970s, when Mrs. Indira Gandhi served as Prime Minister and Mohan Kumara Mangalam, a prominent attorney and legal dignitary, served as the Union Minister. To perform duties for the interests of the poorer sections of society, the late Mrs. Gandhi strived to put into practice her favourite slogan, "*Garibi Hatao*" (remove poverty), by eradicating the privy purses and benefits granted to the former rajas and princes of the princely States of pre-independent India and nationalize the 14 major banks. However, the conservative judiciary took it personally and rescinded her attempts.

Mrs. Gandhi replied strongly and unequivocally, viewing the Supreme Court of India's ruling in the repealing act of Privy Purse and bank nationalisation cases as an example of judicial overreach. On the recommendation of Mr. Kumaramangalam, it is supposed that the conservative and senior Supreme Court justices who participated in the majority decisions in the aforesaid cases were passed over for appointment to the designation of Chief Justice of India. The appointment of the dissenting judge, Mr. A.N. Ray, who was fourth in the line of rank, led to the resignation of three senior judges (Justices Hegde, Shelat, and Grover). This served as the establishment of the theory of judicial activism, which appears because of the conflict between the executive and the judiciary.

With time, the judiciary started taking a proactive approach, especially during the 1970s and 1980s. In the 1970s, many judges started to take a proactive role in shaping the law and public policy. The Supreme Court of India started interpreting the Constitution in a broader way. It gave more importance to fundamental rights and social justice. The SC held that in spite of the fact that no part of the Constitution, including Fundamental Rights, was far away from the Parliament's amending power, the "basic structure of the Constitution could not be revoked even by a constitutional amendment." This is the foundation in Indian law in which the judiciary can strike down an amendment passed by Parliament that is in conflict with the basic structure of the Constitution.

Some case law related to judicial activism is as follows: -

- **Keshavananda Bharati v. state of Kerala (1973):** hon'ble Supreme Court gave power to strike down unconstitutional law and define the basic structure of the constitution. The SC held that despite of the fact that no part of the Constitution, including Fundamental Rights, was overreach the Parliament's amending power, the "basic structure of the Constitution could not be revoked even by a constitutional amendment." This is the foundation in Indian law in which the judiciary can strike down an amendment passed by Parliament that is in tussle with the basic structure of the Constitution.

- **Freedom of press:** In this case of *Sakal newspaper Pvt, Ltd v. UOI* (1962) the government sought to regulate the number of pages in relation to the price of the newspaper in accordance with the *Newspaper act 1956*. The Supreme Court direct that newspapers could not be subject to the same ruling as other businesses because they worked as a council for the exchange of ideas and information. This decision broadened the protections for free speech provided by article 19 (1) (a) of the constitution.

- **Doctrine of prospective ruling:** In *Golakhnath v. state of Punjab* (1971) the idea of "prospective overruling" while addressing the constitutional validity of the 17th amendment to the Constitution and determined that Parliament lacked the authority to revise part III of the Constitution or to curtail any of the fundamental rights.

- In the case of *Maneka Gandhi v. UOI* (1978) Maneka Gandhi argued that the government had violated her personal freedom by seizing her passport. The court direct that the seizure of the passports was illegal. The *A.K. Gopalan* case ruling was overturned by the Supreme Court, assure the legitimacy of personal liberty under Articles 14, and 21.

- In *Minerva Mill v. UOI* (1980) the Supreme Court rejected the attempt by the government to overturn the *Kesavananda Bharti* decision and usurp unrestricted power to amend the Constitution to its liking. As a result, the Court determined that judicial review is an important part of the legal system and that Parliament is not permitted to broaden the concept of the previously granted limited powers.

- Furthermore, Justice P.N. Bhagwati, India's father of judicial activism, make stronger the concept in several decisions.

IMPORTANCE OF JUDICIAL ACTIVISM

- The analysis of Article 21, which protects the right to life and personal liberty, it is *Maneka Gandhi v. union of India* (1978). This decision has arouse the Indian judiciary from a persistent state of inertia with regard to the right to life and the freedom of the individual guaranteed by Article 21 of the Constitution.

- A new definition of Article 21 of the Indian Constitution was given by the Supreme Court of India in the case of *Maneka Gandhi v. Union of India*. It set a great precedent for the other evolution of concepts of reasonableness and fairness. According to the Supreme Court, the concept of life circumscribe not just a mere animal existence but also an existence with all the rights that is necessary. The Supreme Court announce for the first time that simply outlining a process for rejecting life and liberty is insufficient the process itself must be just and reasonable.

- To protect the rights of millions of people who want access to justice, Article 21 of the Constitution was expand to include a broader definition of life, personal liberty, and the procedure established by law. It carefully condemn the abuse of power and neglect on the part of public officials as it endure the interests of the ordinary citizen.

- Present day example of judicial activism in India is the Supreme Court's involvement in environmental matters. In the case of *MC Mehta v. Union of India*, the Court hold the cognizance of air pollution issues in Delhi and issued directives to deal with the crisis, such as implementing the odd-even vehicle rationing scheme and probhit the sale of firecrackers during Diwali.

- **Adapting to Change:** Judicial activism permits courts to convey new and evolving challenges by interpreting laws in a way that adapts to current situations. This enables the judiciary to answer to contemporary issues and changing societal values, effectively updating the legal standards to reflect modern realities.

- **Distribution of Power:** Judges help to preserve a balance of power among different branches of government. They avert any one branch from becoming too powerful.
- **Checks and balances:** Judicial activism work as a check on the actions of the government. It assure that it respects the rights of individuals and follows the law.
- **Caution needed:** Activism may guide decisions to be based on individual opinions rather than the law itself. Hence, some contend that judges should adhere to the original meaning of laws and the Constitution.

ADVANTAGES AND DISADVANTAGES OF JUDICIAL ACTIVISM

Advantages of judicial activism are as follows

Judicial Activism build a system of balances and controls to the different branches of the government.

- It highlights the required change by way of a solution. In the matter of more than half, it helps to address problems quickly where the legislature gets cling in taking decisions.
- It helps to prevent bias and unfair treatment, promoting equal rights for all.
- Judicial activism puts the government accountable for its actions. It set the seal on government that follows the law and respects the rights of individuals.
- It helps to maintain a balance of power among different branches of government.

Disadvantages of judicial activism are as follows

- Judicial activism might intervene with the democratic process.
- When judges play a dynamic role, there is a risk of variability in their decisions. Different judges may interpret laws differently.
- Firstly, when it excels its power to stop and misuse or abuse of power by the government. In the process, it prescribes the working of the government.
- Judicial activism can be seen as contravene constitutional limits when it override the existing laws, as it may broaden the judicial power behind what was originally intended by the constitution. This can bother about the balance of power among branches of government
- Persistent involvements of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

JUDICIAL ACTIVISM IN UK

INTRODUCTION TO UK APEX COURT

The Supreme Court in UK is the desisive court of appeal for all civil cases, and for criminal cases in England, Wales and Northern Ireland. It also perceives constitutional cases and ones that have the most far-reaching result for the public. The Constitutional Reform Act 2005 make provisions for the establishment of a UK Supreme Court. It started sitting in October 2009. Before this, the UK's final court of appeal and constitutional court was repose in the House of Lords. Twelve judges, many times referred to as Law Lords had timely carried out the duty of the Supreme Court as the Appellate Committee of the House of Lords. However, by the early 2000s, the view that this well-established arrangement might not be in keeping with the independence and impartiality expected of the judiciary had gained ground. There was an study that it was not genuine for the Law Lords to both sit in the legislative chamber that helped make the laws and act as the final interpreters of those identical laws. It was bothered that this model might not provide enough separation between the legislative and judicial branches of the constitution. Further, it could be in breach of Article 6 of the European Convention of Human Rights, which give an assurance that the right to a fair trial before 'an

independent and impartial tribunal'. It was also thought that the old arrangements were baffle and unclear for the public, making it appear like the House of Lords was deciding cases, somewhat a committee of the UK's most senior judges.

MEANING OF JUDICIAL REVIEW

ACCORDING TO UK

In the context of UK, the judicial review means the process by which judiciary examine the action of the executive and legislative branches to ensure in accordance with the law.

Some of the key aspects of judicial review in the UK:

- **Legality:** Judicial review focused on whether decisions are lawful. It does not evaluate the merits of the decision but make sure that it complies with the law.
- **Grounds for Review:** The most important grounds for judicial review include:
- **Illegality:** When a decision-maker has moves beyond their legal powers.
- **Irrationality:** When a decision is so vexatious that no reasonable person could have made it.
- **Procedural Impropriety:** When there has been a failure to follow the proper procedures or natural justice e.g., not giving a fair hearing.
- **Remedies:** If a court finds that a decision is unlawful, it can point out various remedies such as:

1. Quashing Order: Nullifies the decision.

2. Prohibiting Order: Prevents an action from being taken.

Judicial review means the process by which the public wants to know judges to review the exercise of a power by a public authority. There are a number of causes for which a decision can be ruled to be unlawful by the courts; for example, if the procedures that led to it were unfair or if it is irrational. Although judges cannot overturn primary legislation, they can mention secondary legislation to be void if it is found to be ultra vires. This means that on other side the scope of the powers that have been given to the authority by primary legislation.

This can be seen around 1980s, where there were about 500 applications in a year. This number fiercely expand by 2013, there were 15,594 applications. This inclination has become more persistent as time passes along, possibly pointing to a greater impact in the UK courts against the government. Along with the number of applications submitted to the courts, in some cases it has attracted media attention. For example, in 1993, William Rees-Mogg had questioned the Conservative government to approve the Maastricht Treaty which aims to advance the European integration (a legislation that self-described as "a new stage in the process of European unification") which in the due course of time had devolved into the European Union and begin the Eurodollar. This was refused by the Divisional Court and attracted large amounts of media attention to this case. Along with these components it is largely evident that judicial activism should not be overemphasised. Ultimately, judicial activism is greatly accepted throughout the UK as the courts are attractive more prone to scrutinise at their own will, and at times, dismiss government legislation that they deem to be not within balance to the UK constitution and becoming more apparent doing so.

JUDICIAL OVERREACH

Sometimes judges exceed their authority and make decisions beyond their role. Also involves judges making decisions based upon the personal preferences rather than the law. It disrupts the balance of power by encroaching on the authority of other branches of government and also interpret the laws in a way that goes against their original intent.

JUDICIAL ACTIVISM IN UNITED STATES OF AMERICA (U.S.A)

In the United States, Judicial activism indicates the practice of judges making rulings based on their policy views rather than their honest interpretation of the current law. Judicial activism is usually used to point out that the speaker thinks judges have gone far away from their proper roles in enforcing the Constitution and have decided a case based on their policy preferences. Despite that, there is small agreement as to which decisions fit this description. When the judiciary exceed the line of the powers put in place the name of judicial activism, it could be rightly said that the judiciary then embark on to disprove the concept of separation of powers set out in the Constitution. If judges can freely conclude and make laws of their choices, it would not only oppose the principle of separation of powers but will result in confusion and unpredictability in the law as every judge will start writing his own laws according to his vogue and notion. Judicial exercise has to be esteemed to maintain a clear balance.

Making laws is the function and responsibility of the legislature, to fill the gap of laws and to devise them in a proper manner. So that barely the work persistently to exist for the judiciary is interpretations. Only a thin balance between these government bodies can preserve the constitutional values.

MEANING OF JUDICIAL ACTIVISM IN U.S.A

- The practice of Judicial Activism initially derived and developed in the USA.
- Judicial activism signifies the dynamic role of the Judiciary in preserving the rights of citizens.
- In India, the Supreme Court and the High courts are entrusted with the power to inspect the constitutionality of any law, and if such a law is formed beyond comparison with the provisions of the constitution, the court can proclaim that the law is unconstitutional. It has to be well known that the subordinate courts do not have the power to review constitutionality of laws.

In spite of this judicial activism not always seen as bleak. It is fundamentally anti-majoritarian, and the exponent of judicial activism view it important to check on legislative overreach.

A famous positive example of judicial activism is *Brown v. Board of education* which has become universally praised as a landmark decision for civil rights.

Common critiques of judicial activism include arguments that:

- A judge cannot be a neutral adjudicator of disputes if they intend to rewrite the law at the outset of a case.
- It is prejudiced to hold parties to a peculiar interpretation of the law.
- Judicial activism takes chances to discompose the balance between the three branches of government.
- As judges are not elected by vote judge-made policies are less likely to obtain wide acceptance from the general public.
- Judges are often inadequate to make sound public policy decisions.

Chief Justice Marshall's gave his opinion in the landmark judgement of *Marbury v. Madison* was as overtly political as any decision in the Court's history. While politics can never be separated from Court decisions the Court has customarily operated under constitutional and self-imposed constraints that limit its intrusion on the policy decisions of democratically elected legislators and officials. The meaning of the term "judicial activism" is evasive. Judicial activism usually are speaking of a judge "who votes differently than the politician would like. The U.S. Supreme Court has always been a political institution.

Judicial activism refers to when court make decisions that acts in a way that violates the powers of the representative elected harmonize department—the Congress and the President—or appointed state and local legislatures and officials. Members of the Court appear increasingly comfortable with activism provided it validate to their own prejudice. Such conduct is usually associated with particular social or political norms shared by a Supreme Court majority. During the Lochner era that ended in the 1930s, it was the conviction that the Constitution, through the due

process clause, protected freedom of contract (a form of “substantive due process”). During the Warren Court’s teasing with populism in the 1960s, it was a strong thoughts that the Constitution protected individual rights of criminal suspects and the relatively powerless.

JUDICIAL ACTIVISM CRITICSM

Judges may go behind their role and form decision based on their personnel belief instead of the law itself. Judicial activism might interfere with the democratic process.it allows judges to make law instead of elected representative.

DIFFERENCE BETWEEN JUDICIAL REVIEW AND JUDICIAL ACTIVISM

Judicial review and judicial activism are two different but interconnected concepts in the legal and judicial outlook. Judicial review is foremost concerned with guarantying that laws and actions hold to the constitution and its confirmed legal precedents, while judicial activism takes a more policy-oriented and energetic approach, often involving the personal faith and values of judges. Both concepts have their own roles and suggestion in shaping the legal and political framework of a nation and their distinctions are essential for understanding the power of the judiciary in any legal system.

CONCLUSION

Judicial activism is when judges play a crucial role in making decisions that shapes the law. Few people think it's good as it helps to shield people's rights and bring about change. Others contend that judges should stick while interpreting the laws, not making them. Judicial activism can have both good and bad impacts on society. Protecting people's rights and at the same time admire the role of other branches of government is crucial. It's important to strike a balance between them. Judicial activism can be a influential tool for change, but it's pivotal for judges to be fair and follow the Constitution.

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