
JUDICIAL ACTIVISM IN THE BACKDROP OF THE SEPARATION OF POWERS AND ITS CONSTITUTIONALITY IN INDIA AND THE USA

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ABSTRACT

The concept of separation of powers is central to India's constitution. The state, its functions, and its powers are separated into three broad divisions, and none of them may interfere with the functioning or exercise of another's power. In this view, the state has three branches: legislative, executive, and judiciary. However, the Indian Constitution grants the judiciary discretionary powers, allowing sitting judges to make decisions at their own discretion. This "discretionary power," combined with the role of the court as a vehicle for preserving checks and balances on legislation, may be viewed to change with the times. This may result in some judicial actions in which the courts appear to cross the customary virtual line established by the notion of separation of powers. Judicial activism refers to the judiciary's overreach. Judicial activism can be carried out by courts through a variety of channels and can take numerous shapes. Within the recent decade, the Supreme Court of India, as well as several High Courts, have issued key rulings and opinions, many of which address legislative stagnation, which is inhibiting the evolution of law over time. The judiciary has also been seen actively participating in the development of guidelines, legislative ideas, and direction, which, according to the doctrine of separation of powers, are within the legislature's powers and functions.

This article will examine the notion of separation of powers as established in the Indian Constitution, as well as judicial activism as evidenced by judicial pronouncements, developments, and guidelines, as well as particular instructions from Indian courts. The author will critically evaluate whether judicial activism is constitutionally permissible and whether it is actually required for legislative advancement.

I. INTRODUCTION

Judicial activism is a term in the law that refers to court decisions that rely heavily or wholly on a judge's personal or political observations rather than existing laws. Judicial activism happens when a judge uses their personal or political beliefs to make decisions during a case hearing. Judicial activism occurs when a judge rules on a case in accordance with the impact of his personal beliefs on public policy. As a result, a court may identify constitutional problems and disagree with precedents regarding standing. Overall, judicial activism is defined as the judiciary's proactive role in defending or safeguarding citizens' rights by advising in such a way that both the Executive and the Legislature must carry out their constitutional tasks. The State's powers are divided into three categories: legislative power, which is the creation of laws; administrative power, which is the implementation of laws; and judicial power, which is the resolution of conflicts through the use of laws. Although a strict separation of powers is impossible, there should be coordination and mutual assistance among the three divisions. Certainly, the judiciary's function transforms the traditional position into a proactive and constructive role in interacting with the growing society. The judiciary protects people's rights, restricts constitutional infractions, and sometimes goes beyond established boundaries through judicial activism. The modernist judicial outlook of 'judicial activism' retains its seat with the goal of ensuring adequate and equal justice for all. It is imperative that if judges employ this mechanism in an odd and eccentric manner, it be referred to as 'judicial overreaching.'

The notion of separation of powers is fundamental to India's constitution. The state, its functions, and powers are divided into three major groups, and they are prohibited from interfering with the operation and exercise of power of another. In this sense, the state is divided into three branches: legislative, executive, and judicial. However, the Indian Constitution affords the judiciary discretionary powers, allowing sitting judges to make decisions based on their own discretion. This "discretionary power," along with the nature of the judiciary as a vehicle for maintaining checks and balances on legislation that may be seen to accord with changing times. This may result in certain judicial actions in which the courts appear to breach the traditional virtual line created by the theory of separation of powers. Judicial Activism refers to the judiciary's overreach. Judicial activism can be undertaken by courts through a variety of outlets and can take many forms. Within the last decade, the Supreme Court of India, as well as various High Courts, have pronounced important judgements and issued significant observations, many of which concern legislative stagnation, which is impeding the growth of

law in accordance with the passage of time. There has also been observable active participation of the judiciary in developing guidelines and legislative suggestions and direction, which, according to the doctrine of separation of powers, are within the powers and functions of the legislature.

Taking into account the cases in the United Kingdom and the United States of America, an opinionated confrontation arose between the legislative and executive on the one hand and the court on the other, based on genuine concern for the welfare of the people. Judicial activism began when a progressive judiciary and a traditionalist government, or a traditionalist judiciary and a progressive Parliament, collaborated and coordinated. Judicial activism originated in India in the late 1960s, during Mrs. Indira Gandhi's tenure as Prime Minister and Mr. Mohan Kumaramangalam's tenure as Union Minister. Indira Gandhi aimed to end poverty by ending the Privy Purses and benefits to former kings and princes of pre-independence India and nationalising 14 important banks.

However, a traditionalist judiciary did not support her efforts. The events that occurred during the Great Depression, as well as what happened to US President Franklin D. Roosevelt and his New Deal legislation, also happened to Indira Gandhi in India. Indira Gandhi criticised the Supreme Court's decision on the Privy Purse termination and bank nationalisation cases as 'judicial overreach'. Her response was strong and clear. According to Mohan Kumaramangalam, senior judges engaged in key judgements were not considered for nomination to the office of 'Chief Justice of India.' Mr. A.N. Ray, the judge who was in disagreement with the decision and was fourth in order of seniority, was chosen, prompting the resignation of the three senior judges, Justices Shelat, Grover, and Hegde. The concept of 'judicial activism' emerged as a result of the struggle between the judiciary and the executive branch.

This assignment will look into the theory of separation of powers as established in the Indian Constitution, as well as judicial activism through judicial pronouncements, developments, and guidelines, as well as specific instruction from the Indian Courts. This piece will critically examine the extent to which judicial activism is constitutional and whether it is truly necessary for legislative progress.

II. JUDICIAL ACTIVISM AND SEPARATION OF POWERS

Arthur Schlesinger Jr.'s term "*Judicial Activism*" was first used in the Fortune magazine article "*The Supreme Court: 1947*" in 1947. The term's introduction at the time was also criticized since A. Schlesinger refused to define "judicial activism". The Black's Law Dictionary summarizes "judicial activism" as this: "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factor, to guide their decisions." It is regarded the proactive functioning of the courts to assure the protection of citizens' fundamental rights. Such judicial actions can be seen when a sitting judge identifies certain violations of constitutional rights and obligations and issues a decision that contradicts or goes beyond the standing precedents on the subject.

Judicial activism frequently involves instances in which the Judge's personal thoughts and understanding, which may differ from the legislation, impact the decision in order to deliver equal justice. This notion of judicial activism is consistent with the principles of judicial interpretation and construction, as well as the discretionary powers afforded to courts by the Indian constitution. It has been noted in various instances where the supreme has gone beyond the established precedents and broadened the scope of the existing laws and their concepts. The apex courts, together with their subsidiaries, have actively maintained social order and protected people' constitutional rights by using numerous norms of interpretation well within their competence.

Several causes contribute to judicial activism in the courts. Some of these identified elements are given as follows:

1. Inefficient governance, including corruption, unresponsiveness, and excessive delays, pose significant challenges to justice and the executive branch. Red tape is another issue that has plagued the executive branch of government. In such cases, the judiciary must step in.
2. Legislative Failure- Over the past decade, there has been a lack of perspective in certain areas, leading to inadequate laws and legislation. To avoid such friction, the Legislature has addressed contemporary issues such as cyber laws and laws that cater to a specific group of individuals. The judiciary's intervention promotes efficient and successful legislation.
3. Public interest litigation: Technology has raised awareness among citizens, bolstered by media interventions. Many of these responsible citizens' concerns are expressed in the context

of public interest litigation, which entrusts the Judiciary with the obligation of litigating situations that may interfere with the operation of the other institutions.

- **Judicial Activism in the United States of America**

As previously noted, the phrase "Judicial Activism" originated in the late 1940s in the United States of America. During this time and in subsequent years, the Supreme Court of the United States of America addressed the gaps between the legislature and executive branches. A surge of progressiveness within the judiciary in relation to the government and legislative, which at the time operated in a more orthodox fashion, laid the groundwork for judicial activism. In the years that followed, A. Schlesinger Jr.'s assessment was reinforced by a great number of judgements decided by the United States Supreme Court, which were aided by a wave of progressiveness. Cases such as *Brown v. Board of Education*, which abolished the system of racial segregation in schools; *Roe v. Wade*, which declared the right to abortion a constitutional right; and several others paved the way for the judiciary to use the checks and balances granted to it to regulate laws that may fall within the powers of the legislature.

Along with the United States, other states' courts, such as those in the European Union, have adopted judicial activism, albeit in a limited meaning. The courts tend to engage in judicial activism in the field of treaty interpretation, as intended at the time of the treaty's drafting.

Judge Posner defines activist decisions as those that extend judicial authority over other departments of the national government or state governments.² I would define judicial activism as judicial review with a conclusion that differs from the result attained through the political process. Several features of this definition warrant emphasis. Judge Posner's analysis focused on federal courts, but the themes of activity and restraint equally apply to state judicial systems. In truth, state judges' rulings have been the source of some of the most daring judicial activism in recent years. Many of the examples are familiar:

1. State courts in California, Tennessee, Texas, and more than a dozen other states have ruled down the state's school financing scheme as violating equal protection guarantees or other elements of the state constitution.¹

¹ Erin E. Buzuvis, Note, 'A "For Effort: Evaluating Recent State Education Reform in Response to Judicial Demands for Equity and Adequacy, 86 Cornell L. Rev. 644,646 N.6 (2001).

2. State courts ruled that tort reform legislation in Ohio, Illinois, Oregon, and other states was unconstitutional.²

3. The Vermont Supreme Court famously determined that the state was "constitutionally required to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law."³

4. The Florida Supreme Court overturned an amendment to the state constitution designed to protect the death sentence, which was backed by more than 70% of voters.⁴

As a result, Judge Posner's definition of activism applies to both state and federal judicial systems. A second issue concerning activism, as defined by Judge Posner, is that it makes no difference whether the decisions are liberal or conservative in nature. The term "liberal activist judges" may lead one to believe that their verdicts invariably favour the liberal side of politics. That was largely true of the Supreme Court in the 1960s under Earl Warren, and to an unexpected extent, of the Court in the 1970s and early 1980s under Warren Burger. Today, under Chief Justice Rehnquist, we have another activist Court, but the majority of its activity is conservative. The mention of the Rehnquist Court raises a third objection, as well as a potential fault in Judge Posner's description. Many of the current Court's most contentious rulings have overturned congressional acts on the grounds that they violated state authority. Although these decisions are perceived as activist by the national government, they may also limit judicial power over state governments. However, the paradox is more pronounced than genuine. The decisions do enhance judicial authority over power allocation among governmental units, but they also reverse the conclusion of the political process. I have little doubt that Judge Posner would classify them as activists, as I do.

These scholars use the term "activism" to describe a preference for overturning precedent or modifying the legislation established by previous rulings. Consider this version from Professor Chemerinsky's op-ed piece: "the Reagan and Bush Justices are engaged in aggressive conservative judicial activism, over-ruling more than half a century of precedents and invalidating important federal statutes."⁵ In a similar vein, Professor David O'Brien has referred

² Mark Thompson, *Letting the Air Out of Tort Reform*, *Aba J.*, May, 1997, Pg. 64.

³ *Baker V. State*, 744 A.2d 864 (Vt. 1999).

⁴ *Armstrong V. Harris*, 773 So. 2d 7 (Fla. 2000).

⁵ Donald H. Ziegler, *The Newactivist Court*, 45 *Am. U. L. Rev.* 1367, 1370 (1996).

to Justices who "appear to share a conservative vision that opposes liberal legalism and lends itself to judicial activism--whether in terms of overturning precedents or second-guessing elected representatives and the democratic process."⁶ Judge (and former academic) Stephen Williams has suggested that a resurrected federalism would necessitate "some 'activism' by the Supreme Court (in the senses of both overturning precedents and countermanding the political branches)."⁷

I believe it is incorrect to use the same term to describe both a decision that overturns precedent and a decision that rejects the outcome attained through the political process. True, both can raise questions about the function of courts and how judicial review works. However, they are fundamentally separate occurrences.⁸ And I suppose it is self-evident that the issue "When should a court overrule one of its own decisions?" is not the same as "When should a court hold a statute, executive regulation, or popular initiative unconstitutional?"

The two sorts of judgements would be analysed using different standards, and the mode of analysis would alter. Combining the two meanings produces surprising results. For example, Justice Clarence Thomas has urged the Supreme Court to reconsider and potentially overturn several of its decisions acknowledging prisoners' rights under the Eighth Amendment. Assume that later this term, the Court is asked to overturn a state act that is thought to violate the principles established in prior instances. Are we going to say that if the Court overturns precedents, the decision is also activist if it follows precedent and declares the statute unconstitutional? That cannot be right.

- **Judicial Activism in India: Advent, Evolution and Tussle between the Judiciary and the Legislature in India Post-Independence**

While the notion of separation of powers is one of the principles of the Indian Constitution, it is not explicitly codified in the document. This indicates that the theory of separation of powers is strictly enforced in India. As a result, soon after independence, the Indian judiciary system and its rulings were not completely free of government interference. During Indira Gandhi's

⁶ David O'Brien, *Charting the Rehnquist Courts Course: How the Center Holds, Folds, And Shifts*, 40 N.Y. L. Sch. L. Rev. 981, 988 (1996),

⁷ Stephen Williams, *Unconstitutional Conditions Through a Libertarian Prism*, 1994 Pub. Int. L. Rev. 159 (Book Review, RICHARD A. EPSTEIN, *BARGAINING WITH THE STATE*, 1993).

⁸ *Farmer v. Brennan*, 511 U.S. 825, 861-62 (1994) (Thomas, J., Concurring in Judgment).

second tenure as Prime Minister, and even before the emergency was declared, the government attempted to dominate the Supreme Court and India's legal system.

In the *Golaknath Case*⁹, the Supreme Court ruled that the Parliament of India would be banned from proposing amendments to the Constitution of India that would violate the core framework of the Constitution, which is expressed in the form of fundamental rights and other provisions. The decision came as a blow to parliament, which was abusing its right and liberty to modify the constitution, as allowed by the constitution itself. However, in response to the *Golaknath decision*, the parliament passed the 24th Amendment to the Indian Constitution. The current ruling limited parliament's ability to modify the constitution, including the basic right enshrined in Part III. With the 24th Constitutional Amendment, the parliament changed Article 368, making it competent to amend basic rights as well, contrary to the judicial intent of the *Golaknath Judgement*. While the 24th constitutional amendment was severely criticised by jurists and the media, the Supreme Court maintained its constitutionality in the case of *Keshavananda Bharti Sripadagalvaru v. State of Kerela and Anr.*¹⁰

The *Keshavananda Bharti case*, decided by the largest constitutional bench while considering the validity of the 24th, 25th, 26th, and 29th amendments to the constitution, held that while the parliament is granted the power to amend the constitution, no such amendment shall violate the constitution's basic structure. The Supreme Court asserted the notion of basic structure, which requires parliament not to amend the constitution in a way that alters its basic structure. However, the judgement was overturned by the 42nd constitutional amendment in 1976.

The 42nd Amendment, commonly known as the Second Constitution, attempted to reduce the Supreme Court's judicial activism, in which its decisions appeared to limit Parliament's powers. The amendment also went into effect during the emergency, when citizens' fundamental and human rights were severely violated at the hands of policing authorities. The government was also accused of bringing the country towards *parliamentary sovereignty* by prohibiting the supreme court from scrutinizing any action of law based on directive principles.

During the emergency era that followed the passage of the 42nd constitutional amendment, Parliament took significant efforts to tighten government control over India's judiciary system.

⁹ Golaknath V. State of Punjab (1967 Air 1643, 1967 SCR (2) 762).

¹⁰ Writ Petition (Civil) 135 Of 1970.

This legislative involvement into judicial functions violated the separation of powers theory. As previously noted, while the Supreme Court has ruled that the idea of separation is not strictly implemented in India, it remains a vital aspect of the constitution, which serves as the foundation for the three pillars of state: legislation, the judiciary, and the executive. The Parliament's intervention with the basic functioning of the judiciary rendered the system of checks and balances mandated by the doctrine of separation of powers ineffective.

According to Article 50 of the Indian Constitution, the judiciary and executive, both of which are public services, are segregated by virtue of the Directive Principle. The flexibility with which separation of powers is used in India, as well as its practical implications, have resulted in fuzzy borders between the legislature and the executive branch. However, from the post-independence period until the late 1980s, the legislative and judiciary engaged in a tug-of-war over tight separation of powers. It should be recognised that the nature of the judiciary compels it to be more accountable and credible as a state organ. In numerous cases, the Supreme Court is tasked with striking a difficult balance between carrying out its constitutional duties and without exceeding its authority.

A comprehensive examination of the function of the Judiciary reveals that it is operationally impossible for laws and even the constitution to be completely exhaustive of all contingent human behaviour. Several laws in the Constitution are open-ended, allowing the court to use discretionary powers based on the factual facts of a case, which may vary greatly from case to case.

Judicial review is another technique that allows the judiciary to be independent. Articles 32 and 226 of India's constitution authorise the supreme court and high court, respectively, to exercise judicial review. A superior court, such as a high court or the Supreme Court, has the authority to modify or alter an order or judgement issued by a subordinate court. Such changes, however, are permitted only when a legal issue arises.

According to the principles enshrined in Articles 32 and 226 of the Indian Constitution, the Supreme Court and the High Court have the authority to intervene only in cases where a specific law may be in violation of the Indian Constitution and the constitutionality of such law is being challenged before the court. It is also worth noting that courts are empowered to take up matters *suo moto*, which at first glance does not appear to violate the separation of powers;

however, when viewed in the context of judicial activism, suo moto actions by a court would contribute to further blurring of the separation of powers between the various organs of the state. The capacity to hear cases on a suo moto basis gives the courts intrinsic authority to rule on issues that may affect the other two branches of government, legislature and executive.

In recent decades, the judiciary has also taken on the entire responsibility of balancing the powers of the legislature and the administration. judges have also taken on the function of the Legislature on numerous occasions, as seen by several cases in the previous decade in which judges have issued specific directives as well as recommendations and guidelines for the Legislature to consider. The judicial system not only oversteps into the area of the legislature, but it also exercises certain executive functions that may be seen to go considerably beyond the powers of the judiciary as intended in the Indian constitution. From the late 1990s to very recently, various Supreme Court decisions, including the *Second Judges case (1993)*¹¹, the *Jharkhand Assembly case (2005)*¹², the *Salwa Judum case (2011)*¹³, and the *Sahara Judgement (2014)*¹⁴, have shown that the Supreme Court has enlarged its power and overstepped the separation of powers.

The events leading up to and during the emergency period emphasise the judiciary's expanding role and function, taking into account its commitment to serve justice while also upholding and defending citizens' rights. The judiciary guarantees that the legislative and executive act in accordance with the constitution. The courts must ensure the legality and constitutionality of all legislative and executive actions. However, this ruling by the courts should be free of any personal beliefs or preferences and should not become a platform for individual kindness conducted by the judges, as noted by Justice Krishna Iyer "unconstitutionality and not unwisdom is the narrow area of judicial review". He has stated that if the Indian judiciary system were to consider the correctness and wisdom of a legislative move in addition to its legality, both administration and legislation would require prior judgement based on the court's opinion.

The landmark Vishakha decision in *Vishakha and Ors v. State of Rajasthan and Others*.¹⁵ The

¹¹ (1993) 4 SCC 441.

¹² (2005) 3 JCR 448 (JHA).

¹³ Writ Petition (Civil) 250 Of 2007.

¹⁴ (2014) 8 SCC 751.

¹⁵ (1997) 6 SCC 241.

Supreme Court went beyond its core mandate as enshrined in the Indian Constitution to develop the "Vishakh guidelines". The court recognised the "social issue of considerable magnitude" of gender equality and sexual harassment of women at work and believed it was necessary to enact legislation specifically dealing with the subject. The court established the historic "Vaisakha guidelines" with special reference to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Visakha decision is regarded as the pinnacle of judicial activism by the Supreme Court, in which the court took special notice of the gravity of the facts and circumstances and asked the government to legislate especially on matters concerning women's job safety. The Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 was enacted 17 years after the court's directive.

ARGUMENTS AGAINST JUDICIAL ACTIVISM

1. Opponents of judicial activism argue that it contradicts the Constitution's mandate for courts to interpret laws rather than enact them. They argue that the question is not how to address social ills, but whether the courts should be involved. Critics of judicial activism claim that courts should not have the authority to handle prisons or schools, as this should be reserved for the legislative and executive departments.
2. Critics argue that judges lack the necessary skills to handle complicated responsibilities like administering prisons, controlling schools, and making hiring choices for businesses. Judges are not social workers, but instead legal specialists.
3. Opponents of judicial activism argue that the division of powers and federalism warrant judicial restraint. Arguments in support of judicial activism. Judicial activism advocates for addressing injustice and promoting societal progress.
4. Proponents of judicial activism argue that courts often intervene when governors and state legislatures fail to resolve issues.
5. Judicial activists argue that politicians, not courts, decide policy. Judges' interpretation of the law has a significant impact on policy. They also believe that courts are responsible for enforcing the law.
6. Judicial activists say that the framers intended for courts to interpret the Constitution based

on changing circumstances.

Judicial activism has proven beneficial in promoting environmental protection, human rights, and social justice. The judiciary often inspires legislative and executive action to make constitutional objectives a reality for citizens. Judicial activism has strengthened India's constitutional structure. The judiciary's role in upholding constitutional values is crucial for shaping the legal system and safeguarding citizens' rights. The judiciary's role in constructing Indian constitutional law will continue to be defined by the balance of activism and restraint.

- **Judicial Activism and Judicial Restraint**

Judicial activism refers to the judiciary's involvement in upholding citizens' legal and constitutional rights. The judiciary uses its own power to execute or overturn laws and policies that violate citizens' rights or are beneficial to society as a whole, as the case may be.

On the other hand, Judicial Restraint is the flip side of the coin. It is the polar opposite of activism, which requires it to follow constitutional laws while doing its tasks. It encourages the courts to follow the laws and rules outlined in the constitution.

The judiciary has gained power through judicial activism, as judges can take up issues *suo motu* wherever they believe constitutional laws are being infringed; but, with judicial constraint, the judiciary must abide by the government, who is given the authority to legislate for the people.

The distinction between "judicial activism" (loose constructionist) and "judicial restraint" ("strict constructionist").

These are ways for interpreting the Constitution. A hard constructionist judge may read the Constitution technically or based on the framers' intended intention. A judge who works as a judicial activist can make broad decisions while noting historical changes since 1787. Judicial action and prohibitions are diametrically opposed. In the United States, the Supreme Court's activism and judicial restraint play a crucial role in preventing unconstitutional use of administrative or legislative power. These approaches are strongly tied to the national court system.

1. Judicial activism is the use of the constitution to advance current opinions and conditions. Conversely, judicial constraint limits judges' ability to overturn legislation.
2. The court must publish all operations of Parliament and state legislatures until they violate the country's constitution.
3. Judicial restraint and activism need the judiciary to address unfairness, especially when other constitutional authorities fail to act. Judicial activism plays a crucial role in determining social policy related to individual rights, civil rights, moral standards, and political injustices.
4. Both judicial activity and restraint serve distinct goals.

NEED FOR THE JUDICIAL ACTIVISM

1. When the legislature fails to pass required legislation to keep up with changing circumstances, and governmental agencies fail miserably to carry out their administrative tasks, voters' trust in constitutional values and democracy dwindles. In this scenario, the judiciary takes over areas traditionally reserved for the legislature and executive, resulting in judicial legislation and governance by the judiciary.
2. If the government or a third party violates people's fundamental rights, judges can take action to improve residents' conditions.
3. The greatest asset and most powerful weapon in the judiciary's arsenal is the confidence and faith it inspires in the minds of the people in its ability to administer fair justice and keep the scales balanced in any conflict.

Judicial activism is a product created completely by the judiciary and not supported by the constitution. When the judiciary goes beyond the limits of its powers in the name of judicial activism, it might be argued that the judiciary is invalidating the principle of separation of powers enshrined in the constitution. If judges may freely determine and write laws of their own choosing, it will not only violate the principle of separation of powers, but it will also cause confusion and ambiguity in the law, as each judge will begin creating his own rules based on his fads and oddities.

The judicial exercise must be respected in order to preserve a clear balance. The legislature's

purpose and obligation are to make laws, fix legal gaps, and properly apply them. As a result, the judiciary's only remaining work is interpretation. Only a delicate balance between various government bodies can preserve the constitutional ideals.

III. CONCLUSION

The introduction of public interest litigation and the subsequent modernisation of the 'locus standi' rule are frequently cited as the origins of judicial activism. The original goal of PIL was to provide justice to the oppressed, poor, and impoverished by reducing the rigidity of locus standi. In the 1979 "Hussainara Khatoon v. State of Bihar" case, the Supreme Court took up a PIL action on behalf of prisoners who had been imprisoned for a longer period than the maximum penalty allowed for their crimes. The court set a mechanism to ensure that the offenders received appropriate redress.

The evolution of PILs accelerated and never looked back. During the "Sunil Batra v. Delhi Admin" case in 1983, the court issued consequential orders for the protection of convicts (both male and female) in terms of their security and well-being, including separate prisons for female convicts, improved prison circumstances, and so on. The court used its 'epistolary jurisdiction' in the "Sunil Batra v. Delhi Administration" case, and a communication note sent by a prisoner was considered a petition. The note implied that the top warden inflicted terrible suffering and attacked a fellow prisoner. The Court concluded that the complexities could not prevent the court from protecting people's civil liberties.

In the "Supreme Court Advocates-on-Record Association v. Union of India" case, the Supreme Court ruled that the 'National Judicial Appointments Commission Act' and its constitutional modification were immoral and violated, with a majority of 4:1 concurrence. The measure was deemed illegal because it violated judicial freedom, and the existing collegium mechanism governing judge nomination and transfer resumed its effectiveness and functioning. Justice Khehar noted that the judiciary's independence from governance institutions protects citizens' rights.

Judicial activism operates in such a way that, after hearing to both sides, the courts move from their traditional position of decisiveness to that of the legislature, developing new legislation, regulations, and norms. This judicial review jurisdiction granted to these Courts to declare orders and legislation to be in violation of the Constitution is referred to as a component of the

Indian Constitution's fundamental structure. The recent Supreme Court decision has shed light on reforming judicial activism in India, offering a broad viewpoint. Judicial activism in India has now given the people an inspiring face. Judicial Activism has had a significant impact on the legal front, and looking at post-emergency legal activity, it is clear that the Supreme Court has excelled and surpassed legal positivism.

Judicial activism has become an essential component of the Indian judicial system. The Indian Supreme Court's adoption of public interest litigations has created a mechanism for courts to battle topics directly that may impinge on the legislative and executive branches' responsibilities. There is still some ambiguity over the actual definition of the phrase "judicial activism" as well as the decisions and judgements issued by the courts during the process. According to the Cohn-Kemnitzer Model of judicial activism, decisions made by the Supreme Court might be viewed as multifaceted, limiting the application of rigorous separation of powers to judicial activism. However, due to the imprecise description of sitting judges' discretionary powers, prudence in judicial activism becomes necessary. The appointment of judges and the collegium system raise concerns about active judicial activism in India's contemporary judicial system. The collegium system's insulated procedure in terms of judicial involvement in the running of the other two organs, namely the legislative and executive.

It should be emphasized that the first provision of the constitution, separation of powers, is intended to prevent the exercise of arbitrary power by the institutions of government. It is also worth mentioning that the conflict between the various organs is a direct result of the division of powers and the checks and balances provided by it.