
THE JUDICIARY IN ACTION: ACTIVISM AND OVERREACH IN THE INDIAN CONTEXT

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"Judicial activism should not become judicial terrorism or judicial adventurism."

~ Chief Justice of India (CJI) B R Gavai

Introduction

The Chief Justice stated at the hearing of arguments about the Supreme Court's authority to impose a deadline on governors and the president to act on state bills in the case of *State of Tamil Nadu v. Governor of Tamil Nadu*¹(2025). Chief Justice Gavai explained that while the judiciary has never aimed to overthrow elected officials, it must make sure that court activism does not become too intrusive. It serves as an example of the ongoing conflict between judicial activism as a means of correction and judicial overreach as an infringement on executive power. The decision may either establish a precedent for judicial excess or serve as a pillar of cooperative federalism, depending on how carefully courts use this logic going forward.³

A system of checks and balances between the legislative, executive, and judicial branches is established under the Indian Constitution. To maintain democracy, each organ is supposed to act within the parameters set forth in the constitution. But throughout the years, India's judiciary has developed a distinct and frequently contentious role. Courts have aggressively participated in governance using tools like Public Interest Litigations⁴ (PILs) and broad interpretations of fundamental rights. This approach, which is frequently referred to as judicial activism, has been praised for defending constitutional principles and rights.⁵ However, the term "judicial activism" describes the judiciary's proactive role in upholding constitutional governance, advancing justice, and defending citizens' rights. It happens when courts broaden

¹ Sathe, Satya P. "Judicial activism: the Indian experience." Wash. UJL & Pol'y 6 (2001): 29.

² Jaswal, Nishtha, and Lakhwinder Singh. "Judicial activism in India." Bharati Law Review 3 (2017): 1-11.

³ Verma, Arvind. "Taking justice outside the courts: judicial activism in India." The Howard Journal of Criminal Justice 40.2 (2001): 148-165.

⁴ Cassels, Jamie. "Judicial activism and public interest litigation in India: Attempting the impossible?." The American Journal of Comparative Law 37.3 (1989): 495-519.

⁵ Cassels, Jamie. "Judicial activism and public interest litigation in India: Attempting the impossible?." The American Journal of Comparative Law 37.3 (1989): 495-519.

their purview to address societal and constitutional issues rather than limiting themselves to interpreting legislation narrowly. Judicial activism was formerly described as "the active process of implementation of the rule of law, essential for the preservation of a functional democracy⁶" by Justice J.S. Verma, the former Chief Justice of India. Through Public Interest Litigations (PILs), judicial activism gained prominence in India in the late 1970s and early 1980s. Even if they were not personally harmed, this mechanism enabled people and organizations to petition courts on issues impacting the general welfare⁷.

Judicial activism not an alteration of Judicial overreach

The term "judicial activism" describes the judiciary's proactive role in defending citizens' rights and preserving constitutional ideals⁸. It happens when judges address more general issues of justice, equality, and fairness rather than only the precise interpretation of statutes.⁹ India's court holds a special place in the country's constitution. It serves as the protector of the Constitution, guaranteeing the protection of fundamental rights and the restraint of the legislative and executive branches. The judiciary frequently adopts a proactive approach—often referred to as judicial activism—in carrying out this function in order to protect rights, interpret the law broadly, and close any gaps left by other departments of government.¹⁰ Nonetheless, judicial activism is usually regarded as judicial overreach, as courts are said to encroach on the areas of governance and policy making that belong to elected officials¹¹. The pioneers of judicial activism in India are frequently cited as Justices V.R. Krishna Iyer and P.N. Bhagwati. In the 1980s, they established the Public Interest Litigation (PIL) process, which gave courts the authority to consider cases involving underrepresented groups who would not have otherwise had access to the legal system¹². Since then, judicial activism has played a significant role in human rights, gender justice, environmental preservation, and administrative accountability.

In *Kesavananda Bharati v. State of Kerala* (1973), the constitutional integrity was maintained

⁶ Kirby, Michael D. "Judicial activism." *Commonwealth Law Bulletin* 23.3-4 (1997): 1224-1237.

⁷ Bhatia, Ravi P. "Evolution of Judicial Activism in India." *Journal of the Indian Law Institute* 45.2 (2003): 262-274.

⁸ Semwal, M. M., and Sunil Khosla. "Judicial activism." *The Indian Journal of Political Science* (2008): 113-126.

⁹ Jha K., "Judicial Activism in India", (23 February 2012)

¹⁰ Baxi, Upendra, "Law, Struggle and Change: An agendum for activists", *Social Action*, 1985, Vol 35

¹¹ Haines & Sherwood, "The Role of the Supreme Court in American Government and Politics", Vol. 1, University of California Press, pp.209

¹² Saha, Arpita, "Judicial Activism in India: A Necessary Evil", 2008,

by the Basic Structure Doctrine, which restricted Parliament's modifying authority. In the 1978 case of *Maneka Gandhi v. Union of India*, Article 21 was extended to include substantive due process¹³, guaranteeing human dignity. In the absence of laws, *Vishaka v. State of Rajasthan* (1997) established principles for sexual harassment in the workplace. In the 2017 case of *Justice K.S. Puttaswamy v. Union of India*, the right to privacy was acknowledged as a fundamental one¹⁴.

Understanding Judicial Overreach

Judicial overreach happens when courts overstep their constitutional bounds and invade the legislative or executive branches. It typically entails courts making legislatively oriented directives¹⁵, micromanaging the administration, or prescribing policy decisions. 2017 saw the Supreme Court ban alcohol sales within 500 meters of highways, which had an impact on state revenue and companies. Critics contended that lawmakers and policy experts should handle this issue. Delhi's 2018 firework ban: Although the judiciary's control over timings and sales was meant to reduce pollution, it was condemned for micromanaging executive activities. In the 2011 *Aruna Shanbaug* case, the Court essentially legislated on a topic still pending in Parliament by allowing passive euthanasia under certain parameters¹⁶.

Judicial Activism versus Judicial Overreach

Judicial activism and judicial overreach are not the same thing, despite their outward similarities. Purpose, breadth, and constitutional legitimacy are where the differences lie. In Indian democracy, activism is crucial because it guarantees that the principles of the constitution be maintained even in the face of failure by other state branches. However, overreach weakens the authority of elected officials and violates the separation of powers, undermining the same democracy. Maintaining this delicate balance—being a watchful defender of rights without taking the place of the legislature or executive—is the difficulty facing the Indian judiciary. Judicial Activism: To defend the rule of law, safeguard constitutional rights, and provide justice when other branches are unable to do so. To enforce

¹³ *Sri Sankari Prasad Singh Deo v. Union of India*, 1951 AIR 458, 1952 SCR 89; *Sajjan Singh v. State of Rajasthan*, 1965 AIR 845, 1965 SCR (1) 933; *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521

¹⁴ “Judicial Activism in India”, Thursday 23, February 2012,

¹⁵ Baxi, Upendra, ‘A pilgrim’s progress: The Basic Structure Revisited’, *Indian Bar Review*- Vol. 24(1&2) 1997, 53.

¹⁶ Menon, N.R., “Law and Justice: A look At The Role and Performance of Indian Judiciary”, pp 8

judicial preferences over policy, especially in the absence of constitutional support, is known as judicial overreach. Judicial activism: Interprets rights, bridges legislative gaps, and upholds accountability while operating within constitutional bounds. Judicial Overreach: Goes beyond interpretation and frequently leads to executive replacement or judicial legislation.

State of Tamil Nadu v. Governor of Tamil Nadu

The Indian President has formulated a list of fourteen questions and, in accordance with Article 143 of the Indian Constitution, has requested the Supreme Court's view on them. This Presidential Reference is predicated on a recent ruling in the State of Tamil Nadu v. Governor of Tamil Nadu case (Writ Petition (Civil) NO. 1239 of 2023) by the Supreme Court¹⁷. In order to understand the Supreme Court's ruling and the Presidential Reference under Article 143, let's examine the scope of Articles 200 and 201 of the Indian Constitution. Even when the Governor reserved bills for the President's consideration under Article 201, the ruling required a deadline. The Court ruled that the President cannot exercise either a "absolute veto" or a "pocket veto" in the course of carrying out her duties under Article 201¹⁸. This essentially means that even if there is no deadline for making decisions, the Governor or the President's protracted inactivity on bills (except from money bills) passed by the State Legislature is not covered by Article 200 or 201 of the Constitution. Understanding Articles 200 and 201 of the Constitution is crucial for a more thorough analysis of the Supreme Court's ruling. The primary role of the judiciary is to interpret and uphold the Constitution, which gives rise to judicial activism. When courts establish new roles for themselves, it is considered overreach¹⁹. While the latter is a deviation, the former is a fundamental aspect of judicial duty. By holding elected branches responsible, activism maintains checks and balances²⁰. By usurping their power, overreach upsets the same equilibrium. When rights or the public interest are disregarded, activism takes over. Conversely, overreach replaces judicial preferences with better-suited policy decisions made by legislatures or experts. Until Parliament takes action, judicial activism frequently fills the void²¹ (e.g., Vishaka recommendations, eventually replaced by legislation). However,

¹⁷ ALBERT VENN DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION (1952).

¹⁸ Regina v. Secretary of State for Transport, ex. parte Factortame, 1991 A.C. 603. See Sir William Wade, Sovereignty-Revolution or Evolution?, 112 L.Q. REV. 568 (1996)

¹⁹ SONI, MS SNEHA HITENDRA. "THE ROLE OF JUDICIAL ACTIVISM IN ADVANCING HUMAN RIGHTS IN INDIA: A CRITICAL ANALYSIS."

²⁰ Ganguli, Tanni. "THE DYNAMICS OF JUDICIAL ACTIVISM AND OVERREACH IN INDIA'S SOCIAL JUSTICE JURISPRUDENCE." JUDICIAL 211 (2025): 285.

²¹ Chand, Ms Sonam. "Chapter-2 JUDICIAL ACTIVISM AND RESTRAINT IN THE INDIAN CONTEXT: A COMPARATIVE STUDY." CONTOURS OF CONTEMPORARY LEGAL RESEARCH: 11.

overreach blurs constitutional bounds by attempting to permanently dictate policy.

Way forward

Courts must refrain from micromanaging governance and restrict their activity to defending fundamental rights. Reliance on court involvement is decreased by efficient parliamentary and executive branches. Avoid abuse and keep the true public interest front and center. Legitimacy shall be guaranteed by openness in nominations and rationale. Promote relationships between the three organs that are cooperative rather than antagonistic. Although they are sometimes confused, judicial activism and judicial overreach are not the same thing. In a democracy, judicial activism is an essential protection that keeps governance accountable and guarantees that constitutional rights are upheld. By interfering with the legislative and executive branches, judicial overreach, on the other hand, compromises the same constitutional balance. Judicial activism is therefore an expression of constitutional duty rather than a modification of judicial overreach. While activism is the performance of judicial duty, overreach is an anomaly. The difficulty is in preserving this distinction so that the judiciary can continue to enforce justice without jeopardizing the constitutionally intended democratic balance.