
THE ROLE OF JUDICIAL ACTIVISM IN NIGERIA: INSIGHTS AND LESSONS FROM SOUTH AFRICA AND INDIA

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ABSTRACT

Judicial activism if not overreached, is necessary in deciding constitutional matters that are of public interest. This is not to undermine its usefulness in other matters. This article examines how judicial activism operates within Nigeria, taking examples and lessons from South Africa and India. It defined what judicial activism means and analysed its extent and characteristics. Furthermore, the text provided a historical overview of judicial activism in Nigeria. Through a thorough discussion of various cases, it explored the impact of judicial activism in Nigeria, South Africa, and India. Additionally, it contrasted the practice of judicial activism in Nigeria with that in South Africa and India, highlighting lessons Nigeria could adopt from both. To achieve this, the article used the doctrinal research method, which involves examining primary and secondary sources. In the end, it remarked that judicial activism is still an important instrument for the judiciary when addressing significant public issues in Nigeria. Nevertheless, the concept can be seen as two-sided, acting as both a driving force for legal progress and a risk of judicial overreach.

Keywords: Electoral Disputes, Judiciary, Judicial Activism, Justice

1. INTRODUCTION

Judicial activism is a lively and changing part of the court's function in influencing the law, frequently mixing the boundaries between making decisions and creating laws.¹ Judicial activism is when judges move away from strictly following the exact wording of laws and constitutions. Instead, they adopt a method that considers the broader purposes or aims in their rulings.² Often, it involves choices that require changes in society, and sometimes these choices aim to support fairness and safeguard the rights of the people.³ This occurrence has been important in promoting constitutional law, individual rights, and democratic leadership, especially in situations where the executive and legislative branches have not managed to provide justice or solve urgent social problems, both in Nigeria and in other places.⁴ This method is different from judicial restraint, which supports a careful and literal interpretation of laws while showing respect for the decisions made by lawmakers and the executive branch in matters of policy.⁵

The article aims to discuss judicial activism in Nigeria while comparing it to experiences from other countries like South Africa and India. It will also look at how judicial activism helps support fair elections and protect human rights. By examining important court cases, laws, and decisions made by judges, this article intends to highlight the chances and difficulties related to the application of judicial activism in Nigeria's election-related legal matters. It outlines the background of judicial activism in Nigeria. It argues that judicial activism encounters various obstacles in Nigeria's electoral legal issues, including concerns about overstepping legislative powers, unclear legal guidelines, political meddling, a lack of bravery among judges, and corruption.

2. THE CONCEPT OF JUDICIAL ACTIVISM

Judicial activism refers to a viewpoint in law where judges actively engage in understanding

¹ T. A. Adetona, *Employing Judicial Activism as a Panacea to the Ills of Obnoxious Laws* UNILAG LAW REVIEW (July 19, 2025, 10: 16 AM) <https://unilaglawreview.org/2019/01/30/employing-judicial-activism-as-a-panacea-to-the-ills-of-obnoxious-laws/>.

² *Id.*

³ A. D. Mane, *Judicial Activism: A Theory of Judicial Philosophy* (July 19, 2025, 11:11 AM), <https://nigerianlawguru.com/wp-content/uploads/2024/11/JUDICIAL-ACTIVISM-1.pdf>.

⁴ I. Imam, *Judicial Activism in Nigeria: Delineating the Extend of Legislative-Judicial Engagement in Law Making*, 15 ICLR 109, 109-127 (2015).

⁵ M. K. Sinha, *Judicial Activism v Judicial Restraint: A Comparative Review of Landmark Cases*, 2 IJL 103, 103-108 (2024).

and applying the law, frequently going beyond typical limits to enhance fairness and defend individual rights. This method is very different from judicial restraint, where judges hold back and respect the decisions made by lawmakers, focusing on a limited understanding of laws. The term judicial activism brings about various meanings and viewpoints in legal discussions.⁶ This research will attempt some of the definitions of judicial activism by scholars. According to Dada, ‘judicial activism is a jurisprudential approach that empowers judges to adopt a proactive stance in interpreting the law, occasionally venturing beyond conventional limits to champion justice. Safeguard individual rights and uphold the spirit of the constitution’. This meaning highlights the notion that judicial activism involves judges making decisions that go beyond merely applying the law as it stands, often in pursuit of broader societal goals or values.

In delving deeper into this concept, one can explore the works of renowned legal scholars such as Omobolanle who argues that the term means ‘a judicial philosophy holding that the courts in giving its judgment can go and should go beyond the applicable law, to consider broader societal implications of its decisions’.⁷ The Black’s Law dictionary, defines the term as:

*a philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors, to guide their decision usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedents.*⁸

Additionally, the phrase typically suggests that judges decide cases based on their personal opinions instead of strictly following previous cases and laws. Consequently, a judicial activist is a judge who exceeds the basic requirements of the law to make sure that his choices promote fairness regardless of the situation. This type of judge considers not just the literal wording of the law but also its underlying purpose.

In common use, this term refers to how courts actively work to maintain fair treatment and equal rights in legal decisions.⁹ This view is insightfully supported by Swygert, who described

⁶ I. Ibrahim, *Judges, Politics and Election Petition Cases in Nigeria: Delineating* 15 ICLR 109, 109-127 (2015).

⁷ O. O. Omobolanle, *An Examination of the Impact of Judicial Activism on Democracy in Nigeria*, ACADEMIA, (July 14, 2025, 8:14 AM) <https://www.academia.edu/>.

⁸ L. M. Swygert, *In Defense of Judicial Activism*, 16 Valparaiso University Law Review, 439, 439 (2011).

⁹ *Id.*

the term as ‘the tendency of the courts to adopt a liberal approach in favor of upholding the essence of due process and equal protection under the law, in adjudication’.¹⁰

3. NATURE AND SCOPE OF JUDICIAL ACTIVISM

Within the field of judicial activism, three key questions emerge that shape the essence and extent of judicial activism, calling for thorough analysis. The first question is ‘what extend should courts prioritize jurisprudence fidelity versus substantial justice in their adjudicatory processes’? In summary, should courts prioritize jurisprudence or justice in their decisions? The second question is ‘can courts legitimately engage in dynamic constitutional interpretation, reflecting evolving societal norms and values, and potentially catalyzing legislative responsiveness? And the last question is that ‘should *stare decisis* yield to justice, allowing courts to depart from fraud precedent?’¹¹

Thus, from the foregoing, it is evident that the extent of judicial activism covers: (i) the understanding of the constitution and laws, (ii) following past court decisions, and (iii) ensuring the government is responsible by reviewing executive actions according to the judicial review principle.¹² For instance, in the case of *Agbakoba v. Attorney General of the Federation of Nigeria*,¹³ the trial judge decided that a change to the constitution without the President's approval is invalid, overlooking a strong precedent from the past. Similarly, in *Hollingsworth v. Virginia*,¹⁴ the Supreme Court of the United States looked at what Article V of the constitution means, much like how section 9 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN) is understood¹⁵ and determined that the President does not have an official function in amending the United States Constitution and that although it is allowed, a signature from the President is not compulsory.¹⁶

The concept of judicial activism has sparked intense debate, with two distinct schools of thoughts emerging in support and opposition. This debate has been ongoing for decades, with scholars subjecting to rigorous academic scrutiny. A notable example is the Hart-Dworkin

¹⁰ *Id.*

¹¹ A. A. Alli, *Judicial Activism ,vis a- vis Judicial Restraint Imperative for Delivering Justice: A Comparative Analysis*, 1 Southeast University Journal of Arts and Social Sciences, 141, 141-154 (2014).

¹² T. A. Adetona, *supra* note 1.

¹³ [2021] JELR 109393 (CA) Court of Appeal • CA/L/1240/2015

¹⁴ U.S (3Dall.) 378.

¹⁵ T. A. Adetona, *supra* note 1.

¹⁶ *Id.*

debate, which has contributed significantly in the ongoing discussion on the role of judges in shaping the law.¹⁷ The important argument started by Ronald Dworkin and H. L. A. Hart's significant writings on the idea of law has grown into a broad conversation. This discussion, which includes many legal experts, explores many subjects such as: whether judicial discretion exists and how far it goes, the relationship between policy and decision-making, the basic essence of rules and their underlying principles, the possibility of descriptive jurisprudence, the role of law in society, the value attached to impartial judgments, and the difficulties presented by unclear ideas and aspects of legal reasoning and inference.

The Dworkin School of thought, comprised of pro-activists and anti-positivists, advocates for judges to exercise judicial discretion when deemed necessary. On the other hand, the Hart approach, made up of those against activism and who favor positivism, believes that judges ought to follow the law exactly as it is written. They should not make personal choices or develop new regulations. Their main point is that judges should focus on interpreting and using the laws that are already in place, rather than inventing new laws. This perspective supports the idea of judicial restraint and maintains the separation of powers. Again, the two schools,¹⁸ take divergent positions. The Dworkin School thinks that apex courts should do more than just explain the law; they should also support public policy with their rulings.¹⁹ Conversely, the Hart School holds that policy and law are two distinct ideas, and that the apex court's job is to make pronouncements on laws, leaving the legislative and executive branches of government to make policies.²⁰

4. THE HISTORICAL PERSPECTIVE OF JUDICIAL ACTIVISM

This section of the article offers a summary of how judicial activism has evolved in Nigeria. Over the years, judicial activism in Nigeria has developed, frequently reacting to political and social issues. The notion that 'justice not only must be done, but also must be seen to be done' was eloquently expressed by Lord Hewart, CJ in the landmark case of *Rex v. Sussex Justices*.²¹ This seminal phrase has since become a cornerstone of natural justice and has inspired the concept of judicial activism, emphasizing the importance of transparency and accountability

¹⁷ S. D. Abdullahi, *Judicial Activism as a Vehicle for Advancing the will of the People in Election Cases in Nigeria*, LAW YALE (August 22, 2025, 1:14 PM) <https://law.yale.edu/system/files/documents>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ [1924] 1 K.B. 256 (C.A.).

in the administration of justice.

The concept of judicial activism has its root in the United Kingdom, dating back to the Stuart's period (1603-1688), when the British unwritten constitution provided a framework that enabled judicial activism to emerge. A pivotal milestone in this development was the landmark case of *Thomas Bonham v. College of Physicians*²² where Justice Edward Coke established the principle of judicial review and decided that the courts can review and declare void any law passed by parliament that goes against common law or reason. This was further supported by Sir Henry Hobart, who became the Court of Common Pleas Chief Justice in 1615 by succeeding Justice Coke. Nevertheless, the term judicial activism was first mentioned by Arthur Schlesinger Jr. in his *Fortune* magazine article, 'The Supreme Court: 1947', marking a significant turning point in the evolution of this judicial philosophy.²³ He utilized the term to classify the American Supreme Court justices of that period as activist judges, proponents of self-control, and judges who fell somewhere in the middle.

The seminal case of *Marbury v. Madison*,²⁴ signified an important turning point in the progress of judicial review, as the US Supreme Court confidently claimed its power to explain the Constitution and ruled that a particular section of the Judiciary Act of 1801 was not in line with the Constitution, thus confirming the judiciary's essential function as a balance against the other government branches. The development of judicial activism in Nigeria started with the British legal system, which prioritized governance, where the courts mainly catered to the needs of the British Crown. The early courts operated under English common law principles and doctrines, often prioritizing the interests of the British Crown over indigenous legal traditions. After independence in 1960, the courts gradually asserted its authority as an independent arbiter of justice.²⁵ During the First Republic, the judiciary adopted a more assertive stance, but faced setbacks due to political instability.²⁶

The military era from 1966-1979, 1983-1999 was a challenging period for judicial activism in

²² *Thomas Bonham v College of Physicians* [1610] BRITANNICA March (13, 2025, 10:19 AM) <https://www.britannica.com>.

²³ S. Akala, *An Overview of Judicial Activism and Statutory Interpretation in Nigeria* SABILAW (February 24, 2025, 4: 34 PM) <https://sabilaw.org/an-overview-activism-and-statutory-interpretation-in-Nigeria>.

²⁴ [1803] 5 U.S. (1 Cranch) 137.

²⁵ *Id.*

²⁶ C. C. Okpanum, *Democratic Transition and Consolidation in Nigeria: One Step Forward or Two Steps Backward?*, LAWGURU (April 8, 2025, 11: 30 AM) <https://nigerian-lawguru.com/wpcontentupload2025/11/JudicialActivism>.

Nigeria, marked by the suspension of constitutional provisions and rule by decree. During these periods, the judiciary occasionally pushed back against executive overreach, with landmark cases like *Chief Odumegwu Ojukwu v. Military Governor of Lagos State*²⁷ affirming the law. Despite limitations imposed by military decrees, this period laid the groundwork for a more assertive judiciary in the democratic era. Nigerian judicial activism accelerated following the country's return to democracy in 1999. Its daring decisions on election disputes, human rights cases, and constitutional issues significantly influenced the democratic landscape of the nation. Landmark decisions, such as *Attorney-General of the Federation & 2 Ors v. Alhaji Atiku Abubakar & 3 Ors*,²⁸ reinforced the judiciary's power in interpreting constitutional provisions.²⁹ The Nigerian Supreme Court interpreted the constitution's clause on fiscal federalism and local government funding control in this case. The Federal Government's refusal to provide Lagos State-created local governments with statutory allocations was contested by the Lagos State Government. Despite Lagos State's constitutional right to establish local governments, the court decided that these councils could not receive federal funding unless they were officially recognized by the Constitution. This decision demonstrated judicial activism by clarifying constitutional ambiguities related to federalism and State powers while simultaneously restricting the executive's discretionary control over State finances. Other earliest practice of judicial activism is evidently seen in the cases of *Adegbenro v. Akintola*,³⁰ *Akintola v. Adegbenro*,³¹ *Williams v. Majekodunmi*,³² *Council of University of Ibadan v. Adamolekun*,³³ and *Lakanmi v. Attorney General of Western Nigeria*.³⁴ The aforementioned cases served as illustrations of the Supreme Court of Nigeria's constitutionally granted judicial bravery and inventiveness.³⁵

The argument that the concept of judicial activism has been with and gradually developed through the function of the courts in Nigeria is thus supported by the Supreme Court of Nigeria's examples of judicial courage and creativity within its constitutional propriety, even though the level of court activism varied in different areas such as electoral litigation.

²⁷ [1986] NGSC 13.

²⁸ [2007] NGSC 177.

²⁹ *Id.*

³⁰ [1963] All NLR 305.

³¹ [1962] 1 All NLR 442.

³² [1963] 2 SCNLR 26.

³³ [1967] NSCC 210.

³⁴ [1970] LPELR-SC.58/69.

³⁵ I. Imam, *supra* note 7.

5. JUDICIAL ACTIVISM IN NIGERIA

In Nigeria, judicial activism has generated debate. While some contend it is necessary to uphold democracy and human rights, others see it as an infringement on the authority of other branches of government. In Nigeria, judicial activism is a vibrant and changing facet of the judiciary's influence on the legal system, frequently obfuscating the distinction between legislation and adjudication.³⁶ It is frequently identified by rulings that call for social engineering, and on occasion, these rulings signify intrusions into executive and legislative affairs.³⁷ Imam claims that the phenomenon has been essential to the advancement of constitutionalism, human rights, and democratic governance, especially in situations where the legislative and executive branches have failed to enforce the law or deal with urgent social issues.³⁸ According to Sinda, the idea is in opposition to judicial restraint, which promotes a rigorous, textual interpretation of the law and deference to the executive and legislature when it comes to matters of policy.³⁹ By delivering landmark judgments on electoral disputes, fundamental rights enforcement cases, and constitutional interpretation matters, the Nigerian judiciary has significantly influenced legal and socio-political transformations. .

However, this philosophy raises critical questions about the legitimacy of judicial discretion, the balance of power among governmental institutions, and the potential risks of judges imposing personal ideologies under the guise of legal interpretation. The foundation of judicial activism in Nigeria lies in constitutional provisions that grant the judiciary broad powers of interpretation of the law.⁴⁰

The judiciary, particularly the Supreme Court⁴¹ and the Court of Appeal,⁴² have repeatedly invoked its interpretative supremacy to resolve disputes relating to fundamental rights, executive powers, and democratic processes. By requiring government agencies to uphold their constitutional obligations, the courts have also been instrumental in addressing socioeconomic disparities. Judicial overreach, on the other hand, happens when courts take on executive or

³⁶ C. Obianuju, *Judicial Activism in Nigeria: A Catalyst for Legal Development or an Overreach of Power?*, 2 Awka Journal of Private and Property 213, 213 (2025).

³⁷ I. Imam, *supra* note 7.

³⁸ *Id.*

³⁹ K. Sinha, *supra* note 5 at 103-108.

⁴⁰ CFRN, s 6.

⁴¹ *Id.* at 230.

⁴² *Id.* at 237.

legislative duties while claiming constitutional interpretation, which causes conflict between the branches of government.

Another significant manifestation of judicial activism in Nigeria is in the realm of human rights protection, where courts have consistently delivered bold and transformative rulings against systemic violations, including police brutality, unlawful detentions, extra-judicial killings, and various forms of discrimination. Recognizing the judiciary as the ultimate guardian of constitutional rights, Nigerian courts have frequently intervened to curtail executive excesses and protect vulnerable citizens from abuses perpetrated by State actors and private entities alike. Notably, in *General Sanni Abacha & Ors v. Chief Gani Fawehinmi*,⁴³ a case which was a defining moment in Nigeria's human rights jurisprudence, as it involved the clash between executive authority and the fundamental rights of individuals, Chief Gani Fawehinmi, a prominent human rights lawyer, was unlawfully detained by the military regime of General Sanni Abacha under the guise of State security.⁴⁴ By claiming that his detention went against his fundamental rights as guaranteed by the Constitution and international human rights instruments, he contested it. In its decision in support of Fawehinmi, the Supreme Court emphasized that no government agency had the authority to detain citizens without cause or justification. This ruling sent a clear message against executive impunity in Nigeria and reaffirmed the judiciary's role as the guardian of individual liberties.

Nigeria's human rights framework has been strengthened by these court rulings, which have not only led to the enforcement of fundamental rights but also forced government agencies to take corrective action. The judiciary has been instrumental in extending the boundaries of individual liberties and guaranteeing that no person or organization functions above the law by utilizing progressive interpretations of constitutional guarantees and international human rights standards. This proactive approach has reinforced the courts' status as the last resort for the average person, offering recourse in situations where other institutional mechanisms have been ineffective. However, the tendency of courts to assume an overtly activist posture in such cases sometimes raises concerns about judicial bias and the potential disregard for procedural limitations.

Judicial activism has also played a role in addressing executive excesses and ensuring

⁴³ S.C. 452022.

⁴⁴ *Id.*

governmental accountability. Nigerian courts have, at various times, restrained the executive from exercising powers *ultra vires* or arbitrarily. For instance, the judiciary has overturned unlawful executive orders, invalidated unconstitutional appointments, and mandated the release of unlawfully detained individuals. In *Attorney-General of Ondo State v. Attorney-General of the Federation & Ors*⁴⁵ the Corrupt Practices and Other Related Offences Act 2000, which was passed by the federal government to fight corruption, was contested as unconstitutional. The Ondo State Government argued that some of the Act's provisions infringed on State governments' authority. The Supreme Court ruled that although the federal government could enact laws to combat corruption, it could not usurp State governments' authority in areas that were not within its constitutional purview.⁴⁶ This ruling upheld the federalism principle and the judiciary's function in preserving the distribution of power among the various governmental tiers. Although this demonstrates the judiciary's dedication to maintaining the rule of law, detractors contend that overzealous judicial meddling in executive affairs undermines governance and infringes upon the executive arm's rights.

The Nigerian judiciary has significantly influenced socio-economic rights through activist decisions. Courts have made pronouncements compelling the government to provide basic amenities, address environmental injustices, such as in cases involving communities affected by oil pollution, which have demonstrated how judicial activism can be a tool for social justice. In *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd & Ors*,⁴⁷ Jonah Gbemre filed a lawsuit against Shell and the Nigerian government on behalf of the Iwharekan community in the Niger Delta, claiming that gas flaring infringed upon their basic rights to dignity and life. Gbemre won the case at the Federal High Court, which ruled that gas flaring was unlawful and mandated that it stop. This historic ruling, which demanded corporate and State accountability, strengthened judicial activism in environmental justice. However, corporate and governmental opposition makes enforcement difficult.

Another dimension of judicial activism in Nigeria is evident in the realm of economic and commercial law jurisprudence. Courts have played an important role in interpreting contractual obligations. For instance, in *BFT Group Corporation v. Bureau of Public Enterprises*⁴⁸ BFI Group contested the Bureau of Public Enterprises' (BPE) revocation of its bid for the

⁴⁵ [2023] LLJR-SC.

⁴⁶ *Id.*

⁴⁷ FHC/B/CS/53/23.

⁴⁸ [2022] LLJR –SC.

Aluminum Smelter Company of Nigeria after being declared the preferred bidder. The Supreme Court held that BPE's actions were unlawful, underscoring the importance of transparency and adherence to due process in privatization and commercial transactions.⁴⁹ This decision emphasised the judiciary's function in guaranteeing contract fairness.

Crucially, by redefining the relationship between the federal government and subnational entities, judicial activism has impacted Nigeria's federalism. Courts have discussed matters pertaining to fiscal federalism, State autonomy, and resource control. In the landmark case of *Attorney General of the Federation v. Attorney General of Abia State*,⁵⁰ often referred to as the Resource Control Case, several oil-producing States challenged the Federal government's control over offshore oil resources, arguing for greater State autonomy in resource management. The Supreme Court ruled that offshore oil revenues belonged to the Federal government, but States were entitled to derivation benefits under the Constitution. This case remains a crucial judicial intervention in Nigeria's fiscal federalism.

In the electoral jurisprudence, the tool of judicial activism has helped in nullifying elections characterized by malpractices, non-compliance with the electoral laws, and regulation in Nigeria. A landmark case illustrating judicial activism in electoral jurisprudence is *Hope Uzodinma & Anor v. Rt. Hon. Emeka Ihedioha & 2 Ors.*⁵¹ In this case, the Supreme Court nullified Emeka Ihedioha's election as Governor of Imo State and declared Hope Uzodima the rightful winner, based on the inclusion of previously excluded polling unit results. This decision showcased the judiciary's power to correct electoral anomalies but also sparked controversy. While the judgment reaffirmed the judiciary's power to correct electoral anomalies, it also ignited widespread criticism, with many questioning the rationale behind the Court's computation of votes. Critics argued that the ruling effectively handed victory to a candidate who had initially finished fourth in the official results announced by the Independent National Electoral Commission (INEC), raising concerns about whether the judiciary had overstepped its constitutional role in the democratic process. Again, the case of *Amaechi v. INEC*,⁵² when the incumbent governor of a State was removed from office on the grounds that the appellant's replacement by his political party, the PDP, violated sections 34(1) and (2) of the Electoral Act, 2006 (as amended), Nigerian electoral jurisprudence witnessed a

⁴⁹ *Id.*
⁵⁰ [2002] NGSC 10.
⁵¹ [2020] LPELR-50260(SC) 1.
⁵² [2008] ALL FWLR (pt 407) 1.

revolutionary judicial activism. However, it is questionable whether the activism displayed in that case reflected the will of the people as the voters thought they were voting for a candidate but the court later declared another candidate who did not participate in the actual election as winner. Although, the court reasoned that it is the logo of parties that appeared on the ballot paper and thus, votes were cast for the party whose valid candidate was Mr. Rotimi Amachi. It is the author's humble opinion that that does not sufficiently reflect the will of the people. The court could have ordered for a re-election.

Further, in the case of *PDP v. Biobarakuma Degi-Eremienyo & 3 Ors*,⁵³ the Supreme Court employed judicial activism to nullify the declaration of David Lyon as the winner of gubernatorial election in Bayelsa State of Nigeria on the ground that his running mate, Biobarakuma Degi-Eremieyo submitted false information to INEC. The Court held that Degi-Eremieyo's disqualification had affected the joint ticket with which he and Lyon contested the election. This article believes that this goes against the people's will. This opinion is founded on the idea that it is the electorates, and not the courts that should determine who should lead a State. Again, critics argue that instead of declaring the PDP candidates winners, the Supreme Court should have ordered a fresh or bye-election to allow voters decide. In *Balewa v. Muazu*,⁵⁴ in the Bauchi State Governorship election held on January 9, 1999, the appellant, Alhaji Adamu Tafawa Balewa, the then-All People's Party (APP) candidate, contested the return of PDP candidate Alhaji Ahmed Adamu Muazu and his running mate, Alhaji Kaulaha Aliyu, on the grounds that his running mate was disqualified due to his termination from the civil service. In that instance, Balewa's appeal was granted by the Court of Appeal, which ruled that the election was void after the Election Tribunal rejected the petition. Given that they were elected on a joint ticket, the Court ruled that the disqualification of the Deputy Governor elects also disqualified the Governor elect. The bye-election was held by INEC.

This article would examine a few instances where the Supreme Court's judicial activism has been criticized. For instance, the Supreme Court's decision in *APC v. Bashir Sheriff & Ors*⁵⁵ among others, has faced criticism regarding the application of judicial activism. The court struck out this case due to allegation of fraudulent practices and irreconcilable conflicts in the party's affidavits has been seen as prioritizing technicalities over substantial justice. Some have

⁵³ [2021] 9 NWLR (pt 1781) 272.

⁵⁴ [1999] 5 NWLR(Pt. 603) 636.

⁵⁵ [2023] LPELR -59953.

argued that the Supreme Court's decision to dismiss the lawsuit was a greater injustice to Bashir Sheriff. On technical grounds, the court dismissed the lawsuit, stating that the claims of fraudulent activities and inconsistencies in the parties' affidavits made the case unfit for trial by originating summons. Lord Denning once said:

*My root belief is that the proper role of the judge is to do justice, if there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid the rule, even to change it, so as to do justice in the instant case before him.*⁵⁶

Unfortunately, even though the judiciary may be criticized for deviating from tradition, we rarely see instances in which it uses its inherent authority to settle disputes. However, it will be preferable for the election tribunals to have the authority and nature of a court of law so that they can freely engage in the judicial activism required to advance electoral justice whenever it is desired. Using judicial activism to salvage a dire situation, particularly for the sake of justice, is not impossible. Therefore, even election petition tribunals should have the ability and means to engage in judicial activism.

6. INSIGHTS FROM JUDICIAL ACTIVISM IN SOUTH AFRICA AND INDIA

A vital component of any constitution is judicial activism, which gives courts the ability to proactively interpret the law and address human rights abuses. After the discourse on Nigerian judicial activism, one can learn more about how judicial activism advances justice in South Africa and India by comparing the both jurisdictions.

6.1 Judicial Activism in South Africa

The transition of South Africa from apartheid to democracy has been greatly aided by judicial activism. The post-apartheid constitution has been interpreted and applied in large part by the South African Constitutional Court, which was founded following the end of apartheid.⁵⁷ The Constitutional Court has upheld human rights, equality, and nondiscrimination through its rulings. The Court is an important part of South Africa's democratic governance because of its

⁵⁶ Lord Denning: *The Family Story*, (Butterworths 1981,) 174)

⁵⁷ D. Davis, *Socio-Economic Rights in South Africa: The Record after Ten Years* 6 *New Zealand Journal of Public and International Law*, 47, 47 (2004).

approach, which has been defined by a readiness to get involved in public policy issues in order to guarantee constitutional compliance. The very first case that came before the Constitutional Court is *S v. Makwanyane*.⁵⁸ This case addressed the extremely delicate topic of the death penalty, which was frequently applied by the apartheid government in an effort to crush opposition to its cruel system. The Court came to the conclusion that the death penalty had no place in the legal system of a democratic South Africa after examining the legislative history of the constitution's draughting and primarily relying on the ban on cruel, inhuman, and degrading treatment and punishment, as well as on the rights to equality and human dignity. Observing the public outcry against this ruling, Hugh Corder comes to the following conclusion that the judgment:

*Represents a brave and principled staking of a claim for the authority of the judiciary in general and the Constitutional Court in particular to pronounce on matters of great social controversy, and even on occasion to go against the likely social consensus in giving expression to the words of the constitution.*⁵⁹

Again, in the case of *Bhe v. Magistrate of Khayelitsha*,⁶⁰ the Constitution's inability to sufficiently balance and reconcile the right to equality with customary law presented the Constitutional Court with yet another problem. The issue that emerged was whether two young girls born outside of a civil law marriage should be denied any claim to their father's estate under the new dispensation. According to the applicable customary law of succession, the estate belonged to their paternal grandfather and was subject to the principle of primogeniture. The Constitutional Court cited violations of women's equality and dignity as well as children's rights guaranteed by the Bill of Rights in its ruling that the legislative provisions under which this occurred were unconstitutional. Following a thorough analysis, the court determined that the customary law principle of primogeniture was unconstitutional because it discriminated against women and children born outside of marriage. The court created a number of specific measures to guide lower courts in similar situations, filling in the gaps left by the declaration of invalidity and waiting for Parliament to find the time to amend the law.

⁵⁸ [1995] (3) SA 391 (CC).

⁵⁹ *Id.*

⁶⁰ 2005 (1) SA 580 (CC).

Another example of judicial activism came in *Minister of Home Affairs v. Fourie*.⁶¹ Same-sex marriages are at the center of this case. When marriage was not possible, two women who had a long-standing, stable domestic relationship requested a mandamus order compelling the Home Affairs Minister to acknowledge their union and a declaration that the common law definition of marriage was unconstitutional. Even though some Supreme Court judges agreed that the definition was no longer valid, they believed that Parliament should amend the law. The Constitutional Court suspended the declaration, gave the legislature a year to amend the law, and ruled that the common law definition and the pertinent portions of the Marriage Act were unconstitutional.

This trend has not been without controversy, though. The idea of separation of powers may be compromised, according to critics, if judges take on responsibilities that belong to elected officials in politically delicate cases. Judicial activism in South Africa has been a powerful force in promoting legal development and defending fundamental rights in spite of these criticisms. By interpreting constitutional provisions, the Constitutional Court has clarified governance issues and broadened the scope of human rights. But worries about judicial overreach continue, especially when it seems like courts are making policy. Since courts must walk a tightrope between upholding constitutional mandates and honouring the functions of the executive and legislature, striking a balance between judicial activism and restraint continues to be a divisive topic. Ultimately, judicial activism in South Africa has been instrumental in consolidating democracy and fostering legal development, but its legitimacy depends on maintaining judicial independence and ensuring that activism does not translate into judicial supremacy.

6.2 Judicial Activism in India

Judicial activism has been a significant aspect of the Indian legal system, especially when it comes to public interest litigation (PIL). PILs have been used by the Indian Supreme Court to address a variety of social and environmental issues, including corruption, pollution, and healthcare. This strategy has received recognition for its capacity to hold the government responsible and give marginalized groups access to justice. A notable example is the landmark case of *Vishaka v. State of Rajasthan*.⁶² Until comprehensive legislation is passed for the

⁶¹ 2006 (1) SA 524 (CC).

⁶² AIR 1997 SC 3011

purpose, the court in this case established comprehensive guidelines to prevent sexual harassment of women in the workplace. It was decided that it is the responsibility of both private and public owners to stop sexual harassment of women at work. The court also ordered the legislature to create a comprehensive law on the subject and mandated that the guidelines be prominently displayed in the workplace.

Again, in the case of *Wadhwa v. State of Bihar*,⁶³ as a political science professor who had studied the State's government in great detail, the petitioner had a strong interest in making sure that constitutional provisions were carried out correctly. He contested the State's practice of issuing numerous ordinances without the legislature's proper consent. The State government was ordered by the Supreme Court to compensate the petitioner for his outstanding research that exposed this oppressive practice.

In the realm of public interest litigation, judicial activism has also been used to improve individual access to the previously disorganized, costly, and time-consuming legal system. In India, the court must first be convinced that the party who approached it has adequate standing to pursue the case before it will take it up for adjudication. However, in its efforts to assist the underprivileged and destitute in defending the infringement of their basic rights,⁶⁴ the court disregards the procedural difficulties that prevented access to the courts as well as the sanctity of locus standi. Critics counter that judicial activism in India has occasionally resulted in judicial overreach and meddling in legislative and executive affairs.

7. COMPARATIVE ANALYSIS AND LESSONS LEARNT

With an emphasis on South Africa and India, a comparative study of judicial activism provides insightful information that can revolutionize the growth of judicial activism in Nigeria's heterogeneous legal systems. The first important lesson is the need to think about whether judicial activism can be facilitated without a constitutional mandate. This calls into question whether the current provisions in the Nigerian constitution are adequate or if judges should be specifically given the authority to practice activist jurisprudence. In this sense, the experiences in South Africa and India are instructive. The expansive responsibilities outlined in the constitutions of South Africa and India have been especially beneficial in enabling judges to

⁶³ AIR 1987 SC 579.

⁶⁴ V. Sripathi, *Constitutionalism in India and South Africa: A Comparative Study from a Human Rights Perspective*, 16 Tulane Journal of International & Comparative Law, 98, 98-103 (2007).

adopt a more proactive stance, upholding individual rights and advancing social justice. For example, the Indian judiciary has been able to actively support the rights of marginalized communities thanks to the constitution's emphasis on social and economic justice and its judicial review provisions. In a similar vein, the bill of rights in the South African constitution has given the court a strong foundation for judicial activism, allowing it to issue historic rulings on matters such as equality, dignity, and access to justice.

One of the main benefits of having a constitutional mandate is that it allows the judiciary to act in a way that respects the separation of powers, is principled, and is measured. Furthermore, it is evident that judges' ability to give the Constitution's provisions vitality and relevance in order to keep them from becoming outdated is crucial to its efficacy.

This succinct comparative analysis of judicial activism in other jurisdictions, with a focus on South Africa and India, offers several intriguing insights that can benefit Nigerian courts. Nigeria can learn a lot about human rights protection from the judicial activism in South Africa and India. Courts can interpret the constitution in a way that upholds fundamental rights and increases individual liberties thanks to judicial activism. The ability of judges to look into how legal issues have been resolved by national and international courts in other jurisdictions is now not only feasible, but also required. As the former Chief Justice of Zimbabwe, Enoch Dumbutschena, rightly observed that:

*In order to advance human rights through the courts, there are two essentials to be met. The judge's personal philosophy must have a bias in favour of fairness and justice. There must exist an activist *793 court. Judicial activism in human rights cases is a pre-requisite for the development of a human rights jurisprudence.*⁶⁵

In contrast to the timidity exhibited by Botswana's courts, the swift action of India's and South Africa's highest courts has not only led to the prompt correction of flawed laws but also the introduction of new procedures and remedies to deal with significant social issues that the legislature and government have been too slow or uninterested to address. The primary

⁶⁵ See Valerie Knobelndorf, *Zimbabwe's Magaya Decision Revisited: Women's Rights And Land Succession In The International Context*, (August 26, 2025, 11: 43 PM) http://old.adapt.it/adapt-indice-a-z/wpcontent/uploads/2014/08/knobelndorf_2006.pdf.

takeaway from this brief discussion is that judges throughout Nigeria can use judicial activism as a potent weapon to support socially and economically progressive policies in addition to opposing authoritarianism. According to Nwabueze, constitutionalism ‘may be endangered when the courts seek to confine their own function unduly by a narrow, positivist interpretation of the law’.

8. CONCLUSION AND RECOMMENDATIONS

This study comes to the conclusion that the judiciary in Nigeria continues to use judicial activism as a helpful tool when making decisions on important matters pertaining to the public interest. The idea is a two-edged sword, though, as it can both spur legal advancement and possibly lead to an abuse of judicial authority. Although it has been crucial in promoting constitutionalism, protecting human rights, maintaining the integrity of elections, and holding the executive branch responsible, worries about the judiciary's intrusion into legislative and executive duties still exist. Its transformational impact in strengthening the rule of law and forming national jurisprudence is demonstrated by the development of judicial activism in Nigeria, from the colonial era through military rule to the democratic era. Judicial activism must, however, carefully balance progressive legal interpretation with respect for the separation of powers doctrine in order to remain legitimate and effective.

A judiciary that is overly interventionist risks undermining democratic stability, while excessive judicial restraint, may render the courts ineffective in addressing pressing societal injustices of public interest matters. Therefore, a judicious and principled approach to judicial activism is imperative, ensuring that while courts continue to act as guardians of justice, their decisions remain firmly rooted in constitutional principles, democratic accountability, and institutional integrity.