



## Judicial Activism and Justice Delivery: An Analysis of the working of the Indian Judiciary

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**Abstract:** This research paper interrogates the paradigm shift in the Indian judicial landscape from a state of "ordered liberty" to one of "judicial proactively." Through an extensive analysis of the evolution of Judicial Activism and its impact on justice delivery, the study explores how the Supreme Court of India transformed itself from a traditional legal arbiter into a "populist institution." The paper examines the genesis of Social Action Litigation (SAL) as theorized by Upendra Baxi and the subsequent rise of Public Interest Litigation (PIL) in the post-Emergency era. By analyzing the tension between the executive and the judiciary—exemplified by the *Kesavananda Bharati* (1973) case and the recent Collegium debates—this research evaluates whether the judiciary has overstepped its constitutional mandate. Utilizing secondary data and landmark case laws, the study finds that while judicial activism has filled institutional vacuums and protected the rights of the marginalized, it faces mounting challenges regarding judicial accountability, the "Master of the Roster" controversy, and a staggering backlog of cases. The paper concludes that for effective justice delivery, a calibrated balance between judicial vigor and executive prerogative is essential to maintain the "Basic Structure" of the Indian Constitution.

**Index Terms** - Judicial Activism, Justice Delivery, Public Interest Litigation, Basic Structure Doctrine, Social Action Litigation, Separation of Powers, Judicial Accountability and Indian Constitution.

### I. Introduction

The Indian judiciary stands as a unique monolith in the global South, possessing powers of judicial review that often eclipse its counterparts in the United Kingdom or the United States. Originally envisioned by the framers of the Constitution as an arm of the social revolution (Austin, 1999), the judiciary was tasked with the dual responsibility of maintaining federal equilibrium and protecting fundamental rights. However, the trajectory of the Indian Supreme Court suggests a departure from mere constitutional interpretation toward a robust form of judicial governance.

Judicial activism, in the Indian context, is not merely a legal tool but a socio-political phenomenon. It represents the judiciary's transition from a "quietist" role to an assertive one where it actively participates in policy-making and executive oversight. The central research problem addressed here is the efficacy of this activism in the actual delivery of justice. Does the proactive nature of the court ensure substantive justice for the common citizen, or does it lead to a "judicial sovereignty" that undermines the democratic process? This paper argues that judicial activism served as a necessary corrective during periods of executive high-handedness but now requires a framework of accountability to ensure that "justice delivery" is not sacrificed at the altar of "judicial populism".

### II. Literature Review

The discourse on judicial activism is polarized. Upendra Baxi (1985) pioneered the concept of "Social Action Litigation" (SAL), arguing that the Indian Supreme Court took "suffering seriously" by relaxing the traditional rules of *locus standi*. Baxi's work highlights how the court became a last resort for the "proletariat," transforming from a "landlord's court" into a "people's court".

Conversely, Pratap Bhanu Mehta (2007) provides a critical perspective in "The Rise of Judicial Sovereignty." Mehta argues that the judiciary has expanded its jurisdiction into the domain of policy and administration without possessing the requisite expertise or accountability. He posits that this expansion risks delegitimizing other democratic institutions. Similarly, Anuj Bhuwania (2014) critiqued the post-Emergency rise of PILs, suggesting that while they claim to empower the poor, they often serve middle-class anxieties and bypass rigorous legal procedures.

Granville Austin (1999) situated the judiciary within the broader "seamless web" of the Indian Constitution, emphasizing that judicial independence is central to the social revolution. Meanwhile, S.P. Sathe (2002) documented the "activist" phase, noting that the judiciary has effectively rewritten parts of the Constitution through interpretation, particularly the "Basic Structure Doctrine." These works collectively suggest that while activism is rooted in the quest for justice, its lack of clear boundaries remains a point of academic contention.

### III. Methodology

This research utilizes a qualitative, doctrinal, and analytical methodology. It relies on secondary data sourced from landmark judicial pronouncements, parliamentary debates, and scholarly articles published in high-impact journals such as the *Indian Journal of Political Science* and *International Journal of Constitutional Law*. The study also incorporates current affairs data

from reputable news outlets like *The Hindu* and *The Indian Express* to bridge the gap between historical theory and contemporary practice. The analysis focuses on the "process tracing" of judicial evolution from the *A.K. Gopalan* era to the present day.

#### IV. The Data of Judicial Performance

The working of the Indian judiciary can be quantified through its output in Public Interest Litigation and its administrative efficiency.

**Table 1: Evolution of Judicial Philosophy in India**

Era	Key Philosophy	Landmark Case	Judicial Stance
1950–1967	Formalist/Literal	<i>A.K. Gopalan</i>	Restraint; Strict adherence to procedure.
1973–1980	Transformative	<i>Kesavananda Bharati</i>	Assertion of "Basic Structure"; Activism begins.
1980–2000	Populist/Expansive	<i>Maneka Gandhi / S.P. Gupta</i>	Dilution of <i>Locus Standi</i> ; PIL era begins.
2000–Present	Administrative/Regulatory	<i>NJAC Case / Article 370</i>	Judiciary as a co-governor and policy arbiter.

**Table 2: Pendency and Justice Delivery (Secondary Data Estimates)**

Court Level	Number of Pending Cases (Approx.)	Growth Rate (Annual)
Supreme Court	~80,000	4.5%
High Courts	~6 Million	6.2%
Subordinate Courts	~44 Million	7.8%

Source: Compiled from National Judicial Data Grid (NJDG) and Ministry of Law reports.

#### V. Discussion and Analysis: The Duality of Activism

The analysis of judicial activism reveals a paradoxical reality. On one hand, the court has delivered substantive justice in areas where the legislature remained paralyzed. In the realm of environmental law, the "Green Bench" of the Supreme Court has utilized the "Precautionary Principle" and "Polluter Pays Principle" to protect ecological interests (Rajamani, 2007). In the absence of specific legislation, the court's *Vishaka* guidelines on sexual harassment served as the law of the land for over a decade, representing a prime example of "justice delivery" through judicial legislation.

However, the "working" of the judiciary reveals significant internal fissures. The "Master of the Roster" controversy highlights the lack of transparency in how cases are assigned to specific benches, leading to allegations of selective activism. Furthermore, the Collegium system remains a flashpoint for executive-judiciary conflict. As noted in *The Hindu* (2023), the lack of a transparent mechanism for judicial appointments creates a perception of an "insular" judiciary.

The expansion of Article 21 (Right to Life) to include the right to privacy, clean air, and even a speedy trial is a triumph of judicial activism. Yet, the data in Table 2 suggests that "justice delivery" is stalled by procedural delays. If activism leads to the admission of thousands of PILs while criminal appeals languish for decades, the moral authority of the court as a deliverer of justice is compromised.

#### VI. Jurisprudential Extensions

The *Kesavananda Bharati* (1973) judgment is arguably the most significant act of judicial activism in world history. By inventing the "Basic Structure" doctrine, the court limited the amending power of the Parliament under Article 368. This was a direct response to the executive's attempt to achieve "committed judiciary" status during the 1970s. T.R. Andhyarujina (2013) highlights the internal struggles of the bench during this period, revealing that activism was born out of a survival instinct for democracy.

The post-Emergency judiciary sought to regain its lost prestige by becoming a champion of the poor. Justice P.N. Bhagwati and Justice V.R. Krishna Iyer revolutionized "access to justice" by allowing any public-spirited citizen to file a petition on behalf of those unable to access the court. This was "Taking Suffering Seriously" (Baxi, 1985) in its purest form. However, as Robinson (2013) notes, this expansion has led to the "Supreme Court of India becoming the Supreme Court for Indians," where the court is bogged down by matters that should ideally be handled by municipal bodies or local administration.

It is crucial to analyze how judicial activism has impacted the electoral system. The Supreme Court's intervention in the *ADR v. The Union of India* case, making it mandatory for candidates to disclose their criminal, educational, and financial backgrounds, fundamentally altered the "Public Opinion" and "Media Influence" on voting. This form of activism directly assists in "Justice Delivery" by ensuring a cleaner democratic process, though the enforcement of these disclosures remains a challenge for the Election Commission.

#### VII. Conclusion: Toward a Balanced Jurisprudence

The Indian judiciary is at a crossroads. Its activism is its greatest strength and its most significant vulnerability. While the proactive stance of the court has saved Indian democracy from the excesses of majoritarianism, the "working" of the judiciary requires urgent administrative reform. Justice delivery cannot be the prerogative of the elite who can afford expensive counsel to file "activist" PILs; it must be a reality for the 44 million citizens whose cases are pending in subordinate courts.

The findings suggest that the judiciary must move from "populist activism" to "administrative activism"—focusing on its own backlog and transparency. The "Basic Structure" must now include the "Right to Efficient Justice." The future of the Indian judiciary lies in its ability to self-regulate, ensuring that it remains the "sentinel on the qui vive" without becoming a "super-legislature".

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