

BOUNDARIES AND CHANGING PERSPECTIVES ON JUDICIAL ACTIVISM IN INDIA: A CRITICAL LEGAL ANALYSIS

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Abstract

This research paper aims to analyse the concept of judicial activism in India comprehensively. It explores the evolution of judicial activism, its changing perspectives, and its implications for the Indian legal system. Judicial activism is characterised by judicial decisions that go beyond the mere interpretation of laws to shape public policy, and it has been a prominent feature of Indian jurisprudence. However, the boundaries of judicial activism have often been debated and critiqued. This paper critically analyses the evolution of judicial activism in India, its impact on the separation of powers, and its role in shaping the socio-political landscape. Additionally, the research evaluates the changing perspectives of the judiciary and society regarding judicial activism and its implications for the Indian legal system.

Keywords: *judicial activism, India, separation of powers, constitutional law, administrative law, Indian jurisprudence*

Introduction

Judicial activism, defined as the proactive role taken by the judiciary in addressing social and political issues, has been a subject of significant debate in India. Judicial activism refers to the active involvement of the judiciary in safeguarding citizens' rights and advancing justice within society. It is a judicial approach that empowers judges to interpret laws in a manner that may differ from the literal wording of legislation, enabling them to establish fresh legal norms, principles, or standards. This approach often includes using judicial review to nullify laws or government actions that are deemed to contravene the Constitution or expand individual rights beyond what was previously established by existing laws⁴.

As per Black's Law Dictionary, "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent".⁵

SP Sathe says, "When a court interprets a provision that aligns with changing social or economic conditions or broadens the scope of individual rights, it is characterised as an activist court"⁶.

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⁴ Vishalj, Judicial Activism, <https://www.legalserviceindia.com/legal/article-2063-judicial-activism.html> (visited on 28/9/23)

⁵ Henry Campbell Black, M. A., "Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern", Revised Fourth Edition By The Publisher's Editorial Staff, St. Paul, Minn. West Publishing Co. 1968, Black's Law Dictionary 4th Ed. Rev. 6-1971.

⁶ S.P. Sathe- Judicial Activism in India, Pg 4.

Research Methodology

This research paper explores the nuances of judicial activism in India, tracing its historical development, analysing its impacts, and considering the various perspectives surrounding this phenomenon.

Historical Evolution of Judicial Activism in India

The historical evolution of judicial activism in India is a fascinating journey that reflects the ever-changing dynamics between the judiciary, the executive, and the legislature. It showcases how the Indian bench, particularly the Supreme Court, has gradually assumed a more proactive role in interpreting and enforcing the law to protect citizens' rights and promote justice.

Pre-Independence Era

The roots of judicial activism in India can be traced back to the pre-independence period when the struggle for freedom was at its peak. During this time, even under colonial rule, the judiciary played a significant role in safeguarding individual liberties and upholding the rule of law. The origins of judicial activism in India can be traced back to 1893 when Justice Mehmoond of the Allahabad High Court delivered a dissenting judgment that laid the groundwork for activism in the country. The case revolved around an undertrial who needed more financial means to secure legal representation. In his dissenting opinion, Justice Mehmoond criticised the practice of dismissing appeals solely because the appellant couldn't afford the translation and printing of the court records in English⁷. This amounted to activism advocating for the rights of undertrials who had suffered significant injustices. Even though his approach did not align with the views of the English judges on the bench, Justice Mehmoond was compelled to resign due to his use of these tactics in the courtroom.

Post-Independence Era- Expanding Horizons

With India gaining independence in 1947, the Constitution of India came into effect in 1950. This marked a crucial turning point in the history of judicial activism. The Constitution, with its elaborate Bill of Rights, empowered the judiciary to play a central role in upholding the fundamental rights of citizens⁸.

The subsequent Supreme Court judgments offer valuable insights into the progression of judicial activism in post-independence India.

The seminal case that marked this shift was *A.K. Gopalan v. the State of Madras*⁹ (1950). In this case, a writ petition was filed to examine whether detention without trial violated fundamental rights under Articles 14, 19, 21, and 22 of the Constitution. The Supreme Court, in its ruling, emphasised that the written Constitution empowered judicial review. While the challenge did not succeed, it initiated a new legal trend that became more apparent in subsequent years.

Changing Perspectives on Judicial Activism

- **Freedom of the Press**

⁷ Naveen Talawar, I Pleaders, <https://blog.ipleaders.in/judicial-activism/> (visited on 02/09/23)

⁸ *Ibid.*

⁹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

The concept of judicial activism, specifically regarding the freedom of the press in India, has undergone notable changes. Initially, there was scepticism about the judiciary's role in safeguarding press freedom. However, in recent years, the courts have increasingly recognised the press as a crucial pillar of democracy and a guardian of citizens' right to information. Judicial activism has played a pivotal role in shaping progressive legal interpretations and setting precedents that protect and promote press freedom in India. This evolving perspective highlights the judiciary's vital role in upholding democratic values and ensuring the press remains a vibrant and independent institution. For instance, in the case of *Sakal Newspapers Pvt. Ltd. v. Union of India*¹⁰ (1962), the government attempted to regulate the number of pages of newspapers based on their prices, citing the Newspaper Act of 1956 and a 1960 order. The Supreme Court decreed that newspapers should not be subject to the same regulations as other businesses because they served as a platform for exchanging ideas and information. This decision extended the protections for freedom of speech enshrined in Article 19(1)(a) of the Constitution.

- **Reservation Policy**

The perception of judicial activism concerning reservation policies in India has evolved significantly. Initially, there were reservations about judicial interference in policies addressing historical social injustices. However, courts have gradually come to be seen as crucial protectors of these affirmative action measures, ensuring their effective implementation and preventing misuse. The judiciary's active role in defining reservation quotas and combating caste-based discrimination reflects a changing perspective that acknowledges its vital function in upholding constitutional principles of equality and social justice in India. This transformation underscores the judiciary's pivotal role in balancing affirmative action policies with the demands of a diverse and evolving society. As discussed in the case of *Balaji v. State of Mysore*¹¹ (1963), the Supreme Court reasoned that economic backwardness was the underlying cause of social backwardness. It differentiated between caste and class, ruling that caste should not be the sole criterion for assessing backwardness. Furthermore, it determined that the proportion of reserved seats should be at most 50%. The Court also stressed compliance with Article 14 and its subsets, Articles 15 and 16.

- **Doctrine of Prospective Overruling**

The doctrine of prospective overruling, originally from the American legal system, stipulates that a decision in a specific case will only affect the future and will not have retroactive implications for prior decisions. In *Golaknath v. State of Punjab*¹² (1971), the Supreme Court of India introduced the concept of "prospective overruling" when addressing the constitutional validity of the 17th Amendment to the Constitution. It concluded that Parliament lacked the authority to amend Part III of the Constitution or curtail any fundamental rights.

- **The Doctrine of Basic Structure**

¹⁰ 1962 AIR 305, 1962 SCR (3) 842.

¹¹ 1963 AIR 649, 1962 SCR Supl. (1) 439.

¹² 1967 AIR 1643, 1967 SCR (2) 762).

The doctrine of basic structure in India has witnessed changing perspectives on judicial activism. Initially, there needed to be more clarity about the judiciary's authority to determine what constitutes the core of the Constitution. Over time, the courts have been increasingly accepted as guardians of this doctrine, essential for preserving the fundamental principles of the Constitution. Judicial activism has played a pivotal role in defining and protecting the basic structure, ensuring that amendments do not alter the Constitution's core values. This evolving perspective recognises the judiciary as a crucial check and balance in safeguarding the democratic and constitutional integrity of India. A famous *Keshavananda Bharti v. State of Kerala*¹³ (1973) marked a watershed moment in Indian constitutional jurisprudence. While addressing the extent of the amending power conferred by Article 368 of the Constitution, the Court introduced the concept of the "basic structure." A 7:6 majority decision by a Bench of 13 judges ruled that while Parliament possessed broad amending powers, it must not alter or destroy the Constitution's basic structure or fundamental framework.

- **Habeas Corpus Case**

*ADM Jabalpur v. Shivkant Shukla*¹⁴ (1976) centred on Article 21 and remains one of the most contentious Supreme Court decisions related to judicial activism. The majority of the Bench held that in dire emergencies, such as the period between 1975 and 1977, a legal process could be established, allowing for the deprivation of human life. Although Justice Chandrachud, who authored the decision, faced criticism for his pro-government stance, his advanced legal theory demonstrated a form of judicial activism. He interpreted Article 21 in this manner, upholding the legality of legislation that required approval to protect the nation's sovereignty when threatened by internal or external aggression.

- **Emergence of PIL (Public Interest Litigation)**

One of the defining moments in the evolution of judicial activism in India was the emergence of Public Interest Litigation (PIL) in the 1970s. The Supreme Court, recognising the need for broader access to justice, relaxed the rules of locus standi¹⁵ to allow individuals and organisations to file cases on behalf of marginalised and disadvantaged sections of society. PIL became a powerful tool for addressing social injustices and holding the government accountable.

Justice such as V R Krishna Iyer, P N Bhagwati, Chinnappa Reddy, and D A Desai have lent their support to judicial activism, rendering numerous judgments that address the fundamental rights of individuals.

In *Hussainara Khatoon v. State of Bihar*¹⁶ (1979), a petition was presented to the Supreme Court following newspaper articles highlighting the plight of undertrial prisoners. Some of these inmates had already served more time than allowed for the alleged offences, and their cases languished for years due to an overwhelmed judiciary. They were unable to secure bail due to financial

¹³ (1973) 4 SCC 225.

¹⁴ AIR 1976 SC 1207.

¹⁵ The right to be heard in court.

¹⁶ 1979 AIR 1369, 1979 SCR (3) 532.

constraints. The petition was accepted as a writ, and the judges, led by Justice Bhagwati, ordered the release of these undertrials on personal bonds if they couldn't meet the required bail amount. It was asserted that a speedy trial was a fundamental right that shouldn't be restricted by financial means. The right to unimpeded legal representation was deemed integral to the right to life and personal liberty. This decision rectified a systemic flaw, leading to the release of thousands of similarly situated undertrials.

- **Protection of Fundamental Rights**

One of the primary objectives of judicial activism has been the protection of fundamental rights enshrined in the Constitution. The judiciary has proactively struck down laws and government actions that infringe upon these rights. For example, in the *Maneka Gandhi case*¹⁷ (1978), the Supreme Court expanded the scope of the right to life and personal liberty to include the right to a fair procedure.

In this case, the Supreme Court of India introduced a fresh interpretation of Article 21 of the Indian Constitution. This ruling set a compelling precedent for the evolution of concepts such as reasonableness and fairness.

- **Scope of the Right to Life**

To safeguard the rights of countless individuals lacking access to justice, Article 21 of the Constitution was expanded to encompass a broader definition of life, personal liberty, and the "procedure established by law." Several notable cases exemplify this. For instance, in *P. Rathinam v. Union of India*¹⁸ (1994), the Court considered whether the right to die falls within the scope of the right to life. The majority of the Bench affirmed that it does, leading to the invalidation of Section 309 of the Indian Penal Code as unconstitutional. However, this decision was subsequently overturned in the case of *Gian Kaur v. State of Punjab*¹⁹ (1996), wherein the Court held that while Article 21 includes the right to die with dignity, it does not encompass the right to die, and suicide remains punishable under Indian law. Furthermore, in one of the most well-known cases, *Common Cause (A Regd. Society) v. Union of India*²⁰ (2018), the Supreme Court determined that passive euthanasia is covered by the definition of the right to life under Article 21.

- **Right To Privacy**

The right to privacy is now acknowledged as an integral component of the right to life and personal liberty. This recognition of the sanctity of an individual's private sphere was affirmed in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*²¹ (2018). The right to privacy has since evolved significantly, encompassing the freedom to make significant personal decisions free from unjustified state interference, including intimate sexual behaviour.

¹⁷ *Maneka Gandhi v. Union of India* (UOI), AIR 1978 SC 597; (1978) 1 SCC 248.

¹⁸ 1994 AIR 1844 1994 SCC (3) 394 JT 1994 (3) 392 1994 SCALE (2)674.

¹⁹ 1996 AIR 946 1996 SCC (2) 648 JT 1996 (3) 339 1996 SCALE (2)881.

²⁰ AIR 2018 SC 1665.

²¹ (2017) 10 SCC 1.

In the *Navtej Singh Johar v. Union of India*²² (2018) case, the Supreme Court declared a portion of Section 377 of the Indian Penal Code unconstitutional. It asserted that it "violates the right to life and liberty guaranteed by Article 21, which encompasses all aspects of the right to live with dignity, the right to privacy, and the right to autonomy and self-determination concerning the most intimate decisions of a human being."

These cases collectively highlight the transformative role of judicial activism in expanding the scope and application of Article 21, effectively protecting and enhancing the rights and liberties of Indian citizens.

- **Environmental Concerns**

Judicial activism in India also extended to environmental issues. The Supreme Court's intervention in cases like *M.C. Mehta v. Union of India*²³ (1986) led to significant ecological protection and conservation improvements. The court's proactive stance on pollution control and the preservation of natural resources demonstrated its commitment to safeguarding the environment.

Accountability of the Government

Judicial activism has played a crucial role in holding the government accountable. The judiciary has intervened in executive excesses, corruption, and abuse of power. Landmark cases like the *Hawala case*²⁴ (1996) and the *2G spectrum case*²⁵ (2012) led to the prosecution of politicians and bureaucrats involved in corruption scandals, sending a strong message about the rule of law.

Social Justice and Inclusivity

The Indian judiciary has also been a defender of social justice. It has sought to address discrimination, inequality, and exclusion issues through its judgments. Cases like the *Mandal Commission case*²⁶ (1992) affirmed the state's power to provide reservations to socially and educationally backward classes, promoting inclusivity and affirmative action.

The historical evolution of judicial activism in India reflects the judiciary's commitment to upholding the values and principles enshrined in the Constitution. It has transformed the Indian legal landscape, ensuring that the government remains accountable, fundamental rights are protected, and justice is accessible to all. As India continues to evolve, the judiciary's proactive role in promoting justice and safeguarding rights remains a cornerstone of its democratic fabric.

The transformation from activism to overreach

The shift from activism to overreach is a notable transformation in the dynamics between the judiciary and Parliament. When judicial activism goes beyond reasonable limits, it is called "judicial overreach." Judicial overreach occurs when the courts, without due justification, excessively and repeatedly intrude into the domains of the legislature and executive domains.

²² AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016 D. No. 14961/2016.

²³ 1987 SCR (1) 819; AIR 1987 965.

²⁴ Vineet Narain Vs Union of India, (1996) 2 SCC 199.

²⁵ [2012] 11 SCR 873.

²⁶ Indra Sawhney v Union of India, AIR 1993 SC 477.

While the distinctions between judicial activism and overreach may be subtle, their societal implications are vastly different. Unlike the well-intentioned nature of judicial activism, judicial overreach lacks genuine intent and disrupts the functioning of essential democratic institutions.

Chief Justice J. S. Verma has expressed that "judicial activism is appropriate within the bounds of legitimate judicial review, and there should be no room for judicial tyranny or ad hoc decisions."

The judiciary cannot justify an unrestricted exercise of its powers. In the *Divisional Manager, Aravalli Golf Course v. Chander Hass*²⁷ (2007), the Supreme Court explicitly ruled that judges must refrain from exceeding their authority or attempting to usurp the functions of the government. It emphasised that each branch of government, including the legislature, executive, and judiciary, must adhere to the principles of the separation of powers and avoid undue interference in the affairs of others.

The court underscored that "judicial activism" should not be confused with "judicial adventurism," clarifying that interventions, encroachments, and activism by the judiciary are often justified by the argument that the legislature and executive are failing in their responsibilities. Nevertheless, the judiciary is not exempt from the need for restraint. There have been cases pending in various courts for over five decades, highlighting the importance of maintaining a balanced power distribution among the three branches of government.

Judicial overreach violates several fundamental constitutional principles, including the separation of powers, which has no valid justification. It contradicts the supremacy of the law, which is guaranteed by the rule of law. Furthermore, it places the judiciary above the law, allowing it to interpret and apply it at its discretion. Additionally, it runs counter to the democratic principle of accountability. In a democracy, accountability is established for all actions taken, decisions made regarding public policy, and actions or inactions by the executive. However, when the judiciary intervenes in these areas, it operates independently and is not held accountable to anyone.

Judicial Pragmatism vs. Restraint in India

The debate over judicial pragmatism versus restraint is not unique to any legal system; it is a recurring theme in democracies worldwide, and India is no exception.

Judicial pragmatism in India is characterised by a proactive and interventionist approach by the judiciary in addressing social and political issues. It emphasises the courts' role in safeguarding fundamental rights and ensuring justice, even when it necessitates interpreting the law creatively or expanding constitutional principles.

One of India's most significant expressions of judicial pragmatism has been the development of Public Interest Litigation (PIL). PIL allows any citizen to approach the courts on behalf of public interest concerns, leading to numerous landmark judgments that have positively impacted the lives of ordinary citizens. For example, in *Sheela Barse v. State of Maharashtra*²⁸ (1983): A letter by a Journalist addressed to the Supreme Court addressing the custodial violence of women prisoners in jail. The court treated that letter as a writ petition and took cognizance of that matter.

²⁷ (2008) 1 SCC 683.

²⁸ 1983 AIR 378 1983 SCR (2) 337 1983 SCC (2) 96 1983 SCALE (1)140.

Additionally, Indian courts have played a vital role in addressing pressing social issues. In the *Vishakha v. State of Rajasthan* case²⁹ (1997), the Supreme Court formulated guidelines to combat sexual harassment in the workplace, filling a legislative vacuum and setting the stage for gender-sensitive jurisprudence.

Judicial Restraint in India

Judicial restraint, in the Indian context, emphasises judicial deference to the elected branches of government and adherence to the principle of separation of powers. Proponents of this philosophy argue that the judiciary should refrain from intervening in policy matters best left to the legislature and executive, as they are directly accountable to the people.

However, it is essential to note that the Indian judiciary has not been consistently pragmatic or restrained. The approach has evolved over time and often depends on the composition of the bench and the specific issues at hand.

Judicial restraint is a judicial decision-making philosophy wherein judges refrain from injecting their personal views about the public good and instead focus on interpreting the law per legislative intent and precedent. The fundamental principle underlying judicial restraint is that the people's will is best expressed through legislative bodies, and individuals should bear the consequences of their political choices. Policies are expected to change with shifts in government, and judges should abstain from establishing new procedures with their decisions.

To maintain the delicate balance of power among the various branches of democracy, the Supreme Court has consistently underscored the importance of judicial restraint.

In the case of *Minor Priyadarshini v. the Director of Elementary*³⁰ (2016), Justice Markandey Katju expressed, "Under the Constitution, the legislature, the executive, and the judiciary each have their distinct spheres of operation. If any of these three state bodies overstep their respective boundaries, it will disrupt the delicate balance established by the Constitution. Therefore, the judiciary must exercise restraint and resist the urge to be a super-legislature. Its respect and reputation will only grow through such restraint."

In the well-known case of *S.R. Bommai v. Union of India*³¹ (1994), the Court determined that there should be no judicial review when high levels of political interest are at play, emphasising that the judiciary should refrain from intervening.

The Supreme Court reiterated in *Government of Andhra Pradesh v. P Laxmi Devi*³² (2008) that "invalidating a legislative act is a significant step that should not be taken lightly. A court may declare a statute unconstitutional not merely because such a viewpoint is possible, but only when the sole viewpoint withstands rational scrutiny."

The debate between judicial pragmatism and restraint continues to evolve in India, reflecting the country's democratic ethos, diverse social fabric, and changing legal landscape.

Public Perception and Accountability

²⁹ 1997) 6 SCC 241.

³⁰ *Minor K. Priyadarshini vs The Director of Elementary* on 4 July 2016, W.P.(MD)No.12061 of 2012 and M.P.(MD)No.1 of 2012.

³¹ ([1994] 2 SCR 644: AIR 1994 SC 1918 : (1994)3 SCC1).

³² Appeal (civil) 8270 of 2001.

Public opinion on judicial activism in India is a subject of ongoing debate, reflecting the diverse perspectives within the country. The views range from those who see judicial activism as a necessary and effective check on legislative excesses and executive inaction to those concerned about potential judicial overreach. Various factors, including the specific cases in question, political ideologies, and societal values, influence this divide in public opinion.

Supporters of Judicial Activism

➤ Checks and Balances

Some individuals and groups argue that judicial activism is a vital component of the system of checks and balances in a democracy. They believe that an active judiciary is necessary to prevent abuse of power by the legislative and executive branches, ensuring that the government adheres to the principles of the Constitution.

➤ Protection of Rights

Supporters of judicial activism argue that it plays a crucial role in protecting fundamental rights and promoting social justice by allowing the judiciary to interpret and apply the law in a manner that responds to society's evolving needs and values. They should safeguard fundamental rights, such as freedom of speech, religion, and due process, that are fundamental and essential to a just and fair society. Address societal issues; the judiciary can step in when the other branches of government, such as the legislative and executive branches, fail to take action or adequately address pressing societal issues. Judicial activism allows judges to make decisions that fill gaps in legislation or remedy injustices.

➤ Immediate Remedies

Judicial activism is often considered a valuable tool in cases with urgent and pressing issues, such as human rights violations, environmental concerns, and public welfare situations. This is because it allows the judiciary to provide swift remedies and address critical problems when other branches of government, such as the legislative and executive branches, may need to respond or even be more complicit.

Critics of Judicial Activism

➤ Separation of Powers

Critics argue that judicial activism can blur the lines of separation of powers. They believe that the judiciary should not infringe on the domains reserved for the legislative and executive branches, as doing so undermines the principles of democratic governance.

➤ Elected Representatives

Some people argue that judges are unelected and should not make decisions that have far-reaching policy implications. Instead, they contend that elected representatives should have the authority to make such decisions, as they are accountable to the electorate.

➤ Accountability Concerns

One of the primary concerns critics raise is the lack of a mechanism to hold judges accountable for their activist decisions. Unlike elected officials who can be voted out of office, judges enjoy a degree of insulation from public accountability, which can lead to concerns of judicial overreach. The issue of accountability for judicial activism remains a contentious one in India. While the judiciary plays a crucial role in upholding the rule of law and protecting citizens' rights, questions about how to ensure accountability for judges who may exceed their constitutional mandate persist. Some suggest judicial review by a higher judicial body or parliamentary oversight. In contrast, others argue that the judiciary's independence must be maintained to protect its ability to safeguard democracy.

Impact on the Executive Authority

In India, judicial activism has significantly impacted the executive authority, as the judiciary has played an active role in reviewing and sometimes intervening in administrative decisions and actions. Some notable instances of judicial activism in India that illustrate its impact on executive authority in the case of *S.P. Gupta v. Union of India*³³ (1981); the Supreme Court of India expanded the scope of PIL, enabling citizens to bring matters of public concern to the court's attention. This has empowered the judiciary to take *suo motu* cognizance of issues and question executive actions when they are not in the public interest.

In the case of *Prakash Singh v. Union of India*³⁴ (2006), the Supreme Court issued directives to implement police reforms, emphasising the importance of separating the investigative and law and order functions of the police. This decision had a direct impact on the functioning of the executive branch in managing law enforcement agencies.

In the *People's Union for Civil Liberties (PUCL) v. Union of India*³⁵ (2002), the Supreme Court issued directives to address starvation deaths, providing relief measures for drought-affected areas. This case highlighted the judiciary's role in ensuring that government schemes effectively reach the vulnerable sections of society.

While judicial activism in India has been credited with promoting transparency, accountability, and the protection of fundamental rights, it has also generated debates about the separation of powers and the potential for judicial overreach. The impact of judicial activism on executive authority continues to be a topic of discussion and judicial scrutiny in the country.

Impact on Legislative Authority

Judicial activism in India has also significantly impacted legislative authority by allowing the judiciary to review and sometimes even strike down legislative actions or omissions. For instance, in the case of *Indira Sawhney v. Union of India*³⁶ (1992), commonly known as the "Mandal Commission case," the Supreme Court placed a cap on the reservation of seats for Scheduled Castes and Scheduled Tribes in educational institutions and government jobs. This decision

³³ AIR 1982 SC 149.

³⁴ Writ Petition (civil) 310 of 1996.

³⁵ AIR 1997 SC 568, JT 1997 (1) SC 288, 1996 (9) SCALE 318, (1997) 1 SCC 301, 1996 Supp 10 SCR 321, 1997 (1) UI 187 SC.

³⁶ AIR 1993 SC 477; 1992 Supp 2 SCR 454.

exemplifies the judiciary's role in reviewing and regulating legislative actions concerning affirmative action policies.

Similarly, in *Association for Democratic Reforms v. Union of India*³⁷ (2002), the Supreme Court mandated that candidates contesting elections disclose their criminal, financial, and educational backgrounds. This decision significantly reformed the legislative process by enhancing transparency in electoral politics. Also, in *T.N. Godavarman Thirumulpad v. Union of India*³⁸ (2002), the Supreme Court issued directives to regulate forest and environmental conservation, effectively shaping environmental policies and influencing legislative actions.

In the case of *Vineet Narain v. Union of India*³⁹ (1997), the Supreme Court issued directives on investigations into corruption cases, leading to the enactment of the Central Vigilance Commission Act 2003. This illustrates the judiciary's role in influencing legislative changes to combat corruption.

While judicial activism in India has led to significant legislative reforms and the protection of constitutional values, it has also sparked debates about the separation of powers and concerns about potential judicial overreach. The impact of judicial activism on legislative authority continues to be a topic of discussion and legal interpretation in the country.

Effect on Social Change

Judicial activism in India has significantly addressed pressing social issues such as environmental protection, gender equality, and minority rights. Judicial activism refers to a proactive approach taken by the judiciary to interpret and enforce the Constitution and other laws to promote justice and social change. Here's how it has contributed to these specific areas:

- **Environmental Protection:**

a. Public Interest Litigation (PIL): The Indian judiciary, through PIL, has allowed citizens and NGOs to raise environmental concerns directly in the courts. This has led to several landmark judgments that have helped protect the environment. For instance, the court has taken action against industries polluting rivers and has mandated relocating industries from ecologically sensitive areas.

b. Judicial Pronouncements: Courts have issued directives to combat air pollution, protect forests, and preserve wildlife. For example, the Supreme Court has passed orders to ban the sale of firecrackers during Diwali to reduce air pollution in Delhi and surrounding areas.

c. Strict Implementation of Environmental Laws: The judiciary has insisted on strict enforcement of environmental laws, ensuring that government agencies comply with regulations to safeguard the environment.

- **Gender Equality:**

³⁷ AIR 2001 Delhi 126, 2000 (57) DRJ 82.

³⁸ (1997) 2 SCC 267.

³⁹ [1 SCC 226].

a. **Women's Rights:** The Indian judiciary has catalysed gender equality through various progressive judgments. For instance, the Vishakha guidelines, established by the Supreme Court, laid the framework for preventing workplace sexual harassment.

b. **Triple Talaq:** The Supreme Court declared the practice of instant triple talaq unconstitutional, giving Muslim women more rights and protection within their marriages.

c. **Marital Rape Debate:** Though not resolved definitively, the courts have taken cognizance of marital rape, sparking essential discussions on women's rights within marriages.

- **Minority Rights:**

a. **Religious Freedom:** The judiciary has consistently upheld the right to religious freedom enshrined in the Indian Constitution. It has intervened in cases involving the protection of religious minorities, ensuring their rights are respected.

b. **Reservation Policies:** The courts have played a role in upholding affirmative action policies, like reservations for Scheduled Castes and Scheduled Tribes, to improve the socio-economic conditions of marginalised communities.

In these areas, judicial activism has filled gaps where legislative and executive branches have sometimes fallen short. The judiciary has pushed for social justice and change by interpreting the Constitution broadly and proactively. However, it's essential to strike a balance between judicial activism and respecting the separation of powers, as an overly activist judiciary could be seen as infringing on the domain of the legislature and the executive. In India's diverse and complex socio-political landscape, judicial activism has often been vital for addressing pressing social issues and promoting a more equitable society.

Political Dynamics

The interplay between judicial decisions and political dynamics is crucial in India and reflects the complex relationship between the judiciary and the political system. Here's an explanation of this interplay:

- **Judicial Independence vs. Political Influence**

- **Judicial Independence:** The Indian Constitution guarantees judicial independence, which means that judges are expected to make decisions based on the law without undue influence from the political branches of government. This independence is crucial to ensure a fair and impartial judiciary.
- **Political Dynamics:** However, politics often plays a significant role in the appointment and elevation of judges. Appointing judges to the higher judiciary involves collaboration between the judiciary and the executive (the President and the Cabinet). Political considerations can influence these appointments.

- **Impact of Judicial Decisions on Politics:**

- **Policy Making:** Courts in India have been known to make decisions that directly impact government policies and legislation. For example, judgments related to reservations, environmental regulations, or religious rights can directly affect political decisions and agendas.

- Election Matters: The judiciary also plays a role in adjudicating election-related disputes, such as cases involving disqualifying elected representatives. These decisions can have immediate political repercussions.
- **Public Perception and Political Reactions**
 - Public Perception: Judicial decisions often shape public opinion and influence voter sentiment. Controversial choices may lead to public protests or support for political parties that promise to challenge or uphold specific judgments.
 - Political Reactions: Political parties and leaders can react to judicial decisions by either accepting them and implementing the necessary changes or by attempting to amend the Constitution or laws to circumvent the judgment. Political parties may also use judicial decisions to rally their base or criticise their opponents.
- **Checks and Balances**
 - Conflict Resolution: In a democracy like India, the judiciary serves as a crucial check on the powers of the executive and legislative branches. When there is a dispute or a perceived overreach by the political departments, individuals and organisations can turn to the courts for resolution.
 - Protecting Fundamental Rights: The judiciary upholds fundamental rights enshrined in the Constitution. This can lead to tensions with the political branches when rights clash with government policies.
- **Long-term Impact on Society**

Social Change: Judicial decisions can drive social change, as seen in cases related to gender equality, environmental protection, and minority rights. This, in turn, can impact political discourse and policies over time.

In brief, the interplay between judicial decisions and political dynamics in India is intricate and multifaceted. While judicial independence is a foundational principle, political considerations can influence various aspects of the judicial process. The impact of judicial decisions on politics and vice versa underscores the importance of maintaining a healthy balance between these two branches of government to ensure the rule of law, protect rights, and uphold democratic values in the country.

Conclusion

In conclusion, the concept of judicial activism in India has evolved significantly over time, and its impact on the legal and social landscape is multi-faceted. While there is widespread recognition of its role in protecting rights, addressing societal issues, and fostering social change, a more nuanced perspective can shed light on its complexities and challenges.

One critical aspect to consider is the potential for judicial overreach. While judicial activism can be a powerful tool for justice, it must be applied judiciously. Excessive judicial intervention in policy matters can disrupt the traditional functions of the executive and legislative branches, creating a delicate balance that needs to be maintained.

Additionally, the effectiveness of judicial activism is closely linked to the responsiveness and efficiency of other branches of government. Ideally, a robust democracy relies on a harmonious

interplay between the judiciary, legislature, and executive, with each branch carrying out its responsibilities effectively. Overreliance on the judiciary to rectify policy failures or address pressing issues can be seen as a symptom of shortcomings in the functioning of other government bodies.

Moreover, while judicial activism can drive social change and protect rights, it may sometimes lead to a perception that unelected judges are making far-reaching policy decisions. This perception can raise questions about democratic legitimacy, as elected representatives should formulate and implement policies that reflect the people's will.

A balanced approach to judicial activism is essential in light of these complexities. It involves careful consideration of the boundaries of judicial authority, the separation of powers, and the need for a well-functioning democratic system. It also underscores the importance of judicial restraint when necessary, respecting the principle that certain policy decisions should be left to the elected branches of government.

Ultimately, the impact of judicial activism in India is shaped not only by the judiciary but also by the broader context of governance, politics, and societal values. While it can be a catalyst for positive change, it is crucial to continually evaluate its application to ensure that it remains a force for justice while preserving the integrity of the democratic system.