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## The Role of Judicial Activism in Shaping Constitutional Law

### Introduction

Judiciary activism plays an important role in shaping constitutional law and social justice across India's complex legal system. It has become a fundamental aspect of the identity of the Indian judiciary with its history of enacting significant rulings and advocating for their interpretation. Through this blog, we will uncover how it has shaped the constitutional law of the country. We examine the role of judicial activism in shaping constitutional interpretation, advocating for social justice, and supporting democratic principles in India through real-life cases and case studies.

### Understanding Judicial Activism in India

In the Indian case, the judicial activism became more visible than ever. The Judiciary actively tried to use the constitution, decoding its essence and intent, to make sure that the rule of law and the right to publicly and equally defended law were well served. Clarifying it, 'continuous judicial scrutiny of government acts', is a part and parcel of the most important doctrine that the Indian constitution perfectly conveys to grant an authority in the judiciary to execute judicial reviews and supervision to protect and enhance the sanctity of the constitution. A crucial moment in India's judicial history was the *Kesavananda Bharati v. State of Kerala (1973)* case,<sup>1</sup> where the Supreme Court articulated the doctrine of the "basic structure" of the Constitution, asserting its authority to review constitutional amendments and safeguard core constitutional principles. This pivotal judgment laid the groundwork for subsequent judicial interventions, empowering the judiciary to act as a guardian of the Constitution and a bulwark against legislative or executive encroachment.

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<sup>1</sup> *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr, (1973) 4 SCC 225; AIR 1973 SC 1461*

Notable instances of judicial activism include the expansion of the Right to Freedom of Speech and Expression under Article 19 to encompass internet freedom, as articulated in *Shreya Singhal v. Union of India* (2015),<sup>2</sup> and the affirmation of internet freedom as a fundamental right in *Anuradha Bhasin v. Union of India* (2020).<sup>3</sup> Through proactive interpretation and enforcement, judicial activism in India has played a transformative role in advancing constitutional values and ensuring the protection of citizens' rights and liberties.

### **Impact on Fundamental Rights**

Judicial activism in India has been crucial in expanding and safeguarding fundamental rights enshrined in the Constitution. The judiciary's proactive stance has led to groundbreaking interpretations of constitutional provisions, ensuring the protection of citizens' rights in diverse contexts. In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Supreme Court delivered a landmark judgment recognizing the right to livelihood as an integral part of the right to life under Article 21 of the Constitution. This seminal ruling upheld the rights of pavement dwellers against forced eviction, setting a precedent for protecting the socio-economic rights of marginalized communities. Furthermore, in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017),<sup>4</sup> the Supreme Court declared privacy as a fundamental right, reaffirming its commitment to upholding individual freedoms in the digital age.

### **Promoting Social Justice and Accountability**

Judicial activism in India has been pivotal in promoting social justice and holding government authorities accountable for their actions. It has played a crucial role in advancing gender equality and women's rights in India. In *Vishaka v. State of Rajasthan* (1997),<sup>5</sup> the Supreme Court issued guidelines to combat sexual harassment in the workplace, filling a legislative void and providing protection to working women across the country. Similarly, in the case of *Public Interest Foundation v. Union of India* (2019),<sup>6</sup> the Court mandated disclosure of criminal antecedents by

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<sup>2</sup> *Shreya Singhal v. Union Of India*, AIR 2015 SC 1523

<sup>3</sup> *Anuradha Bhasin V. Union Of India*, 2020 SCC ONline SC 25

<sup>4</sup> *Justice K.S. Puttaswamy and Anr. vs. Union of India (UOI) and Ors*, (2017) 10 SCC 1; AIR 2017 SC 4161

<sup>5</sup> *Vishaka and Ors. v. State of Rajasthan and Ors*, AIR 1997 SC 3011

<sup>6</sup> *Public Interest Foundation vs Union Of India* AIR 2018 SUPREME COURT 4550, 2019 (3) SCC 224

candidates contesting elections, enhancing transparency and accountability in the political process. Through bold and progressive interpretations of constitutional principles, judicial activism has fostered the evolution of fundamental rights jurisprudence in India, reinforcing the foundations of democracy and social justice.

### **Critiques and Controversies Surrounding Judicial Activism**

In India, the activism of the judicial branch has undoubtedly contributed to the legal evolution and social development but it has also generated debates and controversies over its role. Critics argue that judicial activism encroaches upon the domain of the executive and legislative branches, potentially undermining the principle of separation of powers. Additionally, concerns have been raised about judicial overreach, where courts exceed their constitutional mandate and intervene in policy matters best left to elected representatives. A few of the most notable cases involve the Supreme Court's meddling in the distribution of natural resources such as coal blocks and spectrum licenses which some critics argue went beyond legal authority and disrupted economic governance.

Critics argue that the implementation of this approach could lead to a decrease in legal independence potentially damaging the rule of law. Moreover, the effectiveness of judicial activism in resolving systemic problems and producing concrete results has been called into question with some advocates advocating for a more restrained approach that prioritizes broader issues such as interpreting decisions through the lens of law. Advocates of judicial activism argue that it is crucial for the preservation of constitutional values particularly in situations where other government branches are not upholding basic rights and principles. As a result, they suggest that accountability be upheld to protect socially disadvantaged groups. Thus, while critiques of judicial activism are valid, its role in advancing democracy, social justice, and the rule of law cannot be overlooked in the Indian context.

### **Conclusion**

Judicial activism in India is a fundamental element of constitutional governance as it ensures the supremacy of the Constitution, protects basic rights, and drives the actions for socio-legal justice. Given the fact that the judiciary resorts to vivid and progressive interpretations, the judicial authority has always made efforts to suppress injustice, hold authorities accountable for their acts,

and widen the boundaries of constitutional rights. On the other hand, judicial activism has its fair share of opponents who prefer to see a little space for judicial neutrality. Despite it having been criticised for this it remains indispensable for the Indian legal system to ensure democratic objectives and promote justice.