

Judicial Overreach, Judicial Restraint and Judicial Activism in India

Samridhi M · 02 Sep 2025

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Introduction

Judicial activism in India is a concept that signifies the proactive role of the judiciary in safeguarding the rights of citizens. This practice first emerged and developed in the United States.

In India, the power to examine the constitutionality of laws rests with the Supreme Court and the High Courts. If a law is found to be inconsistent with the provisions of the constitution, the court can declare it unconstitutional. It is important to note that subordinate courts lack the authority to review the constitutionality of laws.

Judicial Activism in India

The term “judicial activism” was coined by historian Arthur Schlesinger, Jr. in 1947. The foundation of judicial activism in India was laid by eminent jurists such as Justice V.R. Krishna Iyer, Justice P.N Bhagwati, Justice O. Chinnappa Reddy, and Justice D.A Desai.

However, judicial activism has not been without its share of criticisms. It has sparked controversy regarding the supremacy between Parliament and the Supreme Court. Some argue that it can disrupt the delicate balance of the separation of powers and checks and balances in a democracy.

Judicial Restraint: Limiting Judicial Power

In contrast, judicial restraint is the antithesis of judicial activism. It advocates for judges to limit the exercise of their own power and to interpret the law without intervening in policy-making.

Instead, judges should decide cases based on the original intent of the Constitution and precedent. They should refrain from setting new policies through their decisions and leave policy-making to other branches of government.

For instance, the landmark case of *S.R. Bommai v Union of India* (1994) illustrates judicial restraint. In this case, the judiciary asserted that certain matters are political in nature and not subject to judicial review. By doing so, the court respected the separation of powers and avoided interfering in political decisions.

Judicial Overreach: When Activism Goes Too Far

When judicial activism goes beyond its intended bounds and becomes judicial adventurism, it is referred to as judicial overreach. In simpler terms, this occurs when the judiciary starts interfering with the proper functioning of the legislative or executive branches of government. Such overreach is undesirable in a democracy as it breaches the principle of the separation of powers.

The impact of judicial overreach can be significant. It may lead to a lack of harmony between the legislature and judiciary, creating an impression of legislative inaction. In some cases, judicial overreach may result in decisions that require expertise in areas where the judiciary lacks knowledge.

The judiciary has argued that it steps in only when the legislature or executive fails in its functions. However, it is crucial for courts to remain within their jurisdiction to uphold the principle of the separation of powers.

Do we need Judicial Activism in India?

Judicial activism has become necessary due to several factors. One of the primary reasons is the failure of the executive and legislatures to take effective action. When doubts arise about the ability of these branches of government to deliver desired results, judicial activism fills the gap. It occurs because the entire system has been plagued by ineffectiveness and inactiveness.

Additionally, the violation of basic human rights has often necessitated judicial activism. In cases where provisions of the Constitution have been misused and abused, the judiciary has played a vital role in upholding the rights of individuals.

Rampant corruption in other branches of government, executive apathy, legislative negligence of duties, and a continuous degradation of democratic principles have further underscored the need for judicial activism.

Cases on Judicial Activism in India

In the legal landscape of India, several landmark cases have played a pivotal role in shaping the nation's jurisprudence.

The case of **G. Satyanarayana v Eastern Power Distribution Company** in 2004 stands out as it introduced crucial regulations in labor law, specifically addressing issues related to worker dismissal based on misconduct.

Another noteworthy case is **Vishaka v State of Rajasthan** in 1997, where the Supreme Court established guidelines aimed at ensuring the proper treatment of women in all workplaces. These guidelines were emphasized as being tantamount to law until Parliament enacted legislation for gender equality.

In 1973, the **Kesavananda Bharati** case made history by firmly declaring that the executive had no right to tamper with the fundamental structure of the constitution, reinforcing the judiciary's role in safeguarding the integrity of the constitution.

Similarly, the case of **Sheela Barse v State of Maharashtra** in 1983 demonstrated the judiciary's commitment to addressing societal issues as it treated a journalist's letter addressing custodial violence against women prisoners as a writ petition.

Furthermore, the landmark judgment of **I. C. Golaknath v State Of Punjab** in 1967 asserted that Fundamental Rights enshrined in Part 3 of the Indian Constitution were immune to amendments by the legislative assembly, setting a precedent for protecting these rights.

Lastly, the case of **Hussainara Khatoon (I) v State of Bihar** in 1979 highlighted the dire conditions of undertrial prisoners and reinforced the right to a speedy trial as a fundamental right under Article 21 of the Indian Constitution. These cases collectively showcase the judiciary's proactive role in shaping Indian law and championing justice and fundamental rights.

These cases demonstrate how judicial activism has been instrumental in shaping the legal landscape of India, protecting individual rights, and upholding democratic values.

The Role of Judicial Restraint

While judicial activism is essential, so is judicial restraint. Judicial restraint helps preserve the balance among the three branches of government: the judiciary, executive, and legislative. It upholds the laws established by the government in the legislature and respects the separation of governmental powers. Courts practicing restraint allow the legislature and the executive to carry out their duties without undue interference and refrain from policymaking.

In the case of **S.R. Bommai v Union of India**, the Supreme Court exemplified judicial restraint by recognizing that certain matters are political questions beyond the scope of judicial review. This decision marked a respect for the democratic form of government and the division of responsibilities among branches.

Similarly, in **Almitra H. Patel v Union of India** (1998), the Supreme Court refused to directly intervene in administrative decisions related to cleanliness in Delhi, demonstrating restraint and deferring to executive authorities.

The Pitfalls of Judicial Overreach

However, when judicial activism goes too far and becomes judicial overreach, it poses significant challenges to the democratic system. Judicial overreach occurs when the judiciary excessively interferes with the legislative and executive branches. It can lead to a breach of the principle of separation of powers, a lack of harmony between the branches, and a decrease in public trust in democracy.

For instance, the censorship of the film Jolly LLB II through a writ petition was seen as an example of judicial overreach. The case alleged that the film portrayed the legal profession in a negative light and constituted contempt. The Bombay High Court appointed a committee to review the film, which was perceived as unnecessary, as the Board of Film Certification already had the authority to censor films. This case restricted freedom of speech and expression under Article 19(2).

In another case, the Supreme Court banned the sale of liquor within 500 meters of national or state highways as a response to a public interest litigation about road safety. However, there was no evidence presented to demonstrate a direct link between liquor sales near highways and the number of accidents. This decision led to revenue loss for state governments and unemployment, emphasizing the potential consequences of judicial overreach in administrative matters.

Conclusion

In conclusion, judicial activism, restraint, and overreach represent the multifaceted roles of the judiciary in a democracy. While judicial activism is necessary to protect rights, address failures in other branches, and promote justice, it must be tempered with judicial restraint to maintain the separation of powers and uphold democratic principles.

Judicial overreach, although occasionally warranted, should be approached with caution to avoid undermining the democratic process. Striking the right balance ensures that the judiciary remains a cornerstone of democracy, upholding the rule of law while respecting the roles of other branches of government.