

Constitutional Law and Judicial Activism: Guardianship and Reform in The Indian Democratic Framework

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Abstract- Judicial activism serves as a dynamic instrument in upholding constitutional values and ensuring justice in a democratic framework. It signifies the proactive role of the judiciary in interpreting and expanding the scope of fundamental rights enshrined in the constitution. Through judicial activism, courts have not merely confined themselves to the literal interpretation of law but have also assumed the responsibility of addressing social injustices and governmental inaction. This approach enhances accountability and strengthens the rule of law by bridging the gap between the ideal and the real in governance. The evolution of judicial activism in India can be traced through landmark judgments such as KESAVANANDA BHARATI V. STATE OF KERALA¹ AND MANEKA GANDHI V. UNION OF INDIA², where the judiciary asserted its power to review and protect constitutional supremacy. The emergence of public interest litigation (PIL) further extended access to justice, making the courts accessible to marginalized and voiceless sections of society. However, excessive judicial intervention has also raised concerns regarding the separation of powers and the potential encroachment upon legislative and executive functions. In essence, judicial activism acts as both a guardian and a reformer of constitutional principles, striving to maintain the balance between authority and liberty. It embodies the spirit of the constitution, ensuring that justice is not only done but also seen to be done in every aspect of public life.

Index Terms- Judicial Activism, Constitutional Law, Fundamental Rights, Public Interest Litigation, Rule Of Law, Separation Of Powers, Basic Structure Doctrine, Judicial Review.

I. INTRODUCTION: THE CONCEPTUAL FOUNDATIONS OF JUDICIAL ACTIVISM

The doctrine of separation of powers, a cornerstone of modern democracies, postulates the division of

governmental functions into three distinct organs: the legislature, the executive, and the judiciary. Each organ is expected to operate within its delineated sphere, thereby preventing the concentration of power and safeguarding liberty. Within this trichotomy, the judiciary's primary role has traditionally been perceived as that of an interpreter of laws enacted by the legislature and enforced by the executive. However, the rigid application of this principle, often termed as judicial restraint, can sometimes prove inadequate in the face of legislative omissions, executive inertia, or societal transformations.

It is from this lacuna that the phenomenon of judicial activism emerges. Judicial activism refers to a proactive and expansive role undertaken by the judiciary, where judges depart from a mere mechanical interpretation of the law to assume a more creative and socially-oriented function. It involves "filling in the gaps" in legislation, interpreting constitutional provisions in a manner that gives effect to their broader spirit, and issuing directives to remedy injustices where traditional legal remedies are ineffective. In essence, it is the judiciary's endeavor to ensure that the constitution remains a living and breathing document, capable of addressing contemporary challenges.

In the Indian context, judicial activism has been instrumental in transforming the constitutional landscape. The supreme court of India, as the ultimate arbiter of the constitution, has gradually evolved from a positivist court to a activist court, especially in the realm of fundamental rights. This evolution was not an abrupt phenomenon but a response to specific historical and political circumstances, including the excesses of the emergency period. The judiciary, realizing that a

passive interpretation of the law could lead to the erosion of constitutional values, began to assert its authority as the guardian of the constitution.

This research paper delves into the multifaceted role of judicial activism within the framework of Indian constitutional law. It aims to analyze its historical trajectory, philosophical underpinnings, and its manifestation through landmark judicial pronouncements. A significant focus will be placed on the instrument of public interest litigation (PIL), which became the vehicle for this activist jurisprudence, democratizing access to justice. However, the paper also critically examines the inherent tensions and dilemmas posed by an over-activist judiciary, particularly concerning the doctrine of separation of powers and the charge of "government by judiciary." the central thesis of this paper is that while judicial activism has been indispensable in protecting rights and enforcing governmental accountability, its legitimacy is contingent upon its prudent exercise, remaining within the broad parameters of the constitutional scheme.

II. THEORETICAL FRAMEWORK: DEFINING JUDICIAL ACTIVISM, RESTRAINT, AND OVERREACH

2.1. Conceptual clarity: beyond mere adjudication

To understand the Indian phenomenon, it is imperative to establish a clear theoretical framework. Judicial activism is often contrasted with its counterpart, judicial restraint. Judicial restraint is a philosophy wherein judges exercise significant deference to the legislature and the executive. They adhere strictly to the text of the statute or the constitution, the original intent of the framers, and the precedents set by previous courts. Under this approach, the court's role is seen as narrow and technical, focused solely on applying the law as written, rather than shaping it based on personal or societal beliefs.

Judicial activism, on the other hand, embraces a more flexible and evolutionary interpretation of the law. It operates on the premise that the constitution is a living document with broadly worded principles that must be adapted to meet the needs of a changing society. Activist judges are more willing to depart from precedent, interpret laws purposively, and invoke underlying principles of justice, fairness, and equity to reach a decision. This often involves creating new rights, expanding the scope of existing ones, and issuing innovative remedies.

2.2. The spectrum of judicial behaviour: from restraint to overreach

It is crucial to view judicial activism not as a binary concept but as a spectrum. On one end lies strict judicial restraint, and on the other lies judicial overreach. Judicial overreach occurs when the judiciary goes beyond its legitimate constitutional role and intrudes upon the core functions of the other two branches of government. This happens when courts effectively start legislating by laying down detailed policies or when they micro-manage executive functions, thereby disrupting the constitutional balance of power. The line between legitimate activism and illegitimate overreach is often blurred and forms the crux of the debate surrounding this phenomenon.

2.3. Philosophical antecedents: natural law and sociological jurisprudence

The philosophical roots of judicial activism can be traced to schools of thought like natural law, which posits that there are inalienable rights inherent in human beings that positive law must recognize. When judges invoke principles of natural justice or read unenumerated rights into the constitution, they are, in effect, drawing from this tradition. Furthermore, the sociological jurisprudence of legal thinkers like Roscoe Pound, which emphasizes the social effects of law and the need for law to serve the needs of society, has heavily influenced activist judges. This school of thought encourages judges to look beyond the black-letter law and consider the broader social and economic consequences of their decisions.

III. HISTORICAL EVOLUTION AND
PHILOSOPHICAL UNDERPINNINGS OF
INDIAN JUDICIAL ACTIVISM

3.1. The genesis: the formative years of judicial
caution (1950-1967)

The journey of judicial activism in India can be broadly categorized into distinct phases, each marked by a shifting judicial approach towards the constitution and fundamental rights. In the initial decades following the adoption of the constitution, the supreme court maintained a largely positivist and restrained stance. The focus was on the text of the law, with a deference to legislative wisdom, particularly in the realm of agrarian and socio-economic reforms. Landmark cases like *A.K. GOPALAN V. STATE OF MADRAS* (1950)³ exemplified this approach, where the court adopted a doctrine of "exclusive occupation," interpreting each fundamental right as a water-tight compartment. However, the seeds of a more expansive interpretation were sown in cases like *CHAMPAKAM DORAIRAJAN V. STATE OF MADRAS* (1951)⁴, where the court held that fundamental rights prevailed over directive principles, compelling the parliament to initiate the first constitutional amendment to protect reservation and other reforms.

3.2. The turning point: golak nath and the
emergence of activism (1967- 1973)

The turning point came with the *golak nath v. State of punjab* (1967)⁵ case. In a radical departure, the supreme court, by a thin majority, held that parliament could not amend part iii of the constitution to abridge fundamental rights. This was the first major assertion of judicial power over the amending power of parliament, setting the stage for a constitutional conflict. The court, under the leadership of chief justice subba rao, classified fundamental rights as "transcendental" and held that the amending power under article 368 was a "legislative power" and not a "constituent power," thereby subjecting it to fundamental rights. This decision was a bold act of judicial activism, prompting a significant constitutional crisis.

3.3. The kesavananda bharati paradigm: asserting
constitutional supremacy (1973)

The tension between parliament and the judiciary culminated in the historic *kesavananda bharati v. State of kerala* (1973)⁶. The central question before the thirteen-judge bench was whether the parliament's power to amend the constitution under article 368 was absolute and could extend to altering or destroying the basic structure of the constitution. In a landmark judgment, the supreme court, by a slender majority of 7:6, overruled *golak nath* in part and held that while parliament had the power to amend any part of the constitution, including fundamental rights, this power could not be used to alter the "basic structure" or "essential features" of the constitution.

The court did not provide an exhaustive list of what constituted this basic structure, but it included principles such as supremacy of the constitution, republican and democratic form of government, secularism, federalism, separation of powers, and the dignity of the individual. This decision was a monumental act of judicial activism. The judiciary, through its interpretive authority, created an implied limitation on the constituent power of parliament, thereby positioning itself as the ultimate guardian of the constitutional edifice. It established the principle of constitutional supremacy beyond any doubt and provided a powerful tool to strike down even constitutional amendments that violated the core identity of the constitution. The doctrine has since been reaffirmed and expanded in cases like *indira nehru gandhi v. Raj narain* (1975)⁷.

3.4. The post-emergency activism: expanding the
horizons of liberty (1977 onwards)

The experience of the internal emergency (1975-1977) was a traumatic period for Indian democracy, characterized by the suspension of fundamental rights and executive excesses. The judiciary's initial acquiescence, as evidenced in the *adm jabalpur v. Shivakant shukla* (1976)⁸ case (the habeas corpus case), where the court held that during an emergency, even the right to life could be suspended, was a low point. However, in the

aftermath of the emergency, the judiciary underwent a profound transformation, embracing a more robust and expansive role to prevent a recurrence of such autocracy. This phase is often termed as "atonement activism."

This new phase was epitomized by the decision in *Maneka Gandhi v. Union of India* (1978). The case concerned the impounding of Maneka Gandhi's passport by the government under the passport act without providing her an opportunity to be heard. The supreme court, in a revolutionary interpretation, held that the "procedure established by law" under article 21 could not be arbitrary, unfair, or unreasonable. It must conform to the principles of natural justice and be right, just, and fair. Furthermore, the court declared that the fundamental rights were not distinct and independent but formed an interconnected "golden triangle" along with articles 14 (right to equality) and 19 (freedom of speech). This judgment effectively incorporated the American due process clause into Indian constitutional jurisprudence through the backdoor. This interpretation expanded the ambit of article 21 beyond mere physical existence to include the right to live with human dignity. This judgment unleashed a cascade of interpretations, where the court read a multitude of rights into article 21, transforming it into the cornerstone of fundamental rights jurisprudence.

IV. PUBLIC INTEREST LITIGATION (PIL): THE VEHICLE OF ACTIVIST JUSTICE

4.1. Conceptual shift from orthodox litigation: relaxing locus standi

The most significant and distinctive innovation of Indian judicial activism is the development of public interest litigation (PIL), also known as social action litigation. Traditional justice delivery systems operate on the principle of locus standi, which requires that only a person aggrieved or directly affected by an action has the right to approach the court. This procedural formality often excluded the poor, illiterate, and marginalized sections of society from accessing justice.

Under the leadership of justices like P.N. Bhagwati and V.R. Krishna Iyer, the supreme court relaxed the rigid rules of locus standi. The court held that where a section of society, due to poverty, helplessness, or socio-economic disabilities, could not approach the court, any member of the public or a social action group acting bona fide could invoke the jurisdiction of the court on their behalf. This represented a philosophical shift from the adjudicatory role of the court to a constitutional ombudsman role, aimed at delivering "substantive justice." The case of *S.P. Gupta v. Union of India* (1981)⁹ (THE FIRST JUDGES CASE) formally recognized and solidified this expanded standing.

4.2. Landmark PIL jurisprudence: expanding the frontiers of rights

PIL became a potent tool for social engineering and governance reform. Through a series of landmark cases, the judiciary addressed a wide spectrum of issues, effectively becoming a site for democratic participation and accountability:

protecting human rights of the vulnerable: in *Hussainara Khatoon v. State of Bihar* (1979)¹⁰, the court took cognizance through a series of petitions of the plight of thousands of under-trial prisoners in Bihar who had been detained for periods longer than the maximum sentence for their alleged offences. The court directed their release, thereby recognizing the right to a speedy trial as an integral part of article 21. Similarly, in *Bandhua Mukti Morcha v. Union of India* (1984)¹¹, the court treated a letter from an NGO working for the release of bonded labourers as a writ petition and appointed a commission to investigate, thereby enforcing the right to human dignity.

pioneering environmental jurisprudence: the court's intervention in environmental matters through PIL has been revolutionary. In *M.C. Mehta v. Union of India* (1986)¹² (the oleum gas leak case), the court solidified the principle of absolute liability for industries engaged in hazardous activities, holding them strictly and absolutely liable for any damage caused. In *Vellore Citizens Welfare Forum v. Union of India* (1996)¹³,

the court elevated the "precautionary principle" and the "polluter pays principle" to the status of customary international law, making them enforceable in Indian courts. Further, in the delhi vehicular pollution case (m.c. Mehta v. Union of India), the court mandated the conversion of delhi's entire bus fleet to compressed natural gas (cng), a sweeping directive with major policy ramifications.

ensuring governmental accountability and probity: in *vineet narain v. Union of India* (1997), the court took supreme control over the investigation into the hawala scandal, which had stalled. It issued a series of directives to ensure the autonomy of the central bureau of investigation (cbi) and the central vigilance commission (cvc), laying down specific guidelines to prevent political interference in cbi investigations. This was a direct and sustained foray into executive functioning to uphold the rule of law and combat corruption at the highest levels.

advancing social justice and governance: the court has actively used PIL to monitor the implementation of social welfare schemes, such as the right to food (*PUCL v. Union of India*)¹⁴, ensuring mid-day meals for schoolchildren, and supervising the functioning of mental health institutions and orphanages.

4.3. Procedural innovations and remedial flexibility in PIL

To make PIL an effective instrument of justice, the court devised a set of innovative procedures that broke from adversarial traditions:

treating letters as writ petitions: the court began entertaining letters, postcards, and even newspaper articles addressed to judges or the court as formal petitions, dispensing with the need for elaborate and costly pleadings.

appointment of fact-finding committees and *amicus curiae*: instead of relying solely on party-submitted evidence, the court often appointed independent committees of experts, social workers, or retired judges to investigate facts. It also frequently appointed senior lawyers as *amicus curiae* (friends

of the court) to assist the court and provide an unbiased perspective.

continuing mandamus: perhaps the most significant procedural innovation, this doctrine allowed the court to retain jurisdiction over a case after passing an initial judgment. Instead of disposing of the matter, the court would issue a series of interim directions and keep the petition alive, effectively monitoring the implementation of its orders over a prolonged period. This was critical in complex cases involving institutional reforms or environmental clean-up.

V. JUDICIAL ACTIVISM AND THE EXPANSIVE INTERPRETATION OF FUNDAMENTAL RIGHTS

The philosophy of judicial activism is perhaps most visible in the judiciary's expansive interpretation of fundamental rights, transforming them from mere negative injunctions against the state to affirmative obligations for the state to ensure a life of dignity.

5.1. The metamorphosis of article 21: from existence to a life of dignity

Article 21 of the constitution states: "no person shall be deprived of his life or personal liberty except according to procedure established by law." initially interpreted narrowly in *a.k. Gopalan*, the judiciary, post-maneka gandhi, has unpacked this provision to include a kaleidoscope of rights. The court has consistently held that the "right to life" is not merely the right to animal existence but the right to live with human dignity, encompassing all those aspects of life that make a man's life meaningful, complete, and worth living. This has led to the judicial recognition of a multitude of rights, including:

right to livelihood (*olga tellis v. Bombay municipal corporation*, 1985) - the court held that the right to life includes the right to means of livelihood, and evicting pavement dwellers without providing alternative accommodation would violate article 21.

right to shelter - recognized as a derivative of the right to life.

right to privacy - in a historic unanimous verdict in justice k.s. Puttaswamy (ret.) V. Union of india (2017), a nine-judge bench confirmed that the right to privacy is an intrinsic part of the right to life and personal liberty under article 21.

right to a clean and healthy environment - the court has repeatedly held that environmental protection is a pre-requisite for the enjoyment of the right to life. VI.

right to health and medical care - including the right to emergency medical treatment.

right to education - ultimately codified as a fundamental right under article 21a via the 86th constitutional amendment, a direct result of judicial interpretation.

right to free legal aid - as part of a fair trial under article 21.

This expansion has been achieved primarily through the doctrine of "unenumerated rights," wherein the court has asserted that the expressly mentioned fundamental rights are not exhaustive and that other rights inherent in the concepts of "life" and "liberty" can be inferred and protected.

5.2. Harmonizing fundamental rights and directive principles: the complementary vision

Another area where judicial activism played a crucial role was in bridging the perceived chasm between fundamental rights (part iii) and directive principles of state policy (part iv). Initially, as seen in *champakam dorairajan*, directive principles were considered subordinate to fundamental rights. However, the court gradually moved towards a harmonious construction. In *kesavananda bharati*, the court held that directive principles are equally fundamental and that the constitution should be interpreted in a manner that gives effect to both.

This was further strengthened in *minerva mills v. Union of India* (1980)¹⁵, where the court declared that the constitution is founded on the bedrock of the balance between parts iii and iv. It held that laws enacted to fulfil the directive principles in article

39(b) and (c) (relating to distribution of resources) could not be struck down for violating articles 14 and 19, except if they damaged the basic structure. This harmonious construction enabled the court to uphold social welfare legislation and promote social and economic justice, thereby using activism to further the socialist goals of the constitution.

THE CRITIQUE: JUDICIAL OVERREACH AND THE SEPARATION OF POWERS DEBATE

Despite its significant contributions to Indian jurisprudence, judicial activism has attracted substantial and persistent criticism, primarily centered around the concept of "judicial overreach" and its implications for the democratic order.

6.1. Encroachment on legislative and executive domains: the usurpation charge

Critics argue that an over-activist judiciary often transgresses the boundaries set by the separation of powers, a basic feature of the constitution. When courts issue directives on policy matters, such as fixing the price of petrol, mandating the construction of flyovers, or dictating the detailed functioning of bureaucratic apparatus, they effectively usurp the functions of the executive and the legislature. For instance, in the *delhi vehicular pollution* case, the supreme court's mandate for cng buses was a technological and economic policy choice that had wide-ranging consequences, arguably venturing deeply into the domain of the executive.

Similarly, the doctrine of "judicial legislation" is often cited. In *vishaka v. State of rajasthan* (1997)¹⁶, the court, in the absence of a parliamentary law, framed elaborate guidelines to prevent sexual harassment at the workplace. While the intention was laudable and the guidelines (known as the *vishaka* guidelines) were later codified into the sexual harassment of women at workplace (prevention, prohibition and redressal) act, 2013, critics contended that the court had effectively enacted legislation, a power vested solely in parliament. This, they argued, set a dangerous precedent.

6.2. The counter-majoritarian difficulty: the legitimacy question

A fundamental critique of a strong judiciary in a democracy is the "counter-majoritarian difficulty." judges are appointed, not elected, and are not accountable to the electorate in the way that members of parliament or the executive are. When an unelected judiciary strikes down laws passed by an elected representative body or issues directives that reverse government policy, it can be seen as subverting the will of the majority. This raises pertinent questions about the democratic legitimacy of such judicial interventions. Critics argue that it places too much power in the hands of a small group of elites who are not responsive to popular will.

6.3. Institutional competence and the burden on the judiciary

Critics also question the institutional competence of courts to decide complex matters of economic policy, scientific regulation, or intricate administrative governance. Courts lack the expertise, technical staff, and investigative mechanisms to micro-manage such affairs effectively. Judicial orders in such cases may be well-intentioned but can have unintended and negative consequences due to a lack of holistic understanding.

Furthermore, the influx of PILs on every conceivable issue—from the management of cricket to the regulation of noise pollution—has led to a phenomenal increase in the burden on the judiciary. This contributes significantly to delays in the disposal of ordinary civil and criminal cases, exacerbating the problem of judicial backlogs. The supreme court itself has acknowledged this issue, with former chief justice j.s. Khehar once remarking that the court was being "flooded" with PILs, some of which were frivolous.

VII. STRIKING A BALANCE: BETWEEN ACTIVISM AND RESTRAINT

The debate is not between absolute activism and absolute restraint, but about finding a constitutionally sound equilibrium. The legitimacy and sustainability of judicial activism depend on its prudent and

principled exercise. Several principles can guide this approach:

self-imposed limitations and judicial statesmanship: the judiciary must develop and adhere to its own internal guidelines for exercising activist jurisdiction. It should intervene only in cases of egregious violations of fundamental rights, patent illegality, or gross executive or legislative inaction. The court must exercise judicial statesmanship, knowing when to step in and when to allow the other branches the space to function.

procedural propriety and scrutiny in PIL: the supreme court itself has, in recent times, cautioned against the misuse of PIL for personal gain, publicity, or political agendas. Strict scrutiny of the bona fides of the petitioner, the gravity of the issue, and the availability of alternative remedies is necessary to prevent PIL from becoming "publicity interest litigation" or "political interest litigation." courts have started imposing heavy costs on petitioners found to be abusing the process of the court.

dialogic constitutionalism and collaborative adjudication: rather than issuing peremptory orders, the court can adopt a dialogic approach. This involves engaging with the executive and legislature through suggestions, setting reasonable deadlines for compliance, and encouraging the formulation of policies by the expert branches. This collaborative model, as seen in some environmental and administrative reform cases, can be more effective, less confrontational, and more respectful of institutional roles.

remedial, not policy-making, focus: the court's primary focus should remain on providing a remedy for a constitutional or legal wrong, rather than venturing into the realm of policy formulation. It can direct the executive to formulate a policy to address a right's violation but should generally refrain from prescribing the specific content of that policy. The remedy should be tailored to correct the wrong, not to run the administration.

VIII. CONTEMPORARY TRENDS AND THE
FUTURE TRAJECTORY

In recent years, the Indian supreme court has continued its activist tradition in several landmark judgments that have reaffirmed constitutional morality and expanded the frontiers of rights.

8.1. Affirmation of civil liberties and privacy

The unanimous decision in JUSTICE K.S. PUTTASWAMY (RETD.) V. UNION OF INDIA (2017)¹⁷ recognizing the right to privacy as a fundamental right was a powerful assertion of judicial authority. The court held that privacy is the sacred core of human dignity and autonomy and is inherent in the right to life and personal liberty. This judgment has had a cascade effect, becoming the basis for subsequent landmark rulings.

8.2. Decriminalization and the upholding of individual dignity

Building on the right to privacy, the court in NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018)¹⁸ decriminalized homosexuality by reading down section 377 of the Indian penal code to the extent it criminalized consensual sexual acts between adults. The court emphasized the values of autonomy, dignity, and equality, declaring that majoritarian morality cannot overtake constitutional morality. This is a prime example of judicial activism being used to protect the rights of a historically persecuted minority.

8.3. Activism in matters of faith and religion

The court has also waded into sensitive matters of religion and faith. In Indian young lawyers' association & ors. V. State of kerala (2018)¹⁹ (the sabarimala case), the court lifted the age-old ban on the entry of women of menstruating age into the sabarimala temple, holding that the practice was discriminatory and violated women's right to worship. Similarly, the court's intervention in the ayodhya dispute culminated in a verdict that awarded the disputed land for the construction of a hindu temple and alternate land for a mosque, a decision that had huge socio-political ramifications.

8.4. The shifting tone: judicial caution in recent times

However, there is also a discernible trend of judicial caution in certain domains, particularly those involving direct confrontation with the executive on matters of pure policy, national security, or economic reforms. For instance, the court's deference to the executive in matters like the electoral bonds scheme (which it ultimately struck down in 2024) and the citizenship amendment act (CAA) challenges initially reflected a more restrained posture. This indicates that the judiciary is constantly negotiating its space within the constitutional framework, its approach being shaped by the specific context of each case and the broader political climate.

Of course. Here is the expanded version of point 9, developed to over 600 words to provide a comprehensive comparative analysis.

IX. COMPARATIVE PERSPECTIVES:
JUDICIAL ACTIVISM ACROSS
JURISDICTIONS

To place the Indian experience in a global context, it is instructive to examine the manifestation of judicial activism in other democracies. While the term "judicial activism" is often used peculiarly in the Indian context, the phenomenon of courts moving beyond a mechanistic interpretation of the law to shape societal norms and protect rights is a global reality. However, the degree, methodology, and philosophical underpinnings of such activism vary significantly, influenced by each nation's constitutional history, legal culture, and political structure. A comparative analysis highlights both the uniqueness of the Indian model and the universal tensions inherent in the judiciary's role.

united states: the battle between originalism and a living constitution

the United States supreme court presents a dynamic and often contentious battleground between activism and restraint. The warren court (1953-1969) is widely regarded as the archetype of judicial activism. Through landmark decisions like brown v. Board of education (1954)²⁰, which declared racial segregation in public schools unconstitutional, and miranda v. Arizona (1966)²¹, which established the

rights of the accused, the court aggressively used its power to drive significant social reform. This was a deliberate departure from strict interpretivism, treating the constitution as a living document. However, this activist legacy spurred a powerful counter-tradition. The philosophy of "originalism," championed by justices like Antonin Scalia, advocates for interpreting the constitution based on its original public meaning. The more recent *Dobbs v. Jackson Women's Health Organization* (2022)²² decision, which overturned *Roe v. Wade*, was rooted in this originalist philosophy, yet its radical departure from half a century of precedent was itself viewed by critics as a form of conservative judicial activism. This illustrates that activism is not the sole purview of any single ideology but rather a function of the court's willingness to effect sweeping legal change.

South Africa: Transformative Constitutionalism and Socio-Economic Rights

The Constitutional Court of South Africa, born from the struggle against apartheid, embodies a model of "transformative constitutionalism." Its post-apartheid constitution is explicitly directive, containing not just negative liberties but also positive, enforceable socio-economic rights, such as the rights to housing, healthcare, food, and water. This mandate has necessitated a form of judicial activism distinct from the American model. In the government of the Republic of South Africa v. Grootboom (2000), the court faced the government's failure to provide adequate housing for the destitute. Rather than simply ordering the government to build houses, the court issued a "reasonableness" review, declaring that the existing housing program was unreasonable because it failed to make provision for those in most desperate need. It then directed the state to devise and implement a comprehensive program to meet this crisis. This exemplifies a "dialogic" model of activism, where the court sets the constitutional parameters and remands the issue to the democratic branches for implementation, fostering an inter-branch collaboration to fulfil constitutional goals.

United Kingdom: From Parliamentary Sovereignty to Rights-Based Review

The British experience demonstrates a gradual evolution from extreme judicial restraint towards a more robust role. The traditional cornerstone of the

British constitution was the doctrine of parliamentary sovereignty, which rendered the judiciary largely subordinate to the will of Parliament. However, the enactment of the Human Rights Act (HRA) in 1998 fundamentally altered this dynamic. The HRA incorporated the European Convention on Human Rights into UK law, empowering courts to review primary legislation for compatibility with convention rights. If a court finds a statute incompatible, it can issue a "declaration of incompatibility," which, crucially, does not invalidate the law but forces Parliament to reconsider it. This creates a form of weak-form judicial review, a hybrid model that blends activism with deference. It allows the judiciary to assert fundamental rights vigorously, as seen in cases expanding prisoners' rights, while ultimately deferring to Parliament's final authority. This contrasts sharply with the Indian and American power to strike down laws, showing a different constitutional settlement for managing the tension between judicial oversight and democratic governance.

In conclusion, the Indian model of judicial activism stands as a unique and potent synthesis. It combines the American-style power of strong-form judicial review (including the unprecedented basic structure doctrine) with the South African sensitivity to socio-economic justice; all delivered through the revolutionary procedural innovation of public interest litigation. This fusion has made the Indian Supreme Court one of the most powerful and interventionist courts in the world, actively engaged in governance and social reform to a degree unseen in the comparative context of the United Kingdom and even the United States. The global comparison reinforces that judicial activism is not a monolithic concept but a spectrum of strategies deployed by constitutional courts to navigate their role as guardians of the constitutional order within their respective democratic ecosystems.

X. CONCLUSION

Judicial activism in India has been a revolutionary and transformative force in constitutional jurisprudence. It has elevated the judiciary from a mere dispute-resolving body to an active guardian of constitutionalism, a catalyst for social change, and a

reformist institution dedicated to substantive justice. From the doctrine of basic structure forged in the fires of *Kesavananda Bharati* to the expansive interpretation of life and liberty in *Maneka Gandhi*, and from the democratization of justice through PIL to the affirmation of privacy, sexual equality, and human dignity in recent times, judicial activism has proven to be the bulwark against majoritarian tyranny, legislative arbitrariness, and state excess.

It has successfully bridged the gap between the grand promises of the preamble and the grim realities of society, breathing life into the concept of a "welfare state" envisaged by the constitutional framers. The judiciary, through its activist avatar, has often stepped in as the last resort for the oppressed and the marginalized, ensuring that the constitution is not a preserve of the privileged few.

However, this very power and influence carry with it the seeds of its own potential downfall. The danger of judicial overreach is real and persistent, posing a constant threat to the delicate balance of powers that sustains Indian democracy. The challenge of the counter-majoritarian difficulty and the issue of institutional competence cannot be wished away.

Therefore, the path forward lies not in abandoning activism but in tempering it with wisdom, restraint, and a deep-seated respect for institutional roles. The judiciary must walk the tightrope, being vigilant without being intrusive, being proactive without being usurpative. It must remain the "sentinel on the qui vive" as envisaged in the case of *State of Madras v. V.G. Row* (1952), without becoming a super-legislature or a super-executive. In this endeavor, the spirit of the constitution—its enduring commitment to justice, liberty, equality, and fraternity—must remain the sole guiding light. Judicial activism, when exercised as a sober, prudent, and constitutionally-mandated duty, remains the most potent shield for the rights of the citizen and the supremacy of the constitution in the world's largest democracy. Its future will be shaped by

the judiciary's ability to uphold this delicate balance, ensuring that it empowers without eclipsing, and protects without usurping.

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