



TRACING THE JURISPRUDENTIAL METAMORPHOSIS FROM JUDICIAL REVIEW TO JUDICIAL ACTIVISM IN INDIA

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RESEARCH ARTICLE



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Abstract

This research paper critically evaluates the functional dynamics of the Indian Judiciary as the "Sentinel on the Qui Vive," tracing its metamorphic journey from a traditional arbiter of law to a proactive catalyst for socio-political change. While the power of Judicial Review is implicitly and explicitly embedded within the Indian Constitution through Articles 13, 32, and 226, its application has evolved significantly over seven decades. This study analyzes the transition from the 'Strict Constructionist' approach characterized by judicial restraint in the early post-independence era to the contemporary era of 'Judicial Activism.' By examining a trajectory of landmark jurisprudence, ranging from the foundational A.K. Gopalan case to the revolutionary Basic Structure Doctrine and the expansion of Article 21 in the Maneka Gandhi case, the paper illuminates how the judiciary has redefined "Procedure Established by Law" to encompass "Due Process of Law." Furthermore, the discussion explores the rationale behind judicial interventionism, particularly through Public Interest Litigation (PIL), as a response to legislative vacuum and executive apathy. The research concludes by addressing the burgeoning debate on Judicial Overreach, arguing that while activism is vital for protecting the marginalized, the judiciary must maintain a delicate equilibrium to uphold the democratic principle of Separation of Powers.

Keywords: *Constitutionalism, Judicial Review, Judicial Activism, Basic Structure Doctrine, Article 21, Public Interest Litigation (PIL), Separation of Powers, Judicial Overreach*

Introduction

The architecture of a modern constitutional democracy rests upon the delicate equilibrium of its governing branches. In the Indian context, the Judiciary does not merely function as a dispute-resolution mechanism but serves as the "Sentinel on the Qui Vive" an ever-vigilant guardian tasked with ensuring that neither the Legislature nor the Executive oversteps its constitutional boundaries. The doctrine of Judicial Review, though not explicitly named in a single clause, is the lifeblood of the Indian Constitution. It is the power that breathes life into the parchment of the document, transforming abstract rights into enforceable realities.

Historically, the concept of Judicial Review in India finds its spiritual roots in the American case of *Marbury v. Madison* (1803), but it has acquired a uniquely Indian character. Unlike the "Due Process" clause of the US Constitution, the Indian framers initially opted for the narrower "Procedure Established by Law" under Article 21. However, the evolutionary trajectory of the Indian Supreme Court especially in the post-Emergency era has seen a radical shift. The court moved from a state of Judicial Quietism or literal interpretation toward a vibrant Judicial Activism.

This transition represents a shift in the judiciary's self-perception from being a cold technician of legal codes to becoming a proactive agent of social justice. Judicial Activism arose not out of a desire for power, but often as a necessary response to Legislative Vacuum and Executive Apathy. When the political branches failed to address systemic issues ranging from environmental degradation to the rights of the incarcerated the judiciary stepped in, often utilizing the tool of Public Interest Litigation (PIL) to democratize access to justice.

However, this proactive stance is a double-edged sword. While it has championed the cause of the marginalized, it has also sparked an intense debate regarding Judicial Overreach. Critics argue that when the Robed Sentinels begin to formulate policy or direct administration, they risk upsetting the Separation of Powers, the very foundation they are sworn to protect. This paper seeks to explore this tension, analyzing whether the court's activism is a legitimate extension of its review powers or a transgression into the domains of the elected representatives.

Research Objectives

- To analyze the constitutional provisions that empower the Indian Judiciary with the right of Judicial Review.
- To trace the historical evolution from a "Strict Constructionist" approach to a "Proactive" approach.
- To evaluate the impact of landmark Supreme Court judgments on the socio-political landscape of India.
- To examine the rationale behind the transition from Judicial Review to Judicial Activism.

Methodology

This research follows a Doctrinal Research Methodology. It relies on primary sources such as the Constitution of India and Supreme Court Case Laws (Landmark Judgments), and secondary sources including academic journals, books by constitutional experts and legal commentaries.

Main Discussion

Judicial Review is best understood as a "Constitutional Audit." It is the primary mechanism that prevents a representative democracy from devolving into a Majoritarian Autocracy. By positioning the Constitution as the Grundnorm (the foundational legal standard), the Judiciary ensures that the will of the majority in Parliament is always subservient to the wisdom of the Constitution. It acts as a Sovereign Filter, neutralizing any legislative or executive action that threatens the fundamental liberties of the citizenry. The power of Judicial Review in India is not a gift of the legislature but a mandate of the Constitution. While the term "Judicial Review" does not explicitly appear, the structural design of the Constitution makes it an inherent feature. There are some provision in our constitution which constitutes the base of judicial review:

Article 13: This article considered as Protective Shield. This article serves as the gateway for judicial review. It mandates that the State shall not make any law that takes away or abridges fundamental rights of citizens. By declaring that any such law shall be void, it grants the judiciary the role of a constitutional filter.

Articles 32 and 226: It is the Remedial Heart of citizen rights. Dr. B.R. Ambedkar described Article 32 as the "soul of the Constitution". Unlike other legal systems where judicial review is a discretionary power, in India, the right to move the Supreme Court for the enforcement of rights is itself a Fundamental Right. This creates a "Constitutional Duty" for the court to act.

Article 131: Provides Original Jurisdiction for Center-State or Inter-State disputes, ensuring federal equilibrium.

Articles 132–134: Establish Appellate Jurisdiction in constitutional, civil, and criminal matters.

Article 136: Grants Special Leave Petition (SLP) power, a discretionary jurisdiction that allows the Supreme Court to review any judgment or order from any court or tribunal in the country

Article 141 and 142: Article 141 ensures that the law declared by the Supreme Court is binding on all courts. Furthermore, Article 142 provides the Extraordinary Power to pass any decree necessary for doing complete justice. This specific article has often been the springboard for Judicial Activism, allowing the court to step in where statutes are silent.

Articles 245 & 246: Establish the territorial and subject-matter limits of legislative power. The courts use these to review whether a legislature has encroached upon a field not assigned to it .

Article 227: Gives High Courts the power of superintendence over all courts and tribunals throughout the territories in relation to which they exercise jurisdiction.

Functional Typologies of Judicial Review: In the Indian context, Judicial Review operates across three distinct functional planes which also determine the scope of judicial review :

- a. Review of Legislative Enactments: Ensuring that laws passed by the Parliament or State Legislatures do not violate the federal distribution of powers (described in Seventh Schedule) or Fundamental Rights of the citizens.
- b. Review of Administrative Actions: This is the application of Public Law to check the arbitrariness of the Executive. It ensures that the Rule of Law prevails over the Rule of Whim.
- c. Review of Constitutional Amendments: A unique feature of the Indian Judiciary (developed through the Kesavananda Bharati case with the concept of basic structure doctrine) where even the Parliament's power to amend the Constitution is subject to the Basic Structure Doctrine.

From Review to Activism

Judicial review and judicial activism represent two distinct yet overlapping dimensions of judicial power within the Indian constitutional framework. Judicial review is a reactive and technical authority, functioning as a formal audit to ensure that every legislative enactment or executive order conforms strictly to the written text of the Constitution. It is rooted in the principle of constitutional supremacy, where the court acts as a defensive shield to invalidate any state action that transcends its legal boundaries. In this traditional role, the judiciary is an arbiter of legality, maintaining the separation of powers by correcting procedural and jurisdictional errors only when a specific legal dispute is brought before it by an aggrieved party. In contrast, judicial activism is a proactive philosophy that moves beyond the literal interpretation of statutes to embrace the transformative spirit of the Constitution. While review focuses on whether a law is technically valid, activism focuses on whether the law is effectively delivering social and economic justice. This approach allows the judiciary to act as a catalyst for change, often intervening through public interest litigations or spontaneous actions to fill legislative vacuums where the other branches of government have remained silent or indifferent. If judicial review is the negative power to strike down a law, judicial activism is the positive power to issue mandates, guidelines, and policy directions that shape the governance of the country. The

fundamental difference lies in their institutional posture and democratic function. Judicial review is a safeguard of the status quo, ensuring that the government stays within the lines of the law. Judicial activism, however, is a tool for social engineering that seeks to fulfill the aspirational goals of the Preamble. While the former is a mandatory constitutional duty derived from specific articles like Article 13 and 226, the latter is a jurisprudential choice made by the court to act as the final resort for the marginalized. Ultimately, judicial review ensures the law is followed, while judicial activism ensures that justice is done in an era where administrative apathy might otherwise leave fundamental rights as mere parchment promises. The shift from a Restrained Review to a Proactive Activism was not an overnight change but a response to socio-political shifts. The causes of this shift was:

The Post-Emergency Realization: After the failure of the judiciary to protect life and liberty during the 1975 Emergency (ADM Jabalpur case), the court underwent a institutional repentance. It realized that a literal, black-letter interpretation of the law could lead to injustice.

From 'Procedure Established by Law' to 'Due Process': In *Maneka Gandhi v. Union of India* (1978), the court broke the shackles of a narrow interpretation. It ruled that any procedure depriving a person of life or liberty must not just be legal but must also be just, fair, and reasonable. This single judgment effectively shifted the court into an activist mode.

Legislative and Executive Vacuum: In a developing democracy, the political branches often fail to address sensitive issues due to vote-bank politics or bureaucratic red tape. The judiciary's activism is often a corrective intervention to fill these voids, such as in environmental protection or gender rights.

Typologies of Judicial Activism in India: Judicial activism manifests in several distinct forms based on the nature of the court's intervention:

- I. **Interpretative Activism:** This occurs when the court expands the meaning of constitutional terms. For example, expanding the concept of Life in Article 21 to include Dignity, Education, and Clean Environment.
- II. **Remedial Activism:** Here, the court creates new remedies to protect rights, such as the concept of Constitutional Torts or awarding monetary compensation for the violation of fundamental rights.
- III. **Legislative Activism (Gap-Filling):** When the legislature fails to enact laws on a critical subject, the court issues "Guidelines" that hold the force of law until a statute is passed (e.g., the Vishaka Guidelines).
- IV. **Supervisory Activism:** The court monitors the investigation of cases involving high-ranking officials or systemic corruption (e.g., "Continuing Mandamus" in the Vineet Narain case).

Now to understand the transition from the "Sentinel" as a passive observer to an active guardian, we must analyze some pivotal cases:

A. *A.K. Gopalan v. State of Madras* (1950): In this early phase, the Supreme Court took a very narrow, literal view of the Constitution. It ruled that Article 21 only protected against executive action, not legislative action. If a law was passed by Parliament, the court would not check if that law was "just" or "fair," only if the procedure was followed. This was Judicial Quietism and defined as the Era of Restraint of judiciary.

B. *Kesavananda Bharati v. State of Kerala* (1973): This is arguably the most important case in Indian history. The court moved from reviewing simple laws to reviewing the Power of Parliament itself. By a thin majority of 7:6, the court invented the Basic Structure Doctrine. It ruled that while Parliament can amend the Constitution, it cannot destroy its Identity. This established the Judiciary as the ultimate gatekeeper of democracy, preventing a Constitutional Suicide.

C. *Maneka Gandhi v. Union of India* (1978): This case marked the death of the Gopalan era and the birth of modern Judicial Activism. The court ruled that "Procedure Established by Law" must be Just, Fair, and Reasonable. It essentially imported the American "Due Process" into India. It established an Inseparable Golden Triangle between Articles 14, 19, and 21, meaning no right can be read in isolation.

D. *S.P. Gupta v. Union of India* (1981): Commonly known as the Judges Transfer Case, this gave birth to Public Interest Litigation (PIL). Justice P.N. Bhagwati relaxed the traditional rule of Locus Standi (the right to be heard). He ruled that any public-spirited individual could approach the court on behalf of those who are poor, ignorant, or in a socially disadvantaged position. This turned the "Sentinel" into a Social Reformer. Through his the court justify the Democratization of Justice.

E. *Vishaka v. State of Rajasthan* (1997): This case is the prime example of Judicial Law-making. There was no law regarding sexual harassment at workplaces. Using Article 141 and International Conventions (CEDAW), the court issued comprehensive guidelines. These guidelines remained the law of the land for 16 years until the Parliament finally passed the Act in 2013. This showed the court's role in filling the Legislative Vacuum.

F. *Justice K.S. Puttaswamy v. Union of India* (2017): The Sentinel evolved to meet the challenges of the digital age. A 9-judge bench unanimously declared Privacy as a Fundamental Right. It proved that Judicial Review is a living power of judiciary, capable of protecting citizens against modern threats like mass surveillance and data mining also.

G. *Navtej Singh Johar v. Union of India* (2018): The court moved into the realm of Constitutional Morality. By striking down parts of Section 377 (decriminalizing homosexuality), the court declared that the Constitution protects the Identity and Dignity of every individual, even if they are a minuscule minority.

H. Anuradha Bhasin v. Union of India (2020) : In the context of the internet shutdown in Jammu & Kashmir, the Court expanded the scope of Judicial Review over executive orders. The Court ruled that the freedom of speech and expression (Article 19) and the right to carry out any trade or business over the medium of the Internet are constitutionally protected. It established that indefinite internet shutdowns are a violation of the Constitution and subject to judicial scrutiny, ensuring the Sentinel guards the digital public square.

I. Secretary, Ministry of Defence v. Babita Puniya (2020) : The Court exercised Corrective Activism to strike down gender-based barriers in the military. It granted Permanent Commission to women officers in the Indian Army, irrespective of their years of service. The Court dismissed arguments based on biological differences as a form of gender stereotyping, asserting that the Constitution demands substantive equality even in traditional institutions like the military.

J. Problems and Miseries of Migrant Labourers (2020–2021) : During the COVID-19 pandemic, the Court initially faced criticism for restraint but later transitioned into a highly proactive mode. The Court took *Suo Motu* (on its own motion) cognizance of the migrant crisis. It issued directions for One Nation One Ration Card, free transport for migrants, and the registration of unorganized workers. This demonstrated the Supervisory Activism of the Court when the Executive's response was deemed insufficient to protect the right to life (Article 21).

K. S.G. Vombatkere v. Union of India (2022) : The Court showed unprecedented activism by effectively freezing a colonial-era law. While reviewing the constitutionality of Section 124A (Sedition) of the IPC, the Court ordered that the law be kept in abeyance. It directed the State and Central governments to refrain from registering any fresh FIRs under this section. This marked a shift where the Court protected citizens from the chilling effect of a law while the Legislature reconsidered its relevance.

L. Supriyo v. Union of India (2023): This case shows Judicial Restraint. The recognition of Same-Sex Marriage. While acknowledging the discrimination faced by the LGBTQ+ community, the Court refused to legislate marriage rights, stating that this falls under the domain of the Parliament. The Court recognizing the boundary between Activism and Legislating, proving the Sentinel knows when to defer to the Legislature.

M. Association for Democratic Reforms v. Union of India (2024): One of the most significant exercises of Judicial Review in recent years. A 5-judge bench struck down the Electoral Bonds Scheme as unconstitutional. The Court ruled that "anonymous" political funding violates the voters' Right to Information under Article 19(1)(a). The Court acted as the guardian of the Purity of Elections, ensuring that the Executive cannot create opaque financial systems that undermine democratic transparency.

N. The 2025-2026 Shift: In the most recent cycle (up to early 2026), the Court has begun addressing Artificial Intelligence (AI) and the Right against Climate Change. The Court has recently recognized a distinct fundamental right to be free from the adverse impacts of climate change, linking it to the Right to Life (Article 21). The Sentinel has started reviewing the Algorithmic Transparency of the State, ensuring that AI-driven government decisions (like welfare distribution) are not discriminatory or biased.

Why did the judiciary become so active?

1. The Post-Emergency Reaction: The single most powerful driver of judicial activism was the guilt following the 1975 Emergency. In the *ADM Jabalpur (1976)* case, the Supreme Court ruled that during an Emergency, even the right to life could be suspended. After the Emergency ended, the judiciary faced a crisis of legitimacy. To regain public trust, judges like Justice P.N. Bhagwati and Justice V. Krishna Iyer began a process of institutional repentance. They decided that the court must never again be a silent witness to state tyranny. This shifted the court's focus from the literal text of the law to the spirit of justice.

2. The Collapse of Legislative and Executive Accountability: Theoretically, the Legislature makes laws and the Executive implements them. However, in India, these branches often suffer from:

a. Policy Paralysis: Due to coalition politics or vote-bank sensitivities, the Parliament often avoids taking stands on controversial issues (e.g., environmental protection or LGBTQ+ rights).

b. Administrative Apathy: When bureaucrats fail to provide basic amenities or clean up pollution, the citizens have nowhere to go but the court.

c. The Vacuum Theory: This theory suggests that power is never static. When the Legislature and Executive leave a vacuum by failing to act, the Judiciary is forced to step in to prevent a total breakdown of the Rule of Law.

3. The Democratization of Justice: Before the 1980s, only the person whose rights were violated could go to court (*Locus Standi*). Judicial activism took off when the court discarded this rule. The court realized that a poor, illiterate laborer could not afford to reach the Supreme Court. By allowing any public-spirited citizen to file a case on behalf of others, the court turned itself into a People's Court. This democratization meant that the Sentinel was now actively looking for injustices to solve, rather than waiting for victims to arrive.

4. Transition from Procedure to Due Process: The constitutional turning point was the interpretation of Article 21. The court originally thought its only job was to see if a procedure existed to take away a right. In the *Maneka Gandhi (1978)* case, the court ruled that the procedure itself must be "Just, Fair, and Reasonable." By adopting this "Substantive Due Process" approach, the court gave itself the power to strike down even a legally passed law if it felt the law was unreasonable. This expanded the court's jurisdiction into every aspect of human life.

5. The Concept of Transformative Constitutionalism :The Indian Constitution is viewed by activist judges as a Living Document designed to transform society. Unlike Western constitutions which focus on "stability, the Indian Constitution is seen as a tool to end casteism, gender bias, and poverty. Judges believe their oath to uphold the Constitution includes an active duty to ensure

Social, Economic, and Political Justice (as stated in the Preamble). If the government is not achieving these goals, the court feels a Constitutional Compulsion to issue orders to achieve them.

6. Globalization and Human Rights Trends: The post-Cold War era saw a global rise in the Human Rights discourse. Indian judges, influenced by international covenants (like CEDAW or UDHR), began incorporating international standards into Indian law. This Global Judicial Dialogue encouraged Indian courts to be as proactive as their counterparts in other advanced democracies

Conclusion

The evolutionary arc of the Indian Judiciary from the Judicial Quietism of the A.K. Gopalan era to the Transformative Constitutionalism of the 2020s reveals a unique jurisprudential journey. As the Sentinel on the Qui Vive, the Supreme Court has successfully transitioned from being a literal interpreter of statutes to a proactive guardian of the social contract. This research concludes that the power of Judicial Review is not merely a legal technicality but a Structural Necessity for the survival of Indian democracy. The transition into Judicial Activism was a rational and necessary response to the historical failures of the political branches. By expanding Article 21 and relaxing the rules of Locus Standi, the court democratized justice, ensuring that the Parchment Barriers of the Constitution translated into tangible protections for the marginalized. However, the contemporary landscape (2019–2026) suggests a complex paradox. While the court has shown remarkable courage in defending democratic transparency (as seen in the Electoral Bonds verdict), it also faces the recurring challenge of Judicial Overreach. The fine line between Activating the Law and Making the Law remains blurred. The contemporary debate is no longer about whether the court should be activist, but rather how far that activism can go without eroding the democratic legitimacy of the elected legislature. Ultimately, the Sentinel must remain alert not only to the excesses of the State but also to its own institutional boundaries, ensuring that it remains a Check on power rather than a substitute for it. To maintain the sanctity of the Separation of Powers while ensuring that justice remains accessible, the following suggestions are proposed:

- A. Codification of Judicial Restraint: While Judicial Activism is essential for Complete Justice under Article 142, there is a need for the judiciary to develop a self-imposed Doctrine of Necessity. The court should intervene in policy matters only when there is a clear Legislative Vacuum or a direct violation of Fundamental Rights, avoiding a Governance-by-Litigation model.
- B. Strengthening the Specialist Review: In the era of 2026, many cases involve complex technological and environmental issues (AI, Climate Change, Data Privacy). It is suggested that the Judiciary move toward Institutional Expert Collaboration. Instead of judges making technical policy decisions, the Sentine should mandate the creation of independent expert bodies whose findings can guide judicial review without overstepping into executive domain.
- C. Institutional Transparency and Vacancy Management: For the Judiciary to maintain its moral authority as a Sentinel, it must address its internal challenges. The Collegium System requires greater transparency to avoid allegations of Judicial Oligarchy. Furthermore, the chronic delay in appointments often a point of friction between the Center and the Judiciary must be resolved through a time-bound constitutional mechanism to ensure that the Sentinels are not understaffed.
- D. The 'Active-Restraint' Model: The court should adopt what scholars call an Active-Restraint model. This means being Active in protecting civil liberties, minority rights, and democratic processes (like elections and free speech), but exercising Restraint in economic policies and social engineering that require public consensus and legislative debate.
- E. Focus on Implementation Monitoring: Rather than merely passing Visionary Judgments, the court should utilize its power of Continuing Mandamus more effectively. The focus should shift from Declaration of Rights to the Monitoring of Implementation, ensuring that the benefits of activism reach the grassroots level without the court having to take over administrative functions permanently.

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