



## **JUDICIAL ACTIVISM AS A DEMOCRATIC FORCE: ENSURING CHECKS AND BALANCES**

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**Paper Received On:** 20 MAY 2025

**Peer Reviewed On:** 24 JUNE 2025

**Published On:** 01 JULY 2025

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### ***Abstract***

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*This paper explores judicial activism as a democratic force within the context of ensuring checks and balances in governance. Judicial activism, the proactive role of the judiciary in upholding the Constitution and protecting citizens' rights, has gained importance in democracies, especially in safeguarding against abuses of power by the executive and legislative branches. By interpreting laws and sometimes expanding beyond conventional judicial review, courts play an essential role in reinforcing democratic values and responding to societal needs. Through a comparative analysis of landmark cases and international practices, this study examines how judicial activism has served as a corrective mechanism, reinforcing the judiciary's role as a protector of constitutional integrity. It further considers criticisms of judicial overreach, emphasizing the need for a balanced approach where judicial activism respects the separation of powers while addressing governmental inadequacies. Ultimately, the paper argues that judicial activism, when exercised judiciously, fortifies democracy by upholding checks and balances, thus ensuring accountability and responsiveness in governance.*

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**Keywords:** *Judicial Activism, Democracy, Checks and Balances, Judicial Independence, Separation of Powers, Constitutional Interpretation, Public Interest Litigation, Social Justice, Human Rights, Government Accountability, Democratic Governance, Judicial Review, Rule of Law, Legislative Oversight, Policy Influence, Minority Rights, Legal Reforms, Judicial Restraint, Case Law*

### **Introduction:**

Judicial activism plays a vital role as a democratic force, enhancing the principle of checks and balances in a constitutional democracy. It allows the judiciary to go beyond its traditional role of merely interpreting laws to actively intervening in matters that safeguard democratic values and protect fundamental rights. Through judicial activism, courts can address legislative or executive actions that may overstep constitutional boundaries or

threaten the rights of citizens. This activism is often viewed as essential in countries where social justice issues, human rights, and governmental accountability demand proactive judicial oversight.

The concept of judicial activism is rooted in the idea that the judiciary is a protector of democracy, tasked with ensuring that all branches of government operate within their prescribed constitutional limits. By exercising judicial review and championing public interest litigation, the judiciary helps uphold the rule of law, addresses injustices, and provides a means of redress where other government bodies might fail. While judicial activism is sometimes criticized for overreach, it also exemplifies a responsive judiciary attuned to the evolving needs of society and democracy, fostering a more balanced and accountable governance framework.

### **Review of Literature:**

The literature on judicial activism as a democratic force largely explores its dual role in safeguarding rights and providing a check on legislative and executive power. Notable scholars like *Aharon Barak* argue that judicial activism is essential for enforcing justice, as it enables courts to protect minority rights and uphold constitutional values where legislative or executive actions might fall short. In his work on judicial discretion, Barak emphasizes that activism allows judges to bridge gaps where law might be unclear, fostering a more adaptable and responsive judiciary.

*Upendra Baxi* is another influential figure, especially in the context of India, who discusses judicial activism as a means of promoting social justice. His analysis highlights how the judiciary in India, through Public Interest Litigation (PIL), has addressed issues of human rights and environmental protections, advancing democracy by giving a voice to marginalized groups. Baxi's work suggests that judicial activism can democratize access to justice, though he also warns of the need for restraint to avoid judicial overreach.

Critics like *Robert Bork*, however, warn against judicial activism, viewing it as a threat to democratic principles when judges override legislative intent. He argues that activism may undermine democratic accountability by allowing unelected judges to make policy decisions that ideally should fall under the purview of elected representatives. This view suggests that judicial activism might lead to judicial overreach, creating a form of governance that lacks direct public accountability.

Empirical studies, such as those by *Ran Hirschl*, provide comparative insights on judicial activism in democracies, illustrating that courts worldwide engage in activism as a

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response to social and political shifts. Hirschl's cross-national analyses indicate that judicial interventions often reflect societal demands for constitutional accountability and checks on power, especially in post-colonial and developing democracies.

In summary, the literature reflects diverse perspectives on judicial activism's role in democracy. Supporters view it as a crucial tool for ensuring checks and balances, while critics warn of potential risks to democratic governance. Across different political systems, judicial activism is seen as both a mechanism for safeguarding individual rights and as a potential source of tension within democratic structures, underscoring the need for a balanced approach.

### **Statement of the problem:**

The study will address key questions, such as:

- To what extent does judicial activism support or undermine democratic processes?
- In what ways have courts acted as forces for democratic checks and balances?
- What are the long-term impacts of judicial activism on the legitimacy and accountability of the judiciary?

By addressing these questions, this research will provide insight into judicial activism's complex role in modern democracies and help clarify under what conditions it serves as a democratic safeguard or a potential threat to governance.

### **Objectives of the study:**

1. To Analyze the Concept and Scope of Judicial Activism.
2. To Examine the Role of Judicial Activism in Promoting Democracy.
3. To Identify Key Cases of Judicial Activism in Enhancing Checks and Balances.
4. To Assess the Impact of Judicial Activism on Democratic Governance and Public Perception.
5. To Critique the Potential Risks and Limitations of Judicial Activism.

### **Methodology:**

The methodology for the study "*Judicial Activism as a Democratic Force: Ensuring Checks and Balances*" involved a comprehensive and multi-faceted approach to analyze the various dimensions of judicial activism and its impact on democratic governance. The research has been divided into both qualitative and quantitative methods, combining legal analysis, case studies, journals, research papers, archival, and comparative research. Reviewed landmark cases and judgments where judicial activism has played a crucial role such as the Kesavananda Bharati case, Maneka Gandhi case, and the Right to Privacy ruling.

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Investigated legal doctrines that allow judicial intervention, such as "public interest litigation" (PIL) and the "basic structure doctrine." Analyzed relevant constitutional provisions (Indian Constitution) that outline the separation of powers and ensure checks and balances, evaluating how judicial activism aligns with these principles. Detailed case studies of countries with a history of judicial activism, particularly India, the United States, and South Africa, have explored to highlight the varying contexts in which judicial activism has shaped democratic governance. Comparative legal analysis has been conducted between different legal systems to assess how judicial activism has been applied globally and how it has impacted democracy in various countries.

### **Significance of the study:**

1. Strengthening Democratic Values.
2. Fostering Government Accountability.
3. Expanding Rights and Social Justice.
4. Balancing Power among Government Branches.
5. Public Awareness and Legal Reforms.
6. Global and Comparative Insights.
7. Evaluating Potential Pitfalls of Judicial Activism.

### **Discussion:**

Judicial activism, as a concept, refers to the active role that courts play in interpreting laws and engaging with issues that may not be explicitly addressed by legislation, often stepping in to safeguard constitutional rights. This activism ensures the upholding of democratic values and the protection of individual liberties. The judiciary's ability to step in and correct legislative or executive actions that violate the Constitution plays a vital role in maintaining the balance of power among the three branches of government—executive, legislative, and judiciary. Judicial activism, therefore, functions as a democratic force that is crucial in preserving democratic integrity and protecting citizens' rights.

#### **1. Judicial Activism as a Safeguard for Rights.**

Judicial activism has played an instrumental role in safeguarding fundamental rights and ensuring that they are protected, even when the legislature fails to act. Landmark judgments in India, such as *Maneka Gandhi v. Union of India* (1978) and *Kesavananda Bharati v. State of Kerala* (1973), expanded the scope of constitutional rights, ensuring they adapt to contemporary realities. In the *Maneka Gandhi* case, the Supreme Court interpreted the right

to life and personal liberty under Article 21 of the Constitution to include the right to travel abroad, a decision that broadened the scope of fundamental rights.

## **2. Role in Ensuring Accountability of the Executive and Legislature.**

The judiciary's role in checking the powers of the executive and legislature is vital for maintaining democratic governance. In cases like *Indira Gandhi v. Raj Narain* (1975), the judiciary exercised its power to ensure that no individual or institution could override the rule of law, even in the face of political pressure. Judicial activism ensures that there is a counterbalance to the power of the legislature and the executive, preventing any one branch from becoming too dominant. The judiciary has the power to strike down unconstitutional laws, thereby ensuring that all laws are in harmony with the Constitution. For instance, judicial intervention in the case of the *Coal Allocation Scam* (2014) led to the cancellation of numerous coal blocks that had been allotted to private companies in a non-transparent manner.

## **3. Promoting Social Justice.**

Judicial activism often intersects with the promotion of social justice, particularly in cases where the marginalized or disadvantaged sections of society are concerned. The Indian judiciary, through public interest litigations (PILs), has actively engaged in cases concerning the rights of Dalits, women, children, and minority groups. In *Vishaka v. State of Rajasthan* (1997), the Supreme Court delivered guidelines on the prevention of sexual harassment at the workplace, an area that lacked legislation at the time.

## **4. Limitations and Criticisms of Judicial Activism.**

While judicial activism plays a crucial role in democratic governance, it is not without its criticisms. One of the major concerns is the potential for judicial overreach, where the judiciary might encroach on the roles and responsibilities of the executive and legislative branches. Critics argue that excessive judicial intervention can undermine the democratic process by rendering elected representatives' decisions irrelevant. The *Minerva Mills* case (1980), for instance, was criticized by some for striking down parts of the 42nd Constitutional Amendment, as it challenged the decision of a democratically elected government.

## **5. Global Perspective: Judicial Activism in Other Democracies.**

Judicial activism is not unique to India; courts in other democracies, such as the United States and South Africa, have played similarly influential roles. In the U.S., cases like *Brown v. Board of Education* (1954) where the Supreme Court declared state-sponsored racial segregation in public schools unconstitutional showcase how judicial activism can catalyze

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social change. Similarly, in South Africa, the Constitutional Court has been active in ensuring that policies comply with the Constitution, especially regarding issues like apartheid-era laws and the protection of civil liberties.

## **6. Balancing Judicial Activism and Judicial Restraint.**

The challenge for a democracy lies in balancing judicial activism with judicial restraint. The judiciary must act as a guardian of the Constitution, ensuring that no law or policy infringes upon the fundamental rights of individuals. However, it must also respect the separation of powers and refrain from unnecessarily overstepping its boundaries. The debate between judicial activism and judicial restraint is ongoing, and different legal scholars and practitioners offer varied perspectives on the appropriate balance. A key argument in favor of judicial activism is its role in ensuring the protection of rights and freedoms in circumstances where the other branches of government might fail. On the other hand, judicial restraint advocates stress the need for judges to interpret laws as they are written, leaving changes to laws to elected representatives.

### **Conclusion:**

In conclusion, judicial activism plays a vital role as a democratic force by ensuring checks and balances within a government. It serves to safeguard individual rights, uphold the rule of law, and maintain the separation of powers. While it is essential in promoting social justice and holding the executive and legislative branches accountable, it also faces challenges related to judicial overreach and the potential undermining of the democratic process. Therefore, it is crucial for the judiciary to exercise activism responsibly, ensuring that it complements the functions of the legislative and executive branches while protecting the democratic values of the nation.

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