



A STUDY OF INDIAN JUDICIAL ACTIVISM AND TRANSFORMATIVE CONSTITUTIONALISM IN THE SUPREME COURT

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Abstract

India's political and legal culture has been greatly shaped by transformational constitutionalism and judicial activism. To ensure justice, equality, and fundamental rights, judicial activism provides the courts with the power to interpret the Constitution in a dynamic and progressive manner. This book analyzes the evolution of judicial activism in India, with a focus on landmark judgments by the Supreme Court that have served to promote social justice and constitutional morality. The concept of transformative constitutionalism highlights the principle that laws continually need to adjust to address emergent sociopolitical challenges. The Supreme Court has played an important role in upholding the rights-based framework of law, protecting marginalized segments, and furthering democracy via judicial intervention. The article continues to analyze how transformative constitutionalism and judicial activism have worked together in upholding constitutional ideals, adapting to changing social needs, and maintaining the equilibrium of power in the Indian legal system.

Keywords: *Judicial Activism, Transformative Constitutionalism, Supreme Court of India, Judicial Interpretation, Constitutional Law.*

1. INTRODUCTION

The legal framework of the nation has been highly affected by Indian constitutionalism and transformational judicial activism, promoting equality, justice, and fundamental rights. With its forward-thinking interpretations, the Supreme Court has ensured constitutional ideals and adapted legal dogma to fit evolving social needs.



1.1.Judicial Activism

A judicial philosophy called "judicial activism" holds that judges both have the power and responsibility to consider more than the letter of the law in making decisions and to consider society as a whole. It is sometimes used as the reverse of judicial restraint. The term often implies that judges base their rulings more on personal opinion than on previous rulings. There are contentious political concerns surrounding the concept of judicial activism and the particular rulings that fall under this category. Separation of powers, legislative interpretation, and judicial interpretation are all directly tied to the issue of judicial activism.

1.2.Concept of Transformative Constitutionalism

Justice Chandrachud claims that the principles of liberty, equality, fraternity, and dignity in social order are all part of transformational constitutionalism. As a result, transformative constitutionalism is a necessary and important process that aids in defining the fundamental characteristics of democracy and its constitution. In a society where human needs are always changing; the only constant is change and adjustment. It is anticipated that as people's needs and circumstances change over time, so will the legislation. Everything in our universe has to be updated, and the universal law that states that change and transformation are the norm of nature states as much.

Numerous legal scholars and authors have expressed their opinions on transformative constitutionalism. For example, renowned Indian lawyer Indira Jaising has stated that "personal liberty is what transformative constitutionalism means to me," which amply illustrates the significance of this concept. Our amazing legislators met all of the necessities when the constitution was ratified, but as time goes on, as the demands and needs change, so do the rights.

In the modern world, transformative constitutionalism is essential to transforming the principles of liberty and dignity. Understanding the fundamental principles upon which the constitution was based and how they are essential to preserving the ideal and ongoing relationship between the state and society are the goals of transformative constitutionalism. It is crucial to include laws that grant all residents of the nation fundamental socioeconomic rights as well as ideas that support drastic social and political change in order to accomplish



transformational constitutionalism. A few prerequisites must be met in order to achieve transformational constitutionalism:

The current legal theories necessitate a dedication to analysing in order to develop transformational constitutionalism.

1. Impact on institutions of society and politics. Our nation's sociopolitical power seeks to strengthen ties toward equality and democratic involvement.
2. Fair access to essential socioeconomic goods and services is provided by socioeconomic rights.
3. The process of achieving justice, democracy, and peace via radical constitutional enforcement and the assistance of judges is greatly aided by judicial activism.
4. As transformative constitutionalism, adjudicative context relies on the law and courts as their last option to achieve their goals in determining the law.
5. Respect for human life and dignity is fostered by cultures that uphold rights.

These components enable constitutionalism to become transformational and serve as a means of bringing about the necessary social and political reforms in society.

1.3. Supreme Court of India

A definitive expert for defending the Indian Constitution, individuals' rights and freedoms, and the principles of the rule of law is the Supreme Court, which sits at the top of the Indian judiciary. It is in this way alluded to as the Gatekeeper of our Constitution. Part V (The Association) and ('The Association Judiciary') of the Indian Constitution both contain arrangements pertaining to the Supreme Court.

An independent judiciary with a progressive structure that includes High Courts and Subordinate Courts under it is laid out under the Indian Constitution.



Figure 1: Supreme court of India

Role of the Supreme Court in India

The Indian Supreme Court is essential to maintaining justice and constitutional principles. It has the authority to impose a fine of ₹2000 or a maximum six-month jail sentence for civil or criminal contempt of court. Even when parliamentary laws or norms created by the Court itself restrict its reach, judicial review is an important role that enables the Supreme Court to assess whether legislative acts and executive directives are constitutional. It also works as the adjudicating body for issues pertaining to the election of the president and vice president and as an investigative body for UPSC activities. Cases may be withdrawn from High Courts and decided by the Supreme Court.

With the President's approval, it can also appoint retired Supreme Court or High Court justices under Article 128. In the event of a quorum shortage, it is in charge of appointing ad hoc judges under Article 127. In addition, the President may designate an acting Chief Justice in the event that the Chief Justice of India is not available, as per Article 126.

2. JUDICIAL ACTIVISM IN INDIA: EVOLUTION AND GROWTH

The final arbiter for the defence of the Indian Constitution, liberties and rights of people, as well as rule of law norms, is the Supreme Court at the pinnacle of the Indian judiciary. It thus is also termed the Guardian of our Constitution. Part V (The Union) and ('The Union Judiciary') of the Indian Constitution both deal with provisions concerning the Supreme Court. A free and



hierarchical judiciary with the High Courts and Subordinate Courts under it is formed under the Indian Constitution.

2.1. Historical Background of Judicial Activism in India

Indian judicial activism has its roots in the post-independence era, where the court took it upon itself to uphold constitutional values. The Supreme Court read the Constitution in a strict sense early on, emphasizing the separation of powers strongly and restricting the role of the judiciary. The court, however, started to expand its roles in the 1970s, especially during the Emergency (1975–1977), when fundamental freedoms were curbed. By its decisions, the Supreme Court evolved concepts such as the basic structure theory, which were pivotal in the protection of the Constitution's basic principles. Judicial activism was further supported in the 1980s with the emergence of Public Interest Litigation (PIL), which allowed individuals to seek justice in the interests of the weaker sections of society.

2.2. Role of the Judiciary in Strengthening Democracy

The court, being the defender of the Constitution, is key to the upkeep of democratic principles. The courts ensure that the government works within the framework of the constitution and does not trespass on the rights of citizens through judicial activism. Indian courts, particularly the Supreme Court, have performed the important task of enforcing checks and balances against the legislative and executive, protection of social justice, and human rights by reading the provisions of the constitution in a forward-looking approach. Through the active intervention on issues such as gender justice, environmental protection, and election reform, the court has enhanced the participatory character of democracy and the accountability and transparency of government.

2.3. Landmark Cases on Judicial Activism (Kesavananda Bharati, Maneka Gandhi, Vishaka v. State of Rajasthan)

The Features of judicial activism in India have been manufactured and raised by a progression of landmark judgments. In the Kesavananda Bharati v. State of Kerala (1973) case, the Supreme Court figured out the Basic Structure Doctrine, which proclaimed that Parliament was



not allowed to adjust the basic arrangements of the Constitution. The ruling safeguarded the sway of the judiciary to save fundamental constitutional beliefs. *Maneka Gandhi v. Association of India* (1978), one more landmark judgment, expanded the extent of Article 21 by holding that the right to life and freedom are not simply actual presence but rather additionally envelop nobility, business, and procedural justice. Essentially, the Supreme Court set standards for halting lewd behavior in the working environment without a trace of laws in *Vishaka v. State of Rajasthan* (1997), a landmark instance of judicial activism. These instances mirror the revolutionary idea of judicial activism in maintaining social justice and spreading constitutional rights.

3. TRANSFORMATIVE CONSTITUTIONALISM

A progressive constitutional theory referred to as transformative constitutionalism views the Constitution as an ever-living document that can foster justice and social change. It emphasizes how constitutional interpretation is not fixed, but rather flexible, allowing the courts to protect fundamental rights and correct social injustices. Transformative constitutionalism, in contrast to formalistic legalism, promotes an evolving legal system aligned with contemporary sociopolitical conditions, ensuring that laws act as instruments of social transformation instead of rigid rules. With landmark judgments upholding equality, liberty, and human dignity, this approach allows courts, particularly the Supreme Court of India, to shape society proactively.

3.1. Transformative Constitutionalism

Transformational constitutionalism rests on justice, equality, and the expansion of basic rights. Through a progressive interpretation of constitutional values, it challenges existing hierarchies and seeks to dismantle oppressive regimes. This concept has often been utilized by the Indian Supreme Court in order to rectify historical injustices, defend marginalized communities, and protect democratic values. Fundamental concepts include the idea of progressive interpretation, judicial activism, and constitutional morality. The courts ensure the Constitution's persisting validity in addressing new challenges in social justice, protection of rights, and governance by making a determined effort with regard to its provisions.

3.2. Influence of Socio-Economic and Political Changes on the Constitution



The Indian Constitution is an evidence of the political and socioeconomic advancement of the country and not an independent piece of legislation. Its applicability has been shaped by a number of revisions and court decisions to adjust to the changing needs of Indian society. Economic liberalization, political ideology shifts, and globalization have all influenced the power of the Supreme Court to enforce constitutional equilibrium. For instance, historical examples related to digital privacy, environmental issues, and workers' rights highlight how judicial activism adapts to suit contemporary concerns. The extension of rights to cover socioeconomic justice, affirmative action policies, and anti-discrimination safeguards illustrates the influence of socioeconomic factors and ensures the Constitution will remain a medium for progressive evolution.

3.3. The Supreme Court as a Catalyst for Social Justice

By actively interpreting the Constitution, the Indian Supreme Court has been an integral part of maintaining social equity. Through Public Interest Litigation (PIL) and judicial activism, the Court has expanded fundamental rights, ensuring legal safeguards for marginalized groups. The Court's radical importance is proved through landmark judgments involving environmental regulation, LGBTQ+ rights, and gender justice. Through the application of principles like the basic structural principle and constitutional morality, the Supreme Court has played a critical role in protecting civil liberties, upholding democracy, and promoting an inclusive legal system with a high regard for human rights.

3.4. Key Judgments Reflecting Transformative Constitutionalism (Navtej Singh Johar, Joseph Shine, NALSA v. Union of India)

The Supreme Court has embraced transformative constitutionalism in request to impact sensational change in the public eye, clear from a progression of way breaking judgments. By striking down Area 377 of the IPC in Navtej Singh Johar v. Association of India (2018), the Court legalized homosexuality and highlighted equality, protection, and pride. The judgment reinforced the idea that, in protecting individual rights, constitutional morality should be focused on over majoritarian opinions. The Court legalized infidelity in Joseph Shine v. Association of India (2018), holding that obsolete laws shouldn't infringe upon individual opportunity and orientation equality. Additionally, the Court perceived the rights of transsexual



individuals in Public Legal Administrations Authority (NALSA) v. Association of India (2014), affirming their distinguishing proof and fundamental rights. These cases demonstrate that transformative constitutionalism guarantees that the Constitution develops to fulfill the needs of justice and equality in contemporary society.

4. IMPACT OF JUDICIAL ACTIVISM AND TRANSFORMATIVE CONSTITUTIONALISM

4.1. Protection of Fundamental Rights

Judicial activism in India has been crucial in upholding the Constitution-granted fundamental rights. Through liberal interpretation of Articles 14, 19, and 21, the Supreme Court has ensured citizens are protected against arbitrary state action. Personal liberty and the right to life were reinterpreted in the landmark case of *Maneka Gandhi v. Union of India* (1978), which asserted that these rights could not be limited without due process. The Supreme Court formulated guidelines to prevent sexual harassment in the workplace in *Vishaka v. State of Rajasthan* (1997), demonstrating the judiciary's initiative in protecting fundamental rights even in the absence of express law. These types of interventions are typical of transformative constitutionalism, where the judiciary is a push factor for society to advance through reading the Constitution in a manner that accommodates contemporary issues.

4.2. Expansion of Social and Economic Justice

The widening of social and economic justice has been significantly upheld by judicial activism, especially with the interpretation of Directive Principles of State Policy (DPSPs). The Court has involved DPSPs in guiding the meaning of basic rights, in this way furthering financial prosperity, despite the fact that they are not of a legally binding nature. The right to occupation was acknowledged as an essential part of the right to life under Article 21 in *Olga Tellis v. Bombay Metropolitan Organization* (1985). Also, as confirmed by *M.C. Mehta v. Association of India* (1986), which prompted the execution of natural laws for the protection of public wellbeing, the judiciary has been dynamic in ecological worries. The judiciary has shown its obligation to a ground breaking constitutional plan that adjusts legal frameworks to social real



factors through ensuring impartial admittance to medical services, training, and natural protection through Public Interest Litigations (PILs).

4.3. Balance of Power Between Judiciary, Legislature, and Executive

A pivotal piece of the Indian Constitution is the idea of separation of powers, and judicial activism plays had a critical impact in maintaining this equilibrium. The judiciary shields constitutional standards by overseeing administrative and leader activities, ensuring that no office exceeds its cutoff points. The Basic Structure Doctrine was formed by the Kesavananda Bharati case (1973), which actually look at Parliament's ability to revise the Constitution to such an extent that it changed the fundamental ideas. Likewise, by limiting the erratic excusal of state legislatures under Article 356 in the S.R. Bommai v. Association of India (1994) ruling, the Supreme Court maintained federalism. Nonetheless, banter concerning the legitimate extent of judicial movement has been incited by judicial overreaches, by which the courts have intervened in crafted by the leader and lawmaking body. Nonetheless, judicial activism actually maintains a fundamental situation in ensuring vote-based values and limiting the other institutions' maltreatment.

4.4. Challenges and Criticism of Judicial Activism

Judicial activism has been criticized on various grounds, although it has been instrumental in ushering in progressive legal reforms. Judicial overreach is argued by critics to arise from too much judicial intervention, which undermines the concept of separation of powers. Encroachment into the executive domain has been a cause of concern with instances of court directions to design policies, like the National Judicial Appointments Commission (NJAC) case in Supreme Court Advocates-on-Record Association v. Union of India (2015). In addition, the inherent subjectivity in judicial activism opens the door to conflicting verdicts, since judges' ideologies might play a stronger role in court rulings than the literal interpretation of the law guides them. Fears regarding the judiciary deviating its focus from current cases to activism-oriented adjudications are also aroused by the backlog of cases in Indian courts. Despite these challenges, judicial activism remains a necessary tool for constitutional interpretation and the pursuit of social justice goals, highlighting the need to implement it with balance.



By upholding core rights, promoting socioeconomic equity, and maintaining the balance of power, transformative constitutionalism and judicial activism have contributed substantially to shaping the legal system of India. Even though there are still problems, the aggressive attitude of the judiciary has ensured that constitutional thought remains adaptable and responsive to the needs of contemporary society.

5. CONCLUSION

Transformational constitutionalism and judicial activism are fundamental pillars of India's constitutional democracy. As the guardian of the Constitution, the Supreme Court has played a key role in keeping laws up-to-date and responsive to the demands of society. Through dynamic interpretation of constitutional provisions, the court has safeguarded social justice, consolidated democratic government, and extended the ambit of fundamental rights. *Maneka Gandhi*, *Vishaka*, and *Kesavananda Bharati* are instances of milestone cases that illustrate the transformative potential of judicial intervention. While it has been a useful tool in plugging legislative-executive gaps, judicial activism can only be exercised prudently to maintain the equilibrium of power. The future of India's legal framework depends on the harmonious coexistence of democratic ethos, constitutional values, and judicial oversight. Transformative constitutionalism ensures that the Constitution will remain a living document that can deal with contemporary challenges and foster an inclusive and equitable society.

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