

Judicial Activism and its Effect on Fundamental Rights: Interviews with Judges and Legal Scholars

Adv. Aditi Ganesh Patnuskar^{1,3}, Prashali Balkrishna Jadhav², Mrs. Rashmi Sasmal³

Assistant Professor¹ and T.Y.LL.B, Student²

Ashokdada Sable Law College, Mangaon

Balasaheb Thackeray Law College, Talaja, Navi Mumbai

Abstract: *This research paper explores the impact of judicial activism on fundamental rights, drawing on interviews with 150 respondents, including judges, legal scholars, and practicing lawyers. The study finds that judicial activism is widely viewed as a vital force in expanding and protecting fundamental rights, especially in contexts where legislative or executive actions have been insufficient. However, concerns about judicial overreach are also prevalent, indicating a need for a balanced approach to ensure that judicial interventions do not undermine the principles of separation of powers and democratic governance. The findings contribute to the ongoing discourse on the role of the judiciary in safeguarding individual liberties and promoting social justice.*

Keywords: judicial interventions

I. INTRODUCTION

Judicial activism has emerged as a pivotal concept in the broader discourse surrounding the protection and expansion of fundamental rights, particularly within legal systems where the judiciary is tasked with not only interpreting but also safeguarding individual liberties. This form of judicial engagement represents a more proactive approach to jurisprudence, wherein courts do not merely apply existing laws but actively interpret and even reshape them to address contemporary challenges and societal needs. In many instances, judicial activism involves courts stepping into the void left by legislative or executive inaction, using their interpretative authority to ensure that fundamental rights are upheld, even in the face of outdated or inadequate legal provisions.

The role of judicial activism in expanding fundamental rights is most evident in landmark cases where courts have interpreted constitutional provisions in ways that significantly broaden the scope of individual liberties. For example, in several jurisdictions, courts have used their interpretative powers to extend the right to privacy, recognize new forms of discrimination, or protect vulnerable groups who might otherwise be neglected by the law. These decisions often reflect a dynamic understanding of constitutional rights, one that evolves in response to changing social, economic, and technological conditions.

However, judicial activism is not without its controversies. One of the primary concerns associated with this approach is the potential for judicial overreach. Critics argue that when courts assume an activist role, they may encroach upon the domains traditionally reserved for the legislative and executive branches of government. This can lead to tensions between the judiciary and other branches of government, raising questions about the appropriate limits of judicial power. The doctrine of the separation of powers is a cornerstone of democratic governance, ensuring that no single branch of government becomes too powerful. When courts engage in judicial activism, they risk upsetting this delicate balance, potentially leading to a form of judicial supremacy where the judiciary becomes the dominant force in shaping public policy.

Moreover, judicial activism can sometimes lead to inconsistency and unpredictability in the law. Because activist decisions are often driven by the particular perspectives or values of individual judges, they may result in legal standards that are not uniformly applied. This can create uncertainty for individuals and institutions trying to navigate the legal system, as well as for lawmakers who must draft legislation that complies with judicially imposed standards.

Furthermore, judicial activism can provoke backlash from political actors or segments of the public who view the courts as overstepping their authority, potentially undermining the legitimacy of the judiciary.

Despite these concerns, judicial activism has also been credited with playing a crucial role in advancing social justice, particularly in contexts where other branches of government are unwilling or unable to act. In many cases, judicial activism has been the catalyst for significant legal and social change, particularly in areas such as civil rights, environmental protection, and the rights of marginalized communities. For example, in some countries, courts have used their activist mandate to address issues such as racial segregation, gender inequality, and LGBTQ+ rights, often in the face of strong political opposition. These judicial interventions have helped to transform legal landscapes, ensuring that fundamental rights are not only protected but also expanded in ways that reflect contemporary values and norms.

This dual nature of judicial activism—as both a protector and a potential disruptor of the democratic process—makes it a subject of ongoing debate and analysis. Legal scholars and practitioners continue to grapple with the implications of judicial activism, particularly in relation to the balance between judicial independence and accountability. On the one hand, there is a strong argument that courts must have the freedom to interpret the law in ways that reflect evolving societal standards, particularly when it comes to protecting individual rights. On the other hand, there is a legitimate concern that unchecked judicial activism could lead to a form of judicial despotism, where courts impose their will on the other branches of government and, by extension, on the public.

Given these complexities, it is essential to examine the perspectives of those who are directly involved in or affected by judicial activism. This research paper aims to explore the effects of judicial activism on fundamental rights through in-depth interviews with judges and legal scholars. These individuals bring a wealth of experience and insight into the ways in which judicial activism influences the legal system, the protection of rights, and the broader societal implications of judicial decisions. By analyzing their views, the study seeks to provide a nuanced understanding of the role that judicial activism plays in shaping the legal landscape, particularly in relation to fundamental rights.

The interviews conducted as part of this research will delve into several key areas of interest. First, they will explore the motivations behind judicial activism, seeking to understand why and how judges choose to engage in this form of judicial behavior. This includes examining the legal, ethical, and social considerations that influence judicial decision-making, as well as the external pressures that may drive courts to adopt a more activist stance.

Second, the study will investigate the impact of judicial activism on specific areas of fundamental rights, such as freedom of speech, equality before the law, and the right to privacy. By focusing on concrete examples, the research aims to illustrate how judicial activism can lead to significant legal and social transformations, as well as the potential challenges and controversies that may arise in the process.

Third, the research will consider the broader implications of judicial activism for the rule of law and democratic governance. This includes examining the ways in which judicial activism interacts with other branches of government, as well as the potential risks of judicial overreach. The study will also explore the public's perception of judicial activism, including the extent to which it is seen as a legitimate and necessary part of the judicial function.

Ultimately, this research seeks to contribute to the ongoing debate about the role of the judiciary in protecting and advancing fundamental rights. By providing a detailed analysis of the perspectives of judges and legal scholars, the study aims to shed light on the complex and often contentious nature of judicial activism, offering insights into how it can be effectively managed within the framework of a democratic legal system. The findings of this research will be of interest not only to legal professionals and scholars but also to policymakers, civil society organizations, and the general public, all of whom have a stake in the ongoing evolution of judicial activism and its impact on fundamental rights

II. REVIEW OF LITERATURE

The discourse on judicial activism has garnered substantial scholarly attention, with varied perspectives on its implications for the legal system, particularly in the context of fundamental rights. This review of literature examines key contributions to the field, ranging from theoretical underpinnings to empirical analyses, focusing on how judicial activism shapes and influences the protection of fundamental rights.

1. Theoretical Foundations of Judicial Activism

Ronald Dworkin's seminal work, *Taking Rights Seriously* (1977), provides a robust theoretical framework for understanding judicial activism. Dworkin argues that judges should interpret laws in a way that best protects individual rights, grounded in moral principles rather than strict legal formalism. His theory supports the idea that courts should play an active role in protecting rights, even if this means challenging legislative or executive actions. Dworkin's philosophy has significantly influenced the way judicial activism is viewed, particularly in liberal democracies where the protection of rights is paramount.

Aharon Barak, in *The Judge in a Democracy* (2006), builds upon Dworkin's ideas by advocating for a judiciary that acts as a guardian of democracy and human rights. Barak emphasizes that judicial activism is sometimes necessary to ensure that democracy functions effectively, especially in situations where the other branches of government fail to uphold justice and equality. He contends that courts must occasionally step beyond their traditional roles to address issues that are vital to the democratic fabric of society.

In contrast, Antonin Scalia's *A Matter of Interpretation: Federal Courts and the Law* (1997) offers a critique of judicial activism, advocating for an approach rooted in textualism. Scalia argues that the judiciary should interpret the law based on its original meaning, as intended by the framers of the constitution. He cautions against judges imposing their personal values and beliefs under the guise of protecting rights, asserting that such activism undermines the rule of law and erodes the separation of powers.

2. Judicial Activism in Practice

The application of judicial activism in various legal systems has been extensively studied. Upendra Baxi's *The Indian Supreme Court and Politics* (1980) provides a critical analysis of judicial activism in India, particularly through the lens of Public Interest Litigation (PIL). Baxi argues that the Indian Supreme Court has played a pivotal role in expanding fundamental rights, especially in areas where legislative and executive actions have been inadequate. His work highlights how judicial activism has been instrumental in addressing social justice issues, such as environmental protection, labor rights, and the rights of marginalized communities.

Frank B. Cross and Stefanie A. Lindquist, in their empirical study "The Scientific Study of Judicial Activism" (2007), examine the U.S. Supreme Court's decisions to quantify the extent of judicial activism and its impact on civil liberties. Their research shows that judicial activism often leads to the expansion of individual rights, particularly in cases related to freedom of speech and equal protection under the law. However, their findings also suggest that such activism can lead to unpredictability in legal outcomes, raising concerns about consistency and stability in the legal system.

3. The Debate on Judicial Restraint vs. Judicial Activism

The debate between judicial restraint and judicial activism is further explored by John Hart Ely in *Democracy and Distrust: A Theory of Judicial Review* (1980). Ely advocates for a form of judicial review that is cautious and restrained, emphasizing that courts should focus on ensuring the democratic process rather than making substantive policy decisions. He argues that judicial activism should be limited to cases where there is a clear violation of constitutional principles, and that courts should avoid overstepping their boundaries.

Cass R. Sunstein's *One Case at a Time: Judicial Minimalism on the Supreme Court* (1999) introduces the concept of judicial minimalism, which is a middle ground between activism and restraint. Sunstein suggests that courts should make narrow, case-specific rulings that address the issues at hand without broad, sweeping judgments that could have far-reaching implications. This approach, according to Sunstein, allows the judiciary to protect rights while maintaining respect for the democratic process and legislative prerogatives.

Richard A. Posner, in *How Judges Think* (2008), offers a pragmatic critique of both judicial activism and judicial restraint. Posner argues that judges, in reality, often make decisions based on a combination of legal principles, personal values, and practical considerations. He posits that while judicial activism can be beneficial in protecting rights, it also carries risks, particularly when judges rely too heavily on personal beliefs rather than legal precedents or statutory interpretations.

4. Judicial Activism and Constitutional Interpretation

Bruce Ackerman's *We the People: Foundations* (1991) provides an exploration of how judicial activism intersects with constitutional interpretation. Ackerman discusses the concept of "constitutional moments," where judicial decisions play a crucial role in shaping the direction of constitutional law. He suggests that in times of significant social and political change, judicial activism can help to reinterpret and adapt the constitution to contemporary realities, thereby ensuring that it remains relevant and effective in protecting rights.

Mark Tushnet's *The New Constitutional Order* (2003) delves into the role of judicial activism in the evolution of constitutional law. Tushnet argues that judicial activism has been a driving force in transforming constitutional jurisprudence, particularly in areas related to civil rights and liberties. However, he also warns of the potential dangers of over-reliance on the judiciary, suggesting that it can lead to a concentration of power in the courts at the expense of democratic governance.

5. Critiques and Counterarguments

Critics of judicial activism, such as Jeremy Waldron in "The Core of the Case Against Judicial Review" (2006), argue that excessive judicial intervention in policy matters undermines the democratic process. Waldron contends that decisions affecting fundamental rights should be made by elected representatives rather than unelected judges. He suggests that judicial activism can lead to a disconnect between the judiciary and the public, as judges may not always be in tune with societal values and needs.

Laurence Tribe's *American Constitutional Law* (2000) provides a balanced perspective, acknowledging both the benefits and risks of judicial activism. Tribe argues that while judicial activism is sometimes necessary to protect rights, it must be exercised with caution and respect for the broader legal framework. He emphasizes the importance of maintaining a delicate balance between judicial intervention and deference to legislative and executive branches.

6. The Role of Judicial Activism in Social Justice

Stephen Breyer's *Active Liberty: Interpreting Our Democratic Constitution* (2005) advocates for a form of judicial activism that is focused on promoting democratic participation and social justice. Breyer argues that courts have a responsibility to interpret the constitution in a way that enhances individual liberties and ensures that all citizens have a voice in the democratic process. His work highlights the potential of judicial activism to address systemic inequalities and protect the rights of vulnerable populations.

In *The Migration of Constitutional Ideas* (2006), edited by Sujit Choudhry, the global impact of judicial activism is explored, particularly how courts in different countries influence each other's jurisprudence. The book discusses how ideas related to judicial activism and the protection of fundamental rights have traveled across borders, contributing to a more interconnected and dynamic global constitutional landscape.

7. Conclusion

The literature on judicial activism presents a complex and multifaceted view of its role in protecting fundamental rights. Scholars have debated its merits and drawbacks, with some advocating for an active judiciary that ensures the protection of rights, while others caution against the risks of judicial overreach. Empirical studies provide evidence of both the positive impacts of judicial activism, such as the expansion of civil liberties, and the challenges it poses, including legal unpredictability and potential democratic deficits.

This review underscores the importance of understanding judicial activism within its broader social, political, and legal contexts. As this research paper examines the views of judges and legal scholars on the impact of judicial activism, it contributes to the ongoing discourse by providing empirical insights into how this phenomenon affects the realization of fundamental rights in contemporary legal systems.

III. ANALYSIS

The data was collected from 150 respondents, carefully selected using purposive sampling to ensure the inclusion of individuals with extensive experience in constitutional law and human rights. This method allowed the study to capture in-depth insights from those who are directly involved in or closely observe the effects of judicial activism on the protection and expansion of fundamental rights.

1. Demographic Profile of Respondents

Profession: The respondents were categorized into three main professional groups: judges, legal scholars, and practicing lawyers. This distribution was designed to capture a broad range of perspectives within the legal field.

Judges: Comprising 33% of the respondents, 50 individuals were serving or had served as judges. This group provides valuable insights from those who are directly involved in the judicial process and have firsthand experience with the application of judicial activism in courts.

Legal Scholars: The largest group in the sample, legal scholars accounted for 40% of the respondents, totaling 60 individuals. These respondents bring an academic perspective to the discussion, offering critical analyses and theoretical frameworks that help in understanding the broader implications of judicial activism.

Practicing Lawyers: Making up 27% of the respondents, 40 practicing lawyers participated in the study. This group offers practical insights into how judicial activism influences day-to-day legal practice, particularly in cases involving fundamental rights.

Years of Experience: The respondents' experience in the legal field was categorized into three ranges, reflecting their depth of engagement with constitutional law and human rights issues.

Less than 10 years: This group included 20% of the respondents (30 individuals), providing a perspective from those who are relatively early in their careers. Their views may reflect a more current understanding of judicial activism, shaped by recent legal trends and educational influences.

10-20 years: Representing 30% of the respondents (45 individuals), this group consists of mid-career professionals who have a significant amount of experience and are likely to have witnessed the evolution of judicial activism over the past decade or two.

More than 20 years: The largest experience group, comprising 50% of the respondents (75 individuals), these seasoned professionals bring a wealth of knowledge and historical context to the discussion. Their perspectives are invaluable in understanding the long-term trends and effects of judicial activism on fundamental rights.

2. Perspectives on Judicial Activism

The respondents were asked to express their level of agreement with statements regarding the impact of judicial activism on fundamental rights and concerns about judicial overreach. The analysis reveals a nuanced view of judicial activism, with strong support for its positive impacts, tempered by some concerns about the potential for overreach.

Positive Impact on Fundamental Rights: Respondents overwhelmingly recognized the positive role of judicial activism in protecting and expanding fundamental rights.

Strongly Agree: A significant majority, 60% (90 respondents), strongly agreed that judicial activism has had a positive impact on fundamental rights. This group likely sees judicial activism as a necessary and effective tool for addressing gaps left by the legislative and executive branches, especially in contexts where these branches may be unwilling or unable to protect individual rights.

Agree: Another 30% (45 respondents) agreed with the statement, showing broad support across the sample for the positive outcomes associated with judicial activism. These respondents may appreciate the role of the judiciary in safeguarding rights, even if they see some limitations or challenges associated with activism.

Neutral: A small minority, 7% (10 respondents), remained neutral, neither fully endorsing nor rejecting the impact of judicial activism. This group may recognize the complexity of the issue, where the outcomes of judicial activism can vary depending on the context and the specific rights at stake.

Disagree: Only 3% (5 respondents) disagreed with the statement, indicating that there is very little outright opposition to the idea that judicial activism has positively influenced fundamental rights. This small group may view judicial activism as overstepping the boundaries of judicial authority, potentially infringing on the roles of the legislative and executive branches.

Concerns about Judicial Overreach: The data also reveal mixed feelings about the potential for judicial overreach—a situation where judges might exceed their authority and encroach on the functions of other government branches.

Strongly Agree: About 20% of respondents (30 individuals) strongly agreed that judicial activism can lead to judicial overreach. This group is likely concerned that, while activism can protect rights, it can also disrupt the balance of power among the branches of government, leading to unintended consequences.

Agree: An additional 30% (45 respondents) agreed with this concern, suggesting that a significant portion of the sample believes that the risks of overreach are real and warrant caution in the application of judicial activism.

Neutral: The largest group, 33% (50 respondents), remained neutral on this issue, indicating a recognition of the complexity of the issue. These respondents may see both the potential benefits and risks of judicial activism, acknowledging that its impact depends heavily on how and when it is applied.

Disagree: Finally, 17% of respondents (25 individuals) disagreed with the concern about judicial overreach, likely viewing the judiciary's active role as essential for protecting rights, even if it means occasionally stepping beyond traditional boundaries.

3. Views on Specific Areas Impacted by Judicial Activism

The respondents were also asked to consider the impact of judicial activism on specific areas such as the expansion of civil liberties and its influence on social justice and equality. The results indicate strong support for the role of judicial activism in these areas.

Expansion of Civil Liberties: Judicial activism is widely viewed as a key driver in the expansion of civil liberties, with respondents expressing strong agreement on this point.

Strongly Agree: A majority of 57% (85 respondents) strongly agreed that judicial activism has significantly contributed to the expansion of civil liberties. These respondents likely view the judiciary as a crucial defender of individual freedoms, particularly in contexts where other branches may be reluctant to act.

Agree: Another 33% (50 respondents) agreed, reinforcing the perception that judicial activism plays a vital role in promoting civil liberties. This broad agreement underscores the judiciary's importance in advancing rights that might otherwise remain underdeveloped.

Neutral: A small minority, 7% (10 respondents), remained neutral, possibly reflecting uncertainty about the consistency or scope of judicial activism's impact on civil liberties.

Disagree: Only 3% (5 respondents) disagreed, indicating minimal skepticism about the judiciary's role in expanding civil liberties.

Influence on Social Justice and Equality: Respondents also acknowledged the significant influence of judicial activism on promoting social justice and equality.

Strongly Agree: The highest level of strong agreement was found here, with 63% (95 respondents) strongly agreeing that judicial activism has had a profound influence on social justice and equality. This suggests a strong belief in the judiciary's ability to drive progress in these areas, particularly for marginalized and disadvantaged groups.

Agree: 27% (40 respondents) agreed, further highlighting the widespread recognition of the judiciary's role in addressing issues of social justice. This consensus reflects the view that judicial activism is not only about protecting individual rights but also about advancing broader societal goals.

Neutral: Again, a small portion, 7% (10 respondents), remained neutral, potentially reflecting the complexity of measuring social justice outcomes or the variability in judicial impact across different contexts.

Disagree: As with the other areas, only a small fraction (3%, 5 respondents) disagreed, indicating that concerns about the judiciary's influence on social justice and equality are minimal.

Summary

The descriptive analysis paints a picture of a legal community that largely supports the role of judicial activism in protecting and advancing fundamental rights. While there are concerns about potential overreach, the overall sentiment is positive, with respondents acknowledging the judiciary's crucial role in expanding civil liberties and promoting social justice. These findings suggest that, within the sample, judicial activism is viewed as an essential component of a robust and responsive legal system, particularly in contexts where other branches of government may fail to uphold or advance the rights of individuals. This analysis lays the groundwork for further exploration of the nuanced views on

judicial activism, including the conditions under which it is most effective and the potential risks it may pose to the balance of powers within a democratic system.

IV. RESULTS

The analysis reveals a broad consensus among respondents that judicial activism has played a crucial role in expanding and protecting fundamental rights, particularly in contexts where legislative or executive actions have been inadequate. A majority of respondents, particularly judges and legal scholars, agreed that judicial activism has been instrumental in advancing civil liberties, social justice, and equality. They highlighted landmark cases where courts have actively interpreted the constitution to protect individual rights against state encroachment.

However, the results also show a significant concern about the potential for judicial overreach. Approximately 50% of the respondents expressed apprehension that excessive judicial activism could blur the lines between the judiciary and other branches of government, potentially undermining the principle of separation of powers. This concern was more prevalent among practicing lawyers, who emphasized the need for judicial restraint to maintain legal predictability and respect for democratic processes.

Overall, the findings suggest that while judicial activism is widely seen as beneficial for the protection of fundamental rights, there is a need for a balanced approach that respects the boundaries of judicial authority.

V. CONCLUSION

The study underscores the influential role of judicial activism in the protection and expansion of fundamental rights. Interviews with judges, legal scholars, and practicing lawyers reveal a generally positive view of judicial activism, particularly in contexts where other branches of government have failed to protect individual rights. However, the findings also highlight concerns about the potential risks of judicial overreach, suggesting the need for a judicious balance between activism and restraint. Ensuring this balance is crucial for maintaining the legitimacy and effectiveness of the judiciary in safeguarding fundamental rights within a democratic framework.

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