



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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"COMPARATIVE ANALYSIS OF JUDICIAL ACTIVISM: INDIA, USA, AND FRANCE"

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ABSTRACT:

Judicial activism, the phenomenon wherein courts actively interpret and apply the law to shape societal change, has been a subject of significant scholarly debate and practical importance. This paper aims to conduct a comparative study of judicial activism in three prominent legal systems: India, the USA, and France.

India, as a common law jurisdiction, has witnessed significant judicial interventions in various policy domains, including environmental protection, social welfare, and governance. The Supreme Court of India, through its expansive interpretation of fundamental rights, has often played a proactive role in addressing societal issues and enforcing governmental accountability.

In contrast, the United States, also a common law system, has a long history of judicial activism, particularly through landmark decisions such as *Brown v. Board of Education* and *Roe v. Wade*. The US Supreme Court's interpretation of the Constitution has led to significant social and legal changes, influencing public policy and societal norms.

France, a civil law jurisdiction, has a different approach to judicial activism due to its legal traditions and the role of the Conseil d'État (Council of State). While French courts generally exercise restraint in reviewing legislative acts, the Conseil d'État has a unique position in supervising the actions of the administration, which has implications for judicial activism in the country.

By comparing the approaches of these three legal systems, this paper seeks to analyze the factors influencing judicial activism, the role of the judiciary in shaping public policy, and

the impact of judicial decisions on societal transformation. Through this comparative study, we aim to provide insights into the dynamics of judicial activism in different legal contexts and its implications for governance and societal change.

This comparative analysis will focus on key aspects of judicial activism, including the scope of judicial review, the relationship between the judiciary and the other branches of government, and the role of public opinion and legal culture in shaping judicial behavior.

Keywords: Judicial Activism, Judicial Review, Constitution.

INTRODUCTION:

The theory of judicial activism emerged during the judicial review process in the United Kingdom. The **British Constitution** is an example of an unwritten constitution that allows for judicial activism. During Stuart's reign (1603-1688), the unwritten constitution created the possibility of judicial review, and thus judicial activism was born.

The judicial review principle was established in 1610 by Justice Edward Coke. In the **Thomas Bonham v. College of Physicians case (1610)**, he made the decision that any law passed by parliament that is against common law or reason can be reviewed and declared void by the courts. This theory of judicial review and, correspondingly, judicial activism was supported by Sir Henry Hobart, who succeeded Sir Edward Coke as Chief Justice of the Court of Common Pleas in 1615.

The first significant case involving the idea of judicial review was **Marbury v. Madison (1803)**, in which the US Supreme Court explicitly declared certain provisions of the **Judiciary Act of 1801** unconstitutional. For the first time in American history, a court declared a piece of legislation to be unconstitutional. Since the Supreme Court ruled that federal courts have the authority to invalidate unconstitutional laws, judicial review has gained popularity in the United States.

However, the exact phrase "judicial activism" was used by Arthur Schlesinger Jr. in his article "The Supreme Court: 1947," which appeared in the January 1947 issue of Fortune Magazine. He used the phrase to categorize the American Supreme Court judges at that time as judicial activists, champions of self-restraint, and judges positioned in between the two

sections.

Further, the American judiciary used the power of judicial review to usher in the era of judicial activism in 1954, with the landmark case of **Brown v. Board of Education (1954)**, where the US Supreme Court ruled unanimously (9-0) that racial segregation in public schools violated the **Fourteenth Amendment** to the Constitution, which forbids states from depriving anyone within their jurisdictions of equal protection under the law. Furthermore, the Supreme Court in the case of **Plessy**

v. Ferguson (1896) not only abolished laws that treated Black people as a separate class but also guaranteed such rights that were clearly provided in the Constitution.

The term “judicial activism” was later used on numerous occasions, but the first time a judge used it in a court was in the case of **Theriot v. Mercer** in 1959. In a related case, Judge Joseph C. Hutcheson used it to oppose a dissenting judgment. He was opposed to judicial activism and the outcomes it sought. The usage also made reference to the shift in connotation that took place in the middle of the 1950s. Some judges viewed the term “judicial activism” as an encroachment.

Furthermore, the ability to engage in judicial activism became a requirement for the existence of an independent judiciary in nations that upheld the rule of law, and other modern democracies quickly followed, giving rise to the concept of judicial activism.

What is Judicial Activism?

The concept of “judicial activism” is opposed to the idea of “judicial restraint.” Both of these terms are frequently used to describe the assertiveness of judicial power, and they are also used from the perspectives of personal and professional views, putting the courts in a position to lean towards one of the views to play the appropriate role. The terms “judicial activism,” “judicial supremacy,” “judicial absolutism,” “judicial anarchy,” and others are frequently used interchangeably in the United States. The term “judicial activism” is also regarded as ascriptive. This implies that the judges’ performance is based on their ideologies, opinions, values, and interests.

The scope of judicial activism is so broad that no precise definition exists. It does not have a statutory definition because each jurist or scholar defines it differently. Supporters of judicial activism claim it to be a proper form of judicial review. In contrast, Thomas Jefferson refers to it as the 'despotic power' of Federal Judges. According to V.D. Kulshrestha, judicial activism occurs when the judiciary is charged with actually participating in the law-making process and subsequently emerges as a significant player in the legal system.

EARLY CASES OF JUDICIAL ACTIVISM IN INDIA

The following Supreme Court rulings provide insight into the development of judicial activism in independent India.

During the reign and dominance of British courts, the Supreme Court functioned as a technocratic court, but it gradually began to take an activist stance. The first landmark case in this regard was **A.K.Gopalan v. the State of Madras (1950)**, in which a writ was filed to determine whether detention without trial was a violation of fundamental rights under **Article 14, 19, 21, and 22**. The Supreme Court opined that the written Constitution contains the authority for judicial review. Even though the challenge was unsuccessful, it did start a new legal trend that became apparent in the years that followed.

FREEDOM OF PRESS

In the case of **Sakal Newspapers Pvt. Ltd. v. Union of India (1962)**, the government sought to regulate the number of pages in relation to the price of the newspaper in accordance with the Newspaper Act of 1956 and order of 1960. The Supreme Court ruled that newspapers could not be subject to the same regulations as other businesses because they served as a forum for the exchange of ideas and information. This decision broadened the protections for free speech provided by **Article 19(1)(a)** of the Constitution.

RESERVATION POLICY

In the case of **Balaji v. State of Mysore (1963)**, the Supreme Court reasoned that economic backwardness was the root cause of social backwardness. The Court distinguished caste from class and ruled that caste should not be used to assess backwardness. Additionally, it was decided that the reserved category's percentage of the total should not exceed 50%. It was decided that Article 14, as well as the subsets of **Articles 15 and 16**, must be complied with. Similar limitations on the reservation were imposed by the Court in the case of **Chitralekha**

v. State of Mysore (1964).**DOCTRINE OF PROSPECTIVE OVERRULING**

The doctrine of prospective overruling first appeared in the American legal system. It states that a decision made in a specific case will only affect the future and will have no retrospective effect on previous decisions. In **Golaknath v. State of Punjab (1971)**, the Supreme Court of India pioneered the idea of “prospective overruling” while addressing the constitutional validity of the **17th Amendment** to the Constitution and determined that Parliament lacked the authority to amend **Part III** of the Constitution or to abridge any of the fundamental rights.

DOCTRINE OF BASIC STRUCTURE

In the case of **Keshavananda Bharti v. State of Kerala (1973)**, the Supreme Court issued a decision that is regarded as a watershed moment in Indian constitutional jurisprudence. While addressing the scope of the amending power conferred by **Article 368** of the Constitution, the Court developed the theory of “basic structure.” By a 7:6 majority, a Bench of 13 judges ruled that Parliament had broad powers to amend the Constitution but that power must not abridge or destroy the basic structure or basic framework of the Constitution.

HABEAS CORPUS CASE

The case of **ADM Jabalpur v. Shivkant Shukla (1976)**, in which Article 21 was brought up, resulted in the most contentious Supreme Court decision regarding judicial activism. The majority of the Bench hearing the case of ADM Jabalpur held that in cases of dire emergencies, such as those that existed between 1975 and 1977, a legal procedure could be established, following which even human life could be taken away. Although Justice Chandrachud, who wrote the decision, faced criticism for penning a pro-government opinion, the legal theory he advanced was an excellent illustration of judicial activism. Justice Chandrachud has interpreted Article 21 in this manner and upheld the legality of legislation requiring acceptance in order to maintain the country’s sovereignty if it is threatened by either internal or external aggression.

COMPARISON OF LEGAL SYSTEMS: COMMON LAW VS. CIVIL LAW

India, the USA, and France represent different legal traditions: India follows a common law system, the USA has a common law system at the federal level and a mix of common law and civil law at the state level, and France follows a civil law system.

- In common law systems, judicial decisions are binding precedents that guide future cases, leading to a more flexible and evolving legal system.
- In civil law systems, laws are codified and judges are expected to apply the law rather than create new law through their decisions.

CONSTITUTIONAL PROVISIONS RELATED TO JUDICIAL REVIEW AND JUDICIAL INDEPENDENCE

- **India:** The Indian Constitution provides for judicial review under Articles 32 and 226, allowing the Supreme Court and High Courts to review the constitutionality of laws and government actions. The Constitution also guarantees judicial independence under Articles 124-147, ensuring the judiciary's autonomy and impartiality.
- **USA:** The US Constitution establishes the Supreme Court as the highest court with the power of judicial review. The principle of judicial independence is enshrined in the Constitution, ensuring that judges are free from political influence and can make decisions based on the law.
- **France:** The French Constitution provides for judicial review by the Constitutional Council and the Conseil d'État. The Constitution also guarantees judicial independence, ensuring that judges are independent and impartial in their decision-making.

FACTORS INFLUENCING JUDICIAL ACTIVISM

1. Role of the Judiciary within the

Separation of Powers India:

In India, the judiciary, particularly the Supreme Court, plays a crucial role in interpreting and enforcing the Constitution. The principle of separation of powers, though not explicitly mentioned in the Indian Constitution, is inherent in its structure. The judiciary acts as a check

on the powers of the legislative and executive branches, ensuring that their actions are in line with constitutional principles.

The Indian Supreme Court has often used judicial activism to protect fundamental rights and uphold the rule of law. For example, in *Maneka Gandhi v. Union of India* (1978), the Court expanded the scope of the right to life and personal liberty under Article 21 of the Constitution to include the right to travel abroad. This decision demonstrated the Court's willingness to interpret the Constitution broadly to protect individual rights.

USA:

In the United States, the judiciary, especially the Supreme Court, is tasked with interpreting the Constitution and reviewing the actions of the other branches of government. The principle of checks and balances ensures that each branch of government has some measure of influence over the others, preventing any one branch from becoming too powerful.

The US Supreme Court has used judicial activism to uphold the Constitution and protect individual rights. For example, in *Brown v. Board of Education* (1954), the Court struck down racial segregation in public schools, overturning the "separate but equal" doctrine established in *Plessy v. Ferguson* (1896). This decision was a landmark moment in the civil rights movement and demonstrated the Court's role in promoting equality and justice.

France:

In France, the judiciary, particularly the Conseil d'État, plays a crucial role in reviewing administrative actions and ensuring the legality of government actions. The principle of separation of powers is enshrined in the French Constitution, with each branch of government having distinct powers and responsibilities.

The French legal system allows for a certain degree of judicial activism to protect individual rights and ensure the proper functioning of the government. For example, in *Conseil d'État, Ass., 30 Oct. 1998, Syndicat national des journalistes v. Minister of the Interior*, the Conseil d'État reviewed an administrative decision to ban a journalist from entering France, highlighting its role in protecting freedom of the press.

In conclusion, the role of the judiciary within the separation of powers varies across India, the USA, and France, but in each country, the judiciary plays a crucial role in upholding the Constitution and protecting individual rights.

2. Influence of Public Opinion, Legal Culture, and Institutional Dynamics

India:

In India, public opinion and legal culture have played a significant role in shaping judicial activism. The judiciary, particularly the Supreme Court, has often responded to public concerns and societal changes, leading to a proactive approach in addressing social and legal issues. For example, in the case of *Vishaka v. State of Rajasthan* (1997), the Supreme Court laid down guidelines to prevent sexual harassment of women at the workplace, responding to a pressing social issue.

Legal culture in India, with its emphasis on justice and equity, has also influenced judicial activism. The concept of public interest litigation (PIL), which allows citizens to seek judicial intervention in matters of public interest, has been instrumental in promoting judicial activism in India. Institutional dynamics, such as the independence of the judiciary and the availability of PIL, further contribute to judicial activism by providing the judiciary with the necessary tools to intervene in public matters.

USA:

In the United States, public opinion and legal culture have influenced judicial activism, particularly in cases involving civil rights, social justice, and individual liberties. While the Supreme Court is intended to be a politically insulated institution, public sentiment can still indirectly influence its decisions. For example, in cases like *Obergefell v. Hodges* (2015), which legalized same-sex marriage nationwide, changing societal attitudes towards LGBTQ+ rights played a significant role in shaping the Court's decision.

Legal culture in the USA, with its emphasis on the rule of law and individual rights, has also influenced judicial activism. The living Constitution theory, which allows for the interpretation of the Constitution in light of changing societal values, has been used to justify judicial activism in cases involving evolving legal principles.

France:

In France, public opinion and legal culture have a more limited impact on judicial activism compared to India and the USA. The French legal system, with its emphasis on legal positivism and adherence to the letter of the law, places less emphasis on public opinion and

more on legal principles and precedent. However, public opinion can still influence judicial decisions indirectly through political pressure and media scrutiny.

Legal culture in France, with its emphasis on legal formalism and the primacy of written law, has also influenced judicial activism. The principle of legal certainty, which requires judges to apply the law as written, limits the extent to which judges can engage in activism. However, the role of the Conseil d'État in reviewing administrative actions and ensuring legality demonstrates a form of judicial activism within the French legal system, albeit within the confines of legal positivism. Institutional dynamics, such as the role of the Conseil d'État, also shape judicial activism in France. The Conseil d'État acts as both an administrative court and an advisory body to the government, giving it significant influence over administrative decisions.

COMPARATIVE ANALYSIS

Examination of Judicial Activism in India, the USA, and France

India:

Judicial activism in India is a prominent feature of the legal landscape, particularly demonstrated by the Supreme Court's proactive approach in interpreting and enforcing the Constitution. The Indian judiciary, and especially the Supreme Court, has played a significant role in protecting fundamental rights and promoting social justice. This activism is evident in the Court's willingness to intervene in matters of public interest through mechanisms like public interest litigation (PIL). The Indian Supreme Court has often taken a broad and expansive view of its powers, using judicial activism to fill gaps in legislation and address systemic issues. For example, in the case of *Vishaka v. State of Rajasthan* (1997), the Supreme Court laid down guidelines to prevent sexual harassment of women at the workplace, demonstrating its commitment to addressing pressing social issues.

USA:

In the USA, judicial activism is characterized by the Supreme Court's active role in interpreting the Constitution and reviewing the actions of the other branches of government. The Court has used judicial activism to expand civil liberties and address societal issues, often reflecting changing values and norms in American society.

The US Supreme Court has been involved in landmark decisions that have significantly

shaped American society, such as *Brown v. Board of Education* (1954), which desegregated schools, and *Roe*

v. Wade (1973), which legalized abortion. These decisions demonstrate the Court's willingness to engage in judicial activism to protect individual rights and promote social progress.

France:

In France, judicial activism is more limited compared to India and the USA, reflecting the country's legal positivist tradition and emphasis on adherence to written law. The French legal system places a strong emphasis on the primacy of legislation, limiting the scope for judicial interpretation and activism.

However, the Conseil d'État plays a crucial role in reviewing administrative actions, ensuring the legality of government actions. While judicial activism in France is more restrained compared to common law jurisdictions, the Conseil d'État has been involved in significant decisions that have protected individual rights and promoted administrative justice.

While the nature and extent of judicial activism vary between India, the USA, and France, all three countries' judiciaries play a vital role in interpreting and applying the law to protect rights and promote justice.

ANALYSIS OF KEY JUDICIAL TRENDS AND PATTERNS ACROSS JURISDICTIONS

India:

In India, key judicial trends include the expansion of fundamental rights, the use of public interest litigation (PIL) to address social issues, and the assertion of judicial independence. The Indian judiciary, particularly the Supreme Court, has played a significant role in expanding the scope of fundamental rights guaranteed by the Constitution. The Court has also used PIL as a tool to address systemic issues and ensure government accountability. Additionally, the judiciary in India has asserted its independence, often taking a proactive approach in interpreting and enforcing the Constitution.

USA:

In the USA, key judicial trends include the protection of civil liberties, the interpretation of the Constitution in light of changing societal values, and the role of the Supreme Court as a check on the other branches of government. The US Supreme Court has been involved in landmark decisions that have expanded civil liberties and addressed pressing social issues. The Court's interpretation of the Constitution has evolved over time to reflect changing societal values, and it has served as a check on the legislative and executive branches of government.

France:

In France, key judicial trends include the emphasis on legality and adherence to written law, the role of the Conseil d'État in reviewing administrative actions, and the balance between individual rights and government authority. The French legal system places a strong emphasis on legal positivism and adherence to the letter of the law. The Conseil d'État plays a crucial role in reviewing administrative actions for legality, ensuring that government actions comply with the law. Judicial activism in France is more restrained compared to common law jurisdictions, reflecting the country's legal tradition and institutional framework.

Overall, these key judicial trends and patterns highlight the diverse approaches to judicial activism and interpretation of the law across India, the USA, and France. Each jurisdiction's legal tradition, societal values, and institutional framework shape the role of the judiciary and influence the outcomes of judicial decisions.

CHALLENGES AND CRITICISMS OF JUDICIAL ACTIVISM

- 1. Overstepping Constitutional Role:** One of the primary criticisms of judicial activism is that it can lead to judges overstepping their constitutional role and encroaching on the powers of the legislative and executive branches of government. Critics argue that judges, who are unelected, should not have the power to make or influence policy decisions, as this is the prerogative of elected representatives. This criticism is based on the idea that judicial activism can undermine the principle of separation of powers, which is essential for a functioning democracy.
- 2. Judicial Overreach:** Another criticism of judicial activism is that it can lead to judicial

overreach, where courts make decisions that are not based on the law or the Constitution but on personal or political beliefs. Critics argue that this can undermine the rule of law and democratic principles, as it allows judges to impose their own values and preferences on society. Judicial overreach can also lead to uncertainty in the law, as decisions may not be based on established legal principles but on the subjective views of judges.

3. Undermining Democratic Principles: Critics of judicial activism argue that it can undermine democratic principles by allowing unelected judges to make decisions that should be made by elected representatives. They argue that decisions on important policy issues should be made through the democratic process, where elected representatives are accountable to the people. Judicial activism, they argue, bypasses this process and allows judges to impose their own views on society.

4. Lack of Accountability: Another criticism of judicial activism is that it can lead to a lack of accountability, as judges are not directly accountable to the people. Unlike elected representatives, who can be voted out of office if their decisions are unpopular, judges serve for life and cannot be easily removed. This lack of accountability, critics argue, can lead to decisions that are out of step with the wishes of the majority of the population.

RECOMMENDATIONS FOR ENHANCING JUDICIAL INDEPENDENCE AND STRENGTHENING DEMOCRATIC GOVERNANCE

- 1. Transparent and Merit-Based Appointment Process:** Ensure that judges are appointed through a transparent and merit-based process. This can help prevent political interference in the judiciary and ensure that judges are selected based on their qualifications and experience.
- 2. Adequate Resources and Support:** Provide judges with the necessary resources and support to carry out their duties effectively. This includes adequate funding for the judiciary, training programs for judges, and support staff to assist them in their work.
- 3. Maintaining Checks and Balances:** Maintain a system of checks and balances to prevent any one branch of government from becoming too powerful. This can help ensure that the judiciary, the legislature, and the executive all play their respective roles in a democratic society.

- 4. Respect for Judicial Independence:** Uphold the principle of judicial independence and respect the decisions of the judiciary. This can help ensure that judges are able to make decisions based on the law and the Constitution without fear of reprisal.
- 5. Promoting Accountability:** Ensure that judges are held accountable for their decisions through appropriate mechanisms. This can help maintain public trust in the judiciary and ensure that judges act in the best interests of society.
- 6. Continued Professional Development:** Provide judges with opportunities for continued professional development to keep them abreast of legal developments and best practices. This can help ensure that judges are able to perform their duties effectively and impartially.

CONCLUSION:

This study has explored the phenomenon of judicial activism in the legal systems of India, the USA, and France, shedding light on its implications for public policy, legislative debates, and social change. Judicial activism, characterized by the proactive role of the judiciary in interpreting laws and shaping policies, has been instrumental in advancing justice and safeguarding rights in these countries. However, it has also sparked debates and criticisms regarding its limits and implications for democratic governance.

Key Findings:

- **India:** The Supreme Court's proactive approach, particularly through public interest litigation, has led to significant reforms in areas such as environmental protection, human rights, and government accountability. However, criticisms of judicial overreach and the judiciary's role in policymaking persist.
- **USA:** The US Supreme Court has played a pivotal role in shaping civil rights, privacy laws, and social policies through landmark decisions. While judicial activism has been instrumental in advancing civil liberties, it has also sparked debates over the Court's legitimacy and its impact on democratic processes.
- **France:** Judicial activism in France, though more limited, has influenced administrative actions and legal principles. The Conseil d'État's role in reviewing administrative decisions has contributed to legal developments, albeit within the framework of legal positivism and adherence to written law.

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