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Article 21 of the Indian constitution and its extension through judicial activism

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Abstract

Through judicial activism, the Indian judiciary has significantly increased the scope of Article 21 of the Indian Constitution, which protects the fundamental right to life and personal liberty. This article was first read narrowly to guard against the state's capricious deprivation of life and liberty. But several Supreme Court decisions, especially since the 1970s, have changed its reach and made it an effective instrument for defending a variety of socioeconomic rights. In Indian constitutional jurisprudence, one of the most vibrant and well-known clauses is Article 21 of the Indian Constitution, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." It was first intended to be a limited safeguard against executive abuse, but judicial interpretation mostly by the Supreme Court of India has greatly broadened its scope. This extension, which was made possible by judicial activism, has improved India's understanding of human dignity and wellbeing by making Article 21 the cornerstone of several unlisted fundamental rights. One of the most valuable and essential rights guaranteed by the Indian Constitution is Article 21. This article covers a number of other essential rights, even though it is not an all-inclusive one. This topic is crucial given the advancements in all areas of human rights. This essay focuses on Article 21's broadening scope, and the function of the judiciary as well as its necessity. Originally interpreted narrowly, Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, has been greatly expanded by judicial activism to include a wide range of rights necessary for human dignity, such as the rights to livelihood, health, education, privacy, and a clean environment. Article 21 has become a "umbrella provision" due to judicial activism, which has interpreted "life" and "personal liberty" broadly, established precedents through significant rulings, and made sure the State treats individual liberties equitably and sensibly.

Keywords: Judicial activism, fundamental rights, human rights, separation of power, personal liberty, right to dignity, public interest litigation (PIL)

Introduction

In Indian constitutional jurisprudence, one of the most vibrant and well-known clauses is Article 21 of the Indian Constitution, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law."^[1] It was first intended to be a limited safeguard against executive abuse, but judicial interpretation—mostly by the Supreme Court of India has greatly broadened its scope. This extension, which was made possible by judicial activism, has improved India's understanding of human dignity and wellbeing by making Article 21 the cornerstone of several unlisted fundamental rights.

As demonstrated in *A.K. Gopalan v. State of Madras* (1950),^[2] the judiciary's early interpretation of Article 21 was limited, taking the term "procedure established by law" literally and omitting any reference to fairness or proportionality. But in *Maneka Gandhi v. Union of India* (1978)^[3], a paradigm shift took place, and the Court expanded the scope of Article 21 by interpreting "procedure" to include one that must be "just, fair, and reasonable."^[4] Since then, Article 21 has developed into a storehouse of rights that go much beyond just physical existence and are necessary for leading a decent life.

A key factor in this development has been judicial activism. The courts have interpreted Article 21 in a variety of ways, including the right to privacy (*Justice K.S. Puttaswamy v. Union of India*, 2017)^[5], the right to a clean environment, the right to livelihood (*Olga Tellis v. Bombay Municipal Corporation*, 1985)^[6], the right to shelter, the right to a speedy trial

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(Hussainara Khatoon v. State of Bihar, 1979)^[7], the right to education (Unni Krishnan v. State of Andhra Pradesh, 1993)^[8], and even the right to a dignified death (Common Cause v. Union of India, 2018)^[9]. The judiciary's proactive role in guaranteeing that basic rights continue to be responsive to changing social conditions is demonstrated by each of these extensions.

Public Interest Litigation (PIL) has played a particularly important role in this expansion. By allowing people and organizations to petition the Court on behalf of underprivileged groups, the judiciary was able to expand Article 21 to cover socioeconomic rights and environmental issues. By bringing fundamental rights and guiding principles of state policy into harmony, this activity helped close the gap between Parts III and IV of the Constitution.

However, some contend that judicial activity in extending Article 21 occasionally verges on judicial excess, posing questions about the separation of powers. Courts have been accused of usurping the legislature's function by interpreting new rights into Article 21 without clear constitutional revisions. However, the judiciary has defended its strategy as an essential protection to preserve justice, protect the weak, and assure that constitutional rights continue to have practical significance.

The evolution of Article 21 from a limited safeguard against the illegal deprivation of life and liberty to a broad source of numerous human rights highlights the revolutionary potential of judicial activism in India. The broad interpretation of Article 21 has unquestionably benefited the Indian constitutional framework by bringing it into compliance with international human rights standards and making it responsive to the ambitions of a dynamic society, even though discussions regarding the boundaries of judicial innovation are still ongoing.

This judicial activity has drawn praise for being progressive and criticism for possibly going too far in the direction of the separation of powers. Critics contend that by establishing new rights, the judiciary is intruding into the legislative branch. Nonetheless, supporters argue that this expansion is necessary to guarantee the state carries out its duties to its citizens and to satisfy the changing demands of a contemporary democratic society. The ongoing reading of Article 21 illustrates both its fluidity and the judiciary's function as India's guardian of basic rights.

Case- The Supreme Court's stance in *The Maneka Gandhi v. Union of India* case showcases the expansion of Article 21, stating, "The right to life and personal liberty is the most fundamental of all human rights, and it is not just about mere existence, but a life with dignity."

Article 21 of the Indian Constitution guarantees that "No person shall be deprived of his life or personal liberty except according to a procedure established by law"

The meaning of judicial activism: The phrase "judicial activism" describes how the Indian judiciary aggressively upholds the rights of its constituents and promotes social justice. In other words, it implies that the court actively works to guarantee that the executive and legislative parts of government carry out their constitutional duties^[10].

Judges who practice judicial activism aggressively use their judicial review authority to influence policy and promote social justice, frequently by questioning precedent or interpreting constitutional rights broadly, going beyond

merely upholding the law. Sometimes criticized as "legislating from the bench" or "judicial overreach," this can entail overturning government actions or decisions. However, it can also be justified as essential to safeguarding citizens' rights and maintaining accountability among the other arms of government.

The Indian Constitution and no Indian law provide a definition for the term "judicial activism." It is the authority through which the judiciary assesses whether executive and legislative orders are unconstitutional. Historically, judicial activism has been a source of intense discussion, particularly in view of recent advancements in this area. The argument that has always created a lot of heat has been reignited in recent decades by a number of contentious rulings by Supreme Court and High Court judges. However, it is still unclear what the word "judicial activism" actually means. From the beginning of legal history to the present, a number of critics have provided varying and inconsistent definitions of judicial activism.^[11]

According to the doctrine of separation of powers, no branch of government may usurp another branch's authority. As a result, neither the legislature nor the executive branch may execute their respective powers, and neither the judiciary nor the executive branch may do so. The government. The principle of separation of powers states that these three powers and functions must always be kept distinct and carried out by different government entities in a democratic democracy.^[12] Articles 13, 32, and 226 of the Indian Constitution, which give the higher courts the authority of judicial review to scrutinize and overturn laws and executive actions that violate the Constitution, are directly related to judicial activism. The judiciary has expanded rights like the right to life and liberty under Article 21 to include areas like the right to a clean environment and livelihood by using the Public Interest Litigation (PIL) mechanism under Article 32 and interpreting fundamental rights broadly.^[13]

- **Article 13:** According to this article, any legislation that violates the Fundamental Rights is null and void, giving the judiciary the authority to examine and overturn such legislation.^[14]
- **Article 32:** It provides the Supreme Court with the authority to uphold Fundamental Rights and serves as a vehicle for judicial activism by guaranteeing the right to constitutional remedies.^[15]
- **Article 226:** This article allows judicial review at the state level by giving High Courts the authority to issue writs for the enforcement of Fundamental Rights and for any other reason.^[16]

The Supreme Court has the authority to issue any order required to carry out full justice under

- **Article 142:** which has been applied to provide creative remedies in the context of judicial activism^[17].

According to Article 13(2)i, the state is prohibited from enacting laws that violate fundamental rights, and laws that do so are null and void. In accordance with Article 13(3), "law" has been defined to encompass any rule, regulation, notice, ordinance, order, bye law, custom, or usage that has legal force within the borders of India^[18] From this, it is evident that the judiciary has been granted judicial review authority by the Constitution. Because of this judicial review authority, which the Constitution expressly grants,

The judiciary has the ability to defend fundamental rights against executive and legislative intrusions. The judiciary has been referred to as the extension of these rights as it has been able to defend the Constitution's fundamental rights through its judicial review authority. Since the Indian Constitution's inception, the authority of judicial review under the document has never been contested.

The nature of the Indian Constitution is dynamic and subject to change throughout time, much like a live organ. As a result, the law must always be evolving to keep up with society's rapid changes. Since the Constitution is a living thing, it is possible to determine the latent meaning of the terms used. effect solely in the event that a specific circumstance occurs. It's not that meaning shifts with the times; rather, shifting times highlight and clarify the meaning of the terms utilized. The meaning of the phrases is shaped and coloured by the dynamic, changing circumstances that surround them. The judicial branch of the state is likewise tasked by the transformative constitutionalism principle to maintain the supremacy of the Constitution while also making sure that a sense of change is brought about. continuously and indefinitely in the community by using the Constitution and other legal rules in a way that is consistent with the stated goal. Therefore, research is required to determine whether the court simply carries out its authorized functions or if it usurps functions assigned to other organs through judicial activism^[19].

The Supreme Court has ruled through judicial activism that other undeclared rights are included in the right to life and personal liberty, including-

1. The right to a clean and healthy environment: A means of subsistence, and defence against inhumane and harsh treatment are all part of the right to live with human dignity.

Case- Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.^[20]

Facts: British national Francis Coralie Mullin was held at Tihar Jail in accordance with the 1974 Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA). She contested some of the terms of her confinement, including the prohibitions on speaking with her family and attorney. According to the regulations, a lawyer's interview needed prior approval from the District Magistrate and had to take place in front of a customs officer, and a detenu may only have one family interview each month.

The primary question was whether the limitations placed on a detainee's ability to speak with their attorney and family members infringed upon the fundamental rights protected by Articles 14 (equality) and 21 (life and personal liberty) of the Indian Constitution.

The Supreme Court ruled that the limitations were invalid and unlawful. The Court's reasoning was predicated on a broad and expansive reading of the "right to life" under Article 21, holding that it encompasses the right to human dignity and all of its associated rights, including the basic needs of life.

Case-Olga Tellis v. Bombay Municipal Corporation^[21]

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Whether the limitations on a detenu's ability to speak with their attorney and family breached the fundamental rights protected by Articles 14 (right to equality) and 21 (right to life and personal liberty) of the Indian Constitution was the main point of contention.

Judgement: The Supreme Court ruled that the limitations were invalid and unconstitutional. The Court's reasoning was predicated on a broad and expansive reading of the "right to life" under Article 21, holding that it encompasses the right to human dignity and all of its associated rights, including the basic needs of life.

2. Right to Health and Medical Care: This includes the right to a clean and healthy environment as well as the right to emergency medical assistance. This right has been maintained in cases like *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996).

3. Right to Privacy^[22]: In the historic decision of *K.S. Puttaswamy v. Union of India* (2017), the Supreme Court ruled that the right to privacy is guaranteed by Article 21 as a basic right. This choice has important ramifications for both personal autonomy and data protection.^[23]

4. Article 21A. right to education: The judiciary connected the right to education to Article 21 even though it was originally included in the Directive Principles of State Policy. Children's right to free and compulsory education was established as a basic right by the 1993 case of *Unni Krishnan v. State of Andhra Pradesh* and the 86th Amendment to the Constitution that followed, adding Article 21A^[24].

Origin and Development

Arthur M. Schlesinger Jr., a historian and professor, first used the term "judicial activism" in the United States in his 1947 article "The Supreme Court: 1947" in *Fortune* magazine. However, the idea itself predated the term's official introduction by a considerable amount.

United States: The seminal 1803 case of *Marbury v. Madison*, which created the concept of judicial review, is frequently cited as the origin of judicial activism in the US. This authority creates the foundation for an active judiciary by enabling courts to rule that executive and legislative actions are unconstitutional.

Evolution of Judicial Activism in India-In India, judicial activism has developed gradually and frequently in reaction to perceived shortcomings in government. Prior to the 1970s, the courts primarily served as passive arbiters of the law. It frequently complied with the wishes of the Parliament. The first significant change was brought about by the Supreme Court's creation of the Basic Structure doctrine in the famous *Keshavanand Bharti* case (1973), which restricted Parliament's ability to modify the

constitution. According to Pratap Bhanu Mehta, this case served as an example of the Court "creating its own powers" in order to uphold constitutional governance. During the Emergency era (1975–1977), the executive branch dominated the courts. In the 1976 ADM Jabalpur case, the court also failed to uphold civil liberties. After the emergency, this led to a significant transformation in the judiciary. According to legal scholars like Upendra Baxi, a sense of "institutional guilt" and a determination to never again stand by while the state represses people are the reasons behind the post-emergency judicial activism. In the late 1970s and early 1980s, Public Interest Litigation (PIL) was born as a result of this resolve. By enabling people and groups to petition courts on behalf of people who are unable to do so for themselves, the PIL revolution significantly increased access to justice. The Court actively stepped in to defend undertrial inmates, bonded labourers, and other marginalized groups in the 1980s. The rights to a clean environment, livelihood, health, education, and dignity were added to Article 21 (the right to life). In India, the 1990s and 2000s saw the start of the following stage of judicial activism. The judiciary began to address governance issues during this period. The Supreme Court, for instance, mandated food distribution, set environmental controls, stopped companies (such as the Delhi tanneries and the Ganga cleanup), oversaw corruption investigations (such as the Jain Hawala case), and changed the police and prison system, among other things. The failure or paralysis of other institutions was the main cause of the court's intervention. When the state fails, Baxi characterized the action as "people's judicature" that is required to accomplish social justice. Critics, however, referred to it as judicial overreach. For instance, there was a lot of protest when the Supreme Court struck down NJAC (2015). In order to replace the collegium (judges-appoint-judges) system with a more accountable structure, the NJAC was unanimously approved by Parliament and accepted by the states. As a result, the NJAC's invalidation by the Supreme Court was interpreted as a rejection of the "mandate of the people."

Judicial Activism Methods

Judicial activism takes several different forms in India. They are:

1. The judiciary's power to interpret the Constitution and declare any executive action or legislation unlawful if it finds that it does not comply with it is known as judicial review.
2. Public Interest Litigation (PIL): the court will only take this petition into consideration if there is broad public interest; the petitioner must have no personal interest in the matter; and the offended party does not submit the petition.
3. Constitutional interpretation
4. International laws that safeguard constitutional rights
5. The power of the higher courts to monitor the lower courts^[25]

Why Judicial Activism is Necessary

1. To Check Government Failures: The other two arms of government are crucially checked by judicial activism. The judiciary can step in to defend citizens' rights and guarantee good government when the legislature fails to pass essential legislation or the executive branch fails to carry it out

successfully. This is especially crucial when there is pervasive corruption or ineffective administration.

2. To Uphold Fundamental Rights: The judiciary is seen as the protector of both the Constitution and citizens' fundamental rights. Judicial activism allows courts to interpret constitutional provisions liberally in order to protect vulnerable or oppressed groups and to meet emerging social challenges that the founders of the Constitution did not anticipate. The extension of Article 21 in the Indian Constitution to cover the rights to privacy, livelihood, and a clean environment is a perfect example.

3. To Advance Social Justice: Judicial activism can be an effective means of redressing social injustices in a society when systemic injustices are pervasive. The courts can ensure that justice is available to everyone by addressing systemic inequities, environmental degradation, and the exploitation of underprivileged groups in society through Public Interest Litigations (PILs).

4. To Close Legislative Gaps: Laws can occasionally be vague, out-of-date, or have holes that cause legal ambiguity. When this occurs, judges can use judicial activism to creatively interpret the law to address contemporary social circumstances, keeping the legal system modern and responsive to the demands of the populace. By doing this, a legal void where a solution is required is avoided.

Raise of judicial activism

A number of significant events and turning points that changed the judiciary's function from a passive interpreter of the law to an active defender of the Constitution are responsible for the emergence of judicial activism, especially in India.

1. Failure of Other Branches: The main motivator has been the executive and legislative branches' alleged inability to fulfil their constitutional obligations. In order to fill this void and solve problems with corruption, ineffective administration, and poor governance, judicial activism frequently arises.^[26]

2. Post-Emergency Phase: The time after the Emergency in the middle of the 1970s was a pivotal moment. There was a significant shift in the judiciary, which had previously been chastised for its servile posture. A feeling of "institutional guilt" and a determination to never again stand by and watch while the state represses people emerged during this time.

3. Public Interest Litigation (PIL): The Supreme Court liberalized the long-standing principle of locus standi (the right to file a lawsuit) in the late 1970s and early 1980s under the leadership of justices V.R. Krishna Iyer and P.N. Bhagwati. This led to the creation of Public Interest Litigation (PIL), which significantly increased access to justice by enabling any citizen to submit a petition on behalf of the general public or a marginalized group.^[27]

4. Extension of Fundamental Rights: Historic rulings that expanded the definition of fundamental rights solidified the judiciary's aggressive stance. A broad range of rights necessary for a dignified life, including the right to a clean environment, health care, and a speedy trial, were added to

the interpretation of Article 21, the Right to Life and Personal Liberty.

Case-Kesavananda Bharati v. State of Kerala (1973):

This case established the Basic Structure Doctrine, which held that Parliament cannot amend the fundamental features of the Constitution. This gave the judiciary the power to review and invalidate constitutional amendments, firmly establishing its role as the guardian of the Constitution.^[28]

The Supreme Court reinterpreted the term "procedure established by law" in Article 21 in the 1978 case of *Maneka Gandhi v. Union of India*. According to its ruling, such a process needs to be "just, fair, and reasonable," not just a legislation that the government passed. A more expansive interpretation of fundamental rights became possible as a result of this ruling.

One of the first and most important PIL cases was *Hussainara Khatoon v. State of Bihar* (1979). The idea of a public interest lawsuit (PIL) and the right to a quick trial were solidified when the court took notice of a newspaper article about undertrial inmates who had been held in jails for years and, treating the article as a writ petition, ordered the release of thousands of them.

The Connection Between Article 21 and Judicial Activism

1. Interpretation of "Life and Liberty" in its broadest sense: The judiciary has interpreted the "right to life" under Article 21 in a very broad and inclusive way, extending it to include many rights for a dignified existence, such as the right to privacy, good food, education, health, livelihood, and a clean and pollution-free environment.^[29]

2. "Due Process of Law" is an extension of "Procedure Established by Law": The Supreme Court included the idea of "due process of law" into Article 21's "procedure established by law" in the historic case of *Maneka Gandhi v. Union of India*. This implies that any process that has an impact on life or liberty needs to be fair, reasonable, and just.

3-Proactive Role in Rights Protection: Judges actively defend individual rights from capricious state actions by engaging in this activity. This entails overturning capricious government actions and guaranteeing equitable and just legal processes.^[29]

4. Enforcement of Non-Justiciable Rights: In the area of environmental protection, judicial activism has also been utilized to link certain Directive Principles of State Policy (Part IV), which are otherwise non-justiciable, to the fundamental rights under Article 21.^[30]

Recent cases of judicial activism: In India, a number of high-profile instances of judicial activism have surfaced in 2023–2025, highlighting the court's ongoing function as a constitutional watchdog as well as the debates surrounding its extensive interventions.

Electoral Bonds Verdict (2024): Association for democratic reforms and ors v. union of india^[31]. A five-judge Supreme Court panel declared the Electoral Bond Scheme illegal in a historic ruling in February 2024. Concerns regarding transparency and quid pro quo

corruption were raised by the plan, which was implemented in 2017 and permitted anonymous, limitless donations to political parties through financial instruments. The ruling also prohibited further bond issuance and ordered the State Bank of India to reveal the identity of previous donors. Although the ruling was required, there are two main problems with it. To begin with, the judgment's timing seemed politically influenced. The ruling administration was unable to take any action due to election sensitivities and the model code of conduct when the verdict was rendered on the eve of the federal elections in 2024. The Court's decision sparked heated political discussions, with different media outlets equating political events with contribution activities. The opposition political parties benefited disproportionately from this. Then there was the matter of the state retracting its own statements. People view the state as a unified entity, notwithstanding the conflict between its numerous organs. When the bond plan was created, donors were promised anonymity. It was overturned by the courts. People saw it as the state retracting its own promises. Such incidents erode the state's legitimacy.

Governor and President Assent Judgment (2025)- State of Tamil Nadu v. governor of Tamil Nadu 2025

Citing constitutional accountability, the Court set deadlines for the President and Governors to act on laws in April 2025 in response to Tamil Nadu's appeal. It implicitly put an end to the abuse of "pocket vetoes" by ruling that extended inaction is unlawful. It even declared several pending laws to be law under Article 142. Critics said the judges changed Article 200 without a formal revision, raising worries about the separation of powers, despite the fact that it was hailed as a pro-federalism gesture.

Cash Scandal Involving High Court Judge: A massive stash of partially burned cash notes was discovered by firefighters in a storage following an unintentional fire at the judge's official residence in March 2024. The judiciary's accountability and transparency in addressing judicial corruption were put to the test by how it handled this incident. Following a 10-day investigation in early 2025, the panel determined that the judge's wrongdoing was severe enough to justify dismissal. CJI recommended Justice Varma's impeachment in a letter to the Prime Minister and the President of India. The judge was essentially benched (no judicial work) and returned to his previous HC (Allahabad) at the same time.

However, the process remained relatively opaque in terms of transparency. Unlike court trials, the public and press cannot observe the proceedings of in-house judicial probes. This brought up the age-old question of whether judges can be held accountable on their own in an impartial and open manner or if outside supervision is required. Notably, the Lokpal itself rendered a decision on this matter in January 2025. The Lokpal ruled that Supreme Court judges, including the CJI, are not "public servants" under its purview when rejecting a complaint against the former CJI. The Lokpal did note, however, that it may have jurisdiction over the High Court and lower-level judges. In February 2025, a special Supreme Court bench, acting suo motu, declared the Lokpal's move to establish authority over High Court justices "very disturbing" and delayed it. The lawsuit pits the judiciary against the Lokpal in a battle over "who will judge the judges." It is still unresolved as of mid-2025.

Conclusion

Activism in the judiciary is hardly an exception. It is a crucial component of a constitutional court's operations. It is a check on democracy that is counter-majoritarian. However, judicial activism does not equate to judicial governance. It must also operate within the bounds of the legal system. It serves the purpose of legitimizing or, less frequently, stigmatizing the conduct of the other branches of government within specified bounds. The state's weakest branch is the judiciary. Only when people put their faith in it does it grow strong. The legitimacy of the Court and judicial activism is based on the public's faith in it. Courts must constantly work to maintain their legitimacy. Instead of caving in to public pressure, they must resist all forms of pressure. This authority should only be used in extraordinary situations and only when it serves the public interest, even though it is necessary to exercise reasonable prudence and constraint to prevent judicial activism from turning into judicial adventurism or dictatorship. Judicial activism "is the oxygen of the rule of law," in other words. The judiciary, which was given the authority to enforce the socioeconomic liberation implied in the fundamental rights and other innovative provisions of the Indian Constitution the jewel in our democracy through "writ power," was entrusted with the constitutional revolution that the Founding Fathers had envisioned.

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