

JUDICIAL ACTIVISM

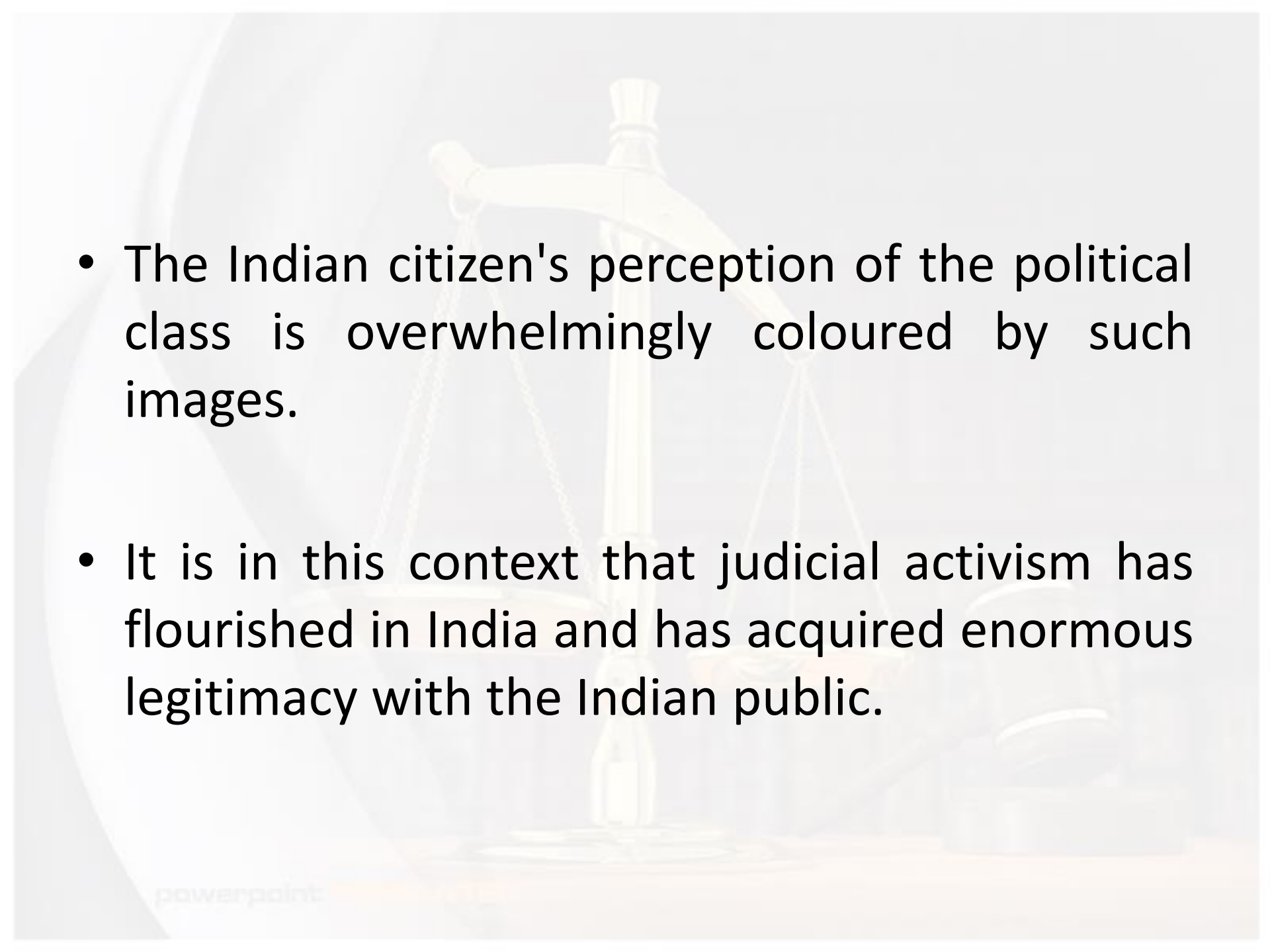
A golden scale of justice and a gavel are positioned on a wooden surface. The scale is the central focus, with its pans hanging from a horizontal beam. The gavel is to the right of the scale. The background is a soft, out-of-focus image of a person's hand holding a scale, suggesting a sense of balance and fairness.

Syndicate Group 3

VIDEO

A golden scale of justice and a gavel are positioned on a wooden surface. The scale is the central focus, with its two pans hanging from a horizontal beam. The gavel is to the right of the scale. The background is a blurred, light-colored wall.

- [Video](#)

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- The Indian citizen's perception of the political class is overwhelmingly coloured by such images.
 - It is in this context that judicial activism has flourished in India and has acquired enormous legitimacy with the Indian public.

Judicial Activism

A Phrase That Is Much Used and Little Understood



ORIGIN OF THE TERM “JUDICIAL ACTIVISM”



- Arthur Schlesinger Jr. introduced the term "judicial activism" in a January 1947 Fortune magazine article titled "The Supreme Court: 1947."

JUDICIAL ACTIVISM



Judicial activism refers to a "philosophy of judicial decision-making whereby judges allow their **personal views** about public policy, among other factors, to guide their decisions"

... and the Trouble with Defining Judicial Activism

- Inconsistency
- Imprecision
- Lack of specificity
- There are thousands of law journal articles on judicial activism – over 500 articles per year
- Courts, Sociologists, Historians, Political scientists debate it on an ongoing basis

Five Core Meanings



Judicial activism has occurred when a court has...

1. Invalidated an arguably constitutional action by another branch
2. Failed to adhere to precedent
3. Legislated from the bench
4. Departed from accepted interpretive mythology
5. Engaged in result-oriented judging

Evolution in India



- In 1893, Mahmood of the Allahabad High Court delivered a dissenting judgment
- Sparse mention of Activism
 - Justice Krishna Iyer's use in 1974
- 1979 – Bihar Undertrial Prisoners

Keshavananda Bharati case

(the fundamental rights case)

For the first time a court held that a constitutional amendment duly passed by the legislature was invalid as damaging or destroying its basic structure. This was a gigantic innovative judicial leap unknown to any legal system. The masterstroke was that the judgment could not be annulled by any amendment to be made by Parliament because the basic structure doctrine was vague and amorphous.

Judicial Review

- Judicial Review is the power of the Courts to determine the constitutionality of the Legislative Act in a case instituted by aggrieved person.
- It is the power of the court to declare a legislative Act void on the grounds of unconstitutionality.
- Edward S. Corwin also says that Judicial Review is the power and the duty of the courts to disallow all the legislative or executive acts of either the central or the state governments, which in the court's opinion transgresses the constitution.

PIL and Judicial Activism

- PIL : Public Interest Litigation
- The term *Public interest* means the larger interests of the public, general welfare and interest of the masses.
- The word *Litigation* means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy.
- The *Public interest litigation* means any litigation conducted for the benefit of public or for removal of some public grievance.

PIL and Judicial Activism



- The concept of PIL in India was started by Justice Krishna Iyer and Justice P.N. Bhagwati.
- PIL was initiated in Akhil Bhartiya Shoshit Karmachari Sangh (Railway) v. Union of India, 1981 case, wherein an unregistered association of workers was permitted to institute writ petition under Art 32 of the constitution for redressal of common grievances.
- Justice Bhagwati , in S.P. Gupta vs Union of India case firmly established the validity of the Public Interest Litigation.

PIL and Judicial Activism



- In 1982, Justice P.N. Bhagwati, stated that

“PIL is a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, a totally different kind of litigation from the ordinary traditional litigation.”

PIL & Judicial Activism



- The traditional rule of "*Locus Standi*" is relaxed.
- Any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition:
 1. In the Supreme Court under Article 32 of the Constitution of India;
 2. In the High Court under Article 226 of the Indian Constitution

PIL & Judicial Activism

Three phases of PIL:

1. The First Phase: 1980s

The PIL cases were generally filed by public spirited persons (lawyers, Journalists, social activists or academicians). Most of the cases are related to the rights of disadvantaged sections of the society such as child labourers, prisoners, mentally challenged .

2. The Second Phase: 1990s

The PIL cases became more institutionalised in that several NGOs and Lawyers started bringing matters of public interest to the courts. The breadth of issues expanded.

3. The third Phase: 21st Century

Anyone could file a PIL for almost anything.

Reasons behind Public Support



- Administration has become apathetic and non performing.
- Corruption & Criminality are so widespread that they have no recourse except to move courts through PIL, enlarging the scope for judicial intervention.

Judicial activism and Positive impacts

- The expansion of popular access: the judges case
- Redresser of public injury and public wrong .
- PIL : Curial democracy .
- The signature tune of our Constitution
- Liberation of Locus Standi
- Shadow Government : Breaks the democratic deadlock .
- Dynamic approach.

Contribution of judicial activism

- The great contribution of judicial activism in India has been to provide a safety valve in a democracy and a hope that justice is not beyond reach.
- Judicial activism has added much needed oxygen to a gigantic democratic experiment in India by the alchemy of judico-photosynthesis.

Recent case: Electoral Reforms

In the case of Association for Democratic Reforms , the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the decisions made by the voters while casting their votes. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the court gave various directions making it obligatory on the part of candidates at the election to furnish information about their personal profile, background, qualifications and antecedents.

Instances of Judicial Activism

- Pornography and Article 21 of Constitution
- Noida Land Acquisition case
- Sexual Harassment of women at workplace.
- Professional ethics
- Child Labour in hazardous Industries/Bonded labour
- Guidelines for loan recovery by banks.

Judicial Activism - Judicial Over-Reach?



Is Judicial Activism, Judicial Overreach?

- Judicial Activism should not become Judicial Adventurism
- The doctrine of separation of powers is an inseparable part of the evolution of democracy.
- JA is disturbing the delicate balance of powers enshrined in our constitution.
- Constitution is the supreme law of the land. No organ should go beyond the role as assigned to it by the constitution.

Is Judicial Activism, Judicial Overreach?

- Hon'ble bench comprising Justice Marakandey Katju & Justice A.K. Mathur observed that

“the judges could enforce a law but should not create a law and seek to enforce it.”

Jharkhand legislative assembly case(1998)

- Even proceedings of legislature are controlled by courts. In the Jharkhand legislative assembly case(1998), supreme court ordered the speaker to conduct a motion of confidence and ordered the speaker to conduct the proceedings according to a prescribed agenda.
- Its proceedings were ordered to be recorded for reporting to the court. Orders were made inspite of Article 212 of the consitution, court not to enquire into any proceedings of the legislature.

Judicial Overreach - Cases

- In 2012, supreme court directed most complex engineering of *interlinking rivers in India*.
- *Distribution of food grains to persons below poverty line was monitored*, which even made the PM remind the court that it was interfering with the complex food distribution policies of the government.

Judicial Overreach - Criticism

- A court is not equipped with the skills and competence to discharge the functions that essentially belong to other organs of the state.
- The paradox of hyper active higher judiciary in its writ jurisdiction but chaotic mainstream system of justice at the grassroot level is unsustainable in the long run.



Judicial Restraint



- Judicial restraint is limiting the powers of the judges to strike down a law.
- Judicial restraint is particularly important for the Supreme Court for two reasons:
 - ✓ Of the three organs of the state, only one, **the judiciary, is empowered to declare the limits of jurisdiction of all three organs.** This great power must therefore be exercised by the judiciary with utmost humility and self restraint.
 - ✓ The errors of the lower courts can be corrected by the higher courts, but there is **none above the Supreme Court to correct its errors.**

Judicial Activism VS Judicial Restraint

- Judicial activism is the **interpretation of constitution** to advocate contemporary values and conditions. Judicial restraint is **limiting the powers of the judges to strike down a law.**
- Judicial restraint helps in **preserving a balance** among the three branches of government whereas judicial activism tries **to step into the function of other branches.**

Judicial Activism VS Judicial Restraint

- Judicial restraint let's judges look to the **original intent of the writers** of the constitution. Judicial activism lets judges look **beyond the original intent of the framers.**
- Judicial activism intends to focus on **orders by courts as the means to enforce policy.** Judicial restraint looks at **changing the laws by means of constitutional amendments.**

Conclusion

- The judiciary has shed its pro status quo approach and taken upon itself to enforce the basic rights of the poor and the vulnerable sections of society by progressive interpretation and progressive action.
- The Supreme Court's pivotal role in making up for the lethargy of the Legislature and the inefficiency of the Executive is commendable. But the law can be dehumanized, thus the weapon of judicial activism must be used carefully!

