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Comparative Analysis of Judicial Activism and Judicial Overreach Between India and The United States of America

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ABSTRACT

Judicial activism is often celebrated as a doctrine of affirmative jurisprudence, while judicial overreach represents its distortion. Both India and the United States of America (U.S.)—constitutional democracies rooted in divergent political philosophies—have grappled with defining the boundary between legitimate interpretation and judicial legislation. This paper undertakes a comparative study of judicial activism and overreach in India and the U.S., tracing their historical trajectories, constitutional foundations, and landmark case law. It argues that Indian courts, influenced by welfare-state commitments, have exercised activism expansively to fill legislative and executive gaps, whereas the U.S. Supreme Court has primarily deployed activism to protect civil liberties and minority rights within a strict separation of powers framework. By offering a comparative synthesis, the paper highlights convergences, divergences, and lessons that each system may draw from the other, ultimately stressing the need for proportionality between judicial activism and restraint.

KEYWORDS

Judicial Activism, Judicial Overreach, India & United States, Constitutional Supremacy, Parliamentary Sovereignty, Separation of Powers, Welfare Jurisprudence.

INTRODUCTION

Judicial activism, as a constitutional doctrine, signifies the judiciary's willingness to transcend a purely interpretative role and actively shape constitutional principles. In the U.S., it originated within the tradition of legal realism as a safeguard for liberty, whereas in India, it evolved into a mechanism for enforcing socio-economic rights and promoting democratic accountability. Judicial overreach, by contrast, describes situations where courts exceed constitutional interpretation and intrude into legislative or executive domains, thereby raising concerns of legitimacy and separation of powers.

The comparative significance of judicial activism and overreach is profound. India embodies a parliamentary democracy constrained by constitutional supremacy, where the judiciary has evolved doctrines such as the basic structure principle to check legislative excess.[1] In contrast, the U.S. Constitution establishes an absolute supremacy of constitutional text, enabling the judiciary to act as the final arbiter of constitutionality since *Marbury v Madison*.[2]

This paper undertakes a comparative analysis across three axes:

1. ***Constitutional philosophy*** — parliamentary sovereignty within constitutional limits in India versus strict separation of powers in the U.S.
2. ***Historical evolution*** — tracing the emergence of activism and overreach in both systems.
3. ***Landmark precedents*** — demonstrating how case law has demarcated activism from overreach.

Ultimately, the paper aims to contribute to comparative constitutional law by providing an integrated synthesis of how the two systems negotiate the tension between activism and restraint, and what lessons may be drawn for balancing judicial creativity with democratic accountability.

CONCEPT AND MEANING OF JUDICIAL ACTIVISM AND OVERREACH

The judiciary, as the constitutional guardian, is entrusted with interpreting and enforcing the Constitution while the legislature creates laws and the executive implements them. Judicial activism refers to the judiciary's proactive role in filling legislative gaps and protecting

[1] Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.
[2] Marbury v Madison 5 US (1 Cranch) 137 (1803).

constitutional values, often by expanding rights through creative interpretation.[3] It reflects the belief that the Constitution is a "living document," requiring dynamic construction to meet new social challenges.[4]

In India, this has been illustrated in the judicial expansion of Article 21 of the Constitution, transforming the right to life into a repository of unenumerated rights such as the right to privacy, livelihood, and education.[5] In the U.S., judicial activism has enabled the Supreme Court to dismantle racial segregation in *Brown v Board of Education* and later to recognise reproductive autonomy in *Roe v. Wade*.[6]

Judicial overreach, however, represents the point where activism becomes illegitimate. Overreach occurs when courts not only interpret constitutional provisions but also assume legislative or administrative functions.[7] For instance, the Supreme Court of India has, at times, framed detailed guidelines on environmental policy or police reforms, areas traditionally reserved for elected branches.[8] While such interventions may be well-intentioned, they raise concerns about judicial supremacy undermining democratic accountability.

The distinction between activism and overreach is therefore one of proportionality. Activism seeks to strengthen constitutionalism by bridging institutional gaps and protecting rights, whereas overreach risks distorting the separation of powers.[9] Courts in both India and the U.S. face the challenge of navigating this thin line while maintaining legitimacy.

PARLIAMENTARY SUPREMACY AND CONSTITUTIONAL SUPREMACY IN INDIA AND THE UNITED STATES OF AMERICA

The doctrine of separation of powers is a foundational feature of both Indian and American constitutionalism, ensuring that legislative, executive, and judicial powers are divided to prevent concentration in one branch. Yet, each system has reconciled this doctrine differently in light of its political philosophy.

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[3] Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980) 42.
[4] Aharon Barak, *The Judge in a Democracy* (Princeton University Press, 2006) 82.
[5] Maneka Gandhi v Union of India (1978) 1 SCC 248; Justice K.S. Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.
[6] Brown v Board of Education of Topeka 347 US 483 (1954); Roe v Wade 410 US 113 (1973).
[7] P.P. Rao, 'Judicial Overreach: A Critique' (2007) 49(30) *Economic and Political Weekly* 3075.
[8] Vineet Narain v Union of India (1998) 1 SCC 226.
[9] Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977) 134.

In India, Parliament enjoys wide law-making powers within a Westminster-style parliamentary democracy. However, these powers are limited by constitutional supremacy. The judiciary has clarified that Parliament cannot amend the "basic structure" of the Constitution, a doctrine crystallised in *Kesavananda Bharati v State of Kerala*.[10] Subsequent judgments, including *Indira Nehru Gandhi v Raj Narain*, affirmed that constitutional supremacy prevails over legislative supremacy, placing the judiciary as the ultimate guardian of constitutional identity.[11]

The U.S., by contrast, has never recognised parliamentary sovereignty. The Constitution is supreme and binding upon all organs of government. In *Marbury v. Madison*, Chief Justice Marshall established judicial review as the mechanism through which unconstitutional laws could be struck down.[12] American constitutionalism, therefore, rests on an uncompromising version of constitutional supremacy, coupled with a strict separation of powers between the executive, legislature, and judiciary.

Although both systems affirm judicial supremacy, their trajectories diverge. In India, tension between Parliament and the judiciary has been frequent, particularly during constitutional amendments designed to curtail fundamental rights.[13] By contrast, in the U.S., legislative-judicial tensions have arisen less from constitutional amendments and more from controversial Supreme Court decisions—such as *Lochner v New York*—that invalidated social and economic legislation under the guise of protecting liberty.[14]

The comparative lesson is that while India accommodates a dynamic balance between parliamentary sovereignty and constitutional supremacy, the U.S. preserves an absolutist model of constitutional supremacy. Both approaches rely on the judiciary as the final interpreter, yet India's judiciary has often exercised greater creative latitude, influenced by welfare state objectives.[15]

[10] Kesavananda Bharati (n 3).
[11] Indira Nehru Gandhi v Raj Narain (1975) Supp SCC 1.
[12] Marbury v Madison (n 4).
[13] Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, 1999) 265.
[14] Lochner v New York 198 US 45 (1905).
[15] S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002) 18.

JUDICIAL ACTIVISM AS A FACET OF WELFARE JURISPRUDENCE

The Indian Constitution explicitly envisions a welfare state, with the Directive Principles of State Policy mandating socio-economic transformation. Judicial activism has therefore often been justified as an essential instrument for realising these constitutional aspirations, especially when legislative or executive action has been inadequate.[16]

The Supreme Court of India has frequently invoked Article 21—the right to life and personal liberty—to derive unenumerated rights such as the right to education, health, livelihood, and privacy.[17] In *Maneka Gandhi v Union of India*, the Court held that "procedure established by law" must be fair, just, and reasonable, aligning Indian jurisprudence with the American doctrine of substantive due process.[18] Later, in *Justice K.S. Puttaswamy v Union of India*, the Court recognised the right to privacy as intrinsic to personal liberty.[19] These developments demonstrate how judicial activism has been deployed to fill legislative gaps and protect dignity, autonomy, and equality.

Public Interest Litigation (PIL) became a unique Indian innovation, enabling courts to address issues of social justice by relaxing the doctrine of *locus standi*.[20] Through PILs, courts have advanced rights for marginalised groups, addressed environmental degradation, and directed reforms in areas ranging from prison conditions to bonded labour. While these interventions have strengthened welfare jurisprudence, they have also invited criticisms of judicial overreach, since courts often ventured into policy domains traditionally reserved for elected branches.[21]

In contrast, the U.S. Constitution was not expressly designed to establish a welfare state, being rooted in liberal and capitalist traditions. Nonetheless, judicial activism has played a transformative role in protecting civil rights and liberties. In *Brown v Board of Education*, the U.S. Supreme Court struck down racial segregation in schools, reshaping the nation's social fabric.[22] Similarly, in *Roe v. Wade*, the Court expanded the right to privacy to include reproductive

[16] Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]justice' in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (Oxford University Press 2000) 156.
[17] Francis Coralie Mullin v Union Territory of Delhi (1981) 1 SCC 608; Mohini Jain v State of Karnataka (1992) 3 SCC 666.
[18] Maneka Gandhi (n 7).
[19] Justice K.S. Puttaswamy (Retd) (n 7).
[20] S.P. Gupta v Union of India 1981 Supp SCC 87.
[21] B.N. Kirpal et al (eds), *Supreme but Not Infallible: Essays in Honour of the Supreme Court of India* (Oxford University Press, 2000) 240.
[22] Brown v Board of Education (n 8).

autonomy, while in *Obergefell v. Hodges,* it recognised same-sex marriage as a constitutional right.[23]

The comparison illustrates that Indian judicial activism has primarily focused on socio-economic transformation, whereas U.S. activism has centred on civil rights and individual liberties.[24] Both experiences underscore the judiciary's capacity to catalyse social change, but also reveal the risks of courts being perceived as exceeding their constitutional role.

EVOLUTION OF JUDICIAL ACTIVISM AND JUDICIAL OVERREACH IN INDIA

The trajectory of judicial activism in India reflects a gradual transition from positivist restraint to assertive constitutional guardianship, punctuated by episodes of overreach. Its development can be traced through four broad phases.

Early Phase: Positivist Restraint

In the formative years of the Republic, the Supreme Court followed a formalist approach, giving primacy to legislative supremacy. In *A.K. Gopalan v State of Madras*, the Court upheld preventive detention by narrowly interpreting Article 21, holding that "procedure established by law" did not require substantive fairness.[25] This reflected judicial restraint and reluctance to interfere with state power. Similarly, cases in the 1950s often validated restrictions on fundamental rights, underscoring a limited role for activism.

Transition to Activism

By the 1960s, the judiciary began asserting itself more vigorously. In *Sakal Papers v Union of India*, the Court invalidated restrictions on newspaper page numbers as violating freedom of expression.[26] The turning point came in *I.C. Golaknath v State of Punjab*, where a narrow majority held that Parliament could not amend fundamental rights.[27] Although this decision was overturned by the 24th Constitutional Amendment, it set the stage for the epochal ruling in *Kesavananda Bharati v State of Kerala*, which established the "basic structure" doctrine.[28] The Court held that

[23] Roe v Wade (n 6); Obergefell v Hodges 576 US 644 (2015).
[24] H.R. Khanna, *Making of India's Constitution* (Eastern Book Company 1981) 205.
[25] A.K. Gopalan v State of Madras AIR 1950 SC 27.
[26] Papers (P) Ltd v Union of India AIR 1962 SC 305.
[27] I.C. Golaknath v State of Punjab (1967) 2 SCR 762.
[28] Kesavananda Bharati (n 3).

while Parliament could amend the Constitution, it could not alter its essential features, asserting the judiciary's role as the guardian of constitutional supremacy.

The Emergency and Judicial Retreat

During the Emergency (1975–77), judicial credibility suffered when the Supreme Court failed to protect fundamental rights. In *ADM Jabalpur v Shivkant Shukla*, a majority held that the right to life could be suspended during the Emergency, effectively legitimising arbitrary executive detention.[29] This judgment was widely condemned as a betrayal of constitutional values and was later declared per incuriam in *Justice K.S. Puttaswamy v Union of India*.[30] The Emergency remains a cautionary tale of judicial abdication, when restraint devolved into complicity with authoritarianism.

Post-Emergency: Expansion of Rights

The post-Emergency period witnessed a resurgence of judicial activism. In *Maneka Gandhi v Union of India*, the Court broadened the interpretation of Article 21, holding that the "procedure established by law" must be fair, just, and reasonable.[31] Through this expansive reading, the Court recognised rights such as the right to a speedy trial,[32] education,[33] And dignity.[34]

This period also saw the rise of Public Interest Litigation (PIL). In *S.P. Gupta v Union of India*, the Court liberalised standing rules, allowing social activists and public-spirited individuals to petition on behalf of disadvantaged groups.[35] While PILs expanded access to justice, they also marked the beginning of judicial forays into governance. For instance, the Supreme Court issued guidelines on police reforms,[36] environmental protection,[37] And corruption investigations.[38] Such interventions, though aimed at filling governance vacuums, attracted criticism for amounting to judicial overreach.

[29] ADM Jabalpur v Shivkant Shukla (1976) 2 SCC 521.
[30] Justice K.S. Puttaswamy (Retd) (n 7).
[31] Maneka Gandhi (n 7).
[32] Hussainara Khatoon v State of Bihar (1979) 3 SCC 532.
[33] Mohini Jain v State of Karnataka (n 19); Unnikrishnan J.P. v State of Andhra Pradesh (1993) 1 SCC 645.
[34] Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608.
[35] S.P. Gupta (n 22).
[36] Prakash Singh v Union of India (2006) 8 SCC 1.
[37] M.C. Mehta v Union of India (1987) 1 SCC 395.
[38] Vineet Narain (n 10).

Contemporary Developments

In recent decades, Indian courts have continued to reshape constitutional jurisprudence through progressive rulings. In *Navtej Singh Johar v Union of India*, the Supreme Court decriminalised consensual same-sex relations, invoking constitutional morality.[39] In *Joseph Shine v Union of India*, it struck down the adultery law under Section 497 of the Indian Penal Code as discriminatory.[40] Similarly, in *Justice K.S. Puttaswamy*, the Court affirmed the right to privacy as fundamental.[41] These judgments demonstrate the judiciary's continuing activist role in adapting constitutional rights to modern challenges.

Yet, criticisms of overreach persist. Judicial monitoring of administrative schemes, imposition of environmental policies, and interference in governance matters raise concerns about institutional legitimacy.[42] The challenge, therefore, lies in ensuring that activism remains tethered to constitutional principles rather than evolving into judicial legislation.

EVOLUTION OF JUDICIAL ACTIVISM IN THE UNITED STATES OF AMERICA

The U.S. Supreme Court has shaped constitutional meaning through over two centuries of jurisprudence. The evolution of judicial activism in the U.S. may be understood in three broad phases: the traditional period, the transitional period, and the modern era.

Traditional Period (1787–1890)

In the Republic's formative years, the Court generally adopted a restrained approach, adhering closely to constitutional text. However, *Marbury v Madison* was a decisive moment, establishing judicial review and affirming the Court's role as the final arbiter of constitutionality.[43] In *McCulloch v. Maryland*, Chief Justice Marshall expansively interpreted the Necessary and Proper Clause to sustain congressional power to establish a national bank, demonstrating that the Court was willing to go beyond strict textualism when constitutional values were at stake.[44]

[39] Navtej Singh Johar v Union of India (2018) 10 SCC 1.
[40] Joseph Shine v Union of India (2019) 3 SCC 39.
[41] Justice K.S. Puttaswamy (Retd) (n 7).
[42] Sathe (n 17) 152.
[43] Marbury v Madison (n 4).
[44] McCulloch v Maryland 17 US (4 Wheat) 316 (1819).

Transitional Period (1890–1937)

The late nineteenth and early twentieth centuries marked the rise of substantive due process as a judicial tool. In *Lochner v. New York*, the Court struck down labour regulations on maximum working hours, holding that they interfered with freedom of contract.[45] This decision epitomised what came to be known as the "Lochner era," during which courts frequently invalidated social and economic legislation under the Due Process Clause of the Fourteenth Amendment. Critics argued that the Court was imposing laissez-faire economic philosophy under the guise of protecting liberty, thereby obstructing progressive reforms.[46]

Modern Era (1937–Present)

The New Deal crisis of the 1930s prompted a judicial shift. After the confrontation between President Roosevelt and the Court over economic regulation, the judiciary abandoned its laissez-faire stance and adopted a more deferential attitude toward economic legislation.[47] Judicial activism, however, resurfaced in civil rights and liberties.

In *Brown v Board of Education*, the Court overruled *Plessy v Ferguson* and declared racial segregation unconstitutional, reshaping the nation's social order.[48] Later cases expanded personal autonomy: *Roe v. Wade* recognised a woman's right to terminate pregnancy under the right to privacy, while *Obergefell v. Hodges* extended constitutional protection to same-sex marriage.[49] These judgments reflect the Court's willingness to expand constitutional rights beyond explicit text, responding to evolving social realities.

Yet, American judicial activism has also attracted criticism for overreach. Decisions such as *Roe v. Wade* remain deeply contested, with critics arguing that courts substituted judicial preference for legislative judgment.[50] Similarly, recent rulings on contentious issues like voting rights and

[45] Lochner v New York (n 16).
[46] Cass R. Sunstein, *Radicals in Robes: Why Extreme Right-Wing Courts Are Wrong for America* (Basic Books 2005) 33.
[47] Barry Cushman, *Rethinking the New Deal Court: The Structure of a Constitutional Revolution* (Oxford University Press 1998) 98.
[48] Brown v Board of Education (n 8).
[49] Roe v Wade (n 8); Obergefell v Hodges (n 25).
[50] Robert H Bork, *The Tempting of America: The Political Seduction of the Law* (Free Press 1990) 112.

campaign finance have reignited debates about judicial supremacy, undermining democratic processes.[51]

Thus, while judicial activism in the U.S. has primarily protected individual liberties and minority rights, its legitimacy continues to be debated, especially when courts appear to assume the role of super-legislatures.[52]

COMPARATIVE SYNTHESIS OF JUDICIAL ACTIVISM AND OVERREACH IN INDIA AND THE UNITED STATES

A comparative study of judicial activism and overreach between India and the U.S. reveals significant convergences and divergences. Both systems view the judiciary as the guardian of constitutional supremacy, but they differ in philosophy, scope of intervention, and the criticisms they attract.

Comparative Table

Dimension	**India**	**United States**
Constitutional Philosophy	Parliamentary democracy constrained by constitutional supremacy; Parliament sovereign within limits of the "basic structure" doctrine.[53]	Absolute constitutional supremacy; strict separation of powers with no concept of parliamentary sovereignty.[54]
Judicial Role	Expansive, welfare-oriented judiciary addressing socio-economic rights and governance vacuums.[55]	The rights-centric judiciary focused on civil rights, liberties, and minority protections.[56]
Key Drivers of Activism	Legislative/executive inaction; Directive Principles of State Policy; PIL.[57]	Social movements; constitutional rights

[51] Shelby County v Holder 570 US 529 (2013); Citizens United v Federal Election Commission 558 US 310 (2010).
[52] Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Oxford University Press 1996) 15.
[53] Kesavananda Bharati (n 3).
[54] Marbury v Madison (n 4).
[55] Baxi (n 18).
[56] Dworkin (n 54) 17.
[57] S.P. Gupta (n 22).

		interpretation; protection of minorities.[58]
Landmark Activist Cases	*Kesavananda Bharati* (basic structure), *Maneka Gandhi* (due process), *Navtej Johar* (LGBTQ+ rights).[59]	*Brown v Board* (desegregation), *Roe v Wade* (reproductive rights), *Obergefell v Hodges* (same-sex marriage).[60]
Overreach Concerns	Frequent—judicial guidelines on policy (e.g. environmental regulation, police reforms).[61]	Occasional—criticisms of courts imposing values (*Lochner era*, *Roe v. Wade* debates).[62]
Criticism	Judiciary acting as a "super-legislature," undermining democratic accountability.[63]	Judicial elitism and counter-majoritarian difficulty; accusations of legislating from the bench.[64]

Analysis

Three insights emerge from this synthesis.

First, Indian judicial activism is structurally linked to the welfare-state mandate of the Constitution, which justifies expansive judicial interventions. By contrast, American activism is primarily rights-driven, emerging from the Bill of Rights and civil liberties jurisprudence.

Second, judicial overreach is more pronounced in India, where PILs and governance interventions have blurred institutional boundaries. In the U.S., judicial overreach has historically been

[58] Sunstein (n 48) 42.
[59] Kesavananda Bharati (n 3); Maneka Gandhi (n 7); Navtej Singh Johar (n 41).
[60] Brown v Board of Education (n 8); Roe v Wade (n 8); Obergefell v Hodges (n 25).
[61] M.C. Mehta (n 39); Prakash Singh (n 38).
[62] Lochner v New York (n 16); Roe v Wade (n 8).
[63] Kirpal et al (n 23) 240.
[64] Alexander Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Bobbs-Merrill 1962) 16.

associated with courts striking down progressive legislation (*Lochner era*) or expanding controversial rights (*Roe v. Wade*), but such episodes are less frequent compared to India.

Third, both systems confront the counter-majoritarian dilemma: unelected judges shaping constitutional meaning against elected branches. While activism can advance justice and minority protections, unchecked overreach risks eroding judicial legitimacy and disturbing the balance of powers.

CONCLUSION

The comparative analysis of judicial activism and overreach in India and the United States underscores that while both systems conceive the judiciary as the guardian of constitutional supremacy, their trajectories diverge due to distinct political philosophies. India's judiciary, operating within a parliamentary democracy constrained by constitutional supremacy, has assumed a more expansive and welfare-oriented role. Its interventions, especially through Article 21 and Public Interest Litigation, have advanced socio-economic rights but also exposed it to criticisms of judicial overreach.

By contrast, the U.S. judiciary functions within a framework of strict separation of powers and absolute constitutional supremacy. Activism in the U.S. has primarily revolved around civil liberties and minority rights, from dismantling racial segregation in *Brown v Board of Education* to recognising same-sex marriage in *Obergefell v. Hodges*. While celebrated for expanding justice, such decisions have been criticised as counter-majoritarian and as instances of judicial legislation.

Three comparative insights emerge. First, judicial activism in India is structurally tied to the welfare-state mandate, while in the U.S., it is primarily rights-driven. Second, judicial overreach is more pervasive in India due to governance interventions, while in the U.S., it surfaces episodically in contentious rights-expansion rulings. Third, both systems confront the enduring counter-majoritarian dilemma, wherein unelected judges shape fundamental policy outcomes.

Ultimately, the legitimacy of judicial activism depends on proportionality. Courts must intervene to protect constitutional values and marginalised voices, but must also exercise restraint to avoid displacing democratic processes. A balanced model—activist in defending rights yet restrained in policymaking—remains essential for sustaining judicial credibility and constitutional democracy in both India and the United States.

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