



JUDICIAL ACTIVISM IN NIGERIA: A CATALYST FOR LEGAL DEVELOPMENT OR AN OVERREACH OF POWER?

Obianuju C. Agu & Valentine C. Ezewudo*

Abstract

The judiciary, as the guardian of justice, wields significant power in interpreting and shaping the law. In Nigeria, judicial activism emerged as a transformative force, influencing legal development through progressive rulings. Proponents viewed it as essential for bridging legislative gaps, safeguarding rights, and fostering socio-legal progress. However, critics argued that it disrupted the separation of powers, potentially encroaching on legislative and executive functions. This research critically examined judicial activism in Nigeria, assessing whether it drove legal advancement or constituted judicial overreach. Employing a doctrinal methodology with an analytical approach, the study relied on primary legal sources such as the 1999 Constitution, judicial precedents, and international legal frameworks, alongside secondary sources like scholarly texts and law journals. Findings indicated that judicial activism significantly shaped Nigeria's legal landscape, expanded constitutional rights, and addressed legislative deficiencies. Nonetheless, concerns persisted regarding its consistency with the separation of powers. The study recommended institutionalising of judicial independence, strengthening legal education and continuous judicial training, encouraging public interest litigation among others, to ensure that activism remained within constitutional boundaries while fostering legal evolution. Additionally, establishing judicial review mechanisms were recommended to provide checks on activist judicial decisions where needed in order maintain the delicate balance between judicial intervention and democratic governance.

Keywords: Judiciary, Judicial Activism, Legal development, Power.

1.0 Introduction

Judicial activism in Nigeria represents a dynamic and evolving aspect of the judiciary's role in shaping the legal landscape, often blurring the lines between adjudication and legislation. Judicial activism refers to instances where judges depart from strict textual interpretations of laws and constitutional provisions, instead embracing a purposive or progressive approach to decision-making.¹ It is commonly marked by decisions calling for social engineering, and occasionally these decisions represent intrusions in the legislative and executive matters.² This phenomenon has played a crucial role in advancing constitutionalism, human rights, and democratic governance, particularly in cases where the executive and legislative arms have failed to uphold justice or address pressing societal issues.³ This approach contrasts with judicial restraint, which advocates for a strict, textual application of laws and a deference to the legislature and executive in policy matters.⁴ By delivering landmark judgments on electoral disputes, fundamental rights enforcement, and constitutional interpretation, the Nigerian judiciary has significantly influenced legal and socio-political transformations. However, this approach

*Obianuju C. Agu, Lecturer and Postgraduate Scholar, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Email: oc.agu@unizik.edu.ng; ujuagbosim@gmail.com

*Valentine C. Ezewudo, PhD Student, Faculty of Law, Nnamdi Azikiwe University, Awka, lumieresattorneys@gmail.com, +234-8035412671

¹AD Mane. 'Judicial Activism: A Theory of Judicial Philosophy' <<https://nigerianlawguru.com/wp-content/uploads/2024/11/JUDICIAL-ACTIVISM-1.pdf>> Accessed 7 March, 2025.

²AD Mane. 'Judicial Activism: A Theory of Judicial Philosophy' <<https://nigerianlawguru.com/wp-content/uploads/2024/11/JUDICIAL-ACTIVISM-1.pdf>> Accessed 7 March, 2025.

³ I Imam, 'Judicial Activism in Nigeria: Delineating the Extend of Legislative-Judicial Engagement in Law Making' *ICLR* (2015) 15(1), 109-127.

⁴ MK Sinha, 'Judicial Activism vs. Judicial Restraint: A Comparative Review of Landmark Cases' *Indian Journal of Law* (2024) 2(4):103-108



raises critical questions about the legitimacy of judicial discretion, the balance of power among governmental institutions, and the potential risks of judges imposing personal ideologies under the guise of legal interpretation.

The foundation of judicial activism in Nigeria lies in constitutional provisions that grant the judiciary broad powers of interpretation.⁵ The judiciary, particularly the Supreme Court⁶ and the Court of Appeal,⁷ has repeatedly invoked its interpretative supremacy to resolve disputes relating to fundamental rights, executive powers, and democratic processes. The courts have also played a crucial role in addressing socio-economic inequalities by compelling government agencies to uphold constitutional obligations. However, this expansive role has raised concerns about whether courts are exceeding their constitutional limits.

While proponents of judicial activism argue that it fosters legal development by adapting the law to contemporary realities and correcting institutional failures,⁸ critics contend that it constitutes an overreach of judicial power, undermining the doctrine of separation of powers.⁹ Detractors argue that judicial activism risks encroaching upon legislative and executive functions, potentially destabilising democratic governance by allowing unelected judges to shape policy and legal principles without direct electoral accountability.¹⁰ Moreover, concerns arise over the consistency and predictability of legal outcomes when courts exercise broad discretion in interpreting laws beyond their literal meaning. In Nigeria's evolving constitutional democracy, the debate over judicial activism remains highly contested, necessitating a critical examination of its implications for legal development, governance, and the rule of law.

2.0 Historical Evolution of Judicial Activism in Nigeria

Judicial activism in Nigeria has its roots in the colonial legal framework, which established the judiciary as an organ for interpreting laws primarily in favour of the colonial administration.¹¹ The early courts operated under English common law principles and doctrines,¹² often prioritising the interests of the British Crown over indigenous legal traditions. However, with the gradual evolution of Nigeria's legal system, particularly after independence in 1960, the judiciary began asserting itself as an independent arbiter of justice.¹³ The post-independence era saw courts cautiously expanding their interpretative authority, particularly in cases concerning fundamental rights and constitutional interpretation.¹⁴ Notably, during the First Republic (1963–1966), the judiciary started adopting a more assertive stance in reviewing executive and legislative actions, although this was curtailed by the political instability and military interventions that followed.¹⁵

The military era (1966-1979/1983-1999) marked a complex phase in the development of judicial activism in Nigeria.¹⁶ While military regimes often suspended constitutional provisions and ruled through

⁵ Constitution of the Federal Republic of Nigeria 1999 (As Amended), s6.

⁶ *Ibid*, s230.

⁷ *Ibid*, s237.

⁸ SK Singh, 'Exploring the Impact of Judicial Activism on Legal Precedent: A Comparative Analysis' *Indian Journal of Law* (2024) 2(2), 23-26.

⁹ W Grimes, 'The Major Questions Doctrine: Judicial Activism that Undermines the Democratic Process' *Loyola University Chicago Law Journal* (2023) 54(3), 825-839.

¹⁰ *Ibid*.

¹¹ I Imam, (n.3).

¹² Learn Nigeria Law, 'History of the Nigerian Legal System' <<https://www.learnnigerianlaw.com/learn/legal-system/history>> Accessed 7 March, 2025.

¹³ O Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' *Brooklyn Journal of International Law* (2005) 31(1), 9-82.

¹⁴ O Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' *Brooklyn Journal of International Law* (2005) 31(1), 9-82.

¹⁵ CC Okpanum, 'Democratic Transition and Consolidation in Nigeria: One Step Forward or Two Steps Backward?' <<https://archives.kdischool.ac.kr/bitstream/11125/30032/1/Democratic%20transition%20and%20consolidation%20in%20Nigeria.pdf>> Accessed 8 March, 2025.

¹⁶ AS Adewuwuyi, 'Nigeria Judiciary under Military Rule, 1966-1999' <https://www.researchgate.net/publication/350285428_NIGERIA_JUDICIARY_UNDER_MILITARY_RULE_1966-1999> Accessed 8 March, 2025.



decrees, the judiciary occasionally resisted executive overreach.¹⁷ Some landmark cases during this period demonstrated the courts' willingness to protect fundamental rights, despite the repressive political climate. For instance, in *Chief Odumegwu Ojukwu v. Military Governor of Lagos State*,¹⁸ the Supreme Court affirmed the principle that the government must abide by the rule of law. However, the judiciary also faced significant constraints, as military decrees often ousted its jurisdiction over certain matters; limiting its ability to challenge executive excesses.¹⁹ Nonetheless, this period laid the groundwork for a more assertive judiciary in the democratic era, as judges became increasingly aware of their role in checking government excesses and upholding the rule of law.

With the return to democratic rule in 1999, judicial activism in Nigeria entered a new and more dynamic phase. Courts have since played a pivotal role in shaping the country's democratic landscape by delivering bold rulings on electoral disputes, human rights cases, and constitutional matters. Landmark decisions, such as *Attorney-General of the Federation & 2 Ors v. Alhaji Atiku Abubakar (Vice President, Federal Republic Of Nigeria) & 3 Ors*,²⁰ reinforced the judiciary's power in interpreting constitutional provisions,²¹ while cases on executive accountability and electoral justice²² further expanded judicial oversight. The Nigerian judiciary has also played a crucial role in advancing socio-economic rights, as seen in cases where courts have mandated government agencies to uphold citizens' fundamental rights.²³ Despite persistent challenges such as political interference and allegations of judicial corruption, judicial activism in Nigeria remains a significant force in the country's democratic evolution, ensuring that constitutionalism and the rule of law are upheld.

3.0 Is Judicial Activism in Nigeria A Catalyst for Legal Development or An Overreach of Power?

One of the most profound arenas where judicial activism asserts itself in Nigeria is the interpretation of constitutional provisions; a function that shapes the trajectory of legal jurisprudence and democratic consolidation.²⁴ As the supreme law of the land, the Nigerian Constitution (CFRN)²⁵ often presents complexities, ambiguities, and areas of contention that necessitate judicial clarification. In fulfilling this role, courts have become the principal arbiters in resolving constitutional conflicts, defining the limits of governmental authority, and reinforcing the fundamental rights of citizens. Through bold and progressive interpretations, the judiciary has expanded the meaning of constitutional provisions to address evolving socio-political realities, thereby bridging legislative gaps and ensuring that governance aligns with the tenets of justice, equity, and democratic accountability. Notably in *Attorney-General of Lagos State v Attorney-General of the Federation*²⁶ the Supreme Court of Nigeria interpreted the constitutional provision on fiscal federalism and the control of local government funds. The Lagos State Government challenged the Federal Government's withholding of statutory allocations to local governments created by Lagos State. The court ruled that while Lagos State had the constitutional right to create local governments, such local councils could not receive federal allocations without being formally listed in the Constitution. This decision demonstrated judicial activism by clarifying constitutional ambiguities related to federalism and state powers while simultaneously restricting the executive's discretionary control over state finances.

¹⁷*Ibid.*

¹⁸ [1986] NGSC 13

¹⁹ DO Aihe, 'Nigerian Federal Military Government and the Judiciary: A Reflection on *Lakanmi v Attorney-General (Western State of Nigeria)*' *Journal of the Indian Law Institute* (1971) 13(4), 570-580.

²⁰ [2007] NGSC 177.

²¹*Ibid.*

²²*Peter Obi v Independent National Electoral Commission & Others* [2007] NGSC 42

²³Suit No. FHC/PH/CS/680/2003

²⁴ I Imam, (n.3).

²⁵ CFRN 1999 (As Amended).

²⁶ (S.C. 70/2004)



However, judicial overreach occurs when courts assume legislative or executive functions under the guise of constitutional interpretation, leading to tensions among the arms of government.²⁷ While judicial intervention is essential in upholding the rule of law, excessive activism risks unsettling the delicate balance of power, leading to friction among the three arms of government and potentially eroding the legitimacy of the judiciary as an impartial arbiter of justice.

Judicial activism has also been pivotal in electoral jurisprudence in Nigeria. In several instances, courts have nullified elections due to electoral malpractices, non-compliance with electoral laws, and irregularities. The judiciary's willingness to adjudicate sensitive political disputes has helped to uphold electoral integrity and promote democratic stability. In *Senator Hope Uzodinma & Anor v Rt. Hon. Emeka Ihedioha & 2 Ors*²⁸ one of the most controversial cases in Nigeria's electoral history, the Supreme Court nullified the election of Emeka Ihedioha as the Governor of Imo State and declared Hope Uzodinma the rightful winner. The Court's decision was based on the exclusion of certain polling unit results, which, when added, altered the final outcome of the election.²⁹ While the judgment reaffirmed the judiciary's power to correct electoral anomalies, it also ignited widespread criticism, with many questioning the rationale behind the Court's computation of votes. Critics argued that the ruling effectively handed victory to a candidate who had initially finished fourth in the official results announced by the Independent National Electoral Commission (INEC), raising concerns about whether the judiciary had overstepped its constitutional role in the democratic process.³⁰ Opponents argue that judicial interventions in electoral matters sometimes create an undue imbalance in the democratic process, as judges who are unelected officials, become final arbiters in political contests.³¹

Another significant manifestation of judicial activism in Nigeria is in the realm of human rights protection, where courts have consistently delivered bold and transformative rulings against systemic violations, including police brutality, unlawful detentions, extrajudicial killings, and various forms of discrimination. Recognising the judiciary as the ultimate guardian of constitutional rights, Nigerian courts have frequently intervened to curtail executive excesses and protect vulnerable citizens from abuses perpetrated by State actors and private entities alike. Notably, in *General Sanni Abacha & Ors v Chief Gani Fawehinmi*,³² a case which was a defining moment in Nigeria's human rights jurisprudence, as it involved the clash between executive authority and the fundamental rights of individuals. Chief Gani Fawehinmi, a prominent human rights lawyer, was unlawfully detained by the military regime of General Sani Abacha under the guise of State security.³³ He challenged his detention, arguing that it violated his fundamental rights as enshrined in the Constitution and International Human rights instruments. The Supreme Court ruled in Fawehinmi's favour, emphasizing that no government authority had the power to arbitrarily detain citizens without due process. This decision reaffirmed the judiciary's role as the protector of individual liberties and sent a strong message against executive impunity in Nigeria.

Such judicial decisions have not only resulted in the enforcement of fundamental rights but have

²⁷ Helen Suzman Foundation, 'Judicial Overreach' <<https://hsf.org.za/publications/hsf-briefs/judicial-overreach#:~:text=%E2%80%9CJudicial%20overreach%E2%80%9D%20occurs%20when%20a,policy%20making%2C%20and%20law%20making.>> Accessed 9 March, 2025.

²⁸ (2020) LPELR-50260(SC) 1.

²⁹ (2020) LPELR-50260(SC) 1.

³⁰ GE Ngwu and OT Ogiri, 'The Supreme Court's Decision in Senator Hope Uzodinma & All Progressives Congress (APC) v Rt Hon. Emeka Ihedioha, Peoples Democratic Party (PDP) & Independent National Electoral Commission (INEC): A Case of Corruption or Preponderance of Evidence?' *International Journal of Criminal, Common and Statutory Law* (2022) 2(1), 47-51.

³¹ EB Omoregie, 'Judicial Activism and Intervention in the Electoral Process: Are or Should Courts Be An Alternative?' <<https://ir.nilds.gov.ng/bitstream/handle/123456789/74/JUDICIAL%20ACTIVISM%20AND%20INTERVENTION%20IN%20THE%20ELECTORAL%20PROCESS%20ARE%20OR%20SHOULD%20COURTS%20BE%20AN%20ALTERNATIVE%20No%203%20March%202020.pdf?sequence=1&isAllowed=y>> Accessed 9 March, 2025.

³² S.C. 45/1997

³³ S.C. 45/1997



also compelled government agencies to take corrective measures, thereby strengthening Nigeria's human rights framework. By invoking progressive interpretations of constitutional guarantees and international human rights norms, the judiciary has played a crucial role in expanding the frontiers of personal liberties, ensuring that no individual or institution operates above the law. This proactive stance has reaffirmed the courts' position as the last hope of the common man, providing redress where other institutional mechanisms have failed to act. However, the tendency of courts to assume an overtly activist posture in such cases sometimes raises concerns about judicial bias and the potential disregard for procedural limitations.

Judicial activism has also played a role in addressing executive excesses and ensuring governmental accountability. Nigerian courts have, at various times, restrained the executive from exercising powers *ultra vires* or arbitrarily. For instance, the judiciary has overturned unlawful executive orders, invalidated unconstitutional appointments, and mandated the release of unlawfully detained individuals. In *Attorney-General of Ondo State v Attorney-General of the Federation & Ors*³⁴ the constitutionality of the Corrupt Practices and Other Related Offences Act 2000, enacted by the Federal Government to combat corruption was challenged. The Ondo State Government contended that certain provisions of the Act encroached upon the powers of State governments. The Supreme Court held that while the Federal Government had the authority to legislate against corruption, it could not usurp the powers of State governments in matters outside its constitutional jurisdiction.³⁵ This judgment reinforced the principle of federalism and the judiciary's role in maintaining the balance of power between different levels of government. While this underscores the judiciary's commitment to upholding the rule of law, critics argue that excessive judicial interference in executive functions disrupts governance and encroaches upon the prerogatives of the executive arm.³⁶ The Nigerian judiciary has significantly influenced socio-economic rights through activist decisions. Courts have made pronouncements compelling the government to provide basic amenities, address environmental injustices, such as in cases involving communities affected by oil pollution, which have demonstrated how judicial activism can be a tool for social justice. In *Gbemre v Shell Petroleum Development Company of Nigeria Ltd & Ors*³⁷, Jonah Gbemre, on behalf of the Iwherekan community in the Niger Delta, sued Shell and the Nigerian government over gas flaring, arguing it violated their fundamental rights to life and dignity. The Federal High Court ruled in favour of Gbemre, declaring gas flaring illegal and ordering its cessation. This landmark decision reinforced judicial activism in environmental justice, compelling corporate and State accountability. However, enforcement remains a challenge due to government and corporate resistance.

Another dimension of judicial activism in Nigeria is evident in the realm of economic and commercial law jurisprudence. Courts have played an important role in interpreting contractual obligations. For instance, in *Bfi Group Corporation v Bureau of Public Enterprises*³⁸ BFI Group contested the Bureau of Public Enterprises' (BPE) revocation of its bid for the Aluminum Smelter Company of Nigeria after being declared the preferred bidder. The Supreme Court held that BPE's actions were unlawful, underscoring the importance of transparency and adherence to due process in privatization and commercial transactions.³⁹ This ruling highlighted the judiciary's role in ensuring fairness in contracts.

Importantly, judicial activism has influenced Nigeria's federalism by redefining the relationship between the central government and subnational entities. Courts have addressed issues related to resource control, state autonomy, and fiscal federalism. In the landmark case of *Attorney General of*

³⁴ (2002) LLJR-SC

³⁵ *Ibid.*

³⁶ Law Teacher, 'Judicial Encroachment into Executive Functions' <<https://www.lawteacher.net/free-law-essays/administrative-law/judicial-encroachment-into-executive-functions-administrative-law-essay.php>> Accessed 9 March, 2025.

³⁷ FHC/B/CS/53/05

³⁸ (2012) LLJR-SC

³⁹ *Ibid.*



*the Federation v. Attorney General of Abia State*⁴⁰ often referred to as the Resource Control Case, several oil-producing States challenged the Federal government's control over offshore oil resources, arguing for greater State autonomy in resource management. The Supreme Court ruled that offshore oil revenues belonged to the Federal government, but States were entitled to derivation benefits under the Constitution. This case remains a crucial judicial intervention in Nigeria's fiscal federalism.

Also, decisions affirming the rights of States to control certain resources have been lauded as steps toward true federalism.⁴¹ However, the argument that the judiciary sometimes oversteps its bounds by assuming quasi-legislative powers in determining federalism disputes remains contentious. The application of judicial activism in Nigeria has not been without controversy. Accusations of judicial partisanship, corruption, and external influence have raised concerns about the judiciary's credibility.⁴² Some judgments perceived as politically motivated have led to public disillusionment with the courts.⁴³ This highlights the delicate balance that must be maintained between judicial independence and accountability to prevent judicial activism from being misused as an instrument of political or economic control.

Despite these concerns, judicial activism remains a vital mechanism for legal development in Nigeria.⁴⁴ It has spurred legislative reforms, strengthened democratic institutions, and provided redress in areas where the executive and legislature have failed. By expanding legal interpretations and addressing evolving societal needs, judicial activism has contributed to the growth of Nigeria's legal system. However, unchecked judicial activism can lead to judicial despotism, where courts assume an omnipotent role in governance, undermining the principles of separation of powers.

The tension between judicial activism and judicial restraint underscores the complex role of the judiciary in governance. While activism enables the judiciary to address injustices and institutional failures,⁴⁵ restraint ensures that courts do not encroach upon the domains of other government branches.⁴⁶ The ideal approach would be a balance that ensures judicial intervention only when necessary, while respecting constitutional limitations.

Furthermore, judicial activism in Nigeria must be complemented by judicial accountability. An activist judiciary that lacks transparency and ethical integrity risks undermining public trust in the legal system. Strengthening judicial oversight mechanisms, promoting judicial ethics, and ensuring a transparent appointment process for judges are essential in maintaining the legitimacy of judicial activism.

Ultimately, judicial activism in Nigeria remains a double-edged sword. While it has served as a catalyst for legal development, its unchecked application can be perceived as an overreach of power.⁴⁷ A responsible judiciary must navigate the fine line between being an agent of progressive change and respecting the foundational principles of democratic governance. Thus, the effectiveness of judicial activism depends on its judicious application within the boundaries of legal propriety and institutional responsibility.

⁴⁰ [2002] NGSC 10.

⁴¹ *Attorney General of Rivers State v Federal Inland Revenue Service & Attorney General of the Federation* FHC/PH/CS/149/2020.

⁴² O Oko, (n.13).

⁴³ BA Green and R Roiphe, 'Public Confidence, Judges, and Politics an and off the Bench' <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5153&context=lcp>> Accessed 9 March, 2025.

⁴⁴ I Imam, (n.3).

⁴⁵ JE Faria, 'Judicialization of politics, judicial activism, and institutional tensions' <<https://fundacaoofhc.org.br/debate/judicialization-of-politics-judicial-activism-and-institutional-tensions/>> Accessed 9 March, 2025.

⁴⁶ PA Talmadge, 'Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems' <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?params=/context/sulr/article/1588/&path_info=0695_0739_20Talmadge.pdf> Accessed 9 March, 2025.

⁴⁷ Drishti Judiciary, *Judicial Activism vs. Judicial Overreach: A Constitutional Perspective* <<https://www.drishtijudiciary.com/blog/judicial-activism-vs-judicial-overreach-a-constitutional-perspective>> Accessed 9 March, 2025.



4.0 Challenges of Judicial Activism in Nigeria

1. Separation of Powers Concerns

One of the primary challenges of judicial activism in Nigeria is the perceived encroachment on the powers of the executive and legislature.⁴⁸ The Nigerian Constitution establishes a clear doctrine of separation of powers, ensuring that the three arms of government; legislature,⁴⁹ executive,⁵⁰ and judiciary,⁵¹ function independently. However, activist rulings, particularly those involving policy directives or legislative interpretations, often blur these boundaries. Cases such as *Attorney General of the Federation v Attorney General of Lagos State*,⁵² where the Supreme Court ruled on fiscal autonomy, illustrate the tensions that arise when courts assume roles traditionally reserved for other branches of government. Critics argue that when judges take on quasi-legislative or executive functions, it weakens democratic accountability, as they are unelected officials imposing policy decisions.

2. Judicial Overreach and Policy Implications

Activist judicial decisions sometimes create unintended policy and financial burdens on the government. In landmark cases such as *Gbemre v Shell Petroleum Development Company*⁵³ where gas flaring was declared illegal, often require extensive implementation frameworks that governments may be unprepared to execute. The challenge is that while courts can issue transformative judgments, enforcement remains a function of the executive, leading to potential conflicts and implementation delays.

3. Inconsistencies in Judicial Decisions

Judicial activism in Nigeria is often criticized for inconsistency in the application of legal principles, particularly in politically sensitive cases.⁵⁴ Electoral jurisprudence, for instance, has witnessed fluctuating interpretations of electoral laws and procedures, leading to concerns over judicial predictability. Cases such as *Hope Uzodinma v Emeka Ihedioha*⁵⁵ where the Supreme Court controversially annulled a gubernatorial election result, have fuelled debates over judicial credibility. The inconsistency in rulings can undermine public trust in the judiciary and create perceptions of political interference, particularly when activist decisions appear to favour certain political interests over others.

4. Weak Enforcement Mechanisms

A significant limitation of judicial activism in Nigeria is the weak enforcement of court rulings, which diminishes the impact of activist decisions. While courts have issued bold pronouncements on human rights, governance, and electoral matters, enforcement agencies often fail to comply. The case of *General Sanni Abacha & Ors v Chief Gani Fawehinmi*⁵⁶ where the Supreme Court upheld fundamental human rights against government repression, exemplifies this challenge, as successive governments have failed to fully implement such decisions. Without robust enforcement mechanisms, judicial activism risks becoming symbolic rather than substantive, as rulings are frequently disregarded by political actors who view them as judicial overreach.

⁴⁸UC Kalu, 'Separation of Powers in Nigeria: An Anatomy of Power Convergences and Divergences' NAUJILJ (2018) 9(1), 116-126.

⁴⁹CFRN 1999 (as Amended), s.4.

⁵⁰*Ibid*, s.5

⁵¹*Ibid*, s.6

⁵²(S.C. 70/2004)

⁵³FHC/B/CS/53/05.

⁵⁴F Agbede, 'The Decline of Judicial Activism in Nigeria: A Comparative Reflection on the Past and Present Judiciary' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5101141> Accessed 11 March, 2025.

⁵⁵(2020) LPELR-50260(SC) 1.

⁵⁶S.C. 45/1997



5. Perceptions of Judicial Bias and Politicisation

Judicial activism, particularly in high-profile cases, is often perceived as being influenced by political considerations. The Nigerian judiciary has faced accusations of favouritism, especially in cases involving election petitions and constitutional disputes.⁵⁷ Instances such as *Atiku Abubakar v Independent National Electoral Commission*⁵⁸ where the Supreme Court upheld a disputed presidential election result, have led to public scepticism regarding judicial impartiality. When activist decisions appear to align with the interests of political elites, they erode confidence in the judiciary's role as an independent arbiter of justice and fuel concerns over judicial legitimacy.

6. Judicial Capacity and Resource Constraints

For judicial activism to be effective, courts must be equipped with adequate resources, manpower, and expertise to handle complex legal and constitutional matters. However, the Nigerian judiciary suffers from systemic challenges, including underfunding, case backlog, and inadequate infrastructure.⁵⁹ These limitations hinder the courts' ability to thoroughly adjudicate on matters requiring extensive legal reasoning and policy evaluation. Without sufficient capacity, judicial activism may result in poorly reasoned decisions that fail to withstand rigorous legal scrutiny, ultimately weakening the credibility of the judiciary's interventions.

7. Resistance from the Political Class

The increasing role of judicial activism in Nigeria has led to resistance from political actors who perceive it as an obstacle to their authority. There have been instances where government officials have defied court orders or sought to undermine judicial independence through intimidation, budgetary control, and executive interference. A notable example is the controversial suspension of Chief Justice Walter Onnoghen in 2019, which was widely viewed as an attempt to weaken judicial oversight ahead of the general elections.⁶⁰ Such resistance underscores the fragile nature of judicial independence in Nigeria and the challenges courts face in asserting their authority against powerful political interests.

5.0 Comparative Analysis of Judicial Activism in Other Jurisdictions

5.1 United States of America

Judicial activism in the United States has played a transformative role in shaping the Country's legal and political landscape. The U.S. Supreme Court, through its power of judicial review as established in *Marbury v. Madison*,⁶¹ has consistently interpreted the Constitution in ways that expand rights, influence policy, and redefine governance structures. Activist rulings have been instrumental in advancing civil rights, social justice, and federalism. Notably, cases such as *Brown v. Board of Education*,⁶² which outlawed racial segregation in public schools, and *Roe v. Wade*,⁶³ which recognized a woman's right to abortion, exemplify how judicial intervention has directly impacted societal norms and governance. However, critics argue that judicial activism often leads to the judiciary assuming legislative functions, effectively making laws rather than interpreting them; a concern that aligns with the principle of separation of powers enshrined in Article III of the U.S. Constitution.

⁵⁷ TAP Initiative, 'An Agenda for the Incoming CJN' <<https://tapinitiative.org/an-agenda-for-the-incoming-cjn/>> Accessed 11 March, 2025.

⁵⁸ SC/CV/935/2023.

⁵⁹ ThisDay, 'Inadequate Funding for Judiciary' <<https://www.thisdaylive.com/index.php/2022/12/27/inadequate-funding-for-judiciary/>> Accessed 11 March, 2025.

⁶⁰ C Rickard, 'Reaction to shock suspension of Nigeria's Chief Justice' <<https://africanlii.org/articles/2019-02-01/carmel-rickard/reaction-to-shock-suspension-of-nigerias-chief-justice>> Accessed 12 March, 2025.

⁶¹ 5 U.S. (1 Cranch) 137 (1803).

⁶² 347 U.S. 483 (1954).

⁶³ 410 U.S. 113 (1973).



The influence of judicial activism in the U.S. extends deeply into electoral jurisprudence and governance. The Supreme Court has issued several controversial rulings that have shaped the political landscape, such as *Bush v. Gore*,⁶⁴ where the Court effectively decided a presidential election by halting a recount in Florida. Similarly, *Citizens United v. Federal Election Commission*⁶⁵ significantly altered campaign finance laws by ruling that corporate funding of independent political broadcasts is protected under the First Amendment. These decisions demonstrate the judiciary's expansive influence over democratic processes, often drawing criticism that unelected judges wield excessive power over matters that should be determined through political or legislative means. Nonetheless, judicial activism has, in many instances, served as a safeguard against political overreach, ensuring constitutional fidelity even when elected branches fail to uphold fundamental rights. Beyond electoral and political governance, judicial activism has played a decisive role in expanding socio-economic rights in the United States. The Court's rulings on labor rights, healthcare, and affirmative action have had profound implications for American society. For instance, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*,⁶⁶ upheld workers' rights to unionize, while *King v. Burwell*⁶⁷ preserved key aspects of the Affordable Care Act ensuring continued access to healthcare for millions of Americans. These rulings illustrate how judicial decisions can shape national policy, sometimes going beyond strict constitutional interpretation to address contemporary socio-economic challenges. However, the counterargument remains that such activism often bypasses the legislative process, imposing judicial preferences on a democratic system meant to be governed by elected representatives.

Despite the debates surrounding judicial activism, the United States Supreme Court remains a powerful institution capable of redefining constitutional interpretation.⁶⁸ Proponents argue that activism is necessary for legal evolution, particularly when legislative inertia prevents progress on pressing issues such as civil rights, social justice, and governance reforms.⁶⁹ However, opponents caution that judicial overreach undermines democratic accountability, eroding the doctrine of separation of powers.⁷⁰ The tension between activism and judicial restraint continues to shape the discourse on the role of courts in a democratic society, making the U.S. judiciary both a guardian of constitutionalism and a subject of contentious political debate.

5.2 South Africa

Judicial activism in South Africa has played a transformative role in shaping the country's post-apartheid legal and constitutional framework.⁷¹ The South African judiciary has been at the forefront of promoting social justice, enforcing constitutional rights, and ensuring governmental accountability. The Constitutional Court, established under the 1996 Constitution of the Republic of South Africa, has demonstrated a strong activist stance in interpreting the Bill of Rights, particularly in cases involving socio-economic rights, separation of powers, and human dignity.⁷² This activist posture has often been seen as necessary in a Country where historical injustices necessitated judicial intervention to redress systemic inequalities. However, the extent to which the judiciary should engage in such interventions has been a matter of debate.

⁶⁴ 531 U.S. 98 (2000).

⁶⁵ 558 U.S. 310 (2010).

⁶⁶ 301 U.S. 1 (1937).

⁶⁷ 576 U.S. 473 (2015).

⁶⁸ CE Hughes, 'The Court and Constitutional Interpretation' <<https://www.supremecourt.gov/about/constitutional.aspx>> Accessed 12 March, 2025.

⁶⁹ U Singh, 'Judicial Activism and Sustainable Development: The Path to Environmental Justice' *Journal of Emerging Technologies and Innovative Research* (2024) 11(10), 862-870.

⁷⁰ W Grimes, (n.9).

⁷¹ AC Diala, 'Judicial Activism In South Africa's Constitutional Court: Minority Protection or Judicial Illegitimacy?' <<https://repository.up.ac.za/bitstream/handle/2263/5322/diala.pdf;sequence=1>> Accessed 12 March, 2025.

⁷² A Govindjee, 'Adjudication of Socio-Economic Rights by the Constitutional Court of South Africa: Walking the Tightrope between Activism and Deference?' *National Law School of India Review* (2013) 25(1), 62-80.



One of the most notable areas where South African courts have demonstrated activism is in the enforcement of socio-economic rights.⁷³ Unlike Nigeria, where socio-economic rights are largely non-justiciable, the South African Constitution explicitly guarantees the right to health care, food, water, and social security.⁷⁴ In the landmark case of *Government of the Republic of South Africa v Grootboom*⁷⁵ the Constitutional Court ruled that the government had a constitutional obligation to provide adequate housing for vulnerable populations. Similarly, in *Minister of Health v Treatment Action Campaign*,⁷⁶ the Court compelled the government to provide antiretroviral drugs to prevent mother-to-child transmission of HIV/AIDS. These decisions underscore the judiciary's role in shaping policy outcomes and ensuring that constitutional rights translate into tangible benefits for citizens. However, some critics contend that such rulings impose financial and policy burdens on the executive, potentially disrupting governance and budgetary planning.

The South African judiciary has also played a critical role in reinforcing democratic governance and constitutional supremacy. The courts have frequently invalidated unconstitutional actions by the executive and legislature, emphasizing the principle of checks and balances. In *Economic Freedom Fighters v Speaker of the National Assembly & Others*⁷⁷ the Constitutional Court ruled that then-President Jacob Zuma had violated the Constitution by failing to implement the recommendations of the Public Protector regarding the misuse of public funds for his Nkandla residence. This ruling reinforced judicial oversight over executive misconduct and affirmed the judiciary's commitment to upholding constitutionalism. However, this trend has not been without controversy. Critics argue that judicial interventions in politically sensitive matters may undermine the doctrine of separation of powers, with judges assuming roles that should be left to elected representatives.

Despite these criticisms, judicial activism in South Africa has been a formidable force in advancing legal development and protecting fundamental rights.⁷⁸ The Constitutional Court's interpretation of constitutional provisions has expanded the scope of human rights and provided clarity on governance issues. However, concerns about judicial overreach persist, particularly in cases where courts appear to engage in policymaking. The balance between judicial activism and judicial restraint remains a contentious issue, as courts must navigate the fine line between enforcing constitutional mandates and respecting the roles of the executive and legislature. Ultimately, judicial activism in South Africa has been instrumental in consolidating democracy and fostering legal development, but its legitimacy depends on maintaining judicial independence and ensuring that activism does not translate into judicial supremacy.

6.0 Conclusion

Judicial activism in Nigeria remains a double-edged sword, serving as both a catalyst for legal development and a potential overreach of judicial power. While it has played an indispensable role in advancing constitutionalism, safeguarding human rights, ensuring electoral integrity, and holding the executive accountable, concerns persist regarding the judiciary's encroachment on legislative and executive functions. The evolution of judicial activism in Nigeria - from the colonial era through military rule to the democratic dispensation demonstrates its transformative impact in reinforcing the rule of law and shaping national jurisprudence. However, for judicial activism to maintain legitimacy and effectiveness, it must strike a delicate balance between progressive legal interpretation and adherence to the doctrine of separation of powers. A judiciary that is overly interventionist risks undermining democratic stability, while excessive judicial restraint, may render

⁷³ R Dixon and T Ginsburg, 'The South African Constitutional Court and Socioeconomic Rights As "Insurance Swaps' *Constitutional Court Review* (2011) 4(1), 1-34.

⁷⁴ South African Constitution 1966, s12.

⁷⁵ [2000] ZAAC 19.

⁷⁶ [2002] ZACC 15;

⁷⁷ [2016] ZACC 11;

⁷⁸ P. S Masumbe, 'The Rule of Law Through Judicial Activism In South Africa'

<<https://lawandworld.ge/index.php/law/article/view/523>> Accessed 12 March, 2025.



the courts ineffective in addressing pressing societal injustices. Therefore, a judicious and principled approach to judicial activism is imperative, ensuring that while courts continue to act as guardians of justice, their decisions remain firmly rooted in constitutional principles, democratic accountability, and institutional integrity.

7.0 Recommendations

1. Institutionalising Judicial Independence: There should be a strong reinforcement of judicial independence by insulating the judiciary from political interference, securing financial autonomy, and ensuring the appointment of judges based on competence and integrity.

2. Promoting Judicial Restraint and Accountability: There should be a careful balance between judicial activism and judicial restraint to prevent judges from overstepping their constitutional roles while ensuring that their decisions uphold the rule of law and democratic governance.

3. Strengthening Legal Education and Continuous Judicial Training: There should be regular training programs for judges and legal practitioners to enhance their understanding of constitutionalism, human rights, and the implications of judicial activism in a democratic society.

4. Encouraging Public Interest Litigation (PIL): There should be a deliberate effort to promote public interest litigation as a tool for social justice and constitutional protection, with legal aid institutions and civil society organisations given the necessary support to pursue such cases.

5. Enhancing Legislative-Judicial Collaboration: There should be improved synergy between the legislature and judiciary to ensure that judicial pronouncements that highlight legislative gaps lead to necessary legal reforms, rather than creating institutional conflicts.

6. Ensuring Strict Compliance with Judicial Decisions: There should be mechanisms in place to guarantee that judicial rulings are respected and implemented by the executive and legislature to uphold the integrity of the judiciary and prevent selective adherence to court decisions.

7. Leveraging Comparative Judicial Practices: There should be a systematic study and adoption of best judicial practices from jurisdictions where judicial activism has contributed significantly to constitutional democracy and legal development.

8. Fostering Civic Awareness and Legal Literacy: There should be widespread civic education and legal literacy campaigns to enhance public understanding of judicial activism, constitutional rights, and the role of the judiciary in governance.

9. Establishing Judicial Review Mechanisms: There should be clear and structured judicial review mechanisms to ensure consistency and accountability in activist rulings, preventing arbitrary interpretations of constitutional provisions.

10. Modernising the Judiciary with Technology: There should be an extensive adoption of digital tools in judicial processes to enhance transparency, efficiency, and accessibility, ensuring that judicial activism is well-informed and effectively communicated to the public.