

# Judicial Activism

## [UPSC Notes]

### What is Judicial Activism?

Judicial activism means the proactive role played by the judiciary in the protection of the rights of citizens and promoting justice in society. Through Judicial Activism, the judiciary forces the other two organs of the government, i.e., the legislature and executive, to discharge their constitutional duties.

- It is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fail to do so and counters the opinion that the Judiciary is a mere spectator.
- The practice of Judicial Activism originated and developed in the USA, and historian Arthur Schlesinger, Jr. coined the term in 1947. In India, the foundation of Judicial Activism was laid down by Justice V.R Krishna Iyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.

### Judicial Activism in India

In India, Judicial Activism has played an important role in keeping democracy alive. The Indian Judiciary is considered the guardian and protector of the Indian Constitution, and citizens look upto the Judiciary as the last hope for protecting their rights.

- According to the Indian Constitution, Article 13 when read with Articles 32 and 226, provides the power of judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the Constitution. Judicial Activism evolved through the process of Judicial Review, which can be pursued from Britain's unwritten constitution.

In India, multiple times, Judicial Activism has led to a controversy concerning the supremacy between Parliament and Supreme Courts.

Judicial Activism is important for the UPSC Exam. It is important to read in detail about the topic so that one is fully aware of the pros and cons of Judicial Activism. Through the article, we will be covering the pointers, including the Importance of Judicial Activism, Examples of Judicial Activism in India, Merits and Demerits of Judicial Activism, etc.

### Importance of Judicial Activism in India

Judicial Activism in India can be seen in the Court's premature and early assertion regarding the essence and nature of the Judicial Review. It is necessary to keep all the organs of government

in balance so that it does not disturb the principles of separation of powers and checks and balances. Proper implementation of fundamental rights could only become possible due to the advancement of Judicial Activism.

Judicial Activism in India reflects the following administrative patterns:

- Expansion of judicial review over the administration.
- Expansion of hearing privileges over administrative lapses.
- Extending the conventional translation guidelines in its quest for financial, cultural, and academic goals.
- Extension of judicial control over discretionary forces.

Judicial Activism holds a high place in Indian democracy, which can be concluded from the fact that:

- Judicial Activism acts as a mechanism to curb legislative adventurism and executive tyranny by enforcing Constitutional limits.
- Judicial Activism help in upholding the faith of citizens in the constitution and judicial organs.
- Judicial Activism help in enhancing administrative efficiency and help good governance. It helps in plugging active political lacunae.
- Judicial Activism allows participation of the judiciary in the advancement of the country and upholding democracy.
- Judicial Activism help in protecting or expanding individual rights.

## Examples of Judicial Activism in India

Judicial Activism, in simple words, means when judges interrupt their personal feelings into a conviction or sentence instead of upholding the existing laws. Judicial Activism in India started in 1973 when the Allahabad High Court rejected the candidature of Indira Gandhi. The other examples of Judicial Activism in India include:

- **A.K. Gopalan v. State of Madras (1950):** The Indian Supreme Court rejected the argument that to deprive a person of his life or liberty, not only the procedure prescribed by law for doing so must be followed but also that such procedure must be fair, reasonable and just.
- **I. C. Golaknath & Ors v. State Of Punjab & Anrs. (1967):** The Supreme Court declared that Fundamental Rights enshrined in Part 3 are immune and cannot be amended by the legislative assembly.
- **Kesavananda Bharati case (1973):** The Supreme Court of India declared that the executive had no right to intercede and tamper with the basic structure of the constitution. The concept of judicial activism started gaining more power from here.
- **Hussainara Khatoon (I) v. State of Bihar (1979):** The inhuman and brutal conditions of the undertrial prisoners were published in the newspaper. Under article 21 of the Indian Constitution, the SC accepted it and held that the right to a speedy trial is a fundamental right and directed the state authorities to provide free legal facilities to the under-trial inmates to get justice bail or final release.
- **Sheela Barse v. State of Maharashtra (1983):** A letter by a journalist addressing the custodial violence of women prisoners in jail was addressed to the Supreme Court. The Court treated the letter as a writ petition and took cognizance of that matter. The SC issued the apposite guidelines to the concerned authorities
- The Supreme Court rolled out a blanket ban on firecrackers in the Delhi – NCR area with certain exceptions in 2018.

- The SC invoked terror laws against alleged money launderer Hasan Ali Khan.

## Judicial Restraint and Judicial Overreach

Judicial Restraint is a theory of judicial interpretation that encourages judges to limit the exercise of their power. It is the antithesis of Judicial Activism and encourages the judiciary to respect the laws or rules in the Constitution.

Whereas, when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government and breaches the principle of separation of power, it is termed Judicial Overreach. Some instances when the mechanism of Judicial Activism turned to Judicial Overreach are

- **Lodha Committee report on the Board of Control for Cricket in India:** To bring law and order back into the BCCI, a committee was set up. The recommendations were treated as Judicial Overreach as BCCI is an independent body, not controlled by any state or central government. So, the Lodha committee had no authority to declare such recommendations.
- **Christian Medical College, Vellore & Others v. Union of India and Others:** The Supreme Court barred the states from conducting separate entrance exams for medical courses and ruled that undergraduate admissions to medical courses can only be done through the NEET.
- **Swaraj Abhiyan-(I) v. Union of India & Ors.:** The SC instructed the Ministry of Agriculture of the Union of India to update and amend the Drought Management Manual. The apex court also guided the state to constitute a National Disaster Mitigation Fund within three months.

## Methods of Judicial Activism

Judicial Activism is manifested in various ways in India, which include:

- Constitutional interpretation
- Supervisory power of the higher courts on the lower courts
- Judicial review
- Public Interest Litigation (PIL)
- Access to international statutes for ensuring constitutional rights

## Judicial Activism: Merits and Demerits

On critical analysis, following are the merits and demerits of Judicial Activism:

Advantages	Disadvantages
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<p>Upholds Constitutional morality; for example, in Naz Foundation Case, the SC used the concept of constitutional morality to strike down Section 377 of the Indian Penal Code and decriminalize homosexuality.</p>	<p>Judiciary, the unelected body, does not enjoy the “General Will” of the people. Ban on liquor sale on highways was seen as an Overreach because the matter was administrative, requiring executive knowledge.</p>
<p>Given the Sabarimala Judgment, Justice Chandrachud held that women should be allowed entry into the Sabarimala temple against popularly held religious beliefs.</p>	<p>Judiciary lacks both time and resources to enact legislation. The Ban on BS-IV vehicles from April 2020 had to be extended many times because practical difficulties of enactments are not known to the courts.</p>
<p>To protect fundamental rights, for example, the 2017 judgment of the Triple Talaq was banned as being ultra vires to fundamental rights of Muslim women.</p>	<p>Judicial Review is a basic structure of the Constitution; however, enacting legislation is not. Courts can look into the validity of the law but not necessarily make a law.</p>

## Issues Related to Judicial Activism

The line between Judicial Activism and Judicial Overreach is very narrow. When Judicial activism crosses its limits, it leads to Judicial Overreach. The interpretation of the law is the primary function of the judiciary, but the courts, rather than interpreting the law, start making the law and issue guidelines and directions to be done by the legislature.

Sometimes in the name of activism, the judiciary often rewrites personal views, and power separation theory is overthrown. Judicial Activism may interfere with the proper functioning of the legislative or executive organs of government. It destroys the spirit of separation of powers.