

JUDICIAL ACTIVISM

Judicial activism is a concept that originated in the US in 1947.

The judiciary plays an important role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism. This entails, sometimes overstepping into the territories of the executive.

Judicial activism is also known as 'judicial dynamism'.

The *judicial overreach* is an aggravated version of judicial activism.

Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups, because of the efforts of justices V R Krishna Ayer and P N Bhagwati, who laid the foundations of judicial activism in India.

Judicial activism can be defined as "judicial philosophy which motivates judges to depart from the traditional precedents in favour of progressive and new social policies."

Judicial Activism Methods

There are various methods of judicial activism which are followed in India. They are:

1. Judicial review (power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution)
2. PIL (*Public Interest Litigation*) (The person filing the petition must not have any personal interest in the litigation, this petition is accepted by the court only if there is an interest of large public involved; the aggrieved party does not file the petition).
3. Constitutional interpretation
4. Access of international statute for ensuring constitutional rights
5. Supervisory power of the higher courts on the lower courts

Significance of Judicial Activism

- It is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so.

- Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed. The Indian judiciary has been considered as the guardian and protector of the Indian Constitution.
- Though the phrase 'judicial activism' is not directly mentioned in the Indian Constitution, there are some provisions in the constitution itself for the judiciary to adopt a proactive role. **Article 13 read with Articles 32 and 226 of the Constitution** provides the power of judicial review to the higher judiciary (SC & HC) to declare any executive, legislative or administrative action void if it is in contravention with the Constitution.
- According to experts, the shift from locus standi to public interest litigation made the judicial process more participatory and democratic.
- Judicial activism counters the opinion that the judiciary is a mere spectator.

Judicial Activism Examples

It all started when the Allahabad High Court rejected the candidature of Indira Gandhi in 1973.

- In 1979, the Supreme Court of India ruled that undertrials in Bihar had already served time for more period than they would have, had they been convicted.
- **Golaknath case:** The questions, in this case, were whether the amendment is a law; and whether Fundamental Rights can be amended or not. SC contented that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required. Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution.
- **Kesavananda Bharati case:** This judgement defined the basic structure of the Constitution. The SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment." This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.
- In the 2G scam, the SC cancelled 122 telecom licenses and spectrum allocated to 8 telecom companies on the grounds that the process of allocation was flawed.

- 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.

Pros & Cons Of Judicial Activism

Pros associated with Judicial Activism India

- Judicial Activism sets out a system of balances and controls to the other branches of the government. It accentuates required innovation by way of a solution.
- In cases where the law fails to establish a balance, Judicial Activism allows judges to use their personal judgment.
- It places trust in judges and provides insights into the issues.
- Judicial Activism helps the judiciary to keep a check on the misuse of power by the state government when it interferes and harms the residents.
- In the issue of majority, it helps address problems hastily where the legislature gets stuck in taking decisions.

Cons Associated with Judicial Activism

- Firstly, when it surpasses its power to stop and misuse or abuse of power by the government, in a way, it limits the functioning of the government.
- It clearly violates the limit of power set to be exercised by the constitution when it overrides any existing law.
- The judicial opinions of the judges once taken for any case become the standard for ruling other cases.
- Judicial activism can harm the public at large as the judgment may be influenced by personal or selfish motives.
- Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

Judicial Activism Criticism

Judicial activism has also faced criticism several times. In the name of judicial activism, the judiciary often mixes personal bias and opinions with the law.

Another criticism is that the theory of separation of powers between the three arms of the State goes for a toss with judicial activism.

Many times, the judiciary, in the name of activism, interferes in an administrative domain, and ventures into judicial adventurism/overreach.

Way forward in Judicial Activism

Judicial activism is a product fabricated solely by the judiciaries and not backed by the Constitution. When the judiciary surpasses the line of the powers set for it in the name of judicial activism, it could be rightly said that the judiciary then begins to invalidate the concept of separation of powers set out in the Constitution.

If judges can freely decide and make laws of their choices, it would not only go against the principle of separation of powers but will result in chaos and uncertainty in the law as every judge will start writing his own laws according to his fads and quirks.

Judicial exercise has to be respected to maintain a clear balance.

Making laws is the function and duty of the legislature, to fill the gap of laws and to implement them in a proper manner is the duty of the executive. So, the only work remaining for the judiciary is interpretations. Only a fine equilibrium between these government bodies can sustain the constitutional values.

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