

Judicial Activism - Indian Polity Notes

Judicial activism is a concept that originated in the US in 1947. It has been seen in India since the Emergency days. It is an important topic because it is often seen in the news. In this article, you can read about the concept, judicial activism for the [UPSC exam](#).

Judicial Activism

The judiciary plays an important role in upholding and promoting the rights of citizens in a country. 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 gone too far is [judicial overreach](#).

The concept of Public Interest Litigation (PIL) is always talked of when judicial activism is discussed.

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.

The Black's Law Dictionary defines judicial activism as “judicial philosophy which motivate 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 (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 interest of large public involved; aggrieved party does not file the petition). Read more on [PILs](#).
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.
- There are 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 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.
- 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 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.

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 administrative domain, and ventures into judicial adventurism/overreach. In many cases, no fundamental rights of any groups are involved. In this context, judicial restraint is talked about.

Also read: [PIL Under Scrutiny: RSTV – The Big Picture](#)

UPSC Questions related to Judicial Activism

What is an example of judicial activism?

An example of judicial activism is the famous Kesavananda Bharati case.

What is the difference between judicial activism and judicial restraint?

Both are opposing concepts. While judicial activism talks about courts taking on a proactive role in ensuring and protecting citizens' rights, judicial restraint encourages the judiciary to limit the exercise of their own power.

Is judicial activism good?

Judicial activism can be good if the intention of the court is to protect and preserve the rights of citizens, and not merely criticise the government.

