

Judicial Activism:

- Judicial activism signifies the proactive role of the Judiciary in protecting the rights of citizens.
- The practice of Judicial Activism first originated and developed in the USA.
- In India, the Supreme Court and the High courts are vested with the power to examine the constitutionality of any law, and if such a law is found to be inconsistent with the provisions of the constitution, the court can declare the law as unconstitutional.
- It has to be noted that the subordinate courts do not have the power to review constitutionality of laws.

Origin:

- The term judicial activism was coined by historian Arthur Schlesinger, Jr. in 1947.
- The foundation of Judicial Activism in India was laid down by Justice V.R Krishna Iyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.

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Why is it Required?

- **Judicial activism has arisen mainly due to:**
 - **The failure of the executive and legislatures to act.**
 - **Since** there is a doubt that the legislature and executive have **failed to deliver the desired results.**
 - It occurs because the entire system has been plagued by **ineffectiveness and inactiveness.**
 - **The violation of basic human rights** has also led to judicial activism.
 - **Due to the misuse and abuse of some of the provisions of the Constitution,** judicial activism has gained importance.
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Necessity of Judicial Activism:

- To understand the increased role of the judiciary, it is important to know the causes that led to the judiciary playing an active role.
 - There was rampant corruption in other organs of government.
 - The executive became callous in its work and failed to deliver results required.
 - Parliament became ignorant of its legislative duties.
 - The principles of democracy were continuously degrading.
 - Public Interest Litigations brought forward the urgency of public issues.

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- In such a scenario, the judiciary was forced to play an active role. It was possible only through an institution like judiciary which is vested with powers to correct the various wrongs in society. In order to prevent the compromise of democracy, the Supreme Court and High Courts took the responsibility of solving these problems.

- For example, in ***G. Satyanarayana vs Eastern Power Distribution Company (2004)***, Justice Gajendragadkar ruled that a mandatory enquiry should be conducted if a worker is dismissed on the ground of misconduct, and be provided with an opportunity to defend himself. This judgement added regulations to labour law which was ignored by legislation.
- Similarly, [Vishaka vs State of Rajasthan \(1997\)](#) is an important case that reminds the need of Judicial activism. Here, the SC laid down guidelines that ought to be followed in all workplaces to ensure proper treatment of women. It further stated that these guidelines should be treated as a law until Parliament makes a legislation for enforcement of gender equality.

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Some other famous cases of Judicial Activism include -

- **Kesavananda Bharati case (1973)**: The apex court of India declared that the executive had no right to intercede and tamper with the basic structure of the constitution.
- **Sheela Barse v. State of Maharashtra (1983)**: A letter by Journalist, addressed to the Supreme Court addressing the custodial violence of women prisoners in Jail. The court treated that letter as a writ petition and took cognizance of that matter.
- **I. C. Golaknath & Ors vs 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.

- **Hussainara Khatoon (I) v. State of Bihar (1979):** The inhuman and barbaric conditions of the undertrial prisoners reflected through the articles published in the newspaper. Under article 21 of the Indian Constitution, the apex court accepted it and held that the right to speedy trial is a fundamental right.
- **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.

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How is it Manifested?

- **Through Judicial Review**

- Judicial review is the doctrine under which legislative and executive actions are subject to review by the judiciary.
- Judicial review is an example of **check and balances** in a modern governmental system.
- Judicial review is adopted in the Constitution of India from the **Constitution of the United States of America**.
- It gives power to the Supreme Court to examine the **constitutionality of any law** and if such a law is found to be inconsistent with the provisions of the Constitution, the Court can declare the law as unconstitutional.

- **Through Public Interest Litigation:**
Public interest litigation means a suit filed in a court of law for the protection of public interest.
- Under Art. 32 of the constitution ,an individual or a group of people can file a PIL in the SC, incase of violation of fundamental rights mentioned in the Constitution.
- Judicial activism in India acquired importance due to public interest litigation. It is not defined in any statute or act.
- In India, PIL initially was resorted to towards improving the lot of the **disadvantaged sections of the society** who due to poverty and ignorance were not in a position to seek justice from the courts.
- **Justices P.N. Bhagwati and V.R. Krishna Ayer** has played a key role in promoting this avenue of approaching the apex court of the country

- **Through Constitutional Interpretation:**

- Constitutional interpretation comprehends the methods or strategies available to people attempting to resolve disputes about the meaning or application of the Constitution.
- The possible sources for interpretation include the text of the Constitution, its "original history," including the general social and political context.

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- **Through Access to international statutes for ensuring constitutional rights:**
 - The court refers to various international statutes in its judgements.
 - This is done by the apex courts to ensure the citizens of their rights.
 - International Law is referred to by Supreme Court's judgments in many cases. Example: Recently, SC reaffirmed the rights of disabled person to live with dignity in Jeeja Ghosh v. Union of India. The court underlined the Vienna Convention on the law of treaties, 1963 which requires India's internal legislation to comply with international commitments.

- **Criticism:**

- Judicial Activism has led to a controversy in regard to the supremacy between Parliament and Supreme Courts.
- It can disturb the delicate principle of separation of powers and checks and balances.

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Conclusion

- In India, Judiciary has played an active role through its activism, especially through PIL. This has restored the rights of disadvantaged sections of the society.
- The Supreme Courts and the High Courts have worked in favour of progressive social policies and citizens hold a high regard for the institution of judiciary.
- However, in a democracy, it is important to maintain the principle of separation of powers and uphold the legitimacy of the three organs of government.
 - It can be possible only when the executive and legislature are attentive and functional.
 - At the same time, the Judiciary should be cautious of stepping into spheres of activity that does not belong to it.