



Judicial Activism, Restraint & Overreach

What does it Mean?

▪ 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 lyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.
- **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.

▪ Judicial Restraint:

- Judicial Restraint is **the antithesis of Judicial Activism.**
- Judicial Restraint is a theory of judicial interpretation that **encourages judges to limit the exercise of their own power.**
- In short, the courts should interpret the law and not intervene in policy-making.
- Judges should always try to decide cases on the basis of:
 - i. The original intent of those who wrote the constitution.
 - ii. Precedent – past decisions in earlier cases.
 - iii. Also, the court should leave policy making to others.
- Here, courts “restrain” themselves from setting new policies with their decisions.

▪ Judicial Overreach:

- When Judicial Activism goes overboard, and becomes Judicial Adventurism, it is referred to as Judicial Overreach.
- In simpler terms, it is when the **judiciary starts interfering** with the proper functioning of the legislative or executive organs of the government.
- Judicial Overreach is undesirable in a democracy as it breaches the principle of separation of powers.
- In view of this criticism, the judiciary has argued that it has only stepped when the legislature or the executive has failed in its own functions.

Why is it Required?

▪ **Judicial Activism:**

◦ **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.

◦ **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.

- 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.

▪ **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.

▪ **Judicial Restraint:**

- Judicial restraint helps in **preserving a balance among the three branches of government**, judiciary, executive, and legislative.

- **To uphold the law established by the government** in the legislature.
- To show solemn **respect for the separation of governmental problems**.
- To allow **the legislature and the executive to follow their duties** by not reaching in their arena of work.
- To mark a **respect for the democratic form of government** by leaving the policy on policymakers.
- **Trends in Judicial Restraint:**

- **S.R. Bommai v Union of India (1994)** is a famous example often stated to show restraint practiced by Judiciary. The judgement stated that in certain cases the judicial review is not possible as the matter is political. According to the court, the power of article 356 was a political question, thus refusing judicial review. The court stated that if norms of judiciary are applied on matters of politics, then it would be entering the political domain and the court shall avoid it.
- Similarly, in **Almitra H. Patel Vs. Union of India (1998)** the Supreme court refused to direct the Municipal Corporation on the issue of assigning responsibility for cleanliness of Delhi and stated that it can only assign authorities to carry out duty that is assigned as per law.

▪ **Judicial Overreach:**

- The direct effect of legislative and executive negligence or inability is "judicial overreach".
- Weak and injudicious results, not only in the making of laws, but also in their application.
- The Indian judiciary has been criticized by many legal scholars, lawyers and judges themselves, for playing an exceedingly activist role and overreaching.
- **Impact of Judicial Overreach:**
 - Since the legislature is lagging behind in its function, the judiciary tends to Overreach from its function causing a conflict between legislature and judiciary. The clear impacts from such an Overreach of Judiciary are as follows:
 - There is a threat to the doctrine of separation of powers which undermines the spirit of the constitution. There is a lack of harmony between legislature and judiciary and an impression on the public of inaction by the legislature.
 - In certain scenarios like that of environmental, ethical, political, expert knowledge is required which the judiciary might not possess. If it renders judgement while having no experience in these domains, then it not only undermines expert knowledge but also can prove harmful to the country.
 - Judicial Overreach can lead to an expression of disregard by the judiciary in the elective representation. This can decrease the faith of the public in the institution of democracy.
- Hence, It is an obligation on the part of courts to remain under their jurisdiction and uphold the principle of separation of powers. The Supreme court has itself reminded other courts, in 2007, to practise Judicial restraint. It stated "Judges must know their limits and must try not to run the government. They must have modesty and humility, and not behave like emperors." Further, it said, "In the name of judicial activism, judges cannot cross their limits and try to take over states which belong to another organ of the state".
- **Examples of Judicial Overreach:**
 - A famous case of Judicial Overreach is **censorship of the Film Jolly LLB II**. The case was filed as a writ petition, and alleged that the film portrayed the legal profession as a joke, making it an act of contempt and provocation. The Bombay High Court appointed a three person committee to watch the movie and report on it. This was viewed as unnecessary, as the Board Of Film Certification already exists and is vested with the power to censor. On the basis of the report of the committee, four scenes were removed by the directors. It was seen as violative of Article 19(2), as it imposed restriction on freedom of speech and expression.
 - On a PIL about road safety, **the Supreme Court banned the Sale of Liquor**, at retail shops, restaurants, bars within 500m of any national or state highway. There was no evidence presented before the court that demonstrated a relation of ban on

liquor on highways with the number of deaths. This judgement also caused loss of revenue to state governments and loss of employment. The case was seen as an Overreach because the matter was administrative, requiring executive knowledge.

How is it Manifested?

▪ **Judicial Activism:**

◦ **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.
- 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.

◦ **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.

▪ **Judicial Restraint:**

◦ **Through referring to the original intent of those who wrote the constitution:**

- Judges look to the original intent of the writers of the Constitution.
- Judges refer to the intent of the legislatures that wrote the law and the text of the law in making decisions.
- Any changes to the original Constitution language can only be made by constitutional amendments.

◦ **Through Precedent:**

- Precedent means past decisions in earlier cases.
- Judicially-restrained judges respect stare-decisis, the principle of upholding

established precedent handed down by past judges.

- **Through leaving the legislature and executive to decide policies:**
 - Judicial Restraint is practised when the court leaves policy making to others.
 - The courts generally refer to interpretations of the constitution by the Parliament or any other constitutional body.

How do they Differ?

▪ **Judicial Activism VS Judicial Restraint:**

- **On basis of Meaning:**
 - **Judicial activism:** interpretation of the constitution to advocate contemporary values and conditions.
 - **Judicial restraint:** limiting the powers of the judges to strike down a law.
- **On basis of Goals:**
 - **Judicial restraint:** the judges and the court **encourage reviewing an existing law** rather than modifying the existing law, whereas in judicial activism: it gives the power to **overrule certain acts or judgments**.
- **On the basis of Intent:**
 - Judicial activism judges should look beyond the original intent of the framers.
 - In Judicial restraint, Judges should look to the original intent of the writers of the Constitution.
- **On basis of Power:**
 - In Judicial activism, the judges are required to use their power to correct any injustice especially when the other constitutional bodies are not acting.
 - Judicial restraint is limiting the powers of the judges to strike down a law.
- **On basis of their Role:**
 - Judicial activism has a great role in formulating social policies on issues like protection of the rights of an individual, civil rights, public morality, and political unfairness.
 - Judicial restraint helps in preserving a balance among the three branches of government, judiciary, executive, and legislative.

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.