

Judicial activism

[Law](#), [Court](#)



Judicial activism is gaining prominence in the present days. In the form of Public Interest Litigation (PIL), citizens are getting access to justice. Judiciary has become the centre of controversy, in the recent past, on account of the sudden (Me in the level of judicial intervention. The area of judicial intervention has been steadily expanding through the device of public interest litigation. The judiciary has shed its pro-status-quo approach and taken upon itself the duty to enforce the basic rights of the poor and vulnerable sections of society, by pro–gressive interpretation and positive action. The Supreme Court has developed new methods of dispens–ing justice to the masses through the public interest litigation. Former Chief Justice PN. Bhagwat, under whose leadership public interest litigation attained a new dimension comments that " the supreme court has developed several new commitments. It has carried forward participative justice. It has laid just standards of procedure. It has made justice more accessible to citizens". The term 'judicial activism' is intended to refer to, and cover, the action of the court in excess of, and beyond the power of judicial review. From one angle it is said to be an act in excess of, or without, jurisdiction. The Constitution does not confer any authority or jurisdiction for 'activism' as such on the Court. Judicial activism refers to the interference of the judiciary in the legislative and executive fields. It mainly occurs due to the non-activity of the other organs of the government. Judicial activism is a way through which relief is provided to the disadvantaged and aggrieved citizens. Judicial activism is pro–viding a base for policy making in competition with the legislature and executive. Judicial activism is the rendering of decisions, which are in tune with the temper and tempo of the times. In short, judicial

activism means that instead of judicial restraint, the Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government regarding policies and also matters of administration. Judicial activism has arisen mainly due to the failure of the executive and legislatures to act. Secondly, it has arisen also due to the fact that there is a doubt that the legislature and executive have failed to deliver the goods. Thirdly, it occurs because the entire system has been plagued by ineffec–tiveness and inactiveness. The violation of basic human rights has also led to judicial activism. Finally, due to the misuse and abuse of some of the provisions of the Constitution, judicial activism has gained significance. Besides the above mentioned factors, there are some other situations that lead to judicial activism. These are: (i) When the legislature fails to discharge its responsibilities. (ii) In case of a hung parliament where the government is very weak and instable. (iii) When the governments fail to protect the basic rights of the citizens or provide an honest, efficient and just system of law and administration, (iv) When the party in power misuses the courts of law for ulterior motives as was done during the Emergency period, and (v) Finally, the court may on its own try to expand its jurisdiction and confer on themselves more func–tions and powers. Areas of Judicial Activism During the past decade, many instances of judicial activism have gained prominence. The areas in which judiciary has become active are health, child labour, political corruption, environment, education, etc. Through various cases relating to Bandhua Mukti Morcha, Bihar Under trials, Punjab Police, Bombay Pavement Dwellers, Bihar Care Home cases, the judiciary has shown its firm commitment to participa–tory justice, just standards of procedures,

immediate access to justice, and preventing arbitrary state action. Public Interest Litigation: An Innovative Step towards Judicial Activism Public interest litigation means a suit filed in a court of law for the protection of public interest such as pollution, terrorism, road safety etc. Judicial activism in India acquired importance due to public interest litigation. It is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. The court has to be satisfied that the person who has resorted to PIL has sufficient interest in the matter. 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. After the Constitution (Twenty Fifth Amendment Act, 1971), primacy was given to Directive Principles of State Policy by making them enforceable. The courts to improve administration by taking up PIL cases, for ensuring compliance constitutional provisions has also increased. PIL is filed for a variety of cases such as maintenance of ecological balance, making municipal authorities comply with statutory obligations of provision of civic amenities, violation of fundamental rights etc. It has provided an opportunity to citizens, social groups, consumer rights activists etc., easier access to law and introduced a public interest perspective. Justices P. N. Bhagwati and V. R. Krishna Ayer have played a key role in promoting this avenue of approaching the apex court of the country, seeking legal remedies in areas where public interests are at stake. PIL has been considered a boon, as it is an inexpensive legal remedy due to nominal costs involved in filing the litigation. But there are some problems also in the PIL cases. There has been an increase in the number of frivolous cases being filed due to low

court fees. Genuine cases got receded to the background and privately motivated interests started gaining predominance in PIL cases. In view of this, the Supreme Court has framed certain guidelines governing the PIL. Presently the court entertains only writ petitions filled by an aggrieved person or public spirited individual or a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class of persons who due to reasons of poverty, disability, socially or economically disadvantaged position are finding it difficult to approach the court for redress. PIL is an extraordinary remedy available at a cheaper cost. As Justice Bhagwati observed in the case of *Asiad workers case*, 'now for the first time the portals of the court are being thrown open to the poor and the downtrodden. The courts must shed their character as upholders of the established order and the status quo. The time has come now when the courts must become the courts for the poor and the struggling masses of this country'.