

# Judicial Activism in India: Origins, Meaning, Causes and Course

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### **Origins:**

Its emergence can be traced back to 1893, when Justice Mahmood of Allahabad High Court delivered a dissenting judgement.

It was a case of an under trial who could not afford to engage a lawyer, So the question was whether the court could decide his case by merely looking his papers, Justice Mahmood held that the pre-condition of the case being “heard” would be fulfilled only when somebody speaks.

### **Meaning:**

As to its meaning, Judicial Activism is not a distinctly separate concept from usual judicial activities. The word ‘activism’ means “being active”, ‘doing things with decision’ and activist is the ‘one’ who favours intensified activities. Justice Krishna Iyer observed ‘every judge is an activist either on the forward gear or on the reverse’.

Judicial policy making can be either an activity in support of legislative and executive policy choices or in opposition to them. But the latter one is usually referred to as judicial activism. The essence of true judicial activism is the rendering of decision which is in tune with the temper and tempo of the times.

Activism in judicial policy making furthers the cause of social change or articulates concepts such as liberty, equality or justice. It has to be an arm of the social revolution. An activist judge activates the legal mechanism and makes it play a vital role in socio-economic process.

## **Causes of Judicial Activism:**

The following trends were the cause for the emergence of judicial activism — expansion of rights of hearing in the administrative process, excessive delegation without limitation, expansion of judicial review over administration, promotion of open government, indiscriminate exercise of contempt power, exercise of jurisdiction when non-existent; over extending the standard rules of interpretation in its search to achieve economic, social and educational objectives; and passing of orders which are unworkable.

## **Course of Judicial Activism:**

In the first decade of independence, activism on part of the judiciary was almost nil with political stalwarts running the executive and the parliament functioning with great enthusiasm, judiciary went along with the executive. In the 50s through half of the 70s, the apex court wholly held a judicial and structural view of the constitution.

In the famous *Keshavananda Bharati* case, two years before the declaration of emergency, the Supreme Court declared that the Executive had no right to tamper with the Constitution and alter its fundamental features. But it could not avert the emergency declared by Mrs. Gandhi and it was only at the end of it that the apex court and the lower courts began to continuously intervene in executive as well as legislative areas. The first major case of judicial activism through social action litigation was the Bihar under trials case. In 1980 it came in the form of a writ petition under article 21, by some professors of law revealing the barbaric conditions of detention in the Agra Protective Home, followed by a case against Delhi Women's Home filed by a Delhi law faculty student and a social worker. Then three journalists filed a petition for the prohibition of the prostitution trade in which women were bought and sold as cattle.

Taking cognisance of custody deaths Supreme Court ordered the police not to handcuff a man arrested purely on suspicion, not to take a woman to the police station after dusk. High Court

judges visited the prisons to check the living conditions of prisoners, in the year 1993, in just a month the apex court proclaimed judgment protecting the rights of innocents held in Hazaratbal mosque in Srinagar, defining the constitutional powers of the Chief Election Commissioner, threatening multi-crore rupees industries with closure if they continued to pollute the Ganga and Taj Mahal and brought all government and semi government bodies under the purview of the Consumer Protection Act.

In a 1994, judgement it asked the Chief of Army Staff to pay Rs. 6, 00,000 to the widow and two children of an army officer who died due to the callousness of the authorities concerned some 16 years before.

The controversial 27% reservation of jobs in Central Government and public sector undertakings was referred to the Supreme Court by the Rao Government. The court decision favoured 49% of jobs for backward castes and class but the 'creamy layers; were exempted from this reservation. Similarly the court put a curb on the operation of capitation fee in colleges in Karnataka.

The Supreme Court giving directions to the CBI and summoning the head of the CBI to report on the hawala case reveals the breakdown of other machineries of the government. The court interference with the CBI working became inevitable in the wake of the tactics of delay and technical evasion that was undertaken by the investigative agencies.