

Remember:

The perfect answer does not exist.

Class-1

Judicial Activism

Judicial review:

- courts review constitutional validity of laws.
- Article 13, 32 and 226 forms the core of judicial review.
- e.g. NJAC struck down for violating separation of power.

Judicial activism:

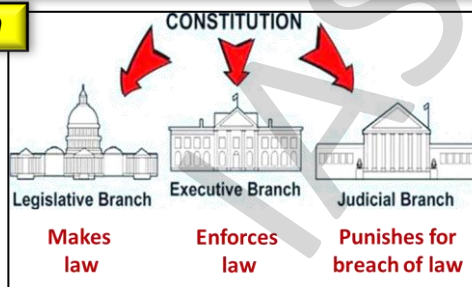
- courts proactively act to promote justice in society
- like activist, court tries to bring political/social change
- e.g. introduction of PIL; candidates disclosing qualifications

Judicial overreach / Judicial legislation

- courts act beyond their jurisdiction
- It challenges the doctrine of separation of powers
- e.g. courts fixing timings for Diwali fireworks

Judicial restrain:

- courts restrict the use of their powers.
- e.g. SC refused to temporarily stop Centra Vista construction during second wave
- e.g. SC refused to look into reduced purchase of Rafale (36 instead of 126)
- e.g. SC refused to take decision on tractor rally (Jan 2021)



Separation of power will be discussed as a separate topic.

Activist is not the one who fights for his own rights, it's the one who fights for rights of others.

Some more examples to quote for Judicial activism/overreach:

- Evolution of doctrine of **Basic Structure** in 1973
- "**Due Process of Law**" in Maneka Gandhi case 1978 (Due process of law checks whether any law in question is fair and not arbitrary)
- Playing **National Anthem in cinema halls** made compulsory by SC in Shyam Narayan Chouksey case.
- **Liquor sale ban** within 500 metres of highways.
- Cancelled 122 telecom licenses and mandated **compulsory auction for natural resources**.
- Issued **Vishakha guidelines** 1997 to protect women from sexual harassment at workplace.
- Ban on sale of **BS-IV vehicle** should be sold after March 30, 2020
- Allahabad HC ordered that **bureaucrats** must send **kids** to **govt schools**

Arguments against Judicial Activism:

- **Against** spirit of the **Constitution** by violating **separation of power**, e.g. against **Article 50** Separation of judiciary from executive.
- **Reduces trust of people in Executive**, which can be dangerous for democracy. e.g. courts seen as savior against tyranny.
- Judiciary is **not accountable to people** unlike Executive. Also, it can punish for contempt.
- (ncert) Proactive judiciary accepting large number of PILs **overburdens the courts**.
- (ncert) It has blurred the line between executive and judiciary. e.g. controlling pollution or corruption is **not duty of judiciary**.

Arguments in support of Judicial Activism:

- **Article 142:**
 - SC can issue any order to ensure **complete justice** in any case.
- It **fills the void** created due to non-activity of other organs of government.
 - e.g. ban on sale of firecrackers in Delhi;
 - e.g. restrictions around Taj Mahal to protect it.
- Helps protect **spirit of the constitution**,
 - by giving wider interpretation to articles like 14 and 21.
- Prevents curbing of **citizen's rights** by state.
 - e.g. 40,000 prisoners released from jail as a result of **Hussainara Khatoon case**
- (ncert) It has forced executive **accountability**.
- (ncert) It has **democratised the judicial system**
 - by giving not just to **individuals** but also **groups** access to the courts.
- (ncert) Made **electoral system** free and fair
 - by mandating candidates to declare assets, educational qualifications, criminal cases.

Closing remarks:

- There is a **thin line** between judicial activism and judicial overreach.
- **Judicial discipline** must be maintained.
- Cases invoking **Article 142** be referred to bench of **at least 5 judges**.
- For political & social change in society, **Activism** is necessary, but should be **within limits**.
- Courts must exercise restraint and **not act as a super-legislature**.
- Judicial activism is **good** as an extension of judicial **review**. However, it should **not** grow into judicial **overreach**.

Previous Year Questions:

- ❑ **Mains 2020: Judicial Legislation** is antithetical to the doctrine of **separation of powers** as envisaged in the Indian Constitution. In this context justify the filing of large number of **public interest petitions** praying for issuing guidelines to executive authorities.
- ❑ **Mains 2014:** Starting from inventing the **basic structure** doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by **judicial activism** in achieving the ideals of democracy.
- ❑ **Mains 2008:** What is meant by **Judicial Activism**? Evaluate its role in the context of the functioning of Indian Polity.
- ❑ **Mains 2005:** Is it possible to distinguish between **judicial review** and **judicial activism** in India? Does the recent behavior of the Indian judiciary partake more of judicial activism? Argue with suitable example.
- ❑ **Mains 1996:** What is meant by '**Judicial Activism**'? Evaluate its role in reducing corruption in public life.

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Supreme Court Regional Benches: A Private Member Bill by P Wilson, appeal by Bar Councils to CJI Ramana for Southern Bench revive debate

Meera Emmanuel .

Published on : 27 Jul, 2021 , 10:34 pm

Regional Benches of Supreme Court

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Vice President Bats For Regional Benches Of Supreme Court

LIVELAW NEWS NETWORK
12 Aug 2019 9:27 AM

The SC should have separate divisions to deal with appeals and constitutional issues, he suggested.

Under article 130:

- **Delhi** is the seat of Supreme Court of India.
- **CJI** can set up regional benches after President's approval.
- **Constitutional amendment** is not needed to set up regional benches.

How will regional benches help?

- ❑ **Access to justice:** Litigants have to travel long **distance** and spend huge amount of **money** to fight case in Delhi. Many don't file appeal due to this reasons.
- ❑ **Pendency:** **65,000 cases** pending in SC; disposal will fasten with regional benches
- ❑ **Efficiency:** SC at Delhi would only hear **Constitutional cases**, which are otherwise delayed due to large number of appeals.
- ❑ **DPSP Article 39-A:** justice should not be denied due to economic reason or other disability.

<i>Arguments against regional benches</i>	<i>Counter-arguments</i>
<ul style="list-style-type: none"> ▪ It will dilute the authority of SC. 	<ul style="list-style-type: none"> ▪ Regional benches of Bombay HC have not diluted its authority. ▪ Only SC at Delhi will deal with constitutional matters, so no question of dilution/competition.
<ul style="list-style-type: none"> ▪ It will weaken the integrated system of judiciary. ▪ In 2010, full court of SC cited this as reason to reject law commission recommendation. 	<ul style="list-style-type: none"> ▪ Regional benches of HCs have not affected integrated judiciary system.

❑ Law Commission

- **1984:** SC should consist of two divisions: (a) Constitutional Division, and (b) Legal Division
- **2009:** Constitution bench at Delhi; four regional benches for appeals

❑ Parliament:

- In 2004, 2005, 2006, Standing Committees of Parliament recommended regional benches.

❑ Supreme Court in 1986:

- recommended establishment of National Court of Appeal with regional Benches at Chennai, Mumbai and Kolkata.

Conclusion:

With rising case pendency and difficulties faced by poor litigants, it is time that the idea of regional benches be put into action.

Cooling off period for Judges

Points can be used in:

- Independence of Judiciary
- Separation of power

2020: Retd CJJ made RS member within 4 months of retirement.

2014: Retd CJJ made Governor within 4 months of retirement.

Such cases have re-ignited demand for cooling-off period for judiciary.

Question: Should there be a cooling-off period for judges?

No, cooling-off period is not needed:

- Article 124(7)** restricts **post-retirement appointment** in judiciary itself, not in legislature or executive.
- Appointments to legislature helps bring **legal perspective** on important bills; add value to debates.
- Nomination** to RS by President is not same as joining a political party; so **impartiality** should not be in question.
- Its not for the first time. [Ranganath Mishra ret. in 1991; joined RS in 1998]

Yes, cooling-off period is need of the hour:

- Such nominations **influences judiciary** to give a favorable ruling in return for attractive post-retirement jobs.
- It weakens the Constitutional spirit of **Separation of power**.
- It will strengthen **independence of judiciary**, and people's faith in courts.
- Both LS and RS already have top **lawyers as members**, to give legal perspective.
- M Hidayatullah became VP after 9 years; Ranganath Mishra became RS-MP after 7 years.

Way forward:

- Implement **cooling-off period**, as in practice for Group-A officers (two years).
- Just like Section-8 of Lokpal Act 2013, bar judges from taking assignment as ambassador, Governor, etc.
- British practice** of automatic nomination to upper house could be explored. (Each and every judge of the Supreme Court has the right to sit in the House of Lords for the rest of his or her life.)

Constituent Assembly debates:

- KT Shah** suggested to bar retired SC/HC judges from executive posts, to prevent any temptation affecting independence of judiciary.
- Ambedkar** argued that judiciary decides cases in which govt hardly has any interest. (true for those times)
- However, today this argument is not valid as **govt. is the largest litigant** in courts.

Additional info:

- Law Commission:**
 - in its 14th report 1958 recommended banning post-retirement **government employment** for Supreme Court judges.
 - But, Nominations to **RS** or appointment as **Governor** are **not** considered as govt. **employment**.
- Article 80:** President can nominate 12 persons to RS: arts, literature, science, social service.
- Group-A** Government officers cannot seek commercial employment within 2 years, post their retirement, without the permission of the government.