



Sambhav-2024

Day 13 : What do you understand by Judicial Activism and Judicial Overreach? How do they affect the principle of separation of powers among the different organs of the government? (250 Words)

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Approach / Explanation / Answer

- Define the terms judicial activism and judicial overreach and give examples of each.
- Explain the concept of separation of powers and its significance for a democratic system of government.
- Analyze how judicial activism and judicial overreach can affect the principle of separation of powers and the balance between the executive, legislative and judicial branches of government.
- Conclude Suitably.

Introduction

Judicial activism refers to the proactive **use of judicial authority to define and enforce what is for the benefit of society**, whereas **judicial overreach** occurs **when the judiciary interferes with the legislative and executive ability to operate properly**, thus infringing on their domains.

Separation of powers is a doctrine of constitutional law that **divides the powers and functions of the government into three branches**: the executive, the legislative and the judicial. The purpose of this **doctrine is to ensure that no branch becomes too powerful or dominant over the others**. Separation of powers is an essential feature of a democratic system of government, as it protects the rights and liberties of the citizens from arbitrary or tyrannical rule.

Body

Judicial activism and judicial overreach can affect the principle of separation of powers in different ways:

- **Judicial activism can be seen as a positive and necessary aspect of the judiciary, as it can:**
 - Protect the rights and interests of the people, especially the marginalized and oppressed sections of the society, from the failures or excesses of the executive and legislative branches.
 - Uphold the constitutional values and principles, and ensure that the laws and policies are in conformity with the basic structure and spirit of the constitution.
 - Examples: Kesavananda Bharati v. State of Kerala (1973), Maneka Gandhi v. Union

of India (1978), Vishaka v. State of Rajasthan (1997) and National Legal Services Authority v. Union of India (2014), where the **Supreme Court expanded the scope and meaning of fundamental rights**, and issued guidelines and directions for the protection and welfare of the citizens.

▪ **Judicial overreach can be seen as a negative and harmful aspect of the judiciary, as it can:**

- Encroach upon the domains and functions of the executive and legislative branches, and undermine the principle of separation of powers.
- Result in the judiciary becoming too powerful or activist, and imposing its own views and preferences on the other branches and the society at large. It may lead to a reaction from the executive and legislature which may cause increased friction between the three organs.
- Erode the public trust and confidence in the judiciary, and invite criticism and backlash from the other branches and the people.
 - **Examples: Shyam Narayan Chouksey v. Union of India (2016)**, where the Supreme Court made it mandatory for all cinema halls to play the national anthem before the start of a movie, and **Common Cause v. Union of India (2018)**, where the Supreme Court legalized passive euthanasia and living wills, without any specific legislation on the issue.

Conclusion

The judiciary, as the guardian of the constitution and the rights of the people, has a vital and constructive role to play in a democracy, but it should also exercise its powers with caution and restraint, and respect the boundaries and functions of the other branches of government.

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