



Debate Over Judicial Activism

For Prelims: [Judicial overreach](#), [Separation Of Powers](#), [Supreme Court](#), [High Courts](#), [Judicial Review](#), [Fundamental Rights](#), [Collegium System](#), [National Judicial Appointment Commission \(NJAC\)](#)

For Mains: [Restatement Of Values Of Judicial Life](#), Significance of Independence and Accountability of the Indian Judiciary and Related Concerns, [Pendency of Cases](#).

[Source: TH](#)

Why in News?

India is witnessing a growing debate on the judiciary's expanding influence, with concerns raised about '**judicial despotism**' clashing with the view that Supreme Court interventions are crucial for **upholding constitutional values**.

- Some of the recent judgments have ignited discussions on the **separation of powers** and whether the **judiciary has overstepped its constitutional limits**.

What is Judicial Despotism?

- **About: Judicial Despotism** refers to a situation where the judiciary, especially the higher courts, exercises **excessive or unchecked power**, often **going beyond its constitutional mandate**, thereby **undermining the roles of the legislature** and the **executive**.
- **Key Features:**
 - **Overreach into Other Organs:** When **courts start making laws** (legislative function) or directly intervening in administrative decisions (executive function) **beyond constitutional limits**.
 - **Frequent Use of Extraordinary Powers:** For example, frequent invocation of **Article 142** (which **allows** the Supreme Court to do "complete justice") **without clear legal or constitutional backing**.
 - **Supersession of Democratic Will:** When unelected judges **consistently override decisions made by democratically elected governments** without adequate justification.
 - **Lack of Accountability:** The higher judiciary enjoys **wide powers with minimal external accountability**, which, if misused, can lead to authoritarian tendencies.

Concept	Meaning	Nature	Intent	Legitimacy	Examples	Impact
Judicial Activism	Proactive interpretation and enforcement of rights and constitutional values	Corrective and constructive	To uphold justice, protect rights	Within constitutional framework	Vishaka Guidelines, PILs for environmental rights	Enhances accountability and rights protection
Judicial Overreach	Judiciary crossing its limits and entering executive/legislative domain	Excessive and intrusive	To fill a governance vacuum, often with good intent	Borderline unconstitutional	Ordering liquor bans near highways, policy interference	Disrupts balance of powers
Judicial Despotism	Systemic, unchecked judicial dominance over other organs	Authoritarian and undemocratic	Assertion of supremacy, ignoring constitutional limits	Often outside constitutional boundaries	Frequent use of Article 142, overriding democratic will	Threatens democracy and constitutional order

What are the Instances Related to Judicial Activism and Restraints?

Instances Showing Judicial Activism

- **Broad Use of Article 142:** The SC has, in some cases, been accused of **issuing wide-ranging directives** (e.g., in mob lynching, Babri Masjid, divorces on irretrievable breakdown) where existing laws already provided a framework.
- **Other Instances of Judicial Activism:**
 - Directing states to **distance liquor shops from national highways (500 meters)** to prevent road accidents.
 - Assuming the power to **issue writ of mandamus against the President and Governors** for assenting to state bills.
 - Providing **compensation for victims of the Bhopal gas tragedy (1989)**.
 - Issuing **guidelines against sexual harassment at the workplace (1997)**.
 - Granting **permanent commissions to women officers** in the armed forces (2024).
- **Democratic Legitimacy:** Judicial activism upholds Constitutional supremacy by ensuring elected governments act within constitutional limits, as affirmed by SC in [*R Coelho v. State of Tamil Nadu \(2007\)*](#).

Instances Showing Judicial Restraint

- **Selective Intervention Only:** The SC has generally upheld existing public policies and rarely invalidates laws. It **upheld demonetisation, Rafale deal, NRC in Assam, and UAPA bail restrictions**. It **refused to recognise same-sex marriage, dismissed Pegasus probe calls, and did not hear key cases on EVMs and CAA**.
- **Recognised Judicial Restraint:** In [*Shreya Singhal Case \(2015\)*](#), and [*NJAC case \(2015\)*](#), the Court acted to protect fundamental rights and judicial independence, **not to assert supremacy**.
- **Delay in Hearing Key Cases:** Petitions related to **Citizenship (Amendment) Act, 2019, Electronic Voting Machine (EVM) and Pegasus surveillance** have seen little progress, raising concerns about **selective judicial passivity**.
- **Acceptance of Sealed Evidence:** SC has been criticised for **undermining transparency and due process** (e.g., in Rafale and bail cases).

What is Judicial Review?

- **About:** Judicial review refers to the **power of constitutional courts** (SC and HC) to examine the constitutionality of **legislative enactments** and **executive actions**.
- **Constitutional Provisions:** Though the term “**Judicial review**” is **not explicitly mentioned in the Constitution**, it is implied in various articles of the constitution such as:
 - **Article 13**, which declares any law inconsistent with fundamental rights as void.
 - **Articles 32 and 226** which entrusts the roles of the protector and guarantor of **fundamental rights** to the SC and HC.
 - **Articles 131-136** empowers the Supreme Court to adjudicate disputes involving individuals, states, and the Union (interpretations by the SC become binding law across all courts).
 - **Article 137** grants the SC power to **review its own judgments**
- **SC's Stands on Judicial Review:**
 - In [Kesavananda Bharati v. State of Kerala \(1973\)](#) and in [Indira Gandhi v Raj Narain case \(1975\)](#), SC held **judicial review** as a **basic feature of the Constitution**, immune from even constitutional amendments.
 - In the [Minerva Mills Case \(1980\)](#), the SC reiterated that **limited government and constitutional supremacy** are foundational principles, safeguarded through judicial review.
- **Examples of Judicial Review:**
 - In [Shreya Singhal v. Union of India \(2015\)](#), SC struck down **Section 66A of the IT Act** as unconstitutional for violating **freedom of speech and expression** under Article 19(1)(a).
 - In [Supreme Court Advocates-on-Record Association v. Union of India \(2015\), \(or Fourth Judges Case\)](#) SC struck down **National Judicial Appointments Commission (NJAC) Act** and 99th Constitutional Amendment, protecting **judicial independence**.

Article 142

- **Article 142** of the Indian Constitution grants the Supreme Court the power to pass any decree or order necessary to do “**complete justice**” in a case.
- It grants the Supreme Court **residual, discretionary, and extraordinary powers** to fill **legislative gaps** or **address exceptional circumstances** where no law exists.
- **Landmark Uses:**
 - [Babri Masjid-Ram Janmabhoomi case \(2019\)](#), allotted alternate land to Muslims.
 - [Divorce on grounds of irretrievable breakdown](#), SC granted divorce even when not provided in the [Hindu Marriage Act 1955](#).

Judicial Restraint

- **Judicial Restraint** is the **opposite of Judicial Activism**. It is a judicial philosophy that **encourages judges to limit the exercise of their power** and **avoid intervening in policy-making**.
- Judges should interpret the law based on the **original intent of the Constitution's framers** and **precedents set by past decisions**.

Way Forward

- **Exercise Judicial Restraint:** The judiciary should practice **judicial restraint**, as advocated by the Supreme Court, ensuring that **it does not encroach upon the roles of the legislature or executive**.
- **Promote Judicial Accountability:** Internal reforms such as **reasoned judgments, peer reviews, and performance audits** can enhance accountability while preserving judicial independence and public trust.

- **Institutional Balance and Dialogue:** All three organs-judiciary, legislature, and executive **must adhere to their constitutional spheres**, and institutional dialogues should be encouraged to **reduce friction and promote separation of power**.
- **Ensuring Checks and Balances:** A **robust mechanism for checks and balances** should be established among all three organs to ensure a **fair distribution of power, preventing any institution from overstepping its mandate**, while **upholding the supremacy of the Constitution**.

Drishti Mains Question:

Examine the balance between judicial activism and judicial restraint in the Indian constitutional framework.

UPSC Civil Services Examination Previous Year Questions (PYQ)

Prelims

Q1. Consider the following statements: (2013)

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.
2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (b)

Q2. A Parliamentary System of Government is one in which (2020)

- (a) all political parties in the Parliament are represented in the Government
- (b) the Government is responsible to the Parliament and can be removed by it
- (c) the Government is elected by the people and can be removed by them
- (d) the Government is chosen by the Parliament but cannot be removed by it before completion of a fixed term

Ans: (b)

Q3. There is a Parliamentary System of Government in India because the (2015)

- (a) Lok Sabha is elected directly by the people
- (b) Parliament can amend the Constitution
- (c) Rajya Sabha cannot be dissolved
- (d) Council of Ministers is responsible to the Lok Sabha

Ans: (d)

Mains

Q. Do you think that the Constitution of India does not accept the principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. (2019)

