

Unit 33. Judicial Review vs Judicial Activism vs Judicial Overreach



Judicial Review, Judicial Activism and Judicial Overreach are terms which come often in news. In this post, we shall compare Judicial Review vs Judicial Activism vs Judicial Overreach.

Judicial Review

Though legislature has the power to make laws, this power is not absolute. Judicial Review is the process by which the Judiciary **review the validity of laws** passed by the legislature.



- **From where does the power of Judicial Review come from:** From the Constitution of India itself(Article 13).

- The power of judicial review is evoked to protect and enforce the fundamental rights guaranteed in Part III of the Constitution.
- Article 13 of the Constitution prohibits the Parliament and the state legislatures from making laws that “may take away or abridge the fundamental rights” guaranteed to the citizens of the country.
- The provisions of Article 13 ensure the protection of the fundamental rights and consider any law “inconsistent with or in derogation of the fundamental rights” as void.
- Under Article 13, the term ‘law’ includes any “Ordinance, order, bye-law, rule, regulation, notification, custom or usage” having the force of law in India.
- **Examples of Judicial Review:** The striking down of the Section 66A of the IT Act as it was against the Fundamental Rights guaranteed by the constitution.

Judicial Activism

Judicial activism denotes a more active role taken by Judiciary to dispense social justice. When we speak of Judicial Activism, we point fingers to the invented mechanisms which have no constitutional backing (Eg: Suo moto (on its own) cases, Public Interest Litigations (PIL), new doctrines etc).



- **From where does the power of Judicial Activism come from:** Judicial Activism has no constitutional articles to support its origin. Indian Judiciary invented it. There is a similar concept in the United States of America.
- Suo Motto cases and the innovation of the Public Interest Litigation (PIL), with the discontinuation of the principle of Locus Standi, have allowed the Judiciary to

intervene in many public issues, even when there is no complaint from the concerned party.

- Although the earlier instances of Judicial Activism was connected with enforcing Fundamental Rights, nowadays, Judiciary has started interfering in the governance issues as well.
- **Examples of Judicial Activism:** Invention of the 'basic structure doctrine' in the 'Keshavanad Bharati case' (1973) by which Supreme Court further extended the scope of Judicial Review, incorporation of due process of law instead of procedure established by law, collegium system, institutionalization of PIL, banning smoking in public places based on PIL, the order by Supreme Court in 2001 to provide mid-day meals to schoolchildren, the order passed by the National Green Tribunal (NGT) banning diesel trucks older than 10 years in Delhi etc.

Judicial Overreach

The line between Judicial activism and Judicial Overreach is very narrow. In simple terms, when Judicial activism crosses its limits and becomes Judicial adventurism it is known as Judicial Overreach. When the judiciary oversteps the powers given to it, it may interfere with the proper functioning of the legislative or executive organs of government.



- **From where does the power of Judicial Overreach come from:** Nowhere. This is undesirable in any democracy.
- Judicial Overreach destroys the spirit of separation of powers.
- **Examples of Judicial Overreach:** What makes any action activism or overreach is based upon the perspective of individuals. But in general, striking down of NJAC bill and the 99th constitutional amendment, the order passed by the

Allahabad High Court making it compulsory for all Bureaucrats to send their children to government school, misuse the power to punish for contempt of court etc. are considered as Judicial Overreach.



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