

General Studies – 2 Topic: Functioning of judiciary

Judicial Activism

1) Introduction

- The judicial activism is use of judicial power to articulate and enforce what is beneficial for the society in general and people at large.
- Judicial activism gives jurists the right to strike down any legislation or rule against the precedent if it goes against the Constitution.
- Failure on part of the legislative and executive wings of the Government to provide 'good governance' makes judicial activism an imperative.

2) Background

- Judicial activism began when access to courts was opened up to the poor, indigent and disadvantaged sections through Public Interest Litigation (PIL).
- The judiciary, led by the Supreme Court, became an active participant in the dispensing of social justice and increased its relevance to the nation in a manner not envisaged by the makers of the Constitution.
- The Golak Nath case is an example of judicial activism.
- In Kesavananda Bharati case the Supreme Court held that by Article 368 of the Constitution, Parliament has amending powers but does not extend to alter the basic structure of the Constitution.

3) Reasons for judicial activism

- Near Collapse of responsible government
- Pressure on judiciary to step in aid.
- Judicial enthusiasm to participate in social reform and change.
- Legislative vacuum left open.
- The constitutional scheme.
- Authority to make final declaration as to validity of a law.
- Role of Judiciary as guardian of fundamental rights.
- Public confidence in the judiciary etc.

4) Arguments against Judicial Activism

- Whether it is diesel, drought or social engineering, courts neither have the expertise to make decisions nor can they be held accountable for the consequences of their decisions.
- The parallels with judicial activism in India are as striking as they are disturbing.
- Unrestrained judicial activism does a disservice to governance in the country and damages its economic growth prospects.
- The Supreme Court is increasingly, and controversially, asserting control over the executive and legislature.
- In the Jharkhand assembly case, the speaker was directed to conduct proceedings as per a prescribed agenda and record them for the court in spite of Article 212, which forbids courts from inquiring into any proceedings of the legislature.
- President Mukherjee cautions judges against perils of 'judicial activism'
- Judicial activism should not lead to the dilution of separation of powers, which is a constitutional scheme.

- Mahatma Gandhi who advocated that the means used for achieving a particular result must also be as acceptable as the result itself.
- Judicial activism or the mere pursuit of ends without regard to the means, has become the dominant approach in judicial thinking.

5) Recent Court interventions

- Judges have doubled the tax on diesel vehicles entering Delhi
- Banned the traditional bullfight in Tamil Nadu
- Struck down an amendment that would change the way judges were appointed to the courts.
- 97% of the penalty imposed by Competition Commission of India (CCI) since inception had been stayed by the courts or appellate authorities.
- In its recent order banning liquor sale and consumption, the Uttarakhand High Court has crossed its legal remit by extending a government policy of prohibiting liquor outlets in the vicinity of places of worship
- SC has ordered the Centre to create a new policy to handle drought,
- Supreme Court ruling that the National Eligibility-cum-Entrance Test (NEET) would be the only test for admissions to medical courses in India
- SC gave directions to the Election Commission to order candidates to disclose their criminal convictions, their assets and liabilities at the time of elections
- It ordered control over automobile emissions, mandatory wearing of seat belts and helmets, action plans to control and prevent the menace of monkeys in cities and towns, among others.

6) The issue on SLP

- Extraordinary jurisdiction of special leave petitions (SLP) under Article 136 appears to have been reduced to a regular appellate one.
- As many as 34,500 SLPs were filed in 2014, of which 43% were admitted, in a Supreme Court with a case load of more than 60,000.
- The Supreme Court has refused to issue norms and guidelines for the acceptance of SLP, leaving the system vulnerable to arbitrary decisions on the admission and rejection of SLP.

7) Way Forward

- The people of India and their representatives should explore ways of addressing judicial activism in the country.
- Howsoever noble an idea may be, courts should be wary of making rules on their own, as it would amount to transgressing into the policy domain.
- Equilibrium in the exercise of authority must be maintained at all times with the powers of the legislature and executive subject to judicial review.
- Each organ of our democracy must function within its own sphere and must not take over what is assigned to the others
- The only check possible in the exercise of powers by the judiciary is self-imposed discipline and self-restraint by the judiciary itself
- The faith and confidence of people in the judiciary must always be maintained. The judiciary must provide accessible, affordable and quick justice to the people.

8) Conclusion

- The Judiciary cannot take over the functions of the Executive.
- Judicial activism, however, does not mean governance by the judiciary.

- Judicial activism must also function within the limits of the judicial process because the courts are the only forum for those wronged by administrative excesses and executive arbitrariness.

