

Judicial Overreach - Indian Polity

Judicial overreach is a term commonly used when the judiciary seems to have overstepped its mandate. As IAS aspirants, it is important to understand what the term means and how it is different from judicial activism. In this article, you can read all about judicial overreach for the IAS exam.

Judicial Overreach

There is a thin line dividing **judicial activism** and **judicial overreach**. While the former implies the use of judicial power to articulate and enforce what is beneficial for society in general, the latter is when judicial activism crosses its limit. Although this is a matter of perspective, there are many examples that are widely regarded as cases of judicial overreach in India.

- Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government, i.e., the judiciary crosses its own function and enter the executive and legislative functions.
- Judicial overreach is considered undesirable in a democracy.
- It also goes against the principle of separation of powers.
- In defence of judicial overreach, the judiciary has always maintained that it stepped in only when there were cases of executive and legislative underreach.

Judicial Overreach Examples

Although it is a matter of perception as to when there has been a judicial overreach, there are some examples that are cited generally to showcase overreach by the judiciary. A common example is misusing the power to punish for contempt of court.

NJAC bill and the 99th constitutional amendment

The Supreme Court struck down the National Judicial Appointments Commission (NJAC) which was established through the 99th Constitutional Amendment on grounds that it was unconstitutional. This was to replace the collegiate system.

Allahabad High Court Order

In 2015, the Allahabad High Court passed an order stating that children of public functionaries/ bureaucrats in Uttar Pradesh should be enrolled only in government schools.

Proactive Censorship in case of Jolly LLB 2 (Movie)

After the movie Jolly LLB 2 was certified by the Central Board for Film Certification (CBFC), a petition was filed that claimed that this film violated Section 5B of the Cinematograph Act, 1952. Section 5B deals with the prevention of the certification of films that involve defamation or contempt of court. The court appointed a commission that looked into it, and finally the commission ordered four cuts in the film and also asked the CBFC to recertify the film. This was in violation of the Cinematograph Act, which does not give courts any power to certify or modify films.

UPSC Questions related to Judicial Overreach

What is judicial adventurism?

When the judiciary oversteps its mandate and steps into the territory of the executive and the legislative, it can be termed judicial adventurism.

Is judicial review and judicial activism the same thing?

No, both are not the same. Judicial review means the judiciary should review a particular case, and decide if the law/act is consistent with the Constitution. It refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution. Judicial activism is one step ahead of judicial review.

What is judicial activism UPSC?

Active role of judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism. Expansion of judicial control over discretionary power is a feature of judicial activism. As with any form of activism, beauty is in the eye of the beholder here. It is a matter of perception when activism crosses over into the realm of judicial overreach.

What is an example of judicial activism?

In 2016, the SC ordered the Centre to craft a new policy to handle droughts. This is considered a case of judicial activism since it is debatable whether the court has the right to order the government to frame policies. The court took this up because of the pathetic condition of farmers in the drought-hit regions of India.