



La Excellence
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Title	The problem with judicial legislation
Syllabus	General Studies-II - Indian Polity and Constitution - Indian Constitution - Important and latest amendments, Basic structure
Issue	Judicial activism
LaEx Notes	<p>Context: There has been an increasing phenomenon in courts across the world to violate the separation of powers doctrine.</p> <p>Highlights</p> <ol style="list-style-type: none">1) Several states in the USA have passed laws that ban the practice of abortion. Such laws would surely be subjected to judicial scrutiny if they are violative of any fundamental rights2) Supreme Court in USA would depend on many earlier decisions to access the constitutional validity of this law. In one of the cases (Griswold v. Connecticut), Supreme Court of USA had evolved a new right- Right to privacy (example of judicial legislation). Banning of abortion would be weighed against this new right by the court3) There has been an increasing many against this behavior of the courts to resort to judicial legislation4) What is judicial legislation? Judicial legislation means new legal rules made by judges. Usually the judicial branch has no power to veto any legislation, but they can use judicial review to label properly challenged legislation unconstitutional.5) The doctrine of separation of powers is a basic feature of the constitution, judicial legislation violates this principle6) Instances of judicial legislation in Indian judiciary:<ul style="list-style-type: none">• State of Tamilnadu v K. Balu, the Supreme Court banned liquor shops within 500 m of highways, which was a legislative order.• K. Puttaswamy v. Union of India, it created a right to privacy, which is nowhere mentioned in the fundamental rights laid down in the Constitution.• Subhash Kashinath Mahajan it amended the SC/ST Act.• NCT, Delhi, Sabarimala and LGBT cases it laid down the 'constitutional morality' test• Fixing timings for bursting crackers on Deepavali• Directing for interlinking of rivers

- It laid down regulations for the Board of Control for Cricket in India
- Creation of collegium system for judicial appointments

7) Consequence of such judicial activism: it creates unpredictability in the law apart from violating the principle of separation of powers. Laws made by subjective notions of certain judges are dangerous.

Takeaway point: Judicial activism shifts the centre of balance in our democracy in favor of courts. There should be general restraint by judges to resort to judicial legislation.

Previous Questions

#	Previous UPSC Question	Year	Marks
1	Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remains in force? (10)	2018	
2	Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (250 words)	2017	
3	To what extent is Article 370 of the Indian Constitution, bearing marginal note "Temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.	2016	
4	What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?	2016	
5	Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (200 words) 15 marks	2015	
6	Khap Panchayats have been in the news for functioning as extra-constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard. (200 words) 15 marks	2015	
7	Does the right to clean environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgement(s) of the Apex Court in this regard. (200 words) 15 marks	2015	
8	Starting from inventing the basic structure doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy. (200 words) 10 marks	2014	
9	What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the	2014	

- films in India stand on a slightly different plane from other forms of expression? Discuss. (200 words) 10 marks
- 1 Discuss -Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution. (200 words) 10 marks 2013
- 1 'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically. (200 words) 10 marks 2013
- 1 Enumerate the fundamental duties incorporated in the Constitution after the 42nd amendment. (150 words) 15 marks 2008 20
- 1 Do you think there is a need for a review of the Indian Constitution? Justify your view. (150 words) 15 marks 2008 20
- 1 Bring out the differences between the Fundamental Rights and the Directive Principles of State Policy. Discuss some of the measures taken by the Union and State Governments for the implementation of the Directive Principles of State Policy. (150 words) 2007
- 1 What is right to life and personal liberty? How have the courts expanded its meaning in recent years? (250 words) 2006
- 1 Give your views on the right to freedom of religions as enshrined in the Indian Constitution. Do they make India a secular State? (250 words) 2005
- 1 What are the constitutional limitations on the free movements of Indians throughout the country? (150 words) 2005
- 1 Discuss how the Constitution of India provides equal rights. (250 words) 2004
- 1 Highlight the significance of Forty Fourth Amendment to the Constitution of India (150 words) 2003
- 2 Identify the major Fundamental Duties (150 words) 2003
- 2 How is the Constitution of India amended? Do you think that the procedure for amendment makes the Constitution a play-thing in the hands of the Centre? (250 words) 2002
- 2 Discuss the constitutional provisions relating to the non-justiciable directives binding upon the states. (150 words) 2002
- 2 What is the constitutional position of Directive Principles or State Policy? How has it been interpreted by the judiciary after the emergency in 1975 – 77? (250 words) 2001
- 2 Discuss the constitutional provisions regarding the rights of children. (150 words) 2001
- 2 What constitutes the doctrine of 'basic features' as introduced into the Constitution of India by the Judiciary? (250 words) 2000
- 2 what grounds does Article 15 of the Indian Constitution prohibit discrimination? Indicate the way the concept of 'Special protection' has qualified this prohibition, and contributed to social change (About 250 words). 1999
- 2 What is the importance of Directive Principles of State Policy? 1999



- 7 Mention which Directive Principles of State Policy have got primacy over the Fundamental Rights. (150 words)
- 2 Highlight the significance of the Twenty Fourth Amendment to the Constitution of India? (150 words) 1999
- 8
- 2 Highlight the significance of the Seventy-third Amendment to the Constitution of India. (150 words) 1998
- 9
- 3 What are the various writs available to the citizens of India? (150 Words) 1993
- 0
- 3 What are the general features of the amending procedures of the Constitution of India? About 250 words (40) 1992
- 1
- 3 What are the major recommendations of the National Perspective Plan for women, 1988 and what are the relevant recommendations as envisaged in the Constitutional Amendment Bill (64th Amendment)? 1990
- 2
- 3 Briefly mention why and how the Chapter on Directive Principles gained precedence over the Chapter on Fundamental Rights in the Indian Constitution (About 250 words). 1987
- 3
- 3 Explain the grounds on which the President can proclaim an state emergency . Give examples from the recent experience 1985
- 4
- 3 Many countries which achieved independence after the war have come under dictatorship or military rule.What are the forces that have enabled India to maintain a democratic system? Consider in this connection, the emergency provision in the constitution of India, in making your presentation. 1983
- 5
- 3 Differentiate between the fundamental rights and directive principle of state policy, Do you think that the later has been adequately implemented? Give reasons for your views. 1982
- 6