



**PERFECTION
IAS**

50 DAYS PLAN

Mains Answer Writing Program
for **BPSC 67**

INDIAN POLITY

9. What do you mean by Judicial Review? Judicial Activism is a double edged sword in a parliamentary democracy". Comment.
9. न्यायिक समीक्षा से आप क्या समझते हैं? संसदीय लोकतंत्र में न्यायिक सक्रियता एक दोधारी तलवार है।" टिप्पणी कीजिए।

REG. OFFICE: 103, KUMAR TOWER, BORING RD. CROSSING, PATNA

9031036700 / 9031036701

[f](#) /Perfection IAS [t](#) Perfection IAS(Official) www.perfectionias.com



67TH BPSK MAIN EXAM

INDIAN POLITY

Ques 9. What do you mean by Judicial Review? Judicial Activism is a double edged sword in a parliamentary democracy". Comment.

I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law. It is the power of judicial review and it is unquestionably, to my mind, a part of the basic structure of the Constitution — P.N. Bhagwati

Judicial review is the power bestowed upon the judiciary by the constitution, by virtue of which the judiciary can examine legislative enactments and executive orders of the governments, be it state or central. This doctrine traces its origin to the United States of America where it was put forward in the case of **Marbury Vs Madison**. In India this doctrine has been provided under Article 13, 32 and 226 of the Indian Constitution.

Importance of judicial review

- Judicial review is necessary to uphold the principle of supremacy of the constitution.
- The provision of judicial review prevents the misuse of power by the legislature and executive.
- It maintains the equilibrium between the centre and state, thereby maintaining federal equilibrium.
- The provision protects the fundamental rights of the citizens.
- This provision ensures the principle of the independence of the judiciary.

Scope of judicial review

Judicial review isn't absolute as some conditions need to be fulfilled to challenge any law in the supreme court or the high courts, i.e., a law can be challenged only if:

- The said law infringes upon the fundamental rights guaranteed by the constitution.
- The said law goes against the provisions listed in the constitution.
- The law that has been enacted goes beyond the competency of the authority that has framed it.

Types of judicial review

The provision of judicial review in India has been famously divided into three broad categories by Justice Syed Shah Mohamed Quadri.

- Judicial review of constitutional amendments.
- Judicial review of legislation by the parliament and state legislatures expands to subordinate legislation.
- Judicial review of administrative actions of the union and state expanding up to authorities under the state.

Judicial Activism

Judicial activism refers to the interference of the judiciary in the legislative and executive fields. Judicial activism has primarily arisen due to the failure of the executive and legislatures to act. As a result of that, judicial activism is triggered when the courts become activists and compel the relevant authority to act. This has led lawmaking in India's Parliamentary democracy to assume new dimensions.

Judicial Activism strengthening Parliamentary Democracy

- **Legislature and Executive Failure:** Failure of Legislature and Executive to discharge their respective functions results in erosion of the confidence in the Constitution and democracy amongst the citizens. Judicial activism helps in upholding faith of citizens in the constitution and judicial organs.
- **Check Reality:** In a modern democratic set up, judicial activism acts as a mechanism to curb legislative adventurism and executive tyranny by enforcing Constitutional limits.
- **Progressive Policies:** Judicial activism allows judges to adjudicate in favour of progressive and new social policies helping in social engineering.
- **Expansion of Rights:** Judicial activism helps in protecting or expanding individual rights. When the legislature and the executive fail to protect the basic rights of citizens, like the right to live with dignity, judicial activism plays an important role.
- **Fills Legislative Vacuum:** Judicial activism fills the Legislative Vacuum i.e areas, which lack proper legislation. This helps the country to meet the changing social needs.
- **Hung Legislature:** In case of a 'hung' legislature when the government is weak and insecure, judicial activism plays an important role in ensuring social justice.
- **Fear of Losing Power:** Sometimes politicians are afraid of taking honest and hard decisions for fear of losing power. Judicial activism helps in plugging such active political lacunae.
- **Administrative Efficiency:** Judicial activism helps in enhancing administrative efficiency and helps in good governance.



- **Balancing Power:** Judicial activism sometimes helps in balancing powers among various organs of government through judicial control over discretionary powers.
- **Holistic Objectives:** Judicial activism allows participation of the judiciary in the advancement of the country and upholding democracy by extending the standard rules of interpretation in achieving economic, social and educational objectives.

Judicial Activism undermining Parliamentary Democracy

- **Separation of Power:** It destroys the spirit of separation of powers, thus damaging the balance between various organs of government.
- **Judicial Overreach:** The line between Judicial activism and Judicial Overreach is very narrow. When Judicial activism crosses its limits it leads to Judicial Overreach.
- **Improper Interference:** It may interfere with the proper functioning of the legislative or executive organs of government.
- **Inactivity:** Judicial activism may lead to inactivity of legislature and executive, leading to running away from duties and responsibilities which they hold for people of India.
- **Less experienced:** In many cases, courts are often ill-equipped and lack experience to weigh the economic, environmental and political costs involved like liquor ban cases.
- **No Accountability:** The executive remains “accountable” to the people through a 5 year election process but judges exercise self-regulation and are insulated from any external control and thus accountable only to themselves, and their own sense of their limits.
- **Mischievous Purpose:** Sometimes when judicial activism is exercised, it is done for solely selfish, political or personal reasons.
- **Threat to People’s Trust:** It reduces the trust people pose in the Parliament and elected representatives as frequent overreach signals executive inactivity and incompetency.

Therefore, in a nutshell, the concept of judicial activism has both positives and negatives. If the judiciary intervenes too much in the working of other organs of the government and tries to overreach the constitutional powers then this concept of judicial activism loses its importance and essence. An activist court is certainly far more efficient than a legal positivist-conservative court to safeguard humanity from legislative and executive tyranny. When the elected representatives fail to create a welfare state then the role of judiciary becomes indispensable but the judiciary cannot intervene in the state affairs just to show its supremacy.