



## Sambhav

### Day 13

**Question 1.** What do you understand by the Lok Adalat and Gram Nyayalayas? Also, mention the constitutional and legal provisions behind it. How far the provisions like Lok Adalats achieved doorstep, timely and affordable justice? (250 Words)

**Question 2.** What are Judicial activism and Judicial Overreach? Do you think that judicial activism is double edge sword? (250 Words)

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### Approach / Explanation / Answer

#### Answer 1

##### Approach

- Start your answer by giving a brief about Lok Adalat and Gram Nyayalayas.
- Mention the constitutional and legal provisions behind Lok Adalat and Gram Nyayalayas.
- Discuss the advantages and disadvantages of Lok Adalats.
- Conclude suitably.

##### Introduction

Access to justice by the poor and the disadvantaged remains a worldwide problem and in India also there was huge challenge for the Government of India to deliver justice to all the sections of the society especially the weaker due to huge pending of cases and low number of prosecutors. Hence, to cope with these challenges the Govt. Come up with the idea of Lok Adalat and Gram Nyayalayas.

##### Body

##### Constitutional and Legal Provisions Related to Lok Adalat and Gram Nyayalayas

- **Article 39-A** of the Constitution **directs the State to secure that the operation of the legal system promotes justice**, on the basis of equal opportunity.
- The term '**Lok Adalat**' means '**People's Court**' and is based on Gandhian principles. It is one of the components of the **Alternative Dispute Resolution (ADR)** system and delivers informal, cheap and expeditious justice to the common people. In view of its growing popularity over time, it was given statutory status under the **Legal Services Authorities Act, 1987**. The

Act makes the provisions relating to the organisation and functioning of the Lok Adalats. It has the same powers as are vested in a Civil Court under the Code of Civil Procedure.

- According to **Gram Nyayalaya Act, 2008**, it shall be the court of Judicial Magistrate of the first class, and its presiding officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court. The qualifications, salary, terms and conditions of service of the Nyayadhikari shall be the same as that of the Judicial Magistrate of the first class.

## Achievements of Lok Adalat

- **No Court Fee:** There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat.
- **Procedural Flexibility:** There is procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws while assessing the claim by Lok Adalat.
- **Interactive:** The parties to the dispute can directly interact with the judge through their counsel which is not possible in regular courts of law.
- **Binding Award:** The award by the Lok Adalat is binding on the parties and it has the status of a decree of a civil court, and it is non-appealable, which does not cause a delay in the settlement of disputes finally.

Although the Lok Adalats have done a great job in the doorstep delivery of the justice to the weaker section of the society but is faced with following challenges:

- **Lower Compensation:** When a case is taken up by Lok Adalat, the matter will be solved with lesser cost and within lesser time which means that there is a high probability of getting less compensation and the parties will not get time to claim a higher amount of compensation as it will take more time which he justly could have got.
- **Limited Jurisdiction:** Lok Adalat has jurisdiction over limited types of matters. In Lok Adalat what mostly happens is compromise and settlement which is not the requirement in every case.
- **Delay in Proceedings:** In India, many cases need to be dealt with through punishment-based and correctional methods which cannot be dealt with in Lok Adalat. These types of cases if brought before Lok Adalat, will be unable to impart justice and the case will move to the court. This will create needless trouble and additional delay in legal proceedings, sometimes which is needed as early as possible.
- **Unwillingness of the States:** In a number of the states the Lok Adalats have not been set up due to the unwillingness of the states.

## Conclusion

Judicial institutions like Lok Adalats and Gram Nyayalayas are helping in achieving the Sustainable Development Goal 16 of Peace, Justice and Strong institutions by making justice accessible to each and every section of society and helping in keeping the spirit of justice alive.

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## Answer 2

### Approach

- Start your answer by giving a brief about Judicial Activism and Judicial Overreach.
- Discuss the advantages of Judicial Activism and Judicial Overreach.
- Conclude suitably.

### Introduction

- **Judicial Activism:** It signifies the proactive role of the Judiciary in protecting the rights of citizens. The practice of Judicial Activism first originated and developed in the USA. In India, the Supreme Court and the High courts are vested with the power to examine the constitutionality of any law, and if such a law is found to be inconsistent with the provisions of the constitution, the court can declare the law as unconstitutional. It has to be noted that the subordinate courts do not have the power to review the constitutionality of laws. For example, the Supreme Court directions to govt

for supply of oxygen.

- **Judicial Overreach:** When Judicial Activism goes overboard, and becomes Judicial Adventurism, it is referred to as Judicial Overreach. In simpler terms, it is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. For example, the banning of alcohol within 500m of the National Highway.

## Body

### Advantages of Judicial Activism

- There is near **collapse of the responsible government**, when the Legislature and Executive fail to discharge their respective functions. This results in erosion of the confidence in the Constitution and democracy amongst the citizens.
- The citizens of the country look up to the judiciary for the protection of their rights and freedoms. This leads to **tremendous pressure on judiciary** to step in aid for the suffering masses.
- **Judicial Enthusiasm**, that is, the judges like to participate in the social reforms that take place in the changing times. It encourages the Public Interest Litigation and liberalizes the principle of 'Locus Standi'.
- **Legislative Vacuum**, that is, there may be certain areas, which have not been legislated upon. It is therefore, upon court to indulge in judicial legislation and to meet the changing social needs.
- The Constitution of India has itself adopted certain provisions, which give judiciary enough scope to legislate or to play an active role.

### Disadvantages of Judicial Activism

The jurist Upendra Baxi presented a typology of fears which are generated by judicial activism. He observes: "The facts entail invocation of a wide range of fears. The invocation is designed to bring into a nervous rationality among India's most conscientious justices". He described the following types of fears:

- **Ideological fears:** There is a growing fear that the judiciary is usurping powers of the legislature, the executive or of other autonomous institutions in a civil society and becoming extremely powerful which poses risk of imbalance in relationship of executive, legislature and judiciary.
- **Epistemic fears:** Many times, the court gives many guidelines or judgements in very technical matters which are out of their capacity to deal with like Uniform Civil Code (UCC), and Universal Basic Income etc.
- **Management fears:** It often raises the question that are they doing justice by adding this kind of litigation work load to a situation of staggering growth of arrears.
- **Legitimation fears:** The undue interference of the judiciary in sphere of other organs of Govt. and not getting work done will create legitimacy crisis for the judiciary.
- **Democratic fears:** As judges not get elected but they are appointed. Hence, it means they are not responsible and accountable to the wishes and opinions of the common people which creates governance problems for the ruling party of the day.
- **Biographic fears:** Some judges take many such steps by taking into account one single question that What would be my place in national affairs after superannuation if I overdo this kind of litigation?

## Conclusion

Judicial activism is a great device for promoting the cause of common people by making use of Public Interest Litigation (PIL) but the judges need to be cautious while making use of this device otherwise it would do a great damage to the reputation of the time honoured institution.

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