



Mains Practice Question

Q. The Indian constitution creates a 'Functional overlap' between the legislature, executive and judiciary. Explain. (250 Words)

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Approach

- Begin by differentiating between the types of 'separation of power' and Indian setup based on functional overlap
- Explain with the help of different provisions of the constitution
- Conclude with the objective of such a setup, like creating a structure of checks and balances, etc.

Introduction

Democratic countries use the doctrine of separation of power for avoiding conflict between the various organs of the government. Of the two models of separation commonly followed, one provides for a rigid separation of powers between these three organs i.e. legislature, executive and judiciary, following Montesquieu's dictum e.g. the USA. The second model is of a looser separation or the Westminster model, which is based on the principle of the supremacy of Parliament e.g. Britain

The Indian Constitution provides a third model of separation of powers. While there is recognition of legislative, executive, and judicial bodies, it does not expressly vest the different kinds of power in the different organs of the State nor is there any exclusivity in the nature of functions to be performed by them.

Body

Following provisions of the Constitution exhibit the functional overlap of different government organs

- Parliament determines the number of judges to be appointed in the Supreme Court and has the power to remove judges of the Supreme Court and High Courts by impeachment.
- Terms and conditions of service, including salaries of judges, are also subject to legislative control.
- Although the power of legislation is vested in the Parliament, Executive (ministers) predominates the legislative process as bills are largely introduced by the executive in Parliament or the State legislatures.
- Through 'delegated legislation' parliament empowers the executive to make laws where it is unable to do so.
- The executive exercises judicial powers under several provisions. For instance, it has the ability (in the name of the President) to decide whether a Member of a House of Parliament has become disqualified to continue as such.
- The executive also staffs administrative tribunals set up under Article 323A as well as other tribunals set up under Article 323B to discharge functions earlier carried on by courts.
- The Supreme Court held in Kesavananda Bharati that the power to amend the Constitution under Article 368 did not extend to amending the 'basic structure' of the Constitution. In this way, the Court controls 'legislative extremism'.

- Under the writ of mandamus, the courts command a public official, public body, corporation, subordinate courts, tribunals or government asking them to perform their duties.

Conclusion

The constitutional organization of powers in different organs of governance in an overlapping fashion was done to create a structure of checks and balances to prevent any organ from exercising too much power. The delicate balancing of powers among legislature, executive and judiciary was a result of India's sui generis social, economic and political scenario and the structure set up in this manner continues to efficiently serve our purposes until today.

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