



Mains Practice Question

Q. Critically analyze the impact of judicial activism on the separation of powers in India. Do you think the trend of judicial activism has gone too far in recent years? Substantiate your arguments with suitable examples. (250 words)

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Approach

- Start your answer with a brief introduction about the separation of powers.
- Discuss the Impact of judicial activism on the separation of powers in India.
- Write about trends of judicial activism with examples.
- Conclude accordingly.

Introduction

The concept of separation of powers refers to the division of powers between the legislature, executive and judiciary in a democracy. The judiciary, as an independent organ of the state, is expected to act as a check on the powers of the other two branches. However, in recent years, there has been a rise in the trend of judicial activism, wherein the judiciary has been playing an increasingly active role in shaping public policy and governance. This has led to a debate about the impact of judicial activism on the separation of powers in India.

Body

Positive Impact of Judicial Activism:

- **Redefining the Role of Judiciary:**
 - Judicial activism has helped redefine the role of the judiciary as a more active participant in the governance of the country.
 - This has helped strengthen the principle of separation of powers as the judiciary has been able to check the actions of the other two branches of government.
- **Expansion of Judicial Review:**
 - Judicial activism has also led to an expansion of the scope of judicial review.
 - This has allowed the judiciary to scrutinize the actions of the executive and legislature more closely, ensuring that they comply with constitutional norms.
- **Protection of Fundamental Rights:**
 - Judicial activism has been instrumental in protecting fundamental rights of citizens.
 - The judiciary has intervened in cases of discrimination, violation of human rights and abuse of power by the executive and legislature, thereby protecting the interests of citizens.
- **Effective Implementation of Policies:**
 - The judiciary has also been able to ensure effective implementation of policies through its intervention.
 - For example, in the case of the mid-day meal scheme, the Supreme Court's intervention led to the effective implementation of the scheme across the country.

Trend of judicial activism has gone too far:

▪ **Judicial Overreach:**

- In recent years, there have been instances where the judiciary has overstepped its jurisdiction and encroached upon the powers of the executive and legislature.
- For example, in the case of the National Judicial Appointments Commission (NJAC), the Supreme Court struck down a constitutional amendment passed by the legislature, thereby undermining the principle of separation of powers.

▪ **Policy Formulation:**

- There have been instances where the judiciary has stepped into the domain of policy formulation, which is the domain of the executive and legislature.
- For example, in the case of the ban on diesel vehicles in Delhi, the Supreme Court's intervention led to the ban, which was seen as an encroachment on the powers of the executive.

▪ **Impact on Governance:**

- The increasing trend of judicial activism has also had an impact on governance.
- The judiciary's intervention in policy matters has often led to confusion and uncertainty and has made it difficult for the executive to implement policies effectively.

Conclusion

Judicial activism has had both positive and negative impacts on the separation of powers in India. While it has helped redefine the role of the judiciary and protect fundamental rights, there have been instances where the judiciary has overstepped its jurisdiction and encroached upon the powers of the executive and legislature. Therefore, it is important for the judiciary to maintain a balance between activism and restraint, and to ensure that it does not undermine the principle of separation of powers.