Polity & Governance · GS - II

Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities.

EXAM YEAR	PAPER	SUBJECT
2020	GS - II	Polity & Governance

MARKS	WORD LIMIT
15	~250 words

Answer Hint

Separation of powers; judicial activism; judicial legislation; public interest litigation; executive inaction; fundamental rights; constitutional remedies; judicial restraint; accountability

Model Answer

Introduction

The doctrine of separation of powers distributes legislative, executive and judicial responsibilities among different organs. Although India does not follow a rigid separation, each organ must respect constitutional limits while ensuring effective governance.

Why judicial legislation raises concerns

- **Democratic legitimacy:** Policy choices generally belong to elected legislatures and accountable executives, not unelected judges.
- **Institutional competence:** Courts may lack the technical expertise and administrative resources needed to design and implement complex policies.
- **Accountability deficit:** Excessive judicial intervention can blur responsibility for policy failures.

- **Constitutional balance:** Replacing executive discretion with detailed judicial directions may undermine the functioning of other institutions.

Why public interest litigation is justified in certain circumstances

- **Protection of fundamental rights:** Under Articles 32 and 226, courts can intervene when state action or inaction threatens constitutional rights.
- **Executive inaction:** Judicial guidelines may be necessary when authorities fail to discharge statutory duties or when a legal vacuum leaves rights inadequately protected.
- **Access to justice:** PIL enables disadvantaged groups to seek remedies despite financial or social barriers.
- **Institutional accountability:** Judicial scrutiny can compel authorities to implement existing laws and fulfil constitutional obligations.

Illustrations

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court issued guidelines against workplace sexual harassment in the absence of a specific statutory framework. These operated until Parliament enacted legislation in 2013. Similarly, environmental PILs have compelled public authorities to address serious regulatory failures.

Way forward

Courts should issue narrowly tailored, time-bound directions grounded in constitutional or statutory obligations. They should avoid substituting their preferences for legitimate policy decisions and should monitor compliance proportionately.

Conclusion

Judicial intervention is not inherently contrary to separation of powers. It becomes problematic when courts assume routine policymaking functions. PILs are justified when they protect rights and remedy institutional failure while respecting democratic accountability.