



Mains Practice Question

Q. 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. (UPSC GS-2 Mains 2020)

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Approach

- Start by briefly writing about judicial legislation and doctrine of separation of power.
- Discuss the rationale of judicial legislation with specific focus on PILs.
- Body of the answer must justify PILs.
- Conclude positively on PILs with a caution that it must not take the form of Judicial Overreach.

Introduction

The doctrine of separation of powers divides the functioning of government into three organs i.e legislature, executive, and the judiciary. This doctrine is one of the basic structures of the constitution. Various constitutional provisions like Article 50, 121, and 211, etc. embody the spirit of this doctrine.

However, of late we have observed the growing phenomenon of judicial legislation, specially filing of a large number of public interest petitions praying for issuing guidelines to executive authorities. There are multiple reasons for this need for PILs.

Body

Need for PILs

- **Dereliction of Duty:** It is the duty of the legislature to make laws while the executive should implement it in a proper manner. However, many times the legislature fails to make the necessary legislation to suit the changing times and the executive fails to perform their administrative functions.
- **Erosion of Confidence:** This leads to an erosion of the confidence of the citizens in constitutional values and democracy.
- **Need to Fill the Vacuum:** In this vacuum, driven by the motive to help the poor, marginalized and underrepresented, ensuring accountability of various instruments and functionaries of the State, individuals resort to Public Interest legislation or public interest petitions.
- **Direct Access to Justice:** In the *Asiad Workers* judgment case, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts.

Advantages of PILs

- **Instrument of Social Change:** According to the Supreme Court, the aim of PIL is to give to the common people of this country access to the Courts to obtain legal redress. It is an important instrument of social change and for maintaining the Rule of law and accelerating the balance between law and justice.

- **Inclusive:** PIL is a method to justice even to voiceless and vulnerable sections of society.
- **Monitoring of Institutions:** It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc. It is an important tool to make human rights reach those who have been denied rights. **E.g.:** issues related to degraded bonded labourers, tortured under trials and women prisoners, humiliated inmates of protective women's homes, blinded prisoners, exploited children, beggars, and many others.

Conclusion

Public Interest Litigation has produced astonishing results which were unthinkable three decades ago. However, the Judiciary should be cautious enough in the application of PILs to avoid Judicial Overreach that is violative of the principle of Separation of Power.

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