



Mains Practice Question

Q. The functional overlap between the organs of government undermines the principle of separation of power. Comment.(150 words)

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Approach

- Mentioning the three organs of government briefly explain the meaning of separation of powers.
- Highlight some of the Articles in the constitution of India that ascertain the separation of powers between the executive, legislative and judiciary.
- Discuss how the functional overlap between each organ of the government undermines the separation of powers.
- Substantiate your arguments with examples.
- Conclude by summarising your answer and suggesting some measures to overcome these limitations.

Introduction

Separation of powers is the division of the legislative, executive, and judicial functions of government. It minimises the possibility of arbitrary excesses by the government, since the sanction of all three branches is required for the making, executing, and administering of laws.

The constitutional demarcation precludes the concentration of excessive power by any branch of the Government.

Body

Constitutional Provisions Ensuring Separation Of Power

- **Article 50:** State shall take steps to separate the judiciary from the executive.
- **Article 121 and 211:** Judicial conduct of a judge of the Supreme Court and the High Courts' cannot be discussed in the Parliament and the State Legislature.
- **Article 122 and 212:** Validity of proceedings in Parliament and the Legislatures cannot be called into question in any Court.
- **Article 361:** the President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

Functional Overlap Among Organs Of the Government

- **Overlapping Powers Of Legislature**

| With Judiciary | With Executive |
|---|--|
| <ul style="list-style-type: none">▪ Impeachment and the removal of the judges.▪ Power to amend laws declared ultra vires by the Court and revalidating it. | <ul style="list-style-type: none">▪ The heads of each governmental ministries are members of the legislature.▪ Through a no-confidence vote it can dissolve the Government. |

- In case of breach of its privilege and it can punish the person concerned.

- Power to assess works of the executive.
- Impeachment of the President.
- The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.

▪ **Overlapping Powers Of The Executive**

With Judiciary

- Making appointments to the office of Chief Justice and other judges.
- Powers to grant pardons, reprieve, respite or remission of punishments or sentence of any person convicted of any offence.
- The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions.

▪ **Overlapping Powers Of The Judiciary**

With Executive

- Under Article 142, the Supreme Court functions as an Executive in order to bring about the complete justice.

Issues with Functional Overlapping

- **Unaccountability:** One of the demerits of overlapping powers, is that a particular organ cannot be held accountable for its decisions. Eg. Judicial verdicts in 2G and Coal Block allocation case.
- **Erosion of faith:** Repeated interventions of one organ into another's functioning can diminish the faith of the people in the integrity, quality, and efficiency of the other organs.
- **Accumulation of power:** It undermines the spirit of democracy as too much accumulation of powers in organs of government undermines the principle of check and balance.
- **Adverse effect on development:** Excessive infringement on each other jurisdiction may impede smooth functioning of government and hinder public service and overall development.

Utility of Functional Overlapping

- **Check and balance:** Organs of government are empowered to prevent arbitrary actions by other two organs. Eg. Power of judicial review by the Supreme Court.
- **Rule of law:** Power sharing laws among the executive, legislative and judiciary enhances accountability and equality in governance.
- **Checks arbitrariness:** Constitutional demarcation of overriding powers decreases the scope of conflict among the government organs.
- **Cooperation:** Overlapping function induces power sharing and power decentralisation.

Conclusion

For a democratic polity and diverse society like India, a Constitutional system with strict separation of powers is undesirable and impracticable. However judicious and calculated constitutional functional overlapping makes way for democratic collaboration of the three organs of the government. Such mutual cooperation bridges the executive, legislative and judicial gap facilitating smooth functioning of government.