

Paper 1

4. Union Government and Administration:

Executive, Parliament, Judiciary – structure, functions, work processes;
Recent trends; Intra-governmental relations;
Cabinet Secretariat; Prime Minister's Office; Central Secretariat; Ministries and
Departments; Boards; Commissions; Attached offices; Field organizations.

1. Judiciary doesn't over reach, it just abhors vacuum. Comment Critically.

15 marks (250 words)

Approach

As the question asks to comment critically, it is mandatory to provide both the sides of the argument. Hence, we need to provide two parts in the answer. One, to prove how Judiciary occupies the legal vacuum, two how it actually overreaches;

From Paper one

Bring in quotes and keywords from the first paper wherever necessary.

Introduction

Justice P.N. Bhagwathi had defended the act of judicial activism and the allegation of judicial over reach, against judiciary, in the above words. He had said that judicial overreach is a false allegation as, judiciary steps into law making domain only when the legislature and the executive create a vacuum.

Body

However, the recent trends in the way the judiciary is dealing with the cases, and the nature of the judicial verdicts that are being put out, are bringing back the words of Justice Bhagwati for discussion.

Judiciary only occupies the legal vacuum;

Many cases in the history have shown that, the judiciary had stepped in only when the legislature is in the disarray; or when the law and order machinery has broken down; or when the crisis has arisen and there are no legal institutions in place to handle it.

Further, the courts use their power of suo-motto cognizance and the PILs very sparingly. These two gateways are opened only in the cases of serious controversies, strong public upheavals and intense debates amidst the intelligentsia.

Examples:

- In the case of PUCL v/s Union of India, the Supreme Court brought in NOTA into the Indian body politic. However, it is to be noted that, the NOTA was not only essential but also that, Indian citizenry didn't have an instrument

through which they could utilize their legal Right to Reject, which is present in almost all the democracies of the world.

- Again, in the 2001 Right to Food case, Supreme Court directed the government of the day, to frame a scheme for providing hot cooked meals for every child in the schools. Here, had there been any scheme in place prior to this, or had the government taken the notice of children going hungry in the schools, there would have been no need of Supreme Court entertaining the PIL in the first place.
- Also, in the recent Muzafarpur shelter house case. Supreme Court took the suo-motto cognizance for the only reason that, in spite of the girls being tortured in the house for years together; the government had turned a blind eye towards them.

But there are trends of over reach as well;

We have also seen many instances in which, the Judiciary has intervened without any presence of legal void or the institutional vacuum as such. Such cases however, are the clear evidences of judicial activism and over reach in India.

- Supreme Court rather than occupying the vacuum, it created one in the Third Judges case. It struck down the National Judicial Appointment Commission Act which was enacted to bring in an objective procedure for the judicial appointments.
- Also, when government was involved in the relief works of severe floods in Maharashtra, in the year 2016. Supreme Court not only entertained a PIL, but also went on to direct the government to form a National Disaster Mitigation Fund. While, the government pondered over the need of NDMF when there was NDRF, SDRFs, Contingency reserves, PM relief funds etc.
- Lastly, in the recent political turmoil of Rajasthan. The Jaipur High Court blatantly stepped out of its jurisdiction; when it accepted the petition of the defected MLAs, even before the speaker took any decision regarding their defection. This rule, of courts not to interfere until the speaker decides, was however set by judiciary itself in the Kihoto Hollohan case in 1992.

Some of these examples show that, not always the judiciary thinks of the legal vacuum before stepping out of its jurisdiction.

Conclusion

However, we can conclude saying that, Judiciary is not a meta-physical institution to maintain a flawless track record. To put in the words of Dr. Ambedkar even “the Judge of the Supreme Court is a man with all frailties”, and, it is natural even for the

judiciary to commit errors of omission and commission. Hence, it is the onus of both the judiciary and the public to understand this and move on.

2. While field organizations are line agents, the attached offices are staff agents. Illustrate with the help of suitable examples.

10 marks (150 words)

Approach

With various examples we need to explain how the field organisations function as line departments. And, how the attached offices work as the staff agents; More emphasis has to be given for the examples here.

From Paper one

We can bring in Line and Staff theory and the Departmentation from the first paper. We can also bring in the quotes and keywords wherever necessary.

Introduction

The originators of the Line and Staff theory, Luther Gullick and Lyndal Urwick propound that; line agent is the implementing organ of the organisation which is mostly concerned with the field works. However, staff agent is the body of specialists who advice the organisation in framing the rule and norms.

Body

The same way, the given two bodies, field organisations and attached offices, also perform two different functions.

While the Field Organisations perform the implementational work in the fields; the Attached Offices help the main Office to formulate policies, by providing expert guidelines and advices. Hence, it is apt to label the field organisations as line agents and the attached offices as the staff agents.

Here are some of the illustrations to prove the point. (Water tight separation is not possible on the grounds of practicality.)

Field Organisations:

- In some of the ministries like, Ministry of Defence, Home, Health Ministry etc; all most all the departments and subordinate offices work as the field organisations.
Ex: Border management division, Department of states, Department of health etc. These bodies implement the policies framed by the secretariat.
- And, in other ministries, there are a few field organisations and the rest are the attached offices.

Ex: Central Public Works Department of the Ministry of Urban Affairs is an important field organisation that construction of roads, drainages etc; as per the plans of Rural and Country Planning Board, Buildings Organisation and others.

- However, some of the offices like Directorate of employment, Directorate General of Mines Safety, etc perform the functions of both the field organisations and the attached offices. I.e. they contain both specialists and the generalists in the same body, who are responsible for both formulation and implementation of rule and codes.

Attached Offices:

- Most of the offices in the Ministry of Human Resource Development, Ministry of Finance, etc consist of domain experts alone. And these can be considered as the attached offices. Ex: Economic Advisory Board, PMSTTAC etc.
- Also, some of the ministries have separate Attached Offices like National Academy of administration in the Ministry of Home, UPSC in DARPG etc.
- Lastly, some of the autonomous organisations like the National Labour Institute, AIIMS, etc are also advisory bodies (Attached Offices); except that they are being allowed to administer themselves to reduce the burden of the government.

Conclusion

To conclude, an Attached Office is called so because, it is connected to the Main Office of the organisation at all times; so that any advice and guidelines can be solicited instantly from these offices. However, field organisations get the name for their filed work.

Hence proved with illustration that, the Attached Office is a staff agent and Field Organisation is a staff agent.