

1. Do you think judicial overreach can be antithetical to the idea of democracy? Critically analyse.

Approach-

Candidates need to write about what is judicial overreach. Then simply explain how it's antithetical to working and idea of democracy also critically analyse the judicial overreach.

Introduction-

Judicial overreach is a term commonly used when the judiciary seems to have overstepped its mandate. It is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government, i.e., the judiciary crosses its own function and enter the executive and legislative functions.

Body

Judicial overreach is considered undesirable in a democracy:

- Although this is a matter of perspective, there are many examples that are widely regarded as cases of judicial overreach in India. For example Imposition of Patriotism in National Anthem Case, Ban of Firecrackers, Proactive Censorship in case of Jolly LLB 2 (Movie).
- In the times of Pandemic Judicial officers and lawyers micro-managing the day-to-day affairs of the Covid crisis in the country. Government officials are having to brief the bench about the prevailing circumstances for hours instead of being allowed to act in real-time.
- It means the Court has violated the doctrine of separation of powers by taking on the functions such as law enforcement, policy making or framing of laws or interfering in day to day activities of the executive.
- It destroys the spirit of the constitution as the democracy stands on the separation of powers between the organs.
- It creates a conflict between the legislative and the judicial system.
- It diminish trust of the people in public institutions which can be dangerous for democracy.
- Results in tyranny of unelected as Judges assumes central role in day to day decision making.
- Entertaining all PILs results in over burdening the Judiciary, which can otherwise be utilized for clearing the pending cases before courts.
- Frequent interventions tend to weaken the functioning of those two wings of the constitution, which are expected to perform by themselves.
- Interfering with the proper functioning of the legislative or executive organs of government is undesirable in any democracy.

Promotes transparency and accountability in Governance:

- Article 142 enables superseding the executive and the legislative for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so.
- As the guardian of the constitution Article 142 provides its power to fill the statutory vacuum.
- To do "complete justice" it has often overridden the laws made by Parliament such as cases Union Carbide Case, Ban on liquor sale on highways case decision was taken to avoid accidents due to drink and drive.
- It also sets out a system of check and balance and controls to the other branches of the government. For example In Vishakha v State of Rajasthan case, Supreme Court laid down the guidelines to protect a woman from sexual harassment at its workplace.
- Bandhua Mukti Morcha Case the Hon'ble Court gave its landmark judgment on bonded labour system of India
- In Olga Tellis Case where Right to livelihood was declared part and parcel of the right to life.
- Helps in the protection of the spirit of the constitution by giving a wider definition to various articles of the constitution such as: Article 14, article 19, article 21 and article 32 etc.
- Prevents arbitrary state action and curbing citizen's fundamental rights by state. Ensures checks and balances on the Executive (Eg: 2G Allocation, Coal Scam etc.)

Way forward:

Judiciary should maintain judicial restraint it not only recognizes the equality of the other two branches with the judiciary, but it also fosters that equality by minimizing inter-branch interference by the judiciary.

Conclusion

Voltaire said, "With great power comes great responsibility". It is clear that the responsibility to uphold powers within the constitutional frameworks lies with all stakeholders. However, courts will have to choose to overlook (politically) motivated fallacies and uphold the Constitution's vision, which undoubtedly deplores overreach, by all pillars of the constitutional framework.

2. How are industrial disputes related to intellectual property rights settled in India? Explain the existing institutional mechanism.

Approach

Students are expected to write about the IPR and disputes arising out of it. Then simply highlight the mechanism in India to resolve the such disputes with examples and write about existing institutions mechanism to handle the cases.

Introduction

Intellectual Property rights means providing property rights through patents, copyrights, and trademarks. Holders of intellectual property rights have a monopoly on the usage of property or items for a specified time period. And IPR disputes predominantly pertained to infringement/ enforcement actions against parties with no contractual obligations.

Body

- The Arbitration and Conciliation Act, 1996 has been the main statute in India dealing with the two cited alternate forms of dispute resolution.
- Arbitration, mediation, settlement and conciliation are some of the models which are the alternatives to court based litigation.
- If Alternative dispute resolution methods fails to be the effective choice for the determination of disputes related to intellectual property rights, they can be used for narrowing down the issues for contestability in a traditional model of litigation.
- The Indian judiciary has effectively tried to bring mediation and settlement for intellectual property disputes in the traditional model of litigation, through the reading of Section 89 of the Civil Procedure Code, 1908.
- In India some legislations involving IPR laws are India's Patents act of 1970, patent rules and Patent Amendment rules in 2005 set the laws governing patents in India.
- In India, trademark litigation covers an overwhelming landscape in the intellectual property related litigation. Uniform Domain Name Dispute Resolution Policy, 1999 and the Indian Domain Name Dispute Resolution Policy for the adjudication of disputes and The Trade Marks Act 1999.
- As per Copyright Act 1957 infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.
- The alternative dispute resolution techniques contain various types of dispute resolution methods such as negotiation, mediation, collaborative law, conciliation, Lok Adalat and arbitration.
- The ADR method is mainly focused on problem-solving but not on declaring winners or losers and therefore we can say that the ADR techniques can be also known as a 'win-win strategy'.

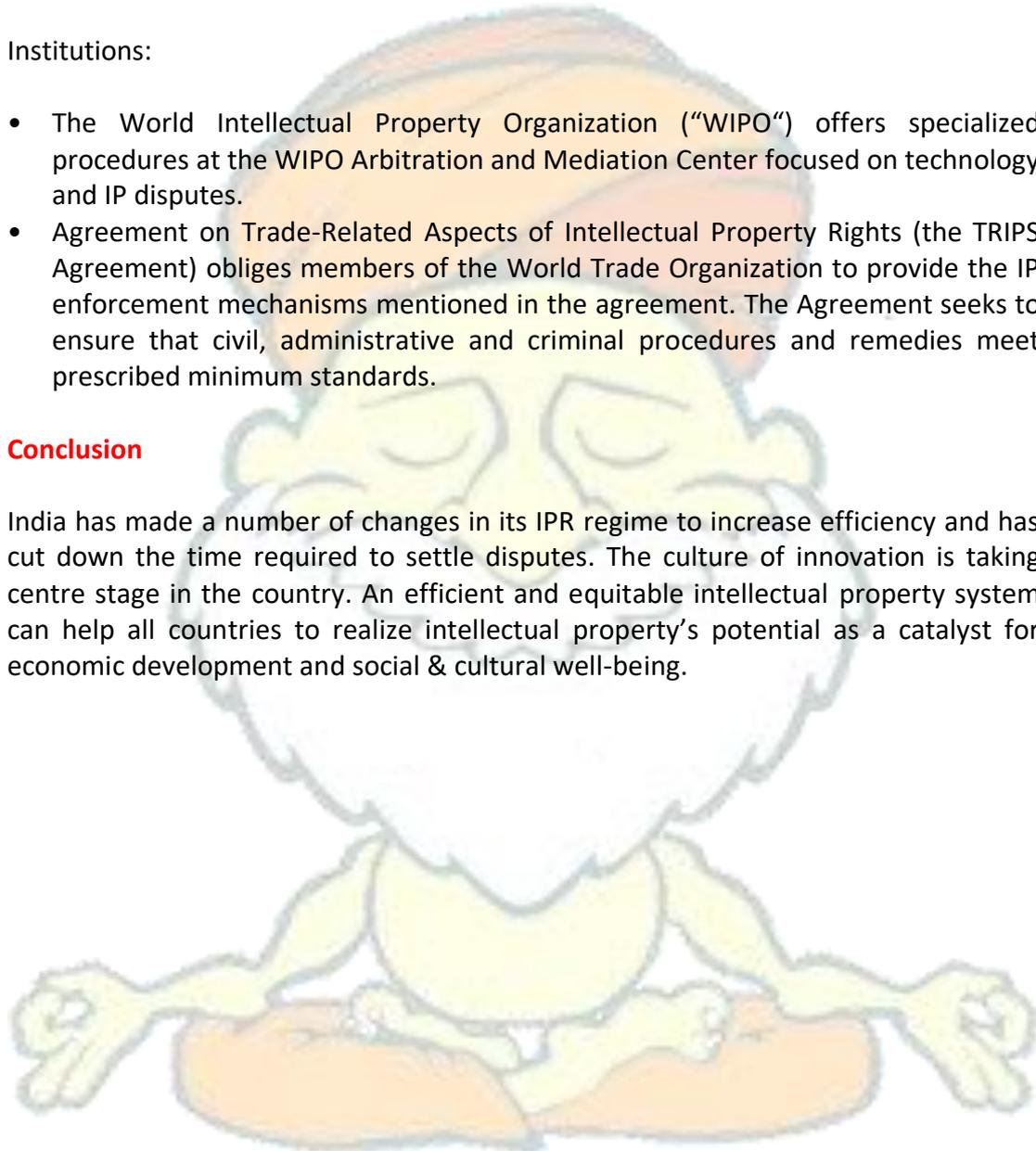
- For India, the WTO's TRIPs agreement became binding from 2005 onwards as the country has got a ten-year transition period (1995-2005) to make the domestic legislation compatible with TRIPs.
- TRIPs relate to the country's Patent Laws and have a very serious bearing on major areas of the country's well being – health, agriculture, research, etc.
- The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.

Institutions:

- The World Intellectual Property Organization (“WIPO”) offers specialized procedures at the WIPO Arbitration and Mediation Center focused on technology and IP disputes.
- Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) obliges members of the World Trade Organization to provide the IP enforcement mechanisms mentioned in the agreement. The Agreement seeks to ensure that civil, administrative and criminal procedures and remedies meet prescribed minimum standards.

Conclusion

India has made a number of changes in its IPR regime to increase efficiency and has cut down the time required to settle disputes. The culture of innovation is taking centre stage in the country. An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.



3. For economic growth, capital expenditure is a more prudent and sustainable strategy than demand stimulus, do you agree? Substantiate your views.

Approach-

Candidates need to write about how the capital expenditure is a more prudent and sustainable strategy than demand stimulus for economic growth.

Introduction:

The Union Budget 2022-23 proposed a big boost to capital expenditure and announced several infrastructure projects to pump-prime private investment and economic recovery. Overall, instead of propelling consumption, something that could have pushed demand and raised prices, the government continued its focus on trying to improve the supply side.

Capital Expenditure Is a More Prudent and Sustainable Strategy Than Demand Stimulus

- Recognising that private investment has not revived, the FM has proposed a sharp jump in allocation for capital expenditure in 2022-23.
- The proposals to stimulate demand are designed to stimulate demand in a fiscally prudent way - some of them involve advancing of expenditure, with offsetting changes later - others are directly linked to increasing GDP.
- Capital expenditure is money spent on infrastructure and asset creation.
- It has a multiplier effect on the economy, it not only improves current GDP but also future GDP, we want to give a new thrust to capital expenditure of both states and Centre.
- Along with Grants-in-Aids to states for creation of capital assets, the effective capex of the government is estimated to be more than 4 per cent of GDP.
- This is good particularly for sectors such as steel, cement, road transport and highways, railways and defence.
- The government proposes to use capex spending on infrastructure through the PM Gati Shakti National Master Plan.
- The focus will be on improved connectivity through roads, railways, airports, mass transport, waterways and logistics that will propel faster movement of people and goods and ease the cost of doing business in India.

Conclusion:

Having given the push to a big boost to capital expenditure, public infrastructure and higher borrowing, the government now needs to ensure that private investors are able to access money at affordable rates. Easing the inflow of foreign capital and inclusion in global bond indices, financial sector reforms including banking and bond market reforms should follow the budget to ensure that higher private capex follows the FM's push for public investment.