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Q12

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 Civil Services Mains 2020 · GS II · 15 marks · Separation of Powers

Separation of powers between various organs; dispute redressal mechanisms and institutions.

Core demand of the question

- 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
- Honour the official stem. Use Vishaka, D.K. Basu, PIL under **Articles 32 and 226**, and the executive-vacuum argument
- Keep the justification within a 15-mark length

Revision summary

Indian separation of powers is checks and balances with a justiciable Part III, not a sealed legislative monopoly.

Guidelines that mimic a statute sit uneasily with **Article 245** if they become permanent.

Vishaka and D.K. Basu justified PIL guidelines as interim rights protection until Parliament or the executive acted.

Volume of PILs tracks executive failure on police, environment and welfare as much as judicial overreach.

Justification holds only if courts retreat when a competent law occupies the field and throw out frivolous petitions.

Introduction

- **Separation of powers in India is not a rigid Montesquieu wall:** Parliament legislates, the executive administers, the judiciary interprets and reviews. When courts issue detailed guidelines that look like statutes, critics call it judicial legislation and say it is antithetical to that scheme. A large PIL docket asking for guidelines to the executive is still justifiable where rights would otherwise die in a vacuum.

Body**The charge: judicial legislation versus separation**

- **Articles 50, 122, 212** and the basic structure all assume distinct organs; Kesavananda and later cases treat separation as a constitutional principle, not a slogan.
- When a Bench writes a code on sexual harassment, arrests, or undertrials, it occupies a field that **Article 245** gave to legislatures.

- The executive, not the Court, has personnel, budget, and democratic mandate to run prisons, police, and welfare. Guidelines can become a continuing mandamus that looks like a third government.

Why the Indian scheme still allows a judicial role

- Unlike a pure Westminster myth, India has a written Constitution with justiciable fundamental rights; **Article 13** makes law void if it offends Part III, and **Article 32** is itself a right.
- **Separation here is checks and balances:** judicial review is the Court's assigned power, not a theft of Parliament's.
- When the legislature is silent and the executive is the violator - custodial torture, workplace sexual harassment, bonded labour - a rights court that waits for a Bill abandons **Article 21**.

Justifying PILs that seek guidelines

- **Vishaka v. State of Rajasthan (1997)** laid down workplace sexual-harassment guidelines until a statute arrived; the **POSH Act, 2013**, later occupied the field. That is gap-filling, not a permanent parallel parliament.
- **D.K. Basu v. State of West Bengal** set arrest-and-detention safeguards because police practice was eating **Article 21**; those directions operationalised rights the executive would not write against itself.
- Environmental and food-right PILs (Mehta line, PUCL) used guidelines because diffuse harm has no single plaintiff and the executive was the reluctant duty-bearer.
- **Articles 32 and 226**, plus epistolary jurisdiction, were designed for the poor and the unorganised; volume of PILs is a symptom of executive gap, not proof of judicial appetite alone.
- Guidelines typically bind the executive as **Article 141** law until Parliament speaks; they are expressly interim in the better-reasoned cases.

Discipline so justification does not become a blank cheque

- Courts should prefer directing the executive to frame a policy within a time, or reading a statute purposively, over writing a full code.
- Frivolous and donor-driven PILs deserve early dismissal; the justification is for genuine rights vacuums, not for governance by amicus.
- Once a competent legislature enacts - POSH after Vishaka - the Court should retreat to review, not run the ministry.

Synthesis

- Judicial legislation, if it means a court pretending to be Parliament forever, is antithetical to separation.
- PILs praying for executive guidelines are justifiable when they are a temporary rights prosthesis in an executive or legislative vacuum, under **Articles 32 and 226**, with a door left open for statute.

Flow diagram

Rights vacuum -> PIL Arts 32 and 226 Arts 32 and 226
 PIL Arts 32 and 226 -> Guidelines to executive
 Guidelines to executive -> Statute later occupies field
 Statute later occupies field -> Court returns to review
 Permanent judicial code -> True antithesis

Conclusion

Separation of powers in India includes a rights-enforcing judiciary. Mass PILs for guidelines are justified where the executive will not bind itself and the legislature has not yet spoken, as Vishaka and D.K. Basu showed. The same doctrine requires the Court to step back when a statute arrives. Antithesis is the permanent judicial statute, not the interim guideline that keeps Article 21 alive.

Facts & figures

Vishaka v. State of Rajasthan (1997)

Sexual-harassment guidelines as law under Article 141 until the POSH Act, 2013.

D.K. Basu v. State of West Bengal

Arrest-and-custody directions to make Article 21 real against police practice.

Articles 32 and 226

Constitutional jurisdiction that makes rights PILs possible against executive authorities.

Article 141

Law declared by the Supreme Court binds all courts; the hook on which guidelines travel.

POSH Act, 2013

Example of the legislature later occupying a field the Court had temporarily mapped.

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