General Studies-2: Topic: Separation of powers between various organs dispute redressal mechanisms and institutions.

Judicial Activism and Judicial Restraint

1) Introduction

- The judicial activism is use of judicial power to articulate and enforce what is beneficial for the society in general and people at large.
- Judicial activism gives jurists the right to strike down any legislation or rule against the precedent if it goes against the Constitution.
- The Golak Nath case is an example of judicial activism.
- In Kesavananda Bharati case the Supreme Court held that by Article368 of the Constitution, Parliament has amending powers but does not extend to alter the basic structure of the Constitution.

2) Background

- Initially Supreme Court was a conservative institution.
- In the 1980s, there was a rapid expansion of judicial power.
- It allowed “public interest” cases to be filed on behalf of those who were unable to access the courts.
- By the 1990s and the 2000s, under the label of “judicial activism”, the court began to engage in a host of administrative activities.
- It included managing welfare schemes to “beautifying cities” to overseeing anti-corruption initiatives.
- The constitutional court had become a Supreme ‘Administrative’ Court.

3) Recent Decisions by Higher Judiciary

- The Supreme Court had made the playing of national anthem in cinema halls before screening of movies optional, modifying its earlier order.
- Supreme Court in Arjun Gopal Vs Union of India case fixed timings for bursting crackers during Diwali and prohibited the use of non-green fireworks in NCR.
- Supreme Court in M.C. Mehta v. Union of India case, directed that no BS-IV vehicle should be sold after March 31, 2020 and only BS-VI vehicles should be sold after that.
- Supreme Court in Subhash kashinath vs state of maharashtra case, amended the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989
- Supreme Court in Rajesh Sharma vs State of Uttar Pradesh case, felt that Section 498A of IPC was being misused and came out with some measures to curb the misuse of the Sec 498A.
- A Judge mandated that every student in Tamil Nadu must study Tirukkural.
- Observations made by Justice SR Sen of Meghalaya High Court
  a. He said India should have declared itself a Hindu country, like Pakistan declared itself a Islamic nation.
  b. The present NRC process is defective as many foreigners become Indians and original Indians are left out which is very sad.
  c. “Anybody opposing... Indian laws and the Constitution cannot be considered... citizens of the country.”
- This shows that judges have inserted themselves into fraught political controversies.
- This shows that the Supreme Court in entering into the Legislative and Executive Domain.
4) **Judicial Independence**
- We normally think about judicial independence as independence from the government.
- The Constitution is designed to ensure that judges can do their work “independent” of government influence.
- Fixed salaries, security of tenure, and an appointments process through the Supreme Court’s judgments — is insulated from executive control.
- However, it also requires that judges perform their constitutional role independent of personal biases, political and moral beliefs, and partisan ideologies.
- Adjudication is a political task, and the judge’s political vision will inform her work.
- Judges are bound to maintain primary fidelity to the law and the Constitution
- Law and adjudication must remain autonomous from partisan politics.

5) **Concerns / Challenges**
- Supreme Court may not be knowing the practical difficulties of implementing the decisions.
- The separation of power between Judiciary, executive and legislature is blurred.
- Unrestrained judicial activism does a disservice to governance in the country and damages its economic growth prospects.
- The Supreme Court is increasingly, and controversially, asserting control over the executive and legislature.
- Mahatma Gandhi who advocated that the means used for achieving a particular result must also be as acceptable as the result itself.
- Judicial activism or the mere pursuit of ends without regard to the means, has become the dominant approach in judicial thinking.

6) **Judicial Accountability**
- Politicians remain “accountable” to the people in at least some sense, because they depend upon them in order to continue in office after five years.
- Judges who are insulated from any external control are accountable only to themselves.
- Accountability only to oneself, however, is a very weak form of constraint.
- The temptation to overstep is always immense, more so when such immense power has been placed in one’s own hands.
- Legal culture plays a critical role in establishing judicial accountability.
- The legal culture must be created and nurtured by judges, lawyers, legal academics, the press and the citizenry.

7) **Way Forward**
- The people of India and their representatives should explore ways of addressing judicial activism in the country.
- Howsoever noble an idea may be, courts should be wary of making rules on their own, as it would amount to transgressing into the policy domain.
- Equilibrium in the exercise of authority must be maintained at all times with the powers of the legislature and executive subject to judicial review.
- Each organ of our democracy must function within its own sphere and must not take over what is assigned to the others
- The only check possible in the exercise of powers by the judiciary is self-imposed discipline and self-restraint by the judiciary itself.
• The faith and confidence of people in the judiciary must always be maintained. The judiciary must provide accessible, affordable and quick justice to the people.
• Judicial activism must also function within the limits of the judicial process because the courts are the only forum for those wronged by administrative excesses and executive arbitrariness.