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JUDICIAL ACTIVISM & RESTRAINT

UPSC MAINS SYLLABUS GS2 PAPER:

WHY IN THE NEWS?

1. The Supreme Court of India has recently guided the Judges of the Higher courts to follow the principle of **Separation of powers** between the *judiciary and the executive* laid in the Constitution under the Directive Principle of State policy (**Article 50**) should be maintained.
2. The Chief Justice of India directed the judges to **exercise restraint** and summon the Government officials only in the complex issues which require *expert evidence or in non adversarial adjudication*, including those concerning policy issues.

WHAT IS JUDICIAL ACTIVISM?

The Constitution envisages a proactive role of Judiciary in **protection of rights of citizen & promotion of justice** in society. In the words of political analyst **WL Wadhwa**, Judicial activism represents the departure of the Judiciary from strict adherence to Judicial precedent in favour of **progressive & new social policies** as showcased below:

1. The idea of Judicial activism flows from the Constitution itself. For example; **Article 32** of the Constitution which provides for the **Judicial review** of Legislative acts and Executive actions.
2. It laid to the establishment of mechanism of **Public Interest Litigation (PIL)** which has made justice accessible for marginalised groups
3. It performs the essential functioning of **Social engineering**. For example, **Navtej Johar judgement** of 2018 decriminalised homosexuality thus expanding the scope of "Right to Equality" under **Article 14**.
4. It helps in upholding the **Fundamental rights** of the citizen. For example, **KS Puttaswamy Judgement** of 2017 upheld the Right to Privacy as integral part of Right to Dignified life under **Article 21**.
5. It helps in checking the **arbitrary powers** of the Executive. For example, the **Writs of Mandamus & Habeas Corpus** under Article 32.
6. It becomes a necessary evil in cases of a **Hung assembly** or court of law being misused by **Authoritarian govt** for ulterior motives. For example, Role of Supreme court in upholding democratic principles during **proclamation of Emergency** by Indira Gandhi government during 1975-77.
7. It also fills the **legislative vacuum** created by ineffective governance. For example, Supreme court issuing the **Vishakha guidelines** to counter the issue of Sexual Harassment at Workplace.

As the current CJI of India, DY Chandrachud held; **“In Humanitarian crisis, Court can not stand as silent spectator”**.

ISSUES ARISING OUT OF JUDICIAL ACTIVISM:

With repeated interventions by the Judiciary in the field of Executive & Legislature has led to growing criticism by various Political analysts that Judiciary is increasingly becoming **“Super legislative”** that undermines the basic tenets of Parliamentary Democracy:

1. Judiciary has taken the role of a legislative body to frame or amend laws. For example, the Supreme court **struck down NJAC Act 2015** in favour of own devised Collegium system under Judges Cases (1992-98).
2. Similarly it has encroached upon the Executive domain as well. For example, establishing the Environment Pollution Control Authority (EPCA) to **regulate pollution in NCR-Delhi region**.
3. Additionally, the Court’s interference in micromanagement of **Day-to-Day governance** such as regulating policy matters during Pandemic control was also criticised.
4. It has also devised various mechanisms which does not have Constitutional backing. For example, **Basic structure doctrine** established under the Keshavanand Bharati case 1973.
5. Judicial activism also leads to **Policy paralysis** or subpar framing of laws by the Parliament.
6. It undermines the role of Parliament to **exact accountability of Executive**. For example, members approaching the Courts instead of using tools like Adjournment motions to keep lawmakers in check.
7. It also undermines the **mandate of People** as the Solicitor General of India argued in the judicial debate related to the issue of Same Sex marriage that; “5 wise men can not make law for such diverse country”.
8. Further, Judicial activism has led to **staggering growth of arrears**. For example, there are more than 70,000 pending cases in Supreme court as of 2023.

As Judicial activism violates the principle of Separation of Power under Article 50, the Supreme court in 2007 verdict observed that ;“Courts should not take over the functions of Executive of Legislature & must follow...

“JUDICIAL RESTRAINT”:

1. It ensures that Judicial activism shall not transform into **“Judicial Adventurism”**.
 2. It recognises the **equality of all three organs** of Parliamentary system i.e; Legislative, Executive & Judiciary.
 3. It aims to minimise the **Inter-branch interference**
 4. The court following “Judicial restraint”, perform continuous evaluation through **Public awareness & Civic engagement**
 5. It also ensures that people exercise their Electoral franchise as laws to govern them are made and regulated by their **“elected representative”**.
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WAY FORWARD:

As emphasised in **“Spirit of Laws” by Montesquieu**, the Separation of Power essential for holding the principles of the democracy and thus Judiciary shall ensure that *all three “engines” of the Governance in India functions in harmony* to ensure all-round Socio-economic development.

UPSC MAINS 2024 PRACTISE QUESTION:

Q: Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to the appointment of judges of higher judiciary in India. (10 M, 150 words) (2017 question)

Suyash Rai

ANTIMICROBIAL RESISTANCE

This article covers 'Daily Current Affairs' and the content details of "NCDC survey on inappropriate use of antibiotic causing antimicrobial resistance". This topic has relevance in the "Issues relating to development of services/social sector relating to Health" section of the UPSC CSE exam.

UPSC MAINS SYLLABUS GS-2 PAPER : Issues relating to development and management of Social Sector/Services relating to health

Why in the News ?

As per the recent survey of NCDC released by the Health Ministry only 6% of patients received antibiotics after a confirmed diagnosis, still 94% of patients received the prescriptions for these medications even before the diagnosis of the infection.

What is Antimicrobial Resistance?

Antimicrobial Resistance (AMR) refers to the capacity of bacteria, viruses, parasites, and fungi, among other microbes, to adapt and resist the actions of antimicrobial medicines, thereby making these medications useless. Antimicrobial-resistant bacteria have the ability to proliferate and spread, which can result in the development of infections that are difficult or impossible to treat.

What Causes Antimicrobial Resistance(AMR)?

- **Unsupervised access to antibiotics:** When antibiotics are used in the dairy, poultry, and animal husbandry industries, they naturally sneak a way into other organisms' food chains and hence affect humans as well.
- **Insufficient Dosage and Duration:** Bacteria that survive antibiotic prescriptions may become resistant if the course is not finished or if the whole dose is not taken as advised. A selection pressure brought about by insufficient doses favors the survival of resistant strains.
- **Poor hygiene:** Microbes spread through trash and wastewater from healthcare facilities, pharmaceutical companies, and animal husbandry.
- **Antibiotic Overuse and Misuse:** Excessive and inappropriate antibiotic use, both in human and animal health, contributes significantly to the development of resistance. This includes unnecessary antibiotic prescriptions for viral illnesses, inadequate treatment courses, and self-medication.
- **Globalization and Travel:** Increased worldwide travel and trade help in the spread of resistant bacteria around the world. Resistant strains have the ability to go beyond boundaries, making it difficult to limit and manage their spread.

Issues caused by Antimicrobial Resistance

- **Treatment Options Are Limited:** The number of effective antibiotics is decreasing as resistance grows. The absence of new medicines in development worsens the problem by giving doctors less treatment options for infections.
- **Mortality and morbidity have increased:** Infections caused by resistant bacteria are related with increased mortality and illness severity. Treatment failures increase healthcare expenditures and put an increased load on healthcare systems.
- **Global Health Danger:** AMR is a serious danger to world health because it can make common illnesses untreatable. This decreases the effectiveness of medical operations that depend on the availability of effective antibiotics, such as surgery, chemotherapy, and organ transplants. For example, Multi-Drug Resistant Tuberculosis (MDR-TB) is increasing at an alarming rate.
- **Infectious Disease Burden:** India has a high burden of infectious diseases such as tuberculosis, malaria, typhoid and cholera. The rise of AMR makes it harder to treat these diseases successfully. It's especially troubling given that these diseases are already big public health issues in the country.
- **Limited Research and Innovation:** To combat AMR, research and innovation in the development of novel antibiotics, diagnostics, and vaccines are important. The lack of such attempts in India is worrying as it decreases the arsenal of techniques available to treat resistant illnesses.
- **Economic Consequences:** AMR results in increased healthcare costs due to prolonged treatments, additional testing, and the need for more expensive second-line drugs. Productivity losses from prolonged illness and increased mortality also impact economies.

Steps taken to control antimicrobial resistance?

- **Access, Watch, and Reserve (AWaRe)** – It is an initiative by WHO to consider the impact of various antibiotics.
- **Global-One Health Approach:** A quadripartite project by UNEP, WHO, FAO, and the World Organization for Animal Health which advocates best practices to minimize AMR levels.
- **National Action Plan (NAP) for AMR:** The NAP aims to raise awareness, strengthen surveillance, promote research, and improve infection prevention and control.
- **Delhi Declaration on AMR:** It is an inter-ministerial consensus, which was signed during the inauguration of NAP-AMR by ministers from the relevant ministries committing their unwavering support for AMR containment.
- **Red Line campaign:** To raise awareness about the dangers of using antibiotics without a prescription and to avoid irrational usage of prescription-only antibiotics.

Way Forward –

- Antimicrobial resistance is a future health disaster that requires a multidisciplinary strategy as well as R&D funding.
- Antimicrobial prescriptions should be based on definitive diagnosis rather than an assumption.
- The economic contribution of AMR is enormous, therefore it is vital to create and implement policies using a holistic “One Health” approach.

Conclusion

The emergence of antibiotic resistance is a huge public health issue all over the world. It makes even mild infections difficult to cure, resulting in serious illnesses and deaths. As a result, a loud call to halt this menace must be issued at the local, national, and global levels, which would eventually aid in the achievement of SDG 3, ensuring excellent health and well-being for everyone.

Prelims practice questions

Q1) What is the primary cause of antimicrobial resistance (AMR)?

- a) Underutilization of antibiotics
- b) Proper adherence to antibiotic prescriptions
- c) Overuse and misuse of antibiotics
- d) Strict control of antibiotic distribution

Ans- C

Q2) Why is antibiotic resistance regarded as a worldwide health risk?

- a) It only affects underdeveloped countries
- b) resistant infections are easier to cure
- c) it restricts treatment options and raises mortality rates
- d) it has no effect on public health.

Ans- C

Mains practice Question

Q) Describe how agriculture contributes to antibiotic resistance. How can sustainable farming methods be used to reduce the development of resistance in animals and its possible transmission to humans?

Himanshu Mishra

