GSSCORE

An Institute for Civil Services

MAINS TEST SERIES 2023

GS MAINS Q&A

REVISION TEST - 03

(10 QUESTION)

POLITY

Complete Syllabus

POLITY REVISION TEST

Time Allowed: 90 Min. *Max. Marks: 125*

Section - A

1. **The working and growth of the representative democracy and parliamentary institutions is a great tribute to their strengths and resilience. However, in recent years, quite a debate is rife about the decline of parliament and its functioning. Critically analyse the statement and discuss the way forward.**
2. **Rule of Law is indispensable to bring about social changes in human civilization. Justify the statement, in light of recent developments in the Supreme Court.**
3. **The Tribunal Reforms Bill 2021 has put the Union Government and Supreme Court at crossroads. Analyze the statement. Also, state the significance of the tribunalization of the justice system in India.**
4. **Executive Accountability is the essence of the Parliamentary system of the government. Discuss the statement in the context of the Government of National Capital Territory of Delhi (Amendment) Act 2021.**
5. **Examine the challenges faced by the Urban Local Bodies in the decentralization of governance. What role can the Municipal Performance Index play in eliminating those challenges?**

Section - B

6. **The bureaucratization of the Election Commission Institution has led to the subversion of the autonomy and integrity of the Institution and raised several questions about its neutrality. Analyze. Also, highlight the reform measures taken so far and suggest measures.**
7. **"The understanding of judicial activism is largely driven by the people's perception of the role of Courts in a democracy". Justify the statement in the light of the recent judicial development in the Supreme Court.**
8. **How far the influence of the NRIs is significant in the Indian Electioneering Process? Discuss the nuances of providing the NRIs the voting rights through the proxy ballot and the classic requirements of the election.**
9. **A partially implemented PESA has worsened self-governance in Adivasi areas. Elaborate with regard to the present scenario.**
10. **"Preventive detention is a necessary evil only to prevent public disorder, however, the State should not arbitrarily resort to 'preventive detention' to deal with all 'law and order' problems". Analyse.**

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GS SCORE

POLITY REVISION TEST

Section - A

1. The working and growth of the representative democracy and parliamentary institutions is a great tribute to their strengths and resilience. However, in recent years, quite a debate is rife about the decline of parliament and its functioning. Critically analyse the statement and discuss the way forward.

Approach

1. ***Introduction to the functioning of the Parliament (50 words)***
2. ***Importance of the Parliamentary functioning (60 words)***
3. ***Needs for the Parliamentary Reforms (70 words)***
4. ***Way Forward for the Reformation (70 words)***

Hints:

The Parliamentary democracy is a platform where the government of the day is held accountable for its actions, policies. It provides people an opportunity where the representative of people can advocate about peoples aspirations and needs. This institution as a whole where Debates, discussion are an integral part of it, benefits the society with informed decision making and better policy alternatives. But in the recent times we have seen the Deteriorating picture of Indian parliament. As India celebrates its 75th year of independence with the Amrit Mahotsav, the glaring irony of a dysfunctional Parliament can no longer be ignored. The Lok Sabha and the Rajya Sabha are gradually ceasing to be places for debate.

Importance of the functioning of the Parliament:

- The productivity of the Parliament is evaluated on the basis of the kind of discussion before passing a law. The Parliament controls the executive by asking questions.
- The government is alerted to its shortcomings, and also comes to know the opinion of the people through their representatives in the Parliament, i.e. the MPs.
- For Parliament, it is of the utmost importance constantly to review and refurbish its structural-functional requirements and from time to time to consider renewing and reforming the entire gamut of its operational procedures to guard against putrefaction and decay.
- Parliament is the communication link between the people and the government. Bad public relations job results in a poor image of Parliament and of its members.

Why the Parliament needs Reforms:

- **Physical Chaos:** Much of the session is characterized by physical chaos. The Opposition starts the session demanding a debate on the laws, and with the government unrelenting, the Opposition starts disrupting the Houses.

- **Cutting down the time for Discussion:** These constant disruptions mean the Parliament functioned for less than a quarter of the scheduled time. On average, Lok Sabha passed a Bill in 34 minutes, Rajya Sabha in 46 minutes
- **Lack of Accountability:** Along with physical chaos, the session is marked by the fact that Parliament is unable to carry out its two most important functions: legislating and holding the government to account.
- **Lack of Scrutiny by the Committees**: In the current Lok Sabha, so far, only 12% of the Bills introduced have been referred to a committee. The expert assistance of the Committees is a prerequisite for building up a better understanding of the Bills.
- **Parliament becomes a *Rubber Stamp:*** Parliament is meant to be a check on the executive. But in some of the last sessions, it is reduced to a rubber stamp whose only job was to mechanically pass bills drafted by the executive.
- **Destroying the legislative Checks:** The Anti-Defection Law, which forces legislators to vote as per the diktats of their party high commands rather than in the interests of the people who elected them. Moreover, the increasing politicization of the law creates doubt over the fair practices in this law.
- **Need for Social Engineering:** The information explosion, the technological revolution, the growing magnitude and complexities of modern administration, and the concept of Welfare State cast upon Parliament vastly extended responsibilities of social engineering through legislation.

Way Forward for the Reformation:

- **Professionalization of Floor-Management**: Control mechanisms, debating, and decision-making procedures would have to be revamped and made faster. Floor management techniques would have to be professionalized at the level of whips, parliamentary officials, and the Presiding Officers.
- **Rejuvenation of the Committees:** The Committees are constituted to check the hasty and ill-framed bills. The law should be made for the compulsory scrutinization of some Bills for the technical screening in a time-bound manner.
- **Accessibility to the Public:** Parliament must have access to public opinion and the public must have access to Parliament. If corruption is suspected inside the portals of legislatures, the press and the public must be free to question it and expose it without being threatened under the law of parliamentary privileges.
- **Need of Parliamentary Ombudsman:** There is every need for a parliamentary Ombudsman to investigate complaints from members of the public who believe that they have suffered injustice because a government department or certain public bodies have not acted properly or fairly, or have given a poor service and not put things right.
- **Live-telecast of the debates:** To give a faithful and complete picture of what actually happens in the Houses of Parliament, it is necessary to telecast nationally other important debates live.
- **Reorientation of the Press:** It is necessary that the press and public relations in Parliament are suitably reoriented and developed as a highly specialized and dynamic service charged with the responsibility inter alia of educating public opinion in regard to Parliament.
- **Profession Training for the Members:** It is necessary to provide the much-needed professional training and orientation to every newly elected Member irrespective of his/her ideological or party affiliations. The curriculum should include adequate knowledge of the political system, the Constitution, the Rules of Procedure and Conduct of Business, the practices and precedents, mechanisms and modalities of the working of the Houses and the Parliamentary Committees, the do's and don'ts for Members, the rules of parliamentary etiquette and the like.

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- **Parliament Disruption Index:** A "Parliamentary Disruption Index" should be evolved to monitor disruptions in Parliament and state legislatures, and check indiscipline. This would lead to the availability of more time for debate and discussion on issues before the House.
- **Inclusive Participation of the Opposition:** In the United Kingdom, where Parliament meets over 100 days a year, opposition parties get 20 days on which they decide the agenda for discussion in Parliament. A similar kind of approach can be affirmed to enhance the participation of the opposition parties in the decision-making in the House of the Parliament.

Conclusion:

A performing Parliament is healthy sign of democracy. When a Parliament session runs smoothly, MPs get a chance to talk about the peoples issues. Efforts need to be made to develop the essential prerequisites for the success of parliamentary polity efficient functioning, discipline, character, high sense of public morality, and willingness to here and accommodate minority views.

2. Rule of Law is indispensable to bring about social changes in human civilization. Justify the statement, in light of recent developments in the Supreme Court.

Approach

1. ***Introduction of Rule of Law (50 words)***
2. ***Rule of Law under Indian Constitution (60 words)***
3. ***Interpretation of the Rule of Law by Supreme Court. Discuss judgments from Keshwananda Bharti to Recent Judgments (140 words)***

Hints:

The rule of Law is one of the basic and general principles of the constitution. It is characterized as legal domination as idea of government of law rather than an idea of men. So, in essence rule of law means that everyone from the government to its officials, together with citizens should act according to the law. The doctrine of rule of law has been described as supremacy of the law. This means that where there is rule of law no person can be said to be above the law, even the functions and actions of the executive organ of the state shall be within the ambit of the law. In the Indian context, the meaning of rule of law has somewhat been much expanded. The Supreme Court has in various occasions further enunciated and illustrated the rule of law through its various judgments.

Interpretation of the Rule of Law by Supreme Court:

The principle of the Rule of Law denotes two principles;

i) that the law must be clear and accessible, and

ii) equality before the law. Rule of Law is based on a factual and social reality that is constantly changing.

The purpose of having a Rule of Law is to transform society for the better and this objective is the foundation pillar of a transformative constitution.

Over time, the Constitution has been interpreted by the judiciary in a manner so as to afford a liberal interpretation of the principle.

- The Supreme Court in ***Kesavananda Bharati*Case** held the principle of 'Rule of Law' and 'Democracy' to be a part of the basic structure of the Constitution.
- The Supreme Court has its own history of invoking the concept of the Rule of Law. And, this invocation becomes more relevant in the contemporary dynamic society that is changing at a faster pace. While decriminalizing homosexuality in ***Navtej Johar* Case**, the Supreme Court has set the course of the future and held that sexual orientation is recognized and protected by the Constitution.

- The judgment of the Apex Court in ***Navtej Johar***was preceded by the judgment in ***Justice Puttaswamy***, which is instrumental in holding the idea that the right to privacy is a fundamental right under Part III of the Constitution.
- Talking about the idea of gender justice, the Supreme Court in recent judgment has strengthened the idea of an egalitarian and inclusive society. In 2018, while decriminalizing adultery in the judgment of ***Joseph Shine***, the Supreme Court acknowledged the error in treating women as the property of men. Similarly, in the ***Sabrimala* judgment**, the Court held that the exclusion of women between the ages of 10-50 years by the Sabarimala Temple was contrary to constitutional morality and that it subverted the ideals of autonomy, liberty, and dignity.
- Supreme has rather took a more transformation approach while deciding the case, such as ***Anuradha Bhasin***, wherein the Court held that freedom of speech and expression included right to the internet and therefore was protected under the constitution. In the judgment of ***Babita Puniya***, while ensuring the permanent commission for women into the army, the Supreme Court held the evaluation criteria set by the Army constituted systemic discrimination and disproportionately affects women.
- There are many other judgments, be it the ***Triple Talaq* case**, where the Apex Court struck down the draconian practice of triple talaq; ***BK Pavitra*** judgment, where the Court uphold the reservation policy enshrined under the Constitution to eradicate the deep structural inequality in society; the recently celebrated order of the Supreme Court to allow the entry of women in the NDA, and so on. The list is unending, but the idea that is to be conveyed is that every generation has the right to decide for themselves what Constitution means for them, and the Supreme Court has become successful in interpreting the idea of justice under the Rule of Law.

Conclusion:

The Rule of Law incentivizes the idea of protecting the rights under the Constitution, which are dynamic and timeless rights of liberty, and equality. This approach has been very much used by the Supreme Court in upholding Constitutional Morality. Interpersonal relations, sexual harassment at the workplace, mob lynching, marital rape, etc. are some of the issues that provide an incentive to the Court to come up with another series of Constitutional Dynamism for the preservation of the Rule of Law.

3. The Tribunal Reforms Bill 2021 has put the Union Government and Supreme Court at crossroads. Analyze the statement. Also, state the significance of the tribunalization of the justice system in India.

Approach

1. ***Briefly introduce with tribunals in India and mention some Constitutional provision and link it with recent development (30 words)***
2. ***The Tussle on the Tribunal Reforms Bill 2021 (90 words)***
3. ***Salient Features of the Bill 2021 (45 words)***
4. ***The Tussle on the Bill 2021 (45 words)***
5. ***Significance of the Tribunalization of Justice (40 words)***

Hints:

Speedy trial and quick justice are fundamental rights implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. In consonance with this principle, tribunalization in India formally started with the insertion of Articles 323A and 323B into the Constitution by virtue of the 42nd Constitutional Amendment Act. The Amendment provided for the establishment of Administrative Tribunals to deal with service matters and also for the establishment of other Special Tribunals to deal with special disputes under respective statutes.

The Tussle on the Tribunal Reforms Bill 2021

- The government has, in several instances, has established tribunals, such as National Green Tribunal, National Company Law Tribunals, etc., and several Appellate Tribunals as well. The government has also formulated the Rules pertaining to it.
- Supreme Court in past, has struck down the Rules framed by the Parliament for the establishment of the Committee for the appointment of the chairman and members of the tribunal. Recent instance being, the 2020 Rules were stuck down in *Madras Bar Association* Case (2020), in which the Court directed the constitution of a 5-member committee with the CJI or his nominee having a casting vote power.
- The conspectus of all these decisions indicates that-
  - i) The judiciary wants to have a major say in the appointment of members of tribunals,
  - ii) The judiciary intends to rehabilitate retired judges in these tribunals, and
  - iii) The judiciary feels that it has exclusive and predominant power to adjudicate even those disputes of technical and complex nature, as the sole custodian of justice.

The Tribunal Reforms Bill 2021

The Tribunal Reforms Ordinance, 2021, contrary to the apparent intention of the Supreme Court, postulated a search-cum-selection committee for the appointment to the post of Chairperson or Member. And, despite this provision being struck down by the Supreme Court, the Government has enacted the Tribunal Reforms Bill 2021 (*hereinafter* the Bill 2021).

- The Bill 2021 not only abolished five tribunals but also introduced a similar kind of approach for the appointment and terms of service of the tribunal officials.
- The Bill 2021 has conferred the jurisdiction of the abolished Tribunals to the High Courts, which will delay justice delivery further.
- The Bill 2021 is also questioned for the lack of discussion over the Bill in parliament.

Significance of the Tribunalization of Justice:

- Tribunals are needed for specialized and effective hearings of technical matters. The procedural simplicity, and speedy justice, that are guaranteed by the tribunals reduce the burden of Constitutional Courts, and thus its importance cannot be undermined.
- In the never-ending tussle between the executive and the judiciary over the tribunal system, fulfillment of the litigants' desire to secure speedy, inexpensive, and informal justice is important to be looked into.
- The Indian Constitution imbibes the idea of cooperative institutions to fulfill the Constitutional ethos. Both the government and the judiciary, while fulfilling their respective obligations, are required to cooperate.
- By reposing trust in other institutions as per the doctrine of *Constitutional Trust*, the government and higher judiciary can ensure that tribunals function as effective alternative institutions.
- The Rules pertaining to the appointment and term of services of the tribunal officials are to be decided with due consultation among all the stakeholders. And the appointment of the tribunal officials is required to be done in a time-bound manner to justify the objective of their establishment.

Conclusion:

Tribunals are needed for a specialised and effective hearing of technical matters that may at times miss the eye of law in the conventional courts. The procedural simplicity and speedy justice that is guaranteed by a tribunal reduces the burden of the constitutional courts and thus its importance cannot be undermined. A reform to the tribunals system in India is remedy to the age old problem that still cripples the Indian judicial system

4. *Executive Accountability is the essence of the Parliamentary system of the government. Discuss the statement in the context of the Government of National Capital Territory of Delhi (Amendment) Act 2021.*

Approach

1. ***The Parliamentary System of Government under Indian Constitution (50 words)***
2. ***Special Constitution Provisions for the Union Territory of Delhi (50 words)***
3. ***The Approach of the Supreme Court (30 words)***
4. ***Critical Analysis of the Government of NCT of Delhi (Amendment) Act, 2021 (80 words)***
5. ***Conclude with the way forward (40 words)***

Hints:

Passing the Government of NCT of Delhi (Amendment) Act, 2021 is a step by the central government to resolve the tussle of power between the elected government of Delhi and the LG. This amendment not only crystalizes that the ultimate power to govern Delhi rests with LG but also clarifies the ambiguities by specifying the powers and responsibilities of the LG and the elected government towards the people of Delhi.

Article 239AA of the Constitution provides that:

- With the insertion of Article 239AA by virtue of the 69th Amendment, the Parliament envisaged a representative form of Government for the NCT of Delhi. The government has been given a special constitutional status by Parliament in the exercise of its constituent power as against its normal legislative power.
- The said provision of Article 239AA intends to provide for the Capital a directly elected Legislative Assembly confers on the assembly the power to legislate on all matters in the state list as well as the concurrent list except land, police, and public order.
- The interpretation of Article 239AA(3)(a) clarifies that the Parliament has the power to make laws for the National Capital Territory of Delhi with respect to any matters enumerated in the State List and the Concurrent List. If the Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive action of the State must conform to the law made by the Parliament.
- The provision also provides for the reservation of the Bill passed by the Assembly by the Lieutenant Governor for the consideration of the President.

Approach by the Supreme Court:

- Hon'ble Supreme Court in***the Government of NCT of Delhi*** **judgment (2018),** in order to bring forth clarification on the Constitutional provisions, held the real purpose behind the Constitution 69th Amendment Act is to establish a democratic setup and representative form of government.
- It was also clarified that the Lieutenant Governor cannot interfere in every decision of the Delhi government and has no independent decision-making powers that he must act on the aid and advice of the council of ministers.

The Government of National Capital Territory of Delhi (Amendment) Act, 2021

The Act seeks to amend the National Capital Territory of Delhi Act, 1991, and provide a clarification pertaining to the powers and responsibilities of the Legislative Assembly and the Lieutenant Governor:

- **Restriction on laws passed by the Assembly:** The Act provides that the term "government" referred to in any law made by the Legislative Assembly will imply Lieutenant Governor (LG). This provision is against the Constitutional ethos as it defeats the established institution of representative government.

- **Rules of Procedure of the Assembly:** The Act provides that the Rules framed by the Assembly must be consistent with the Rules of Procedure and Conduct of Business in the Lok Sabha. This provision is inconsistent to the extent of the inherent privilege of each legislative house to frame rules for conducting its proceedings. The Parliament cannot make a law restricting such privilege and independence of the House.
- **Prohibits Inquiry by the Assembly into administrative decisions:** The Act prohibits the Legislative Assembly from making any rule to enable itself or its Committees to (i) consider the matters of the day-to-day administration of the NCT of Delhi and (ii) conduct an inquiry in relation to administrative decisions.
- It deems any rules previously made by the Assembly pertaining to such matters void; the very process of framing such provision is against the principle of the Natural Justice.
- **Assent to Bills: The Act demarcates the instances when the Lieutenant Governor (LG) can reserve a Bill for the consideration of the President.** The Act requires the LG to reserve certain bills passed by the Legislative Assembly for the consideration of the President. These Bills are those:

  (i) which may diminish the powers of the High Court of Delhi,

  (ii) which the President may direct to be reserved,

  (iii) dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, or

  (iv) relating to official languages of the Assembly or the NCT of Delhi.

  The Bill requires the LG to also reserve those Bills for the President which incidentally covers any of the matters outside the purview of the powers of the Legislative Assembly.
- **The LG's opinion for executive actions:** The Act specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the LG.

Criticism of GNCTD Amendment Act

- The critics have challenged the vires of GNCTD Amendment Act for being prima facie violative of basic structure doctrine of the constitution and also violative of Article 14,21 and 239AA of the constitution.
- The latest amendment will greatly reduce the efficiency and timeliness of the Delhi government by making it imperative for it to hold consultations with the L-G even when a situation demands urgent action.
- Significantly, the L-G is not obliged to give his opinion to the State government within a time frame. Critics argue that the L-G could politically exploit these unbridled powers to hamper the government's administrative work and thus turn the political tides against the incumbent if he so desires.

Conclusion:

The enactment of law for seeking a clarificatory approach to the administration of the UT of Delhi is a need of the hour. But it should not be at the cost of the basic feature of the Constitution. The Delhi assembly has the inherent and inalienable right to scrutinize the decisions of the government, administrative or otherwise. At the same time, the Parliament is competent to enact the law as per the Constitutional provision. The practicable solution would be to come at the same terms with cooperation, consultation, and consideration.

5. Examine the challenges faced by the Urban Local Bodies in the decentralization of governance. What role can the Municipal Performance Index play in eliminating those challenges?

Approach

1. ***Urban Local Bodies (ULBs) (50 words)***
2. ***Challenges faced by the ULBs (75 words)***
3. ***The Significance of the Municipal Performance Index (75 words)***
4. ***Conclude with the way forward (50 words)***

Hints:

Amendment to the Constitution in 1992 brought forth the idea of the Urban Local Bodies (*hereinafter* the ULBs) with the inception of the local self-government in the Constitution. The ULBs are local bodies that administer or govern a city or a town of a specified population. The constitution and improvisation of powers and authority of the ULBs are subjects of state list; hence, the state government makes an ambivalent policy towards the municipal rule.

Urban Local Bodies are vested with a long list of functions delegated to them by the state governments. These functions broadly relate to public health, welfare, regulatory functions, public safety, public infrastructure works, and development activities.

There are several types of Urban Local Bodies in India established as per the Constitutional provisions, such as Municipal Corporation, Municipality, Notified Area Committee, Town Area Committee, Township, Port Trust, Cantonment Board, etc.

Challenges faced by the ULBs:

The constitutionally recognized local self-government is still in the transitional phase with the expectations to acquire technological facilitation and democratic changes. Article 40 in the Directive Principles of State Policies leaves the provision of organizing Panchayats in rural areas, does not give any corresponding duty to the states with regard to the creation of urban bodies.

There are several challenges that the ULBs face in the Indian Context:

- **Financial Deficit:** Their chief sources of income are the varied types of taxes. However, most of the income-generating taxes are levied by the union and state governments and, the taxes collected by the urban bodies are not sufficient to cover the expenses of the services provided.
- **Unplanned Urbanization**: The municipal services have failed to cope with the increasing needs of the population, both qualitatively and quantitatively. The metro cities are bulging and their administration pertaining to civil amenities is getting unmanageable.
- **Excessive State Control:** This state control which is legislative, administrative, judicial, and financial keeps urban municipal government quiet subservient units of local administration rather than functioning as an institution of self-governance.
- **Low Effectiveness:** In view of the paucity of finances, the local bodies have not been able to fulfill their constitutional obligations. As a result, they face constant criticisms from the public as well as the government.
- **Low level of People's Participation:** This is the sub-standard approach of our society in that, despite a relatively higher level of literacy and educational standard, people do not take adequate interest in the functioning of the urban government bodies.

The Significance of the Municipal Performance Index:

Salient Features of the Municipal Performance Index:

- The Municipal Performance Index (*hereinafter* the MPI), launched as an accompaniment to the Ease of Living Index, seeks to examine local government practice in municipalities across areas of services, finance, administration, policy, technology, and governance.

- The index categorizes the municipalities into two categories: Million+ Municipalities (municipalities having over a million populations) and Less than Million Municipalities (municipalities having less than a million populations).

Significance of the MPI:

As India continues to move forward with rapid urbanization, our cities need inclusive development. At this crucial juncture, the MPI provides a mirror to all of us on the health of our local governments. The significance of the MPI is as follows:

- While focusing on the factors that produce those outcomes, the MPI seeks to simplify and evaluate the complexities in local governance practice and promote the ethos of transparency and accountability.
- The MPI provides an understanding of municipalities' functionalities and the extent of its development and capabilities, through which the citizens can better, understand their local government administration, which in turn builds trust among key stakeholders.
- The framework for the MPI covers 20 varied sectors, such as education, health, water & sanitation, solid waste management, and digital literacy, etc, which are emerging areas of concern.

Conclusion:

Democratization and decentralization are interdependent processes. Dissemination of power from one center helps in empowering the people and can also be held the government accountable for exercising political power. Together through cooperative federalism, we can leverage to ignite action towards transforming our urban local bodies into true local self-governments, as envisaged in the 74th Amendment.

Section - B

6. *The bureaucratization of the Election Commission Institution has led to the subversion of the autonomy and integrity of the Institution and raised several questions about its neutrality. Analyze. Also, highlight the reform measures taken so far and suggest measures.*

Approach

1. ***Contextual introduction to the Election Commission Regime (50 words)***
2. ***Significance of Election Commission institution in Democracy (70 words)***
3. ***Issues aligned with the Institution (80 words)***
4. ***Need for Electoral Reforms (50 words)***

Hints:

The Election Commission of India is a very unique agency in its mandate, powers and functions. It is one of the few agencies in the country that is wholly independent and it's only constitutional duty is to conduct elections in a fair and impartial manner. Is has contributed significantly to make India a democratic nation. However, the EC needs to formulate a conscious policy towards democratization and rule-enforcement if it has to become the means to the end of a fair and vibrant representative democracy.

Election Commission Institution (ECI): A Pillar of Democracy

The ECI is a highly trusted Constitutional institution entrusted with the task of 'superintendence, direction, and control of elections. Indian Constitution, under Article 324, has entrusted the Election Commission of India to administer elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies, State Legislative Councils and the offices of the President and Vice President of the country; and, the State Election Commission conducts election for the Panchayat, and Municipality under Article 243K, and Article 243ZA respectively.

In the last few years, in particular, have seen a subversion of the autonomy and integrity of the ECI, leading to several questions about its neutrality. These are:

- Appointment of the Election Commissioners from the Bureaucrats;
- the issue of using electronic voting machines (EVMs) and not allowing a Verifiable Paper Audit Trail (VVPAT) machine in all polling booths;
- the removal of the State Election Commissioner via an ordinance route (for eg. Andhra Pradesh);
- the continuing influence of money power and hate speeches by politicians;
- the unrestricted violation of the Model Code of Conduct by the Political Parties;
- the hesitancy of the Commission to take swift action, etc.

Measure to be taken for Electoral Reforms:

1. Need for the implementation of the Directives by the Courts:

i) The Hon'ble Supreme Court in several cases, such as ***Mohinder Singh Gill, TN Seshan v. Union of India,*** held that a free and fair election is a constitutional imperative. We need to have functional autocracy for the Election Commission Institution.

ii) Andhra Pradesh High Court in ***Dr. N Ramesh Kumar v. The State of Andhra Pradesh and Others*** that struck down the state's ordinance for cutting short the tenure of the State Election Commission (SEC); what we need to is to have an incentive-legislative or administrative-to prevent the SEC from functioning as an autocrat in our constitutional framework.

iii) It was held in the case of ***Kishansingh Tomar v. Municipal Corporation, Ahmedabad*** **(2006)**, that cooperation by the executive is imperative in the conduct of the election. The judiciary has ensured the removal of unnecessary interference of the executive by way of striking down the Andhra Pradesh Ordinance but at the same time called for due consultation for the required deliberative process with the executive.

2. Second Administrative Reforms Commission:

i) Appointment of the ECI: The officers, such as the Chief Election Commissioner, Election Commissioners, and State Election Commissioners to be appointed by **multi-party committees/ collegium system.** In this Committee, the involvement of the opposition parties can be ensured for transparent measures.

ii) Financing of the Election: The Commission called for the (i) disclosure audit of assets and liabilities of candidates; (ii) curbing the cost of campaigning; and (iii) state funding of elections.

iii) Conduct and Better Management of the Election: The Commission called for (i) irregularities in the election, and proliferation of candidates; (ii) restrictions on the government-sponsored advertisement, and opinion polls; (iii) prohibition of the campaign during the last 48 hours; (iv) restriction on transfer of officers likely to serve elections; (v) punishment for electoral offences to be enhanced, etc.

It is not surprising that several of these measures have been taken into consideration in the Model Code of Conduct; and other incentives. But, there is a need for stricter implementation and incentivization of those measures.

iv) Other Measures: The Commission called for (i) the institutionalized mechanism to ensure coordination, and sharing resources among the stakeholders; (ii) adjudication of election disputes within the prescribed time; and (iii) deeper democratic and political reforms, etc.

3. Law Commission on Electoral Reforms:

i) The Law Commission of India, in their **170th report in 1999** called for statutory measures: i) to make declaration of assets and criminal cases pending against the candidate part of the

qualifications necessary for membership to the House of the People; ii) to have a separate set of penalties for electoral offences and offences having a bearing upon the conduct of elections under the Indian Penal Code (*i.e.* the IPC); iii) to make state funding for the election with the condition of barring the parties from raising funds from any other source, etc.

ii) The Law Commission of India, in their **255th report in 2015** called for the measure such as i) candidate expenditure limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections; ii) constitution of a separate independent and permanent Secretariat for the ECI and the State Election Commissions along the lines of the Lok Sabha/Rajya Sabha Secretariats, etc.

4. Other Measures:

i) The Tarkunde Committee (1975): The Committee suggested **changing the procedure of appointment of the Election Commissioners,** just like the collegium system. It was the Tarkunde Committee, on whose recommendation, the voting age was reduced from 21 to 18 in the 61st Constitutional Amendment Act of 1988.

ii) The Goswami Committee Report (1990): The Report recommended **the empowerment of the Election Commission** pertaining to take stringent action on the report of returning officers, election observers, or civil society in regards to booth capture or the intimidation of voters; or to have the power to make recommendations to the appropriate authority and refer any matter for investigation.

iii) The Indrajit Gupta Committee on State Funding of Election (1999): The Committee called for **curbing the cost of campaigning, state funding to the parties for election**, etc.

iv) National Commission to Review the Working of the Constitution (2001): The Commission called for i) following-up action to the declaration of assets and liabilities by candidates; ii) an automated online database prepared by the Election Commission of India for electoral transparency; iii) common rolls for all elections, with the Parliamentary and Assembly rolls adapted to suit the needs of local bodies elections, etc.

Conclusion:

Free and fair elections are the hallmark of a well-functioning democracy like India; having said so, there are a number of areas that need to be strengthened for us to realise the true potential of a well-functioning democracy. The electoral reform is a continuing process with the requirement of a national dialogue on the important changes that need to be brought about to strengthen our electoral system.

7. "The understanding of judicial activism is largely driven by the people's perception of the role of Courts in a democracy". Justify the statement in the light of the recent judicial development in the Supreme Court.

Approach

1. ***Contextual Introduction of the Judicial Adventurism (i.e. Judicial Activism) (30 words)***
2. ***Judicial Activism vs. Judicial Overreach (50 words)***
3. ***Brief About Judicial Activism and Judicial Overreach through case laws (80 words)***
4. ***Analysis of the trend of Judicial Activism (Popularist Approach and the Issues) (90 words)***

Hints:

The Constitution of India embraces the idea of separation of powers of the legislature, executive, and judiciary, in an implied manner; there is no clear-cut demarcation of powers though. The conflict that arises between these three organs is far from eliminated and the rising issue that arises, which needs attention is the judiciary's activist approach and the people's acceptance of those regimes. The tussle

arises due to continued underperformance, and at times, non-performance of the executive and legislative organs.

Recently, the Supreme Court has put forth the precedent staying the implementation of the farms' laws aimed at liberalizing the farm sector, which appears a case of judicial overreach and may potentially shake the foundation of India's representative democracy.

Judicial Activism vs. Judicial Overreach:

- Renowned Jurist Upendra Baxi believes that *the SC of India is essentially acting as an institution of governance and not merely settling disputes*. And, it is true that the Constitutional Courts of India were never passive, with the attitude of merely striking down a law or preventing something from being done. Rather, the attitude comprised issuing orders, positive affirmation cases, and decrees directing remedial actions.

Judicial Activism:

- Judicial activism refers to the interference of the judiciary in the legislative and executive fields. In the past few years, judicial activism has only flourished in India. One such example is **the Public Interest Litigation (PIL)**, which is seen as relaxation on the traditional rule of *locus standi*.
- The historical ruling of the ***Keshawananda Bharati* Case (1973), the doctrine of the Basic Structure case,** marked a significant shift in the role of the judiciary from the practice of constitutional interpretation to a creative and active role of the judiciary. Similarly, the Supreme Court in ***Maneka Gandhi* Case (1978),** emerged with the substantive 'due process of law' for the enforcement of Fundamental Rights.
- There were innumerable instances, where the Apex Court has set the benchmark for implementing the Constitutional ethos by way of judicial activism. For instance, the ***Second Judges Case*** also known as ***Advocate on Record vs Union of India*** established the principle of the collegium system.

Judicial Overreach:

- When the judiciary starts overstepping in the constitutional powers entrusted to them, and resultantly, interferes in the functioning of the legislative or the executive organs of the government. In this sense, judicial adventurism defeats the very basic principles imbibed in the Constitution.
- The glaring instances of judicial overreach include the ban on Deepavali firecrackers citing rising pollution and safeguarding the environment; banning the use of private vehicles after 10 or 15 years; ban of liquor sale at retail outlets that are within 500 meters of any National or State highway; cancellation of telecom licenses in 2G case; interference in the educational policies of the government (***Islamic Academy of Education and Ors vs State of Karnataka***), etc.

Analysis of the trend of Judicial Activism:

Popularism of the Judicial Activism:

- The Indian Judiciary, specifically the Supreme Court, has many a time restrained herself from judicial adventurism. In the case of the *State of Bihar vs Bal Mukund Shah,* the Supreme Court held that the doctrine of separation of powers is one of the basic features of the Constitution. This indicates that it was the Court only, which through her activist approach, evolved this idea of judicial restraint. But the irony lies with the perception of the other entities as to how they take the decisions of the Court.
- It is not always true that judicial activism is always unexpected; sometimes necessity of the society also plays a role for the judiciary to come with the revolutionary approach. For instance, The Supreme Court has given remarkable guidelines in the case of *Vishaka vs State of Rajasthan*, due to the absence of enactment with regards to the enforcement of gender equality laws against sexual harassment.
- While interpreting Article 21 of the Constitution, for ensuring the right to clean environment, right to food, right to education, etc, the Supreme Court went ahead with the conventional regime and provided with adequate remedies.

Where the problem lies:

- In these series of events, not all judgments were accepted by society. Many rulings were criticized, questioned, and challenged. For instance, in the case of *J.P.Unnikrishnan vs State of Andhra Pradesh*, the Supreme Court was criticized for her activism, for taking the inappropriate approach for the interpretation of Article 21 of the Constitution.
- Other recent instances, where the Court was criticized were, denying the executive any role in the appointment of judges by instituting a collegium which is said to be an extra-constitutional body; invalidating the National Judicial Appointments Commission Act; the Supreme Court of India's setting up of the Lodha Panel to probe the allegations of corruption and match-fixing in cricket; and betting scandals in Indian cricket seen as interference not warranting the involvement of the apex court; sealing of unauthorized commercial operations in Delhi, to cite a few.

Conclusion:

It is true that if judges take up the tasks of the executive and legislature in their own hands then some issues are bound to arise such as lack of expertise and distorting the doctrine of separation of powers. But then the Indian scenario also requires the creativity and application of personal minds of the judges while interpretation due to the complexity of cases in the present times.

8. How far the influence of the NRIs is significant in the Indian Electioneering Process? Discuss the nuances of providing the NRIs the voting rights through the proxy ballot and the classic requirements of the election.

Approach

1. ***Contextual Introduction of the NRI Voting in India (40 words)***
2. ***Analysis of the Voting Rights to the NRIs (60 words)***
3. ***Merits & Issues in Providing the Voting Rights to the NRIs (100 words)***
4. ***Suggest measures (50 words)***

Hints:

The Indian Diaspora, far from the direct experience of the political reality in India, is human capital for the politico-economic upliftment of India. However, out of 1.26 crore Indians residing overseas, only a little over 1,00,000 are registered as voters with the Election Commission of India. The Election Commission of India is considering the introduction of electronically transmitted postal ballot system (ETPBS) facility for overseas voters

Voting Rights to the NRIs:

The question of providing voting rights to the NRIs has been a matter of discussion for a long. The government's decision to allow NRIs to vote could set the stage for expatriates to emerge as a decisive class in the Nation's electoral politics. This decision would also remove an unreasonable restriction posed by Section 20(A) of the Representation of the People (Amendment) Act of 2010, requiring overseas electors to be physically present in their constituencies to cast their votes.

Having said so, we need to understand every such aspect of providing voting rights to the NRIs, which may affect, positively, or negatively, the basic principles of the Indian Electioneering framework.

Merits of the NRIs Voting Rights:

i) **Politico-Economic Upliftment:** Providing voting rights to the Indian Diaspora has its own advantages as it will not only keep them engaged in the political framework of India, but also bring forth the investment in the economic sector.

ii) **Dissemination of Information:** The plan will bring the NRIs closer to India and can add different perspectives, and information. This will make the Indian policy framework more inclusive, and credible.

iii) **Inclusivity in the Electoral Process:** The progressive and inclusive electoral system will reinvigorate the image of India at the International fora. It will also strengthen the relations with the countries, where the Indian Diaspora resides.

iv) **Transparency in the Electoral Measures:** The NRI voting through proxy votes ensures that only one person will be appointed for one overseas elector; this will not ensure transparency, credibility, and impartiality.

Issues in Providing the Voting Rights to the NRIs:

i) **Against the Direct Democracy:** The NRIs are far from the reality and nuances of the social and structural framework of the government. They cannot access social welfare in their constituencies. Hence, it is against the principle of direct democracy.

ii) **Violation of the Principle of Equality:** The fundamental right to equality is the prime argument. The NRIs are provided with voting rights; we have over 40 times more internal migrants than overseas ones. But most of them cannot participate in the world's biggest display of democracy.

iii) **Need for the Electoral Reforms:** There is a need for electoral reforms in India; questions pertaining to the misuse of the EVM, or the VVPAT; criminalization of politics; corruption; hate speech, etc raises the question of the credibility of the Indian Electioneering System.

iv) **Violation of the Basic Electoral Principles:** The notion of external voting goes against one of the classic requirements, *namely* the residency inside the state territory. The system of e-ballot for such a plan not only puts forth the question of maintaining the secrecy of election but also threatens the free and fair election.

v) **No Check on Coercion:** considering the lack of labour reforms for the foreign migrants there can be a guarantee of NRI voters exercising their vote in a free and fair manner as there can be no check on coercion or inducements by the employers and supervisors.

Suggestion:

- **Electoral Reforms**: We have several measures suggested by the committees, such as the **Goswami Committee** (on empowerment of the Election Commission Institution); the **Indrajit Committee** (on state funding of election); **second administrative reform commission** (for better management and conduct of election); which also need to be taken expeditiously for the reformation and restoration of electoral faith.

- **Equitable Dissemination of Rights:** In India, the adult franchise has been the basis ever since we adopted our constitution in the year 1950. But, two Main sections of people were being left out for various reasons: (i) the NRIs; (ii) the interstate migrant labourers. We have resolved the issue for the NRIs community, but we have to look for equitable measures for the migrant workers as well for ensuring their participation in electoral politics.

- **Rejuvenating the Election System:** In the past several years, many doubts have been raised on the whole system due to political partisanship, criminalization in politics, lack of effective measures to curb corruption and dissemination of false news, etc. We need to take stringent measures and entrust the concerned authorities with the appropriate power to take effective actions in time. In this way, we cannot not only rejuvenate our election system but also re-establish our image as transparent democracy at the national as well as the international level.

Conclusion:

The provision of NRI voting right is surely a welcome step towards inclusive and effective democracy, but we need to have certain other reform measures to make this provision more effective.

9. A partially implemented PESA has worsened self-governance in Adivasi areas. Elaborate with regard to the present scenario.

Approach

1. ***Introduce with the brief description and objectives of PESA act (50 words)***
2. ***Discuss how a good intentioned but poorly implemented PESA is doing more harm than good for tribal self governance (140 words)***
3. ***Suggest a way forward (60 words)***

Hints:

The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA is a law enacted by the Government of India for ensuring self governance through traditional Gram Sabhas for people living in the Scheduled Areas of India. PESA extends the provision of the Indian Constitution to formalise the three-tier Panchayati Raj system to fifth Schedule areas with certain modifications and exceptions.

PESA sought to enable the Panchayats at appropriate levels and Gram Sabhas to implement a system of self-governance with respect to a number of issues such as customary resources, minor forest produce, minor minerals, minor water bodies, selection of beneficiaries, sanction of projects, and control over local institutions. PESA was viewed as a positive development for tribal communities in Scheduled Areas who had earlier suffered tremendously from engagement with modern development processes and from the operation of both colonial laws and statutes made in independent India.

However the law has faced criticism for not living upto expectations and failing to secure its deemed objectives:

- As the situation stands at present, no gram sabha can hope to function without going through revenue officers at various levels, and in a majority of cases, required sanctions are denied by inordinate delays or outright refusals. No stretch of common property can in anyway be rightfully owned and controlled by any village, communities, groups, or people. And the gram sabha's power to accord such ownership is never recognised. This is a direct violation of the PESA Act.
- A total of four states – Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha have not even framed the rules yet – while Gujarat used the rules of the Panchayati Raj Act to manage the fifth scheduled areas. Despite having a 26% Adivasi population, Jharkhand has failed to formulate rules for the implementation of PESA, a law meant for the welfare of the Adivasi community.
- But even in the states where the rules were formulated, the situation is not different. States were supposed to amend their law incorporating the provisions of PESA but even though some states managed to formulate the rules they performed quite poor on ensuring their implementation.
- A study conducted by the Indian Institute of Public Administration in six districts of three states – Jharkhand, Chhattisgarh and Odisha, highlights the poor implementation of the Act. For example, in the Khunti district, 65% of people whose land was acquired said they were not even asked about it. Around 26% of such people from the Gumla district of Jharkhand had similar claims.
- The partially implemented PESA has worsened self-governance in Adivasi areas in Jharkhand. Studies stated that PESA did not deliver due to the lack of clarity, legal infirmity, bureaucratic apathy, absence of a political will, resistance to change in the hierarchy of power, and so on.
- Social audits conducted across the state have also pointed out that in reality different developmental schemes were being approved on paper by Gram Sabha as a vetting entity without actually having any meeting for discussion and decision making.
- Government officials, Panchayati Raj institutions and community members have very little information about PESA, and presently PESA is not truly implemented in schedule V areas.
- PESA's importance in protecting traditional customs and a culture of tribal self-governance is ignored. Traditional leaders of the villages are ignored and the panchayat representatives are given more importance. Gram sabhas are convened at the panchayat level, and are not consulted for the planning and implementation of government programmes.

- The forest department has not adhered to the gram sabha resolution of collecting minor forest produce.
- Village development plans lack people's involvement. Traditional practices of conflict resolution by the "village kutumba" have been abolished and people have started going to courts and police.

Conclusion:

The PESA Act, which was supposed to uphold the traditional decision-making process, has so far not been fully implemented in its true spirit. PESA recognises the traditional system of the decision-making process and stands for the peoples' self-governance. Laws relating to land acquisition, excise, forest produce, mines and minerals, agri produce market and money lending need to be amended. If it is implemented in letter and spirit, it will rejuvenate the dying self-governance system in the tribal areas of India. It is imperative to revisit its status and its presence for the tribal communities, as a set of constitutionally guaranteed rights.

10. "Preventive detention is a necessary evil only to prevent public disorder, however, the State should not arbitrarily resort to 'preventive detention' to deal with all 'law and order' problems". Analyse.

Approach

1. ***Give a brief introduction of preventive detention mechanism in India (40 words)***
2. ***Discuss the rationale for a preventive detention law (85 words)***
3. ***Highlight the misuse of the law and ways to deal with it (85 words)***
4. ***Conclude with way forward (40 words)***

Hints:

Preventive detention means to detain a person so that to prevent that person from commenting on any possible crime or in other words preventive detention is an action taken by the administration on the grounds of the suspicion that some wrong actions may be done by the person concerned which will be prejudicial to the state. India is one of the few countries in the world whose Constitution allows for preventive detention during peacetime.

Rationale for a preventive detention law

- Under Section 151 of The Criminal Procedure Code, 1973 (CrPC) preventive detention is action taken on grounds of suspicion that some wrong actions may be done by the person concerned.
- Preventive detention is said to be the practice of imprisoning accused persons prior to trial on the presumption that their discharge would not be in favour of society, and, if discharged, they might commit multiple other crimes.
- In the case of Mariappan v. The District Collector and Others held that the aim of detention and its laws is not to punish anyone but to stop certain crimes from being committed.
- In the case of Union of India v. Paul Nanickan and Anr, the Supreme Court stated that the purpose of the preventive detention isn't to punish any person for doing something but to obstruct him before he does it and deter him from doing so.
- The reasoning for such detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof.

Arguments against preventive detention and its criticism:

- In the contemporary liberal-democratic era, where the right to personal liberty is near-universally recognised as of utmost importance and courts around the world readily interfere in cases concerning its infringement, preventive detention laws need to be examined with scepticism.

- They are a tool for detaining individuals and curtailing their right to liberty, not because by reason of being convicted or under-trial for an offence, but for the sole reason of an apprehension of them committing an act prejudicial to law and order.
- Preventive detention laws are designed to be highly administratively steered and restrict the scope of judicial interference. This, at times, places unfettered and largely unchecked power in the hands of the executive without any liability, allowing the potential of grave misuse of such powers.
- In the case of Prem Narayan v. Union of India, the Allahabad High Court stated that preventive detention is an infringement upon the personal freedom of an individual.

Way forward:

- Even if the idea of these laws being necessary for the prevention of any crime is to be accepted, there need to be more safeguards available to the detainee. Those safeguards must not be just theoretical but should act as effective barriers against any misuse.
- The detainee should not be denied the right to consult and be represented by a lawyer of his choice at any stage to ensure that the defence of the detainee is effectively put before the advisory board to aid it in making an informed decision.
- The advisory board should be of a judicial nature with only sitting judges of High Courts eligible to be its members. This would ensure the application of a judicial mind while deciding the validity of detention orders, as well as the speedy disposal of such cases.
- Also, the detention order should be made effective only after approval by such advisory boards within a prescribed time frame so that the detainee is not forced to be in detention for too long just by executive order.

Conclusion:

The preventive detention laws are not completely just fair and reasonable and need some changes or alterations to fit in well within the scope of the Right to life and liberty. As long as the law on preventive detention is made within the legislative entry and does not infringe any of the conditions or restrictions on that power, such law cannot be struck down on the specious ground that it is circulated to interfere with people's freedoms. Under this respect, a moral assessment must be taken because, at one end of the spectrum, the lives and personal freedom of vast areas of society must be respected and, at the other end, the life and personal freedom of the person detained must be taken care of.

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