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An Institute for Civil Services

MAINS TEST SERIES 2023

GS MAINS Q&A

TOPICAL TEST - 14

(5 QUESTION)

POLITY

- Preamble
- Union Territories
- Citizenship
- Fundamental Rights

POLITY - 2

Time Allowed: 50 Mins. *Max. Marks: 75*

1. **The Indian constitution guarantees the fundamental rights of both individuals and communities. However, in recent years, the Indian judiciary has given more primacy to individual rights over community rights. Do you agree with the view? Justify your answer with suitable examples.**

2. **Do you think that the Citizenship Amendment Act goes against the secular republic nature of Indian state and violates Article 14 and Article 25 of the Constitution of India? Critically analyse.**

3. **The Preamble serves as a brief introductory statement that sets out the guiding purpose, principles, philosophy and spirit of the Indian Constitution. Examine.**

4. **Though the Centre and the States are supreme in their respective fields, the Constitution places certain limitations on the territorial jurisdiction of the Parliament. Discuss the limitations on the territorial jurisdiction of the Parliament.**

5. **The scope and ambit of fundamental rights have expanded over the years, both in terms of legal aspects, as well as on a substantive basis. Comment and substantiate the argument with relevant examples.**

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POLITY - 2

1. The Indian constitution guarantees the fundamental rights of both individuals and communities. However, in recent years, the Indian judiciary has given more primacy to individual rights over community rights. Do you agree with the view? Justify your answer with suitable examples.

Approach

1. ***Briefly introduce individual and community rights in Part III of the Indian Constitution. (60 words)***
2. ***Highlight the Supreme Court Judgements in the last few years providing emphasis on Individual rights. (80 words)***
3. ***Discuss the implications of these judgments on India being a liberal democracy. (60 words)***
4. ***Conclusion (50 words)***

Hints:

Fundamental Rights, therefore, protect citizens against the arbitrary and absolute exercise of power by the State. It makes a strong commitment to promoting the well- being of all citizens without any discrimination on the grounds of caste, creed, community or gender. The Constitution, thus, guarantees the rights of individuals and community against the State as well as against other individuals. The fundamental rights have been categorized as the following:

Individual rights: Right to equality (Article 14 to 18)

Right to freedom (Article 19 to 22)

Community rights: Right to freedom of religion (Article 25 to 28)

Cultural and educational rights (Article 29-30)

However, with the recent development of dynamics of society and polity in the nation and pronouncement of judicial decisions over the issues related to fundamental rights, it appears that the Indian judiciary has given more primacy to individual rights over community rights.

Examples where individual rights have prevailed over community rights:

- **Indian Young Lawyers Association Vs State of Kerala (Sabrimala case):** The judiciary seems to have favoured individual rights of women for entry into the sanctum sanctorium over community rights of religious group denying entry of women.
- **Aadhar case:** In the famous case over the Right to privacy, the Supreme Court put prominence on individual rights over community rights by putting 3 level litmus test in the Puttaswamy judgement.
- **Bhartiya Muslim Mahila Andolan case (Haji Ali Dargah case):** The Bombay High Court favoured for the entry of women in the dargah shrine, which was earlier banned by religious groups.

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- **Triple Talaq judgement:** The inclination of apex court towards the individual liberty and autonomy of women displays its favour towards the individual rights of Women over the religious rights of a particular community.

Examples where community rights have prevailed over individual rights:

1. **Denial of mining rights** to Individual company in Niyamgiri hills of Odisha and prevailing of rights of Gram Sabha of tribal community in the region (2013).
2. **Chipko movement,** where community rights of people demanding the preservation of forests were kept and the government had to step back due to public protests.

Implication on Indian Polity:

- Indian democracy is evolving vibrantly with time with increasing awareness of citizens on their individual rights. Thus, the interpretation of the constitution by the judiciary over the period ensures that individual rights are not subdued under the burden of religious or social pressure and that nation treads on the path of liberal democracy.
- The Supreme Court in 2013, in a case over the bifurcation of states, said that the constitution is like an ever-evolving tree that takes its own course with passing of time. Thus, the recent tilt of its judgments towards individual rights over community rights displays the same nature of the Indian constitution.

Conclusion:

The democracy is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasise on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Thus, caution should be taken while pronouncing the judgements over interference in community rights and harmony must be maintained in the community for an overall peaceful atmosphere in the nation.

2. Do you think that the Citizenship Amendment Act goes against the secular republic nature of Indian state and violates Article 14 and Article 25 of the Constitution of India? Critically analyse.

Approach

1. ***Briefly introduce about the recent debates on the Citizenship Amendment Act. (50 words)***
2. ***Mention the main features about the Act and the controversy related to it. (70 words)***
3. ***Provide the arguments in support of this Act then give your own argument that how this Act goes against the Fundamental Rights of the Constitution of India. (80 words)***
4. ***Conclude with your opinion on this Act (50 words)***

Hints:

The primary objective of the Citizenship Amendment Act is to update the Citizenship Act of 1955 to provide for the acquisition and determination of Indian citizenship for a certain category of immigrants. Additionally, this bill relaxes the citizenship criteria for such immigrants and merges the categories of Persons of Indian Origin (PIO) and Overseas Citizen of India (OCI) together. The Citizenship Amendment Act has not been sitting well with the Assamese, as it contradicts the Assam Accord of 1985, which clearly states that illegal migrants heading in from Bangladesh after March 25, 1971, would be deported.

Features of the Bill

- The Bill amends the Citizenship Act, 1955 to make migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.

- Under the Act, one of the requirements for citizenship by naturalisation is that the applicant must have resided in India during the last 12 months, and for 11 of the previous 14 years. The Bill relaxes this 11 year requirement to six years for persons belonging to the same six religions and three countries.
- The Bill provides that the registration of Overseas Citizen of India (OCI) cardholders may be cancelled; in case of violation of any law.

Arguments in support of this Act

- Far from being discriminatory in nature, the Citizenship Amendment Bill is a humanitarian gesture towards persecuted minorities in India's neighbourhood.
- The Bill became a necessity because the Partition happened on religious lines. It addresses the injustices of the cataclysmic events of 1947.
- People belonging to Indic faiths and minority religions in Muslim-majority countries in the neighbourhood have no other place to go, given that most of the territory in question was either part of united pre-Partition India or home to a large number of migrants from British India.
- The proposed law in no way discriminates against India's minorities.
- The Bill does not violate Article 14 of the Constitution, as the obligation for the government to be religion-neutral applies only to citizens of India.

Why has the bill caused a controversy?

- The Citizenship Amendment Act, which was passed by the Lok Sabha, has led to a political backlash in Assam and caused unrest in the rest of the North-east, with protests by ethnic Assamese groups.
- Assamese organizations say that as a result of the bill the burden of illegal migrants will be passed on to the state alone. The bill drew flak from opposition parties in the Rajya Sabha for excluding Muslims from countries such as Nepal and Sri Lanka.

Key Issues and Analysis

- The Bill makes illegal migrants eligible for citizenship on the basis of religion. This may violate **Article 14** of the Constitution which guarantees right to equality.
- The Bill allows cancellation of OCI registration for violation of any law.
- The Bill provides that illegal migrants from Afghanistan, Bangladesh or Pakistan who are Muslims, other minorities who do not belong to the above groups (e.g. Jews), or Atheists who do not identify with a religious group will not be eligible for citizenship. Thus, the provision violates the right to equality guaranteed under **Article 14** of the Constitution because it provides differential treatment to illegal migrants on the basis of their religion.
- Article 14 guarantees equality to all persons, citizens and foreigners. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose.
- The Statement of Objects and Reasons of the Bill does not explain the rationale behind differentiating between illegal migrants on the basis of the religion they belong to.
- The Bill adds another ground for cancelling OCI registration, which is violation of any law of the country by an OCI. This means that even offences with: (i) lesser penalties, or (ii) which have been committed after five years of registration could be covered under the Bill. This makes the earlier provision redundant.
- The bill also grants the central government wide discretion to cancel OCI registration for a range of violations. This will include serious offences like murder, as well as minor offences like violation of a traffic law (such as parking in a no-parking zone or jumping a red light). The question is

whether minor violations should result in cancellation of OCI registration, which may require an OCI, staying in India, to leave the country.

- Citizenship in India is currently covered under two legislations: Part II of the Constitution of India, 1950 and the Citizenship Act, 1955. However, neither of these legislations has defined citizenship clearly and only provides the prerequisites for a "natural" person to acquire Indian citizenship.

Conclusion:

The Indian democracy is based on the concept of welfare and secular state. A progressive constitution is the law of the country, whereArticle 21 provides the Right of a dignified life. So, it becomes a moral obligation of the state to allay thefears of minority communities, if any. Hence, the classification done in CAA on the basis of country of originand religious minorities can be made more inclusive.

The critics say that CAA violates the Constitution's Article 14, the fundamental right to equality to all persons. This basic structure of the Constitution cannot be reshaped by any Parliament. But, the government maintains that it does not discriminate or violate the right to equality. Howver, the classification done in CAA on the basis of country of originand religious minorities can be made more inclusive.

3. The Preamble serves as a brief introductory statement that sets out the guiding purpose, principles, philosophy and spirit of the Indian Constitution. Examine.

Approach

1. ***Briefly introduce the role and relevance of the Preamble in the Constitution. (40 words)***
2. ***Discuss the key Supreme Court verdicts with reference to the Preamble and its role as a guide to the Indian Constitution. (120 words)***
3. ***Analyse if the Preamble has been serving its envisaged purpose. (50 words)***
4. ***Briefly conclude. (40 words)***

Hints:

The Preamble of the Indian Constitution is based on the '**Objective Resolution' of Jawaharlal Nehru**. He had introduced it on December 13, 1946. The Constituent Assembly adopted it on January 22, 1947. The purpose of the Preamble is to clarify who has enacted the Constitution , what is its source, what is ultimate sanction behind it; what is the nature of the polity which is sought to be established by the Constitution and what are its goals and objective.

Principle and Philosophy of the Constitution

- Some people believe that a constitution merely consists of laws and that laws are one thing, values and morality, quite another. Therefore, we can have only a legalistic, not a political philosophy approach to the Constitution. It is true that all laws do not have a moral content, but many laws are closely connected to our deeply held values and spirit. For example, a law might prohibit discrimination of persons on grounds of language or religion. Such a law is connected to the idea of equality. Such a law exists because we value equality.

- Therefore, there is a connection between laws and moral values. We must therefore, look upon the constitution as a document that is based on a certain moral vision. We need to adopt a philosophy and spirit approach to the constitution.

Relevance of the Preamble to the Constitution:

- The significance of the Preamble lies in its components. It embodies the source of the Constitution i.e., the people of India. The terms sovereign, socialist, secular, democratic, republic in the Preamble suggests the nature of the state. The ideals of justice, liberty, equality, fraternity reflects the objectives of the Constitution.

- In spite of not being Justiciable, the Preamble has always been given due respect and regard by the courts while interpreting the Constitution.
- Preamble is a key to open the mind of the makers. This is useful when deciding upon vague and ambiguous situations.

Key Supreme Court verdicts with reference to the Indian Preamble:

- **Keshavananda Bharati v. State of Kerala:** In this case, the Supreme Court of India emphasized that the principle of equality is basic to the Constitution of India. This is the basic features of the Constitution which no legislature in India can transgress. Even an amendment of the Constitution offending the basic structure of the Constitution is ultra virus. It was also held in this case that the Preamble is neither a source of power nor a source of limitation and the basic elements in the Preamble cannot be amended under **Article368**.
- **Minerva Mills V. Union of India:** In this case, the Supreme Court expressed the meaning of "**Socialism**" so as to crystallize a socialistic state securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive Principles of State Policy. The Preamble to the Constitution read with the Directive Principle in Articles 38, 42, 43, 46 and 48A, which promotes the concept of social justice. The aim of social justice is to attain a substantial degree of social, economic and political equality.
- **Golaknath v. State of Punjab:** It was held that the Preamble sets out the main objectives which the legislation is intended to achieve.
- **S.R. Bommai v. Union of India:** Justice M.H. Beg observed that the secular state arising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religion beliefs and practices.

Has the Preamble served its purpose as envisaged?

- The purpose of the Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it; what is the nature of the polity which is sought to be established by the Constitution and what are its goals and objectives.

Conclusion:

Looking at socio-economic and political policies as implemented, one can reasonably argue that the Constitution has been ably supported and guided by the Preamble and its philosophy. Though political immaturity and illogical trends have at times threatened this philosophy, yet the spirit of the Preamble is intact. Such is the relevance of it that the Courts have not only treated it as a part of the constitution, but also linked all of its provisions to the doctrine of basic structure.

4. Though the Centre and the States are supreme in their respective fields, the Constitution places certain limitations on the territorial jurisdiction of the Parliament. Discuss the limitations on the territorial jurisdiction of the Parliament.

Approach

1. *Briefly introduce the division of powers between the Union and the States. (50 words)*
2. *Elaborate on the limitations of the territorial jurisdiction of the Indian Parliament. (150 words)*
3. *Conclusion (50 words)*

Hints:

The Constitution of India, being federal in structure, divides all powers, i.e., legislative, executive and financial between the Centre and the states. The Constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states. The Centre-State relations can be analyzed under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations.

Limitation to the territorial Jurisdiction of the Parliament:

The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states in the following way:

- The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories, and any other area for the time being included in the territory of India.
- A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state.
- The Parliament alone can make 'extra-territorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

However, the Constitution places some restrictions on the plenary territorial jurisdiction of the Parliament. There are some areas where laws of Parliament are not applicable:

- The President can make regulations under **Article 240** for the peace, progress and good government of the four Union Territories—the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu.
- A regulation, so made, has the same force and effect as an act of the Parliament. It may also repeal or amend any act of Parliament in relation to the Union Territories.
- The Governor is empowered to direct that an act of Parliament does not apply to a Scheduled Area in the state or apply with specified modifications and exceptions.
- The Governor of Assam may direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions.
- The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram **(Sixth schedule)**.

Conclusion:

It is obvious that the above provisions have been inserted in view of the backwardness of the specified areas to which the indiscriminate application of the general laws might cause hardship or other injurious consequences.

5. The scope and ambit of fundamental rights have expanded over the years, both in terms of legal aspects, as well as on a substantive basis. Comment and substantiate the argument with relevant examples.

Approach

1. ***Briefly introduce of fundamental rights. (50 words)***
2. ***Discuss the various verdicts of supreme court regarding expanding the scope of fundamental rights and it implications (90 words)***
3. ***Suggestions for further improvement (60 words)***
4. ***Conclusion. (50 words)***

Hints:

Fundamental rights have been enshrined in Indian constitution under Articles 12-35 which are meant to protect the interests of citizens leading to strengthening the democratic virtues of the nation. However,

with passing time, the fundamental rights need to be evolved and the scope has expanded over the years both in terms of legal aspects as well as substantive basis.

Examples which show their expansion:

1. **Menaka case (1978):** The scope of Article 21 was widely expanded to bring in a large number of areas under the scope of protection of life and personal liberty.
2. **Aadhar case:** Expanding the scope of right to privacy as enshrined in Puttaswamy judgement with focus on individual rights.
3. **Naz Foundation vs. Govt of NCT of Delhi:** The scope of fundamental rights LBGT community was liberally interpreted to improvise upon the living conditions of marginalised.
4. **Navtej Singh Johar vs Union of India:** The Supreme Court ruled in favour of individual rights of homosexuals leading to decriminalisation of homosexuality in India.

Implications of such initiative:

- Strengthening the roots of Indian democracy by transforming it towards liberal democracy and promoting inclusiveness by rights-based approach.
- Enhanced stand of India in international arena, helping in strong geopolitical position for its position on fundamental rights for citizens.
- A tool of good governance, working towards cause of empowering citizens.
- Expanding the scope of rights to entities beyond humans, e.g., considering river as living entity by state judiciary, taking care of environment-related matters, etc.

Suggestions:

- Taking public view related to matter for better feedback and effectiveness of fundamental rights, for e.g., involving civil societies.
- Taking into account international stand on particular rights-based issue for better policymaking. For e.g., the stand on human rights by international institutions.

Conclusion:

Thus, it would be right to say that the scope and ambit of fundamental rights have expanded over the years both in terms of legal aspects as well as on substantive basis and institutions of democracy have taken positive efforts in this regard. This could be further improvised by taking into account for the suggestions provided.

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