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# ANSWER WRITING WORKBOOK

# Indian Polity

**GS PAPER 2**

Complete Revision of Indian Polity through **100+ Question & Answers**

- ✔ Preparation Approach
- ✔ Micro Detailing of UPSC Syllabus
- ✔ 13 Practice Sets and Model Hints
- ✔ Previous Year Questions & Solutions

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# PREFACE

While current affairs changes every year there are some parts in syllabus which do not change and a candidate requires conceptual understanding and a good grip over these topics. The purpose of this workbook is to serve as one stop destination for students. It will help in building a base of knowledge and conceptual clarity

GS answer writing workbook aims to function as a standalone product that will promote self-learning habits in students and help in maximum syllabus coverage of the static portion.

## Features of Workbook

The workbook has following features that aim to resolve various issues faced by students in an efficient and holistic manner.

| Feature | Issue resolved |
|---|---|
| Static Topics from syllabus | Conceptual clarity |
| Topic wise sets | Syllabus coverage |
| Question & Answer format | Answer writing practice & Time management |
| Approach before each answer | Structuring of answers |
| Previous Year questions | Analysis |
| Blank Page at the end of each set | Self-note making |

- **How to optimally make use of workbook**

In order to gain maximum out of it, a student must first attempt each of the set by himself and then compare his answers with model hint given. This exercise will help them to gain confidence in answer writing, in enrichment of their answers and in better management of time.

The approach given at the beginning of each answer is also aimed to give him an idea about how to approach an answer. Before going into the answer, he must first build his own answer around the approach and then compare with the given answer.

Any extra point to be remembered, revised or any other extra additions can be made at the Blank Page given at the end of each set.

- **About GS score Indian Polity Workbook**

It consists of total 13 sets that are broadly divided as per Indian polity syllabus. The focus has been on covering maximum topics and sub topics possible. It is aimed to serve as a very reliable source of information, concepts and ideas that will help you in building a conceptual understanding and will also enable a comprehensive coverage of syllabus. It is essential that you must aim to utilize it optimally as per steps given above, to gain maximum out of it.

# APPROACH TO PREPARE INDIAN POLITY FOR UPSC

Indian Polity is one of the most fundamental and important subjects for the UPSC Civil Services examination. It helps us to become aware of all the contemporary-political happenings and thus helps one in creating a sense of awareness among the individuals about the duties, rights, and responsibilities. It is among those few subjects that forms the backbone of Civil Services Exam. Polity is not only significant for the UPSC Prelims exam but also holds immense importance for UPSC mains exam including personality test. Thus a rock solid strategy for polity is essential for qualifying civil services exam.

To settle all the doubts regarding start of preparation, we have listed out some easy yet helpful tips along with a glossary of amazing books to help you study Indian Polity for UPSC Civil Services Exam. These tips and books must be inculcated in your preparation regime to accomplish the goal of becoming a civil servant.

## • Preparation of Indian Polity for UPSC Civil Services Exam is based on 4 pillars

- Understanding of Syllabus
- Study of Previous year question papers
- Booklist and Resources
- Strategizing

## • Understanding of Syllabus:

Before jumping to the strategy we must need to know about the UPSC CSE syllabus of Indian polity for both prelims and mains. This will help us not only to understand the needs and requirements of the examination, but also to chalk out the right strategy and approach. The UPSC CSE syllabus acts as a beacon to guide us to stay focused on exam specific things and avert any kind of distraction. It is advisable to thoroughly read the syllabus so that it engraves into our mind. A thorough understanding and revision of the syllabus helps us in better comprehension of the topics and to write better answers in the mains examination.

## • Importance of Previous Year Question Papers:

UPSC's Previous Year Question Papers act like a guiding map for candidates and help them to understand the nature of questions, structure of paper and difficulty levels. It is a rare possibility that these questions might get repeated in future, but they will help you devise a framework for the examination. The regular practice of mains and prelims questions helps one assess his/her preparation, identify the gaps and plug them.

## • Booklist and Resources:

**Given below is a list of some Indian Polity & NCERT books for your preparation:**

- NCERT Textbook (Class X) – Democratic Politics II
- NCERT Textbook (Class XI) – Indian Constitution At Work
- Indian Polity by Author M Laxmikanth

The NCERT books help gather basic knowledge of Polity in India. Post NCERTs, one should move to "Laxmikanth's Indian Polity" and GS SCORE Indian Polity Material for in-depth understanding. Indian Polity enjoys a considerable weightage in all the stages of the examination. Though the subject might seem highly theoretical in nature, but its study will aid you in formulating a better sense of awareness regarding the rights, duties, and responsibilities of an individual in India as well as linking it with contemporary dynamic aspects of the political system. It will help you understand the pivotal role the government plays in the efficient functioning of a democracy.

## • Strategy of Preparation

The subject must be studied in an integrated and methodical way in which due emphasis must be laid on the static and theoretical/conceptual aspects as well as contemporary developments related to polity to answer the questions asked in the examination. One must guard against only going through the theoretical aspects and ignoring the implied aspects.

The nature of questions asked under this topic is tricky, but highly scoring. We can categorize the questions into the easy, moderate, and difficult. Besides reading the above-mentioned sources at least once, one must adopt the practice of notes-making along with the classes.

## • Approach to Cover the Syllabus:

At the outset, the elaborate syllabus of the UPSC CSE might look intimidating, but that should not deter the candidate to put in hard work with sincerity.

Just always remember the rule: "Study to understand and apply knowledge conceptually, do not study to learn the UPSC CSE syllabus". And you'll be good to go!

## • Integrated Preparation:

Integrated preparation should be emphasized to ace the UPSC CSE exam. Polity is a subject that can be integrated with almost all papers, be it UPSC Mains GS papers or Essay Paper. The UPSC CSE prelims and mains examination preparation should be carried out simultaneously so that you can easily integrate the concepts with the dynamic or current section. The changing pattern of civil services exam demands the overall knowledge - theoretical and its practical aspects.

Ensure daily reading of newspapers, and solving the UPSC CSE prelims question papers from the previous years. We hope this clears all your doubts on how to study Indian Polity. This subject is a high-scoring subject and with clarity & a clear understanding of the basics you can easily answer all the questions.

## • Answer Writing Approach:

Developing a habit of daily answer writing not only helps you to consolidate your concepts and learning but also aid to be efficient in answer writing during mains exam. Daily answer writing keeps you in-sync with the facts and figures which enables you to use them in your answers in an effective manner. It also helps eliminate the grey areas and to maintain speed with accuracy

in your answers. Daily answer writing is akin to a Test Match where time management and application of things are important.

- **Stage-wise answer writing for mains:**

- You should start with daily writing practice on particular topic of the day whether static or current for the first 1 or 2 months in order to inculcate the habit of recalling points.
- Once you are able to translate your thoughts on the paper, start practicing daily answer writing with simple topics.
- The daily answer writing should include practicing Previous Years Questions (PYQs), Model Questions and Test Series for mains examination.
- You should not overdo answer writing and avoid making it a mechanical process.

- **Mains answer writing approach for Indian Polity**

- The basic necessity for writing answers in polity is the use of language, providing examples and conceptual clarity.
- You cannot be overtly critical or unconstitutional while writing answers in Indian polity.
- The answers should not be biased and a balanced view should be targeted while writing answers for mains. The solution based approach and balanced view are necessary conditions.
- The arguments given in the answers should be backed by government reports, judicial judgements, views of Law Commissions etc.

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# SYLLABUS

## MICRO DETAILING

# SUB TOPIC LISTING
## (Polity)

## UPSC Syllabus

- Indian Constitution—Historical Underpinnings, Evolution, Features, Amendments, Significant Provisions and Basic Structure.
- Functions and Responsibilities of the Union and the States, Issues and Challenges Pertaining to the Federal Structure, Devolution of Powers and Finances up to Local Levels and Challenges Therein.
- Separation of Powers between various organs Dispute Redressal Mechanisms and Institutions.
- Comparison of the Indian Constitutional Scheme with that of Other Countries.
- Parliament and State Legislatures—Structure, Functioning, Conduct of Business, Powers & Privileges and Issues Arising out of these.
- Structure, Organization and Functioning of the Executive and the Judiciary—Ministries and Departments of the Government; Pressure Groups and Formal/Informal Associations and their Role in the Polity.
- Salient Features of the Representation of People's Act.
- Appointment to various Constitutional Posts, Powers, Functions and Responsibilities of various Constitutional Bodies.
- Statutory, Regulatory and various Quasi-judicial Bodies.

### 1. Indian Democracy

- Meaning of democracy
- Significance of democracy
- Strengthening of democracy
- Outcomes of democracy
- Roadblocks in creation of democracy
- Democratic decentralization

### 2. Salient Features of Indian Constitution

- Importance of Constitution
- Historical evolution of the Constitution
- Constituent Assembly
- Objectives of the Constitution
- Salient features of Indian Constitution
- Unitary features
- Federal features
- Basic structure: How it evolves?

### 3. Significant Provisions of Indian Constitution

- Preamble
  - Basic features
  - Value premises of constitution
  - Terminologies as:
    - Democratic
    - Sovereign
    - Socialist

- Secular
- Republic
- Justice
- Equality
- Liberty
- Fraternity
- Integrity

- Basic constitutional features
- Methodology of getting citizenship
- Modes of Losing the Citizenship of India
- Concept of dual citizenship
- Citizenship provisions in J&K
- Special privileges enjoyed by citizens in India
- Significance of Fundamental Rights
- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies
- Difference between procedure established by law and due process of law
- Writs and their uses
- Restrictive limitations on fundamental rights
- Basic features
- Directives
- Economic and Social DPSP
- Gandhian DPSP
- Administrative DPSP
- DPSP related to International Peace
- Implementation of DPSP
- Fundamental Rights and the Directive Principles of State Policy Controversy
- Features
- Link of Fundamental Rights and Fundamental Duties
- Features in American and UK Constitution
- Checks and balances provisions in Indian Constitution
- Judicial Review
- Concept of Separation of Powers

## 4. Union Legislature

- Composition of Rajya Sabha
- Composition of Lok Sabha
- Qualification and disqualification of MPs and MLAs
- Vacation of seats
- Sessions of parliament
- Law making procedure
- Officers of Parliament and state legislature
- Parliament Proceedings
- Motions and resolutions in Parliament
- Powers and Privileges
- Financial proceedings
- Comparison of Lok Sabha and Rajya Sabha
- Comparison of Legislative assembly and council
- Women reservation in Parliament and issues
- Lowering of Parliamentary powers
- Parliamentary committees and their working
- Judicial activism and Parliament
- Delegated legislation and issues

## 5. Union Executive

- Importance of President
- Qualification
- Election procedure
- Advantages and disadvantages of single transferable form of voting
- Presidents' Term of Office and emoluments
- Executive Powers
- Legislative Powers
- Emergency Powers
- Financial Powers
- Miscellaneous powers
- Judicial powers
- Presidents Impeachment
- President as nominal head
- Issues

- Ordinance making power
- Passage of bills
- Misuse of emergency provisions
  - Pardon power
  - Coalition government
- Office of the Vice-President
- Functions
- Appointment of PM
- Functions of PM
- Role of PM with respect to
  - CoM
  - President
  - Lok Sabha
  - Political Party
  - Coalition Government
- Division of CoM
- Role of CoM
- Role of Cabinet
- Responsibilities of the Ministers
- Qualification
- Functions
- Powers with respect to parliament

## 6. State Government, PRIs, ULBs

- The composition of Vidhan Sabha and Vidhan Parishad
- Qualifications of the Members of Legislature
- Powers and Functions of State Legislature
- Relationship between both the Houses
- Officers of State Legislature
- Powers, Privileges and Immunities of State Legislatures and their Members
- Legislative procedure
- Governor's assent to Bills
- Procedure in Financial Matters/Budget
- Appointment, term of office, qualification, etc
- Powers
- Discretionary powers
- Ordinance making power
- Appointment
- Powers and responsibilities
- Relationship between the Governor and the Chief Minister
- Relationship between CoM and the Chief Minister
- Appointment of Advocate - General for the State
- Functions of Advocate - General for the State
- Provisions of 73rd AA and 74th AA
- Role and functions of different tiers
- Municipal Corporations
- Municipal Councils
- Nagar Panchayats
- The steps taken towards women's empowerment
- Role of State Election commission
- Role of State Finance Commission
- Smart City Mission & Municipal Governance

## 7. Judiciary

- Integrated judicial system
- Supreme Court
  - Composition
  - Independence of Supreme Court
  - Jurisdiction of SC
  - Judicial Review
- High Court
  - Composition
  - Terms and removal
  - Jurisdiction
  - Other powers
  - Lower judiciary
  - Appointment
  - Powers
- The role of the Supreme Court of India as guardian of the Constitution and protector of Fundamental Rights
- Judicial Review

- PIL
- Judicial Activism
- Judiciary appointment
- Collegiums System
- NJAC Controversy
- National Court of Appeal
- Judicial Accountability
- Issues of corruption in judiciary
- What is Dispute redressal mechanism?
- Need of Dispute redressal mechanisms
- Administrative tribunal and issues
- Fast Track Courts and issues
- Gram Nyalayas and issues
- Parivarik Mahila Lok Adalats and issues
- Family Courts and issues
- Lok Adalat and issues
- NALSA and issues
- Dispute redressal for Weaker section
- Arbitration Mechanism
- International Arbitrary Centre
- Commercial Court

## 8. System of Government

- State Reorganization Commission (brief)
- Components of Indian territory
- Process of formation of new states
- Zonal Councils
- Union territories
- Special provisions for states
- Administrative relations
- Legislative relations
- Financial relations
- Misuse of Article 356
- Issues related to concurrent list
- Issues related to appointment of Governor
- Issues related to state formation
- Poor devolution of finances
- Reserving bill for Presidential approval
- Central sponsored schemes and issues
- Special package for different states
- Issues between Centre and State after 1990 reforms
- Foreign policy and Centre and State Relations
- Emergency Provision
- Parliamentary form of government
- Presidential form of government
- Parliamentary vs. Presidential system of government
- Regulating functions of Government
- Development functions of government
- Service providing functions of government
- Problems in implementation
- Recommendations for improvement
- Interrelationship between union, state and local government in implementation of roles
- Constitutional provisions related to financial devolution
- Issues of financial devolution

## 9. Union Territories and Scheduled areas

- Creation of Union Territories
- Administration of Union Territories
- Special Provisions for Delhi
- Advisory Committees of Union Territories
- Administration of Scheduled Areas
- Administration of Tribal Areas

## 10. Constitutional & Non-Constitutional Bodies

- Election Commission of India
- Union public Service Commission
- Joint State Public Service Commission
- Finance Commission
- National Commission on SCs & STs
- Special officer for Linguistic Minorities
- NITI Aayog
- National Human rights Commission

- CBI
- Central Vigilance Commission
- Central & State Information Commission
- Lokpal & Lokayuktas
- National Disaster Management Authority
- Appointment
- Functions
- Role of CAG in good governance

## 11. Important Amendments and Elections in India

- Important Amendments in India
- Criminalization of Politics
- Issues Related to the Working of Political Parties
- Enact Strong Laws to Cleanse Politics, says Supreme Court
- How effective is Election Commission in Ensuring Fair Elections
- Freebies Politics in India
- Election Commission Proposal for Countering Bribe-for-Votes
- Law Commission Report on Electoral Reforms
- State Funding in Elections
- Role of Civil Society in Free and Fair Election
- Women Voices in Elections
- Electronic Voting Machine (EVM) Issue
- About Paper Trail Units
- Anti-Defection Law
- Office of Profi t & RPA

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# PRACTICE QUESTIONS

## SET: 1 - 13

# SET-1: QUESTIONS

## INDIAN DEMOCRACY

**Q1. "Democracy is the worst form of government, except for all the others." The quote aptly explains that despite all its imperfections, democracy continues to be the best possible alternative. Critically analyze.**

**Q2. History shows that democracy is the best way to fight for recognition and to accommodate diversity. Substantiate.**

**Q3. "No democracy can long survive, which does not accept as fundamental to its very existence the recognition of the rights of minorities". Do you think that constitutional protection of minorities is well-followed in practise? Critically Analyse.**

**Q4. Discuss the objective and composition of major parliamentary forums. How does it strengthen deliberative functions in Indian democracy?**

**Q5. "The basic structure possesses substantial moral value, in that it strengthens democracy by limiting the power of a majoritarian government to undermine the Constitution's central ideals." Critically examine.**

**Q6. A democratic government may be slow and less efficient yet it is considered legitimate and people's own government. Critically evaluate the outcomes of democracy.**

**Q7. Every citizen of India has more than one identity and hence belongs to more than one social group. Discuss how far this differentiated identity poses a hurdle in creation of democratic unity.**

**Q8. Discuss the objective, composition and functions of parliamentary group in India. How can it help other democracies learn from experience of each other?**

**Q9. Universal Adult Franchise (UAF) has been the bedrock of Indian democracy. Discuss how it has been helpful in developing India as a democratic country. Also, explain the views of Mahatma Gandhi on UAF.**

**Q10. What is democratic decentralization? Explain how the democratic decentralization can empower people.**

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# SET-1: ANSWERS

**1. "Democracy is the worst form of government, except for all the others." The quote aptly explains that despite all its imperfections, democracy continues to be the best possible alternative. Critically analyze.**

***(250 words)***

**Approach**

1. **Briefly introduce what is democracy** ***(40 words)***
2. **Compare it with other forms of government** ***(70 words)***
3. **Discuss the positive and negative factors of democracy** ***(50 words)***
4. **Explain how it is better from other forms of Government** ***(60 words)***
5. **Conclusion** ***(30 words)***

**Hints**

Government is the group of people with the authority to govern a country or state. Governments can be classified into several types such as: Democracy, Republic, Monarchy, Aristocracy, Dictatorship, and Republic.

- Democracy is defined, basically, as government in which the supreme power is vested in the people. In some forms, democracy can be exercised directly by the people; in large societies, it is by the people through their elected agents.
- Democracy serves the interests of the people regardless of their participation in political office.

## Case for the Democracy

- Freedom - Democratic states always have freer people than autocratic states. They have the right to vote for their government so by extension deciding the policy of their nation and what their nation should be like. They have more freedom of speech and expression than in autocracies. In particular they are free to criticize their own government.
- Represents the people - The government represents the views of the people who elect them and can throw them out if the government does things that the people do not like.
- Better governance due to transparency - Democracy is as much about having checks and balances to the executive and having transparency of decision-making as it is about elections and the populace throwing governments out of power. In a democracy the parliament, the media and sometimes the judiciary all keep an eye on the executive and what is being done with the people's money.

- Respect of Human Rights - If democracy is put at it appropriate performance, then, all facet of human rights is respected. The citizens would have the rights to exercise freedom of speech concerning the well-being of the populace in areas of the economy, education, health, infrastructural development, etc.
- Promotes Human Rights - The ability of the people to have a voice in the running of the State, in the economy, health, education, infrastructural development, etc creates a bit-balanced environment for governance to thrive, this can only be achieved in a democratic governance.
- Participatory decision making processer-people are involved directly or indirectly in the decision making processes, structures.

### Case against Democracy:

- The election process of representative government focuses solely on the majority. The minority groups, are rarely represented simply because they do not have the majority of the votes to get an official into office. This causes a feeling of separation with these groups as well as feeling like their issues are not as important.
- Further leaders are chosen by the parties based on caste, creed and other such factors that appeal to the poor population. The government thus formed may more often than not work for its own welfare and not nation building, therefore giving a freehand to corrupt practices in politics and bureaucracy.
- The prospect of personal interest becoming the predominant factor in decisions, and negative financial implications.
- In Democracy due to principle of participation, decision making get delayed. Autocracies or Monarchies are better at making decisions and are likely to be better at creating economic growth
  - But Democracy is better that the other forms of government such as monarchy and dictatorship. In both monarchy and dictatorship, the ruler- individual or group - wields absolute power and the people have no remedy against its misuse. Power corrupts and absolute power corrupts absolutely. There is no individual freedom, freedom of speech or expression.
  - The most important attribute of democracy is that everyone is treated equally before the law, irrespective of caste, creed
  - or sex. Everyone is entitled to freedom of speech, freedom of worship, freedom of occupation and freedom to move throughout the country. The dignity of man is recognized and respected. People are given ample opportunities to move ahead in life.
  - If democracy is to be effective, the people have to be aware. They must continuously keep track of the activities to those to whom they have given their votes. They must learn to raise their voice against injustice and corruption.

### Conclusion:

Democracy is not perfect and there are few structural deficiencies, which if tried can be ironed out. At the same time despite all its imperfections it continues to be the best possible alternative provided transparency, accountability and citizen participation is taken into account.

## 2. History shows that democracy is the best way to fight for recognition and to accommodate diversity. Substantiate.

***(250 words)***

## Approach

1. **Explains tenets and attributes of democracy.** ***(40 words)***
2. **Discuss factors helping recognition of diversity in the democracy** ***(80 words)***
3. **Illustrate challenges faced while realizing accommodation of diversity** ***(80 words)***
4. **Conclusion** ***(50 words)***

## Hints

### Tenets and attributes of democracy

Democracy is a system of rule by laws, not individuals. In a democracy, the rule of law protects the rights of citizens, maintains order, and limits the power of government.

All citizens are equal under the law. No one may be discriminated against on the basis of their race, religion, ethnic group, or gender

The future of democracy depends on our ability to deal with complex social problems and this ability can be achieved while thinking together and making meaning to create a shared perception of events that help us all get more of what we want in a situation when what we want is good for all of us.

This means sharing the mutual tasks for the orderliness and welfare of the groups as well as for personal interdependence.

Since democracy envisions a dynamic society in which the individuals play a deciding role in its governance, critical thinking and decision-making are two important characteristics of the members of a democratic society.

### Factors helping recognition of diversity in the democracy

Democracy is the best basis for social organization because the logic of democracy denies that absolute truth can be known with certainty, and therefore allows for diversity, tolerance, openness to change and recognition of error.

Democracy maximizes the opportunities for self-determination, for persons to live under laws of their own choosing. It facilitates moral autonomy, the ability of each individual citizen to make normative choices and thus to be, at the most profound level, self-governing.

Consequently, the democratic process promotes human development (the growth of personal responsibility and intelligence) while also providing the best means for people to protect and advance their shared interests.

### Realizing accommodation of diversity

Decision making in democracies is a process of reaching agreement in group situations through discussion, debate, and analysis. Democracy envisions an open and dynamic society in which individual citizens are privileged to play the deciding role in its governance.

Citizens in a democracy make a host of decisions that affect their own welfare as well as the welfare of others. Two levels of decision making are involved.

At the first level, citizens must gather necessary information using inquiry skills (observe, describe, compare, identify, etc.)

At a second level, citizens must decide how to deal with complex social problems: how to define the problem, what values should be pursued, what public policies should be supported, what candidates should be elected to office, what actions should be taken with respect to social concerns

Thinking together and making meaning in a democracy means creating a shared perception of events that helps us all get more of what we want in a situation when what we want is good for all of us. In making meaning and thinking together, dialogue plays a main role. The purpose of dialogue is defined as "seeking mutual understanding and harmony"

The discipline of team learning starts with dialogue, and the capacity of team members to suspend assumptions and enter into genuine "thinking together"

The last characteristic people should display is to be non-coercive in their attempts to influence. By doing so, people are willing to consider the possibility that their thinking may need to change. Persuasion is based on merit, logic and principle; therefore people will get better implementation and build stronger relationships.

### Concluding remarks

Individual responsibility and civil involvement with others are traits that grow with the opportunities in a democracy to share the mutual tasks for the orderliness and welfare of the group as well as for personal independence

It is not passive submission to group demands prompted by a desire to escape group displeasure; it is rather active participation prompted by a desire to aid in promoting the best interests of the group

**3. "No democracy can long survive, which does not accept as fundamental to its very existence the recognition of the rights of minorities". Do you think that constitutional protection of minorities is well-followed in practise? Critically Analyse.**

***(250 words)***

**Approach**

1. **Brief about democracy and its lacunae.** ***(30 words)***
2. **Highlight on some international examples along with some developments, if any** ***(30 words)***
3. **Highlight some important constitutional provisions.** ***(70 words)***
4. **Quote important highlights of reports/committees along with examples along with dangers of excluding minorities** ***(70 words)***
5. **Conclude with measures needed to augment these** ***(50 words)***

**Hints**

- Political Democracy, intrinsically, means rule of Majority. This majority can be religious, ethnic, linguistic groups, race etc. Indian society being multi-religious with 80% of Hindus (rest are minority groups consisting of many religious identity groups) gives predominance to this religious group in electoral process and hence in all arenas of public discourse.

- Acknowledging this, the Constitutional makers provided for provision under Article 26-30 as Fundamental rights and special linguistic officers, Right to be taught in primary education in mother tongue as Constitutional rights.
- In the evolution of Indian society, minorities have proved themselves as an Asset, by broadening and enriching Indian culture and civilization, and in general played a significant role in the development of the Indian society as a whole
- The experience of Blacks exploitation in USA, Sunni Muslims in Iraq, Jews in Germany during the 20th century and recently **Rohingya Muslims in Myanmar** shows us that disenfranchisement of minorities, lower social honour, lack of social democracy can damage social harmony and bring development to standstill.
- **UNITED NATIONs**:1984-UN sub commission on prevention, discrimination and protection of minorities, marks a growing realization that **"Minority groups' cultural autonomy is as absolute as the** sovereignty of the state".
- **UNDPs Human Development Report 2004**, argued that **cultural freedom and protection of cultural diversity is essential to prevent conflict**. It is **not** cultural differences which promote violence, it cautions, it is when these differences are not allowed to be expressed – be it in Sri Lanka or in Bosnia – that societies and even countries might erupt. **Globalization cannot succeed**, the UN warns, unless **"xenophobic resistance to cultural diversity"** is fought and overcome.

- The report approvingly notes how of the 14 "religious" national holidays in predominantly Hindu India, only **five are of Hindu festivals, while nine others relate to other faiths (4 Muslim, 2 Christian, 3 others)**; whereas in officially secular France, all six religious holidays celebrate events on the Christian calendar, this despite the fact that seven per cent of the population is Muslim and one per cent Jewish.

## Indian Constitutional provisions:

**The following are the Articles.**

- **Article 15**: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- **Article 16:** Equality of opportunity in matters of public employment
- **Article 25:** Freedom of conscience and free profession practice and propagation of religion
- **Article 26:** Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section.
- **Article 27:** Freedom as to payment of taxes for promotion of any particular religion: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.
- Article 29: Protection of interests of minorities:
  - Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
  - No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
  - Article 30: Right to minorities to establish and administer educational institutions:
- Article 51A which is of special relevance for the Minorities
  - Citizens duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious linguistic and regional or sectional diversities

- Citizen's duty to value and preserve the right heritage of our composite culture.

- Provision for a Special Officer for Linguistic Minorities and his duties

We have had Prime minister (Dr.Manmohan Singh) and Presidents (Zakir Hussain) from minority not to speak of armed forces where they represent in greatest share. We have many film stars like Shahrukh, Aamir khan and sports persons as in Saniamirzabeing socially accepted despite from minority.

- In some of the states, the Urdu is recognized as second official language particularly in Jammu & Kashmir, Uttar Pradesh, Bihar and Andhra Pradesh. At the central government level the government has established a 'Council for the promotion of Urdu' under the ministry of Human Resource Development.
- The Government established Maulana Azad Education Foundation with heavy budgetary allocations, which sanction grants to generally private managed Urdu schools in different parts of the country. This Maulana Azad Foundation extends its financial assistance to NGOs, which undertakes any upliftment work for minorities.
- Nevertheless, Amitabh kundlu committee, Sachar Committee show how share in jobs (PSUs) lack representation of minorities and refer to 'exclusive urbanisation' lacking share of minorites in urbanization process.
- The practice of publication of community-wise data related to socioeconomic and educational level of each group of the Indian people has been discontinued since 1951 census.

## Conclusion:

- Constitution has empowered every citizen Fundamental rights, but on the ground they have not been realised at the pace at which it should have been.
- Although there are constitutional protections to the minorities but they have to be followed in letter and spirits, so that True empowerment is done especially at the grass root level. This would enhance the democratic ethos in the overall administration and Governance and increase the participation and belief of minorities in the democratic form of Government.
- British could deploy 'divide and rule' ,appeasement policy to pursue their political ambition in India by harnessing sense of powerlessness of Muslim minorites. This delayed our fulfillment of freedom and attainment of democracy. For people who fail to take into account the lesson of history are doomed to repeat it. Hence instances of communal conflicts as in Kairana, attack on church, denying homes to Minorities, hate speeches have only in resulted in segmented habitation which affect their socio-economic mobility should be addressed effectively.

## 4. Discuss the objective and composition of major parliamentary forums. How does it strengthen deliberative functions in Indian democracy?

***(250 words)***

**Approach**

1. **Briefly discuss objective and composition of parliamentary forums.** ***(120 words)***
2. **Discuss significance of these in increasing deliberative functions in democracy.** ***(100 words)***
3. **Conclusion** ***(30 words)***

**Hints**

The Parliamentary Forums provide a platform to members of the house to have interaction with the Ministers concerned, experts and key official from the nodal Ministries with a view to have a focused discussion on critical issues facing the country so as to enable them to effectively raise these issues on the floor of the House and in the meetings of the Departmentally Related Standing Committees. The first Parliamentary Forum was constituted by the Lok Sabha Speaker on Water Conservation and Management on 12 August, 2005. Subsequently, the four Parliamentary Forums were constituted namely, Parliamentary Forum on Youth, Parliamentary Forum on Children, Parliamentary Forum on Population and Public Health, and Parliamentary Forum on Global Warming and Climate Change. On 21 January, 2010, during the 15th Lok Sabha, the Hon'ble Speaker, Lok Sabha has re-constituted all the above five Parliamentary Forums.

## Objective:

- To provide a platform to the members to have interactions with the ministers concerned, experts and key officials from the nodal ministries with a view to have a focused and meaningful discussion on critical issues with a result-oriented approach.
- To sensitize members about the key areas of concern and also about the ground level situation and equip them with the latest information, knowledge, technical know-how and valuable inputs from experts
- To prepare a data-base through collection of data on critical issues from ministries concerned, reliable NGOs, newspapers, United Nations, Internet, etc.

## Composition:

- The Speaker of Lok Sabha is the ex-officio President of all the Forums except the Parliamentary Forum on Population and Public Health wherein the Chairman of Rajya Sabha is the ex-officio President and the Speaker is the ex-officio Co-President
- The Deputy Chairman of Rajya Sabha, the Deputy Speaker of Lok Sabha, the concerned Ministers and the Chairmen of Departmentally-Related Standing Committees are the ex officio Vice-presidents of the respective Forums
- Each Forum consists of not more than 31 members (excluding the President, Co-President and Vice-Presidents) out of whom not more than 21 are from the Lok Sabha and not more than 10 are from the Rajya Sabha
- The President of the forum appoints a member-convener for each forum

## Significance for deliberative democracy:

Deliberative democracy or discursive democracy is a form of democracy in which deliberation is central to decision-making. It adopts elements of both consensus decision-making and majority rule. Deliberative democracy differs from traditional democratic theory in that authentic deliberation, not mere voting, is the primary source of legitimacy for the law.

## Conclusion:

Here, parliament is not only a body for legislative purposes. Deliberation on issues of national importance is a critical function of the parliament. Keeping in mind the status of education in India, the workload on MPs, difficulties of deliberation between 500 plus MPs etc. Such fora provide a platform for more detailed deliberation. Expert discussions can be a part of it. The small size of these fora facilitates better discussion which can then be transmitted to the house in general as an input. Hence, if religiously made to function, there can strengthen the deliberative aspect of democracy in India.

**5. "The basic structure possesses substantial moral value, in that it strengthens democracy by limiting the power of a majoritarian government to undermine the Constitution's central ideals." Critically examine.**

***(250 words)***

## Approach

1. **Introduce "doctrine of basic structure".** ***(50 words)***
2. **Discuss its evolution in Indian judicial history.** ***(75 words)***
3. **Mention important elements of this basic structure.** ***(75 words)***
4. **Conclude.** ***(50 words)***

## Hints

- Doctrine of Basic Structure delineates the scope of constitution amending power of the legislature. It says that amending power of the parliament cannot damage the basic structure of the constitution. But, mysteriously, the Supreme Court in Kesavananda Bharti case didn't articulate what this basic structure constitute of. It has gradually evolved through various cases in which some legislative or executive action of the government where challenged in the court.
- Ever since the Constitution was first amended in 1951, the true extent of Parliament's power to amend the document has been acutely contested.
  - The first case in this context happened to be that of Shankari Prasad vs. Union of India in 1951 in which the petitioner challenged the First Amendment of the Constitution on the ground that it infringed the fundamental right to property, which remained unamendable under Article 13(2) of the Constitution. The Court held that Parliament is competent to amend any part of the Constitution including that of the fundamental rights.
  - The Supreme Court reiterated the same position in the case of Sajjan Singh vs. State of Rajasthan.
  - In the case of Golak Nath vs. State of Punjab, the Supreme Court, with a majority of 6 to 5 held that the Parliament did not have any power to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.
  - The Court devised the innovative doctrine of 'basic structure' of the Constitution in Kesavananda Bharti case to lay down the far-reaching formulation that there exists a basic structure of the Constitution, which lies beyond the amending power of the Parliament. The Court created a sort of fortress in the name of the basic structure to avail an unenviable position in the political system from where it can become the custodian of the Constitution.
- The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. From the various judgments, the following have emerged as 'basic features' of the Constitution:
  - Federalism
  - Parliamentary system
  - Judicial review

- Independence of judiciary
- Secularism
- The list is not exhaustive.

- Now, if we reflect upon what changes in spirit does this judicial innovation bring to our polity is that no matter what electoral majority a government can boast of, it cannot use/abuse its power to amend the constitution and destroy some core ideals of the makers of the constitution, that have evolved during our national movements and make the ethos of our constitution.
- Judiciary, taking the commanding position of being the custodian of the constitution, limited the popular wave with this doctrine. For instance, it once and for all settled that secularism is basic feature in S R Bommai case. What this declaration essentially means that any government with whatever communal ideology it comes cannot tweak with this element. Similarly, In NJAC Judgment, SC argued that Independence of judiciary is a basic feature. Thus, any political demand, however popular, has to be tested against this touchstone of basic structure. This is where the strength of this doctrine lies.

## Conclusion:

The Basic structure strengthen the democratic principles. The democratic principles reflect in the promotion, protection of the people. The basic structure act as to limit the power of a government not to go against the public interest and ideals of constitution. It reflects the ideals in letter and spirit and government could not go beyond this spirit. Therefore government will be serving national interest within the framework of constitution.

**6. A democratic government may be slow and less efficient yet it is considered legitimate and people's own government. Critically evaluate the outcomes of democracy.**

***(250 words)***

### Approach

1. **In intro explain the term democratic government** ***(20 words)***
2. **Differentiate decision making process in democratic government and other form of government** ***(70 words)***
3. **Briefly explain the outcome of democracy** ***(70 words)***
4. **Elaborate on the condition necessary for the outcome and problem with democracy** ***(60 words)***
5. **Conclusion** ***(30 words)***

### Hints

Democratic government is a government that is governed by people. The supreme power is usually vested in the people and exercised directly or indirectly (representative) by them.

## Decision making in democratic government vis a vis other government:

- In a democracy the power is not centralized (as compare to monarchy, aristocracy) which delays the decision making process. A number of formalities are to be observed in decision making and adopting process hence it becomes difficult to take quick measures.

- However Democracy improves the quality of Decision Making as it allows people to correct their own mistakes through participation. It also provides a method to deal with differences and conflicts. It also promote the interests of people as authority is vested in them.

## Outcome of democracy

- Responsible and accountable Government: Democracy ensures popular control and popular responsibility and the elected representatives remains accountable to them.
- Democracy promotes equality among citizens: In democracy, each citizen is given equal rights and freedoms. There is no discrimination on the basis of religion, caste, colour, etc In a democracy, every citizen takes part in the decision-making process, either directly or indirectly through the elected representatives.
- Democracy develops competitive attitude: Democracy usually develops a procedure to conduct competition among the social differences. This reduces the possibility of social tensions becoming explosive or violent.
- Democracy evolves mechanisms to negotiate: No society can fully and permanently resolve conflicts among different groups, but we can certainly learn to respect these differences and also evolve mechanisms to negotiate the differences. Democracies are best suited to produce this outcome.
- Democracy represents the general view: The majority always needs to work with the minority so that governments function to represent the general view.
- Democratic structure paves way for the development of Grievance Redressal Mechanism.
- Democracy ensure that people participate in the decision making. It ensures that people promote and protect their interests.

## Problem with democracy:

- A fully functioning democracy requires a complex set of institutions, practices and conditions. Apart from free and fair elections, democracy requires a regime of civil and political rights, open government, and civil society to flourish.
- If these condition are not met certain destabilizing trend will appear as an outcome like the personalization of politics, the marginalization of parliamentary institutions, the technocratization of policy-making, increasing number of citizens exiting from politics and falling voter turnout, increasing interference of court in policy making, Centralization of Authority.
- Democracy needed to be made accountable through mechanisms, processes, procedures. This would ensure the check and balance on the power vested with the representatives elected by the people of the country.

## Conclusion:

Power, and when unchecked, tends to corrupt and democracy as the form of government that empowers the people to keep power in check. Hence among all known forms of political systems, democracy is the one that allows the people the greatest extent to participate in determining the conduct of their government.

**7. Every citizen of India has more than one identity and hence belongs to more than one social group. Discuss how far this differentiated identity poses a hurdle in creation of democratic unity.**

***(250 words)***

## Approach

1. **Briefly introduce your answer elaborating different identities possessed by Indians.** ***(50 words)***
2. **Analyze differentiated identity and path hurdle to creation of democratic unity** ***(75 words)***
3. **Evaluate remedial measures** ***(75 words)***
4. **Conclusion** ***(50 words)***

## Hints

### Different identities possessed by Indians

India is one of the most diverse lands found anywhere else in the world. From language, culinary skills and habits to dressing-style, the country has been hailed as one of the most complex amalgamation of various cultural identities

### Causal factor for creation of diversified identity

- Social division which hitherto gives rise to social inequality
- Racial division
- Regional – geographical differentiations
- Linguistic bases (led to creation of Andhra state in 1956)
- Religious differences

### Overlapping and Cross-cutting differences and their impact on democracy

Social divisions take pace when some social differences overlap with other differences. In India, Dalits tend to be poor, homeless and landless.

They often face discrimination and injustice. Situations of this kind produce social divisions, when one kind of social difference becomes more important than the other and people start feeling that they belong to different communities.

Democracy involves competition among various political parties. Their competition tends to divide the society. In case political parties start competing in terms of some prevalent social differences, it can further lead to social conflict and disintegration of society

Wherever social divisions exist, they are reflected in politics. In democracy, it is only natural that political parties would talk about these divisions. They make different promises to different communities, look after due representation of various communities and make policies to redress the grievances of the disadvantaged communities.

Social divisions also affect voting in most countries. People from one community tend to prefer the party belong to his own community more than others.

How does diversity affect democracy? National identity is the dominant form of identity in the framework in which other identities evolve and interact in the political process.

Although there are various identities in the country, but in a democracy participation and promotion of interests of various social groups is significant attribute. Hence through the constitutional framework and democratic structure unity is achieved where healthy debate, discussion takes place like in elections, public forums etc. so, Diversity adds to the democratic unity and make it Rainbow democracy.

### However, what constitutes the nation is not always clear.

The "nation" is usually associated with vague and abstract concepts drawing on people's perceptions, such as "common destiny" or "sense of belonging".

The geography of languages, myths, religions and customary law rarely ever coincided with state borders. Yet, the nation-state paradigm kept producing the idea that cultural homogeneity was good and desirable. Nation is an important parameter through which democratic participation of the people is ensured.

Hence, Diversity is often perceived as threatening not only national cultural homogeneity, but also the achieved levels of social coexistence and harmony which are important for the development of democratic unity.

### Democracy and inclusiveness

How even, Democracy, regardless of the absence of a single model, has become almost a synonym for inclusiveness. A democratic society is basically seen as an inclusive society. The equation today is about balancing the infinite diversity of the real world with the imperative of inclusiveness and with the need for a functional and effective government able to deliver on citizens' expectations

### Remedial measures

Democracy cannot but acknowledge and recognize collective identities as they emerge and evolve.

On the one hand, the acknowledgement of diversity has become another name for democracy; on the other, a level of unity remains the condition of a workable, organized and democratic society. Common goals need to be set.

Dialogue which is an important democratic etho, needs to take place across identity-based divides. Individuals should be able to act as citizens, not only as members of their respective communities.

### Conclusion:

What makes democracy more inclusive: integration or the acknowledgement and respect of diversity? An institutional design that promotes equality or one that mirrors diversity? Answers are not easy to provide as both systems, when implemented rigidly, seem to have produced political tensions and sometimes violent reactions both among the immigrant population and the citizens of the receiving community.

## 8. Discuss the objective, composition and functions of parliamentary group in India. How can it help other democracies learn from experience of each other?

***(250 words)***

## Approach

1. **Briefly discuss objective, composition and functions of parliamentary groups.** ***(120 words)***
2. **Relate with inter-country exchange of experiences.** ***(100 words)***
3. **Conclusion** ***(30 words)***

## Hints

### Introduction:

The establishment and development of relations among parliaments constitutes part of the regular activities of national parliaments. Although promotion of inter-parliamentary relations has for many years been a significant part of the work of parliamentarians, recently it has received a new thrust due to the increased inter-dependence of nations in a global environment. Parliamentarians from different parts of the world, therefore, have a forum where they can meet to discuss and find out solutions to their common problems. It is here that some sort of cross-fertilization of ideas can take place not only between the older and the younger parliaments, but also between parliamentarians working under different parliamentary systems.

IPG acts both as the National Group of the Inter-Parliamentary Union (IPU) and also as the India Branch of the Commonwealth Parliamentary Association (CPA).

The Indian Parliamentary Group took shape as an autonomous body in the year 1949 in pursuance of a motion adopted by Constituent Assembly on 16 August, 1948. The Group functions as the National Group of the Inter-Parliamentary Union (IPU) and main Branch of the Commonwealth Parliamentary Association (CPA) in India. The Group acts as a link between the Parliament of India and the various Parliaments of the world through exchange of delegations, goodwill missions and interactions at multilateral Parliamentary fora etc.

### Objective:

- To study questions of public importance that are likely to come up before the Parliament; arrange seminars, discussions and orientation courses; and bring out publications for the dissemination of information to the members of the Group.
- To arrange visits to foreign countries with a view to develop contacts with members of other parliaments.

### Composition:

- The membership of IPG is open to all members of Parliament. The former members of Parliament can also become associate members of the Group. But, the associate members are entitled to limited rights only. They are not entitled to representation at meetings and conferences of the IPU and the CPA.
- The Speaker of the Lok Sabha is the ex officio president of the Group. The Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha are the ex officio vice-presidents of the Group. The Secretary-General of the Lok Sabha acts as the ex officio Secretary-General of the Group.

### Function:

- The Group acts as a link between the Parliament of India and the various parliaments of the world. This link is maintained through exchange of delegations, goodwill missions, correspondence, documents, etc. with foreign parliaments.
- An uninterrupted flow of information to members regarding the activities of the Group is maintained through the IPG Newsletter brought out every quarter. It is sent regularly to all members of the Group, including associate members.
- To encourage bilateral relations, the Group constitutes Parliamentary Friendship Groups with other countries in the Parliament. The aims and objectives of the Friendship Group are to maintain political, social and cultural contacts between the two countries and to assist in exchanges of information and experiences on issues relating to parliamentary activities.

### Conclusion:

There has been a decline in quality of parliament across the globe as right-wing soft-authoritarianism is sweeping. Executive control over the government is tightening. This has also been argued by Gyan Prakash in his recent work "Emergency Chronicles". Hence, it becomes important for those having faith in parliamentary democracy to join hands and protect the spirit of democracy by standing against the tides of dictatorial urges.

## 9. Universal Adult Franchise (UAF) has been the bedrock of Indian democracy. Discuss how it has been helpful in developing India as a democratic country. Also, explain the views of Mahatma Gandhi on UAF.

***(250 words)***

**Approach**

1. **Briefly introduce Universal Adult Franchise (UAF) and Struggle of inducing UAF in India** ***(40 words)***
2. **Explain how UAF helped in deepening and expanding democracy?** ***(80 words)***
3. **Give views of Gandhi based on equality about UAF** ***(70 words)***
4. **Explain briefly some challenges of UAF** ***(30 words)***
5. **Conclude with positive views** ***(30 words)***

**Hints**

- Article 326 of Indian Constitution defines a universal adult franchise as the basis for elections to all levels of the elected government. The universal Adult Franchise refers to all citizens who are 18 years and above irrespective of their caste or education, religion, colour, race and economic conditions are free to vote.
- The Motilal Nehru report of 1928 advocated unlimited adult franchise and equal rights for women. The resolution of the 1931 Karachi session of the Indian National Congress adopted a resolution on Fundamental Rights and Economic Policy which encapsulated the notion of universal adult franchise. India adopted the principle of universal adult franchise when the present Constitution was enacted in 1949 which as you know was implemented on January 26, 1950.

## Role of UAF in Indian Democracy in developing India as democratic country:

- **Control of government:** UAF ensures better control of government by its citizens. In selective suffrage the government gets controlled by a handful of oligarchs and hence the government loses popular support of the majority population.
- **Welfare state:** Government becomes sensitive to issues of the vulnerable section of citizens because of their dependence on those votes to get into the power. This resulted Indian state becoming a "Welfare state". This was absent in British Raj as the voting was restricted to property class.
- **Women voters**: The UAF in India gave equal political say to women voters. This was done at one go for the first time in history by any country. This later resulted in women holding powerful positions in Indian politics.
- **Protection of Minorities rights:** Minorities got protection and right to choose their own leader regardless of fear. UAF ensured proper representation of each and every section of society regardless of their religion and ethnicity.
- **Preventing caste discrimination:** In pre-independence India caste discriminations stopped lower castes from exercising their political rights. UAF ensured every cast to be represented according to their population.
- **Strengthening of grass root democracy:** India's local self government reforms for 73rd and 74th amendment were direct results of UAF. Strengthening of grass root democracy is inspired by UAF.

## Mahatma Gandhi's views about promoting UAF:

- Being a strong believer in equality, Mahatma Gandhi advocated everyone should be allowed to participate in voting.
- He was not in favour of the idea that a man who has got wealth should have all the rights to be politically active and the one born in a poor family should be barred from making any political representation or being a part of any political process.
- Gandhiji believed in the inner character and soul of a person. He said that honesty and character does not come from money. Honest poor man is equally capable to choose his political leader as any other rich man. He cannot be discarded just being poor which is not his crime.
- Keeping these views at forefront constituent assembly of India unanimously accepted UAF as part of India's electoral process without any further debate.

## Challenges in UAF:

- However there are some challenges faced by UAF, like despite being free, poor people are not entirely free to choose their choices because of money and muscle power of the politicians.
- It also motivates politicians to work as majoritarians and this sometimes results in oppression of minorities.

## Conclusion:

The UAF empowered the vast population of India to secure their popular representation and ensure good governance. UAF should be complemented with electoral reforms like decriminalization of politics to ensure sustainable democracy in India as visioned by Mahatma Gandhi.

**10. What is democratic decentralization? Explain how the democratic decentralization can empower people.**

***(250 words)***

## Approach

1. **Briefly introduce with the democratic Decentralization** ***(50 words)***
2. **Give its feature and advantage** ***(150 words)***
3. **Conclusion** ***(50 words)***

## Hints

Democratic decentralization is a global phenomenon. Decentralization is viewed as a theory of development that requires various institutions for empowering and uplifting the marginalized and the poor. It is expected to work for the building up of an administrative space at the cutting edge level where the felt needs of the poor could be ventilated. Decentralization is a prime mechanism through which democracy becomes truly representative and responsive.

### Feature of democratic decentralization:

- Decentralization can leads to the empowerment of the local people through deconcentration and devolution. Decentralized governance seeks to tap local initiatives and practices by involving gross roots organizations such as self-help groups.
- Representative democracy and participatory democracy both become possible through decentralized governance.
- Another important feature of decentralized governance is interactive policy making that leads to decentralized decision-making. Interactive policy is a process where government and non-governmental sectors such as private sector, non-governmental organizations, communities, gross roots organizations, pressure groups all participate in decision-making so as to influence issues and suggest alternatives.
- Decentralized governance can serve as an alternative strategy of development, which is people-centered, participatory and bottom up development mechanism.

### The overall advantage of democratic decentralization can be summarized as follows:

- It can cut red-tape in administration.
- Closer contact between government officials and local population is possible.
- It can allow better penetration of national policies to areas remote from the national capital.
- It will ensure greater representation of political, religious, ethnic and tribal groups in development decision-making that could lead to greater equity in allocation of resources.
- It can develop the capacity of local institutions and their managerial and technical skills.
- Top management would be relieved of routine jobs and devote time to more important jobs.
- It will institutionalize the participation of the citizens and exchange of information.

- It will offset the influence of the elite people.
- It will lead to a more flexible, innovative and creative administration.
- Increased political stability will be ensured by increasing the participation of the local people in decision-making.
- It will also reduce the cost of planning and increase the number of public goods.

## Conclusion:

Thus, decentralized governance is good for the people. It helps people have a better understanding of what the government does. It is a concept based on the right of the people to initiative and executes policy decisions in an autonomous manner. It is a more effective way meeting local needs. It also provides a mechanism responsive to the variety of circumstances encountered from place to place. Decentralize governance enable poor people to take part in politics, which is necessary for successful implementation of antipoverty prorgrammes.

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# NOTES

# SET-2: QUESTIONS

## SALIENT FEATURES OF INDIAN CONSTITUTION

**Q1.** **"The ethos of constitution of India were largely determined by the history of national movement, immediate challenges at the time of independence and vision of the leadership." Discuss.**

**Q2.** **'Indian constitution is a product of evolution rather than of revolution unlike American constitution'. Comment.**

**Q3.** **Discuss the contribution of Kesavananda Bharti Case Judgement in retaining India as a cherished republic envisioned by its founding fathers?**

**Q4.** **The constituent assembly in India borrowed liberally from different existing constitutions, but customized them to suit the Indian realities and needs. Discuss with particular emphasis on secularism and federalism.**

**Q5.** **"The Indian Constitution appears to be seamless web characterized by the three strands of the unity and integrity of the country, institutions and spirit of democracy, and social revolutionary fervor." How do provisions of the constitution manifest the above ideas?**

**Q6.** **Do you think that the Constitution of India was a culmination of constitutional reforms initiated decades ago by the colonial rulers? Critically comment.**

**Q7.** **The Constitution of India is remarkable for many outstanding features, which distinguishes it from other constitutions, even though it has been prepared after "ransacking all the known constitution of the world". Elaborate. Do you think that the bulk of the constitution is due to "patch work?"**

**Q8.** **The Preamble starts with word "We the People", which means people of India are Sovereign, however, on the contrary, none of the five pillars of state are directly accountable to the people, except for a five year electoral process. Elaborate.**

**Q9.** **One of the unique features of the Indian Constitution is its emphasis on the maintenance of 'flexibility' within the 'rigid' framework. Do you agree? Substantiate your answer using examples.**

**Q10.** **Illustrate how the Constitution of India is distinctive in its own way, notwithstanding being a blend of various constitutions around the world. Also, discuss how Indian Secularism is different from Western Secularism.**

# SET-2: ANSWERS

**1. "The ethos of constitution of India were largely determined by the history of national movement, immediate challenges at the time of independence and vision of the leadership." Discuss.**

***(250 words)***

## Approach

1. **Briefly mention the ethos of Indian Constitution and the sections of constitutions where they are enshrined.** ***(50 words)***
2. **Link each of the three factors viz. 'history of national movement', immediate challenges at the time of independence', and 'vision of the leadership' with the above discussed ethos of the constitution** ***(150 words)***
3. **Conclude by establishing the claim made in the statement of the question** ***(50 words)***

## Hints

The deep-rooting of the ethos and functional vibrancy of democratic life in India may arguably be taken to be the fruition of the long cherished endeavor of the fathers of the Constitution who envisioned India to be a modern nation based on the The deep-rooting of the ethos and functional vibrancy of democratic life in India may arguably be taken to be the fruition of the long cherished endeavor of the fathers of the Constitution who envisioned India to be a modern nation based on the

- norms of rule of law,
- secular character of the society,
- democratic nature of the polity and, ordinarily,
- primacy of the people's fundamental rights over other imperatives of the state;

For several reasons, the framing of an acceptable-to-all Constitution for free India was an extremely arduous task, which the Constituent Assembly shouldered efficiently to produce the longest democratic Constitution in the world.

- First, the partition of the country and the subsequent mayhem in Punjab and Bengal led to a shocking state of nervousness among the leaders who immediately set on to devise ways and means to instil in the people the confidence in the govern ability of the country. Moreover, the onerous task of ensuring the integration of over 500 princely states in the Indian Union appeared quite challenging in view of the ambivalent, if not totally defiant, positions taken by the rulers of the states like Junagadh, Hyderabad, and Jammu and Kashmir.

- Second, the carving out of Pakistan did not mean the conversion of India into a homogenous country as more than 10 per centof the total Muslim population of the country was left in India whose religious and cultural identities needed to be protected. At the same time, India itself was home to numerous communities speaking different languages, professing different faiths, practicing different customs, following different traditions, and emphasizing different cultures. In the face of such a diverse cultural base of the people, it was really a stupendous task to provide for sufficient constitutional provisions to protect the distinct religious-cultural identities of the citizens, without compromising the unity and integrity of the country.
- Third, the tone and tenor of the national movement had a rouseda high level of expectation among the common people in general and the hitherto marginalized sections of the society, like the Scheduled Castes, Scheduled Tribes, and the other backward people in particular, to experience a new dawn with the inauguration of the Constitution of independent India.
- Last, the spirit of liberal democratic traditions were so strong among the majority of national leaders, particularly Nehru, that independent India was bound to usher in a full blown democracy, irrespective of its preparedness to experience the mass scale of democracy based on universal adult franchise on the one hand, and the lurking dangers to the unity and integrity of the nascent nation from the dynamics of electoral politics on the other.
- The inclusion of DPSPs in the constitution show that the leaders were aware of the economic inequality, but at the same time were not having enough resources to make the DPSPs enforceable.
- The provision special ones to the various states depicts that Indian state and the princely states were going to a tough time in establishing relationship and unite at a common ground, which was provided by the constitution.
- The leadership ensured that every citizen was able to enjoy the political equality and rights. It ensured that gradual transformation of Indian society takes place with the participation of all the communities, castes, tribes, religions.

### Conclusion:

Combined together, these riddles of constitution-making in independent India acted both as challenges as well as opportunities for the Constitution-makers to show their fullest constitutional acumen and innovativeness.

## 2. 'Indian constitution is a product of evolution rather than of revolution unlike American constitution'. Comment.

***(250 words)***

**Approach**

1. **Give a description of the important factors behind the emergence of Indian constitution** ***(40 words)***
2. **Discuss the process of making of the Indian constitution** ***(110 words)***
3. **Compare it with American Constitution** ***(60 words)***
4. **Conclusion** ***(40 words)***

**Hints**

The Constitution of India was not prepared in haste but the process of the evolution of the constitution began many decades before India became independent in 1947. The philosophy of the Indian Constitution can be understood from the evolutionary landmarks of constitutional history of India since 1858. The Act enunciated the principle of absolute imperial control of home government without any native participation.

- The Indian Council Act 1861 expanded the size of the Executive Council with additional non-official member to transact legislative business of the colony.
- The subsequent instalment of 1892 retained the non-official element but created a majority of official members in the legislative council at the centre.
- It was the Morley Minto reform of 1909 when the Council System was given the semblance of a legislative body of 67 members. The electoral system though extremely limited and absolutely communal was introduced.
- The 1919 Act, introduced dyarchical reforms in provincial government, bisecting the subjects into reserved and transferred. The reforms relaxed central control over provincial governments without any conscious division of federal nature.
- The central legislature was made bicameral and more representative. The Gandhian era witnessed all sorts of proposals including the report of the Simon Commission, Round Table discussions, Communal Award and Poona Pact, etc.
- The Government of India Act 1935 envisaged a federal system with provincial autonomy and diarchy in provincial and central governments respectively. The 1935 Federation though unborn, laid the foundation of the present constitutional arrangement in the distribution of subjects in three lists, emergency powers of Governors and Governor-General and reservation of seats in legislatures of the parliamentary system.
- The Republican Constitution of India was prepared and passed by the Constitutional Assembly, which was constituted under the Cabinet Minister Plan of 1945. Hence the above time line depicts the evolutionary frame work of Indian constitution from 1858 to 1949. The people revolted and initiated the constitution making process.

Whereas the American Constitution is the output of American War of Independence. In 1776, the United States Congress approved the Declaration of Independence and after that during Philadelphia Convention in 1787 adopted a new Constitution that provided for a much stronger federal government, including an effective executive in a check-and-balance system with the judiciary and legislature.

## Conclusion:

Hence, Indian constitution followed evolutionary scheme while American constitution was a result of the revolutions approach adopted by the American people.

## 3. Discuss the contribution of Kesavananda Bharti Case Judgement in retaining India as a cherished republic envisioned by its founding fathers?

***(250 words)***

**Approach**

**1. Introduce Kesavananda Bharti case** ***(40 words)***

2. **Elaborate on the significance of the judgement** ***(70 words)***
3. **Elaborate on shortcomings of the judgement** ***(60 words)***
4. **Implications** ***(50 words)***
5. **Conclusion** ***(30 words)***

## Hints

The founding fathers of the Constitution of India made a grandeur constitution after going through extensive studies of prominent existing constitutions in the world. With the adoption of the constitution of India, our country became a republic. Republic state is a state in which supreme power is held by the people and their elected representatives, and which has an elected or nominated president rather than a monarch. Further, constitution is the highest law; people of India made the constitution.

- In this context, KesavanandaBharati case judgement is landmark. The judgement underlined that the visions of the founding fathers- a republic state, cannot be tarnished by the any organ of it.
- In this case, the validity of 24th, 25th and 29th amendments to the Constitution of India was challenged. The main question was related to the nature, extent and scope of amending power of the Parliament under the Constitution.
- Significance of the judgement
- The Supreme Court laid down the Theory of Basic Structure in this case. According to this theory, some of the provisions of the Constitution of India form its basic structure which is not amendable by Parliament by exercise of its constituent power under Article 368.
- The Basic Structure doctrine forms the basis of power of the Indian judiciary to review, and strike down, amendments to the Constitution of India enacted by the Indian parliament which conflict with or seek to alter this basic structure of the Constitution.
- Apart from it, the judgement cleared the deck for complete legislative authority to amend any part of the Constitution except when the amendments are not in consonance with the basic features of the Constitution.
- The validity of clause (4) of article 13 and a corresponding provision in article 368(3), inserted by the 24th Amendment was upheld.
- Judiciary successfully defended that fundamental rights cannot be amended by whims and fancies of the legislative. The judiciary thwarted the attempt of the Parliament to amend the constitution at its whims and fancies.
- Judiciary also asserted their privilege as the custodian of the constitution.
- The 'rule of law' was upheld by the judiciary.

### Shortcomings of the judgement:

- Basic structure was not defined by the judiciary, hence left the room for misinterpretation of the term. However, practically it is not possible to define the without ambiguity. Rather, it is wishful to deal with case by case.
- Acrimonious relations heightened between legislative and judiciary. Subsequently, a series of attempts were made to circumvent the powers and privileges of the independent judiciary.

### Implications:

- The government of Indira Gandhi did not take kindly to this implied restriction on its powers by the court. On 26 April 1973, Justice AjitNath Ray, who was among the dissenters, was promoted to Chief Justice of India superseding three senior Judges, Shelat, Grover and Hegde, which was unprecedented in Indian legal history.
- The 42nd Amendment, enacted in 1976, is the immediate and most direct fall out of the judgement.
- The basic structure doctrine was adopted by the Supreme Court of Bangladesh in 1989, by expressly relying on the reasoning in the Kesavananda case.

### Conclusion:

The judgement of Kesavananda case is very significant in terms of the theorization of 'basic structure', which clearly states that abridgement of basic structure is not possible, hence it protects of political, social and economic system of the country. It has also shielded the constitution from unconscionable amendment in the future. Nowadays, abrogation and abridgement of the constitution is growing at world over. Indian constitution is immune to such risk. It had retained India as a cherished republic envisioned in the Preamble of our constitution.

## 4. The constituent assembly in India borrowed liberally from different existing constitutions, but customized them to suit the Indian realities and needs. Discuss with particular emphasis on secularism and federalism.

***(250 words)***

### Approach

1. **Mention what provisions were borrower from which country's constitution.** ***(50 words)***
2. **Explain classical understanding of 'Secularism' and 'Federalism'.** ***(75 words)***
3. **Explain how constitution makers customized the above to suit Indian realities.** ***(75 words)***
4. **Conclusion** ***(50 words)***

### Hints

The Indian Constitution is unique in its contents and spirit. Though borrowed from almost every constitution of the world, the constitution of India has several salient features that distinguish it from the constitutions of other countries. The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935. Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the World'.

- The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935.
- The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.

- The political part of the Constitution (the principle of Cabinet Government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.
- The other provisions of the Constitution have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on.

The Constitution of India establishes a federal system of government. It contains all the usual features of a federation like

- Two government
- Division of powers
- Written Constitution
- Supremacy of Constitution
- Rigidity of Constitution,
- Independent judiciary
- Bicameralism

However, the Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions, and so on.

- Federalism is not merely a structural arrangement for distribution and sharing of power between the federal partners, it is also a culture sustaining its very spirit. Its emergence and later consolidation in India is slightly paradoxical since it is the product of two conflicting cultures: one representing the national leaders' normative concern for India's multicultural personality, shaped by its unique history and geography, and the other underlining their concern for unity, security, and administrative efficiency.
- While the former led to the articulation of federalism, as laid down in the 1950 Constitution, the latter resulted in the retention of the very state machinery which consolidated the colonial rule in India. Nonetheless, the federal system that supported unwarranted centralization of power appeared to be the most suitable alternative for nation building in India.
- Indian federalism is a distinct case of asymmetrical federalism that characterizes a federation in which some of the units are accorded weightage under imperative of compelling historical or cultural factors necessitating special constitutional recognition.
- If we see the idea of secularism as adopted in the Constitution of India, it is distinct from its Anglo-Saxon understanding where it broadly means a wall of separation between state and religion. Though we adopted this idea, we have adjusted it to meet the needs of intra- and inter-religious dominations in India. Ours is not a strict separation between state and religion. Indian Constitution believes in state-intervention for religious reforms under article 25(2). Moreover, it attempts to maintain a principled distance with different religions based on needs to address basic values of equality, justice and freedom. Hence, we see that Indian ingenuity has been in play even when we have borrowed liberally from constitutions across the globe.

## Conclusion:

Thus secularism, different from the western concept, is based upon respect for all the religion. While federalism is based upon the participatory and collaborative approach which recognises the historical, cultural factors to establish special relations.

**5. "The Indian Constitution appears to be seamless web characterized by the three strands of the unity and integrity of the country, institutions and spirit of democracy, and social revolutionary fervor." How do provisions of the constitution manifest the above ideas?**

***(250 words)***

## Approach

1. **Briefly introduce the meaning of the three phrases like 'the unity and integrity of the country', 'institutions and spirit of democracy', and 'social revolutionary fervor'.** ***(50 words)***
2. **Explain how the above three strands are significant and how have they been manifested in the text of the constitution.** ***(150 words)***
3. **Conclude** ***(50 words)***

## Hints

Famous commentator on Indian Constitution Granville Austin discerns a 'seamless web', consisting of three strands namely

- Protecting and enhancing national unity and integrity,
- Establishing the institutions and spirit of democracy, and
- Fostering a social revolution to better the lot of the mass of Indians.

Bestowing equal weightage and significance to all the three strands in time and space, Austin asserted the mutual dependence of these strands and warns that undue strain on, would distort the web and risk its destruction, and with it, the destruction of the nation.

Framed with much painstaking perseverance and imbued with the long cherished dreams of the national leaders, the Constitution of India reflected the wisdom of the framers in not only meeting out the challenges at hand, like preserving the unity and integrity of the nation threatened by the communal violence but also a prophetic vision of heralding in an era of what Gandhi called 'Ram Rajya'.

### Unity and Integrity:

The first and foremost priority of the framers at the time of Independence, and probably afterwards, appeared to be jealously guarding the unity and integrity of the country, for which they were willing to afford so much of unfettered powers to the Central Government even at the risk of rendering the federal set-up of the polity meaningless. Apparently, it appears paradoxical that though very few mentions have been made in the Constitution with regard to the unity and integrity of the country, such sweeping powers and unwritten discretion have been provided in addition to the retention of the colonial constructions like the

- All India Services—the Indian Administrative Service (formerly Indian Civil Service) and Indian Police Service (formerly Indian Police, and so on), Indian Forest Services

It would not be impertinent to argue that the preservation of the unity and integrity of country is the running consideration pervading from the first to the last word of the Constitution.

### Ethos and spirit of democratic governance:

- The framers set on to infuse the ethos and spirit of democratic governance in the country, within the broad spectrum of the parliamentary system, based on the sanctities of universal adult franchise. Banking heavily, if not exclusively, on the periodic elections conducted by an independent constitutional body, the framers' trump card, with regard to democracy, turned out to be the classical negative rights of Western mould.
- This ensured for the common people the basic minimum constitutional guarantees through which they could feel as being the citizens of an independent country and enjoy the freedom of not only choosing their rulers but also live a life of their volition, notwithstanding the traditional character of Indian society and the socio-economic backwardness of the mass of the people.

### Social Revolution:

- The value of social revolution, as referred to by Austin, appears only at the last stage of contemplation by the framers, after ingraining fully the other two values of unity and integrity as well as democracy in the Constitution. Though fully aware of the indispensability and unavoidability of a subtle social revolution in the country in order to make democracy meaningful and sustainable, the framers seem to be convinced of the primacy and pivotal position of the other two values, which were bound to become the substructure over which the superstructure of social revolution could be erected. Part 4 of the constitution i.e., directive principles of state policy provide various articles that aim to lead the state towards a social revolution like minimum wages, right to work, education for all, reduction in wealth gap etc.

### Conclusion:

- In sum, undoubtedly, the Indian Constitution appears to be a seamless web characterized by the three strands of the unity and integrity of the country, institutions and spirit of democracy, and social revolutionary fervor. It may be argued that the shape of the web would probably be pyramidal in which the three values are arranged in the ascending order with the base position occupied by the value of unity and integrity of the nation, the next position accorded to the value of the democracy, and finally comes the value of social revolution, in order of their indispensability from top to bottom.

## 6. Do you think that the Constitution of India was a culmination of constitutional reforms initiated decades ago by the colonial rulers? Critically comment.

***(250 words)***

**Approach**

1. **Introduce what constitutional reforms mean.** ***(50 words)***
2. **List various reforms undertaken by the colonial rulers over a century and a half.** ***(75 words)***
3. **See the changes and continuity in the evolution of legal-constitutional framework.** ***(75 words)***
4. **Conclusion** ***(50 words)***

## Hints

A discussion on the evolution of administration in India in modern times is in fact the discussion of the legacies left by the British. The British endeavors in creating a number of structures was not for the purpose of evolving a modern, rational system of administration in India but for revenue collection, and afterwards, for ensuring the retention of their colonial rule in the country.

### The long stint of British rule in India is usually divided into two distinct phases for the purpose of analysis:

- The phase of the rule of the East India Company
- The phase of the rule of the British government.

The British Parliament enacted the Regulating Act of 1773 in order to streamline the functioning of the Company in India. Providing for the appointment of a Governor-General and a council of advisors to assist him, the Regulating Act replaced hereditary rulers in India by that of officer appointed.

- Charter Act of 1833 provided for the grouping of the most important departments into two hubs: one consisting of the general, foreign, and finance departments, and the other comprising the secret, political, revenue, and judicial departments. The Act was also radical in the sense that the natives should not be prohibited from the superior services of the Company.
- Charter Act of 1853 wound up the long-standing practice of patronage and revolutionized the system of recruitment of the civil servants by introducing the system of open competition for the purpose. Macaulay Committee Report of 1854 contained the seeds of a whole new set of administrative reforms in India.
- The Act of 1858 created a new post of the Additional Principal Secretary of India to look after the affairs of India with a focused attention. The Act also declared the intention of the British government to allow Indians also a fair degree of participation in the process of governance of the country.
- Another paramount Act that introduced non-official members in the administration was the 1861 Indian Councils Act. The function of the Council was limited to legislation and had no authority to control the executive though it empowered the provincial governments to legislate on provincial matters. The Executive Council was expanded to include the Advocate General of the provinces, in addition to four nonofficial members who were invariably Indians.
- Several Acts were enacted to constitute municipalities in Bombay, Calcutta, and Madras. The most eventful development in this regard was undoubtedly the 1882 Ripon Resolution that defended the introduction of the local self-government by underlining that it was introduced not primarily with a view to improvement in administration. It is chiefly desirable as an element of political and popular education.
- 1892 Indian Councils Act provided for the enhanced membership of the Councils. It was mandatory for the government to consult the representative bodies and institutions, approved by the government, before selecting nominees for the Councils. Besides legislative powers, the Councils were also empowered to pull the executive on financial matters though it had no power to either revise or reject decisions on this matter. However, the growing weightage of the councils is indicative of a sea change in colonial rule.
- Government of India Act, 1909 introduced a profound change with long-term effects in representation of communities in Councils. It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative

Council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform. It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget, and so on.

1919 Montague-Chelmsford Reform scheme was guided by the committed goal of the government to increase association of the Indians in every branch of the administration and the gradual development of self-governing institutions in India.

- The central and provincial legislatures were authorized to make laws on their respective list of subjects.
- It further divided the provincial subjects into two parts—transferred and reserved. It introduced, for the first time, bicameralism and direct elections in the country.
- It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.

## 1935 Government of India Act:

- Provincial autonomy was recognized by giving the provinces a separate legal identity and liberating them from Central control except for certain specific purposes.
- A federation of India was established demarcating domains between the provincial governments and the federal Central government.
- Separate electorate was retained following the distribution of seats among the minority communities, as devised by the 1932 Communal or MacDonald Award.

## Indian Independence Act of 1947:

- It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
- It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.
- It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.

## Conclusion:

- The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935.
- The political part of the Constitution (the principle of Cabinet Government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.
- The most profound influence and material source of the Constitution is the Government of India Act, 1935. The Federal Scheme, Judiciary, Governors, emergency powers, the Public Service Commissions and most of the administrative details are drawn from this Act. More than half of the provisions of Constitution are identical to or bear a close resemblance to the Act of 1935.
- The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.

- The other provisions of the Constitution have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on.

Thus we can see that reforms undertaken by the British did influence the way we made our constitution but there were other sources from which we borrowed liberally. So, there is a change amidst continuity between colonial rule and independent India's rule.

Hence, the structural framework of the constitution was a result of not the constitutional reforms but constitutional evils which aimed at strengthening the hold of British Government in the administration of the country. The political, philosophical and other provisions were also borrowed from the constitution of the other countries, thereby reflecting the diverse composition of the constitution.

**7. The Constitution of India is remarkable for many outstanding features, which distinguishes it from other constitutions, even though it has been prepared after "ransacking all the known constitution of the world". Elaborate. Do you think that the bulk of the constitution is due to "patch work?"**

***(250 words)***

**Approach**

1. **Define the unique features of Indian constitution** ***(50 words)***
2. **Do you think that the bulk of the constitution is due to "patch work? If yes give reasons with suitable examples** ***(100 words)***
3. **Conclusion** ***(50 words)***

**Hints**

## Unique features of Indian constitution:

- Unlike other constitutions, the Indian constitution provides not only the basic law. It also provides very detailed and minute administrative provisions. This was to prevent subversion of the constitution through legislative process. These details save a lot of time.
- The vastness of the country and its population size and diversity, compelled the framers of the constitution to make provisions for the protection and promotion of the interests of different regions and groups in the country. Thus, the constitution has elaborated provisions for the minorities, scheduled castes and tribes, etc.
- The Indian constitution is an omnibus constitution. It is at the same time a constitution for the whole nation as well as for the component states of the Union.
- Indian constitution does not sanction double citizenship as in federations like the U.S.A. There is only one uniform Indian citizenship.
- Both, flexible and rigid
  - If an amendment in the constitution requires an ordinary law-making process, it's called a flexible constitution and if it requires a special procedure, then it's a rigid one. Indian constitution is a synthesis of both. Some of its provisions can be amended by a special majority of the Parliament whereas some other provisions can be amended by the Parliament's special majority and with the ratification by half of the total states.

- Dual system of the Government
  - The Indian constitution has dual system of the Government – i) A federal or union government and ii) Many state governments.
- The constitution is supreme in any case and both the governments get their powers from it. The Supreme Court maintains the legal supremacy of the constitution and vests the authority to interpret the constitution.
- Freedom to almost everything. The fundamental rights which are given to us by the constitution are an asset. Indians have right to equality and freedom, right to speak or act against exploitation, right of choosing the religion as well as cultural and educational rights.

### Yes, bulk of it is patch work:

- Indian constitution is mainly inspired from constitutions of countries like UK, USA, Ireland. Even some parts from the constitution of countries like Germany, Japan, Australia were adopted. The concepts of liberty, equality and fraternity were taken from the French Constitution. The idea of 5 year plans was taken from the USSR and the concept of socio-economic rights was taken from Ireland. Most importantly, the law on which the Supreme Court works was taken from Japan.
- However, the above features were made accommodative and acclimatizing to the socio-political environment of the country by correcting faults and removing incongruence's in them.
- Each country inspired from other existing constitutions, and each had included its own flavour as per its social, economic and political needs.

### Conclusion:

Indian constitution evolved with the changing needs of the country as there have been amendments made in many laws of the country. Also, the fact that our constitution has endured for over sixty years and during periods of acute crisis, shows its inherent strength and resilience.

**8. The Preamble starts with word "We the People", which means people of India are Sovereign, however, on the contrary, none of the five pillars of state are directly accountable to the people, except for a five year electoral process. Elaborate.**

***(250 words)***

**Approach**

1. **Briefly introduce the five pillars of the state & Basic democratic principle** ***(50 words)***
2. **Elaborate role of different segments of the state and accountability system of them** ***(150 words)***
3. **Conclusion** ***(50 words)***

**Hints**

The five pillars of state are: Executive, Legislature, Judiciary, Mass media, and Civil Society.

There are different mechanisms to ensure accountability of each, while executive is accountable to legislature; the legislature is directly accountable to people through general elections. While the balance of power between legislature and executive has tarnished and gone in favour of executive, the only accountability they hold is the indirect accountability to people at interval of five years.

Role of different segments of the state and accountability system of them:

- Executive – Executive constitutes to types, permanent and temporary. Both of these are not directly accountable to the people. Though temporary executives are held accountable every 5 years, but 5 years is a long duration to keep a check upon the execution i.e. Bureaucratic accountability has to be strengthened through mechanisms, processes involving more participation of people from grassroot level and transparent dealing in the formal structure.
- Legislature – Legislature is also not directly accountable to the people. Only the elections are a means to check once in five year, otherwise there is a fragmented and weak mechanism to check the laws are made in the public interest and national interest. Though Judiciary provides for a mechanism of accountability through Judicial Review.
- The judiciary at present has very little accountability as it is not directly accountable to people, while its dependency on legislature has decreased in era of coalition governments, as the judicial impeachment is virtually impossible in coalition governments. It is relatively dependant on executive for judicial appointments, but there too executive's role is decreasing as there is a demand for judicial coalition, where judges hold majority.
- The Mass media in India is self regulated and holds little or no accountability. While in pre-24x7 channels era, media was largely self-righteous and well regulated from within, the situation has worsened in recent years and media is largely being found on the wrong side of ethics. The Radia tapes case and involvement of many senior journalists along with issue of paid news have tarnished the image of media and questioned its accountability.
- Civil society has largely worked for the benefit of poor and downtrodden in India. However, with increase in the charity funds and donations globally with the advent of Bill Gates Foundation and similar institutions, many NGOs have come up only to usurp the funds and expensive urban land which is allotted by government. There is very little accountability to Government and people and while many NGOs have been blacklisted from received donations in past, the absence of direct accountability measures have left a big room for such NGOs to engage in unscrupulous activity.

## Conclusion:

Thus, while all such organs enjoy their share of power at the cost of people, they have very limited accountability to them and each of them is engaged in misuse of power and misappropriation of funds in absence of such measures. Therefore, direct Accountability mechanism is need of hour to ensure sovereignty of the people of India.

**9. One of the unique features of the Indian Constitution is its emphasis on the maintenance of 'flexibility' within the 'rigid' framework. Do you agree? Substantiate your answer using examples.**

***(250 words)***

## Approach

1. **Briefly introduce the flexible and rigid features of the Constitution.** ***(40 words)***
2. **Discuss the causal factors for keeping such a unique arrangement.** ***(80 words)***
3. **Analyse if 'flexibility' is retained within a 'rigid' framework in the Indian Constitution.** ***(90 words)***
4. **Briefly conclude highlighting the importance and benefits of a semi-rigid Constitution for India.** ***(40 words)***

## Hints

A constitution may be called rigid or flexible on the basis of the procedure used to amend it. In a rigid constitution, amendment of the constitution is not easy. The Constitutions of the USA, Switzerland and Australia are considered to be rigid while the British Constitution (though unwritten) is considered to be flexible because the procedure to amend it is easy and simple.

The Indian Constitution presents a unique blend of rigidity and flexibility. This has been developed to maintain the federal polity within the context of India's diversity as a nation.

### The Constitution of India provides for three categories of amendments:

- In the **first category**, amendment can be done by the two houses of Parliament by a simple majority of the members present and voting before sending it for the President's assent. This is the most flexible way to amend the Indian Constitution.
- In the **second category,** amendments require a special majority. Such an amendment can be passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3$^{rd}$ majority of the members present and voting in each house of Parliament and send to the President for his assent, which cannot be denied.
- In the **third category,** besides the special majority mentioned in the second category, the same also has to be approved, by at least 50% of the State legislatures.
- To understand causal factors of keeping balanced 'flexibility' within the 'rigid' framework of constitution, it is important to know the merits and demerits of the flexibility apparatus.

### Merits of Flexible Constitution:

- In a flexible constitution, the nation is protected against internal revolts and revolutions.
- Adaptability or elasticity is the chief merit of a flexible constitution. It enables the people to keep pace with the changes in society.
- A flexible constitution is very useful for a developing country, because it is inclusive and gives better expression to the term 'development'.

### Demerits of Flexible Constitution:

- A flexible constitution is said to be in a state of perpetual flex because it can be easily amended. It is liable to fall a prey to the whims of political passions and emotions rather than by reason.
- A flexible Constitution becomes a plaything of judicial courts, because they interpret it according to their own will and give it a meaning of their own liking and choice (a root cause behind Judicial Activism and Basic Structure doctrine)
- It is vague and indefinite and the politicians give it meanings of their own choice.

### India's journey with the unique blend of 'flexibility' within the 'rigid' Constitutional framework:

- Indian Constitution has retained its organic nature and flexibility, as evinced by over one hundred amendments during the past seventy years.
- In this context, flexibility of the Constitution would only mean that it is possible for the People (Parliament) to **amend, without changing its basic character (Keshavananda Bharati case)**.

### Flexibility - Judicial interpretation

- The judiciary at the apex level interprets the Constitution and lays down the guiding principles through its judgments which then become binding.
- There is, however, no flexibility available to other institutions in the interpretation of laws, on the basis of principles already laid down by the Supreme Court.
- Such flexibility at the implementation levels would lead to administration by convenience, which in a democratic country with multiple agencies, can lead to serious situations and chaos as yardsticks and principles would change in decision- making from case to case.
- Hence, though the flexibility is retained, at times the 'interest accommodation' factor subverts the basic doctrine. Take the case of creation of Telangana. Its creation had opened up a Pandora 's Box and only lately, have we managed to put to rest the issue of Gorkhaland .

### Conclusion:

It can be stated that flexibility is a tool that can be used only to accommodate the larger public interest and not minority, whimsical ideas. If the Parliament fails to live up to this expectation, the nation will see a rise in socio-economic instability and Judicial Activism (to fill the void thus created).

## 10. Illustrate how the Constitution of India is distinctive in its own way, notwithstanding being a blend of various constitutions around the world. Also, discuss how Indian Secularism is different from Western Secularism.

***(250 words)***

**Approach**

1. **Briefly introduce about the formation of the Constitution of India** ***(50 words)***
2. **Elaborate on the many distinct features of the Indian Constitution** ***(75 words)***
3. **Discuss the difference between Indian Secularism and Western Secularism** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

The Constitution of India is the supreme law of India. The document lays down the framework demarcating fundamental political code, structure, procedures, powers, and duties of government institutions and sets out the Fundamental Rights, Directive Principles, and the duties of citizens. It is the longest written constitution of any country on earth. The Indian Constitution is unique in its contents and spirit. The Constitution of India has several features which are borrowed from that of other countries.

## Distinct features of the Indian Constitution

- The Indian Constitution is a blend of various constitutions, such as, it has borrowed the features of the Preamble, the Supreme Court, a written constitution, Fundamental Rights from the USA, Fundamental Duties and the Five Year Plan from Russia, the Election Commission, Parliamentary Election from the UK, Federal System and Union-State List from Canada, etc.
- Even though it had picked up many best features from other constitutions of the world, the Constitution of India has several salient features that distinguish it from the constitutions of other countries.
  - It is one of the largest written liberal democratic constitutions of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity.
  - The Indian Constitution is a constitution made by the people of India acting through their duly elected and representative body—the Constituent Assembly– in December 1946.
  - The Preamble declares India to be a Republic. It means that India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India), who wields power for a fixed term of 5 years.
  - Under its Part III C (Articles 12-35), the Constitution of India grants and guarantees Fundamental Rights to its citizens. It is called the Indian Bill of Rights.
  - Part IV of the Constitution dealing with the 'Directive Principles of State Policy' provides one of the most striking features of the Indian Constitution. The Directive Principles are instructions to the state for securing socio-economic developmental objectives through its policies. These are to be implemented by both the Union for the States.
  - The Constitution provides for a Bicameral Legislature at the Union level and names it as the Union Parliament. Its two Houses are: The Lok Sabha and the Rajya Sabha.

## Difference between Indian Secularism and Western Secularism:

### Western Secularism-

- In most commonly prevalent conceptions, inspired mainly by the American model, separation of religion and state is understood as mutual exclusion: the state will not intervene in the affairs of religion and, in the same manner; religion will not interfere in the affairs of the state.
- Each has a separate sphere of its own with independent jurisdiction. No policy of the state can have an exclusively religious rationale. No religious classification can be the basis of any public policy. If this happened, there is illegitimate intrusion of religion in the state.
- Similarly, the state cannot aid any religious institution. It cannot give financial support to educational institutions run by religious communities. Nor can it hinder the activities of religious communities, as long as they are within the broad limits set by the law of the land.

### The Indian Model of Secularism-

- Sometimes, it is said that Indian secularism is an imitation of western secularism. But Indian secularism is fundamentally different from Western secularism. Indian secularism does not focus only on the separation of the church and the state and the idea of inter-religious equality is crucial to the Indian conception.
- Indian secularism deals not only with religious freedom of individuals but also with religious freedom of minority communities.

- Within it, an individual has the right to profess the religion of his or her choice. Likewise, religious minorities also have a right to exist and to maintain their own culture and educational institutions.
- Since a secular state must be concerned equally with intra-religious domination, Indian secularism has made room for and is compatible with the idea of state-supported religious reform. Thus, the Indian constitution bans untouchability. The Indian state has enacted several laws abolishing child marriage and lifting the taboo on inter-caste marriage sanctioned by Hinduism.

## Conclusion:

India has a unique constitution and some of the features – that might seem to be the same – have very different interpretations. Although some concepts have been borrowed from various different sources, they have been adapted and changed according to the Indian society and needs. Thus, the Indian Constitution is distinctive in its own way, notwithstanding being a blend of various constitutions around the world.

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# NOTES

# SET-3: QUESTIONS

## SIGNIFICANT PROVISION OF INDIAN CONSTITUTION

**Q1. 'Life can become smoother if rights and duties go hand in hand and become complementary to each other'. In the light of the given statement illustrate the importance of fundamental duties for Indian society.**

**Q2. While Fundamental Rights ensure political rights of the citizen, DPSPs ensure that economic and social rights of people are respected and followed by State. Critically analyze, why provisions of economic and social rights were also not made mandatory?**

**Q3. "Directive Principles of State Policy serve as a common political manifesto." Critically analyse the statement in the light of implementation of the Directive Principles of State Policy in India?**

**Q4. What is the nature of Fundamental Duties? Why aren't they given legal backing like Fundamental Rights? Can they be enforced under special circumstances? Debate, the case for conscription in India, like many developed countries?**

**Q5. The DPSPs are an unofficial manifesto for good governance, if a political party can only adhere to them properly, when in power, there is no need for any other manifesto. Examine.**

**Q6. In India separation of power is more hypothetical than real. Comment**

**Q7. Freedom of Speech and expression is one of the most evolved constitutional provisions and has been described as "Inalienable adjunct" to Right to life. Elaborate.**

**Q8. What is Separation of Power? Examine the idea of separation of power enshrined in Indian Constitution with suitable examples?**

**Q9. The Preamble serves as a brief introductory statement that sets out the guiding purpose, principles, philosophy and spirit of the Indian Constitution. Examine**

**Q10. The ethos of equality embedded in the constitution of India aims to not only eradicates the discrimination in Indian society based on gender, religion and caste formally, but also substantively. Critically analyze the above statement.**

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# SET-3: ANSWERS

**1. 'Life can become smoother if rights and duties go hand in hand and become complementary to each other'. In the light of the given statement illustrate the importance of fundamental duties for Indian society.**

***(250 words)***

**Approach**

1. **Differentiate FRs with FDs** ***(50 words)***
2. **Illustrate the importance of fundamental duties for Indian society** ***(80 words)***
3. **Steps need to be taken to aware citizens** ***(80 words)***
4. **Conclusion** ***(40 words)***

**Hints**

Fundamental rights are rights and freedoms guaranteed by constitutions of some countries of the world to their citizens. These rights have a legal sanction and are enforceable in a court of law. On the other hand fundamental duty is the basic duty or responsibility bestowed on you as a citizen of the country. This is the most important difference between fundamental right and fundamental duty.

Rights and Duties are like two sides of a coin, absolutely inseparable. Whenever and wherever we have any rights, we must have corresponding duties. Whether it be the home, the society or the country, in every sphere of life we have rights and duties that go hand in hand.

## Importance of Fundamental duties for Indian society:

- In the Indian Constitution, fundamental rights have been provided to the citizens of India along with a mention of fundamental duty because no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country.
- They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are no mere spectators but active participants in the realisation of national goals.
- The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties set out in Part IV–A of the Constitution, concern individuals and the nation. Like the Directive Principles, they are not enforceable by courts unless otherwise made enforceable by parliamentary law.

- The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.
- Since time immemorial the emphasis in Indian society in accordance with the dictates of the ancient scriptures has been on the individual's "Kartavya", i.e., performance of one's duties towards society.The fundamental duties define the moral obligations of all citizens to help in the promotion of the spirit of patriotism and to uphold the unity of India.
- Hence fundamental Duties can complement the fundamental Rights and ensure the public morality and decency through the development of civic senses and responsibility among the citizens of the country.

### Conclusion:

- These fundamental Duties would go a long way to ensure that 2 way participatory approach i.e. Government to people & people to Government is strengthened to ensure the supremacy as of constitution and to make India a democratic inclusive Republic nation creation in letter and spirit.
- Einstein said life is like bicycle in order for move you have to keep moving. FRs & FDs are 2 tyres of that bicycle which results in better civic sense.

## 2. While Fundamental Rights ensure political rights of the citizen, DPSPs ensure that economic and social rights of people are respected and followed by State. Critically analyze, why provisions of economic and social rights were also not made mandatory?

***(250 words)***

### Approach

1. **Briefly introduce the DPSPs and their provisions** ***(50 words)***
2. **Critically analyze, why provisions of economic and social rights were also not made mandatory** ***(75 words)***
3. **Drawbacks of making DPSPs mandatory** ***(75 words)***
4. **Conclusion** ***(50 words)***

### Hints

Article 37 of Indian Constitution specifically mentions that DPSPs, though not enforceable through any court of law are "fundamental" to the governance of the country. The Articles include matters relating to right to work, right to education, the uniform civil code, and other principles of good governance that the State must take note of.

- There were apprehensions even at the time of Constitution drafting about how useful the DPSPs would actually be. There was a view that, by not making the Directive Principles justifiable, they were reduced to being pious wishes, and the intention of the Directives would never come into force.

- Dr. B.R. Ambedkar called the DPSPs 'Instruments of Instructions'. He referred to them as policies and principles to achieve economic democracy, which is an ever changing concept and is dependent on the times and circumstances, how it is achieved, and it would be wrong to lay down a fixed concept of it. Further, the State would have to answer to the people, and thus these Directive Principles would not be mere pious declarations.
- India did not possess the adequate resources to enforce all the DPSPs, and thus, it was left to the future Governments to follow them voluntarily.
- In today's context, the implementation of the DPSPs would impose a financial burden on the government, and on the finite resources of the nation. For example, in many states the Right to Education was imposed mandatorily, even though the state lacked the resources leading to the result that the initiative did not succeed.
- Similarly there have been various schemes by the government like the MGNREGA, Integrated Rural Development Schemes that have been enacted for the purpose of social and economic justice and can be considered as codification of the DPSP into laws. However, the success of these schemes is dismal. The actual benefits derived to the people are marginal. Other initiatives taken like the Public Distribution System (PDS) have also not borne the desired fruits.
- Making the DPSPs justifiable would result in complete restriction of the government's freedom to legislate, and it would be a scenario of 'one size fits all' which is not what the drafters intended. The driving force behind the DPSPs is public opinion, and the necessity of the measure. Thus, middle ground can be found wherein welfare schemes are introduced voluntarily by the government, but a body set up may oversees the successful implementation of these schemes, which ensures greater social and economic justice.
- Similarly, whenever the issue of the DPSPs has come up before the courts, the courts have stressed upon the importance of them time and again.
- Hence, though DPSPs were not made mandatory at the time of framing constitution due to some historical restrictions of political, economic and administrative challenges. However, DPSPs are oftern read along with FRs & a balance is made b/w DPSPs & FRs to ensure harmonious application in the welfare schemes of the governments.

## Conclusion:

They have repeatedly read the DPSPs with the Fundamental Rights. Thus, the Right to Education mentioned in Article 41 has been held to be a part of Article 21, in turn making it a fundamental right. In a few cases, the Courts have even issued directives to the government to implement the DPSPs. Thus, though the DPSPs have not been made enforceable by the courts, they have been implemented in some cases.

**3. "Directive Principles of State Policy serve as a common political manifesto." Critically analyse the statement in the light of implementation of the Directive Principles of State Policy in India?**

***(250 words)***

**Approach**

1. **Give a brief description about DPSPs** ***(50 words)***
2. **Discuss the aim of DPSPs and mention related state policies in India** ***(150 words)***

### 3. Conclusion *(50 words)*

**Hints**

UThe DPSPs which have been borrowed from the Irish constitution are enumerated in Part IV of the Indian constitution. They give guidelines to the government regarding steps that should be taken in governing the people and the ideals given in the directive principles of state policy are supposed to be taken into consideration by the policy makers while formulating the policy on any issue. Thus, they in a way aim to achieve a welfare state.

- They were designed to bring about the social and economic revolution that remained to be fulfilled after independence.
- Though they lack legal enforcement in a court of law, but they have a moral enforcement on any government in power. They can be said to be manifesto of aims and aspirations of people. They are enforceable in the court of people, where people judge the performance of the government based on their ability to fulfil the promises.
- A ruling party irrespective of its political ideology has to recognize the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts. They are moral precepts on the authority of political parties. They induce the government to work for the welfare of the people. Thus, they serve as a common political manifesto and a crucial test for the performance of the government.
- Since independence, the successive governments at the centre and in the states have made several laws and formulated various programmes for implementing these principles which show that how they have tried to inculcate them in the promises they made while declaring their manifestos. It can be discussed as:
- Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include:
  - Abolition of intermediaries like zamindars, jagirdars, inamdars, etc;
  - Tenancy reforms like security of tenure, fair rents, etc;
  - Imposition of ceilings on land holdings;
  - Distribution of surplus land among the landless labourers; and
  - Cooperative farming. It shows concern towards people by the governments.
- The Maternity Benefits Act (1961) and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.
- Khadi and Village Industries Board, Khadi and Village Industries Commission, Small-Scale Industries Board, National Small Industries Corporation, Handloom Board, Handicrafts Board, Coir Board, Silk Board and so on, have been set up for the development of cottage industries in rural areas.
- Three-tier Panchayati raj system (at village, taluka and zila levels) has been introduced to translate into reality Gandhiji's dream of every village being a republic. The 73rd Amendment Act (1992) has been enacted to provide constitutional status and protection to these Panchayati Raj institutions.
- Primary health centres and hospitals have been established throughout the country to improve the public health.

- Seats are reserved for SCs, STs and other weaker sections in educational institutions, government services and representative bodies. The Untouchability (Offences) Act, 1955, which was renamed as the Protection of Civil Rights Act in 1976 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been enacted to protect the SCs and STs from social injustice and exploitation.

### Conclusion:

Thus, these measures show that the DPSPs have given a common framework to the governments to establish political and economic democracy in the country and promote the welfare of the community. Though they are not enforceable in the count of law, DPSPs are fundamental in promoting the participatory Governance and Development.

## 4. What is the nature of Fundamental Duties? Why aren't they given legal backing like Fundamental Rights? Can they be enforced under special circumstances? Debate, the case for conscription in India, like many developed countries?

***(250 words)***

**Approach**

1. **What is the nature of Fundamental Duties** ***(40 words)***
2. **Enforcement of DPSPs under special circumstances** ***(50 words)***
3. **Why they were not made necessary** ***(50 words)***
4. **Debate, the case for conscription in India, like many developed countries** ***(40 words)***
5. **Discuss the reasons why India needs it** ***(40 words)***
6. **Conclusion** ***(30 words)***

**Hints**

### Nature of fundamental duties:

Fundamental duties are obligatory in nature. But there is no provision in the constitution for direct enforcement of these duties. There is no sanction either to prevent their violation.

- As rights and duties are two sides of the same coin it is expected that one should observe one's duties in order to seek the enforcement of the fundamental rights.
- Some of the Fundamental Duties belong to the class of moral duties and others and belong to the class of civic duties. For example, cherishing noble ideals of freedom struggle is a moral duty and respecting the constitution, National Flag and National Anthem is a civil duty.

### Enforcement under special circumstances:

- There is neither specific provision for enforceability nor any specific prohibition. However, Fundamental Duties have an inherent element of compulsion regarding compliance.

- It is said that by their nature, it is not practicable to enforce the Fundamental Duties but can be enforced by suitable legislation and departmental rules of conduct.
- The Supreme court reminded the administrators of the Government that they too are primarily the citizens and therefore, their vision should be national interest. The primary responsibility of an administrator is to perform his functions in the services of the nation as an enlightened citizen to strengthen a new democratic state. The public administrator should get rid of all mental reservations on narrow considerations of caste, religion or regional. He should have a wider concern for society as a whole. Otherwise he is not worthy to be an administrator. In short, the court held that the Fundamental Duties oblige the administrators of the Government to be good administrators.
- The duties as such are not legally enforceable in the Courts of law, but if a law has been made to prohibit any act or conduct in violation of the duties, it would be reasonable restriction on the relevant Fundamental Rights.

### Why they were not made necessary:

- Constitutional fathers felt that fundamental duties constituted an implied and inseparable part of the chapter on fundamental rights and there was no need for a separate chapter on Fundamental Duties.
- Some critics observed that more than 99% of the people were law-abiding. There was no need to tell them to obey laws and abide by their duties.
- The main sweep of the freedom struggle, therefore, was towards assertion of the people's right to national freedom. All these explain why the founding fathers of the Constitution took pains to ensure basic human rights in Part III of the Constitution.
- It seems that the people in the country had been concentrating much on rights that they tended to forget the importance of their duties and obligations towards the society and the nation which enabled them to claim; and exercise their rights.

### Conscription

- Conscription is the compulsory enlistment of people in a national service, most often a military service. It dates back to antiquity and continues in some countries to the present day under various names.

### Reasons why India needs it are:

- It is a way of instilling maturity in young adults. Compulsory military service can give person a sense of discipline and patriotism.
- It is a great leveller.
  - You can come from a rich or poor background, any ethnic or religious community (and in the case of India, any linguistic background) and you're treated the same way. The time in the armed forces helps in moulding young people and makes them more tolerant and accommodative.
- In all fairness, India has insecurities with neighbours. If the situation ever deteriorated to the point of war, then having a large pool of trained young men and women would work to India's advantage.
- It may not be only preparing for war, but would also empower people for dealing with any untoward incident in their own locality.

- Besides being a means of remaining active and fit, it can also be useful for self-defense. Military training can also help in effectively channelizing the energy of the youth.

### Not needed because:

- Conscription is controversial for a range of reasons, including conscientious objection to military engagements on religious or philosophical grounds; political objection, for example to service for a disliked government or unpopular war; and ideological objection, for example, to a perceived violation of individual rights. Those conscripted may evade service, sometimes by leaving the country.
- While women, almost always exempt from conscription, are free to pursue work, study and other activities, men's early career and life prospects can be impeded by conscription.
- Close to 30 crore males and 24 crore females between the ages of 16-49 are fit for military service in India. Annually, 1.2 crore males and 1 crore females attain militarily significant age. This is a huge number and even if a section of them have to be trained, it would require astronomical resources in terms of manpower, infrastructure and equipment.
- Also, with high levels of crime and unemployment and a host of serious internal security challenges, teaching a large number of youngsters to handle weapons and battlefield tactics could have dangerous ramifications.
- Conscription is a useful tool only in thinly populated countries, usually facing an existential crisis, like Israel.

### Conclusion:

A similar model already exists in schools and colleges in the form of the National Cadet Corps (NCC). The largest youth volunteer organization of its kind in the world with strength of about 15 lakh cadets, its mandate is personality development and inculcating discipline. Once India improves its education system and inculcates moral values, people will understand what is required of them and the situation will improve. Imparting military training is not the way to solve the ills of the society.

## 5. The DPSPs are an unofficial manifesto for good governance, if a political party can only adhere to them properly, when in power, there is no need for any other manifesto. Examine.

***(250 words)***

**Approach**

1. **Elaborate the constitutional provisions provided for DPSPs** ***(50 words)***
2. **How DPSP serve as governance manifesto** ***(150 words)***
3. **Conclusion** ***(50 words)***

**Hints**

DPSP enshrined in Part-IV (A 36 to 51) of the constitution are borrowed from Ireland constitution. It guarantees social and economic democracy and tries to establish welfare state.

- The Directive Principles are non-justiciable in nature, the Constitution under Article 37 make

it clear that these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. They impose an ethical responsibility on the state authorities for their application, but the real force behind them is political, that is, public opinion.

- Though the directive-principles are non-justiciable, they have been enforced through various decisions of the successive governments.
- Dr B. R. Ambedkar also pointed out that a government which rests on popular vote can hardly ignore the Directive Principles while shaping its policy. If any government ignores them, it will certainly have to answer for that before the electorate at the election time.

The framers of the Indian Constitution made the Directive Principles non-justiciable and legally non-enforceable due to the following reasons as listed below:

- The country did not possess sufficient financial resources to implement them.
- The presence of vast diversity and backwardness in the country would stand in the way of their implementation.
- The newly born independent Indian State with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

Henceforth, taking a pragmatic view, the framers of our constitution refrained from giving teeth to the directive principles. They believed more in an awakened public opinion rather than in court procedures as the decisive sanction for the execution of these principles. Also, an idea was to provide a common political manifesto. 'A ruling party, irrespective of its political ideology, has to recognize the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts'.

### How DPSP serve as governance manifesto:

- They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
- Their implementation makes a favorable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
- They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
- They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.

### Conclusion:

Therefor the vision, aim and objectives of DPSP outline the ideals of a progressive society. These in itself suffice to be a manifesto for socio-economic development of the country.

## 6. In India separation of power is more hypothetical than real. Comment

***(250 words)***

**Approach**

**1. Briefly introduce the doctrine of separation of power** ***(50 words)***

2. **Critically examine the concept of separation of power between union and states in India** ***(150 words)***
3. **Conclusion** ***(50 words)***

## Hints

The doctrine of separation of power contemplates the idea that the governmental functions must be based on a tripartite division of legislature, executive and judiciary. This doctrine tries to bring exclusiveness in the functioning of the three organs and hence advocates a strict demarcation of power.

This arrangement gives each department a certain independence, which operates as a restraint upon such action of others as might encroach on the rights and liberties of the people, and makes it possible.

In Indian constitution, there is express mention that the executive power of the Union and of a State is vested by the constitution in the President and the Governor, respectively, by articles 53(1) and 154(1), but there is no corresponding provision vesting the legislative and judicial powers in any particular organ. It has accordingly been held that there is no rigid separation of power.

### Although prima facie it appears that our constitution has based itself upon doctrine of separation of power.

- **Judiciary** is independent in its field and there can be no interference with its judicial functions either by the executive or the legislature.
  - Constitution restricts the discussion of the conduct of any judge in the Parliament.
  - The High Courts and the Supreme Court has been given the power of judicial review and they can declare any law passed by parliament as unconstitutional.
  - The judges of the S.C. are appointed by the President in consultation with the CJI and judges of the S.C.

The S.C. has power to make Rules for efficient conduction of business. It is noteworthy that Article 50 of the constitution puts an obligation over state to take steps to separate the judiciary from the executive. But, since it is a DPSP, therefore it's unenforceable.

- In a similar fashion certain **constitutional provisions** also provide for:
  - Powers, privileges and immunities to the MPs - immunity from judicial scrutiny into the proceedings of the house, etc. Such provisions are thereby making legislature independent, in a way.
  - The Constitution provides for conferment of executive power on the President. His powers and functions are enumerated in the constitution itself.

The President and the Governor enjoy immunity from civil and criminal liabilities.

But, if studied carefully, it is clear that doctrine of separation of power has not been accepted in India in its strict sense.

The executive is a part of the legislature. It is responsible to the legislature for its actions and also it derives its authority from legislature.

Generally the legislature is the repository of the legislative power but, under some specified circumstances President is also empowered to exercise legislative functions, i.e., while issuing an ordinance, framing rules and regulations relating to Public service matters, formulating law while proclamation of emergency is in force. These were some instances of the executive head becoming the repository of legislative functioning. President performs judicial functions also.

On the other side, in certain matters Parliament exercises judicial functions too. It can decide the question of breach of its privilege, and in case of impeaching of the President; both the houses take active participation and decide the charges.

Judiciary, in India, too can be seen exercising administrative functions when it supervises all the subordinate courts below. It has legislative power also which is reflected in formulation of rules regulating their own procedure for the conduct and disposal of cases.

## Conclusion:

Thus, the three organs of the Government (i.e. the Executive, the Legislature and the Judiciary) are not separate. Actually the complete demarcation of the functions of these organs of the Government is not possible.

## 7. Freedom of Speech and expression is one of the most evolved constitutional provisions and has been described as "Inalienable adjunct" to Right to life. Elaborate.

***(250 words)***

### Approach

1. **Constitutional provision of freedom or speech and expression. It's importance** ***(50 words)***
2. **How article 19 is important to ensure right to life defined under article 21** ***(150 words)***
3. **Conclusion** ***(50 words)***

### Hints

The power or right to express one's opinions without censorship, restraint, or legal penalty is known as Freedom of Speech. Unhindered flow of words in an open forum is the essence of free society and needs to be safeguarded at all times. One's opinions may, therefore, be expressed by words of mouth, in writing, printing, pictures, or any other mode. This freedom includes a person's right to propagate or publish the views of other people. In India, freedom of speech and expression is guaranteed under Article 19(1) (a) of the Constitution of India. Apart from this, provisions relating to freedom of speech and expression are also contained under various international conventions like Universal Declaration of Human Rights (UDHR), European Convention on Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, etc.

Article 19(1) (a) states that all citizens shall have the right to freedom of speech and expression. But this right is subject to limitations imposed under Article 19(2) which empowers the State to put 'reasonable' restriction on various grounds, namely, security of the State, friendly relations with foreign States, public order, decency and morality, contempt of court, defamation, incitement of offence, and integrity and sovereignty of India.

The right to free speech and expression is inalienable. The Constitution's role, therefore, is not to grant it, but to protect citizens from any attempt by the state to infringe upon it.

The original Constitution guaranteed free speech with few, if any, caveats. The Central and state governments of the day soon came to regret this, repeatedly restrained by the courts in restricting political speech and writing they deemed dangerous. Luminaries such as Jawaharlal

Nehru, Vallabhbhai Patel and the most staunchly liberal of them all, B.R. Ambedkar, moved to curtail freedom of expression. Shyama Prasad Mukherjee, who led the opposition to the Bill, can be credited for the first amendment to the Constitution imposing only "reasonable restrictions" on free speech and not "restrictions" as Nehru and Patel had wanted.

The judiciary also has a patchy record at best. On occasion, it has championed free speech, such as by striking down Section 66A. But in rejecting challenges to the antiquated Section 499 of the Indian Penal Code (IPC) criminalizing defamation, in reading Article 21 of the Constitution to grant a fundamental right to reputation that acts as a check upon free speech, and on various other occasions, it has shown its ambivalence towards freedom of expression.

## Conclusion:

Eminent American jurist and judge Benjamin N. Cardozo once said, "Freedom of expression is the matrix, the indispensable condition, of nearly every form of freedom." The right to freedom of speech and expression extending the concept of citizenship to include socio-political participation of a person is critical in the process of determining the scope of right to life of a citizen under Article 21 of the Constitution.

## 8. What is Separation of Power? Examine the idea of separation of power enshrined in Indian Constitution with suitable examples?

***(250 words)***

### Approach

1. **What is Separation of Power** ***(50 words)***
2. **Examine the idea of separation of power enshrined in Indian Constitution with suitable examples?** ***(150 words)***
3. **Conclusion** ***(50 words)***

### Hints

The principle of separation of powers deals with the mutual relations among the three organs of the government, namely legislature, executive and judiciary. The principle implies that each organ should be independent of the other and that no organ should perform functions that belong to the other.

It signifies the fact that one person or body of persons should not exercise all the three powers of the government, as concentration of power in one person or a group of person results in tyranny. Thus, there is a need for vesting the governmental power in three different organs.

## Separation of power in Indian Constitution:

- In India, the separation of powers theory has been used as a guiding philosophy to separate powers as much as possible but not completely, so that the organs of government are alienated from each other. In our parliamentary form of governance, a lot of cooperation is required and thus each organ must correspond to the other on some level to function smoothly.
- While the Indian Constitution has not indeed recognized the doctrine of separation of powers explicitly in its absolute rigidity, the functions of the different parts or branches of the government have been sufficiently differentiated. It is important to note that the separation of powers is still an important guiding principle of the constitution.

- **Most noteworthy is our judicial system** which is completely independent from the executive and the legislature. According to Articles, 32, 136, 226 and 227, the High Courts and Supreme Courts have the power of judicial review which empowers them to declare any law passed by the parliament unconstitutional if it so decides. As regarding the judges, they are extremely well protected by the Constitution, their conduct is not open to discussion in the Parliament and their appointment can only be made by the President in consultation with the Chief Justice of India and the judges of the Supreme Court.
- India, not only there is functional overlapping but there are personnel overlapping also. The executive can affect the functioning of the judiciary by making appointments to the office of Chief Justice and other judges, among many other such cases of overlapping.
- **In I. C. Golak Nath vs. State of Punjab, it was observed:** "The Constitution brings into existence different constitutional entities, namely, the Union, the States and the Union Territories. It creates three major instruments of power, namely, the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them.
- **In Indira Nehru Gandhi v. Raj Narain, it was observed:** "That in the Indian Constitution there is separation of powers in a broad sense only. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India. The SC also observed that the political usefulness of doctrine of Separation of Power is not widely recognized. No constitution can survive without a conscious adherence to its fine check and balance. The principle of Separation of Power is a principle of restraint which has in it the precept, innate in the prudence of self-preservation, that discretion is the better part of valor."

## Conclusion:

Thus, the Indian Constitution, which is an extremely carefully planned document designed to uphold the integrity and liberty of every citizen, has not in its entirety embraced the doctrine of separation of powers but has indeed drawn a lot from the concept and kept it as a guiding principle. But the doctrine of Separation of Powers has been included in our basic structure doctrine as has been ruled and upheld by the Supreme Court in many cases. Thus, it holds a position of utmost importance, albeit has been modified to suit the needs of a modern all-pervasive state.

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

***(250 words)***

### Approach

1. **Briefly introduce the role and relevance of the Preamble in the Constitution.** ***(25 words)***
2. **Discuss the key Supreme Court verdicts with reference to the Preamble and its role as a guide to the Indian Constitution.** ***(150 words)***
3. **Analyse if the Preamble has been serving its envisaged purpose.** ***(50 words)***
4. **Briefly conclude.** ***(25 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. In forming the Preamble on the basis of Objective Resolution, the Drafting Committee felt that the Preamble should only deal with **the basic features of the State** and its objectives and the other matters can be dealt with in the other provisions of the Constitution.

- The Preamble as a Basic Structure of the Constitution has provided for a humane vision which is, democratic, secular and, therefore, egalitarian.
- The purpose of the Preamble is to clarify who has made 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.

### 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 a part Justiciable of the Constitution, 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 **Article 368**.
- **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.

**10. The ethos of equality embedded in the constitution of India aims to not only eradicates the discrimination in Indian society based on gender, religion and caste formally, but also substantively. Critically analyze the above statement.**

***(250 words)***

### Approach

1. **Briefly write about ethos of equality as provided in constitution of India.** ***(40 words)***
2. **Write about provisions of equality as given.** ***(70 words)***
3. **Contrast formal and substantive equality.** ***(50 words)***
4. **Explain how constitution provides for not only formal but also substantive equality.** ***(60 words)***
5. **Conclusion** ***(30 words)***

### Hints

As a political ideal, the concept of equality invokes the idea that all human beings have an equal worth regardless of their color, gender, race, or nationality. It maintains that human beings deserve equal consideration and respect because of their common humanity. In the modern period the equality of all human beings has been used as a rallying slogan in the struggles against states and social institutions which uphold inequalities of rank, wealth status or privilege, among people.

It provides for equal access to public places like shops, hotels, places of entertainment, wells, bathing ghats and places of worship. There cannot be any discrimination in this access on the grounds only of religion, race, caste, sex, or place of birth. It also prohibits any discrimination in public employment on any of the above mentioned basis. This right is very important because our society did not practice equal access in the past.

- Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

- Article 18 abolishes titles.
  - The first step towards bringing about equality is of course ending the formal system of inequality and privileges. Social, economic and political inequalities all over the world have been protected by customs and legal systems that prohibited some sections of society from enjoying certain kinds of opportunities and rewards.
  - Formal equality or equality before the law is necessary but not sufficient to realize the principle of equality. Sometimes it is necessary to treat people differently in order to ensure that they can enjoy equal rights. Certain differences between people may have to be taken into account for this purpose.
  - Affirmative action is based on the idea that it is not sufficient to establish formal equality by law. When we wish to eliminate inequalities that are deeply rooted, it is necessary to take some more positive measures to minimize and eliminate entrenched forms of social inequalities. Most policies of affirmative action are thus designed to correct the cumulative effect of past inequalities.
- Article 16 (4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- The protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29).
- Hence, the formal mechanism is created to ensure the eradication of discrimination and justice to the marginalised people of the country. But historicity paves the way for substantive recognition to the problem of deprived sections. It aims to ensure guarantees for the social and economic upliftment of the down trodden section of the society.

## Conclusion:

Despite the attempts towards substantive equality, Indian society still has deep seated inequalities along the axis of caste, gender, religion etc. This shows how prudent it was to make explicit constitutional provisions not only about formal equalities but also substantive equality.

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# NOTES

# SET-3.1: QUESTIONS

## SIGNIFICANT PROVISION OF INDIAN CONSTITUTION

**Q1.** **Harmony between Fundamental Rights and Directive Principles of State Policy is essential to balance "Social Interest" over "Individual Interest". Discuss in light of the evolved relationship between the Fundamental Rights and DPSP.**

**Q2.** **Critically evaluate the significance and criticism of fundamental rights. Have excessive limitations on the fundamental rights diluted their importance?**

**Q3.** **The DPSPs are an unofficial manifesto for good governance, if a political party can only adhere to them properly, when in power, there is no need for any other manifesto. In this context examine the importance and limitations of DPSPs.**

**Q4.** **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**

**Q5.** **Separations of power, unlike USA System, have not been explicitly mentioned in Indian Constitution. Discuss trends and tendencies of separation of power in India.**

**Q6.** **The best summary of philosophy of the Constitution is to be found in the preamble to our Constitution. Analyze the preamble critically to comment on the above statement.**

**Q7.** **Explain the different generations of fundamental rights and examine the role that the Supreme Court has played in expanding the scope of Fundamental Rights.**

**Q8.** **Indian constitution presents India as a compromise between the British Parliamentary Sovereignty of and American Judicial Supremacy. What are the arguments for and against the statement? Elaborate with examples.**

**Q9.** **Fundamental Rights under Indian Constitution provided a strong base for the functioning of the India democracy, but they exist merely in name and thus have only a formalistic value". Examine in view of some of the judgments of apex court.**

**Q10.** **Preamble is a proper yardstick with which one can measure the worth of the constitution. Critically evaluate.**

# SET-3.1: ANSWERS

**1. Harmony between Fundamental Rights and Directive Principles of State Policy is essential to balance "Social Interest" over "Individual Interest". Discuss in light of the evolved relationship between the Fundamental Rights and DPSP.**

***(250 words)***

## Approach

1. **Give a brief introduction about the importance of Fundamental Rights and Directive Principles of the State Policy** ***(50 words)***
2. **Briefly discuss the evolved relationship between them.** ***(150 words)***
3. **Conclude by discussing how they have complemented each other to balance social and individual interests.** ***(50 words)***

## Hints

Supreme Court in KC Ranjeevan case 1991 held that the fundamental rights and Directive principles of the State policy together constitute the core and conscience of the Constitution. The fundamental rights are justifiable political rights and DPSP are the socio economic goals which the state must strive to attain.

### Evolution of relationship between Fundamental Rights and DPSPs:

- In the Champakam Dorairajan case20 (1951), the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail.
- In the Golaknath case (1967), the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in nature. In other words, the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles.
- The Parliament reacted to the Supreme Court's judgement in the Golaknath Case (1967) by enacting the 24th Amendment Act (1971) and the 25th Amendment Act (1971). The 24th Amendment Act declared that the Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts.
- The 25th Amendment Act inserted a new Article 31C which contained the following two provisions:

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b) 22 and (c)23 shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).
- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

- In the Kesavananda Bharati case24 (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.
- In the 42nd Amendment Act, it accorded primacy to DPSP over the FRs under Articles 14, 19, and 31.
- In the Minerva mills case, the SC held that the constitution is founded on the bedrock of balance between the FR and DPSP. They both are necessary for bringing social harmony. Absolute primacy to one over other will disturb the harmony of the constitution.
- In the IR Coelho case, SC reiterated that FR and DPSP don't contradict but form a harmonious construct.

### Conclusion:

- In recent times, the horizon of FR has been broadened. Liberal interpretation of Articles is seen like article 21 to include rights like right to clean environment, right to live with dignity, etc. On the same lines, DPSP are being implemented. Eg., Right to livelihood under MNREGA, Right to Education, Right to Health. On the other hand, the social environment in the country is not conducive for implementation of some of the DPSP like Uniform Civil Code.
- Thus, the emerging relationship between Fundamental Rights and Directive Principles of State Policy has balanced the social interest and individual interest and has further strengthened the core of the Indian constitution.

## 2. Critically evaluate the significance and criticism of fundamental rights. Have excessive limitations on the fundamental rights diluted their importance?

***(250 words)***

### Approach

1. **Briefly describe fundamental rights** ***(30 words)***
2. **Explain their significance** ***(50 words)***
3. **Shortcomings in defining fundamental rights** ***(70 words)***
4. **Limitations on exercising fundamental rights and their impact** ***(70 words)***
5. **Conclusion** ***(30 words)***

### Hints

The fundamental rights are those rights, which are vital for the development of any human being. The Constitution of India laid down an elaborate set of rights for the people of India. The idea that there are certain basic rights essential for a human existence which inhere in the individual are manifested in Part 3, from articles 14 to 30 of the Constitution as Fundamental Rights.

## Significance of the Fundamental Rights:

Fundamental Rights are the beacon which constitution provides against any abuse of power by the government or government agency.

- The Fundamental Rights were intended to serve three important purposes namely:
- To prevent the executive from acting arbitrarily.
- To ensure some amount of security and protection to various types of minorities.
- To promote and foster social revolution by establishing the conditions necessary for achieving justice- social, economic and political.

## Shortcomings in defining Fundamental rights:

- The Fundamental Rights do not comprise economic and social rights such as the right to work, rest and leisure and social security. According to Dr. Ambedkar, "Socio Economic rights are necessary to enjoy political rights".
- Fundamental rights are not absolute. Restrictions, exceptions and explanations with which the fundamental rights are hedged around, have the effect of depriving the rights in practice.
- Vast gap exists between the fundamental rights guaranteed in the Indian Constitution and reality of these rights in India today.
- The provision for Preventive Detention and the suspension of Fundamental Rights has also been criticised.
- Although Art. 17 has constitutionally prohibited untouchability, the evil still exists in many parts of the country.
- Article 21 is open to wide interpretations and judiciary has every now and then added features to the rights coming under Right to life and personal liberty.

## Limitations on the fundamental rights have following impacts:

- In India, fundamental rights are special legal rights provided in the Constitution itself and remedies for them, also a fundamental right, people can directly approach high courts and Supreme Court under Article 226 and 32 respectively.
- **Fundamental rights in India have two kinds of limitations:**
  - Fundamental rights are not absolute in India. Every fundamental right in India has a "but government can" clause in end, that means government can violate them for affirmative action. Eg :- Aadhaar Act legislated by government. The government asserted its right to use this provision of 'reasonable restrictions' for national security and social welfare benefits. Individual right to privacy got compromised here.
  - Before 1974, Kesavananda Bharati case, government could take away fundamental rights by constitutional amendment, as it is a legal right, but since then, the basic structure doctrine has been invented by Supreme Court. It takes into account substantive nature of fundamental rights. For example, freedoms given in Article 19 can be taken away for public order, morality etc.
- The constitution makers regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State.
- In Shreya Singhal vs Union of India case, section 66A of IT Act was challenged since it violated individual freedom of speech and expression.
- There are various draconian laws, that restricts fundamental rights of individual and thus restricts Political, Social and economic development of nation.

## Conclusion:

The Fundamental Rights, as contained in Part III of the Constitution, are neither rooted in the doctrine of natural law nor are they based on the theory of 'reserved rights'. They are conferred rights and embody the social values of the present generations. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfill the aspirations of the people in the context of changed conditions and the environment in which they live along with higher concerns of national security and public order.

**3. The DPSPs are an unofficial manifesto for good governance, if a political party can only adhere to them properly, when in power, there is no need for any other manifesto. In this context examine the importance and limitations of DPSPs.**

***(250 words)***

### Approach

1. **Introduction about DPSP.** ***(40 Words)***
2. **Explain why they are considered as unofficial manifesto.** ***(70 Words)***
3. **Discuss about limitations of DPSPs** ***(100 Words)***
4. **Conclude with positive views.** ***(40 Words)***

### Hints

DPSP enshrined in Part-IV (A 36 to 51) of the constitution are borrowed from Ireland constitution. It guarantees social and economic democracy and tries to establish welfare state. The Directive Principles are non-justiciable in nature, the Constitution under Article 37 make it clear that these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. They impose an ethical responsibility on the state authorities for their application, but the real force behind them is political, that is, public opinion.

## How DPSP serve as governance manifesto:

- They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
- Their implementation makes a favorable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
- They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
- They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.

## Criticism of the Directive Principles:

Many constitutional and political experts as well as members of the constituent assembly criticized the Directive Principles on the following grounds:

### No Legal Force

- The criticism of the Directive principles was mainly the consequence of their non-justiciable nature. While K T Shah dubbed them as 'pious superfluities' and compared them with 'a cheque on a bank, payable only when the resources of the bank permit', Nasiruddin contended that these principles are 'no better than the new year's resolutions, which are broken on the second of January'.
- T.T. Krishnamachari described the Directives as a veritable dust-bin of sentiments, while K C Wheare called them as a manifesto of aims and aspirations and suggested that they serve simply as moral homily, and Sir Ivor Jennings observed them only as pious aspirations.

### Illogically Arranged

- According to the critics, the Directive Principles are not arranged in a sensible manner on the basis of a consistent philosophy. The declaration blends with the relatively insignificant issues with the most important economic and social questions.
- It combines rather inappropriately the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice.

### Conservative

- Sir Ivor Jennings observed the Directives to be on the basis of the political philosophy of the 19th century England. He remarked: 'The ghosts of Sydney Webb and Beatrice Webb stalk through the pages of the text. Part IV of the Constitution expresses Fabian Socialism without the socialism'. He suggested that the Directives are deemed to be suitable in India in the middle of the twentieth century.

### Constitutional Conflict

K Santhanam has stated that the Directive principles arise a constitutional conflict between

- The Centre and the states,
- The President and the Prime Minister, and
- The governor and the chief minister.

According to him, the Centre can give directions to the states with respect to the implementation of these principles, and in case of non-compliance, can dismiss the state government.

## Conclusion:

Despite many shortcomings, DPSPs still remain fundamental to the governance of the system. Governments should systematically convert DPSPs into Fundamental rights as was done in case of Right to Education (Article 21A) to improve their effect. Elaborate provisions of DPSPs about woman rights, children rights and worker's rights makes them essential for the government as a guiding tool to work for welfare of society.

**4. 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**

***(250 words)***

## 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:

- **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.
- **Aadhar case:** Expanding the scope of right to privacy as enshrined in Puttaswamy judgement with focus on individual rights.
- **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.
- **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.

**5. Separations of power, unlike USA System, have not been explicitly mentioned in Indian Constitution. Discuss trends and tendencies of separation of power in India.**

***(250 words)***

## Approach

1. **What do you understand by separation of power** ***(50 words)***
2. **Define and compare the concept of separation of power between India and USA** ***(80 words)***
3. **Discuss related constitutional provisions in India and their applicability** ***(80 words)***
4. **Conclusion** ***(40 words)***

## Hints

The value of the separation of power doctrine lies in the fact that it seeks to preserve human liberty by avoiding the concentration of powers in one person or body of persons. The different organs of government should thus be prevented from encroaching on the province of the other organ.

This theory has had different application in USA and India.

### Legal provision in USA:

- There, the executive power is vested in the President.
- The President is not a member of the Congress.
- He appoints his secretaries on the basis not of their party loyalty but loyalty to himself.
- His tenure does not depend upon the confidence of the Congress in him.
- He cannot be removed except by impeachment,
- However, the United States Constitution makes departure from the theory of strict separation of powers in this that there is provision for judicial review and the supremacy of the ordinary courts over the administrative courts or tribunals.

### Legal provision in India:

- In India, the Executive is part of the legislature.
- The President is the head of the executive and acts on the advice of the Council of Ministers.
- He can be impeached by Parliament.
- The Council of Ministers is collectively responsible to the Lok Sabha and each minister works during the pleasure of the President.
- If the Council of Ministers loses the confidence of the House, it has to resign.

### Constitutional provisions in India:

- Functionally, the President's or the Governor's assent is required for all legislations. The President or the Governor has power of making ordinances when both Houses of the legislature are not in session. This is legislative power, and an ordinance has the same status as that of a law of the legislature.

- The President or the Governor has the power to grant pardon. The legislature performs judicial function while committing for contempt those who defy its orders or commit breach of privilege.
- Thus, the executive is dependent on the Legislature and while it performs some legislative functions such as subordinate it, also performs some executive functions such as those required for maintaining order in the house.

- Whereas in the linkage between judiciary and executive, the Judges of the Supreme Court are appointed by the President in consultation with the Chief justice of India and such of the judges of the Supreme Court and the High Court as he may deem necessary for the purpose. The Judges of the High Court are appointed by the President after consultation with the Chief Justice of India, the Governor of the state, and, in the case of appointment of a judge other than the Chief justice, the Chief Justice of the High Court.
- The judges of the High Court and the judges of the Supreme Court cannot be removed except for misconduct or incapacity and unless an address supported by two thirds of the members and absolute majority of the total membership of the House is passed in each House of Parliament and presented to the President.
  - An impeachment motion was brought against a judge of the Supreme Court, Justice Ramaswami, but it failed to receive the support of the prescribed number of members of Parliament. The salaries payable to the judges are provided in the Constitution or can be laid down by a law made by Parliament.
  - Every judge shall be entitled to such privileges and allowances and to such rights in respect of absence and pension, as may from time to time be determined by or under any law made by Parliament and until so determined, to such privileges, allowance and rights as are specified in the Second Schedule. Neither the privileges nor the allowance nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.
  - Appointments of persons to be, and the posting and promotion of, district judges in any state shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such state (Article 233).
  - The control over the subordinate courts is vested in the acts of the Legislature as well as the executive. The Supreme Court has power to make rules (Article 145) and exercises administrative control over its staff.
  - The judiciary has power to enforce and interpret laws and if they are found in violation of any provision of the Constitution, it can declare them unconstitutional and therefore, void. It can declare the executive action void if it is found against any provisions of the Constitution. Article 50 provides that the State shall take steps to separate the judiciary from the executive.

## Conclusion:

Thus, the three organs of the Government (i.e. the Executive, the Legislature and the Judiciary) are not separate. The Constitution of India does not recognize the doctrine of separation of power in its absolute rigidity, but the functions of the three organs of the government have been sufficiently differentiated. None of the three organs of the Government can take over the functions assigned to the other organs. Actually the complete demarcation of the functions of these organs of the Government is not possible.

**6. The best summary of philosophy of the Constitution is to be found in the preamble to our Constitution. Analyze the preamble critically to comment on the above statement.**

***(250 words)***

## Approach

1. **Introduce the significance of preamble.** ***(50 words)***
2. **Explain the content of preamble and show how it embodies philosophy of the constitution.** ***(150 words)***
3. **Critically explain the limitations of preamble.** ***(50 words)***

## Hints

The Preamble is often referred to as the soul of the Indian Constitution, affording a key to its letter and spirit. Delineating the core concerns of the polity in independent India, the Preamble seeks to express a solemn resolve that becomes the guiding light in the country. The government of Indira Gandhi effected an amendment in the original Preamble to the Constitution by inserting the words 'Socialist' and 'Secular' along with the original 'Sovereign, Democratic, Republic' as well as 'Integrity' along with the original 'unity of the nation', through the Forty-second Amendment on 18 December 1976.

As amended in 1976, the Preamble, unambiguously exemplifies the broad contours of the Indian political life and serves a number of useful purposes, for, the expressions used in it connote certain fundamental aspects of the polity from which there is no escape for the various stakeholders in the political life of the nation.

- First, by establishing the sovereignty of the people, the Preamble reduces all other units of governance in the country to a secondary position. At the same time, it also implies that the powers which are given to the government in India, are sourced from the people at large, as a result of which no section of the people can challenge its authority and contend that it is not bound by the authority of the state because it has not accorded its consent to it. More importantly, since the states of the Union were not parties to the creation of the Union, which was created by the people of India, they cannot claim a right of secession from the Union. Therefore, the Preamble not only affords a stable democratic polity for the nation but also solidifies the unity and integrity of the nation.
- Second, the Preamble puts in black and white the nature of polity in the country which must conform to the hard-earned ideals of sovereign, socialist, secular, democratic republic. Needless to say, the nature of the Indian polity would not have been different from what it is today, had the words socialist and secular not been added to the original Preamble. While sovereignty affords a respectful place of pride to India in the comity of nations, the ideal of democratic republic manifests the basic outline of the nature of polity, guaranteeing the people the fundamental right of choosing their representatives to foster democratic governance in the country. Unavoidably, the mention of India becoming a republic becomes a compulsive requirement in view of the previous incarnation of India as a British Dominion who's Head of State would have been the British monarch. Hence, by making India a republic, the framers of the Constitution carried out a crucial, if not total, break from the British suzerainty, even if nominal in practical terms.
- Third, the Preamble presents a wish list outlining the aspirations of the people which they expect the Government of India to secure for them. Spelt out in terms of justice, equality, and fraternity, these ideals act as the benchmark to guide the policies and programs of the

government in future to cast India into the mould of a welfare state. Leaving no room for ambiguity on the dimensions of justice, the Preamble demarcates that justice needs to be in terms of social, economic, and political, to be construed in the broadest sense of the term so that the nature of state in India does not become lopsided. The framers were quick enough to supplement the ideal of justice with that of the ideal of equality of status and opportunity to provide for the holistic framework of an egalitarian society in India. In the meanwhile, the Preamble does emphasize the promotion of fraternity amongst the citizens by assuring the dignity of the individual in society. Aware of the propensity of certain sections of society to advocate the subordination of individual dignity to the cause of farcical societal interests, the framers did not mince words to clarify that societal good could be ascertained only by ensuring the individual good in the society. There has been a debate around preamble being a part of the constitution. It is now agreed that preamble is not justiciable but is very much part of the constitution since it has been voted upon during enactment itself. It does not provide explicit power or imposes any limitations on the actions of the government also.

## Conclusion:

The utility of the Preamble is discerned in its serving as a beacon light to the higher courts in the country that are called upon to discharge the grand duty of interpreting the Constitution. At the times of interpreting a controversial law or constitutional provisions, where the meaning of the law in point is not clear or ambiguity or uncertainty prevails in the minds of the constitutional lawyers or the judges, the only reference point left to the court is the language of the Preamble through which they persevere to mark out real intention of the framers of the Constitution. It is argued that the Preamble is the repository of the spirit of the Constitution and hence, the only reference point for those engaged in interpreting the constitutional provisions should be the ideals embodied in it.

## 7. Explain the different generations of fundamental rights and examine the role that the Supreme Court has played in expanding the scope of Fundamental Rights.

***(250 words)***

### Approach

1. **Briefly introduce the right about fundamental rights and the role of judiciary.** ***(50 words)***
2. **Elaborate on the different generations of Fundamental Rights.** ***(75 words)***
3. **Mention a few cases related to these generational Fundamental Rights. Assess the success of the Supreme Court in the related issue.** ***(75words)***
4. **Conclusion.** ***(50 words)***

### Hints

A democracy aims at maximizing the personality of an individual so that he could recognize his potential and talent. The personality of an individual is inseparably linked with his liberty. A common device that helps most nations in this process is incorporation of fundamental rights in their constitution. An independent judiciary protects these rights against the arbitrary action of the legislature or the executive on these rights.

### Different generations of Fundamental Rights

- First-generation rights deals with the civil and political rights. These rights pre-suppose the equality principle among all and are safeguards against the excesses of the state, thereby seeking negative action on part of the state.
- Second-generation rights are the larger social, economic and cultural rights, which establishes the fact that material inequality among individuals is inherent, thereby demands positive action on part of the state. This generation of rights provides scope for affirmative actions on part of the state.
- Third generation rights are broader and informal set of rights often cited in international documents and conventions such as Rio summit, UN human rights documents, etc. These rights are group rights, whereas the first and second-generation rights are individual rights.
- The Indian constitution has embodied the first and second-generation rights as part of the fundamental rights. Being a dynamic and evolving document, the Supreme Court has inserted several other second and third generation rights.

### Assessing the success of Supreme Court:

**Success:**

- In "**Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh AIR 1987 SC 2187**" introduced the concept of "Sustainable Development", It was stated that the permanent assets of mankind are not to be exhausted in one generation. The natural resources should be used with requisite attention and care
- In "**Indian Council for Enviro-Legal Action vs. Union of India AIR 1999 SC 1502**" held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the "Polluter Pays Principle".
- **Shah Bano case (1986)**: Giving the judgment in the favour of entitlement rights for women was a progressive step which was overruled by the judiciary.
- **Right to Privacy**: The Supreme Court in the Puttaswamy judgement added a 3 stage litmus test which is a progressive towards 3rd generational fundamental rights.

**Failure:**

Initial stand of judiciary towards Section 377 of IPC related to homosexuality was to criminalise it, indicating a downward shift towards progress of fundamental rights, which was later overturned by the apex Court.

### Conclusion:

However, the pressing issue with these second and third generation rights is that they involves matter of policy and not legal issue, thereby leading the Judicial adjudication to steer into the realm of policy making, Therefore, there must be a balance between the policy-making of the government and judicial reach of supreme court regarding fundamental rights.

**8. Indian constitution presents India as a compromise between the British Parliamentary Sovereignty of and American Judicial Supremacy. What are the arguments for and against the statement? Elaborate with examples.**

***(250 words)***

## Approach

1. **Introduce with Indian constitution's brief description** ***(50 words)***
2. **In brief explain British Parliamentary Sovereignty of and American Judicial Supremacy** ***(75 words)***
3. **Discuss how Indian Constitution possesses the characteristics of British and American Constitutions but also differs from it** ***(75 words)***
4. **Conclusion** ***(50 words)***

## Hints

- The Constitution of India was adopted by the Constituent Assembly of India on 26 November 1949 and became effective on 26 January 1950. It has borrowed most of its provisions from the Constitutions of various other countries as well as from the Government of India Act5 of 1935.
- The doctrine of sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.

### British sovereignty of Parliament:

- Parliament possesses unlimited constituent powers. It can pass any constitutional act in the same way as ordinary law can be passed.
- The Parliament can pass a simple law which may change the whole structure of the constitutional fabric.
- There is no "Judicial Review" in England. The judiciary has recognized every act of the Parliament as valid law. The British Judiciary, therefore, does not interfere with the supreme authority of the Parliament.
- While the American Cabinet is independent of the legislature, the British Cabinet dominates both in executive and legislative fields. Concentration of authority therefore, is a cardinal principle of the British constitutional system.

### Judicial supremacy in America:

- In the US system, the Supreme Court with its power of judicial review and interpreting the Constitute has assumed supremacy.
- The Constitution clearly states that it is the supreme law of the land and because it is the province of the judiciary to uphold the law, the courts must declare state laws and even acts of Congress null and void when they are inconsistent with a provision of the Constitution.
- The same principle holds with regard to executive actions contrary to the Constitution.
- Supreme Court pronouncements on questions of constitutionality are final and binding for all other courts and governmental authorities, whether state or federal.

### Amalgamation of both the concepts in India:

- In India, the Constitution has arrived at a middle course and a compromise between the British Sovereignty of Parliament and American Judicial Supremacy is made.

- As India has written Constitution and powers and functions of every organ are defined and delimited by the Constitution, there is no question of any organ- not even Parliament- being sovereign.
- The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review.
- The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

## But at the same time, Indian system is different from British system:

- India does not follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament like
- The written character of the Constitution
- The federalism with division of powers
- The Fundamental Rights
- The judicial review
  - Unlike the British Parliament which enjoys unrestricted power regarding legislative matters, the Indian Parliament has legal restrictions on its authority and jurisdiction.
  - In case of Indian Parliament, the laws made by it are subject to scrutiny outside it and their validity can be challenged in courts.
  - The legislation passed by it as subject to judicial review and can be struck down if they are declared by courts in violation of the 'basic structure of the Constitution'.
  - Any constitutional amendments in case of Indian Parliament must be passed by a special majority of two-third of the total strength in either Houses of the Parliament
  - Hence, in India the parliament is not supreme in its decisions and is constantly regulated by the Supreme Court and the High Courts, unlike in the British context.

## Similarly, Indian Constitution differs from American Constitution in following manner:

- The scope of judicial review in India is narrower than that of what exists in USA, though the American constitution does not explicitly mention the concept of judicial review in any of its provisions.
- In USA, the judges exercise judicial review in a very aggressive manner. If the judges think that a particular law and the philosophy of it is not liked by the judges then, also the judiciary may reject the law.
- But such a thing never happens in India. The Indian judges reject a law only on the basis of unconstitutionality.
- Moreover, it has also been seen that in USA, if a law is rejected by the Supreme Court then the court will make a new law in its place.
- The American constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian constitution.

## Conclusion:

Members of the Drafting Committee took utmost care to formulate the best of the constitutions and they did this by adding their own geniuses, improvising and adopting suitable provisions from constitutions from across the world. It cannot be called literally as a compromise; rather it is a well studied synthesis of different polities tailored for India.

**9. Fundamental Rights under Indian Constitution provided a strong base for the functioning of the India democracy, but they exist merely in name and thus have only a formalistic value". Examine in view of some of the judgments of apex court.**

***(250 words)***

**Approach**

1. **Introduction about Fundamental rights.** ***(50 Words)***
2. **Explain how Fundamental rights are strong base for the functioning of the Indian Democracy by citing recent judgments.** ***(75 Words)***
3. **Explain why they exist merely in name and thus have only a formalistic value.** ***(75 Words)***
4. **Conclude on balanced views** ***(50 Words)***

**Hints**

The sentiment that Fundamental Rights (FRs) exist merely in name and thus have only a formalistic value is mainly expressed at times when we reflect upon the sorry state of affairs in which most of the people of our country live in after 67 years of independence.

## Fundamental Rights as strong base for the functioning of the Indian Democracy

- Fundamental Rights are individual rights and without them democracy is meaningless, Fundamental Rights cannot be violated under all circumstances. A society cannot develop or proper effectively without Fundamental Rights.
- Fundamental Rights are given to the individuals mostly against the state because state is supported to be the biggest violator of individual rights. However, some of the articles has been designed to protect the individuals not only from the state but also from other individuals
- It is in this context that the apex court has made an attempt to enlarge the scope of fundamental right to make them as broad as possible. A glaring example of this phenomenon is the Maneka Gandhi Vs/ UoI case in which the court expanded the scope of Article 21 including within its scope several rights like right to fair trial under the principle of natural justice etc.
- In Kesavananda Bharti case the apex court declared that FRs are a part of the basic features of constitution and such features of the constitution cannot be altered by any amendment to the constitution.
- In the St. Stephen's College Vs University of Delhi 1992 case, the identity of St. Stephen's College as a minority-run institution was put under the scanner as it was receiving grant-in-aid from the Government. The court ruled that grants could not change the minority character of an institution.
- In Vishaka Vs State of Rajasthan 1997 case for the first time, sexual harassment, including sexually coloured remarks and physical contact, was explicitly and legally defined as an unwelcome sexual gesture. It stated that every instance of sexual harassment is a violation of fundamental rights.

### Shortcomings in fundamental rights:

- Despite lofty promises in the constitution problems like socio-economic deprivation and violation of basic human rights stare the face of millions in our countrymen.
- Another occasion when the sentiment comes to fore is when we take a legal approach and analyze the provisions of Part III elaborately what we find is that almost all the provisions of Part III be it article 15 or 16 or the all-important freedoms in article 19, they are all subjected to so many exceptions that the right itself seems to be lost. It appears that what the constitution has given from one hand, it has taken away from other.
- Supreme Court delaying hearing habeas corpus petitions of Jammu and Kashmir politicians was against right to liberty of citizens.
- With the misuse of sedition law, the governments are curbing civil liberties of citizens despite Supreme Court guidelines.
- Armed Forces Special Powers Act still exists in some areas of country and dilutes implementation of fundamental rights in those areas.

### Conclusion:

Therefore we can say that though there have been several shortcomings but still the judiciary which is entrusted the responsibility of protecting the constitution by interpreting it, has tried to make FRs a realty in this country.

## 10. Preamble is a proper yardstick with which one can measure the worth of the constitution. Critically evaluate.

***(200 words)***

**Approach**

1. **Introduce your answer elaborating key provisions mentioned in the Preamble and their importance.** ***(50 words)***
2. **Analyze role of Preamble in granting Justifiability to constitution's significant provisions** ***(75 words)***
3. **Evaluate effectiveness of the Preamble in view of criticism received** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

### Key provisions mentioned in the Preamble and their importance

The Preamble to a Constitution embodies the fundamental values and the philosophy, on which the Constitution is based, and the aims and objectives, which the founding fathers of the Constitution enjoined the polity to strive to achieve.

### The Preamble to our Constitution serves, two purposes:

- It indicates the source from which the constitution derives its authority:
- It also states the objects which the constitution seeks to establish and promote

- The words- We, the people of India adopt, enact and give to ourselves this Constitution thus, declare the ultimate sovereignty of the people of India and that the constitution rests on their authority. Sovereignty means the independent authority of a state.
- It means that it has the power to legislate on any subject; and that is not subject to the control of any other state or external power.
- The Preamble declares, therefore, in unequivocal terms that the source of all authority under the Constitution is the people of India and that there is no subordination to any external authority. It means a government by the people and for the people
- The Constitution holds out equality to all citizens in the matter of choices of their representatives, who are to run the governmental machinery. The ideal of a democratic republic enshrined in the Preamble of the Constitution can be best explained with the reference to the adoption of universal suffrage
- The offering of equal opportunity to men and women, irrespective of their caste and creed, in the matter of public employment also implements this democratic ideal.
- Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity
- The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status- social, economic and political
- Combining the ideals of political, social and economic democracy with that of equality and fraternity, the Preamble seeks to establish what Mahatma Gandhi described as The India of my dreams, namely
- "An India, in which the poorest shall feel that it is their country in whose making an effective voice, an India in which all communities shall live in perfect harmony"

## Role of Preamble in granting Justifiability to constitution's significant provisions

- The basic objective specified in the Preamble contains the basic structure of our Constitution, which cannot be amended in the exercise of the power under article 368 of the Constitution
- Reference can be made to the Preamble for the purpose of construing when the words of a statute or the Constitution are ambiguous and are admitted
- The Preamble can also be used to shed light on and clarify obscurity in the language of a statutory or, constitutional provision.
- When, however, the language of a section or article is plain and suffers from no ambiguity or obscurity, no gloss can be put on the words of the section or article by invoking the Preamble.

## Effectiveness of the Preamble

- The significance of constitution is not in the explicit ritualistic reverence to the supreme legal document, but in critical introspection of our progress in fulfilling the basic ideology of our constitution. The constitution makers' clarity of thought in creating a just society is clearly reflected in the founding philosophy of our constitution. The importance and effectiveness of preamble lies in the recognition and achievement of these embedded values.

## Conclusion:

The Preamble acts as a constant reminder to lawmakers and policy-makers while formulating legislation and public policies. Function of the preamble is to open the mind of the makers, as to the mischiefs which are to be remedied and the objects which are to be accomplished.

# NOTES

# SET-4: QUESTIONS

## UNION LEGISLATURE

**Q1. Parliamentary Standing Committees allow Parliament to scrutinize the executive more effectively, making it more responsible to the people. Elaborate the statement with reference to the role of Parliamentary Standing Committees in India. Also explain how they make the executive more accountable to the legislature.**

**Q2. Discuss the role of Parliamentary Standing Committees. Is it correct to say that they are watch dogs and make the executive more accountable to legislature?**

**Q3. Write a short note on the different sessions of Indian Parliament. Why do you think parliamentary disruptions by Members of Parliament are on the rise, during last two decades? Examine the causes.**

**Q4. Rare provisions of the Constitution itself can be anti-democratic in spirit if abused by the political executive. Taking into consideration provisions of emergency, ordinance and designation of money bill, comment on the above statement.**

**Q5. The absence of planning of Parliament's calendar and business directly impacts the quality of debate in Parliament. Do you agree? Compare the working of Indian Parliament with respect to Britain in the above case.**

**Q6. Parliamentary privileges are a violation of article 14 of the Constitution and therefore should be scrapped. Comment in the context of their use, misuse and abuse in the contemporary scenario.**

**Q7. Reviving and strengthening the Departmentally Related Standing Committees (DRSCs) can significantly improve the legislative process and effectiveness of parliament as an institution. Examine, the role played by DRSCs and issues they are suffering from.**

**Q8. Till the time the Speaker is from the ruling party, fairness cannot be expected in matters related to anti-defection and other Parliamentary matters. In the light of given statement critically examine the role of speaker in a Parliamentary democracy?**

**Q9. Promulgating ordinances in large numbers is not a healthy sign for a Parliamentary democracy. Do you agree? Give reasons. Will it not undermine sovereignty of the legislature?**

**Q10. 'Upper Chamber of the Parliament across the world is generally considered to be less powerful than the Lower Chamber. However, they are also vested with certain functions and powers, which enable them to play a decisive role'. Critically analyze the above statement with special emphasis on India.**

# SET-4: ANSWERS

**1. Parliamentary Standing Committees allow Parliament to scrutinize the executive more effectively, making it more responsible to the people. Elaborate the statement with reference to the role of Parliamentary Standing Committees in India. Also explain how they make the executive more accountable to the legislature.**

***(250 words)***

## Approach

1. **Introduction about of parliamentary committees** ***(40 words)***
2. **About the role of parliamentary committees** ***(90 words)***
3. **Discuss how they make executive more accountable to legislatures** ***(80 words)***
4. **Conclusion** ***(40 words)***

## Hints

Parliament has another forum through which a considerable amount of its work gets done. These are known as Parliamentary Committees. Parliament deliberates on matters that are complex, and therefore needs technical expertise to understand such matters better. Committees help with this by providing a forum where Members can engage with domain experts and government officials during the course of their study.

### Role of Parliamentary Committees

- The Parliamentary standing committees are representative bodies composed of parliamentarians who go into the details of executive activities and examine them under the light of propriety, efficiency, economy etc.
- These committees are like the eyes and ears of the legislature which oversee the working of the executive and submit their report to the legislature for discussion thereby extracting accountability from the executive. If the report mentions any discrepancies the legislature is empowered to question the executive by debating it on the floor of the house.
- Various parliamentary committees are constituted and assigned different tasks under different categories so as to streamline and expedite the work of the legislature. The Standing Committees cover areas which come under the purview of different Ministries.

- For example, the Committee on Health and Family Welfare studied the Surrogacy (Regulation) Bill, 2016 which prohibits commercial surrogacy, but allows altruistic surrogacy. As MPs come from varying backgrounds, they may not have had the expertise to understand the details around surrogacy such as fertility issues, abortion, and regulation of surrogacy clinics, among others.
- The Committee called upon a range of stakeholders including the National Commission for Women, doctors, and government officials to better their understanding of the issues, before finalising their report. This way these parliamentary committees play a crucial role in parliament work.

### Parliamentary committees work as check on executives in following ways

- The executive matters are thoroughly scrutinized by the parliamentary committees which makes the executive more accountable to the legislature.
- Committees also provide a forum for building consensus across political parties. The proceedings of the House during sessions are televised, and MPs are likely to stick to their party positions on most matters. Committees have closed door meetings, which allow them to freely question and discuss issues and arrive at a consensus. This way these parliamentary committees keep a check on executives.
- Thus, Parliamentary Committees help with this by providing a forum where Members can engage with domain experts and government officials during the course of their study. There is a need to strengthen the parliamentary committees rather than bypassing them for the betterment of parliamentary democracy.
- The RBI governor was summoned by a parliamentary committee on finance to ask questions about raising scams in the banking sector. This way committees ensure executive answerable to parliament and public at large for their actions under office.

### Conclusion:

Hence parliamentary committees are considered as parliament at work while parliament at cession is considered as parliament at display. They strengthen the voice of people by making executives more accountable. There needs to be strengthening of committees in order to make parliamentary democracy more resilient.

## 2. Discuss the role of Parliamentary Standing Committees. Is it correct to say that they are watch dogs and make the executive more accountable to legislature?

***(250 words)***

**Approach**

1. **Briefly introduce the Parliamentary Standing Committees** ***(50 words)***
2. **Discuss its role and functions** ***(75 words)***
3. **Is it correct to say that they are watch dogs and make the executive more accountable to legislature** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

The system of departmentally related standing committees was instituted by Parliament in 1993. Currently, there are 24 such committees, organised on the lines of departments and ministries. For example, there are committees on finance, home affairs, defence etc. These standing committees examine bills that are referred to them. They also examine the expenditure plans of ministries in the Union Budget. In addition, they may examine the working of the departments and various schemes of the government.

### Departmental standing committees:

- Each committee has 31 members: 21 from Lok Sabha and 10 from Rajya Sabha. Parties are allocated seats based on their strength in Parliament.
- The final membership is decided based on the MP's area of interest as well as their party's decision on allocating the seats.
- Of the 24 committees, 16 are administered by Lok Sabha and eight by Rajya Sabha.
- The chairperson is from the respective house.
- Political parties are allocated chairs based on their strength in Parliament.
- Some committees such as home affairs finance and external affairs are customarily chaired by a senior member of an opposition party.

### Watch dogs and accountability to government:

- The Parliamentary standing committees are representative bodies composed of parliamentarians who go in the details of executive activities and examine them under the light of propriety, efficiency, economy etc.
- These committees are like the eyes and ears of the legislature which oversee the working of the executive and submit their report to the legislature for discussion thereby extracting accountability from the executive. If the report mentions any discrepancies the legislature is empowered to question the executive by debating it on the floor of the house.
- Various parliamentary committees are constituted and assigned different tasks under different categories so as to streamline and expedite the work of the legislature.
- The Standing Committees cover areas which come under the purview of different Ministries.

But the fact that executive matters are thoroughly scrutinized by the parliamentary committees sometimes delays the process of decision making to a large extent. Further the executive sometimes complain that the approach of these committees is not administrative, they do not take into account the practical problems confronted by the administrative agencies rather take an audit perspective.

### Conclusion:

However despite these limitations these committees continue to contribute in the functioning of modern parliamentary activities and have in a way become almost indispensable. They have made the structural process for the accountability of the work done by the parliament more enhanced and led to the efficacious work.

**3. Write a short note on the different sessions of Indian Parliament. Why do you think parliamentary disruptions by Members of Parliament are on the rise, during last two decades? Examine the causes.**

***(250 words)***

## Approach

1. **Details on different Parliamentary sessions** *(50 words)*
2. **Reasons for disruption by MPs** *(150 words)*
3. **Conclusion** *(50 words)*

## Hints

A session of Indian Parliament is the time period during which a House meets almost every day continuously to transact business.

Every year, the Parliament of India conducts three sessions - Budget, Monsoon and winter.

- **Budget session-** Conducted from February to May, it is considered highly crucial as it opens with the presentation of the Budget. The MPs get an opportunity to discuss budgetary provisions and proposals pertaining to taxation. The standing committees related to various ministries utilize the intervening period to discuss and consider the Demands for Grants made by the ministries.
- **Monsoon session -** After a brief hiatus of around two months post the Budget session, both the Houses of the Parliament resume business in July and continue till September. Unlike the preceding session, the monsoon session is dedicated largely to discussions on matters of public interest. Bills, resolutions, motions requiring approval of house is dealt with in this session usually. Discussion on matters which are important for the general public are conducted in this session.
- **Winter Session -** It is the shortest session that spans over a period of one month generally between mid-November and mid-December. It takes up the issues that could not be deliberated upon and makes up for the lack of legislative business during the second session of the Parliament. The MPs not only debate on administrative policies on the floors of the Parliament, but also make sure that the government gets the drift and becomes aware of its lapses.

In recent years, there are growing no. of disruptions in place of debates taking place in the parliament. PRS, Social Watch etc. have presented quantitative accounts of the decline in terms of no. of sittings and no. of bills passes. The reasons why disruptions are on the rise are:

- Plebianization of Indian democracy which has converted democracy into mobocracy
- Extreme diversity in the country which makes consensus building a difficult task
- Lack of healthy coalition culture
- Negative portrayal of Parliament by the media
- Lack of leadership which is able to develop consensus by taking on board the concerns of the opposition
- Rise of civil society
- Assertion by judiciary
- Lack of electoral reforms
- Lack of adequate training and capacity building
- Politicization of the post of speaker
- Politics of defection in the country

In order to arrest the decline, various options can be considered such as:

### Conclusion:

- Electoral reforms which tackle criminalization of politics
- Devolution of power through democratic decentralization
- Introducing a vote of constructive no confidence as in German federation, suggested by NCRWC under Justice Venkatchalaiya.
- Capacity building of parliamentarians etc.

## 4. Rare provisions of the Constitution itself can be anti-democratic in spirit if abused by the political executive. Taking into consideration provisions of emergency, ordinance and designation of money bill, comment on the above statement.

***(250 words)***

### Approach

1. **Mention some extraordinary provisions given in the constitution of India and discuss why they have been provided for.** ***(50 words)***
2. **Discuss each of the three viz. emergency, ordinance and designation of money bill briefly.** ***(100 words)***
3. **Illustrate and explain how they have been abused.** ***(50 words)***
4. **Conclude by suggesting remedial measures.** ***(50 words***

### Hints

The rationality behind the incorporation of emergency provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution. The ordinance-making power is the most important legislative power of the President. It has been vested in him to deal with unforeseen or urgent matters when the houses of parliament are not in session. Money bills include provisions for imposition and abolition of taxes, for appropriation of moneys out of the Consolidated Fund. Whether a bill can be a money bill is decided by the Speaker of the Lok Sabha whose decision is deemed final. There are no other checks on the use of the money bill route by a government with absolute majority in the Lok Sabha.

### Emergency Provisions:

- The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. Article 352 provides for national emergency, article 356 provides for president's rule and article 360 provides for financial emergency.
- During emergency, fundamental rights are either suspended or constitutional remedies are suspended. The laws made by union government prevails all over the nation. Though provided by the constitution itself, the actual declaration of emergency by Indira Gandhi unleased a reign of terror where political opponents were put behind bars. Forced sterilization was undertaken. Judiciary also gave verdicts in favor of the government. Article 356 has become a method to discipline state governments.

- Thus, we see that what actually should have been a 'dead letter' actually turned out to be a blatant abuse of democratic norms. Finally, 44th amendment removed the constitutional lacunae that made declaration of emergency difficult viz. consent of council of minister, ratification by the parliament etc. In Bommai judgment also, the SC has given some guidelines to use article 356 in right spirit.

## Ordinance:

- Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws. An ordinance can only be promulgated when the president is satisfied that the circumstances exist that render it necessary for him to take immediate action. But what is seen is practice is the repeated re-promulgation of ordinance has become a norm rather than remained an exception.
- For instance, between 1967– 1981 the Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years by re-promulgation from time to time. On April 21, the Union cabinet headed by Prime Minister Narendra Modi passed the Criminal Law (Amendment) Ordinance, 2018 which allows courts to award the death penalty to those convicted of raping children below 12 years of age.
- What we are seeing today is an abuse of Article 123 for what can be called a self-serving agenda, wherein the government brings in an ordinance to either counter political challenges or make a statement about an issue it has failed to address through governance. The higher judiciary ruled that re-promulgation of an ordinance was a "fraud on the constitution". Re-promulgation defeats the constitutional scheme under which a limited power to frame ordinances has been conferred on the President and the Governors. The danger of re-promulgation lies in the threat which it poses to the sovereignty of Parliament and the state legislatures which have been constituted as primary law givers under the Constitution.

## Money Bill:

- Article 110 of the Constitution deals with the definition of money bills. If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the president. When a money bill is transmitted to the Rajya Sabha forre commendation and presented to the president for assent, the Speaker endorses it as a money bill.
- Lok Sabha speakers enjoys blanket powers to certify a bill as money bill. The limits of judicial review in this case is also striking. But, bills like Aadhar have also been certified as money bill which has faced resistance from various quarters. The government has been accused of bypassing Rajya Sabha because it lacks majority there. This is not in line with federal spirit of Indian constitution. As such, the scope of judicial review is contested but we don't have clarity whether or not the decision of speaker can be questioned in court of law.

## Conclusion:

- Thus, we see that the provisions that were placed in the constitution of India to deal with extraordinary situations have been made a norm and used blatantly for political ends. What needs to be done is scope of judicial review needs to be clarified. SC guidelines need to be abided by. Recommendations of Sarkaria and Punchhi Commission needs to be executed. What is needed is understanding the spirit of constitution rather than only the letter of it.

**5. The absence of planning of Parliament's calendar and business directly impacts the quality of debate in Parliament. Do you agree? Compare the working of Indian Parliament with respect to Britain in the above case.**

***(250 words)***

## Approach

1. **Briefly introduce about the session of the parliament** ***(50 words)***
2. **The absence of planning of Parliament's calendar and business directly impacts the quality of debate in Parliament. Do you agree? If yes give arguments** ***(75 words)***
3. **Compare the working of Indian Parliament with respect to Britain** ***(75 words)***
4. **Conclusion** ***(50 words)***

## Hints

Every session of Parliament is crucial for the governance of the country. Therefore, it is important that its dates and schedule are decided in advance and it is made sure that all the planned business is carried out, but frequent disruptions, walk-outs, indiscipline and sometimes, low-attendance, shows that, situation is far from ideal in India.

The absence of planning of Parliament's calendar and business directly impacts the quality of debate in Parliament.

- Political parties cannot choose in advance which of their MPs will participate in a particular discussion.
- This then reduces the time available to MPs to prepare for a nuanced debate on a legislative or policy issue. Many times, MPs only get a few hours to perfect their arguments on laws that will impact the entire country.
- These debates hold the key to interpreting the intent of Parliament while making a law. When the judiciary has to adjudicate on laws at a later date it relies on these debates in Parliament to get a sense of the legislatures' intent on an issue.
- Successive governments have been guilty of springing legislative proposals before the two houses at the last minute. These have resulted in reducing Parliament from a deliberative institution that scrutinizes laws to a body that merely rubber stamps government bills.
- The lack of planning of the business of Parliament also creates uncertainty about policy roll-outs in the country.
  - For example, it was unclear as to when the Goods and Services Tax Bills would finally get passed by Parliament.
  - Similarly, the bill which increases maternity benefits for women was stuck in Parliament for some time before both houses passed it.

### Working of Indian parliament Vs British:

- In UK, the calendar of sitting days of Parliament is fixed at the beginning of the year. Parliament meets throughout the year with identified dates for holidays.
  - Indian system is completely the opposite. Parliament meets only on specified dates and is in recess for the rest of the year.

- In UK, there is clarity about the number of days that the legislature will meet.
  - This helps in the scheduling of legislative and other business. Government Bills are slotted into the schedule of the year.
  - It gives interested stakeholders adequate time to prepare and advocate for their positions.
  - This is not done in India
- Speaker chart out the entire calendar year as soon as new government is formed, marking periods of recess, hours of meeting every day of the week, on which opposition gets preference to raise issues.
  - This is not done in India

## Conclusion:

Thus the parliamentary functioning can be improved upon by the process of planning and structuring the work as per the time available. This would also leads to the improvement in the quality of the debate of parliament. Taking in account the various international conventions of working of the parliament, this can enhance the efficacy and efficiency of the parliament.

## 6. Parliamentary privileges are a violation of article 14 of the Constitution and therefore should be scrapped. Comment in the context of their use, misuse and abuse in the contemporary scenario.

***(250 words)***

### Approach

1. **Briefly introduce the parliamentary privileges** ***(50 words)***
2. **Discuss how it is violating article 14.** ***(75 words)***
3. **Discuss the use and misuse of the Parliamentary privileges** ***(75 words)***
4. **Conclusion** ***(50 words)***

### Hints

Among the three pillars of the Indian government (Legislature, Executive and the Judiciary) Parliament is the most important one. Commanding a superior position over others due to the nature of the work it is associated with it is imperative to enable the members should perform in a free and frank atmosphere.

- Powers and privileges make an important part of the law and customs of the Parliament. They tend to preserve the relationship between the legislature and the judiciary and with the press as well. It is a popular fallacy that the procedure and practices of the Indian Parliament is the replica of the west minister's model.
- Article 105 of the constitution talks about freedom of speech available to the parliamentarians and other parliamentary privileges available to the members of the parliament and importantly it mentions that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

- These privileges are exclusively available to the parliamentarians and not to ordinary citizens therefore appear to be a violation of the article 14 of the constitution.
- The parliament is a forum of discussion and deliberations where the process of creation of law is carried out and if discussions in such a forum are restricted by the authority of law in any manner, it will impede the very process of creation of law. Secondly as the legislature is itself one of the three vital organs of democracy along-side the executive and the judiciary, it is important to maintain its independence vis-à-vis other organs of the State, particularly the judiciary.
- The question of scrapping the privileges arises when it is seen that on several occasions the parliamentarians are crossing the line of decency and remain protected by parliamentary privileges. Moreover there have also been instances when the parliamentarians have been saying those things in the parliament which they cannot say in public.
- The term privilege does not mean any special benefits or entitlements enjoyed by Members of Parliament or state legislators but the immunity from law. But despite the presence of a valid case for scrapping of parliamentary privileges, we should refrain from doing it as this would be detrimental to the environment of deliberation which is so important in a democracy.

## Conclusion:

Hence, instead we should try to create a mechanism by which we can regulate the unruly behaviour of the parliamentarians. For example enacting a code of conduct, adherence to which can be enforced by the presiding officer of the house and violation of which may attract penalties ranging from temporary suspension to permanent expulsion depending upon the severity of the violation. Such measures may go a long way in maintaining the sanctity of the parliament.

## 7. Reviving and strengthening the Departmentally Related Standing Committees (DRSCs) can significantly improve the legislative process and effectiveness of parliament as an institution. Examine, the role played by DRSCs and issues they are suffering from.

***(250 words)***

### Approach

1. **Briefly introduce parliamentary committees** ***(50 words)***
2. **Discuss the role played by DRSCs** ***(75 words)***
3. **Discuss the related Issues with DRSCs** ***(75 words)***
4. **Conclusion** ***(50 words)***

### Hints

Parliament plays a central role in our democracy; both Lok Sabha and the Rajya Sabha scrutinize the work of the Government through several procedures. Beyond the visible work in the two Houses, a substantial part of the work is carried out by committees. They evolved as parliamentary innovation in 1993 to tackle the 'guillotine' of key legislature due to paucity of time. It has evolved as a 'mini-parliament' with proportional representation of all parties. There are 24 DRSCs. Each DRSC has 31 members, with 21 from Lok Sabha and 10 from Rajya Sabha. Seats on each Committee are allocated to parties in proportion to their strength in the House.

## Role played by DRSCs:

- **It helps Parliament manage its business better.** It is easier to examine a topic in depth by a committee of 30 than by an assembly of 700. They scrutinizing Demand for Grant, bills of concerned ministries, Consideration of annual reports and presents a report.
- **It enables input from experts** and those who may be directly affected by a policy or legislation. For example, the DRSCs often invite comments from the public and call people to testify.
- **It ensures executive and financial accountability** of the government. Several complex nature and technical legislature and policy issues are referred to DRSC
- Being outside direct public glare allows members to discuss issues and reach consensus without worrying about constituency pressures.
- An advantage in the Indian context is that the anti-defection law does not apply to committees — therefore, decisions are not usually made on party lines.
- These committees allow members to focus on some specific areas and build their expertise, which helps them scrutinize issues more thoroughly.

## Issues with DRSCs:

- **All Bills are not referred to committees**. Whereas during the period of the last two parliaments, 60 percent and 71 percent of all Bills were referred to committees, just 27 percent of Bills introduced in the current Parliament have been so referred.
- Though rules mention that the Speaker of Lok Sabha or Chairman of Rajya Sabha refers the Bill, this is usually done on the recommendation of the relevant minister.
- The recommendation of committees is not binding. It is for the Government or any other member to move the relevant amendments, which may then be voted upon by the House.
- One major weakness of these committees is the lack of standing research support. They are backed by the general support staff of Parliament and do not have a dedicated set of researchers associated with them. While they can (and often do) reach out to outside experts, there is no internal expertise.
- Low attendance of MPs at meetings; too many ministries under a committee; norms not followed by most political parties while nominating MPs to committees; and the constitution of DRSCs for a year leaves very little time for specializations.
- Issue of transparency of the work of committees. All committees meet behind closed doors and only the final report is published, with summary minutes. There have been arguments that the meetings should be televised or at least the full transcripts be published.

## Conclusion:

To improve the functioning of DRSCs, the recommendation of National Commission to Review the Working of the Constitution (NCRWC) should be implemented. These include, DRSCs should be periodically reviewed. All Bills should be referred to DRSCs. The DRSCs may finalize the second reading stage in the Committee. Major reports of all Committees should be discussed in Parliament especially in cases where there is disagreement between a Committee and the government, creating research teams, and improving the transparency of input from advocacy groups. Their performance will improve the overall effectiveness of Parliament as an institution that makes laws, holds the Government accountable, and gives sanction for public spending.

**8. Till the time the Speaker is from the ruling party, fairness cannot be expected in matters related to anti-defection and other Parliamentary matters. In the light of given statement critically examine the role of speaker in a Parliamentary democracy?**

***(250 words)***

## Approach

1. **Give a brief description of the office of the Speaker** ***(50 words)***
2. **Discuss the role and responsibilities of speaker** ***(75 words)***
3. **Critically examine the role of speaker if he is from the ruling party** ***(75 words)***
4. **Conclusion** ***(50 words)***

## Hints

The office of the Speaker occupies a pivotal position in our parliamentary system. It has been said of the office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself. He/She symbolizes the dignity and power of the House over which He/she is presiding. Therefore, it is expected that the holder of this office of high dignity has to be one who can represent the House in all its manifestations.

In theory, India embraces the impartiality of the Speaker. The Speaker's office is considered to be of great dignity as he represents the House - the collective of the nation's expectations from the government and has been vested with considerable power.

It is the Speaker who presides over the meetings of the House, and it is his/her responsibility to maintain discipline in the House. He also fixes the agenda of the House and gives permission to the members to raise their questions.

The Speaker is expected to act at all such times with fairness, lack of prejudice and detachment. The Speaker has another very important responsibility vested in him-he acts as the judge in deciding disputes relating to the defection by party members.

However, though much importance is attributed to maintaining this office above petty political games and subterfuges; unlike the British system, the Speaker continues to be part of a political party and after his tenure, he can even return to active politics. Thus, there are no actual conventions to ensure the impartiality of the office even though it is expected.

The responsibility entrusted to the Speaker is so onerous that he/she cannot afford to overlook any aspect of parliamentary life. His actions come under close scrutiny in the house and are also widely reported in the mass media. With the televising of proceedings of Parliament, the small screen brings to millions of households in the country the day-to-day developments in the House making the Speaker's task all the more important.

Several measures have been suggested to bring about an improvement in the working of the speaker. But all the suggestions have their share of pitfalls. Firstly even if the speaker resigns from his party his neutrality cannot be guaranteed. Secondly restraining the discretion of the speaker by a strict set of rules could hamper parliamentary functioning in several ways and then it will further present the question of accountability which could again be only before the parliament which is again dominated by the ruling party. Thirdly any civil servant cannot be expected to preside over a house manned by people's representatives.

## Conclusion:

Hence the speaker has to play a specific role and take care of the proceedings of the house. Therefore the fairness of his decisions has to be maintained and legitimacy and credibility has to be maintained. Thus the issue is a complex one which needs a lot of deliberation and debate before any changes can be incorporated.

**9. Promulgating ordinances in large numbers is not a healthy sign for a Parliamentary democracy. Do you agree? Give reasons. Will it not undermine sovereignty of the legislature?**

***(250 words)***

### Approach

1. **Briefly introduce the ordinance-making power of the Government of India** ***(50 words)***
2. **Discuss its pros and cons** ***(150 words)***
3. **Conclusion** ***(50 words)***

### Hints

The ordinance-making power of the Government of India (Article 123 of the Constitution of India) were consciously shaped on elements of the Government of India Act, 1935 and based on other emergency legislation-making powers in other countries.

The founders of democracy in India were generally united in the importance of democratic processes, and by and large, shunned ordinance-making powers. The first Speaker of the Lok Sabha, G.V. Mavalankar in his letter to Nehru (on July 17, 1954) had vehemently argued that an Ordinance is undemocratic and cannot be justified except in cases of extreme urgency or emergence and if it is not limited by convention, only to extreme and very urgent cases, the result may be that, in future, the Government may go on issuing Ordinances giving the Lok Sabha no option, but to rubber stamp".

It implies that decisions are arrived at without sufficient consultations and deliberations which are likely to be less broad-based and could lack some valuable inputs of genuine stakeholders. Further, it can create dissatisfaction among those who are affected by the decision and sends a wrong message to the masses, who may get the feeling that their representation and their voice is being ignored in taking important decisions.

Between 1952 and 2013, the central government promulgated 659 ordinances under Article 123 of the constitution, which means that ideally there should have been 659 unforeseen emergencies. The shift, from a culture of healthy parliamentary debate to a culture of governance by ordinance, was brought about by a number of variables.

Moreover, in a democracy it is the Parliament or the legislature which is supreme and sovereign and therefore it is expected that no important decision should be taken bypassing the legislature, therefore practice of promulgating ordinances violates this fundamental principle of democratic style of governance and is thus definitely against the spirit of collective decision making.

## Conclusion:

Hence, the constitution makers had realized this aspect of ordinances and therefore had made provisions to use it only as an emergency arrangement when the Parliament is in recess. In that sense it is important to serve exigent needs so as to cater the law making requirements during the period of time when the Parliament is not in session. Thus the instrument itself should be retained but should be used sparingly and with discretion.

**10. 'Upper Chamber of the Parliament across the world is generally considered to be less powerful than the Lower Chamber. However, they are also vested with certain functions and powers, which enable them to play a decisive role'. Critically analyze the above statement with special emphasis on India.**

***(250 words)***

### Approach

1. **Introduce with the status of Upper house in India** ***(50 words)***
2. **Define division of powers between Lok Sabha & Rajya Sabha** ***(150 words)***
3. **Conclude with importance of upper chamber** ***(50 words)***

### Hints

Upper Chamber (UC) is one of the two chambers of the bicameral legislature. It is based on regional or state representation. Apart from other key differences, they are prominently distinguished in terms of their powers.

Under the Indian constitution, **Rajya Sabha (Council of state) is the upper house of the Parliament**. Fitting the pattern across the globe, it has limited powers in most cases when compared to Lok Sabha (Lower house).

In India, Rajya Sabha exercise limited powers in ordinary and financial legislature. Lok Sabha gets upper hand even in terms of size and composition of the house, electoral method and more. Following ensures some parity with Lok Sabha.

- Constitutional amendment bill can be introduced in either of the houses and passed separately in both (Article 368)
- Proclamation of national emergency requires approval from both the houses.
- Deadlock over the passage of a bill is ended through a joint sitting if two houses. (Article 108) .
- Budget is discussed in both houses and needs approval of the houses. (Article 112)

Constitution has laid down many clauses while listing powers of Rajya Sabha which curtails its power. Acknowledging the bottlenecks which a weaker upper house would bring to Indian polity, framers of Indian constitution has vested Rajya Sabha with following special power to ensure balance of power and smooth function of the parliament.

- For r**emoval of vice-president of India, a** resolution with absolute majority needs to be passed in Rajya Sabha before Lok Sabha agrees on it.
- Article 249 gives power to RS to pass a resolution to empower parliament to enact law on **the state subject.**

- As per article 312, RS can pass a resolution to **create a new All-India-service.**
- RS can **extend the life of a Proclamation** issued under article 352, 356, and 360 in the events of the dissolution of the Lok Sabha.

## Conclusion:

Overall, power balance between upper and lower chamber has always remained a subject of debate. Across the world, upper house plays a crucial role in creating legislation beneficial to public and in keeping a constitutional check on another house. In a diverse country like India, its role has added responsibilities.

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# NOTES

# SET-5: QUESTIONS

## UNION EXECUTIVE

**Q1. The Indian Presidency differs from most other Presidencies across the world. Do you think the Indian President serves a purely ceremonial role? Give reasons in support of your answer. Also, discuss the discretionary powers of the President of India.**

**Q2. The institution of the Governor should rise above its present stature of a mere representative of the Central government. Examine and discuss the role of governor in the view of Punchhi commission recommendations.**

**Q3. Although the Attorney General of India doesn't enjoy the right to vote in Parliament, he plays a vital role both inside and outside the house with respect to role played in governance. Analyze**

**Q4. Explain how the constitution of India distributes legislative subjects between center and state governments. List and discuss the conditions in which central government can legislate on subjects normally reserved for state government.**

**Q5. Is it appropriate to say that cabinet is the prime mover of political action and the Core of Indian political system? What are the factors that have led to erosion of power and authority of cabinet in recent years?**

**Q6. "Cabinet Secretariat provides expert assistance to the Cabinet and Cabinet Committees". Examine in view of the role of Cabinet Secretariat.**

**Q7. "In a Parliamentary system of government the Prime Minister occupies a unique position as the most powerful functionary who controls both Parliament and Executive". Critically examine. Discuss the relation between Prime Minister and President in view of article 78 of the Indian Constitution.**

**Q8. Among the executive and legislature, the balance of power has drastically shifted to the executive, making the legislature weak and causing frequent adjournment and walkouts by opposition parties. Critically Analyze.**

**Q9. The conditions existing in the society provide the base for a pattern of relationship between the political and permanent executive. Do you agree? Substantiate with example.**

**Q10. "The principle of individual responsibility in the Indian Parliamentary System is used through the instrumentality of the Prime Minister to secure principle of collective responsibility." Analyse.**

# SET-5: ANSWERS

**1. The Indian Presidency differs from most other Presidencies across the world. Do you think the Indian President serves a purely ceremonial role? Give reasons in support of your answer. Also, discuss the discretionary powers of the President of India.**

***(250 words)***

## Approach

1. **Briefly introduce the post of the President in India** ***(25 words)***
2. **Give reasons for how Indian President is a purely ceremonial post** ***(75 words)***
3. **Give reasons for how Indian President is more than just ceremonial post** ***(50 words)***
4. **Also, mention the discretionary powers of the President** **(*75 words)***
5. **Conclusion** ***(25 words)***

## Hints

The Indian President is the head of the state and he is also called the first citizen of India. He is a part of Union Executive, provisions of which are dealt with by Article 52-78 including articles related to the President (Article 52-62). The primary duty of the president is to preserve, protect and defend the constitution and the law of India as made part of his oath .The president is the common head of all independent constitutional entities.

### Reasons for how Indian President is purely ceremonial post:

- The President does not exercise executive powers - he is the head of the state, and is required by the Constitution to act on the advice of ministers.
- So, the role is more akin to that of the British monarch or monarchy in countries like the Netherlands or Spain: a referee over a parliamentary system where ministers possess the real power. Countries like Germany and Israel have Presidencies similar to India.
- The President does not have any say on money bills and constitutional amendment bills, even if it curtails the powers of the president, he has to sign it.
- If parliament passes ordinary bills after reconsideration, then also the president has to sign it, which makes parliament overriding the president's opinion.
- Article 74 clearly states that the president shall act on the aid and advice of the Council of Ministers making him just a rubber stamp agreeing to the council's decisions.

- All international treaties and agreements are signed on the name of the president; still the president never takes part in any negotiations. This makes presidential posts as pure ceremonial and actual power vests with the council of ministers.
- The Supreme Court has clearly said that parliamentary form of government is the basic structure of the constitution. Hence it indirectly meant President as ceremonial post with parliament and executive having more say.

### Discretionary powers of the President of India

- The president does have some discretionary powers while inviting leaders to prove their majority in parliament when no single party has secured a clear majority.
- President can return aid and advice to the council of ministers for one single time to make the government rethink their decision.
- President Abdul Kalam in the past has returned the bill of Office of Profit for reconsideration of parliament. And that bill was never passed again. This shows the president can be an activist in safeguarding against unethical laws.
- President Dr. Rajendra Prasad has said that Indian president is not similar to the monarch of the UK. President has a bigger electoral college than the prime minister, which even includes the states. Also, the president can be impeached making it different from only ceremonial hereditary post of UK monarch.

### Conclusion:

There are many instances, as mentioned above, which make the President a very important personality in the governance of the nation. The activist president can protect the citizens of the country from unethical populist laws of the Parliament. Hence the president of India is an honorable post with office holders determining stature of the office.

## 2. The institution of the Governor should rise above its present stature of a mere representative of the Central government. Examine and discuss the role of governor in the view of Punchhi commission recommendations.

***(250 words)***

**Approach**

1. **Give a brief description of the institution of the Governor** ***(50 words)***
2. **Examine and discuss the role of governor** ***(75 words)***
3. **Discuss the recommendations of Punchhi commission** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

From time to time, the role of Governor has made Indian citizens feel that they are living in a very fragile democratic realm which can be shaken effortlessly. It is a well known fact that the Governors have played a dictatorial role many a time and transcended all the democratic limits. Different political parties have misused Governor at different times for their partisan interests.

The role of the Governor has come in for attack on the ground that some Governors have failed to display the qualities of impartiality and sagacity expected of them. It has been alleged that the Governors have not acted with necessary objectivity either in the manner of exercise of their discretion or in their role as a vital link between the Union and the States. Many have traced this mainly to the fact that the Governor is appointed by, and holds office during the pleasure of the President, (in effect, the Union Council of Ministers). The part played by some Governors, particularly in recommending President's rule and in reserving State Bills for the consideration of the President, has evoked strong resentment. Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this high constitutional office.

Criticism has also been levelled that the Union Government utilizes the Governors for its own political ends. Many Governors, looking forward to further office under the Union or active role in politics after their tenure, came to regard themselves as agents of the Union.

The institution of the governor has to rise above the role of a mere representative of the Central government. This is important so as to ensure that the extensive discretionary powers which the Governor is vested with at the state level are exercised with utmost impartiality and neutrality.

Punchhi committee on centre-state relations have made several recommendations in this regard viz. the Governor should be given a fixed tenure of five years and if he needs to be removed, it can only be through impeachment proceedings carried out at the state level on the lines of the impeachment of the President at the union level. Further, clear guidelines are laid down regarding matters of how the Governor is expected to act after the polls in matters of making invitations to form the government and that the Governor should be necessarily a person from outside the state and must not be involved in active politics for at least two years.

### Conclusion:

These recommendations if implemented could dilute the control of the union government over the Governor but can go a long way in ensuring fairness in the discharge of the constitutional duties of the Governor and also improving centre-state relations.

## 3. Although the Attorney General of India doesn't enjoy the right to vote in Parliament, he plays a vital role both inside and outside the house with respect to role played in governance. Analyze

***(250 words)***

**Approach**

1. **Briefly introduce about office of Attorney general of India.** ***(50 words)***
2. **Role he plays both in and out of parliament.** ***(90 words)***
3. **How changing governance requires role modification.** ***(70 words)***
4. **Conclusion.** ***(40 words)***

**Hints**

The Attorney General of India derives its power from Indian constitution from Article 76. He is the highest law officer in the country appointed by president and his duties include –

- To give advice to government of India upon such legal matters which are referred to him by president.
- To perform such other duties of a legal character those are assigned to him by the president.
- To discharge the functions conferred on him by the constitution or any other law.

### Role played by Attorney General inside the parliament:

- He has the right to speak and take part in the proceedings of both the houses of Parliament.
- He enjoys all the privileges and immunities that are available to a Member of Parliament.

Thus he enjoys all the rights available to the members of Parliament except the right to vote. This makes him an important part of parliamentary proceedings whereby he can analyze and comment on the day to day perspective of the parliament based on legal perspective of bills and discussions. This constitutes important aspect of democracy when viewed through legal prism of an expert.

### Role played outside Parliament:

- To appear on behalf of government of India in all cases in the Supreme Court and High Court in which the government is concerned.
- To represent the government of India in any reference made by president to the Supreme Court under Article 143 of constitution.

Thus he is the chief legal advisor to the government of India whereby the government consults him on issues related to legal matter. Although he is not a full time counsel for the government, doesn't fall under the category of government servants and is not debarred from private legal practice.

### How changing governance requires role modification:

- The office of Attorney General was created decades back when the role of government was majorly to manage day to day aspects of governance. But the changing times has brought new aspects to the governance like multiplicity of stakeholders, increased role of private players, increased role of e-governance and need for better public service delivery to promote good governance to aware citizenry.

### Conclusion:

Thus it should be ensured that the office of Attorney General is free from political influence and it discharges its duty as per mandates of constitution. What else could be done is to create multiple organs within the body of Attorney General so as to deal with legal aspects of matters individually for better expert advice. Thus the Attorney General's role should be adaptive with changing nature of governance and whichever party be in government.

## 4. Explain how the constitution of India distributes legislative subjects between center and state governments. List and discuss the conditions in which central government can legislate on subjects normally reserved for state government.

***(250 words)***

**Approach**

1. **Mention and discuss constitutional division of powers between state and central governments.** ***(120 words)***

2. **List exceptional cases in which central government can assume large powers of legislations.** ***(120 words)***
3. **Conclude by discussing why such powers have been given to central government.** ***(60 words)***

## Hints

**Since India claims itself to be a federal state, the powers of units is clearly delineated by the constitution itself.** The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule.

### Division of legislative powers:

- The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 100subjects (originally 97 subjects) like defense, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.
- The state legislature has "in normal circumstances" exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 61 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, the aters, gambling and so on.
- Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament.
- The matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list.
- In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the central law prevails over the state law.

### Exceptions to the norm:

The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended.

- If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter.
- The Parliament acquires the power to legislate with respect to matters in the State List, while a proclamation of national emergency is in operation.
- When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter.

- The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions.
- When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state.

### Conclusion:

The Constitution has assigned a position of superiority to the Centre in the legislative sphere. If this principle of union supremacy is excluded, it is not difficult to imagine its deleterious results. This rule of federal supremacy, therefore, is indispensable for the successful functioning of the federal system.

## 5. Is it appropriate to say that cabinet is the prime mover of political action and the Core of Indian political system? What are the factors that have led to erosion of power and authority of cabinet in recent years?

***(250 words)***

**Approach**

1. **Briefly introduce the cabinet in terms of parliament** ***(50 words)***
2. **Explain the functions of cabinet** ***(75 words)***
3. **What are the factors that have led to erosion of power and authority of cabinet** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

The cabinet is a committee of the leading members of the government. It comprises usually 20-23 members. Within the cabinet there is a pecking order, with the posts of finance, foreign minister, home minister and, if appointed, deputy PM being regarded as the 'plum' jobs. This may also mean that such minister form an inner circle of ministers who are consulted more frequently by the PM, sometimes in the form of a core group.

### Functions of cabinet:

- The cabinet is indeed at the core of the Indian political system. Particularly in a system like ours when the political executive is drawn from the legislature, it becomes even more important.
- All the policy decisions are taken in meetings of cabinet and only then they are either presented before the parliament for legislations or are directly implemented through an executive order.
- Further as the executive is drawn out of the party which holds the majority in the legislature, the possibility of any cabinet proposal being rejected by the Parliament is very low.
- It is only rarely in cases like constitutional amendments etc where special majority is needed can the government may face problems sometimes, otherwise largely the cabinet which is the face of the government rules the roost.

### Factors that have led to erosion of power and authority of cabinet:

- Things have changed to a certain extent in the recent past, due to the advent of coalition politics.
- Now, if no single party holds the majority in the legislature, it is dependent on some other party for its support to get its proposals through. This creates a situation when the almost absolute powers of the cabinet may get diluted.
- If the party is offering only outside support, it may have different ideas on same proposals and so may have reservations in supporting them in the Parliament.
- Secondly, due to increasing complexities of issues in the present times the importance of specialists in decision making has increased manifolds.
- The members of the cabinet are however seasoned politicians who lack specialist skills and are therefore heavily dependent on the specialist bureaucracy and other subject matter experts in creating their opinion which come out as policy proposals.

### Conclusion:

The concept of GoM and EGoM has further diluted the authority by creation of cabinets within the cabinet. However despite some limitations, the cabinet still continues to wield considerable power and authority and is still at the helm of the Indian political system in making the strategic and responsible decisions for the public and the national interests.

## 6. "Cabinet Secretariat provides expert assistance to the Cabinet and Cabinet Committees". Examine in view of the role of Cabinet Secretariat.

***(250 words)***

**Approach**

1. **Give a brief description of Cabinet Secretariat** ***(50 words)***
2. **Define the role and responsibilities of Cabinet Secretariat** ***(150 words)***
3. **Conclusion** ***(50 words)***

**Hints**

**The Cabinet Secretariat** functions are under the direct control of the Prime Minister. The chief of the secretariat is the Cabinet Secretary. The Cabinet Secretariat has to perform different types of functions.

- **It is the Cabinet Secretariat** which prepares the agenda of the meetings of the cabinet.
- It is to preserve all papers related with the decisions taken by the cabinet in various matters.
- The secretariat is to collect all necessary information's as to how the various ministries and departments have practically implemented the decisions taken in the cabinet meetings.
- It is the duty of the Cabinet Secretariat to keep the President of India, the Vice-President of India and all the ministries of the government well informed about the important activities and decisions of the government of India.
- It is also the duty of cabinet secretary to give advices and discuss elaborately all problems of inter-departmental nature and on the matters related with the question of co-ordination among the different departments.

- On permission from the President of India and being directly ordered by the Prime Minister of India the Cabinet Secretariat finalizes the rules of executive business and distributes the works to be done among the different departments of the government of India.

However the cabinet secretariat is sometimes believed to be a bunch of generalist bureaucrats who may be adept in administrative skills but may not be very well suited to discharge specialist advice which has become so very indispensable in modern times. It is for this reason that several other agencies like the PMO or the Planning Commission have come into existence. So much so that not only these agencies have come into existence but have come to eclipse the functions and powers of the Cabinet secretariat. The PMO for example is sometimes seen as an alternative to the cabinet secretariat and sometimes even supersede its authority.

### Conclusion:

However, despite the erosion of the authority of the cabinet secretariat, it continues to be the top office of the government and the Cabinet secretary is still the topmost bureaucrat of the country acting as a conscience keeper for the entire bureaucracy of the country and helps in the functioning of Responsible administration in the country.

## 7. "In a Parliamentary system of government the Prime Minister occupies a unique position as the most powerful functionary who controls both Parliament and Executive". Critically examine. Discuss the relation between Prime Minister and President in view of article 78 of the Indian Constitution.

***(250 words)***

### Approach

1. **Briefly introduce parliamentary system of government** ***(50 words)***
2. **Discuss the position of Prime Minister. Also discuss his executive role** ***(75 words)***
3. **Discuss the relation between Prime Minister and President in view of article 78.** ***(75 words)***
4. **Conclusion** ***(50 words)***

### Hints

The parliamentary system of Government is the one in which the executive is responsible to the legislature for its policies and acts. In this system the executive needs to execute various policies and laws. There should be responsibility and the desirability to ensure effective and efficient execution. This will happen if the executive is accountable to the people of the country. Through the responsibility to the legislature a system of checks and balances is created to ensure the accountability mechanism.

- **Position of Prime Minister:** The Prime Minister of India is the leader of the executive of the Government of India. The prime minister is also the chief adviser to the President of India and head of the Council of Ministers. They can be a member of any of the two houses of the Parliament of India—the Lok Sabha (House of the People) and the Rajya Sabha (Council of the States)—but has to be a member of the political party or coalition, having a majority in the Lok Sabha.

- **His executive role:** The prime minister is the senior-most member of cabinet in the executive of government in a parliamentary system. The prime minister selects and can dismiss members of the cabinet; allocates posts to members within the government; and is the presiding member and chairperson of the cabinet.

The union cabinet headed by the prime minister is appointed by the President of India to assist the latter in the administration of the affairs of the executive. Union cabinet is collectively responsible to the Lok Sabha as per article 75(3) of the Constitution of India. The prime minister has to enjoy the confidence of a majority in the Lok Sabha and shall resign if they are unable to prove majority when instructed by the president.

- More so in our set up where the executive is drawn from the legislature and the government is formed by the party which commands majority in the Parliament, the leader of the government becomes the most important figure both for the executive and the legislature.

However, despite the powers of the PM on paper which are visible only occasionally when the government of the day commands a clear majority, most of the time especially in a coalition setup, the PM is not as powerful as he appears to be. This is particularly because when the proposals emanating from the cabinet meetings requires the endorsement from the legislature the PM has to look towards his allies in the Parliament which may or may not share the ideas of the PM. In such situations if the PM is not good at consensus building he may face problems and at times feel restricted within an ambit.

### Relation between Prime Minister and President in view of article 78:

Article 78 of the constitution lays upon a duty to the PM to communicate to the President all the decisions of the cabinet and information regarding the affairs of the administration. However this duty in no way binds the PM to take advice or suggestions from the President regarding matters of decision making related to any issue whatsoever.

Article 78 of the Constitution defines the duties of the Prime Minister and in discharge of these duties he acts as a link between the President and Cabinet. Duties as defined in Article 78 are:

- To communicate to the President all decisions of the Council of Ministers
- To furnish such information relating to the administration of the affairs of the Union and proposal for legislation as the President may call for.
- If the President requires, to submit for the consideration of the Council of Ministers any matter on which 'a decision' has been taken by a minister but which has not been considered by the Cabinet.
- This is clear that Prime Minister communicates the 'decisions' and not merely renders advice to the President. The President in fact is bound to accept the decision taken by the Cabinet.

### Conclusion:

Hence the Indian Political system is having a unique responsibility of the Prime Minister that is inherent in the constitution itself. There is also a unique relationship between the President and the Prime Minister which is ensuring the democratic character of the functioning of the Indian polity.

## 8. Among the executive and legislature, the balance of power has drastically shifted to the executive, making the legislature weak and causing frequent adjournment and walkouts by opposition parties. Critically Analyze.

***(250 words)***

## Approach

1. **Discuss the provisions related to the Executives and Legislatures** ***(50 words)***
2. **Mention the issues which makes executive more powerful** ***(100 words)***
3. **Impact of frequent disruptions on functioning of government** ***(50 words)***
4. **Conclusion** ***(50 words)***

## Hints

The Constitution of India states that the Executive branch of the State shall be collectively responsible to the Legislature. This implies that Parliament should oversee the work of the government and hold it responsible for its actions and omissions. Members of Parliament also have the responsibility of passing laws, authorizing the expenditure of the government, and representing the interests of their constituencies.

However, several instances in the recent past indicate the abdication of responsibility by Parliament to fulfil some of these responsibilities. For instance, on the last day of 2008, eight bills were passed in Lok Sabha in a span of 17 minutes, without any discussion. Also, Parliament met for just 46 days that year - the lowest ever in a calendar year -- thereby drastically reducing the time available to meaningfully scrutinize the Executive. Large parts of the annual budget are guillotined each year, without adequate discussion. The similar pattern has also been observed during 15th Lok Sabha lead by UPA-II.

### These examples highlight several structural issues.

- For instance, currently Opposition party MPs don't force the government to ensure proper functioning of legislature as they don't want to play the role of constructive opposition and instead just plan and work to capture power and disrupt work.
- Their disinterest is visible from the fact that they never forced government to hold regular sessions.
- For the ruling party MPs, the order of CoM is always supreme and is ensured by the party whip as per anti-defection law. Similarly such whip also prevents opposition MPs to attend discussions if their party decides for a walkout.
- Most Government Bills are passed because MPs are required to vote on party lines. Explanatory memorandum rarely details the purpose of each clause and the overall structure of the legislation. In some cases, the financial implications are not provided.

### The issues which makes executive more powerful:

- Paucity of time and lack of expertise leads Parliament to frame only the skeleton of an Act and leaves its details to be worked out by the executive.
- It is the executive which frames detailed rules under the delegated powers of legislature.
- Such delegation of powers may be so loosely defined that the executive becomes all-powerful and usurps the legislative powers of the legislature and indulge in back-door legislation.

### Impact of frequent disruptions on functioning of government:

- It affects the working of the Parliament directly and indirectly.
- They involve actions such as the members' absence or departure from Parliament.
- The departure of members from the parliamentary chamber may have an immediate and direct impact on the functioning of that legislative body.
- This contradiction highlights that parliamentary accountability may be subverted by the government and in such cases; the opposition has no other choice but to resort to disruption unless the government agrees to discuss certain topics.

### Conclusion:

However, the past few decades since independence have clearly demonstrated that in India, democracy has failed to deliver its purpose, both theoretically and practically. In the present context of rapid degradation of democratic norms, executive and political sects of the government meant for facilitating and catering to people's needs and open violation of electoral reforms, alternative forms of democracy have become increasingly needed in India.

## 9. The conditions existing in the society provide the base for a pattern of relationship between the political and permanent executive. Do you agree? Substantiate with example.

***(250 words)***

**Approach**

1. **Briefly introduce the relationship between Political and permanent executive** ***(50 words)***
2. **How societal norms change the relationship** ***(75 words)***
3. **What should be done to maintain coordination and cooperation** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

In a democracy, power vests with the people. This power is exercised through its elected representatives who have the mandate to govern them for a specific period. The civil services by virtue of its knowledge, experience and understanding of public affairs assist the elected representatives in formulating policy and are responsible for implementing these policies.

The relation between the political executive and permanent executive should be that of cooperation and coordination in form of healthy working relationship for economic and social well being of the people.

### But in practical, the social base defines the relationship between the two:

In Western countries the society is homogenous thus there is considerable consensus on the goals of development of the nation and principles of neutrality and anonymity are followed. Whereas in case of India, where the society is diverse and also divided in caste, creed, religion, the social values and norms comes in implementation of one's public duty.

This happens because there is no system of specifying of answerability on the acts of political and permanent executives.

### What should be done to maintain coordination and co-operation?

The relation between them should be based on output-outcome framework. Outputs or key results in implementation of services that the civil servants produce and deliver should become the basis for evaluation of their performance rather than their caste, religion, etc.

In such a scheme, the political executive becomes accountable to the legislature and the electorate for the outcome. The political executive is judged on the basis of whether it has chosen the right outputs to achieve social goals. While the civil servants are accountable to the structural mechanisms for the effective, efficient delivery of public services and policy implementation.

### Conclusion:

The relationship between the political executive and permanent civil service get objectively defined when the accountability is ensured in the structural mechanisms of the governance. This helps in the optimum performance and working of the civil servants according to the established principles and rule of law.

## 10. "The principle of individual responsibility in the Indian Parliamentary System is used through the instrumentality of the Prime Minister to secure principle of collective responsibility." Analyse.

***(250 words)***

**Approach**

1. **Briefly introduce the meaning of individual responsibility and collective responsibility separately.** ***(70 words)***
2. **Explain the ways in which they are ensured in our polity.** ***(75 words)***
3. **Elaborate on the role of the office of PM in linking the two.** ***(75 words)***
4. **Conclusion** ***(30 words)***

**Hints**

- The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission. They work as a team and swim or sink together.
- When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha. Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha. This is one of the basic features of the Parliamentary form of government.

## Concept of collective responsibility:

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.

- It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament.
- If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.
- Several ministers have resigned in the past owing to their differences with the cabinet.
  - For example, Dr BR Ambedkar resigned because of his differences with his colleagues on the Hindu Code Bill in 1953.
  - CD Deshmukh resigned due to his differences on the policy of reorganisation of states.
  - Arif Mohammed resigned due to his opposition tothe Muslim Women (Protection of Rights on Divorce) Act, 1986.

## Concept of individual responsibility:

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha.

- However, the President removes a minister only on the advice of the Prime Minister.
- In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advice the President to dismiss him.
- By exercising this power, the Prime Minister can ensure the realization of the rule of collective responsibility.

## Role of Prime Minister in upholding above:

Collective responsibility can be achieved only through the **instrumentality of the Prime Minister**. Therefore, unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility. The **key to 'collective responsibility'** is the **Prime Minister's right to choose and dismiss his Ministers**.

When the draft provision 61 (later to become Article 74) about "the Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions" came up for discussion in the Assembly, Ambedkar pointed out the important role and the responsibility of the Prime Minister:

"All members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that is a very sound principle. But I do not know how many members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister."

Collective responsibility is enforced by the enforcement of two principles.

- One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister.

- Secondly, no person shall be retained as a member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility.

Collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers, there can be no collective responsibility.

## Conclusion:

However, in times of coalition governments, the Prime Minister doesn't command that authority as happens in ordinary times. The actions of the PM are governed more by the need to defend the existence of the government and less by the constitutional principles. Hence, there is a need to ensure that the PM has enough leg room to ensure that idea of collective responsibility can be upheld.

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# NOTES

# SET-6: QUESTIONS

## STATE GOVERNMENT, PRIs AND URBAN LOCAL BODIES

**Q1. The last few decades have seen arguments on abolishing as well strengthening bicameralism in state governments. Elaborate the structure of bicameral legislature in Indian states. Also examine the need for such an institution?**

**Q2. While the Governor is the nominal executive authority, the Chief Minister is the real head of the state. In light of the above statement, discuss the role of Chief Minister in a parliamentary form of government.**

**Q3. The institution of the Governor should rise above its present stature of a mere representative of the Central government. Examine. Also, discuss the role of Governor in the view of Punchhi commission recommendations.**

**Q4. The Ministers in the state shall hold office during the pleasure of the Governor. In the light of the above statement, discuss whether the Governor is competent to dismiss a Council of Ministers.**

**Q5. Explain the constitutional provisions that describe the relationship between the Governor and the Chief Minister in a state**

**Q6. President's Rule has been imposed in many states of India under Article 356. Discuss how does it affect the people and functioning of the state?**

**Q7. The goal of sustainable development can best be realized through Panchayati Raj institutions by integrating them in governance process. Substantiate with relevant examples.**

**Q8. The 74th Amendment is crucial to the strengthening of key public delivery channels, but unfortunately has not been accorded with the importance it deserves. Analyse.**

**Q9. Discuss various ways in which urban local bodies are disempowered. Suggest effective measures in this regard.**

**Q10. "...I can never accept the principle of self-government for India unless I am satisfied that every self-governing institution has provision in it which gives the depressed classes special representation in order to protect their rights...". Reflect upon this statement of B.R.Ambedkar and comment if reservations in 73rd and 74th constitutional amendment are effective enough.**

# SET-6: ANSWERS

**1. The last few decades have seen arguments on abolishing as well strengthening bicameralism in state governments. Elaborate the structure of bicameral legislature in Indian states. Also examine the need for such an institution?**

***(250 words)***

## Approach

1. **Introduction about the importance of bicameral legislature.** ***(50 words)***
2. **Discuss the structure of the Bicameral legislature in Indian states.** ***(70 words)***
3. **Discuss the need of such an institution- arguments for and against.** ***(80 words)***
4. **Conclusion on futuristic vision** ***(50 words)***

## Hints

Bicameralism is the practice of having two Houses of Parliament. At the State level, the equivalent of the Lok Sabha is the Vidhan Sabha (Legislative Assembly), and that of the Rajya Sabha is the Vidhan Parishad (Legislative Council). A so-called Upper House is considered important in the parliamentary system, as only a third of the seats are filled every two years and it therefore acts as a check against potential impetuousness of electoral majorities in the Lower House.

### Structure of bicameral legislature:

- A bicameral legislature comprises a lower house and an upper house. While the former is known as the Legislative Assembly (Vidhan Sabha), the latter is called the Legislative Council (Vidhan Parishad).
- The Constitution of India had the provision of establishing bicameral legislatures in more populous states of the country. Initially states such as Tamil Nadu, West Bengal, Madhya Pradesh, Punjab etc. were slated to have two houses. However, some of the states felt that Legislative Council would be an “unnecessary adjunct. “
- The Constitution grants every state the right to create or abolish Legislative Council, which decides whether it will have a unicameral or bicameral legislature.
- According to Article 169 of the Indian Constitution, the state legislative assembly has to pass a resolution demanding creation or abolition of the council. The Parliament can then make it a law by passing it like any ordinary bill. It doesn’t require any amendment to the Constitution

- The lower house wields greater legislative power as compared to the upper house. In a bicameral set up, a motion of no confidence against the state government can only be introduced in the Vidhan Sabha.
- Once passed by the majority, the Chief Minister and his Council of Ministers are bound to resign. Similarly, a money bill can only be introduced in Vidhan Sabha. Like Rajya Sabha, the upper house in the state can't sit on any legislation passed by the lower house. It has to approve the bill after 14 days.

### Need of bicameral legislature at states:

- Upper house can act as a check on hasty actions by the popularly elected House
- Bicameral legislature ensures that individuals who might not be cut out for the rough-and-tumble of direct elections too are able to contribute to the legislative process.
- It was also suggested that having a second chamber would allow for more debate and sharing of work between the Houses.
- Respectable senior members who cannot get elected on their own can be made direct entry and legislators can make use of their knowledge for making laws.

### Arguments against need of bicameral legislature at states:

- They can be used to park leaders who have not been able to win an election.
- They can be used to delay progressive legislation.
- They would strain state finances.
- The constitution gives Councils limited legislative powers.

### Conclusion:

The Bicameral legislature ensures proper representation in states of large populations. Hence, they need to be given real powers like Raja Sabha in order to improve their working potential and make the state legislature functioning with more quality legislation than just populist measures.

**2. While the Governor is the nominal executive authority, the Chief Minister is the real head of the state. In light of the above statement, discuss the role of Chief Minister in a parliamentary form of government.**

***(250 words)***

**Approach**

1. **Briefly introduce the Parliamentary system of government.** ***(40 words)***
2. **Elaborate on the constitutional provisions in the context of the question.** ***(90 words)***
3. **Discuss the role of Chief Minister in the state government.** ***(80 words)***
4. **Conclusion.** ***(40 words)***

**Hints**

- In the scheme of the parliamentary system of government provided by the Constitution, the Governor is the nominal executive authority and the Chief Minister is the real executive authority. The Governor is the head of the state while the Chief Minister is the head of the government. Thus, the position of the Chief Minister at the state level is analogous to the position of the Prime Minister at the Centre.
- According to the convections of the parliamentary system of government, the Governor appoints the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the Governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the Governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and asks him to seek a vote of confidence in the House within a month.

## Constitutional provisions:

- The Indian Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. **Article 164** mentions that the Chief Minister shall be appointed by the Governor. However, it does not mean that the Governor is free to appoint anyone as the Chief Minister.

## Role of Chief Minister:

- The Governor appoints only those persons as ministers who are recommended by the Chief Minister.
- The CM allocates and reshuffles the portfolios among ministers.
- The CM can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
- The CM presides over the meetings of the council of ministers and influences its decisions.
- The CM guides, directs, controls and coordinates the activities of all the ministers.
- The CM can bring about the collapse of the council of ministers by resigning from office.
- Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers.
- The CM advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
- The CM can recommend the dissolution of the legislative assembly to the governor at any time.
- The CM announces the government policies on the floor of the house.
- The CM is also the member of the Inter-State Council and the National Development Council, both headed by the prime minister.
- The CM is the chief spokesman of the state government.
- The CM is the crisis manager-in-chief at the political level during emergencies.

## Conclusion:

Although every work in a state is carried under the Governor's name, the actual work is carried by Chief Minister along with his Council of Ministers in a parliamentary form of government. Thus, it can be said that the Chief Minister is the real head of a state as most of the work is performed by the office of the CM, in the name of the office of the Governor.

**3. The institution of the Governor should rise above its present stature of a mere representative of the Central government. Examine. Also, discuss the role of Governor in the view of Punchhi commission recommendations.**

***(250 words)***

## Approach

1. **Introduction about the institution of Governor.** ***(40 words)***
2. **Discuss the role of governors** ***(60 words)***
3. **Discuss some issues associated with office of Governor** ***(60 words)***
4. **Suggest remedial measures with the help of Punchhi commission.** ***(50 words)***
5. **Conclude on futuristic vision** ***(40 words)***

## Hints

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role. The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president. He is appointed by the president by warrant under his hand and seal.

### Role and responsibility of Governors:

#### Executive Role

- All executive actions of the government of a state are formally taken in his name.
- He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
- He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.

#### Legislative Role

- He can summon or prorogue the state legislature and dissolve the state legislative assembly.
- He can address the state legislature at the commencement of the first session after each general election and the first session of each year.

#### Financial Role

- He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
- Money bills can be introduced in the state legislature only with his prior recommendation.
- No demand for a grant can be made except on his recommendation. Judicial Powers

### The judicial Roles and functions of the governor are:

- He can grant pardons, reprives, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
- He is consulted by the president while appointing the judges of the concerned state high court.

- He makes appointments, postings and promotions of the district judges in consultation with the state high court.

## Issues associated with office of Governor:

- The role of the Governor has come in for attack on the ground that some Governors have failed to display the qualities of impartiality and sagacity expected of them.
- It has been alleged that the Governors have not acted with necessary objectivity either in the manner of exercise of their discretion or in their role as a vital link between the Union and the States.
- Many have traced this mainly to the fact that the Governor is appointed by, and holds office during the pleasure of the President, (in effect, the Union Council of Ministers). The part played by some Governors, particularly in recommending President's rule and in reserving State Bills for the consideration of the President, has evoked strong resentment.
- Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this high constitutional office.
- From Uttarakhand to Karnataka, the governor role is quite contentious. Criticism has also been levelled that the Union Government utilizes the Governors for its own political ends.
- Many Governors, looking forward to further office under the Union or active role in politics after their tenure, came to regard themselves as agents of the Union

## Recommendations with the help of Punchhi Commission:

- Punchhi committee on centre-state relations have made several recommendations in this regard viz. the Governor should be given a fixed tenure of five years and if he needs to be removed, it can only be through impeachment proceedings carried out at the state level on the lines of the impeachment of the President at the union level.
- Further, clear guidelines are laid down regarding matters of how the Governor is expected to act after the polls in matters of making invitations to form the government and that the Governor should be necessarily a person from outside the state and must not be involved in active politics for at least two years.
- While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit :
  - He should be eminent in some walk of life
  - He should be a person from outside the state
  - He should be a detached figure and not too intimately connected with the local politics of the state
  - He should be a person who has not taken too great a par politics generally and particularly in the recent past
- Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.
- Further in recent judgement of Supreme Court has clearly favoured towards sanctity of governor's post.

## Conclusion:

Thus, the governor's role is not merely an agent of the centre sitting in state capitals; he is the lynchpin of India's federalism and democracy at the state's level. Therefore, the governor's role is indispensable for the successful working of constitutional democracy, and he must withhold the virtue of impartiality. The institution of the Governor has to rise above the role of a mere representative of the Central government. This is important so as to ensure that the extensive discretionary powers which the Governor is vested with at the state level are exercised with utmost impartiality and neutrality.

**4. The Ministers in the state shall hold office during the pleasure of the Governor. In the light of the above statement, discuss whether the Governor is competent to dismiss a Council of Ministers.**

***(250 words)***

### Approach

1. **Briefly introduce mode of appointment of ministers.** ***(50 words)***
2. **Discuss the constitutional provisions in this regard.** ***(75 words)***
3. **Discuss the judgments given by various courts in this regard.** ***(75 words)***
4. **Conclusion.** ***(50 words)***

### Hints

The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. The ministers shall hold office during the pleasure of the Governor.

## Constitutional provision of Ministers of state

- **Article 164(2)** further lays down that "the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State".
- It appears that the Ministers are made responsible to both the Governor and the Legislative Assembly of the State.
- The question arises whether the Council of Ministers is accountable to the Legislative Assembly or answerable to the Head of the State. It is an established practice of the Parliamentary system that a Ministry remains in the office so long as it commands the majority of the members of the Legislature.
- The pleasure of the Governor vanishes when the Assembly gives the signal to the Ministry to go out of the power through a no-confidence motion. Thus, withholding of pleasure of the Governor is not self-generating. It is a conditional clause with **Article 164(2)** of the Constitution.

### Court's Judgment

- The Supreme Court has held that the phrase (during the pleasure) has not been adopted by the Constitution of India. The absolute doctrine and the pleasure as know to English law is not the law in India.
- The court further held that the word pleasure under Article **164(1)** is not uncontrolled in view of **Article 164(2).**

### Conclusion:

The Governor has the power to dismiss an individual minister at any time. However, the office of the Governor can dismiss council of the minister or Chief Minister only when the assembly has expressed its want of confidence in the council of minister either by a direct vote of no confidence or censure or by defeating an important measure or the like and the Governor does not think fit to dissolve the assembly.

## 5. Explain the constitutional provisions that describe the relationship between the Governor and the Chief Minister in a state

***(250 words)***

**Approach**

1. **Briefly introduce the relationship between the Governor and the Chief Minister.** ***(50 words)***
2. **Elaborate on provisions of the Constitution deal with the relationship between the Governor and the Chief Minister.** ***(150 words)***
3. **Conclusion.** ***(50 words)***

**Hints**

In the scheme of the parliamentary system of government provided by the Constitution, the Governor is the nominal executive authority and the Chief Minister is the real executive authority. The Governor is the head of the state, while the Chief Minister is the head of the government. Thus, the position of the Chief Minister at the state level is analogous to the position of the Prime Minister at the Centre. The constitution, however, does not contain any specific procedure for the selection and appointment of the Chief Minister. **Article 164** only says that the Chief Minister shall be appointed by the Governor.

### The following provisions of the Constitution deal with the relationship between the Governor and the Chief Minister:

- **Article 163** explains that there shall be a Council of Ministers, with the Chief Minister as the head, to aid and advise the Governor on the exercise of his functions, except in so far as he is required to exercise his functions or any of them in his discretion.
- **Article 164** explains that the Chief Minister shall be appointed by the Governor and other Ministers shall be appointed by the Governor on the advice of the Chief Minister. The ministers shall hold office during the pleasure of the Governor and the Council of Ministers shall be collectively responsible to the legislative assembly of the state.

- **Article 167** of the Constitution explains that it shall be the duty of the Chief Minister to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation.
- To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for.
- If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister, but which has not been considered by the Council.

### Conclusion:

Thus, we see that most of the time Governor acts on the advice of the council of ministers and the Chief Minister. This is the general functioning of the office, except when the Governor acts on discretion.

## 6. President's Rule has been imposed in many states of India under Article 356. Discuss how does it affect the people and functioning of the state?

***(250 words)***

**Approach**

1. **Introduce about the President's rule under Article 356.** ***(40 words)***
2. **Discuss the reasons for imposing Article 356 and explain how President's rule affects the functioning of a state.** ***(70 words)***
3. **Discuss your views on misusing of Article 356 in recent times.** ***(50 words)***
4. **Briefly criticize the concept of President's Rule.** ***(50 words)***
5. **Conclusion.** ***(40 words)***

**Hints**

**Article 356** of the Indian Constitution empowers the President to impose President's Rule in a state if he is satisfied from the report of the Governor of the state or 'otherwise' the effect that "the government of the State cannot be carried on in accordance with the provisions of the Constitution". The expression 'the Government of the State cannot be carried on in accordance with the provisions of the Constitution' is of very wide import and it gives wide discretionary powers to the President in invoking the powers under this Article.

### Various reasons for the President's rule-

- These include the failure of state machinery and failure to follow the Constitution.
- Other factors may include the loss of majority; break down of the law and order, no decisions reached in the elections, insurgency and breakup of the coalition. This can continue for a period of six months.
- For different kind of emergencies, India Constitution confers extraordinary powers upon the Union. The Emergency provisions provided under the Constitution enables the Federal Government to acquire the strength of a unitary system whenever the exigencies of the situation so demand.

- Emergency situations place a democratic government in a real dilemma by bringing about a conflict between its primary obligation to protect the human rights of its citizens and other persons within its jurisdiction.
- The State is forced into a choice between competing values and the sacrifice of one to the other.
- Emergency provision is a unique feature of Indian Constitution that allows the Centre to assume wide powers so as to handle special situations.
- In emergency, the Centre can take full legislative and executive control of any state. Emergency provision also allows the Centre to curtail or suspend freedom of Citizens.

### Effects of State Emergency

- The President can assume to himself all or any of the functions of the State Government or he may vest all or any of those functions with the Governor or any other executive authority.
- The President may dissolve the State Legislative Assembly or put it under suspension. He may authorize the Parliament to make laws on behalf of the State Legislature.
- The President can make any other incidental or consequential provision necessary to give effect to the object of proclamation.

### Criticism of President's Rule

- In recent time Maharashtra and Jammu & Kashmir were put under the President Rule. The way it has been imposed on various occasions has raised many questions. At times, it has been imposed purely on political grounds.
- Suspending or dissolving assemblies and not giving a chance to the other political parties to form governments in states have been due to partisan consideration of the Union Government, for which Article 356 has been clearly misused.
- The Sarkaria Commission noted that this Article has been misused in 90% of the cases for political purposes.
- In S.R. Bommai case (1994), it has been argued that governor's decision is based on "objective material" and not on a political whim or fancy.

### Conclusion:

It needs to be remembered that only the spirit of "cooperative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions - a sine qua non for good governance. Hence, the President rule must be imposed with utmost responsibility.

## 7. The goal of sustainable development can best be realized through Panchayati Raj institutions by integrating them in governance process. Substantiate with relevant examples.

***(250 words)***

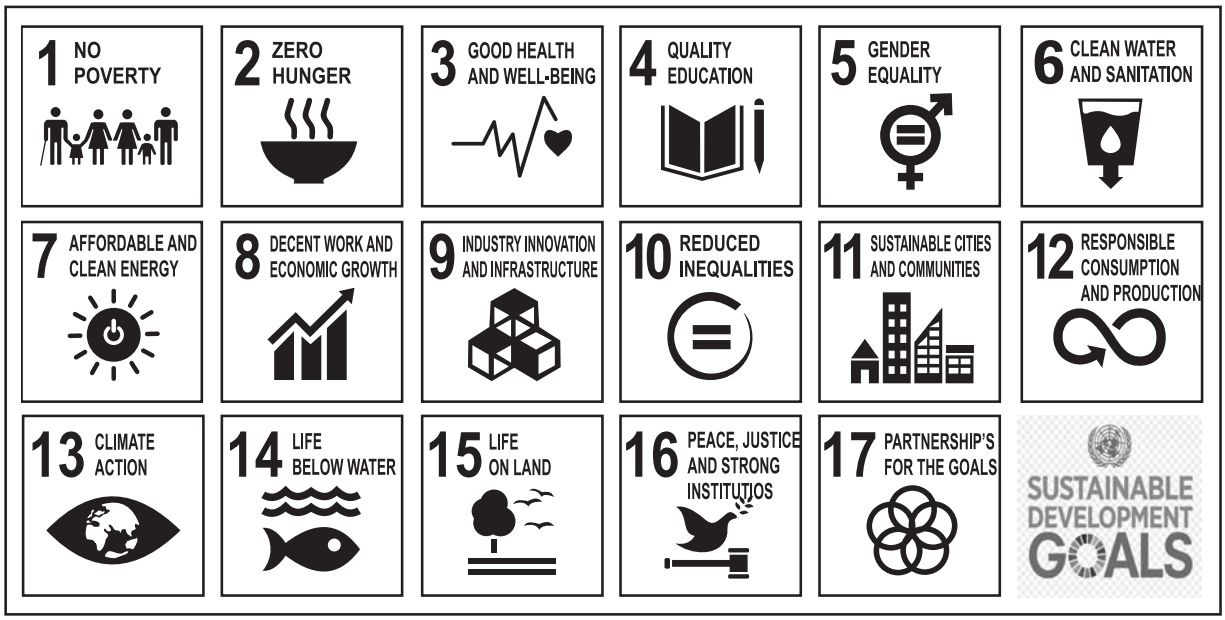
**Approach**

1. **Briefly introduce with sustainable development and Panchayat Raj.** ***(50 words)***

2. **Discuss how the goal of sustainable development can be best achieved through Panchayat Raj institutions. Give specific examples to explain the context.** ***(150 words)***
3. **Conclude on futuristic vision.** ***(50 words)***

## Hints

Sustainable development seeks a balance between people (wellbeing, participation), planet (healthy environment) and profit (sustainable economy), essentially needs utilization of resources according to local sensibilities (traditional knowledge) and empowering people at grass root to decide their developmental priorities, best suited to them.




### The goal of sustainable development can be best achieved through Panchayat Raj institutions

- For its success it requires community participation. In this context the Gandhian vision of self-sufficient village panchayats (given constitutional recognition through 73rd and 74th Constitutional Amendment Act) appears to be best suited to achieve twin goals of sustainable development and democratic decentralization.
- For the achievement of sustainable development, three aspects of governance need to be considered: good governance (the processes of decision making and their institutional foundations), effective governance (the capacity of countries to pursue sustainable development), and equitable governance (distributive outcomes).
- This can be substantiated by analyzing the linkage between sustainable goals and working of Panchayats.
- Sustainable development aims at resource conservation and as village socio-economic life is intricately connected to environment, PRI is best suited for environment conservation and sustainable use. e.g.: Gram Sabha rejecting bauxite mining at ecologically sensitive niyamgiri in Odisha. Government of Odisha is empowering Panchayats to collect water tax (Pani Panchayat).Villagers of Deogarh district conserve community based forest.So SDG like 6 and 12 can be best achieved through the cooperation of active role of Panchayat.

- SDG 4 which focused on Quality education. Government is providing funds and infrastructure to schools. But active role of Panchayat can ensure quality education by keeping watch on punctuality of teachers.
- Sustainable development aims at women empowerment in the context of SDG 5 and one third reservation in PRI will bring them in the decision making process hence will provide voice to fight for their rights along with cast base reservation gives voice to marginalised sections of the society. Hence for women participation at the grass root level Panchayats may play an important role.
- Thus, the 17 Sustainable Development Goals (SDGs) and their 169 targets adopted by member states of the United Nations, here Local governments have a crucial role to play in achieving the SDGs. While the goals are universal, the implications and intervention possibilities are local and Panchayats are expected to play an effective role in the planning and implementation of these SDGs.

### Conclusion:

Hence we agree that by integrating PRI in formal governance structure and empowering them (through funds, functions and functionaries), sustainable development goals can be achieved through grass root participation.

## 8. The 74th Amendment is crucial to the strengthening of key public delivery channels, but unfortunately has not been accorded with the importance it deserves. Analyse.

***(250 words)***

**Approach**

1. **Introduce by defining the 74th Amendment act and related inserted Article in the constitution** ***(50 words)***
2. **Mention why 74th amendment act as key public delivery channel** ***(75 words)***
3. **Highlight the drawbacks of 74th amendment** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

- The 74th Amendment Act not only formally constituted a three-tiered municipal structure for Indian cities, but also provided an illustrative list of their specific functions through the 12th schedule.
- Among their varied core functions, municipalities were invested with the responsibility for urban town planning, regulation of land use and construction, planning for social and economic development, construction of roads and bridges, and water supply.

### Municipalities as key public delivery channels

- They were also responsible for ensuring public health, sanitation and solid waste management, efficient fire services, environment protection, safeguarding the interests of weaker sections of society, slum improvement and up-gradation and urban poverty alleviation.

- These functions, as is apparent, would have a very direct bearing on the way Indian cities developed, and the quality of life that the burgeoning urban population, projected to grow at a rate of 2.4 per cent each year until 2030, experienced.
- Provision of state-run home services and basic unmet needs as regards health, education, environmental cleanliness, drinking water in homes, recreation and sport.
- Organization and planning of the economic, social and environmental development of their territory and construction of facilities required for municipal progress.
- Control of the appropriate management of renewable natural resources and the environment.
- Promotion of community participation and the social and cultural improvement of their inhabitants

## Drawbacks

- While the functions of the municipalities were clearly outlined, the Amendment Act did not draw out a parallel list of financial powers that would allow the municipalities to actually carry these out.
- The crucial question of how they would raise funds for fulfilling their functions was, instead, left to the discretion of individual state governments **therefore can be dissolved by them** as well if not dancing as per their tunes.
- The result is a highly uneven and non-uniform level of reform implementation by individual state governments, leaving most of India's municipalities in a poor condition, even 21 years after the $74^{th}$ Amendment's enactment.
- As much as 75 per cent of India's urban citizens shall constitute an economically weak 'bottom income segment' in 2030, it is apparent that pressures on service delivery systems that provide basic services such as sanitation, water, electricity, transportation, healthcare, education and much else will hit the urban Indian poor the hardest, as they have a weaker capacity to access private alternate means of service provision.
- Municipalities in India today operate in highly disparate ways, making it difficult to understand and assess their functioning. Evidence, however, indicates that empowered municipalities have, in general, been able to take bold decisions and initiate systemic solutions to problems that have had a direct bearing on the lives of the urban poor.
- With an annual addition of over 10 million people to its urban population each year, India confronts an increasingly formidable urban service delivery challenge.
- **Lack of proper monitoring system** in place results in inefficient and improper functioning of Local Urban Bodies.

## Conclusion:

The 74th Amendment is crucial to the strengthening of the main public delivery channels, and unfortunately has not been accorded with the importance it deserves. A failure to take note of this in the times to come shall only have adverse consequences for India's growth and development trajectory, and it is inevitable that the urban poor, drivers of India's urban economy, shall carry the burden.

## 9. Discuss various ways in which urban local bodies are disempowered. Suggest effective measures in this regard.

***(250 words)***

## Approach

1. **Introduce the urban local bodies.** ***(25 words)***
2. **Discuss problems faced by them.** ***(150 words)***
3. **Suggest effective remedial measures.** ***(50 words)***
4. **Conclusion.** ***(25 words)***

## Hints

The term 'Urban Local Government' in India signifies the governance of an urban area by the people through their elected representatives. The jurisdiction of an urban local government is limited to a specific urban area which is demarcated for this purpose by the state government. There are eight types of urban local governments in India—municipal corporation, municipality, notified area committee, town area committee, cantonment board, township, port trust and special purpose agency. The system of urban government was constitutionalized through the 74th Constitutional Amendment Act of 1992. At the Central level, the subject of 'urban local government' is dealt with by the following three ministries:

- Ministry of Urban Development, created as a separate ministry in 1985
- Ministry of Defence in the case of cantonment boards
- Ministry of Home Affairs in the case of Union Territories

### 74th Constitutional Amendment Act:

- This Act has added a new Part IX-A to the Constitution of India. This part is entitled as 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG.
- In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of municipalities. It deals with Article 243-W.
- The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act aims at revitalizing and strengthening the urban governments so that they function effectively as units of local government.

### Challenges:

Much has been written about the failure of States to implement the provisions of the 74th Amendment. However, it is important to examine concerns in the underlying constitutional design of urban local governments and the politics impeding this Amendment's operation. The "implementation failure" narrative tends to focus on how local governments are financially constrained and do not have the administrative capacity to carry out its functions.

It is also important to explore how urban local governments are actively disempowered and depoliticized as an institution. The disempowerment and depoliticisation has happened in multiple ways.

- First, elected representatives at the city-level are rendered powerless by making them subservient to the State government. In most municipal corporations, while the mayor is the ceremonial head, the executive powers of the corporation are vested with the State government-appointed commissioner. This disjuncture in municipal governance has been exploited by State governments to ensure that no city-level politician challenges their control over a city.

- Municipal corporations are further denied their political role by the continued operation of various parastatals agencies created by the State government. These may take the form of urban development authorities (which build infrastructure) and public corporations (which provide services such as water, electricity and transportation).
- These agencies, which function with a certain autonomy, are accountable only to the State government, not the local government. Even urban planning and land-use regulation (globally a quintessential local government function) is with State government-controlled development authorities.
- While parastatals agencies and unelected commissioners are pre-74th Amendment legacies that have not been undone, what is also worrying is the further depoliticisation of local government in recent years.
- Central government programmes such as the Smart Cities Mission seek to ring fence projects from local government. This programme mandates the creation of special purpose vehicles (SPVs) for Smart Cities which will have "operational independence and autonomy in decision making and mission implementation". It further "encourages" a State government to delegate "the decision-making powers available to the ULB (urban local body) under the municipal act/ government rules to the Chief Executive Officer of the SPV".
- The creation of parallel institutions that disempower the elected local government shows how higher levels of government distrust local politics and craftily retain control of a city's reins. Even for performing functions that are within its purview (such as levying local taxes or undertaking civic projects above a certain budget) the local government requires State government permissions. Hence, municipalities are not yet autonomous units that can be genuinely called as the "third tier" of government in India's federal system. Even after the 73rd and 74th Amendments, India has effectively only two levels of government — Union and State.

## Measures:

- While the 74th Amendment has become a lodestar for civic activism in many cities, it has certain inherent limitations. Many of its key provisions are not mandatory for the State government. The functions listed under the 12th Schedule — which a State government is expected to devolve to the local government — do not include essential civic issues such as urban transportation, housing or urban commons.
- The 74th Amendment also contains an industrial township exception whereby a municipality need not be constituted in areas which are declared as industrial townships. These provisions have been employed by State governments to keep local governments weak.
- Civic activism has often been focused on the creation of two bodies mandated by the 74th Amendment — ward committees and metropolitan planning committees. However, an over-reliance on such semi-representative bodies does not augur well for creating a genuinely democratic city government. In fact, civil society's fixation with nominating its members into ward committees can further depoliticize local governments and make them captive to the interests of certain elite resident welfare associations. Instead of distrusting them, we must acknowledge that local governments are inherently political spaces where multiple interests compete.
- As cities struggle to meet the basic needs of their inhabitants, we must re-examine the existing modes of organising power in urban India.
- Unlike the 73rd Amendment which provides for three levels of panchayats (village, taluk, and district levels), power in urban areas is concentrated in a single municipal body (whether it is a municipal corporation, municipal council or town panchayat). However, as Indian cities

have grown exponentially over the last 25 years, with some crossing the 10 million population mark, we must rethink the present model of urban governance that vests power in a singular municipality.

- While urban governance reforms can take multiple shapes, they must be fore grounded in the political empowerment of local government that furthers local democratic accountability.

### Conclusion:

Given the importance of functions and responsibilities entrusted to the local self-governments, the issues relating institutional structure of ULBs gain tremendous significance. Urban local bodies being empowered with resources and encumbered by accountability can become effective vehicles for competitive federalism.

**10. "...I can never accept the principle of self-government for India unless I am satisfied that every self-governing institution has provision in it which gives the depressed classes special representation in order to protect their rights...". Reflect upon this statement of B.R. Ambedkar and comment if reservations in 73rd and 74th constitutional amendment are effective enough.**

***(250 words)***

#### Approach

1. **Explain the general meaning of the statement of Ambedkar given above.** ***(65 words)***
2. **Establish the significance of reservations in political domains.** ***(65 words)***
3. **Discuss the constitutional provisions under 73rd and 74th Constitutional Amendment and comment on its performance.** ***(90 words)***
4. **Conclusion** ***(30 words)***

#### Hints

As far as the space for the depressed classes is concerned, Dr Ambedkar had argued that if the village Panchayats shall be elected on the basis of adult suffrage both for males and females but he didn't have the slightest hesitation in saying that adult suffrage is not sufficient for depressed classes. The depressed classes are in a minority in every village and assuming that India adopts adult suffrage, it cannot convert a minority into a majority. Consequentially, he insisted that if these Panchayats come, there should be special representation for the minorities. At any rate, there shall be special representation for the depressed classes.

Ambedkar was pessimistic about the ability of the electoral politics based on UAF to protect the interests of marginalised sections of the society. He argued that only representatives from depressed classes share the historical injustices done to them and hence, keeping in mind the power structures in the society, there should be adequate seats reserved for people from such backgrounds.

## Reservations and its significance:

- Reservations provide for an arrangement to ensure that people from different sections of the society get their representative in the political institutions. It is to make sure that exclusion of some weaker sections doesn't face exclusion from these institutions. Such representation is needed to make sure that decisions taken by them is legitimate and acceptable to all sections of the society. Underlying this trust deficit is oppression and marginalization of centuries.

## Panchayati Raj and provisions relating to reservations:

- As per the provisions of the 73rd Constitutional Amendment Act 1992, Panchayats have been included in its Ninth Schedule. These have both mandatory and enabling provisions. Mandatory provisions are those provisions which are invariably included in the State Panchayat Acts. Enabling provisions are the provisions which are left to State Legislatures to take a call on those.
- The reservation for marginalised groups like SCs, STs have been made at all levels of Panchayats. Provisions have also been made for women who would be at least one-third of the total number of seats at the membership and President levels. The seats are to be rotated among different constituencies of a Panchayat.
- Legally, these provisions have ensured the entry of lakhs of historically oppressed people into the lower rungs of government. This is akin to a revolution of sorts. Those people who have never been allowed to participate in the decision making process are now occupying the public institutions.
- The state in this way is becoming more representative of its diversity of society. It has been observed that policies made by women as representatives are focused on issues that affect women. They may be related to water, sanitation, SHGs etc.
- A male dominated political space has a different way to look at policy making. Similarly, the participation of tribal and Dalits in structures of governance has led to their empowerment. They are becoming more assertive at local levels. They can affect the channelization of funds in their benefit.

## The ground reality:

- The caste and gender have been deep rooted in our societies. Caste violence has increased since these radical amendments have been brought. Dominant sections of the society has not accepted them. Elections have been boycotted. Force has been used to debar lower caste people from participation at local levels.
- At times, proxies of dominant sections are propped up to fight elections as SCs and STs. This keeps effective decision making power in the hands of upper castes. On the axis of gender, the concept of panchayat pati has been propped up. It means that the actual decision making power rests with the male of the family from which women get elected. There have been incidents where elected women have been boycotted by their families.
- Apart from these, the non-elected bureaucracy which is largely from affluent sections of the society has been reluctant to engage with and take seriously these local elected leaders. The engagement of bureaucracy with civil society and SHGs becomes a mechanism to bypass these local bodies.

## Conclusion:

These realities suggest Ambedkar's ideas were almost prophetic in nature. The ground reality regarding Panchayat Raj system is harsh still. The legal provisions don't translate into actual reality overnight. The socio-cultural matrix needs to be analyzed to appreciate the actual functioning of these legal revolutionary provisions.

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# NOTES

# SET-7: QUESTIONS

## JUDICIARY

**Q1. "Doctrine of creative interpretation has helped the judiciary of India to keep the constitution as a living document." In the light of key judgments by the higher judiciary, examine the above statement.**

**Q2. The Judiciary has played an important role in protecting and interpreting the Constitution. Critically examine**

**Q3. What do you understand by the concept "Contempt of Court"? Does it cover criticism of judiciary also? Does it violate the provision under Article 19(1) (a), which grants to the country's citizens a right to freedom of speech and expression? Critically examine.**

**Q4. In the light of growing pendency of cases with traditional judicature, the need for alternative dispute mechanism has been felt. What are the merits and demerits of alternative dispute redressal mechanism? Also suggest measures to improve the performance of the traditional judiciary.**

**Q5. Paucity of Judges, especially in lower courts is critically affecting the Judiciary and Justice delivery system. Discuss, how the situation can be improved?**

**Q6. Fast track courts were created with an objective of reducing the pendency in judiciary; however, it was not successful in its objective. Evaluate the statement and examine the performance of fast track courts, so far?**

**Q7. What are your views on the importance of decentralization of the administration of justice? Do you think, that the Supreme Court has strayed from its original character as a Constitutional Court and gradually converted itself into a mere court of appeal?**

**Q8. How tribunals as quasi-judicial body are different from regular courts in India? Also discuss the recommendations of Law Commission to improve the working of tribunals, which are facing the crisis of transparent appointment and functioning?**

**Q9. "The fatal attraction with tribunals has weakened the judiciary without any improvement in the disposal of case or in the quality of justice." Discuss.**

**Q10. Public Interest Litigation is one of the most important innovations by Indian judiciary. Critically evaluate its success in delivering justice to Indian masses.**

# SET-7: ANSWERS

**1. "Doctrine of creative interpretation has helped the judiciary of India to keep the constitution as a living document." In the light of key judgments by the higher judiciary, examine the above statement.**

***(250 words)***

## Approach

1. **Introduce "Doctrine of Creative Interpretation".** ***(50 words)***
2. **Discuss what you understand by the phrase "Constitution as a living document".** ***(50 words)***
3. **Mention relevant cases in higher judiciary that substantiate your claim of constitution being a living document.** ***(130 words)***
4. **Conclusion** ***(20 words)***

## Hints

The attempt to understand the spirit of specific constitutional provisions as against simply reading down the letter of the same is understood as creative interpretation. It helps judiciary in expanding the ambit of the constitutional provisions. It is an element of the jurisprudence. In case of India, we have seen how right to life under article 21 has been reinterpreted in different cases and given broadest possible meaning to give a fuller sense of what it means to live.

- The Constitution of India was adopted on 26 November 1949. Its implementation formally started from 26 January 1950. More than sixty nine years after that, the same constitution continues to function as the framework within which the government of our country operates.
- Is it that our Constitution is so good that it needs no change? Was it that our Constitution makers were so farsighted and wise that they had foreseen all the changes that would take place in the future? In some sense both the answers are correct.
- It is true that we have inherited a very robust Constitution. The basic framework of the Constitution is very much suited to our country. It is also true that the Constitution makers were very farsighted and provided for many solutions for future situations. But no constitution can provide for all eventualities. No document can be such that it needs no change.

Then how does the same Constitution continue to serve the country?

- One of the answers to such questions is that our Constitution accepts the necessity of modifications according to changing needs of the society.

- Secondly, in the actual working of the Constitution, there has been enough flexibility of interpretations.
- Both political practice and judicial rulings have shown maturity and flexibility in implementing the Constitution.

These factors have made our Constitution a living document rather than a closed and static rulebook.Article 21 of the Constitution of India reads as follows:

- "No person shall be deprived of his life or personal liberty except according to procedure established by law."
- The narrow interpretation of this article in the early years of the Supreme Court in A.K. Gopalan's case was changed in Maneka Gandhi's case. The Courts incorporated the guarantee of 'substantive due processes' of U.S.A into the language of Article 21. In the words of Justice Bhagwati:
- "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms."
- The SC invoked right to privacy as fundamental to right to life while giving judgment in case of Aadhar. Right to Education has been legislated after the SC interpreted as corollary of right to life. In judgment on case of homosexuality also, the SC invoked article 21 to upheld permission for consensual sexual intercourse between individuals.
- Amendments under article 368 also play a critical role in this fluidity of constitution. For instance, recently, economically weaker section of society were granted reservation by bringing an amendment to the relevant articles.
- The creative interpretation has helped Judiciary to ensure the supremacy of constitution is maintained. At the same time within the frame work of constitution itself the amendments and modification are justified in public and national interest. In this way constitution will remain a beautiful, living document encompassing the changes of time and standing tides of changes.

### Conclusion:

The living nature of constitution is also a sign of respect for democratic nature of rule in our country where will of people changes with time and constitution responds to that without losing its basic character through doctrine of creative interpretation signifying Independence of Judiciary.

## 2. The Judiciary has played an important role in protecting and interpreting the Constitution. Critically examine

***(250 words)***

**Approach**

1. **Illustrate constitutionally envisioned role of the Judiciary.** ***(50 words)***
2. **Discuss role played by Judiciary in protecting and interpreting the Constitution** ***(75 words)***

3. **Analyze instances of Judicial overreach and corrective actions observed** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

## Constitutionally envisioned role of the Judiciary

The Judiciary plays the important role of interpreting and applying the law and adjudicating upon controversies between one citizen and another and between a citizen and the state.

It is the function of the courts to maintain rule of law in the country and to assure that the government runs according to law. In a country with a written constitution, courts have the additional function of safeguarding the supremacy of the Constitution by -interpreting and applying its provisions and keeping all authorities within the constitutional framework.

## The Constitution confers very broad jurisdiction on the Court:

- The Court has power to commit a person for its contempt [Art. 129]
- The Court has original jurisdiction to decide inter-governmental disputes [Art. 131]
- The Court has appellate jurisdiction. It is the highest court of appeal in the country in all matters, civil or criminal [Arts. 132 to 134].
- The Apex Court has power under Art: 32 to enforce Fundamental Rights
- The Court has advisory jurisdiction. [Art. 143]
- The Court has power to review its own decisions. [Art. 137]
- The Court has power to make any order necessary for doing complete justice in any case. [Art. 142)

## Role played by Judiciary in protecting and interpreting the Constitution

India has a unified judicial system with the Supreme Court standing at the apex. There are High Courts below the Supreme Court; under each High Court there exists a system of subordinate courts.

The Supreme Court thus enjoys the topmost position in the judicial hierarchy of the country. It is the supreme interpreter of the Constitution and the guardian of the people's Fundamental Rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land, and thus helps in maintaining a uniformity of law throughout the country.

The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court's considered judgment, conflict with the Constitution.

This power of "judicial review" has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a "living Constitution" whose broad provisions are continually applied to complicated new situations.

## Instances of Judicial overreach and corrective actions observed

In India, the opening up of access to courts to the poor, indigent and disadvantaged sections of the nation through Public Interest Litigation, popularly known by its acronym PIL, is unexceptionable judicial activism.

From 1979, the judiciary led by the Supreme Court in India became relevant to the nation in a manner not contemplated by the makers of the Constitution and became an active participant in the dispenser of social justice.

The Court has ordered the exclusion of tourists in the core area of tiger reserves. All these managerial exercises by the Court are hung on the dubious jurisdictional peg of enforcing fundamental rights under Article 32 of the Constitution.

In reality, no fundamental rights of individuals or any legal issues are at all involved in such cases. The Court is only moved for better governance and administration, which does not involve the exercise of any proper judicial function.

Matters of policy of government are subject to the Court's scrutiny. Distribution of food-grains to persons below poverty line was monitored, which even made the Prime Minister remind the Court that it was interfering with the complex food distribution policies of government

In its most activist and controversial interpretation of the Constitution, the Supreme Court took away the constitutionally conferred power of the President of India to appoint judges after consultation with the Chief Justice, and appropriated this power in the Chief Justice of India and a collegium of four judges. In no Constitution in the world is the power to select and appoint judges conferred on the judges themselves.

## Conclusion:

The doctrine of judicial activism which justifies easy and constant readiness to set aside decisions of other branches of Government is wholly incompatible with a faith in democracy and in so far it encourages a belief that judges should be left to correct the result of public indifference it is a vicious teaching

**3. What do you understand by the concept "Contempt of Court"? Does it cover criticism of judiciary also? Does it violate the provision under Article 19(1) (a), which grants to the country's citizens a right to freedom of speech and expression? Critically examine.**

***(250 words)***

### Approach

1. **What do you understand by the concept "Contempt of Court"** ***(50 words)***
2. **Does it cover criticism of judiciary** ***(80 words)***
3. **Does it violate the provision under Article 19(1) (a). Make arguments in the favour or against with suitable examples** ***(80 words)***
4. **Conclusion** ***(40 words)***

### Hints

Judiciary enjoys a unique position in the administration of justice as the final arbiter. Its judgments have to be respected on the basis of merit, thoroughness, and impartiality. Not only have the decisions needed to be respected, but also obeyed. Therefore anything which "curtails or impairs the freedom of limits of the judicial proceedings, tends to bring the authority and administration of Law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation" is called contempt of court."

- In India the Contempt of Courts Act, 1971 covers the issues related to the contempt of court. It defines two kinds of contempt: Civil contempt and Criminal contempt.
- Civil contempt means wilful disobedience to any judgment or order of the court or beach of any undertaking given to the court.
- Criminal contempt is defined as any publication which scandalizes or lowers the authority of court, prejudices or interferes with the administration of justice or obstructs it.
- Therefore, it can be seen that criminal contempt of court includes criticism of court in its ambit, because in the criticism of the court there is an attempt to make an imprint on the minds of the people that courts are not free & fair. Such a situation may affect the administration of justice as people may not follow the judgments.
- It can be seen that the criminal contempt of court interferes with the freedom of speech and expression entailed under Article 19, but Fundamental Right u/a 19 is not an absolute right. It operates under the reasonable restrictions which include 'contempt of court'.
- However, it does not mean that anything can't be said about Judiciary and it should be treated as 'Holy Cow' as in India the Contempt of Courts Act exempts innocent publication, fair and accurate reporting of judicial proceedings, fair criticism of judicial acts and comments on the administrative side of the judiciary. Therefore, it is a fine balance between the freedom of expression and fair and impartial administration of justice.
- But the main issue is actual practice of these provisions. There has been arbitrariness in their implementation. This arbitrariness in which the contempt of court law is applied is a direct threat to Article 19. For example in Duda case in 1988 Supreme Court didn't take any action against a Union Cabinet Minister who said that SC sympathised with Zamindars and bank magnets. Whereas, Kerala CM Namboodaripad was convicted for making similar allegations in 1967. This arbitrariness is same as Sec 66a of IT Act which Supreme Court struck down.

### Conclusion:

In view of all these points it can be said that there is a need of contempt law, because ambiguous laws leaves a lot of scope for misuse and narrow interpretation.

**4. In the light of growing pendency of cases with traditional judicature, the need for alternative dispute mechanism has been felt. What are the merits and demerits of alternative dispute redressal mechanism? Also suggest measures to improve the performance of the traditional judiciary.**

***(250 words)***

**Approach**

1. **Briefly introduce the reasons behind the growing pendency of cases with traditional judicature** ***(40 words)***
2. **Examine the need for alternative dispute mechanism** ***(60 words)***
3. **What are the merits and demerits of alternative dispute redressal mechanism** ***(60 words)***

4. **Suggest measures to improve the performance of the traditional judiciary** ***(60 words)***
5. **Conclusion** ***(30 words)***

## Hints

With the steep growth in the number of laws and the number of cases, the Court system is under great pressure. To reduce the heavy demand on Court time, efforts need to be made to resolve the disputes by resorting to Alternative Dispute Resolution Methods before they enter the portals of the court. The Arbitration, Mediation and Conciliation are most important tools of Alternative Dispute Redressal System.

- Arbitration is a process in which a neutral third party or parties render a decision based on the merits of the case.
- The Process of mediation aims to facilitate the development of a consensual solution by the disputing parties. The Mediation process is overseen by a non-partisan third party - the Mediator. The authority of the mediator vests on the consent of the parties that he should facilitate their negotiations.
- Conciliation is a process by which resolution of disputes is achieved by compromise or voluntary agreement. In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator. The conciliator is in the Indian context, often a Government official whose report contains recommendations.

### Advantages of ADRM in India:

- It saves a lot of time by allowing the parties to resolve their differences/ disputes/ issues in a short period of time as compared to the excessive stint taken by the Hon'ble Courts in resolving the very same issues.
- It saves a lot of money that is disbursed on lawyers and other miscellaneous expenses that one must undergo in the process of litigation.
- It puts the parties in control by giving them opportunities to discuss their case by giving them a forum to put forth their own views and thereby giving them a chance to put themselves on a clean slate.
- Access to justice is much easier and much faster in case of ADR, because it allows people, who cannot afford fees or cannot afford to lose time, to acquire a remedy without getting into the sweat breaking system of the court.
- It focuses on the issues that are important to the people instead of just stressing upon the legal rights and obligations.
- It leads to more flexible remedies than in court, i.e. the people make agreements that the court cannot order or enforce upon.
- It keeps the disputes that are private as the same.
- It produces good results by reducing stress upon the people and satisfying them by giving them the desired results and by preserving good relationships between them.
- In courts, during the proceedings, the parties generally have a chance to appeal the decision of the judge or the verdict of a jury. In contrast to this, the grounds for court review of an award received through arbitration are very much limited. There is lesser chance for the award of arbitration to be challenged. It is final and binding on the parties thereof.

### Demerits of the ADR scheme:

- Alternative dispute resolution system may not be suitable for each dispute.
- Wastage of time/ money if the case is not resolved. In India, at least 10 percent cases in ADR finish without conclusion and many more are taken back by litigants.
- The possibility of bias is there, much more so than the judiciary.
- Limited Judicial Review;
- They are informal in nature, thus, more opportunity of abuse of power.
- Lack of power to establish legal precedents, as these are not courts of record.
- Lack of awareness and unfamiliarity with the procedure.
- **Improvement in Judicial System**
- The Niti Aayog has suggested the introduction of a 'judicial performance index' to check delay in trial and address the issue of pendency of cases. If implemented properly, it can be a big change to the present system.
- Appoint judges to the Supreme Court and High Courts, to full strength as provided by the Constitution. Next, or also, amend the constitution to have the provision of CJI+30 increased further.
- Increasing the strength of judges of the lower judiciary is a welcome step. But not parallely doing the same for the higher judiciary will cause a backlog of cases that are pushed to these courts as appeals. So, again, increase the number of judges in the higher courts. (This has been noted by the Law Commission too)
- Since appointment of judges is a cumbersome process that has needed the close attention of the collegium, it is important and necessary that a permanent judicial appointments commission be established, rather than a collegium of busy judges. Somewhat like the NJAC, yes. Six-member National Judicial Commission to select judges for higher courts.
- Increase fiscal spending on the infrastructure of the judiciary. This is something that every government (and every commission) that has considered the issue of backlog of cases has acknowledged, but has done nothing about.
- Digitization of the records of the courts.

### Conclusion:

In a developing country like India with major economic reforms under way within the framework of the rule of law, strategies for swifter resolution of disputes for lessening the burden on the courts and to provide means for expeditious resolution of disputes, there is no better option but to strive to develop alternative modes of dispute resolution (ADR) by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation and negotiation.

## 5. Paucity of Judges, especially in lower courts is critically affecting the Judiciary and Justice delivery system. Discuss, how the situation can be improved?

***(250 words)***

**Approach**

1. **Justify the fact that there is paucity of judges in country with data on vacancies and pendency of cases** ***(50 words)***

2. **Discuss the reasons behind such high paucity and vacancies** ***(80 words)***
3. **Explain the ways to bridge gap and reduce pendency** ***(80 words)***
4. **Conclusion** ***(40 words)***

## Hints

Currently, all-India vacancy in subordinate judiciary is at 26% of the sanctioned strength which is at all-time high. There are around 1,540 cases per judge. Nearly 2.6 crore cases are pending in these courts. Unless there are an adequate number of judges, speedy justice will remain a distant dream for this country.

### Reason for Paucity and Large pendency:

- **Increased Litigation:** Day by day people are getting aware of law and are becoming literate; number of cases filed every year is increasing.
- **Misuse of law:** With increased litigation, number of false cases filled has also shot up. This causes unnecessary delays. As per reports, there are approximately 1 lakh cases of dowry filed every year out of which 10 per cent are found false.
- **Low Judge-population ratio:** India has 12 judges per million. The Commission recommended it to be 107 judges per million.
- **Judicial Infrastructure:** According to Law ministry document, the number of courtrooms available for lower courts in the country is less than the sanctioned strength of judges in the subordinate judiciary. Thus, judicial infrastructure hasn't kept pace with the rate of litigation.
- **Systemic defects in the appointment process:**
  - One recruitment cycle for the post of civil judge's junior (direct recruitment) took 326.27 days on an average over the past 10 years among States that followed a three-tier recruitment cycle.
  - Exams are not conducted frequently enough to fill vacancies as they arise.
  - Even when they are, the High Courts are often unable to find enough meritorious candidates to fill the vacancies advertised.
  - Unclear recruitment procedures and difficulties in coordination between the High Courts and the State Public Service Commission also frequently give rise to disputes and litigation surrounding recruitment, further stalling the process.
- **Backlogs of government cases:** The government is the largest litigant in India, responsible for nearly half the pending cases. Many of them are actually cases of one department of the government suing another, leaving decision-making to the courts.
- **Under-**staffed court administration

### Steps to Improve situation:

- **Alternate Dispute Resolutions:** Setting up E-courts and fast track courts can escalate the process of clearing out pending cases.
- **Improving judicial infrastructure:** improvement in infrastructure of judicial system and increase the human resources at the disposal of judiciary is urgently needed. Information technology can be used to regularize the data of all the pending cases

- **Election Process:** Central Selection Mechanism to appoint lower court judges, similar to the All India Judicial Service was proposed by the Law Commission in its 116th report as part of a judicial reform package. As a national level selection process would attract a more talented pool of candidates and encourage fresh graduates to join the lower judiciary, it will make recruitment more efficient and transparent.
- **Increasing budget allocation**
- **Legislatures initiative**
  - **Scrapping of redundant laws:** obsolete and redundant laws not only create confusion among citizens but also increase pendency of cases.

### Conclusion:

Hence the judiciary to function well and for effective and efficient delivery of justice the above steps aimed at the reformation of the judicial system can be taken. These would ensure the structural and functional changes which would lead to Responsible judiciary.

## 6. Fast track courts were created with an objective of reducing the pendency in judiciary; however, it was not successful in its objective. Evaluate the statement and examine the performance of fast track courts, so far?

***(250 words)***

**Approach**

1. **Give a brief introduction about the fast track courts in India** ***(50 words)***
2. **Discuss its performance in reducing the pendency of work in judiciary** ***(80 words)***
3. **Also, mention how it has not been able to achieve its objective successfully** ***(80 words)***
4. **Conclusion** ***(40 words)***

**Hints**

To expedite justice delivery, in cases of heinous crimes and those against women, children and the elderly, the government has earmarked over Rs 4,100 crore to set up 1,800 fast-track courts to help bring down pendency of cases, one of the largest allocation of funds so far to set up such special courts. These funds will be available to states till 2020.

Fast-track courts have also been set up on the orders of various High Courts to accelerate disposal of cases on matters ranging from sexual offences, anti-corruption, riots, and cheque bouncing.

### Performance:

- According to latest information from high courts and state governments, over 32 lakh cases were disposed of by fast-track courts, out of the 39-lakh transferred to them during the first two phases.
- Experts conclude that fast track courts have been quite successful in reducing the backlog of cases.

- However, given the total backlog, this number is too small. We need fast track courts to manage more cases. In reality, rather than increasing the number of such courts, states are reducing them, out of 1500 fast track courts, working at one point of time, only about 800 are functional. This is happening due to lack of funds transfer from state governments.

### Criticism:

- In the process of trying to speed up the case, the procedural safeguards like the presumption of innocence, the right to sufficient time and facilities to prepare the defence, and the right to examine witnesses and have their own witnesses examined which an accused is entitled to goes away.
- Makes the people working on the case take shortcuts, which is unfair to both the victim and the accused.
- They also do not have more sophisticated administrative or infrastructural support than regular courts. When fast-track courts for rape cases were first propositioned, they were supposed to be accompanied by additional judges and infrastructure, like courtrooms. This never happened,
- Central funding to states for FTCs established under the 11th Finance Commission award has been discontinued with effect from April 2011
- The quality of judgments issued by fast track courts is questionable as these courts are given unrealistic targets of cases to finish. They are told not to get involved in too much technicality.
- Notably large fraction of the decisions of fast track courts has been overturned by higher courts on appeal.
- Many of the judges are retirees who are on contracts and not really accountable to the high court for any miscarriage of justice.

### Conclusion:

- Government needs to work towards rationalisation of judicial structures. In other jurisdictions such as the United Kingdom and Canada, one agency is responsible for the administration of various judicial bodies, including tribunals.
  - This ensures that different judicial authorities can be monitored centrally, that resources can be distributed among them proportionately, and that reforms can be implemented in a coordinated fashion.

## 7. What are your views on the importance of decentralization of the administration of justice? Do you think, that the Supreme Court has strayed from its original character as a Constitutional Court and gradually converted itself into a mere court of appeal?

***(250 words)***

**Approach**

1. **Briefly explain the importance of decentralization of the administration of justice** ***(50 words)***
2. **Discuss how SC has strayed from its original character** ***(80 words)***

3. **Also, mention the reasons how SC has become a court of appeal** ***(80 words)***
4. **Conclusion** ***(40 words)***

**Hints**

## Importance of decentralisation of the administration of justice:

- Decentralization by providing specialist tribunal would reduce delay, cost and techno-formal approach.
- Achieve the desired goal of reducing the inow of work in the High Courts
- Courts should be where the litigants are in large numbers, where their access is best facilitated.
- Economic democracy in the administration of justice commands a system where courts and tribunals are easy to reach, inexpensive to tap and facilitate finality of verdict. These fundamental features compel a democratic system of justice to be successful by means of decentralisation.
- If the court has too many tiers and the highest court is too distant from the regions where the proletariat live and struggle for its existence, the right to justice which is the quintessence of democracy loses its spiritual value and trivializes the other fundamental rights.

## How SC is becoming a Court of appeal:

- It often tasks itself with ruling on run-of-the-mill civil and criminal appeals. The court's docket, in fact, tends to burst with seemingly mundane disputes like rent control quarrels between landlords and tenants, factual squabbles over tax assessments etc. As a result the court's focus has wavered from questions of pure constitutional significance.
- It was believed the lower judiciary and the various high courts would be sufficiently equipped to dispense justice in these kinds of cases but that failed.
  - National Judicial Data Grid (NJDG) data shows that there is only one judge for every 73,000 people in India, a figure that is seven times worse than the United States.
- The use of exceptional Special leave petition (SLPs) under A 136 even for mundane matters.
- Entertaining Public Interest Litigation (PILs) on petty matters, which are meant only for public cause and not individual reasons
- Judicial Activism: court judgements in jurisdiction of executive and legislature leading to diversion of Supreme Court's resources
- The number of cases decided by constitution benches comprising five or more judges has steadily declined right from the Supreme Court's inception. Between 1950 and 1954, almost 15 per cent of the total cases decided by the Supreme Court were decisions of constitution benches. By the time the 1970s came around, this figure had dipped below one per cent.

The Supreme Court is still left with mostly those cases which would fall within the jurisdiction vested in it by the framers of the Constitution and covering essentially the following matters:

- All matters involving substantial questions of law relating to the interpretation of the Constitution of India or matters of national or public importance;
- Settling differences of opinion on important issues of law between High Courts or between Courts of Appeal;
- Validity of laws, Central and State;

- After the Kesavananda Bharati case, (1973) 4 SCC 217, the judicial review of Constitutional Amendments;
- Resolving conflicts between States and the Centre or between two States, as well as the original jurisdiction to dispose of suits in this regard; and
- Presidential References under Article 143 of the Constitution.
- The court acts as the ultimate arbiter on disputes concerning any interpretation of the Constitution.

### Conclusion:

- Cases which do not raise questions of national or public significance should be finally decided by intermediate courts which are to be created by an amendment to the Constitution.
- Establishment of a National Court of Appeal (NCA) that would act as an intermediate forum between the Supreme Court and the various high courts of India.
- There needs to be greater rigour involved in choosing judges. If socially conscious and meritorious women and men, who subscribe to the best constitutional values, are elevated as judges to our subordinate judiciary and the high courts, the idea of viewing the Supreme Court as a routine court of appeal can be renounced altogether.
- More robust subordinate judiciary is needed then it would not only negate any requirement on the part of most litigants to approach the Supreme Court.
- Alternative Justice Systems like Lokadalats need to be regularly held to lessen burden on lower judiciary.
- Broadly, the Constitution prescribes to the Supreme Court two types of jurisdiction: an original jurisdiction i.e. the power to entertain cases at the first instance where fundamental rights have been violated, or where a State is involved in a dispute with another State or with the Centre; and an appellate jurisdiction, where a case involving a substantial question of law requires adjudication, on appeal.

## 8. How tribunals as quasi-judicial body are different from regular courts in India? Also discuss the recommendations of Law Commission to improve the working of tribunals, which are facing the crisis of transparent appointment and functioning?

***(250 words)***

**Approach**

1. **Briefly introduce Tribunals as quasi judicial body in India** ***(50 words)***
2. **Discuss the major differences between Tribunals and regular courts** ***(80 words)***
3. **Also, mention the recommendations given by the Law Commission to resolve crisis of Tribunals** ***(80 words)***
4. **Conclusion** ***(40 words)***

**Hints**

'Tribunal' is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body.

## Difference between Tribunals and regular courts:

- Tribunals take a functional rather than a theoretical and legalistic approach. The traditional judiciary is conservative, rigid and technical. It is not possible for the courts of law to decide the cases without formality and technicality. On the other hand, administrative tribunals are not bound by the rules of evidence and procedure and they can take a practical view of the matter to decide the complex problems.
- Tribunals can take preventive measures, for example, licensing, rate fixing, etc. Unlike regular courts of law, they have not to wait for parties to come before them with disputes. In many cases, these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach of any legal provision.
- Tribunals can take effective steps for enforcement of the aforesaid preventive measures, e.g. suspension, revocation or cancellation of licenses, destruction of contaminated articles, etc. which are not generally available through the ordinary courts of law.
- In ordinary courts of law, the decisions are given after hearing the parties and on the basis of evidence on record. This procedure is not appropriate in deciding matters by the administrative authorities where wide discretion is conferred on them and the decisions may be given on the basis of the departmental policy and other relevant factors.
- Sometimes, the disputed questions are technical in nature and the traditional judiciary cannot be expected to appreciate and decide them. On the other hand, administrative authorities are usually manned by experts who can deal with and solve these problems, e.g. problems relating to atomic energy, gas, electricity, etc.

However, Tribunals in India are suffering from issues of confusion and overlapping of functions, over- tribunalisation, lack of manpower and resources, political influence, opaqueness in appointments etc. To improve the working of the tribunals, Law Commission has made following recommendations.

- There shall be uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and Members appointed in the Tribunals. While making the appointments to the Tribunal, independence shall be maintained.
- There shall be constituted a Selection Board/Committee for the appointment of Chairman, Vice-Chairman and Judicial Members of the Tribunal.
- For the selection of Administrative Member, Accountant Member, Technical Member, Expert Member or Revenue Member, there shall be a Selection Committee headed by the nominee of the Central Government, to be appointed in consultation with the Chief Justice of India.
- The Chairman of the Tribunals should generally be the former judge of the Supreme Court or the former Chief Justice of a High Court and Judicial Members should be the former judges of the High Court or persons qualified to be appointed as a Judge of the High Court.
- The terms and conditions of service, other allowances and benefits of Presiding Officer/ Member of a Tribunal (to which the jurisdiction and functions exercised or performed by the District Judges are transferred) shall be such as are admissible to a Central Government officer drawing the corresponding pay of a District Judge.

- Vacancy arising in the Tribunal should be filled up as early as possible by initiating the procedure well in time, preferably within six months prior to the occurrence of vacancy.

## Conclusion:

The Tribunals must have benches in different parts of the country so that people of every geographical area may have easy Access to Justice. Ideally, the benches of the Tribunals should be located at all places where the High Courts situate. In the event of exclusion of jurisdiction of all courts, it is essential to provide for an equally effective alternative mechanism even at grass root level. This could be ensured by providing State- level sittings looking to the quantum of work of a particular Tribunal. Once that is done, the access to justice will stand ensured.

**9. "The fatal attraction with tribunals has weakened the judiciary without any improvement in the disposal of case or in the quality of justice." Discuss.**

***(250 words)***

### Approach

1. **Introduce tribunals and their working.** ***(50 words)***
2. **Evaluate the working of tribunals and comment critically upon it.** ***(150 words)***
3. **Conclusion** ***(50 words)***

### Hints

## Tribunals and their working:

Parliament has systematically taken away important judicial functions of the High Courts and the civil courts and vested them in quasi-judicial tribunals. The stature of our High Courts has been reduced and, if this trend continues, vitally important cases will come to be decided by tribunals that are wholly controlled by the executive.

- The first blow came with the 42nd amendment to the Constitution, made during the Emergency promulgated in June 1975. On the ground that there were mounting arrears in the High Courts and there was a need to ensure speedy disposal of service and tax cases, Articles 323A and 323B were inserted. At the same time, major amendments were made to drastically curtail the powers of the High Courts under Articles 226 and 227.
- Tribunals are a multi-member body consisting of a chairman and members. They are drawn from both judicial and administrative streams and are appointed by the president. The appointment of Members is made on the basis of recommendations of a high powered selection committee chaired by a Sitting Judge of Supreme Court who is nominated by the Chief Justice of India. After obtaining the concurrence of Chief Justice of India, appointments are made with the approval of Appointments Committee of the Cabinet (ACC). It is not bound by the procedure laid down in the Civil Procedure Code of 1908. It is guided by the principles of natural justice.

## How have the tribunals fared:

- The top five central tribunals in the country have a combined backlog of over 3.50 lakh cases with the Income Tax Appellate Tribunal alone having over 91,000 pending matters, says a latest law commission report.

- National Green Tribunal (NGT) Act was passed by Parliament for effective and expeditious disposal of cases relating to environmental protection and conservation of forests, and also for giving compensation to the victims of environmental damage. NGT has received accolades and appreciation, but has also been criticized for exceeding its jurisdiction and giving "non-technical" judgments. Amid rumors of a likely amendment in the NGT Act by the Union Ministry of Environment, Forests and Climate Change to "clip its wings", it has become important to review NGT's performance.
- The ostensible reason for creating tribunals is often attributed to the huge backlog of cases and the need for specialization. However, the real reason is that tribunals are an excellent source of post-retirement opportunities for several bureaucrats and High Court judges.
- The rewards to civil servants are so enormous that the government has insisted on creating more and more tribunals, even though most of them have failed to achieve the objective of speedy and specialized disposal of cases.
- In the past, the Wanchoo Committee and the Chokshi Committee had recommended that Taxation Tribunals must be specialized benches of the existing High Courts. The two committees repeatedly emphasized that such tax benches should not be created as quasi-judicial tribunals. All these warnings went unheeded as the possibility of getting 50 post-retirement opportunities was too salivating for retired members of the Indian Revenue Service.
- One cannot have a tribunal consisting of a retired banker and a retired IAS officer to decide cases relating to bounced cheques on the ground that they are clogging the criminal justice system. These persons may have more intelligence than judges of the criminal courts, but our constitutional scheme does not permit the vesting of essential judicial power outside the judiciary.

### Following questions arise:

- Does Parliament have the legislative competence to vest intrinsic judicial functions, traditionally performed by courts, in any tribunal or authority outside the judiciary?
- Is there any limit to transferring judicial power of courts to quasi-judicial tribunals which are outside the judiciary?
- Whether creation of such quasi-judicial tribunals violate the constitutional scheme of separation of powers and independence of the judiciary?

### Conclusion:

There is no doubt that tribunals are an essential part of the justice delivery system and have an important role to play. It is necessary to ensure that tribunals are confined to disputes between citizens and government departments and are not formed to decide disputes which are essentially civil or criminal in nature.

## 10. Public Interest Litigation is one of the most important innovations by Indian judiciary. Critically evaluate its success in delivering justice to Indian masses.

***(250 words)***

**Approach**

**1. Give a brief description of Public Interest Litigation** ***(50 words)***

2. **Achievements related to it** ***(80 words)***
3. **Discuss related issues with PIL** ***(80 words)***
4. **Conclusion** ***(40 words)***

## Hints

The Use of litigation, legal action, which seeks to advance the cause of minority/disadvantage group or raises issue of broad public concern. It is a way of using the law to effect social change.

### Achievements:

- **Disadvantaged**: Given low level of legal literacy of Indian population and complexity of Indian legal system, PIL serves a great purpose to avail affordable and timely justice to the disadvantaged (under trials, child labour, and care homes. (Article 21, Article 39)
- **Democratization of justice delivery:** The imaginative judicial innovation has transformed the "Apex court of India" into Supreme Court of all Indians.
  - **Corruption:** The infamous 2G scam was unearthed by PIL filed by two individuals.
  - **Human right:** In Citizens for Democracy v/s State of Assam, the court took cognizance of human-rights violations of Terrorist and Disruptive Activities (Prevention) Act (TADA) detainees and provided remedies under Article 32.
  - **Reservation issue:** In Indira Sawhney judgment, the court upheld 27% reservation for backward castes, recognizing the age-old disability thrust upon them.

### Issue areas:

- **Frivolous cases:** Genuine cases of public interest have taken back seat and irresponsible PILs are being filed (mostly for personal vendetta).e.g., PIL regarding calling back Indian cricket team from Australia tour.
- **Violation of separation of power:** In Vishakha vs. state of Rajasthan the court directives were to be in place till appropriate laws are put in place. Here judiciary takes over legislative vacuums.
- **Flexibility leads to vagueness:** In a recent case where Supreme Court issued a directive to all states destruction of forest, on basis of situation in a particular state.
- **Ineffective implementation:** Due to plethora of PILs, it becomes difficult for court to ensure effective implementation of its orders, which leads to credibility erosion.
- **Action taken:**
- **Supreme Court guidelines:** To qualify as a PIL, certain conditions must satisfy. e.g., letter addressed by aggrieved person, a public spirited individual etc.
  - In BALCO vs. UoI, Supreme Court showed restraint not to encroach into executive domain.
- **Attorney General's recommendation:** To reject dubious PIL, with exemplary cost to cases with mollified intention. PILs, which impact important projects and socio-economic regulations, must not be entertained.

## Conclusion:

Public interest litigation (PIL) has a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation. By providing a ladder of justice to disadvantaged, it enables enforcement of diffused and collective rights and gives voice to civil society, creating a vibrant democracy. However the above mentioned issues with PIL must be addressed to preserve its sanctity.

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# NOTES

# SET-7.1: QUESTION

## JUDICIARY

**Q1. Tribunals perform an important and specialized role in justice mechanism". Briefly enlist the Constitutional provisions related to Tribunals in India. Critically analyze the role of tribunals in the Indian Judicial System.**

**Q2. Identify constitutional provision that laid down for quasi-judicial process in India. Highlight how the quasi-judicial bodies evolved? Analyze how far they have been effective by highlighting important judgments.**

**Q3. The appointments to tribunals and their functioning should remain independent of the executives influence. Do you agree? State reasons**

**Q4. There are questions being raised on transparency and accountability with respect to functioning of the Indian judiciary. Critically examine the related issues within the judiciary with recent examples.**

**Q5. The writ jurisdiction of High Courts is wider than that of the Supreme Court. Elucidate.**

**Q6. Recently there has been controversy over "Master of the Roster". What are the issues involved? Discuss the problems with current system and consequences of it. What could be the possible way-out?**

**Q7. Tribunals and Quasi-judicial bodies mostly remain understaffed and burdened with ever increasing number of cases, because of which they find it difficult to perform, functions smoothly. Highlight the problems they face and suggest some solutions.**

**Q8. While the idea of the Basic Structure to the Constitution is well established, its contents cannot be completely determined with any measure of finality until a judgment of the Supreme Court spells it out. Analyse.**

**Q9. In the light of growing pendency of cases with traditional judicature, the need for alternative dispute mechanism has been felt. What are the merits and demerits of Alternative Dispute Redressal (ADR) mechanisms? Also suggest measures to improve the performance of the traditional judiciary.**

**Q10. Indian Judiciary is alleged of judicial overreach in certain cases. Elaborate and how it is different from judicial activism? What should be the way out to ensure separation of power with adequate check and balances?**

# SET-7.1: ANSWERS

**1. Tribunals perform an important and specialized role in justice mechanism". Briefly enlist the Constitutional provisions related to Tribunals in India. Critically analyze the role of tribunals in the Indian Judicial System.**

***(250 words)***

## Approach

1. **Introduce with importance of tribunals** ***(30 Words)***
2. **Enlist the Constitutional provisions regarding tribunals** ***(30 Words)***
3. **Give some areas where tribunals are excelling** ***(60 Words)***
4. **Enlist some areas where tribunals are lagging** ***(60 Words)***
5. **Suggest some remedial measures** ***(40 Words)***
6. **Conclude with balanced views** ***(30 Words)***

## Hints

Tribunal is a quasi-judicial institution that is set up to deal with problems such as resolving administrative or tax-related disputes. It performs a number of functions like adjudicating disputes, determining rights between contesting parties, making an administrative decision, reviewing an existing administrative decision and so forth. A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes – whether or not it is called a tribunal in its title.

### Constitutional Provisions of tribunals:

- **Article 323-A** empowers Parliament to create Administrative Tribunals to adjudicate disputes regarding recruitment and conditions of service of persons appointed to public services at Union, State and local level or with any other authority within India.
- **Article 323-B** empowers parliament or state legislatures to set up tribunals for other matters like tax, labour disputes, property, land reforms, environment etc.

### Role of tribunals in the Indian Judicial System:

There has been an increasing recognition of judicial status of the Tribunals as they have developed their own distinctive identity. Tribunals were set up to reduce the workload of courts, to expedite decisions, increase the outreach of justice and to provide a forum which would consist of both lawyers and experts in the areas falling under the jurisdiction of the tribunal. While adjudicating tribunals follow the principles of natural justice.

## Areas where tribunals are excelling:

- **Speedy Justice:** The core objective of the tribunal is to deliver quick and quality justice. Since the tribunal procedure is not so complex, it is easy to decide the matters quickly and efficiently.
- **Less Expensive:** The tribunals take less time to solve the cases as compared to the ordinary courts. As a result, the expenses are reduced. On the other hand, the ordinary courts are cumbrous and slow-going, thus making litigation costly. Therefore, the administrative tribunals are cheaper than ordinary courts.
- **Quality Justice:** If we consider the present scenario, the tribunals are the best and the most effective method of providing adequate and quality justice in less time. Tribunals have expert members to deal with specific subject matters e.g. NCLT has experts in tax, NGT has environmental experts etc.
- **Reduced burden of Courts:** The system of administrative adjudication has lowered down the burden of the cases on the ordinary courts. A law commission report says that the top five central tribunals in India have taken over 3.50 lakh cases pending from the judiciary.
- **Flexibility:** The introduction of tribunals engendered flexibility and versatility in the judicial system of India. Unlike the procedures of the ordinary court which are stringent and inflexible, the administrative tribunals have a quite informal and easy-going procedure.

## Areas where tribunals are lagging:

- **Grown haphazardly:** They have grown haphazardly with lack of any overarching plan. Different tribunals constituted under different enactments are administered by different administrative departments of Central and the State Governments.
- **Judgments:** Poor judgments resulting in the case reaching SC and HCs, leading to more delay.
- **Impartiality:** Doubts about impartiality as tribunals act as extended arm of departments with retired bureaucrats appointed to it with fewer judges
- **Number of tribunals:** Growth in the number of tribunals has led to transfer of judicial powers to the executive which is against separation of power and judicial independence.
- **Clarity in proceedings:** As tribunals do not follow any uniform procedures but principles of natural justice, adjudicators are unable to have a clear understanding of the procedures to be followed.

## Suggestions to improve tribunals:

- SC has cautioned on incessant creation of tribunals. It has itself struck down the creation of a few like the National Tax Tribunal. Hence, the need is to improve the quality of tribunal justice along with balancing the powers of judiciary and executive. In this regard following steps can be taken:
- Independent supervisory body to oversee working of tribunals.
- Formulation of minimal norms of natural justice.
- Substantial questions of law before tribunals be decided by SC and HCs.
- Streamlining appointment process with greater representation to judicial members.

### Conclusion:

It is the need of the hour that the Union government shows enough will to force systemic tribunal reforms. A reform to the tribunals system in India may as well be one of the keys to remedy the age-old problem that still cripples the Indian judicial system – the problem of judicial delay and backlog. An independent autonomous body such as a National Tribunals Commission (NTC), responsible for oversight as well as administration, can go a long way in remedying issues that plague the functioning of tribunals.

## 2. Identify constitutional provision that laid down for quasi-judicial process in India. Highlight how the quasi-judicial bodies evolved? Analyze how far they have been effective by highlighting important judgments.

***(250 words)***

**Approach**

1. **What are quasi-judicial bodies with examples** ***(50 words)***
2. **Evolution of such bodies** ***(60 words)***
3. **Advantages and disadvantages of such bodies** ***(80 words)***
4. **Conclusion** ***(60 words)***

**Hints**

A Quasi-Judicial Body is an entity such as an arbitrator or a tribunal, generally of a Public Administrative Agency, which has powers and procedures resembling that of a Court of Law or Judge, and which is obliged to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or to impose legal penalties, and may affect the legal rights, duties or privileges of specific parties.

### Some examples of Quasi-Judicial Bodies in India are as follows:-

- Election Commission of India.
- Income Tax Appellate Tribunal.
- Intellectual Property Appellate Tribunal.
- Telecom Dispute Settlement and Tribunal.

### Constitutional provisions and Evolution of Tribunals in India

- Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A, which has only two articles viz. 323-A and 323-B. While article 323-A deals with Administrative Tribunals; article 323-B deals with tribunals for other matters.
- According to Article 323A, administrative tribunals can adjudicate the disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts at Union Level, State Level as well as any local or other authority within the territory of India

- Article 323 B empowers the parliament or state legislatures to set up tribunals for matters other than those mentioned above. The matters to be covered by such tribunals are as follows:
- Levy, assessment, collection and enforcement of any tax, Foreign exchange, import and export across customs frontiers; Industrial and labour disputes;
- Matters connected with Land reforms covered by Article 31A etc.

## Advantages of Quasi-Judicial Bodies

- **Low Cost:** In the conventional judicial process, a large section of the populace for the fear of expenditure, may hesitate from approaching the Courts, thus defeating the purpose of justice. Tribunals on the other hand, have an overall low cost which encourages people to seek redressal for their grievances.
- **Simplicity:** Tribunals and other such bodies do not follow any lengthy or complex procedure for submitting application or evidence etc.
- **Expert Knowledge:** A tribunal comprises of experts, who can easily understand the technicalities of a case, the necessary actions involved and their consequences.
- **Reduction of Workload:** Tribunals while taking up specific matters, majorly help by sharing the massive workload of the Judiciary. In a country which has 2.81 crore pending cases, it is important to take steps to decrease the burden of the Judiciary.

## Disadvantages of Quasi-Judicial Bodies

- The unfair imbalance between represented and unrepresented parties as the richer parties has a better chance at representation when compared to the ones with limited resources at their disposal.
- While lower costs of Tribunals encourage people to fight for justice, they also invite a lot of ill founded claims.
- Many a times the decision given by a Tribunal is challenged in a High Court by the losing party. This inevitably puts the burden on the Judiciary, which defies the purpose of Tribunals.

## Conclusion:

Though the concept and working of Tribunals and Quasi Judicial Bodies is still new to our country, they mostly remain understaffed and burdened with the ever increasing number of cases, because of which they find it difficult to perform their functions smoothly. The backbone of the problem lies in the fact that with half the manpower of the Judiciary, these bodies are expected to perform an almost equal amount of work. Despite such odds, Quasi Judicial Bodies are a great help to the nation and have substantially decreased the burden of the Judiciary.

Therefore, the Government needs to address this issue by enabling sufficient number of appointments at various Quasi Judicial Bodies. However, as a foolproof appointment mechanism plays a crucial role in ensuring quality, the Government is duty bound to provide for the same. Only then can India's Quasi Judicial Bodies expedite not only the resolution of disputes but also dispensation of justice.

## 3. The appointments to tribunals and their functioning should remain independent of the executives influence. Do you agree? State reasons

***(250 words)***

## Approach

1. **Brief introduction of judicial independence and its importance** ***(50 words)***
2. **How the independence is being threatened in case of tribunals** ***(80 words)***
3. **Conclusive evidences suggesting need for more autonomy to tribunals** ***(70 words)***
4. **Conclusion** ***(50 words)***

## Hints

The principle of judicial independence traces its origins from the doctrine of separation of powers. Often, ministries are parties before the very tribunals whose staff, finances, and administration they handle. This is further problematical by a revolving door between ministry bureaucracy and tribunal posts. Therefore, it is crucial to assess tribunal independence based on the following parameters:

### Appointment of members

NCLT Case observed that selection committees are often not independent, since secretaries of the sponsoring department are a part of them.75 Moreover, several department bureaucrats are appointed as tribunal members, continuing their lien with the parent cadre. Since departments also fund and assist with the day to day administration of these tribunals, it creates a clear conflict of interest when decisions by these departments are challenged in the tribunals they administer.

NCLT Case also held that selection committees should have an equal number of judicial and executive members, with the casting vote reserved for the senior-most judicial member. Of 37 tribunals analysed (excluding the five inter- state water dispute tribunals), 18 tribunals have selection committees, while 14 do not. Amongst the 18 tribunals, three do not have any judicial members in their selection committees. 13 tribunals have selection committees where executive members are more than judicial members.

### Removal of members

Since the procedure for removal of members lies with the executive, there exists a possibility of influencing the decisions passed by the tribunals. While judges in the Supreme Court and High Courts need to be impeached (which requires an absolute majority in each house of Parliament), no such safeguard exists for tribunal members. This is despite certain tribunals supplanting the role of High Courts. In this regard, both the grounds and manner of removal are equally important. The 74th Parliamentary Standing Committee recommended that there must be uniformity not only in the grounds of removal but also in the procedure of removal.

### Reappointments

Out of the 37 tribunals analysed, only five tribunals have expressly barred reappointment. However, 15 tribunals contain no provision on reappointment. Arguably, this creates a situation of ambiguity where reappointment of members is potentially possible.

## Nodal ministry

Tribunals are entirely dependent on their nodal ministries for their day to day functioning. These ministries can compromise the functioning of the tribunal by providing inadequate resources with the aim of arm-twisting the tribunal into passing favourable orders or not able to function at all. For example, the apathy of central government in filling up the vacancies in the NGT has compromised the functioning of the tribunal severely. Since 2017, the lack of adequate judicial and expert members in the principal and zonal benches of the NGT has either resulted in those benches being shut down, or has rendered them incapable of passing decisions.

## Proclivity to appoint judges/bureaucrats

A particularly worrying trend noticed in the staffing of tribunals is the proclivity of the central government to select retired judges and bureaucrats to head these institutions. Such a trend has been criticised since it is seen as having the potential to compromise the independence of the judiciary. This is because such post retirement options act as 'perverse incentives' to toe the executive line when deciding high stake cases against the government. In addition they cast doubt on the institutional integrity of the tribunals to which such judges are appointed.

## Need for more autonomy- Suggestions

- Law commission in a strong message to the government that appointments to tribunals and their functioning should remain independent of the executive's influence, the Law Commission of India has recommended that a Committee led by the Chief Justice of India should be in charge of the appointments of Chairman, Vice-Chairman and Judicial Members of the various central tribunals, which form a pillar of the country's justice delivery system. The Commission has suggested a common nodal agency, possibly under the Law Ministry, to both monitor the working of the tribunals and to ensure uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and members.
- An independent autonomous body such as a National Tribunals Commission, responsible for oversight as well as administration, can go a long way in remedying issues that plague the functioning of tribunals. In a recent case, the Supreme Court has once again taken up the mantle of pushing reform. It recognised the need to revisit the tribunals system and accepted the recommendations that broadly approved the concept of an autonomous oversight body for the administration and regulation of tribunals in the country.

## Conclusion:

The pressing need for speedy disposal invites the involvement of the executive in setting up and administering tribunals, providing funds, staff and infrastructure. However, as a frequent litigant before these tribunals, the government stands in a dubious position of administration and oversight. This issue of separate and accountable governance of tribunals has led to them operating in a state of dysfunction and flux, often subject to constitutional challenges. Supreme Court judgements in the L Chandra Kumar case (1997), the R Gandhi case (2010), and the Madras Bar Association case (2014) offer a blueprint for India's tribunal's framework, explaining their constitutional status and relationships with the judiciary and executive. And thus they need to be implemented in right spirit.

**4. There are questions being raised on transparency and accountability with respect to functioning of the Indian judiciary. Critically examine the related issues within the judiciary with recent examples.**

***(250 words)***

## Approach

1. **Introduce the topic with highlighting importance of transparency within judiciary** ***(40 words)***
2. **Explain the issues of transparency within judiciary** ***(70 words)***
3. **Elaborate how accountability and independence contradicts in some situations** ***(40 words)***
4. **Suggest measures to overcome issues** ***(60 words)***
5. **Conclude the debate with some positive views** ***(40 words)***

## Hints

Accountability is the sine qua non of democracy. Transparency facilitates accountability. No public institution or public functionary is exempt from accountability although the manner of enforcing accountability may vary depending upon the nature of the office and the functions discharged by the office holder. The judiciary, an essential wing of the State, is also accountable. The courts in India enjoy virtually absolute power than any Court in the world. So it is vital that judges of the superior judiciary be accountable for their performance and their conduct.

### Issues of transparency within judiciary:

- Appointments and transfers within the higher judiciary still remain a mystery. It is almost as though the Supreme Court Collegium has many paths to opacity that can exist in the appointments process. It is increasingly being perceived that judicial appointments have too often been made in an ad hoc and arbitrary manner.
- CJI acting as master of roaster allocates cases at his own discretion. The allegations of some particular judges repeatedly being allocated cases concerning the present government drew criticism over allocation of cases.
- Judiciary being repeatedly reluctant to get under RIT set up bad precedence as political parties got a chance to escape by making judiciary as a shield.
- In the Medical Council of India scam case, Judges being judges of their own case was seen as a conflict of interest. Hence it degraded the legitimacy of the judicial process.
- Then-Chief Justice of India (CJI) Dipak Misra recommended the impeachment of Allahabad High Court judge Shri Narayan Shukla on charges of misconduct and judicial impropriety, after an in-house committee of judges found “sufficient substance” in allegations against him. Still no judge till date has been impeached by the parliament.
- The Supreme Court in Manohar s/o Manikrao Anchule v. State of Maharashtra & Anr stated that it is undoubted that transparency is important or rather say sine qua non to democracy, and if an authority is made accountable, probability of errors becomes less The protection of Rule of Law in the country has also been assigned to the bold and independent judiciary, for which the judiciary needs to be transparent and constitutionally sound.

### Conflict between Accountability and independence:

- As per description given on the blog Ratio Juris, “judicial independence and judicial accountability seem to pull in opposite directions.“

- There is a lack of accountability if a judge is completely independent.
- On the other side, a completely accountable judge may feel pressured to rule in ways that please those to whom the judge is accountable.
- For example, some are of the view that the judicial elections are a good tool for keeping judges accountable while others argue that forcing judges to campaign puts undue pressure on them to bend to the will of voters and campaign contributors.
- To strike the correct balance between independence and accountability, many opinions have emerged on the way.

## Suggestive Measures:

- **Judicial selection and appointment:** Appointment of judges using transparent and open processes helps protect judges from undue external influences that may be exerted by the other branches of government or interest groups. Likewise, transparency helps ensure the selection of candidates that meet the basic international standards for qualifications, including high professional standing and the necessary legal skills and experience.
- **Judicial financial disclosures**: Includes public officials file asset and income disclosure statements. Such disclosures have been a key element of anti-corruption efforts worldwide. Build trust in public administration, including the judiciary.
- **Publication of court statistics**: The gathering, analysis, and sharing of statistical information is another important way of increasing judicial transparency. Such information makes it possible to analyze performance, identify achievements, detect problems and, design strategies to solve them.
- **Access to the courts by citizens and the press**: Public access to the courts, including through the media, is important to publicize the work the judiciary is doing. Such access can include the recording of court sessions by video, audio or transcription.
- **Publishing judicial decisions**: Access to decisions of the Supreme Court of Justice is particularly relevant since those decisions transcend the cases at issue and affect government institutions and actions more broadly. Such decisions may address matters relating to the rights of individuals or the obligations of the state and thus have a critical influence on the ways in which citizens' rights are understood and protected.
- **Scope for an independent committee and a Public website**: Having an independent committee that decides over issues such as a judge misbehaving or having no work ethic. The committee can issue warnings in written forms and temporary suspensions or even fine the judges to discipline them and then impeachment as the last procedure can be adapted.

## Conclusion:

Judges, undoubtedly, require protection from being sued for their judicial decisions so as to be able to "do the duty with complete independence and free from fear" and hence require independence and supremacy in their functioning. Meanwhile it is imperative to have a transparent system within the judiciary itself to deal with cases of judicial misconduct and to infuse the idea of judicial accountability. The best way to salvage this is to open up the court. A judiciary that is confident of itself and of its place in the democratic republic should not be worried about subjecting judicial appointments to public scrutiny.

**5. The writ jurisdiction of High Courts is wider than that of the Supreme Court. Elucidate.**

***(250 words)***

## Approach

1. **Briefly introduce Writ jurisdiction** ***(60 words)***
2. **Explain Types of Writ .How writ jurisdiction of High court is wider than Supreme court** ***(140 words)***
3. **Conclusion** ***(50 words)***

## Hints

- The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo-warrento and certiorari for the enforcement of the fundamental rights of an aggrieved citizen. Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. Article 226 of the Constitution empowers a high court to issue writs for the enforcement of the fundamental rights of the citizens and for any other purpose.
- In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. As high courts are also empowered to issue writs for the enforcement of the Fundamental Rights, it signifies that when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

### Types of Writs

- **Habeas Corpus:** It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention.
- **Mandamus:** It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.
- **Prohibition:** It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- **Certiorari:** It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.
- **Quo-Warranto:** It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

### How writ jurisdiction of High court is wider than Supreme Court

- **According to article 226** every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

- Article 226 makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
- The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.
- The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose. The High Court can also issue writs for the enforcement of an ordinary legal right. Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of high court.
- A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other hand, a remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction.

### Conclusion:

Thus, the constitutional remedies provided under the constitution operate as a check and keeps the administration of government within the bounds of law. Safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdictions which is wider for High Court as compared to the Supreme Court of India.

## 6. There has been controversy over "Master of the Roster". What are the issues involved? Discuss the problems with current system and consequences of it. What could be the possible way-out?

***(250 words)***

**Approach**

1. **Briefly elaborate on "Master of Roster"** ***(30 words)***
2. **Explain current issue over mater of Roaster** ***(70 words)***
3. **Problems with current system** ***(70 words)***
4. **Consequences** ***(50 words)***
5. **Conclusion** ***(30 words)***

**Hints**

"Master of the Roster" is a well settled convention related to court administration. It refers to the privilege of the Chief Justice to constitute Benches to hear cases. It is important practice for maintaining orderly transaction of business.

## Issues Involved:

Biggest issue related to 'Master of roster' practice is non-adherence of values and principles behind the rule.

- Power is increasingly being centralized in hands of CJI.
- There have been instances of assigning cases of far-reaching consequences for the nation and the institution selectively to the benches "of CJI's preference" without any rational basis for such assignment.
- Few judges were not being allocated sensitive cases despite their seniority.
- Sanctity of Supreme Court is getting tainted in the process.
- While the recent development could be largely because of actions of CJI of the time, it is the loopholes in the practice that is allowing such possibilities.

## Problems with current system:

There are few factors that have put this model under severe strain.

- Currently. Supreme Court has 26 judges, who predominantly sit in benches of two. Chief Justice of India has prerogative in determining which judges will hear and decide a case.
- The rise of public interest litigation has diluted the practice of strict adherence to the legal text, and the Court's habit of sitting in multiple small benches has undermined the gravitational pull of precedents.
- Supreme Court is dealing with a massive backlog of cases. The Chief Justice has the power to "list" cases for hearing. Given the huge backlog, this simple administrative function becomes a source of significant power.
- The Second Judges Case of 1993, laid the foundations of the collegium system, is also premised on the idea that all power, even administrative, in such an important court, must not rest on the discretion of just one node, or the Chief Justice. But in the present mechanism of the roster, power had concentrated in the hands of CJI.

## Consequences:

- History tells us that institutions that become over-reliant upon single individuals inevitably decay.
- Though CJI is "first among equals", but master behaviour of CJI is undermining equality in court. This led to serious contravention of opinions among judges and Justice System will be on anvil.
- Trust of common man deteriorating from judicial system due to contradictions and controversies in system.

## Conclusion:

- In a legal system where a significant percentage of the judges of the Court sit on every case, there should be at least a surface consensus about the interpretive philosophy that judges use to decide cases.
- All cases must be heard within a short period of time.
- Chief Justice's power as Master of the Roster should be purely administrative.
- However, in our system, where none of these three conditions obtain, this harmless administrative power has transformed itself into a significant ability to influence the outcomes of cases.

Thus, there is an immediate need to bring reforms which will keep accountability and transparency of offices without compromising judicial independence.

**7. Tribunals and Quasi-judicial bodies mostly remain understaffed and burdened with ever increasing number of cases, because of which they find it difficult to perform, functions smoothly. Highlight the problems they face and suggest some solutions.**

***(250 words)***

## Approach

1. **Substantiate the understaffing and pendency in quasi-judicial bodies with data** ***(50 words)***
2. **Difficulties it poses to functioning of such bodies** ***(70 words)***
3. **Measures to reduce the problems** ***(80 words)***
4. **Conclusion** ***(50 words)***

## Hints

Judicial tribunals are supposed to speed up the legal process. But in India there is growing concern that they often do just the opposite. Recently, Prime Minister Narendra Modi too drew attention to the low rate of disposal of cases by tribunals and said there was a need to ascertain whether these institutions were delivering justice or were acting as a "barrier" to it.

According to the Parliamentarians' Forum on Economic Policy Issues, a parliamentary panel, as on December 31, 2014, 1.55 lakh cases were pending at the Central Administrative Tribunal, 99,349 at the Income Tax Appellate Tribunal, 96,039 at the Customs, Excise and Service Tax Appellate Tribunal and 44,756 cases at the Railway Claim Tribunal. "The pendency at these tribunals has defeated the purpose for which they were created - as parallel to the high courts," the parliamentary panel said in a report.

In the past the Supreme Court has come down heavily on the problem of the over dependence on the "parent ministry" and on two separate occasions - in the Chandra Kumar vs The Union of India &Ors (1997) case and the Union Of India vs R. Gandhi (2010) case - it ordered the law ministry to take over their functioning in a bid to give them some uniformity and independence. However, successive governments chose to ignore the order.

For example, the Central Administrative Tribunal (CAT), which adjudicates recruitment and service related cases, is functioning at half its sanctioned strength, as 31 of the 66 sanctioned posts of members are lying vacant. This, a parliamentary standing committee said, is leading to mounting backlog of cases. "The committee is constrained to observe that even after 30 years of its establishment, CAT lacks human as well as physical infrastructure. Because of this, 14 of the 17 Benches are not fully functional," the committee said in its report.

Echoing the same view, Justice Chandrachud of Supreme court says: "Recruitment is not properly regulated in tribunal, the presiding officer has no control over non-judicial staff", and gave the example of the National Consumer Disputes Redressal Commission (NCDRC). Justice Chandrachud also said that non-judicial members, along with judicial members, play an important role in the administration of tribunals.

### Problems faced by tribunals

There's hardly any utility of tribunals since their judgments are subject to judicial review. So, instead of ensuring speedy justice, tribunals lengthen the judicial process unnecessarily.

Tribunals do not enjoy any independence as they are under the direct control of the respective ministries. In most cases, even their administrative and technical members are appointed by the executive.

There is no uniformity in the way they are administered

The constitutionality of many of these tribunals has been mired in controversy. For example, Madras High Court struck down key provisions of the Intellectual Property Appellate Board, established under the Trade Marks Act, 1999, as unconstitutional.

There are structural barriers specific to tribunals too. "For example, the Law Commission's report on environmental courts had suggested one such court in every state to ensure easy access to all citizens. However, the NGT has only five benches and no other courts can entertain any environmental litigation. For a country the size of India, just five benches serve little purpose

### Measures

Law commission in a strong message to the government that appointments to tribunals and their functioning should remain independent of the executive's influence, the Law Commission of India has recommended that a Committee led by the Chief Justice of India should be in charge of the appointments of Chairman, Vice-Chairman and Judicial Members of the various central tribunals, which form a pillar of the country's justice delivery system.

An independent autonomous body such as a National Tribunals Commission, responsible for oversight as well as administration, can go a long way in remedying issues that plague the functioning of tribunals.

Legatt Committee in United Kingdom was set up to study the working of Tribunals in that country because it had faced similar problem. It's report recommended that tribunals should be brought together into a single system, administered by a new Tribunals Service. India can learn from this to at least handle the staffing problem at the tribunals.

In a large-scale reform of tribunals, the Finance act, 2017 sought to reduce the number of these quasi-judicial bodies and bring parity in the service conditions of their officials. A total of eight tribunals including Competition Appellate Tribunal, Cyber Appellate Tribunal and the Copyright Board will be merged into other existing tribunals. This is a very important first step towards administrative streamlining of tribunals.

### Conclusion:

Hence the tribunal's ways and means can become more efficient and efficacious in ensuring the resolving of the disputes. The changes above can ensure the structure and functioning of the tribunals for the public and national interests.

## 8. While the idea of the Basic Structure to the Constitution is well established, its contents cannot be completely determined with any measure of finality until a judgment of the Supreme Court spells it out. Analyse.

***(250 words)***

**Approach**

**1. Briefly introduce the idea behind basic structure doctrine.** ***(40 words)***

2. **Discuss the key contents covered under the Basic Structure doctrine.** ***(40 words)***
3. **Analyse why only the judicial wing has veto in determining Basic structure.** ***(40 words)***
4. **Is the doctrine serving as an obstacle in the face of its undefined nature?** ***(100 words)***
5. **Conclusion** ***(30 words)***

## Hints

The basic structure doctrine is a common law legal doctrine that the constitution of a sovereign state has certain characteristics that cannot be erased by its legislature. It was developed by the Supreme Court of India in a series of constitutional law cases in the 1960s and 1970s that culminated in Kesavananda Bharati v. State of Kerala, where the doctrine was formally adopted.

### The idea behind basic structure doctrine

- Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. But the Supreme Court has acted as a brake to the legislative enthusiasm of Parliament ever since independence.
- With the intention of preserving the original ideals envisioned by the constitution-makers, the apex court pronounced that Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending it. The phrase 'basic structure' itself cannot be found in the Constitution.
- The Supreme Court recognized this concept for the first time in the historic Keshavananda Bharati case in 1973. Ever since the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by the Parliament.

### Key contents covered under the Basic Structure Doctrine:

- The ideology behind basic structure is the assumption that 'We the people' have given only limited rights to the Parliament. Hence, the Parliament cannot convert them to unlimited rights. Supreme Court has implied that the Parliament is only a creature of the Constitution not its master.
- Some contents of the basic structure are - Supremacy of the Constitution, Parliamentary Democracy, Separation of power between the three arms, Federal Character, Secularism, Dignity of individual, Sovereignty of India, Free and Fair elections, Independence of Judiciary, and Rule of Law.

### Why only Judicial wing has veto in determining Basic structure:

- The basic structure is deeply rooted in the Constitution's text and history. It possesses substantial moral value, in that it strengthens democracy by limiting the power of a majoritarian government to undermine the Constitution's central ideals.
- While this promotes judicial activism, it also opens up instances of judicial overreach, thus harming the balance of power (between the Legislature and the Judiciary).

### Is the doctrine serving as an obstacle in the face of its undefined nature?

- The Indian Parliament's power to alter the Constitution had been considered plenary. If the legislature were bestowed with the widest of powers to amend the Constitution, its authority should be subject to a set of inherent constraints. Parliament was after all, a creature of the Constitution. It could not, therefore, make changes that had the effect of overthrowing or obliterating the Constitution itself.
- Since the law making power of the legislature is extensive - so is the interpretation scope of the Judiciary. This is why the basic structure is yet undefined comprehensively.
- That being said, this undefined territory has often posed limit to the application of directive principles and other socio-economic measures. The legislature is always at fear that its law may not see the execution phase - could be struck down by the Judiciary.

### Conclusion:

The separation of power is the cornerstone of Parliamentary democracy. For a developing nation such as India, the goal of socio-economic development requires all out and co-joined efforts put forth by the Judiciary and the Legislature. This can happen only when the organs of the state strive together in the common pursuit upholding the constitutional values.

## 9. In the light of growing pendency of cases with traditional judicature, the need for alternative dispute mechanism has been felt. What are the merits and demerits of Alternative Dispute Redressal (ADR) mechanisms? Also suggest measures to improve the performance of the traditional judiciary.

***(250 words)***

**Approach**

1. **Introduce the topic with situation of pendency cases within the judiciary and need of alternative dispute resolution** ***(50 words)***
2. **Elaborate merits ADR** ***(50 words)***
3. **Elaborate demerits ADR** ***(50 words)***
4. **Suggest measures to improve traditional judiciary** ***(70 words)***
5. **Conclude with some positive views** ***(30 words)***

**Hints**

- India now has almost 4 crore pending cases spanning the Supreme Court, various high courts and the numerous district and subordinate courts, according to written replies submitted by the Ministry of Law and Justice in Parliament. The primary reason for growing pendency of cases is that the number of new cases filed every year has outpaced the number of disposed of cases. This has resulted in a growing backlog of cases. This situation urges disputes to be settled by resorting to Alternative Dispute Resolution Methods before they enter the portals of the court.
- The Arbitration, Mediation and Conciliation are the most important tools of Alternative Dispute redressal System.

## Advantages of ADR in India

- It saves a lot of time by allowing the parties to resolve their differences/ disputes/ issues in a short period of time as compared to the excessive stint taken by the Hon'ble Courts in resolving the very same issues.
- It saves a lot of money that is disbursed on lawyers and other miscellaneous expenses that one must undergo in the process of litigation.
- It puts the parties in control by giving them opportunities to discuss their case by giving them a forum to put forth their own views and thereby giving them a chance to put themselves on a clean slate.
- Access to justice is much easier and much faster in case of ADR, because it allows people, who cannot afford fees or cannot afford to lose time, to acquire a remedy without getting into the sweat breaking system of the court.
- It focuses on the issues that are important to the people instead of just stressing upon the legal rights and obligations.
- It leads to more flexible remedies than in court, i.e. the people make agreements that the court cannot order or enforce upon.
- It keeps the disputes anonymous to public that are private in nature. Hence maintaining privacy in sensitive matters.
- It produces good results by reducing stress upon the people and satisfying them by giving them the desired results and by preserving good relationships between them.
- In courts, during the proceedings, the parties generally have a chance to appeal the decision of the judge or the verdict of a jury. In contrast to this, the grounds for court review of an award received through arbitration are very much limited. There is a lesser chance for the award of arbitration to be challenged. It is final and binding on the parties thereof.

## Demerits of the ADR scheme

- Alternative dispute resolution systems may not be suitable for each complex dispute.
- Wastage of time/ money if the case is not resolved. In India, at least 10 percent cases in ADR finish without conclusion and many more are taken back by litigants.
- The possibility of bias is there, as adjudicators are not necessarily competent and trained at par with the judiciary, they may lack integrity.
- It lacks judicial oversight, hence the threat of not getting complete justice.
- They are informal in nature, thus more opportunity for abuse of power.
- ADR judgements lack power to establish legal precedents, as these are not courts of record.
- Most of the people have a lack of awareness and unfamiliarity with the procedure of ADR.

## Suggestions for necessary improvement in Judicial System

- The Niti Aayog has suggested the introduction of a 'judicial performance index' to check delay in trial and address the issue of pendency of cases. If implemented properly, it can be a big change to the present system.
- Appoint judges to the Supreme Court and High Courts, to full strength as provided by the Constitution. Next, or also, amend the constitution to have the provision of CJI+33 increased further.

- Increasing the strength of judges of the lower judiciary is a welcome step. But not parallelly doing the same for the higher judiciary will cause a backlog of cases that are pushed to these courts as appeals. So, again, increase the number of judges in the higher courts. (This has been noted by the Law Commission too)
- Since appointment of judges is a cumbersome process that has needed the close attention of the collegium, it is important and necessary that a permanent judicial appointments commission be established, rather than a collegium of busy judges. Somewhat like the NJAC, yes. Six-member National Judicial Commission to select judges for higher courts.
- Increase fiscal spending on the infrastructure of the judiciary. This is something that every government (and every commission) that has considered the issue of backlog of cases has acknowledged, but has done nothing about.

### Conclusion:

In a developing country like India with major economic reforms under way within the framework of the rule of law, strategies for swifter resolution of disputes for lessening the burden on the courts and to provide means for expeditious resolution of disputes, there is no better option but to strive to develop alternative modes of dispute resolution (ADR) by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation and negotiation

## 10. Indian Judiciary is alleged of judicial overreach in certain cases. Elaborate and how it is different from judicial activism? What should be the way out to ensure separation of power with adequate check and balances?

***(250 words)***

**Approach**

1. **Introduce the topic with the term of judicial overreach and judicial activism** ***(50 words)***
2. **Explain Judicial Overreach with examples** ***(60 words)***
3. **Explain Judicial Activism with examples** ***(60 words)***
4. **Suggest measures to ensure system of checks and balances** ***(40 words)***
5. **Conclude with some balanced views** ***(40 words)***

**Hints**

- Judicial activism denotes a more active role taken by Judiciary to dispense social justice. It implies going beyond the normal constraints applied to jurists and the Constitution, which gives jurists the right to strike down or make any legislation or rule against the precedent if it goes against the Constitution. It is premised upon the fact that judges assume a role as independent policy makers or independent "trustees" on behalf of society that goes beyond their traditional role as interpreters of the Constitution and laws.
- Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government, i.e., the judiciary crosses its own function and enters the executive and legislative functions. Judicial overreach is considered undesirable in a democracy.

## Judicial Activism and examples:

- Judicial activism denotes a more active role taken by Judiciary to dispense social justice. When we speak of Judicial Activism, we point fingers to the invented mechanisms which have no constitutional backing (Eg: Suomoto (on its own) cases, Public Interest Litigations (PIL), new doctrines etc).
- Invention of the 'basic structure doctrine' in the 'Kesavananda Bharati case' (1973) by which the Supreme Court further extended the scope of Judicial Review.
- Incorporation of due process of law instead of procedure established by law, collegium system, institutionalization of PIL, banning smoking in public places based on PIL, the order by Supreme Court in 2001 to provide mid-day meals to schoolchildren, the order passed by the National Green Tribunal (NGT) banning diesel trucks older than 10 years in Delhi etc.

## Judicial Overreach and examples:

- What makes any action activism or overreach is based upon the perspective of individuals. The line between Judicial activism and Judicial Overreach is very narrow. In simple terms, when Judicial activism crosses its limits and becomes Judicial adventurism it is known as Judicial Overreach. When the judiciary oversteps the powers given to it, it may interfere with the proper functioning of the legislative or executive organs of government.
- Striking down the NJAC bill and the 99th Constitutional Amendment, the order passed by the Allahabad High Court making it compulsory for all Bureaucrats to send their children to government school, misuse the power to punish for contempt of court etc. are considered as Judicial Overreach.
- Judiciary overseeing the functioning of BCCI where many other important cases are pending, making unnecessary orders to make national anthem compulsory at cinema halls, banning alcohol shops on national and state highways were seen as judicial overreach.
- In Judicial overreach arbitrary, unreasonable and frequent interventions are made by the judiciary into the legislature's domain, often with the intention of disrupting the balance of powers between executive, legislature and judiciary.

## Measures to ensure system of checks and balances:

- The Supreme Court is the custodian of the constitution that checks any overreach by legislature and executive. Therefore, the judiciary should lead to the adherence of maintaining constitutional morality by avoiding overreach by itself.
- Judicial restraint can be best practiced. And NJAC can be considered to bring more transparency than the collegium system.
- Judicial review forms an important part of checks and balances. Judicial activism, and in that process overreach are the outcomes of legislature or executive gaps and delays. This makes the courts step in and fill the void. However, courts should maintain a self-restrain from overreaching as it goes against the doctrine of separation of powers.
- At the same time, the legislature and executive must not leave such scope for the judiciary to intervene. It would be in the interest of the country if judges understand this and don't encroach upon other's jurisdiction.

## Conclusion:

Judiciary at times reacted proactively in the larger interest of the society but it must also respect the other organs of the state namely legislature and executive by working within its constitutional limits. It can be rightly argued that legitimate judicial intervention is one which clearly falls within the permissible scope of judicial review.

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# NOTES

# SET-8: QUESTION

## SYSTEM OF GOVERNMENT

**Q1. "Federalism seemed to have provided an institutional arrangement to accommodate India's pluralist socio-political character." Explain.**

**Q2. The scheme of distribution of legislative subject between Centre and state is either modified or suspended in abnormal times. In light of the above statement, elaborate with the areas where the Parliament legislates in a state's field during abnormal times.**

**Q3. Generally, one associates emergency with war or aggression. But, the emergency of June 1975 was imposed because of the perceived threat of internal disturbance. Critically evaluate the consequences and the lessons learnt of emergency for Indian democracy.**

**Q4. Unlike the constitutional symmetry of American federalism, Indian Federalism has been constitutionally asymmetric. The intention behind such an arrangement was to help meet specific needs and requirements of the sub-units. Discuss how far this philosophy of the Constitution has been beneficial to the spirit of federalism.**

**Q5. Discuss the thinking that went into choice of parliamentary system of government by the makers of Indian Constitution. Do you think that the parliament has stood up to those expectations?**

**Q6. Article 356 has become, 'a tool of political revenge and instrument of dominance over federal units'. In the light of the above statement, discuss constitutional provisions for President's rule?**

**Q7. Examine the need for establishing a permanent Inter-state Council. Discuss the main functions of Inter-state Council as envisaged under Article - 263 of the Indian Constitution. Highlight the recommendations of the Sarkaria Commission in this regard.**

**Q8. Coalition governments are usually of a temporary alliance and hence they impose constraints on policy making. Critically examine the role of coalition governments in Indian democracy by giving suitable examples.**

**Q9. Unless the concerns of states and intra-regional disparity are addressed, the fault lines in the Indian federation could deepen which could lead to multiple demands for new states. Discuss.**

**Q10. Cooperative federalism has lost its relevance in the wake of competitive federalism". Examine. Also bring out how a middle ground is needed between the two ideas for holistic national development.**

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# SET-8: ANSWERS

**1. "Federalism seemed to have provided an institutional arrangement to accommodate India's pluralist socio-political character." Explain.**

***(250 words)***

## Approach

1. **Introduce the term "federalism".** ***(50 words)***
2. **Discuss institutional arrangements under constitution providing for federalism.** ***(130 words)***
3. **Explain how the above institutional arrangement is needed for accommodation of India's pluralist socio-political character.** ***(50 words)***
4. **Conclusion** ***(20 words)***

## Hints

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the national government and the regional governments. A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.

- In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.
- Britain, France, Japan, China, Italy, Belgium, Norway, Sweden, Spain and so on have the unitary model of government while the US, Switzerland, Australia, Canada, Russia, Brazil, Argentina and so on have the federal model of government.

### The federal features of the Constitution of India are explained below:

- **Dual Polity:** The Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with the matters of national importance like defense, foreign affairs, currency, and communication and so on. The state governments, on the other hand, look after the matters of regional and local importance like public order, agriculture, health, local government and so on.
- **Written Constitution:** The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. At present (2016), it consists of a Preamble, about 465 Articles (divided

into 25 Parts) and 12 Schedules. It specifies the structure, organization, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

- **Division of Powers:** The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 100 subjects (originally 97), the State List 61 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (i.e., which are not mentioned in any of the three lists) are given to the Centre.
- **Supremacy of the Constitution:** The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must confirm to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.
- **Rigid Constitution:** The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre–state relations and judicial organization) can be amended only by the joint action of the Central and state governments. Such provisions require for their amendment a special majority of the Parliament and also an approval of half of the state legislatures.
- **Independent Judiciary:** The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.
- **Bicameralism:** The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.
- Federalism is not merely a structural arrangement for distribution and sharing of power between the federal partners, it is also a culture sustaining its very spirit. Its emergence and later consolidation in India is slightly paradoxical since it is the product of two conflicting cultures: one representing the national leaders' normative concern for India's multicultural personality, shaped by its unique history and geography, and the other underlining their concern for unity, security, and administrative efficiency.
- While the former led to the articulation of federalism, as laid down in the 1950 Constitution, the latter resulted in the retention of the very state machinery which consolidated the colonial rule in India. Nonetheless, the federal system that supported unwarranted centralization of power appeared to be the most suitable alternative for nation building in India.
- Indian federalism is a distinct case of asymmetrical federalism that characterizes a federation in which some of the units are accorded weightage under imperative of compelling historical or cultural factors necessitating special constitutional recognition.

### One comes across four kinds of asymmetries in Indian federation:

- First, there is universal asymmetry with regard to the constituent provinces because they are represented in Rajya Sabha on the basis of their demographic strength unlike the American system where each state has two members in the Senate regardless of the strength of population.
- Second, there are specific asymmetries as regards administration of tribal areas, intra-state regional disparities, law and order situation and fixing the number of seats, as per Article 371 of the Constitution, in states like Maharashtra, Gujarat, Manipur, Assam, Andhra Pradesh, Arunachal Pradesh, Sikkim, and Goa.
- Third, the areas identified as union territories, altogether seven in 2006, enjoy special constitutional status.
- Last, there is a stark asymmetry vis-à-vis Jammu and Kashmir, Nagaland, and Mizoram. While Article 370 accords special status to Jammu and Kashmir, Article 371 guarantees special privileges to Nagaland and Mizoram.
- Thus division of power between the Centre and the state can be seen not only in the political sense in which promotion and protection of the diversity of country in ensured. Federalism is a means to ensure the fraternity and dignity of all the individuals, communities in the country. It is not a top down approach but participatory mechanism for effective efficient Governance for public interest.

### Conclusion:

Hence, despite federalism being a borrowed concept, constitution makers have customized it to suit the Indian realities. It has strengthened the democratic fabric of the country and accommodates India's plurality and diversity.

## 2. The scheme of distribution of legislative subject between Centre and state is either modified or suspended in abnormal times. In light of the above statement, elaborate with the areas where the Parliament legislates in a state's field during abnormal times.

***(250 words)***

**Approach**

1. **Brief introduction about the division of power between Union and state.** ***(40 words)***
2. **Mention when the Parliament can legislate in the state's field.** ***(130 words)***
3. **Discuss how Centre control state's legislation.** ***(50 words)***
4. **Conclusion.** ***(30 words)***

**Hints**

The scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following extraordinary circumstances.

### Areas where the Parliament legislates in a state's field during abnormal times

- If the Rajya Sabha (under Article 249) declares by passing a resolution (two-thirds of the members present and voting) that it is necessary for the national interest that the Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter. The resolution remains in force for one year and it can be renewed any number of times but not exceeding one year at a time.
- The Parliament acquires the power to legislate with respect to matters in the State List, while a proclamation of national emergency is in operation (Under Article 250).
- When the legislatures of two or more states (Under Article 252) pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law and the state legislature ceases to have the power to make a law with respect to that matter.
- The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfill its international obligations and commitments.
- When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the president's rule.
- In respect of matters on which both the Parliament and the state legislatures have the power of legislation, the executive power rests with the states except when a Constitutional provision or a parliamentary law specifically confers it on the Centre.
- Therefore, a law on a concurrent subject, though enacted by the Parliament, is to be executed by the states except when the Constitution or the Parliament has directed otherwise.

### Centre's Control over State Legislation

- The Governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The President enjoys absolute veto over them.
- Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the President.

### Conclusion:

The scheme of distribution of legislative powers between the Centre and the states is only modified in abnormal times and in rest of the time, coordination and harmony between Centre and the state are maintained for the effective operation of the federal system.

**3. Generally, one associates emergency with war or aggression. But, the emergency of June 1975 was imposed because of the perceived threat of internal disturbance. Critically evaluate the consequences and the lessons learnt of emergency for Indian democracy.**

***(250 words)***

## Approach

1. **Discuss the circumstances which led to imposition of Emergency on June 1975.** ***(50 words)***
2. **Assess the impact of emergency on Indian democracy** ***(80 words)***
3. **Analyze the lessons learnt** ***(80 words)***
4. **Conclusion** ***(40 words)***

## Hints

### Circumstances which led to imposition of Emergency on June 1975

The months preceding the declaration of the Emergency were fraught with economic troubles — growing unemployment, rampant inflation and scarcity of food. The dismal condition of the Indian economy was accompanied by widespread riots and protests in several parts of the country.

### Here are the four major occurrences of the 1970s following which Indira Gandhi declared the Emergency.

- **Navnirman Andolan in Gujarat:** Gujarat at this point in time was governed by the Congress under chief minister Chimanbhai Patel. The government was notorious for its corruption
- **The JP movement:** Following in the footsteps of Gujarat or rather inspired by its success, a similar movement was launched in Bihar. In the case of Bihar, Indira Gandhi did not concede to the suspension of the Assembly. However, the JP movement was significant in determining her to declare Emergency.
- **The railways' protest:** Lasting for three weeks, in May 1974, the strike resulted in the halt of the movement of goods and people.
- **The Raj Narain verdict:** a petition had been filed in the Allahabad High Court by socialist leader Raj Narain who had lost out to Gandhi in Rae Bareli parliamentary elections of 1971. The petition accused the prime minister of having won the elections through corrupt practices. It alleged that she spent more money than was allowed and further that her campaign was carried out by government officials.
  - The darkest chapter in modern India's history unfolded on June 25, 1975, when President Fakhruddin Ali Ahmed proclaimed Emergency under Article 352 of the Constitution on the grounds that "the security of India is threatened by internal disturbance".
  - As per the Constitution, the President can declare Emergency only on the recommendation of the Union cabinet, However, the then Prime Minister Indira Gandhi, without consulting her cabinet, recommended its imposition and the cabinet had ratified the decision the next day. In other words, it was a fait accompli for the Cabinet although one minister was believed to have expressed reservations.

### Impact of emergency on Indian democracy and the lessons learnt

- The Indian Emergency in 1975 had deeper-seated causes.
- The poorly built government had proven unable to cultivate respect of the democratic institutions and methods, which opened to the door to greater instability and chaos.

- In such an environment, a constitutional crisis is largely inevitable, and a leader's zeal and a judge's ambitions merely realized that potential. The Indian story, then, is one of poor founding, unsafe traditions, and unreasonable politics—the perfect storm to bring democracy crashing down
- The Emergency was the earliest symptom of what has become a long crisis of political institutions that continues to this day. The crisis will intensify as India passes through its "second democratic upsurge," a process drawing the lowest and poorest into politics.
- The 15 years between 1975 and 1990 were the most traumatic in India's independent history. During this period, two Prime Ministers were assassinated, a pogrom killed over 3,000 Sikhs in Delhi, Punjab was wracked by terrorism, Parliament overturned the Supreme Court's verdict on Shah Bano to appease Muslim fundamentalists and the government opened the locks of the Babri Masjid to allow puja to appease Hindu radicals.
- The Jammu & Kashmir assembly poll was rigged, creating deep grievances among Kashmiris, laying the ground for Pakistan-sponsored insurgency in the Valley in 1989. As the blood-soaked decade ended, violent protests against the Mandal Commission made caste as permanent a divisive force in Indian politics as religion. India in 2011 is a very different country from India in 1975. Literacy has more than doubled from 35% to 74%. GDP has leapt nine times from Rs. 8.42 lakh crore to over Rs. 70 lakh crore.
- A large middle-class has emerged. Small towns have surging populations of aspirational young men and women. The media is unrecognizable from the suffocating mediocrity of Doordarshan and All-India Radio.
- It is unimaginable today that the entire Opposition can be jailed, journalists muzzled, the Constitution subverted. Today the dangers are more insidious: the nexus between big business and politicians; the proximity between senior editors and political parties; the encroachment of criminal elements into electoral politics. It is this enemy within that is as dangerous today as subversive forces were during the Emergency in 1975-77.
- The system does not need to be subverted from outside anymore; part of the system has itself been subverted. The result: deep-rooted, institutionalised corruption and misgovernance.
- Hence emergency period is generally considered as 'Dark Hour' in the Indian polity. At the same time that period proved to be a guide to these type of institutional crisis.

## The lessons learnt were

- The adequacy of the constitution structure to face the institutional crisis.
- The misuse of power and circumventing the existing code of action realised the need of strengthening of Accountability mechanisms.
- The administrative structure can be misused to affect the democratic principles.
- Need for strong civil society to ensure check on the tyranny of executive
- The political crisis affects the economic condition and social stability

## Conclusion:

The most important lesson learnt from the Emergency is that India as a democracy can only remain strong if we strengthen our constitutional institutions like Parliament, the Supreme Court, Election Commission of India and the PMO rather than strengthening an individual or a family. India has learnt that placing an individual above the country is detrimental to our democracy

**4. Unlike the constitutional symmetry of American federalism, Indian Federalism has been constitutionally asymmetric. The intention behind such an arrangement was to help meet specific needs and requirements of the sub-units. Discuss how far this philosophy of the Constitution has been beneficial to the spirit of federalism.**

***(250 words)***

## Approach

1. **In intro briefly discuss on federalism and its significance in democracy** ***(40 words)***
2. **Differentiate between the asymmetric federalism of India with symmetric federalism of USA** ***(60 words)***
3. **Explain the nature of asymmetric federalism in India** ***(60 words)***
4. **Elaborate on how despite asymmetric nature the federalism has got strengthened and how it benefitted India** ***(60 words)***
5. **Conclusion** ***(30 words)***

## Hints

Modern federalism is a system based upon democratic rules and institutions in which the power to govern is shared between national and provincial/state governments. Federalism is the best way to integrate the regional disparities to serve national interests while fulfilling the regional aspiration of self-governance and identification of regional culture.

### Indian federalism vis-a vis American federalism:

- Indian federalism is based on unequal distribution of powers in political, administrative and fiscal spheres. This asymmetry is both vertical {between centre and states} and horizontal {among states}.
- The Constitution contains certain integral federal features such as two governments; division of powers between the union and its constituents; supremacy of the Constitution; rigidity of the Constitution; independent Judiciary; bicameralism. However unlike the true federal states like the USA, Indian federation was not a result of a compact between several sovereign-units but a product of conversion of a unitary system into a federal system.

### The nature of asymmetric federalism in India:

- The vertical asymmetry arises because residuary powers (the power to legislate on matters not enumerated in the central, state or concurrent list of subjects) are given to the centre under Article 248. Also Unitary bias of constitution can also be seen in Art 3(Centre Can Change Name and Boundaries of States), flexibility of the constitution (majority of constitutional provision can be amended alone by parliament under art 368), power of parliament to legislate even on state list (emergencies, national interest, to enforce international treaty etc). The fiscal dependence of state on centre and appointment of governor by centre gives union a upper hand vis a vis state.

- On the other hand horizontal asymmetry can be seen in special provision given to J&K under art 370 ,other state under art 371, scheduled and tribal areas( art 244 ) and unequal representation in Rajya sabha (art 80).

### Analyzing the success of Asymmetric federalism:

- 'Asymmetric federalism' was preferred due to states having significantly different needs from the others, as the result of an ethnic, linguistic or cultural , geographical, economic differences.
- The functioning of the Indian Constitution over the past 69 years established that federalism has been going deep in India in tandem with global trends.
- The provisions like a separate state list in the constitution, a second chamber for representation of units at the Centre, NITI Aayog, inter-state councils, zonal councils, substantial devolution of funds for the states through finance commission, special category state, emergence of regional parties and their important role in coalition government at centre have ensured required sovereignty to states to function as an independent entity within a federal set-up.
- The vertical asymmetry has minimized the growth of regionalism and separatist tendencies thereby ensuring unity in diversity and the horizontal asymmetry provides state sufficient autonomy to deal with diverse ethnic, cultural, linguistic and geographical challenges.
- The judiciary has also played a major role in improving the autonomy of the state governments because many a time, it has rescued the state governments which were dismissed in an arbitrary manner.

### Conclusion

Thus in a country of India's scale, federalism is a pathway to democracy. It not only ensures that unity and integrity of nation is maintained but also provides greater autonomy and decentralization to the constituent unit to meet the aspirations of people.

## 5. Discuss the thinking that went into choice of parliamentary system of government by the makers of Indian Constitution. Do you think that the parliament has stood up to those expectations?

***(250 words)***

**Approach**

1. **Introduce parliamentary system briefly.** ***(50 words)***
2. **Discuss thinking that went into choice of this system over others like presidential system.** ***(130 words)***
3. **Critically reflect on the working of the parliament.** ***(50 words)***
4. **Conclusion** ***(20 word)***

**Hints**

- On the basis of the relationship between the executive and the legislature, governments have been divided into two types, namely, the parliamentary form of government and the presidential form of government. In the parliamentary form of government, the executive is responsible to the legislature, but in the presidential type, the executive is not responsible to the legislature.

- In the Parliamentary form of government, the Parliament is supreme, and the governments, comprised of some members of the Parliament, are accountable to it. Some of the best examples of Parliamentary government are the governments in Britain, India, Australia and Canada.

## Features of Parliamentary Government:

- Nominal or Titular Head
- Collective Responsibility and Individual Responsibility
- Political Homogeneity
- Harmony between Executive and Legislature
- Rigidity of Party Discipline
- Leadership of the Prime Minister

## Choice of parliamentary system:

- The adoption of the parliamentary system of governance by the Constituent Assembly was more in keeping with the advantages expected to accrue from the institution of the Parliament in future than the familiarity of Indians with the functioning of representative bodies in the country in the past. Following factors influenced our choice:
- First, the framers sought to achieve the objective of unity in the country through the mechanism of popular government by uniting Indians into one mass electorate having universal adult suffrage, and by providing for the direct representation of the voters in genuinely popular assemblies.
- Second, the parliamentary system appeared to be the thing that could have accommodated all sorts of imperatives bothering the Constitution-makers on the eve of Independence. At the same time, federal nature of polity also became an indispensable norm with the supremacy of the Constitution holding key to the successful functioning of the other institutions. Going in for a presidential model for the sake of a strong executive to ensure the unity and integrity of the nation, would have been fraught with the real dangers of the President turning into a despot, as happened in many other newly-independent countries including her neighbors, eclipsing the whole notion of democratic governance in the country. Hence, keeping the Parliament in the central position, the framers devised such a hybrid system of governance which included those valuable virtues of all the existing systems of governance that were found propitious to fit into the bill of India as a sovereign, democratic, federal, republic, embarking on the path of socio-economic and political reconstruction of the country.
- Last, the institution of Parliament was probably the only operational guarantee which the framers could think of, to ensure the unscathed functioning of federalism in the country by bringing about a harmonious co-existence of the Centre as well as the states under the overall rubric of the Union of India. Like the arrangements existing in other federations like the United States, the second chamber of the Parliament· Rajya Sabha was accorded special powers and functions in relation to the working of the Centre-state relations.
- The parliamentary form of Government best accommodated the diversity of the country. Through voting rights to all it ensured that popular and responsible government was elected to govern the country. There is a sense that Parliamentary form of government is more accountable and bring governance closer to the people.

## Critical reflection on the working of the parliament:

- The performance of parliament has been on decline for decades. The amount of time used for deliberation, discussion and legislation is declining and is filled with unruly behavior.

- The rise of street politics and secessionist tendencies underline the lack of faith people repose in parliament's ability to tap and address their demands.
- Lack of convergence of Indian party system towards a two-party system also makes handling of chaotic coalitions unmanageable. It encourages spoils system and increases policy paralysis.
- Dominance of one party in recent times has anyway blocked channels of accountability that was at the root of choice of parliamentary system over presidential one.
- In recent past, there has been a demand of switching to presidential system from certain quarters. But, it needs to be understood that the very rationale that existed at the time of constitution making also stand true today. So, the need is to make parliament function better and not switch back to presidential system.

### Conclusion:

Hence, Parliamentary form of government is the best form of government to ensure the participation, promotion, Protection of all citizens, individual as well as groups. However still the system has to evolve to more efficient and effective stage to ensure better governance leading to unity and integrity of nation and dignity of individuals. And to limit the criticisms from various channels.

## 6. Article 356 has become, 'a tool of political revenge and instrument of dominance over federal units'. In the light of the above statement, discuss constitutional provisions for President's rule?

***(250 words)***

**Approach**

1. **Briefly introduce Article 356.** ***(20 words)***
2. **Discuss constitutional provisions for President's rule** ***(60 words)***
3. **Discuss related concerns** ***(80 words)***
4. **Discuss the view of Supreme Court on the Issue** ***(60 words)***
5. **Conclusion** ***(30 words)***

**Hints**

### Constitutional provisions of President's rule:

The President's Rule refers to the imposition of Article 356 of the Constitution of India on a state that is incapable of running the constitutional machinery. In such times, the state comes under the direct control of the central government of India, which is termed as "under the President's Rule". The President dissolves the state assembly and orders the centrally appointed Governor to execute the operations of the state.

- **Article 356** empowers the president to issue a proclamation of President's rule in the state in case of 'failure of constitutional machinery' in the state. Such a failure includes the following circumstances:
  - Elections cannot be held as scheduled for any reason.

- Elections were held but the assembly is hung, no party secures clear majority.
- Party that secured a majority is unwilling to form ministry and a coalition cannot be formed.
- Ministries resigned after suffering a vote of no confidence and no clear political successor emerges.
- Internal subversion where govt. is deliberately not doing its duty.
- Failure to comply with centre's constitutional directives.
- Wilful refusal to discharge constitutional duty.

- Recently president rule was imposed in Arunanchal Pradesh due to more than six months of gap between last session and the very next session of assembly sitting which is a case for evoking article 356 according to article 174(1) of the constitution.
- Article 365 also says that president rule can be imposed by the centre if state fails to comply with directions from the centre.
- Recently there have been instances of misusing president's rule in states like Uttarakhand and Arunanchal Pradesh

## Related Concerns:

- Sarkaria Commission notes that since independence, it has been used over 100 times.
- Perfectly legitimate state governments have sometimes been fired to either make them fall in line or to give the Union government's own party a chance at obtaining power in the state.
- To claim legitimacy, Union governments have assumed precisely the role Dr.Ambedkar feared they would—that of being determinants of quality of governance in the states.
- 1970s and 80s will be remembered for the most spiteful use of Article 356.
- Manipur has seen the most frequent application of Article 356. The deeply fragmented internal politics of the state, as well as long periods of violence, have often enabled the Union government to impose its fiat on the state.

## SC view on the Issue:

- If there is improper use of Article 356 then the court will provide remedy.
- Under Article 356(3) it is the limitation on the powers of the President. Hence, the president shall not take any irreversible action until the proclamation is approved by the Parliament i.e. he shall not dissolve the assembly.
- Article 356 is justified only when there is a breakdown of constitutional machinery and not administrative machinery
- Sarkaria commission had also recommended that article 356 should be used in extreme cases

## Conclusion:

Hence Presidents rule should be used as the last resort and not a policy of carrot and stick. This mechanism is an important constitutional mechanism for the check of emergency situations. Thus the democratic means should be explored before arriving at this.

**7. Examine the need for establishing a permanent Inter-state Council. Discuss the main functions of Inter-state Council as envisaged under Article - 263 of the Indian Constitution. Highlight the recommendations of the Sarkaria Commission in this regard.**

***(250 words)***

## Approach

1. **Basic purpose for which inter-state council was established** ***(30 words)***
2. **Discuss important functions of council** ***(30 words)***
3. **Do we really need a permanent council?** ***(30 words)***
4. **View of Sarkaria commission as well as M.M. Punchhi commission?** ***(50 words)***
5. **Need to increase effectiveness of the present council instead of making it permanent.** ***(30 words)***
6. **Conclusion** ***(30 words)***

## Hints

The Inter-State Council is a **constitutional body** that has representatives of the Union government as well as chief ministers of states. It is mandated with advisory role.

As per **Article 263, President** is empowered to establish such a council if he at any times it appears to him that public interest would be served by its establishment.

Following **Sarkaria commission recommendations in 1990,** it was established for effective coordination between central and state governments on the constitutional provisions matter of centre-state and inter-state relations.

### While President defines the duties of an inter-state council, constitution specifies following functions:

It investigates and discusses the subjects in which the centre and the states have common interest. For example, recently launched Goods and Services Tax which affect fiscal relations between centre and states.

It enquires and advice upon any possible disputes between states.

Deliberates upon such other matters of general interest to states as may be referred to it by the chairman.

### Need for permanent inter-state council-

- A strong case for permanent inter-state council was first made by Sarkaria commission.
- As of today, most of the institutional architecture of Indian federalism is focused on relations between the Union government and the states. There is far less space to settle inter-state frictions. Inter-state council is one of them.
- Although it is mandated to meet at least thrice a year, it has met only 12 times since 1990. In its current form, is marred by functional and administrative inefficiency. Latest meeting of the council in November 2017, discussing recommendations of Punchhi commission has mainstreamed the problems of the council. There is growing support for permanency Inter-state council, making it a key institution managing inter-state frictions with regular and periodical meetings.

- However, such permanent council would need to assume an enlarged role and agenda to perform. Article 262 provides for resolution of inter-state river water disputes and zonal councils are established to perform many other functions to improve inter-state relation. Thus, there is no need felt presently to have such permanent council.

## Conclusion:

M.M Punchhi Commission recommended to make council a quasi-judicial body instead of political platform. However, there is need to have such political body for deliberation on important centre-state issue especially in absence of national development council

Instead, the effectiveness of present inter-state council can be increased. The council should regularly meet and deliberate on important federal issues. There is also need to have independent secretariat as presently it is also functioning as secretariat for zonal councils.

**8. Coalition governments are usually of a temporary alliance and hence they impose constraints on policy making. Critically examine the role of coalition governments in Indian democracy by giving suitable examples.**

***(250 words)***

### Approach

1. **Explain briefly about coalition governments with suitable examples.** ***(70 words)***
2. **Discuss how coalition governments are temporary and explain their constraints?** ***(70 words)***
3. **Discuss How coalition governments contribute to development in their own way?** ***(70 words)***
4. **Conclude by telling Ambedkar's views on government** ***(40 words)***

### Hints

A coalition government is one in which multiple political parties come together and often reduce the dominance of the party that has won the highest number of seats. Coalition governments are formed as seldom does a political party win the necessary number of seats to form the government on its own.

In India, the first coalition government to complete its full-term was the Atal Bihari Vajpayee-led National Democratic Alliance from 1999 to 2004. Introduction of coalition government was seen in 1977 in India. It was led by PM Morarji Desai as the first non congress PM. The 1990s decade saw a series of coalition governments. After that Vajpayee and Manmohan Singh became PM of coalition governments from 1999 till 2014 PM Modi came with a clear majority.

## Temporary features of coalition and their constraints

- Decade of 1990's was of political instability hence Indian economy was at its lowest position and some scams emerged.
- State governments like seen in Uttarakhand and Goa become highly unstable when local politics gets involved in coalition government.

- Political instability leads to a developmental deficit and hence creating problems for citizens.
- PM Manmohan Singh once said due to "Coalition dharma" they were not able to take strict action against multiple emerging scams against coalition partners.
- Chances of corruption get increased in coalition due to each and every party demanding its share of resources.

### Contributions of coalition governments

- Coalition governments give wider representation to diverse voices within society.
- Common minimum programs done to compromise extreme ideologies ultimately help in moderating radical elements within the party, like which was seen in recent Maharashtra elections 2020.
- Despite being in coalition government PM Narsimha Rao implemented IMF reforms and made 1991 liberalisation, PM Vajpayee conducted the Pokharan test and made India a nuclear state. Hence coalition governments do not always lack courage to take decisions.
- GDP was highest at 10% during PM Manmohan Singh and that government also concluded a civil nuclear deal with the USA. Hence Coalition form of governments should not be blamed for incompetence of some particular leaders.

### Conclusion:

Dr. Ambedkar said that any Constitution can be molded into the best one if leaders ruling the country have integrity towards citizens. Similarly it doesn't matter whether the government is of full majority or coalition, the leaders ruling the state should be committed towards the development of the country.

## 9. Unless the concerns of states and intra-regional disparity are addressed, the fault lines in the Indian federation could deepen which could lead to multiple demands for new states. Discuss.

***(250 words)***

**Approach**

1. **Briefly introduce the causal factors that fuel demands for new states.** ***(30 words)***
2. **Discuss whether the causal factors act as fault lines in the Indian federation.** ***(100 words)***
3. **Discuss ways to bridge intra-regional disparity and make development inclusive.** ***(80 words)***
4. **Conclude on futuristic grounds** ***(40 words)***

**Hints**

The ever increasing demand for new states has raised a number of questions with regard to the well-being of India's federal democratic polity.

## Factors responsible for bringing local/regional demands into sharp focus:

- The changed mode of electoral representation has led to assertiveness of the hitherto politically dormant regions. The political articulation and mobilization along caste/ethnic/language-based social cleavages undertaken by these newly emergent state/region level parties remain territorially contained and rarely cross the regional lines.
- Growing regional inequalities in terms of income and consumption in the post-reforms period have accentuated the perception of neglect and discrimination.
- The rich regions within constituent states, attracting huge private investments and registering impressive growth, have started resenting the continued dependence of relatively underdeveloped regions on the revenues transferred to them (i.e., Harit Pradesh).
- An uncritical acceptance of the unending demands for new states would recreate a situation like that of more than 560 princely states at the time of independence. It is with great difficulty that the states like Rajasthan and Madhya Pradesh comprising of princely states have become political communities having a territorial identity.
- Political opportunism has been involved in the creation of the states. The major political parties act primarily by expediency and opportunism rather than, as is claimed, by an evaluation of the democratic and developmental potential of the smaller states.
- Constitutional provisions (Articles 3 and 4) can be easily used to redraw the political map of the country by the ruling party at the centre because of its majority in the Parliament. The say of the states is merely confined to the reference of the matter by the president to the "would be affected states" merely for the sake of eliciting its opinion before making a recommendation, which is not even binding.
- There is no proposal for referring the matter for the second time to the affected state(s) even if substantial changes have been made by the centre in the legislative bill at the time of its introduction or during the course of debate.

## A few pertinent questions that confront us all and are concerned with the well-being of the federal democratic polity of India are:

- Does another wave of reorganization provide a road map to quicker growth and development in a "transforming" India?
- How long can the political class afford to ignore the aspirations of the masses in the marginal regions as the voices get louder?
- Does their salvation lie only in the division of the states or can there be better alternatives? In case division is the only option, what should be the minimum viable economic size of a state? To what extent should political consideration be allowed to outweigh economic consideration?
- Any break-up is always emotionally and politically wrenching for the people involved. What may be the remedial measures?

Finally, will the creation of more states strengthen our federal polity or will it lead to further interstate conflict as has happened in the context of the creation of Punjab and Haryana. Disputes concerning river water sharing, capital (Chandigarh) division and border demarcation have lingered on for more than four decades without any solution in sight. And it is not an isolated case.

## Conclusion:

- Redrawing political boundaries brings forth gains for the electorates in terms of better representation of their preferences in the composition of the government.

- In democracies like ours, the amount of transfers that a constituency gets depends crucially on whether the local representative belongs to the ruling party.
- It explains as to why when they are part of the same state, the smaller region would vote strategically to elect representatives with preferences more closely aligned to those of the bigger region.
- There are four measures that must be considered while devising any framework to address the issue of federal reorganization. These are:
  - the constitution of a permanent State Reorganization Commission,
  - amendment of the Constitution to ensure that the demand for a new state emanates from the state legislature and not at the centre,
  - examination of economic and social viability rather than political considerations and clear-cut safeguards to encourage democratic concerns like development and
  - Governance rather than religion, caste and language as valid grounds for a new state.

### Conclusion:

India may have at least 50 states in future if demands for new states are to be conceded as the Home Ministry has received representations for creation of more than 20 states. Creation of new states not necessarily leads to good governance, hence, concerted steps should be taken to address the concerns of States and reduce the intra-regional disparity.

## 10. Cooperative federalism has lost its relevance in the wake of competitive federalism". Examine. Also bring out how a middle ground is needed between the two ideas for holistic national development.

***(250 words)***

**Approach**

1. **Introduce by explaining about federalism, cooperative and competitive federalism** ***(40 words)***
2. **Highlight the reasons for federalism moving from cooperative to competitive** ***(60 words)***
3. **Mention government steps to promote competitive federalism** ***(50 words)***
4. **Highlight the need for both cooperative federalism and competitive federalism** ***(60 words)***
5. **Conclude on balanced grounds** ***(40 words)***

**Hints**

- Federalism is a form of government in which the sovereign authority of political power is divided between the various units. This form of government is also called a "federation" or a "federal state" in the common parlance. These units are Centre, state and panchayats or the municipalities. The centre also is called union. The component units of the union are called variously as states

- Cooperative federalism involves the Centre and States governments cooperating with each other for the overall development of the nation. It involves the participation of all the States in the creation and implementation of national policies of the country. It is the horizontal relationship between the Centre and the States. Competitive federalism is a concept where centre competes with states and vice-versa, and states compete with each other in their joint efforts to develop India

## Federalism moving from cooperative to competitive:

- For faster progress and to ensure that no one lags behind, there is a need to consciously infuse a spirit of competition between States which is presently attempted.
- Liberalisation: Competitive federalism is already at work in economic policies since liberalisation. States via with one another to hold investors meet; Chief Ministers go abroad to promote trade relations; State governments enter into agreements with foreign
- Economic interests: Regional meetings are also held to promote common economic interests.
- Share in National Resources: 15th Finance commission in its report has given weightage for fiscal efforts and demographic performance. Hence naturally states will become competitive to gain the highest share of national resources.

## Government steps to promote competitive federalism

- NITI Aayog: The government has replaced the old Planning Commission by establishing NITI Aayog. The NITI Aayog is formed to empower and strengthen the state governments.
- Financial autonomy: Share of states in central tax revenue has been increased from 32% to 42% after the recommendation of the finance commission. It will provide Greater financial autonomy as well as discipline.
- Expenditure: States have freedom expenditure based on their own priorities, strength , prudence and to plan their states projects.
- Centrally sponsored schemes: The government also declared that the states will have freedom to plan their expenditure based on their own priorities and the states are free to change centrally sponsored schemes.
- Rankings: NITI Aayog has announced a plan of ranking states on social indices on the basis of their performance in social sectors. The purpose seems to be to link the disbursal of Central funds with State‘s performance on these indices. It will promote a healthy competition among States to improve their performance.

## Need for both cooperative federalism and competitive federalism:

- Cooperative and competitive federalism are two sides of the same coin. The competition alone cannot give the best results; it is competition with cooperation that will drive real change.
- Competitive federalism provides the dynamism that needs to be unleashed. We need cooperative federalism to balance competitive federalism.
- States need to learn from each other not only in terms of policies, but also the apt messaging with regard to reform.
- To bring competition, the centre should cooperate with the states by providing necessary autonomy in their policy making and allocating them the required funds to spend based on their own priorities. The cooperation forms the ground base on which competition can begin.

- Fierce competition between States is considered a healthy atmosphere for realising our aim of —Make in India. At the same time, NITI Aayog is set to provide for the constitution of Regional Councils to promote cooperation between States for joint progress.

## Conclusion:

Therefore, there has to be a balance between cooperative and competitive federalism. Cooperative and Competitive federalism cannot be successful if they are separated from each other. Both these concepts, though different, have the same goal – the economic growth and development of the overall Indian economy.

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# NOTES

# SET-9: QUESTION

## UNION TERRITORIES AND SCHEDULED AREAS

**Q1. Briefly describe the intention behind 5th schedule provisions and analyze if the provision has lived up to its expectations.**

**Q2. PESA is an incomplete document, which failed to address the socioeconomic developmental challenges of Tribal societies. Examine.**

**Q3. The government of India has enacted 5th and 6th Schedule to address the challenges emerged due to federalism but federalism or increased autonomy is not, in itself, a solution for the people's desire for development. Discuss the lacunas in the Schedule which fail to induce development in the region.**

**Q4. Article 371 G specifies that the acts of Parliament relating to Mizoram would not apply to it automatically unless the State Assembly so decides. Describe these provisions in detail and explain their importance in securing a social order in the state.**

**Q5. Critically evaluate the benefits and challenges put forth by 6th schedule of the Constitution and how far has it achieved its mandate**

**Q6. The office of the Governor with respect to the Sixth Schedule has many important functions, but it has been observed that there are overlapping functional responsibilities between the States and the District councils along with a lack of clarity in the role of Governor. Discuss.**

**Q7. Despite states share distribution of power with the Centre in a federal system, the Union Territories are under the direct control and administration of the Central government. Explain the areas of administration of the UTs under the direct control of the Central government.**

**Q8. 'The Sixth Schedule of the Constitution is often referred to as a charter for autonomy of a wide magnitude, but it has failed to decrease the tensions between different stakeholders at the ground level'. Elaborate.**

**Q9. Within the purview of Article 371, critically evaluate the provisions and effectiveness of Separate development boards which were established for Vidarbha, Marathawada, Saurashtra and Kutch.**

**Q10. Discuss the process of integration of Sikkim to India? Also analyze why it is considered to be a unique example of integration of a territory?**

# SET-9: ANSWERS

**1. Briefly describe the intention behind 5th schedule provisions and analyze if the provision has lived up to its expectations.**

***(250 words)***

## Approach

1. **Briefly describe the backwardness of the tribal people and areas covered under fifth schedule of the constitution.** ***(60 words)***
2. **Underline the difference between areas covered under fifth schedule and sixth schedule of constitution and reasons behind a separate schedule for tribal areas.** ***(60 words)***
3. **Describe the provisions under 5th schedule of constitution. Analyse the effectiveness of the provisions on areas under 5th schedule of the constitution.** ***(70 words)***
4. **Conclude with the need for such provisions to develop tribal areas of the country.** ***(60 words)***

## Hints

### Introduction:

India constitutes of 8.6 % of the tribal population. These tribal people are one of the most backward community of India who are socially as well economically backward. The Fifth Schedule of the Constitution deals with the administration and control of scheduled areas and scheduled tribes in any state except the four states of Assam, Meghalaya, Tripura and Mizoram.

### Intention behind 5th schedule of constitution

- Tribal areas covered under 5TH schedule of the constitution are home to those tribal people who have somehow amalgamated with other societies while areas under 6th schedule are inhabited by aboriginals who tend to remain isolated from other societies and have distinct customary laws and tradition.
- All scheduled areas comes under 5th schedule except the four states of Assam, Meghalaya, Tripura and Mizoram which are covered under sixth schedule of the constitution.

- Main intention behind creating a separate schedule for schedule areas are:
  - To provide a sense of autonomy and self-governement to tribal people for their development in their natural ecosystem.
  - To provide advisory roles to members of tribal communities for formulation of policies regarding them and include them in governance and decision making process irrespective of their population.
  - To enforce only those laws and regulations which does not interfere in personal and customary laws of tribes

### How does provisions of 5th schedule fulfill the aspirations of tribals?

- Governor submits the report to the President regarding administration of tribal areas. This ensures that executive organ of the government works in a better way for welfare of tribals.
- It has provision for a 'Tribes Advisory Council' in each state with atleast three fourth of the 20 members from schedule tribes. It ensures participation of tribals as advisers in decision making and policy formulation process for their welfare.
- Any law or regulation of the Parliament or state legislature which interferes in customary laws of tribals can be struck down by governor of the state or can be applied with certain modifications by governor itself. This ensures peace and better governance in tribal areas.
- Certain regulations can be made by governor with the advice of the Tribes Advisory council and with assent of President for better governance of the concerned areas. These regulations may be related to transfer or acquiring of land of the area concerned e.t.c.

### Conclusion:

- Fifth schedule of the constitution has tried to bring tribals into main stream of the development and governance. Its provisions has enabled them to be a part of participatory democracy and exercise their rights in matters of policy formulation apart from preserving their rich and unique cultural heritage. On the one hand, its provisions have saved them from general rule and regulations which would have infringed their customary laws and on the other hand provides amended laws on advice of the tribes advisory council to cater their needs in day to day governance.

## 2. PESA is an incomplete document, which failed to address the socioeconomic developmental challenges of Tribal societies. Examine.

***(250 words)***

**Approach**

1. **Briefly introduce PESA** ***(50 words)***
2. **Discuss the issues related with PESA** ***(80 words)***
3. **How can make PESA effective in addressing the needs of Tribal areas** ***(80 words)***
4. **Conclusion** ***(40 words)***

**Hints**

PESA or Panchayats (Extension to Schedule Areas) Act, 1996 is an Act of central government for enforcing and implementing the provisions of Panchayati Raj Institution (Part IX of the Constitution) in the schedule areas which are not covered in the 73rd Amendment Act.

## Issues with PESA:

- The 1996 PESA or Panchayats (Extension to the Scheduled Areas) Act implemented only in 5th schedule areas should have been a landmark for the tribal communities which mandate the state to devolve certain political, administrative and fiscal powers to local governments elected by the communities. But, it has not been implemented properly. Tribal communities have progressively been denied self-government and their rights on natural resources that should have been provided to them under the legislation.
- On the other hand The Sixth Schedule gives tribal communities considerable autonomy; the role of the Governors and the States are subject to significant limitations, with greater powers devolved locally. The District Council and the Regional Council under the Sixth Schedule have real power to make laws, possibility on the various legislative subjects, receiving grants-in-aids from the Consolidated Fund of India to meet the costs of schemes for development, health care, education, roads and regulatory powers to state control.
- **Ambiguous definition-within PESA** - definition of many provisions is ambiguous for example there is no clear cut definition of terms like minor water bodies, minerals in the statue, which leads to denial of rights of the tribal's.
- **Lack of coordination and overlapping** jurisdiction - Both ministry of tribal affairs and Panchayati Raj have overlapping jurisdiction in PESA and Both of them functions in silos without any coordination which creates confusion and weakens PESA.
- **PESA diluted at State level -** A comparative analysis of PESA and the legislations enacted by the States on this subject reveals that the provisions of PESA have been highly diluted in the process of ratification by the States and most of the powers of the Gram Sabha have been given to the district administration or to the Zila Parishad.
- **Gram Sabha constituted at Revenue Village Level instead of Hamlet level:** One major impediment in implementation of PESA is the absence of a proper administrative definition of the village that is in consonance with the Act. All States, without exception, have continued with their earlier revenue definitions of the village. Thereby, not only does a village at times consist of 10â€"12 scattered hamlets, but several revenue villages are clubbed together to form a Gram Panchayat. This effectively precludes the functioning of a 'face to face' community as envisaged in PESA.

## How can we make PESA effective in addressing the needs of Tribal areas?

- There is urgent need to amend Indian Forest Act and other related Acts so that ownership on minor forest produce, water bodies and land resources are explicitly handed over to gram Sabha of PESA areas.
- No state government should have any power to overrule any recommendation of the gram Sabha
- Gram Sabha should have direct access to funds so that they can exercise these powers independently and spend funds according to the needs and requirements of the tribal society, Since local bureaucracy is generally consisted of non-tribal outsiders who are neither aware nor sensitized about the needs of the tribal village which leads to ineffective implementation of the provisions of PESA.

- Looking at the performance of State governments in implementation of PESA and their tendency to by-pass it, the Central government should issue a notification that all other laws will be subordinate to PESA in the fifth schedule (or PESA) areas.
- Certain Features of sixth schedule areas should be introduced in 5th schedule like An autonomous district council should be established which will provide greater role in directing administrative requirements without depending on the Central-State structure.

## Conclusion:

Thus PESA ,though was established to empower the tribal communities in tribal areas has not able to do so effectively and therefore certain changes as suggested above should be incorporated in PESA so that it could in reality become an engine of tribal empowerment.

**3. The government of India has enacted 5th and 6th Schedule to address the challenges emerged due to federalism but federalism or increased autonomy is not, in itself, a solution for the people's desire for development. Discuss the lacunas in the Schedule which fail to induce development in the region.**

***(250 words)***

### Approach

1. **Briefly introduce Federalism** ***(50 words)***
2. **Discuss Federalism with respect to 5th and 6th Schedule** ***(80 words)***
3. **Mention some shortcomings of 5th and 6th schedule** ***(80 words)***
4. **Conclusion** ***(40 words)***

### Hints

Constitution has provided for a structure of governance which is essentially federal in nature.

- However, over the years, there has been a steady erosion of the rights of the states and federal character of our constitution is being, slowly but steadily, converted into a unitary state structure. In other words maximizing zone of interference to the state by the centre is increasing more and more. It also became one of the factors of increasing political violence in the NE India.
- To establish a decentralized system and federalism in North East region government has passed Schedule 5$^{th}$ and 6$^{th}$:
  - **Fifth Schedule -** Administration and control of scheduled areas and tribes
  - **Sixth Schedule -** Provisions for administration of Tribal Area in Assam, Meghalaya, Tripura, Mizoram & Arunachal Pradesh
- However, within the purview of development the tribal affairs have been shoved under the shelf to serve the vested interest of some. The poor tribals have been made to feel like aliens in their own indigenous lands. The 5th and 6th schedule fail to establish true autonomy.

### The reasons are:

- Lack of coordination and overlapping jurisdiction: PESA was meant to benefit not only the majority of tribals but also extended to cover minority non-tribal communities. It guarantees tribes half of the seats in the elected local governments and the seat of the chairperson at all hierarchical levels of the Panchayat system. However, lack of coordination and overlapping jurisdiction between Ministry of tribal affairs and Panchayati Raj creates confusion and weakens PESA.
- There has been absence of a proper administrative definition of the village (PESA) that is in consonance with the Act. All States, without exception, have continued with their earlier revenue definitions of the village. Thereby, not only does a village at times consist of 10 - 12 scattered hamlets, but several revenue villages are clubbed together to form a Gram Panchayat. This effectively precludes the functioning of a 'face to face' community as envisaged in PESA.
- Under 6th schedule there are frequent conflicts of interest between the District Councils and the state legislatures. For example, in Meghalaya, despite the formation of the State, the whole of the State continues to be under the Sixth Schedule causing frequent conflicts with the State Government. Thus, state enjoys the superiority, but then it is alleged that autonomous councils are mere platforms for aspiring politicians who nurture ambitions to contest assembly polls in the future.
- There is disparity among Autonomous Bodies and Local Bodies. The local bodies established via Seventy-third Amendment are more liberally funded through the State Finance commissions. In a state where there are more than one autonomous councils; one claims that it is being treated less favourably than other. For example, in Assam, there is a perceived preferential treatment to Bodoland Territorial Council in matters of budget allocations.

### Conclusion:

The North East region for the development and welfare of people do not require superficial laws related to decentralization, it requires actual decentralization of functions, finances and functionaries to work for the welfare of the people. The literal meaning of decentralization is transferring of decision making powers and functions to the local bodies with a view to inject greater degree of efficiency in administration.

## 4. Article 371 G specifies that the acts of Parliament relating to Mizoram would not apply to it automatically unless the State Assembly so decides. Describe these provisions in detail and explain their importance in securing a social order in the state.

***(250 words)***

**Approach**

1. **Briefly explain the need for special provisions to Mizoramgranted under 371 G due to unique customary laws and traditions.** ***(50 words)***
2. **Explain the need for special provision for the state of Mizoram to maintain social order.** ***(80 words)***
3. **Underline the uniqueness of customary laws and traditions of Mizos and describe the salient features of article 371 G align it with the effectiveness of such provisions and their impact on areas under it.** ***(80 words)***

**4. Conclude with necessity of some special privileges granted to these regions to protect unique tribal cultural and traditional heritage as well as rights of tribals.** ***(40 words)***

**Hints**

## Introduction

Indian constitution is a blend of flexibility and rigidity. Amid protests of Mizo people an accord was signed between Union of India and Mizo national front which is also called 'Mizo Accord'. Accord underlined the need for recognition of unique customs and traditions of Mizos bound by certain sets of customary laws along with certain other provisions. It led to enactment of the Constitution (Fifty-Third Amendment) Act, 1986 and insertion of Article 371 G of the constitution.

## Need for Article 371 G and uniqueness of Mizo customary laws

- Mizoram comes under 6th schedule of constitution. Sixth schedule covers tribal areas of those states which are inhabited by aboriginals.
- The tribes in Assam, Meghalaya, Tripura and Mizoram have not assimilated much the life and ways of the other people in these states. While, the tribal people in other parts of India have more or less adopted the culture of the majority of the people in whose midst they live.
- The tribes of these four states on the other hand, still have their roots in their own culture, customs and civilization.
- These areas are, therefore, treated differently by the Constitution and sizeable amount of autonomy has been given to these people for self-government.
- Mizo tribal people mainly concentrated in state of Mizoram, Myanmar and some parts of Bangladesh.
- They are governed by certain sets of separate customary laws and have different socio-religious practices.
- Criminal and civil administration of Mizos are based on their customary laws.

Hence, it led to enactment of the Constitution (Fifty-Third Amendment) Act, 1986 and insertion of Article 371 G of constitution. It has following provisions:

- The Acts of Parliament relating to the following matters would not apply to Mizoram unless the State Legislative Assembly so decides:
  - Religious or social practices of the Mizos;
  - Mizo customary law and procedure;
  - Administration of civil and criminal justice involving decisions according to Mizo customary law; and
  - Ownership and transfer of land.
- The Mizoram Legislative Assembly is to consist of not less than 40 members.
  - Apart from provisions of article 371 G, three Autonomous district councils (ADC) have been formed in Mizoram to realize autonomy for tribals. They are:
    - Chakma ADC
    - Lai ADC
    - Mara ADC

### Effectiveness of Article 371H of the constitution

- Special provisions for Mizoram realized autonomy and self rule for state of Mizoram.
- Now, Mizoram is among most literate states of India with literacy rate of more than 90%.
- Mizoram ranks 14th in Human Development Index in India with 0.697, which is higher than national average of 0.640.
- A streak of ethnic violence which had started amid demand for separate state and recognition of tribal rights has ended with enactment of amendment act and insertion of article 371 H.

### Conclusion:

India being a geographically vast country has varied ethnicity with variable customs, tradition and culture. Flexibility of Indian constitution has given space for people of different regions to accommodate under its umbrella. Aligning with customary laws and traditions has given more space to natives to develop in their natural environment in a better way and at the same time given opportunity to exercise their democratic rights by preserving their rich cultural heritage.

## 5. Critically evaluate the benefits and challenges put forth by 6th schedule of the Constitution and how far has it achieved its mandate

***(250 words)***

**Approach**

1. **Briefly describe the need for sixth schedule, areas under it, difference between tribal areas included under it and fifth schedule.** ***(50 words)***
2. **Underline the unique way of life of tribals of these areas, their administration based on customary laws and their empowerment.** ***(80 words)***
3. **Briefly describe the challenges put by special provisions under sixth schedule by aligning it with 'One Nation one Law' and how does it infringe the fundamental rights of citizens.** ***(80 words)***
4. **Conclude with necessity of these special provisions aligning with accommodative nature of Indian constitution.** ***(40 words)***

**Hints**

India has a vast ethnic diversity comprising of 8.6 % of tribal population. Some of the tribals of the country have amalgamated with modern societies but some of them still prefer to thrive in deep forests alienated from others and are called aboriginals. These tribals are inhabitants of mainly four states namely Assam, Mizoram, Tripura and Manipur. Tribal areas which are inhabited by aboriginals come under sixth schedule of constitution while rest are governed under fifth schedule.

### Uniqueness of tribal cultures of aboriginals

- Tribals in areas under sixth schedule ave their own customary laws for civil and criminal administration.
- They are bound by some of the personal laws which might be illegal under other provisions of Indian constitution.

- They do not want interference of outsiders into their territory and occupation of land by them.
- Hence, some of the states have inner line permits to specifically allow outsiders to enter into their territory.

## Benefits provided by sixth schedule of the constitution

- As there are many tribal areas which comes under sixth schedule of the constitution which are inhabited by different tribes hence it has provided generalized provisions for them.
- **Autonomy and self-rule:** There is a provision for autonomous districts in these states which must be governed by autonomous district councils. If one district is inhabited by many tribes then government is empowered to divide them in autonomous regions. It gives them autonomy and self-rule in accordance with their customary laws.
- **Enforcing customary laws:** District and regional councils can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, and inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor. This provides them freedom to practice their customary laws.
- **Civil and Criminal administration:** The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.
- **Development works and revenue collection:** The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor. The district and regional councils are also empowered to assess and collect land revenue and to impose certain specified taxes.
- **Non-interference Clause:** The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.

## Challenges put by special provisions under sixth schedule

- Certain provisions of Sixth Schedule infringes fundamental rights of individual residing in other parts of India such as rights under article 19 which advocates protection of six rights regarding freedom of:
  - speech and expression,
  - assembly,
  - association,
  - movement,
  - residence, and
  - profession in any part of India.
- As 'Inner Line Permit' is required in few states like Mizoram it restrict free movement of individuals in these areas and restriction on purchasing land restricts individuals to reside in the areas under sixth schedule.
- It is a hurdle for implementation of article 44 of DPSP (Directive Principle Of State Policy), which envisages for an uniform civil code in the country.

- Certain customary laws violates Indian laws such as 'Bride Money' under Mizo customary law which demands money for bride from groom. This is similar to dowry which is illegal under "Dowry Prohibition Act".
- Apart from it certain other customary laws of tribals violates other provisions of Indian constitution which are enforced in areas apart from areas under sixth schedule.

### Conclusion:

Although, there are some customs and traditions of tribals covered under sixth schedule which infringes fundamental rights of individuals residing in other parts of country, they are part of rich cultural heritage of India which empowers tribal irrespective of their population. It on the one hand showcases diversity of Indian society and on the other hand underlines the flexibility of Indian democracy which accepts people, culture and tradition from diverse background. Hence, they must be protected and enriched for peace and progress of India.

## 6. The office of the Governor with respect to the Sixth Schedule has many important functions, but it has been observed that there are overlapping functional responsibilities between the States and the District councils along with a lack of clarity in the role of Governor. Discuss.

***(250 words)***

**Approach**

1. **Briefly introduce the provisions and need of Sixth Schedule areas.** ***(40 words)***
2. **Discuss delineation of functional responsibilities between the States (and Governor) and the District Councils** ***(90 words)***
3. **Analyse the factors causing overlapping of functional responsibilities and ways to mitigate them.** ***(80 words)***
4. **Briefly conclude.** ***(40 words)***

**Hints**

The Sixth Schedule of the Indian Constitution gives tribal communities considerable autonomy. The mandate is towards devolution, deconcentration and divestment determines the protection of their customs, better economic development and most importantly ethnic security.

### Provisions of the Scheduled and Tribal Areas of India:

The Sixth Schedule identifies and designates certain tribal areas as autonomous districts with the governance framework extended through the Constitution of District Councils and Regional Councils. These locally elected councils are endowed with legislative, judicial, executive and financial powers.

For instance, in terms of judicial powers, these Autonomous Councils can constitute village councils or courts to the exclusion of any court in the state to try suits and cases between scheduled tribe communities within such areas. In finance, besides the constitution of the district and regional funds, these Autonomous Councils have powers to collect taxes and fees and entitlement to royalties.

## Delineation of functional responsibilities between the States (and Governor) and the District councils and their overlapping:

- Each District Councils or regional Council provided under the Sixth Schedule is a corporate body by name of District Council or Regional Council of (Name of the District or name of the Region) having perpetual succession and a common seal with the right to sue and be sued.
- The District councils have elaborate functions/powers in the legislative, executive, judicial and financial domains. These powers are expected to uplift the tribal communities in the domains of primary education, health, culture, social customs, social welfare, forest, land, agriculture, water management, village administration, economic and rural development. However, in practice the performances of the District Councils, have not come up to expectations.

## Factors causing overlapping of functional responsibilities

- Though the institutional structures (District Councils) have been given constitutional recognition in Sixth schedule areas, due to lack of sufficient devolution of funds, functions and functionaries have made their actual working akin to any of the appendages of the State government machinery.
- The basic overlapping is due to the constitutionally extended 'discretionary' powers to the governors in the Sixth Schedule states. While the President has to act at all times according to the advice tendered by the Council of Ministers, such is not the case with the Governors.
- This conflicts with the role and mandate of the District Councils as the Governors try to impose powers under the garb of constitutional norms.
- The Governor has power to alter laws or rules passed by the District Councils, which are in violation of the provisions of the Sixth Schedule, thus making the Governor the head of the Autonomous District Council.
- The District and the Regional Councils are responsible for framing rules for the management of finances with the approval of the Governor.
- Another reason for the inadequate performance of the Councils is their dependence on State Governments for financial grants and allotments.
- The income from such taxes collected from the areas of the Regional Council goes to the District Councils which is unfair. The District Councils neither enforce the tax regulations strictly nor realizes the amount efficiently, resulting in meager tax returns. Generally no attempt is made by the District Council to raise its revenues by exploiting the financial resources available to them.
- The provisions of the Sixth Schedule suffer from certain short-comings and defects. There is no provision for coordination of the activities of the District Council, the Regional Council and the State Government.
- The State has no power to review and assess the working of these councils except to approve their legislations by the Governor and to sanction loans and grants for development schemes. As a result, the councils do not surrender the unspent balances of the grants to the State Government. They transfer the amounts for other purposes without proper sanction.
- Besides lacking expert inputs in developmental matters the leaders of the District Councils do not take interest in plan formulation, schemes and monitoring at the micro level. The Councils have also failed to uplift the poor masses.

## Conclusion:

- If the District Council is to continue to function in a proper shape and manner required under the Sixth Schedule, its autonomy should be restored by scrapping the overriding powers of the State Government, over the District Councils. Adequate grants-in-aid must be given to them.
- A provision should be made that mandatory obligation on the part of the State Government is required to make funds available to the District Council in time for its estimated expenditures by amending paragraphs 7 and 13 of the Sixth Schedule. Because of financial difficulties and limited financial resources, most Councils have not yet taken over charge of their many functions such as primary education, set-up of its police force, hospitals and development functions as provided by the Sixth Schedule.
- The District Councils must take local initiative and ensure people's participation in the development activities in the desired extent. The Councils have hardly brought about the intended social and economic changes in the tribal areas. The Councils must function in the desired way to ensure good governance.

**7. Despite states share distribution of power with the Centre in a federal system, the Union Territories are under the direct control and administration of the Central government. Explain the areas of administration of the UTs under the direct control of the Central government.**

***(250 words)***

### Approach

1. **Briefly introduce the control of power in the territory of India.** ***(40 words)***
2. **Explain the specific provisions that deal with the Union Territories.** ***(60 words)***
3. **Elaborate on the areas of administration of the Union territories under the direct control of the Center.** ***(110 words)***
4. **Conclusion** ***(40 words)***

### Hints

Under **Article 1** of the Constitution, the territory of India comprises three categories of territories. They are territories of the states, Union territories, and territories that may be acquired by the Government of India at any time.

## The constitutional provision dealing with Union Territories:

- **Articles 239 to 241** of the Constitution deal with the Union Territories. Even though all the Union Territories belong to one category, there is no uniformity in their administrative system. Every Union Territory is administered by the President acting through an appointed Administrator.
- The Union Territories of Pondicherry and Delhi are provided with a legislative assembly and a council of ministers headed by a Chief Minister. The remaining union territories do not have such popular political institutions. However, the establishment of such institutions in the Union Territories does not diminish the supreme control of the President and the Parliament over them.

### Direct administration of the Center on the Union Territories:

- The Parliament can make laws on any subject of the three lists (including the State List) for the union territories including Delhi and Pondicherry. The legislative power of Parliament for the union territories on subjects of the State List remains unaffected even after establishing a local legislature for them.
- The President makes regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.
- A regulation made by the President has the same force and effect as an act of Parliament and can also repeal or amend any act of Parliament in relation to these union territories.
- The council of ministers headed by the chief minister (UTs with assembly) aid and advises the Lt. Governor in the exercise of functions, except in so far as is required to act in discretion. In the case of difference of opinion between the Lt. Governor and the ministers, the Lt. Governor is to refer the matter to the President for decision making, and act accordingly.
- In brief, in case of failure of constitutional machinery, the President can impose President's rule in the territory. This can be done on the report of the Lt. Governor or otherwise. This provision resembles **Article 356** which deals with the imposition of President's Rule in the states.
- The Lt. Governor is empowered to promulgate ordinances during recess of the assembly. An ordinance has the same force as an act of the assembly. Every such ordinance must be approved by the assembly within six weeks from its reassembly. The LG can also withdraw an ordinance at any time. However, no such ordinance can be promulgated or withdrawn without the prior permission of the President.

### Conclusion:

Although there is a division of power between state and Center in a federal set up, the Union territories are directly dealt by Centre. However, it does not hamper the integrity of the nation. UTs with assembly are also allowed to make laws with respect to the subject mentioned in the state list.

## 8. 'The Sixth Schedule of the Constitution is often referred to as a charter for autonomy of a wide magnitude, but it has failed to decrease the tensions between different stakeholders at the ground level'. Elaborate.

***(250 words)***

**Approach**

1. **Introduction about sixth schedule.** ***(50 words)***
2. **Explain why Sixth schedule is considered as a charter for autonomy of a wide magnitude.** ***(75 words)***
3. **Explain why Sixth schedule has failed to decrease the tension between various stakeholders.** ***(75 words)***
4. **Conclusion on positive lines.** ***(50 words)***

**Hints**

The Sixth Schedule is regarded as a mini-Constitution within the Constitution. It envisages establishment of Autonomous District Councils (ADCs) and gives them elaborate Legislative, Administrative, and Judicial powers.

## Sixth schedule is considered as a charter for autonomy of a wide magnitude because:

- No law of the Centre or the State applies in any autonomous region without District Council's approval. They are also empowered to constitute Village councils and Village courts.
- Sixth Schedule in the Indian Constitution established Autonomous District Councils (ADC) in four northeastern states, namely Assam, Meghalaya, Tripura and Mizoram. These ADCs envisage protecting and preserving tribal culture.
- The rationale behind the creation of ADCs is the belief that relationship to the land is the basis of tribal or indigenous identity. The culture and identity of indigenous people can be preserved by ensuring their control over land and natural resources, as these factors to a large extent determine the lifestyle and culture of the indigenous people.
- The Sixth Schedule empowers the Governor to determine the administrative areas of the councils. He is authorized to create new autonomous districts, change the area of existing districts; redefine the boundaries; and alter the names of autonomous districts. The nature of the District Councils, however, differs from place to place. For instance, the District Councils in Assam and Meghalaya have been constituted at the district level, whereas in Mizoram, the District Councils have been created at both the district and sub-divisional levels.

## Sixth schedule has failed to decrease the tension between various stakeholders:

- These councils have become power centers where tribal elite is elected to positions of power and authority. They wield considerable financial clout, but have failed to deliver basic governance. People in these areas feel a deep sense of betrayal.
- It breeds corruption, nepotism, and favoritism and facilitates nexus among the top decision makers, contractors, rich traders, and influential politicians. The elected members in councils and the office-bearers are normally from the elite group of tribal society and have vested interests in preserving this exploitative structure.
- They also do not take interest in planning activities and monitoring developmental schemes at the micro level. They neither try to look for expert input nor involve the local people.
- Their activities have undermined the basic purpose of the Sixth Schedule and consequently the poor tribes are left out both as beneficiaries or as decision makers in issues that ultimately are affect them. This is, in fact, denial of democratic rights to the grass-root people.
- Some District Councils have failed to set up courts at village and other levels. The Karbi Anglong District Council could not create judiciary, because of reluctance of the State Government to release fund. Often the courts at the District Councils level are manned by discarded politicians or persons without any judicial background or training.
- Many District Councils have not yet codified customary laws. Despite the service rules framed by the Councils, appointments are arbitrary. Rather than qualification considerations such as political patronage, nepotism and favoritism take precedence.

## Conclusion:

Councils are almost totally dependent on the devolution of funds from the governments, which denies them the flexibility required to emerge as a vibrant institution for local development. Thus the sixth schedule has failed to decrease the tensions between different stakeholders at the ground level.

**9. Within the purview of Article 371, critically evaluate the provisions and effectiveness of Separate development boards which were established for Vidarbha, Marathawada, Saurashtra and Kutch.**

***(250 words)***

### Approach

1. **Briefly underline the regional imbalances within some of the states and need for special provisions which is imbibed in Indian constitution.** ***(30 words)***
2. **Briefly discuss the provisions under article 371 for establishment of separate development boards for different regions of Maharashtra and Gujarat.** ***(80 words)***
3. **Underline the historical and socio-economic perspective behind this provision.** ***(50 words)***
4. **Discuss effectiveness of the development boards and need for effective implementation of this provision.** ***(60 words)***
5. **Conclude with utility of this constitutional provisions and need to add some more backward regions under it.** ***(30 words)***

### Hints

India is a vast country with varied geographical diversity and thus possesses regional imbalances in terms of socio-economic conditions and development. These imbalances can be found within a state or a region. Flexibility and accommodative nature of Indian constitution has special provisions for such regions. Regions like Vidarbha and Marathawada in Maharashtra and Saurashtra and Kutch in Gujarat are such regions which have been given special privileges in Indian constitution under article 371.

## Provisions under article 371:

Under Article 371, the President is authorised to provide that the Governor of Maharashtra and that of Gujarat would have special responsibility for:

- The establishment of separate development boards for
  - Vidarbha, Marathwada and the rest of Maharashtra,
  - Saurashtra, Kutch and the rest of Gujarat;
- Making a provision that a report on the working of these boards would be placed every year before the State Legislative Assembly;
- The equitable allocation of funds for developmental expenditure over the above-mentioned areas; and

- An equitable arrangement providing adequate facilities for technical education and vocational training, and adequate employment opportunities in the state services in respect of the above-mentioned areas.

## Historical and geographical perspective behind underdevelopment of these regions

- Marathawada and Vidarbha regions of Maharashtra lie in rain shadow area or leeward side of Western Ghat. Hence, these regions receive very less rainfall as compared to rest of Maharashtra.
- Primarily, the both regions are an agro based economy. Less rainfall, low agricultural productivity and poverty has caused large scale migration from these regions. These regions accounts for India's majority of farmer's suicide.
- A large part of Kutch district is known as Rann of Kutch which is shallow wetland which submerges in water during the rainy season and becomes dry during other seasons. Historically Kutch was always considered a backward region due to its location and submerged geography.
- Saurashtra region of Gujarat is a water deprived region which constantly faces drought. This has hindered development in this region.

## Effectiveness of separate development boards for underdeveoped regions: Case study of Maharashtra

- Under constitutional provision of article 371, the three Development Boards were established in Maharashtra, the Vidarbha Development Board, the Marathwada Development Board and the Development Board for the Rest of Maharashtra were established in 1994 with the notification of the State of Maharashtra (Special Responsibility of the Governor for Vidarbha, Marathwada and the Rest of Maharashtra) Order, 1994, their terms have been extended up to 2020.
- Boards established for Marathawada and Vidarbha have taken a lot of initiatives to develop these regions including regular inspection for better implementation of programs, improving socio economic conditions of farmers but yet these regions witness highest number of farmer's suicide.
- The Annual Report 2011-12 shows some of striking findings of regional imbalance in Maharashtra.
  - Of total 'Micro, Small, Medium Enterprises' in Maharashtra, Marathwada has only 7% of enterprises while Vidarbha has 13%, rest of Maharashtra has 80% of total enterprises.
  - Of total 'Large Industries', Marathwada has 11%, Vidarbha 14% while Rest of Maharashtra has 75%.
  - Per Capita Income of Marathwada is Rs.60013, Vidarbha Rs.65502, Rest of Maharashtra Rs.105488.
  - Of total 116 Special Economic Zones of Maharashtra, Marathwada has 10, Vidarbha 10 and Rest of Maharashtra 96.
  - Of total Foreign Direct Investment in Maharashtra, only 2% is in Marathwada while Vidarbha has 8% and Rest of Maharashtra has 90%.
- These statistics clearly shows striking differences between socio-economic condition of Marathawada, Vidarbha and rest of Maharashtra.
- Hence, there is a need to strengthen policy implementation framework to develop backward regions of the state to end intra-state disparity.

- Similar case is with Saurashtra and Kutch region of Gujarat which has signs of intra state regional disparity.

## Conclusion:

Merely implementation of constitutional provision will not suffice as development of historically deprived regions need scientific and rational approach. These regions require problem specific tailor made policies based on regional analysis and effective implementation of government policies with regular social audits of beneficiaries. Some more regions like northern Bihar which has been historically underdeveloped due to natural calamities like flood must be covered under special provisions, then only India will be able to eradicate problems of hunger, poverty and regional disparity and perform better in human development indices.

## 10. Discuss the process of integration of Sikkim to India? Also analyze why it is considered to be a unique example of integration of a territory?

***(250 words)***

### Approach

1. **Briefly introduce the process of integration of Sikkim to India** ***(50 words)***
2. **Analyze why it is considered to be a unique example of integration of a territory?** ***(150 words)***
3. **Conclusion** ***(50 words)***

### Hints

According to the Anglo-Chinese Convention of 1890 Sikkim was allegedly recognized as a protectorate of the British Government. Neither Sikkim nor Tibet were consulted and were not party to the agreement. The fact that Sikkim was a member of Indian Chamber of Princes. When the suzerainty of the British Crown over the Indian states lapsed, all members of the Princes' Chamber technically became independent states. The Indian princely states then merged with the Dominion of India by signing instruments of accession and merger agreements. The Indian Government's claim was that Sikkim, since it was a member of the Chamber of Princes, was in fact another princely state of India. Hence join India through signing the instrument of accession, but the Chogyal claimed that Sikkim was only formally a member of the Chamber, a body which possessed no executive powers, and that Sikkim in fact observed special treaty relations with the British Crown and it did not qualify to be the princely state and subsequently, a state of Union of India.

- In 1950, Sikkim became a protectorate of India through signing a treaty between Maharaja of Sikkim, Sir TashiNamgyal, and a representative of the Indian Government, but remained an independent country.The 1974 general elections resulted in a victory for the India-friendly Sikkim National Congress. The new government sought an increase in civil and political liberties, but was suppressed by the Chogyal, PaldenThondupNamgyal.On 4 July 1974, the Parliament adopted a new constitution that provided for the country becoming a state of India, which the Chogyal signed under pressure from India.
- On 4 September 1974, the Indian LokSabha voted in favor of making Sikkim an "associate" state, with the Rajya Sabha voting for an amendment on 8 September, giving it a status equal to that of other Indian states and absorbing it in the Indian Union.On 8 September 1974, the Chogyal called for a free and fair referendum.

- On 5 March 1975, the National Congress repeated its calls for integration into India, whilst the Chogyal again called for a referendum. On 9 April, Indian troops invaded the country and disarmed the palace guard while putting the king under house-arrest. On 10 April 1975, the Sikkimese Parliament with the support of Indian Prime Minister Indira Gandhi, unanimously voted to abolish the monarchy and merge with India to obtain full Indian statehood. A referendum on this issue was set for 14 April 1975.
- The Indian Parliament gave its final approval to the constitutional amendment making Sikkim a state on 26 April 1975.On 15 May 1975, Indian President Fakhreddin Ali Ahmed ratified a constitutional amendment that made Sikkim the 22nd state of India and abolished the position of the Chogyal.

China and Pakistan called the referendum a farce and a disguise for the forced annexation of the principality, to which Indira Gandhi replied by reminding them of their takeover of Tibet and the issue of Azad Kashmir, which she believed was Indian territory. The Chogyal called the referendum "illegal and unconstitutional".The U.S. government viewed the merging of Sikkim into India as a historic and practical inevitability, given the state's location on important trade routes. The Soviet Union responded positively, though with a muted response.

## Conclusion:

Hence the complex history of the Indian State with Sikkim made the relationship special. This relationship was predominantly to ensure the protection and promotion of the unique cultural and religious diversity of Sikkim, while integrating itself into the union.

The integration of Sikkim to India was unique as it involved a complex process of a host of treaties. The integration followed a gradual process one after another. And finally through conquest invasion the Indian territory contained Sikkim as another state.

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# NOTES

# SET-10: QUESTION

## CONSTITUTIONAL & STATUTORY BODIES

**Q1.** **There are various Constitutional and Non-Constitutional Commissions for welfare of vulnerable and marginalized people. Discuss the flaws in their working and recommend steps needed to make them powerful in handling atrocities and exploitation against vulnerable people.**

**Q2.** **The economy of India has been witnessing several new avenues of interaction between private enterprises and the government. In this context, discuss the paradigm shift in working of CAG with changing state market relation.**

**Q3.** **Discuss the important limitations which have weakened the CBI professionally? How professionalism and accountability could be ensured in the organization.**

**Q4.** **Do you agree that Strong States make a Strong Nation? Illustrate the statement with respect to the working of Niti Aayog in implementing it.**

**Q5.** **For democracy to be meaningful and just, impartiality and independence of the Election commission is prerequisite. In this context identify the flaws that need to be addressed to further strengthen the institution.**

**Q6.** **Examine the role of National Commission for Women in upliftment of women in India. Do you agree that legal measures are not sufficient to address the women issues?**

**Q7.** **The actual working of the State Finance Commissions (SFC's) has not been as effective and efficient as the Union Finance Commission. Critically examine.**

**Q8.** **National Human Right Commission (NHRC) is termed as toothless tiger by the Supreme Court of India. In this regard, examine the functioning and effectiveness of the institution. Also suggest the measures required to enhance the legitimacy and credibility of the institution.**

**Q9.** **The role played by Finance commission in maintaining the fiscal federalism in India is credible, although with lacunae. Analyze. Do you think further rationalization of Centrally Sponsored Schemes will help in better realization of targets of Finance Commission? Give favorable arguments.**

**Q10.** **Explain the powers of union public service commission with special focus on its advisory powers. Briefly mention what changes can be brought about in the institution.**

# SET-10: ANSWERS

**1. There are various Constitutional and Non-Constitutional Commissions for welfare of vulnerable and marginalized people. Discuss the flaws in their working and recommend steps needed to make them powerful in handling atrocities and exploitation against vulnerable people.**

***(250 words)***

## Approach

1. **Introduce the topic with the various constitutional and non-constitutional commissions** ***(40 words)***
2. **Explain importance of commissions for marginalised people** ***(40 words)***
3. **Discuss flaws in their working** ***(60 words)***
4. **Suggest steps to overcome those flaws** ***(60 words)***
5. **Conclude with some positive view** ***(50 words)***

## Hints

- India is a democratic country that is run by the combination of Constitutional and Non-Constitutional Bodies in India. Constitutional Bodies are the bodies that are mentioned in the Constitution of India and so considered as independent and more powerful. These include, Election Commission, Union Public Service Commission and National Commission for SCs and STs.
- Non Constitutional or Extra Constitutional commissions are the bodies that aren't defined in the Constitution of the country. For example, the National Human Rights Commission is not a Constitutional commission because it was established in 1993 by an act of parliament. Others include Central information commission, Lokpal and lokayuktas, Central Vigilance Commission.

### Importance of commissions for marginalised people:

**Some Constitutional Commissions:**

- National Commissions for Scheduled Castes and Scheduled Tribes mandated responsibility to investigate and monitor matters relating to the safeguards for the Scheduled Castes and Tribes of the four core areas of the Commission's functioning – viz., service safeguards, education, economic development and atrocities.

- Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. By conducting elections in a free and fair manner it ensures the voice of marginalised to be reached by their representative leaders.
- Union Public Service Commission (UPSC) is the central recruiting agency in India. By maintaining a free and fair recruitment process, it ensures bureaucracy to be represented by all sections of society.
- Article 280 of the Constitution of India provides for a Finance Commission as a quasi judicial body. It makes recommendations to the president of India on the matters of distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares to ensure equitable distribution of resources for welfare of the country.

## Some Non-Constitutional Commissions:

- National Human Rights Commission and State Human Rights Commission is the watchdog of human rights in the country, i.e. the rights related to life, liberty, equality and dignity of the individual guaranteed by Indian Constitution or embodied in the international covenants and enforceable by courts in India.
- The Central Information Commission is a high-powered independent body which inter alia looks into the complaints made to it and decides the appeals. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the Central Government and the Union Territories.
- The Central Vigilance Commission is conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organisations in planning, executing, reviewing and reforming their vigilance work.
- Lokpal is the institution at the Centre and the Lokayukta at the level of the State that seeks to provide a uniform vigilance and anti-corruption road map for the nation both at the Centre and at the States. The jurisdiction of Lokpal includes the Prime Minister, Ministers, Members of Parliament and Groups A, B, C and D officers and officials of the Central Government.

## Flaws in the working of commissions:

- The most significant handicap of the NHRC , SC& ST Commission is the fact that its decisions are not binding, but recommendatory. An important constraint is the underlying tension between the Commission's constitutional obligation of monitoring the working of safeguards, on the one hand, and its functioning as a body that redresses complaints of violations of safeguards, on the other. This tension at least partly stems from the enormity of the latter task, the huge resources that it requires, and above all the fact that this is popularly perceived as its primary role.
- All commissions are supposed to prepare an Annual Report for presentation to Parliament. Even when Reports are tabled in Parliament, they are frequently not discussed.
- Commissions often restraint from taking views critical of the present government. Since the members are directly appointed by executive, the commission is indirectly controlled by the government.
- Commissions lack funds, functions and functionaries (3 F's) in order to execute their responsibilities.

### Suggest recommendations to improve working of constitutional commissions:

- It is often argued that all commissions are paper tigers which need to be armed with greater powers. This argument is premised on an inadequate appreciation of the location of the Commission in the existing constitutional setup. To give the Commission additional powers, in the matter of criminal investigation for instance, would require it to follow prevailing rules and procedures pertaining to evidence and prosecution.
- These may in fact retard the effectiveness of the Commission by rendering it vulnerable to litigation in the form of appeals to higher judicial bodies, and thereby nullifying its operational effectiveness, and diluting its moral stature.
- The Annual Report is a crucial activity of the Commission, the importance of which is generally overlooked. The Report is generally tabled several years after the period to which it pertains, and is barely debated.
- An amendment is required either in the constitution itself, or in the rules by which the President may fix a period for the discussion of the Report in Parliament.
- A more thoroughly institutionalized mechanism for appointing the Chairperson, Vice-Chairperson and other members, would be appropriate, for it has been observed that the leadership and personnel are key determinants of the Commission's effectiveness. The process of appointment to the Commission should be made more autonomous of the government of the day.

### Conclusion:

Commissions should be given real power and that should be spearheaded by political leadership. Parliament should step forward in enacting the legislations and empowering the commissions to protect human rights of individuals and to provide safeguard to vulnerable sections of society.

## 2. The economy of India has been witnessing several new avenues of interaction between private enterprises and the government. In this context, discuss the paradigm shift in working of CAG with changing state market relation.

***(250 words)***

**Approach**

1. **Introduce the topic with the importance of CAG** ***(40 words)***
2. **Explain traditional duties of CAG** ***(40 words)***
3. **Discuss paradigm shift in working of CAG with changing state market relation** ***(120 words)***
4. **Conclude with some positive view** ***(50 words)***

**Hints**

The Comptroller and Auditor General (CAG) of India is the Constitutional Authority in India, established under Article 148 of the Constitution of India. He is empowered to Audit all receipts and expenditure of the Government of India and the State Governments, including those of autonomous bodies and corporations substantially financed by the Government. The CAG is also

the statutory auditor of Government-owned corporations and conducts supplementary audits of government companies in which the Government has an equity share of at least 51 per cent or subsidiary companies of existing government companies.

## Traditional Duties of CAG:

- Audit of Receipts and expenditure from the Consolidated Fund of India and of the State and Union Territory having legislative assembly.
- Audit of Trading, manufacturing, profit and loss accounts and balance sheets, and other subsidiary accounts kept in any Government department; Accounts of stores and stock kept in Government offices or departments.
- Audit of Government companies as per the provisions of the Companies Act, 2013.
- Audit of Corporations established by or under laws made by Parliament in accordance with the provisions of the respective legislation.
- Audit of Authorities and bodies substantially financed from the Consolidated Funds of the Union and State Governments. Anybody or authority even though not substantially financed from the Consolidated Fund, the audit of which may be entrusted to the C&AG.
- Audit of Grants and loans given by the Government to bodies and authorities for specific purposes.
- Audit of entrusted audits e.g. those of Panchayati Raj Institutions and Urban Local Bodies under Technical Guidance & Support (TGS).

## Paradigm shift in working of CAG with changing state market relation:

- In economies like that of India have gone beyond the conventional interactions in terms of taxes and regulations.
- These are now strewn across various categories. Indian economy is, thus, witnessing expansion of the private sector role in managing public resources and utilities. It is a matter of record that numerous Indian and foreign companies have carried out these activities with high st standards of transparency and accountability. This is what they are expected to do in an open market economy.
- As private public interfaces grow; the role of CAG and regulators would also expand. Accountability of the Executive as well as that of private enterprise will be required to be defined and strengthened through sound and effective institutions which ought to be independent as well as credible.
- Institution of CAG enforces such accountability through Parliament as far as public money and resources are concerned. The Constitutional mandate of CAG is very well defined and the institution is capable of meeting the new challenges presented by the emerging economy.
- The ruling of the Supreme Court removed the doubts on the constitutional mandate as far as it relates to CAG audit of revenue sharing. An entity that may be using public resources in its business and sharing revenue with the Government can be audited by the CAG.
- CAG's examination of the accounts of the service providers in a revenue sharing contract is extremely important to ascertain whether there is an unlawful gain to the service provider and an unlawful loss to the union of India, because the revenue generated out of that has to be credited to the Consolidated Fund of India.
- In the coming days, as the economy further picks up, as more and more people join the workforce, as governments reduce their presence in the marketplace and as technological breakthroughs permit exploitation of natural resources in new areas and avenues for private enterprises would further open up and public interest and fairness would be on test.

- The new changes in the Companies Act also enjoin additional responsibilities on the companies to improve their accountability mechanism. It may also be necessary for the government to make sensible and simplified changes in the design of contracts so that incentives to fudge revenue are systematically removed. If better and sound contracting architecture is put in place and the accountability mechanism is well defined, transparent and fair, CAG audit will not lead to any discouragement to the investors.

## Conclusion:

The role of CAG increased in the post liberalisation era. CAG should work with government vision of "Minimum Government and Maximum Governance" to boost economic progress and Ease of Doing Business in India.

## 3. Discuss the important limitations which have weakened the CBI professionally? How professionalism and accountability could be ensured in the organization.

***(250 words)***

### Approach

1. **Introduce the topic with the induction of CBI** ***(50 words)***
2. **Explain limitations within the CBI** ***(90 words)***
3. **Suggest measures to improve professionalism and accountability** ***(70 words)***
4. **Conclude with some positive futuristic views about CBI** ***(40 words)***

### Hints

The Central Bureau of Investigation (CBI) is the premier investigating agency of India. Operating under the jurisdiction of the Ministry of Personnel, Public Grievances and Pensions(India), Originally set up to investigate bribery and governmental corruption, in 1965 it received expanded jurisdiction to investigate breaches of central laws enforceable by the Government of India, multi-state organised crime, multi-agency or international cases. The agency has been known to investigate several economic crimes, special crimes, cases of corruption and other cases.

## Limitations within the CBI:

- The Supreme Court has characterized the CBI as "a caged parrot speaking its masters' voice"-"one parrot with many masters". The Court further observed that the CBI should have stood up against pulls and pressures.
- This is not the first time that the Supreme Court has insisted upon the independence of the CBI in investigating cases, especially when persons holding high positions in government were themselves involved in malfeasance or in criminal acts.
- Fifteen years ago in a landmark judgment in 1993 on a public interest litigation filed by Vineet Narayan for an honest probe in the Jain hawala case, the Supreme Court Bench headed by late Chief Justice J.S. Varma laid down a system under which the CBI would be supervised by the Chief Vigilance Commission (CVC).

- There is no law at present to ensure independence in investigation by the CBI. At present the CBI derives its powers from the Delhi Special Police Establishment Act under which it is only an investigating arm of the Central Government.
- The most important limitation has been that it is still an agency under the control of the executive, i.e., it is the executive which shall recommend what case is to be investigated by the CBI, and also the superintendence and accountability of the CBI is with the executive.
- Administrative supervision over the CBI is divided between the Ministry for Home Affairs, and the Ministry of Personnel. The overall supervision of work and budgetary control over the CBI is exercised through the Ministry of Personnel. This is the reason why there have been several allegations against the government in power regarding its misuse
- Another important aspect was the single directive or the procedure to take prior approval of the government to even conduct preliminary inquiry into allegations of corruption against top civil servants of the rank of Joint Secretary and above.

### Some of other reforms suggested:

- Delink the CBI from the administrative control of the government - As long as the government of the day has the power to transfer and post officials of its choice in the CBI, the investigating agency will not enjoy autonomy and will be unable to investigate cases freely.
- Providing statutory status through legislation equivalent to that provided to the Comptroller & Auditor General and the Election Commission will help maintain the independence of the institution.
- Twenty fourth report of Department related parliamentary standing committee on personnel, public grievances, law and justice on working of CBI recommended the following:
  - Strengthening human resources by increasing strength of CBI;
  - Better investments in infrastructural facilities;
  - Increased financial resource and administrative empowerment with accountability;
  - Give more Powers (related to Union, State and Concurrent list of the 7th schedule of Indian constitution), to the CBI;
  - Separate enactment under – "Central Bureau of Intelligence and Investigation Act" and replace DSPE Act.
  - The Second Administrative Reforms Commission (2007) also suggested that "a new law should be enacted to govern the working of the CBI".

### Conclusion:

Judiciary, comptroller and auditor general (CAG) and the election commission (EC) have been given independence to a large extent and all these institutions are doing well. So, now time has come that the government must experiment with investigative agencies by giving them independence.

## 4. Do you agree that Strong States make a Strong Nation? Illustrate the statement with respect to the working of Niti Aayog in implementing it.

***(250 words)***

**Approach**

**1. Introduce the topic with federalism** ***(40 words)***

2. **Give balance view on need for stronger states** ***(80 words)***
3. **Explain role of NITI Aayog in making Strong States and Strong Nation** ***(90 words)***
4. **Conclude with futuristic positive views on Indian Federalism** ***(40 words)***

**Hints**

Federalism is a mixed or compound mode of government that combines a general government (the central or "federal" government) with regional governments (provincial, state, cantonal, territorial or other subunit governments) in a single political system. In a federation system, there are two seats of power that are autonomous in their own spheres. A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.

## Arguments in favour of Strong States make a Strong Nation:

- In a federal cooperative democracy like India with huge diversity in culture, ethnicity and economy, strong states make up a strong nation.
- Strong states should have the following characteristics:
  - Political and economic autonomy.
  - Co-operation from the centre.
  - Decentralized planning.
  - Implementation of principle of subsidiarity.
- Strong state means government and the rule of law provide a stable political/social/economic environment where citizens can plan and build and invest for the future.
- Strong states assert their political rights in favour of federal units. And hence gaining more bargaining power with the center.
- After the democratic upsurge in the elections of 1970's, the federal units of India got more strong and separated from the high command culture of central authorities.
- Regional political parties represent regional aspirations and hence contribute to developments of states in an aggressive manner.
- The United States has highly autonomous states with states having their own laws separate from the center and also carrying their own citizenship conditions. This makes the USA a strong nation in terms of its global reputation.

## Arguments for we need much more than a Strong State to make a Strong Nation:

- For the establishment of a strong state in such a diverse nation, support from centre is must i.e. implementation of cooperative federalism.
- India being a continent sized country, every state does not have sufficient resources to sustain on their own, hence support from the center is essential.
- Apart from center-state cooperation, state-state cooperation is also essential for the progress of India and making a strong nation.
- For making a strong nation we need strong military power, this power cannot be delegated to states hence centre has a crucial role in making the image of nation as a strong nation.

## Role of NITI Aayog in making Strong States and Strong Nation:

- Niti Aayog acts as a coordinating bridge between state and centre.
- It envisages formation of national development priorities sectors and strategies with the active involvement of States in the light of national objectives by fostering cooperative federalism and to develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- Role of Niti Aayog in establishment of cooperative federalism.
  - a)Consultative and direct decision making of the state chief ministers in the governing council to deliberate on complex issues. Ex 3 subgroups on Swachh Bharat, skill development.
  - b)The Niti Aayog governing council is playing a greater role in assisting states where Centre-state investment agreements signed for bilateral invest treaty to boost investments in states to ensure better implementation of international treaties that build the spirit of competitive federalism.
  - c)Niti Aayog knowledge hub to act as knowledge and best practises repository for all states who want to emulate
  - d)Niti Aayog creates a congenial atmosphere for states in planning- with recent upgradation of share in divisible pool to 42%, it can help in better utilization of resources.
  - e)Niti Aayog constituted a subgroup of chief ministers for rationalizing and restructuring the centrally sponsored schemes to states greater freedom in designing and restructuring of developmental plans. Ex the Beti Bachao scheme would be of little relevance to states like Kerala while they are important to Haryana.
  - f) Niti Aayog have constituted task forces on agriculture and poverty alleviation. In this regard NITI has come up with a model land leasing bill that each state would adopt according to their needs to ensure effective land leasing and tenancy to increase agriculture productivity and farmer incomes.
  - g) Niti Aayog role in ensuring implementation of SDGs analysing the present targets and demands of each state.
  - h) Niti Aayog as a think tank can help in guiding the states in a co-operative spirit and be a force multiplier in national development by building strong states.

## Conclusion:

Hence, Niti Aayog can be used as the best platform to make units of holding together federation strong and independent. Along with Niti Aayog Rajya sabha can be best utilised as representative of states to make a strong case for autonomous states.

**5. For democracy to be meaningful and just, impartiality and independence of the Election commission is prerequisite. In this context identify the flaws that need to be addressed to further strengthen the institution.**

***(250 words)***

**Approach**

1. **Introduce by elaborating about meaningful, just democracy and highlighting the importance of Election Commission** ***(40 words)***

2. **Mention constitutional provisions regarding Election Commission** ***(30 words)***
3. **Mention the flaws which needs to be addressed** ***(90 words)***
4. **Suggest some remedies** ***(50 words)***
5. **Conclude by giving futuristic way Forward** ***(40 words)***

**Hints**

- Democracy is government by the people; a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system. Meaningful democracy means democratic systems of government must be practiced on ground and not only on paper. And Just democracy includes government should consider the opinion of all the sections of society while governing, including the least vulnerable ones.
- For democracy to be meaningful and just, it is important that the election system is impartial and transparent. Several efforts have been made in India to ensure the free and fair election system and process. The most important among these, is the creation of an independent Election Commission (EC) to 'supervise and conduct' elections.

## Constitutional Provisions regarding Election Commission (EC)

- Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission:
- Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. Thus, he does not hold his office till the pleasure of the President, though he is appointed by him.
- Any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
- The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission.

## Flaws in working of Election commission:

- **Qualifications:** The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission. This makes commissioners to be selected on favour of the government of the day. And reducing chances of impartiality.
- **Term of the members:** The Constitution has not specified the term of the members of the Election Commission. Hence making them insecure about acts they perform in office.
- **Removal:** Additionally, removal of other two ECs does not require such a process of impeachment and can be removed simply by the government in power, making them vulnerable, and affecting their ability to act independently. Hence making other two commissioners them insecure about acts they perform in office.
- **Reappointment:** No bar on retiring election commissioners from any further appointment by the government. Hence making them vulnerable to take actions in favour of the government.

- **Funds:** Funds needed by commission to perform their functions are not "Charged" on consolidated funds of India but "made" out of it. Hence leaving them to the mercy of the government for financial resources.
- **Manpower:** Election commission has no permanent manpower of its own and hence it becomes dependent on other government departments for the workforce during elections.
- **Electoral Bonds:** Election funding by illegal channels was tried to be curtailed by electoral bonds, but anonymity of bonds made commission difficult to track down illegal money.
- **Model Code of Conduct (MCC):** EC has no legal powers to punish offenders of MCC. Hate speech by various leaders like Mayawati, Yogi Adityanath were only barred after the intervention of the Supreme Court.
- **Deregister political parties:** EC has no powers to deregister political parties once they are found guilty of some electoral offences. Hence decreasing their moral stature.
- **Political Funding:** EC has not been able to curb expenses during elections, which cross thousands of crores. EC has some control on funding of individual contestants but no control on political parties for funding.
- **Fake news and hate speech:** Fake news and hate speeches decrease the level of political debate and hence erode the belief of citizens on fair electoral process. EC has failed in curbing the fake news generated on social media and punishing those who are guilty.

## Suggestions to improve working of EC:

- **Recognize the diversification of campaign media:** Recognizing the diversification of campaign media is the first step towards addressing the rampant flouting of the Model Code of Conduct (MCC). The framework for understanding and addressing the various forms of voter manipulation must be fundamentally remained by the ECI.
- **Voters awareness:** Voter Awareness is an ultimate and effective solution, which makes candidates more accountable to their voters and stops the flouting the MCC every now and then. The EC has launched voter awareness campaigns like SVEEP (Systematic Voters' Education and Electoral Participation program). It has also helped turn people into election-participants who remain vigilant in polling processes through the cVigil App where anyone can report election malpractices.
- **Amending the appointment and removal process of ECs:** Government should consider the recommendations by Administrative Reform Commission-II and Law Commission reports regarding the changes required in appointment and removal of ECs and make the institution stronger.
- **Recommendations by commissions:** Government should consider the recommendations by Administrative Reform Commission-II and Law Commission reports regarding the changes required in appointment and removal of ECs and make the institution stronger.
- **Best practices** from other countries in appointing Election Commissions for example in South Africa Election Commissioners is appointed by the President on the recommendations of the National Assembly, following nominations by a National Assembly inter-party committee, which receives a list of at least eight candidates.

## Conclusion:

EC should continuously reinvent its powers given to it under the Indian Constitution as done by many previous CECs like T. N. Seshan. He showed that the powers delegated can be effectively used by a commissioner if he has the willpower to do so. Hence all political parties should come forward to strengthen the institution and make Indian democracy more resilient.

**6. Examine the role of National Commission for Women in upliftment of women in India. Do you agree that legal measures are not sufficient to address the women issues?**

***(250 words)***

**Approach**

1. **Introduce with National Commission for Women** ***(50 words)***
2. **Highlight how NCW works for upliftment of Women** ***(75 words)***
3. **Analyze the legal measures for upliftment of women** ***(75 words)***
4. **Conclusion** ***(50 words)***

**Hints**

National Commission for Women (NCW) was constituted on January 31, 1992 as a statutory body in pursuance of the NCW Act, 1990 to safeguard the interests of women in India. NCW has a wide mandate covering almost all aspects of women's development and plays a pivotal role in studying and monitoring all matters relating to the Constitution and legal safeguards provided to women. It reviews the existing legislations and suggests amendments wherever necessary to meet any lacunae, inadequacies or shortcoming in such laws and also suggests fresh legislations. It looks into the complaints and takes Suo-moto notice of cases involving deprivation of women's rights, etc., of women in order to provide them support, legal care and assistance.

## Commission has initiated various steps i.e.-

- Organized legal awareness camps on legal rights of women, etc.
- Sponsors Parivarik Mahila Lok Adalats and publicitisised against female feticides, violence against women, child marriages etc. in order to generate awareness among women about these issues.
- Launched Mahila Adhikar Abhiyan in Rajasthan.
- Concentrated not only on women's empowerment but also on their growth and development including health care and education. The Constitutional and legislative provisions in India not only grants equality and protection to women, but also empower the state to adopt measures of positive discrimination in favor of women.
- The government of India has enacted several women-specific legislations to uphold the constitutional mandate and to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of sati, etc.
- The 'crime against women' under various legislations of government of India could be broadly classified within two categories:
- First, the crimes identified under the Indian Penal Code (IPC) which includes Rape; Kidnapping & Abduction for different purposes; Homicide for dowry, dowry deaths or their attempts; Sexual harassment, etc.
- Secondly, the crimes identified under the Special Laws (SLL) which are though not gender specific but do have special provisions to safeguard women and their interests.
- It includes The Employees State Insurance Act, The Family Courts Act, 1954; Immoral Traffic (Prevention) Act, 1956; Dowry Prohibition Act, 1961; The Criminal Law (Amendment) Act, 1983; etc.

### Lacunas in Woman empowerment:

- But over the years, discriminations against women in various forms have reached epic proportions. The maternal mortality rate is estimated at 200 per 100,000 live births (2010) in India.
- The saga of missing daughters is vividly depicted in the growing incidence of female feticide as a result of which the child sex ratio has declined from 927 in 2001 to 914 in 2011.
- Prenatal tests to determine the sex of the fetus were criminalized by Indian law in 1994, but the above-mentioned imbalances in the sex ratio at birth, clearly point to gender selective abortions.
- While abortion is officially illegal in India there are some exceptions to this rule such as the failure of contraceptive device used by a couple; if the woman was raped; or if the child would suffer from severe disabilities. In total 11 million abortions take place annually and around 20,000 women die every year due to abortion related complications.
- Further the literacy rates have shown an improvement from 54.3% to 65.46% of the total female population between 2001 and 2011, yet much more needs to be done especially for socially and economically backward regions and groups.
- Economic empowerment as reflected by the work participation rate shows that the percentage of women in the work force increased by only 3% (from 22.5% to 25.7%) between 1991 and 2001. Participation of women in the workforce is only 13.9% in the urban sector and 29.9% in the rural sector.
- Women's wage rates are, on an average only 75 % of men's wage rates and constitute only 25% of the family income.

### Conclusion:

Legislation alone is not going to stop discrimination against women from occurring. There is a mismatch between the existence of good laws and their actual implementation. For the better implementation of the laws and to address the women issues, all the three (Government, NCW, & Citizens) should play their respective roles. I.e., Government should provide enough powers to the commission to play its 100% role to bring the justice on the board, NCW should focus more on the bringing awareness in the general citizens & strengthen its redressal mechanism. And finally the citizens should change their mindset towards women.

## 7. The actual working of the State Finance Commissions (SFC's) has not been as effective and efficient as the Union Finance Commission. Critically examine.

***(250 words)***

**Approach**

1. **Introduce with state finance commission** ***(40 words)***
2. **Highlight the role of SFC with constitutional provisions** ***(50 words)***
3. **Enumerate the issues with working of SFC as mentioned in 2nd ARC** ***(60 words)***
4. **Highlight few suggestions** ***(60words)***
5. **Conclusion** ***(40 words)***

**Hints**

State Finance Commission (SFC) is the Constitutional body of experts on public finance and public administration appointed by Governor of each state at regular intervals of five years.

## Constitutional Provisions of State Finance Commission:

- As per article, 243-I of the Constitution, its mandate is to review and revise the financial position of panchayat raj institutions and urban local governments.
- The provisions of Articles 243 I and 243 Y are essentially modeled on Article 280 which deals with constitution of a Finance Commission at the Union level to make recommendations.
- Similar to the role of the Finance Commission in recommending devolution of funds from the Union to the States, the State Finance Commissions also make recommendations regarding the principles that should govern the distribution of taxes between the States on the one hand and the local bodies on the other.
- Thus, the SFC arbitrates the claims to resources of a State by the State Government and the local bodies.

## Issues in functioning of SFC:

- **Government's attitude towards SFCs:**
  - There have not been genuine efforts by the states to make clear expenditure assignments to the local bodies and corresponding restructuring of state's set-up.
  - The state Governments treat the SFCs with scant respect, partly due to their membership composition that includes serving civil servants.
  - The State Government generally takes a long time to accept and act on the SFCs recommendations.
  - The State Government staff transfers to the local bodies have not been accompanied by revenue source transfers.
  - There is inadequate realization that the SFC's are supposed to recommend fiscal transfers in aid of local revenues and not finance of creating local infrastructure.
- **Administrative problems with SFCs**
  - The SFC's waste much of their time to collect routine financial data from the local bodies that the states should have collected in a routine manner; collection of qualitative data for policy purposes e.g., fiscal autonomy/revenue dependency, expenditure/revenue decentralization, is not attempted.
  - The SFC's have not paid much attention to improve fiscal administration of local bodies, which might be more important than fiscal transfers per se.
  - SFCs do not start their work after first reviewing state finances, nor do they suggest significant transfers of, or surcharging on, the state taxes.
  - Inadequate attention is given by the SFCs to the adverse consequences of grants on local revenue efforts and local fiscal autonomy.

## Way Forward:

- Article 243 I (1) of the Constitution should be amended to include the phrase "at such earlier time" after the words "every fifth year". Each State should prescribe through an Act, the qualifications of persons eligible to be appointed as Members of the State Finance Commission.

- SFCs should evolve objective and transparent norms for devolution and distribution of funds. The norms should include area-wise indices for backwardness.
- State Finance Commissions should link the devolution of funds to the level/quality of civic amenities that the citizens could expect. This could then form the basis of an impact evaluation.
- The Action Taken Report on the recommendations of the SFC must compulsorily be placed in the concerned State Legislature within six months of submission and followed with an annual statement on the devolution made and grants given to individual local bodies and the implementation of other recommendations through an appendix to the State budget documents.
- SFCs should carry out a more thorough analysis of the finances of local bodies and make concrete recommendations for improvements in their working.

### Conclusion:

SFCs have not been provided with the necessary environment to play their rightful role in Indian fiscal federalism. A great opportunity to build regional equity in India has been undermined. Hence, adequate steps should be taken to make SFCs effective and efficient.

## 8. National Human Right Commission (NHRC) is termed as toothless tiger by the Supreme Court of India. In this regard, examine the functioning and effectiveness of the institution. Also suggest the measures required to enhance the legitimacy and credibility of the institution.

***(250 words)***

### Approach

1. **Define NHRC, its powers and functions.** ***(40 words)***
2. **Briefly highlight the nature and role of NHRC.** ***(90 words)***
3. **Highlight specific role and success in furthering human rights** ***(80 words)***
4. **Mention steps taken and needed to make it more effective** ***(40 words)***

### Hints

NHRC is a statutory body, constituted under the Protection of Human Rights Act, 1993, to protect and promote human rights related to life, liberty, equality and dignity of individuals. Though NHRC ushered the era of awareness of human rights and their promotion, registered number of cases of human right violations has significantly increased but readdressed of these cases is not as per expected lines due to weak structuring and ineffective functioning of the institution.

### Role and Flaws in NHRC:

- NHRC's recommendations do not percolate to the ground level as the NHRC does not have the backing of the Protection of Human Rights Act to penalize authorities which do not implement its orders.

- **Flaws in Selection process:** not sufficiently broad and transparent, lack of uniform and precise criteria for appointing members, no advertisement for vacancies in top posts is given out.
- **Non-filling of vacancies**: Most human rights commissions are functioning with less than the prescribed Members. This limits the capacity of commissions to deal promptly with complaints.
- As non-judicial member positions are increasingly being filled by ex-bureaucrats.
- The NHRC is not empowered to act when human rights violations through private parties take place.
- **Scarcity of resources** – or rather, resources not being used for human rights related functions – is another big problem.
- **Bureaucratic style of functioning:** As human rights commissions primarily draw their staff from government departments – either on deputation or reemployment after retirement – the internal atmosphere is usually just like any other government office.
- The Act does not extend to Jammu and Kashmir and hence the commission has to keep its eyes closed to human rights violations there.

### Steps to be taken to enhance effectiveness, legitimacy and credibility of the institution:

- The effectiveness of commissions will be greatly enhanced if their decisions are immediately made enforceable by the government. This will save considerable time and energy.
- Not allowing NHRC to independently investigate complaints against the military and security forces only compounds the problems and furthers cultures of impunity.
- If it is to play a meaningful role in society, it must include civil society human rights activists as members in non-judicial position, rather than ex bureaucrats.
- NHRC needs to develop an independent cadre of staff with appropriate experience. This problem can be rectified by employing specially recruited and qualified staff to help clear the heavy inflow of complaints.
- A culture of human rights ought to be promoted through education. Human rights education in India is extremely important, given the fact that society is witness to numerous violations and abuse of powers and that the ability of the people to fight these injustices is limited. The strategy for inculcating human rights culture among the people needs to be based on a number of factors: social, legal, political, judicial, and institutional.

### Conclusion:

It is important that Human Rights Commissions (HRCs) succeed in their efforts to promote and protect human rights. The legitimacy and credibility of these commissions rest on their ability to address the problems relating to human rights in a society. It is for Parliament to decide whether to confer NHRC with some kind of contempt powers to make authorities implement its recommendations and establish them as an institution of eminence and credibility.

## 9. The role played by Finance commission in maintaining the fiscal federalism in India is credible, although with lacunae. Analyze. Do you think further rationalization of Centrally Sponsored Schemes will help in better realization of targets of Finance Commission? Give favorable arguments.

***(250 words)***

## Approach

1. **Write briefly about finance commission and role played by it.** ***(50 words)***
2. **Issues related to FC and suggestive measures.** ***(70 words)***
3. **Issues related to CSS and how their restructuring will help FC.** ***(80 words)***
4. **Conclusion.** ***(50 words)***

## Hints

The office of finance commission derives its powers from Article 280 of Indian constitution. It is a quasi-judicial body constituted by President for a term of five years and can be extended for desired period as per requirement. It consists of chairman and four other members with mentioned criteria for appointment.

### Role played by finance commission:

- The distribution of net proceeds of taxes between centre and states and allocation between states.
- The principles governing grants in aid to the states by the centre from consolidated fund of India.
- The measures to augment the consolidated fund of a state.
- Any other matters referred to it by the president.

### Issues related to present finance commission:

- Presently 1971 Census is used as one of the criteria for resource allocation but the new terms of reference is considering 2011 census as the new basis. Since the population of northern states has increased considerably in the period, it is creating furor in southern states as it will reduce their tax share.
- The share of states has been increased to 42% from earlier 32% giving more autonomy to states but reduction in funding to centrally sponsored schemes has been creating problems for already funds crunched states.
- Some tension with erstwhile Planning Commission with respect to resource allocation created a rift between two bodies. However the replacement of Planning Commission with Niti Aayog has redefined the relation between the two bodies positively.
- Recently NK Singh, the chairman of 15th finance commission commented that there needs to be further rationalization of centrally sponsored schemes which could help finance commission in better realization of goals.

### Issues with centrally sponsored schemes:

- Tied nature of funds whereby states have less autonomy in spending e.g. National social assistance program where states have least autonomy in spending.
- One size fits all approach whereby the schemes are formulated at top level with least feedback from ground level e.g. Pradhan Mantri Awas Yojna.

- Slip back effect where people revert back from benefits e.g. people not using toilets under Swatch Bharat Abhiyaan.
- States contributing very less despite increased funding from finance commission.
- Thus with the issues related to present structure of centrally sponsored schemes in India, the problem will persist with respect to effective distribution of resources among common people. Restructuring of these schemes could help with the problems.

### How restructuring will help:

- More autonomy at ground level for planning purpose.
- More scope for increased avenues for states with respect to resource generation.
- Greater participation by workers at ground root level leading to enhanced efficiency of schemes.
- Lesser burden on finance commission for looking into sector specific allocation and making shares as per terms of reference mentioned.

### Conclusion:

The two distinctive feature of commission's work involve redressing the vertical imbalances between the taxation powers and expenditure responsibilities of the centre and the states respectively and equalization of all public services across the states. Restructuring centrally sponsored schemes will help in better realization of financial and social targets of nation.

## 10. Explain the powers of union public service commission with special focus on its advisory powers. Briefly mention what changes can be brought about in the institution.

***(250 words)***

**Approach**

1. **Briefly address few points about upsc and its role.** ***(40 words)***
2. **Address the main part i.e powers with special focus on advisory powers.** ***(70 words)***
3. **Give suggestions on what issues there could be improvement in role of UPSC** ***(80 words).***
4. **Conclusion particularly focused with changing time.** ***(60 words)***

**Hints**

The Union Public Service Commission is India's premier central recruiting agency. It is responsible for appointments to and examinations for All India services and group A & group B of Central services. Established on 1 October 1926 as Public Service Commission, it was later reconstituted as Federal Public Service Commission by the Government of India Act, 1935; only to be renamed as today's Union Public Service Commission after the independence.

## Constitutional Provisions:

Article 315 to Article 323 deals with issues related to Union Public Service Commission like Appointment and terms of office, removal and suspension of members, powers and functions, expenses and reports etc.

## Major powers of UPSC:

Main power of Union Public Service Commission is its advisory power. It can give advises to the President and the governors of any State of the following affairs:

- On all matters related with the appointment of the civil services of the governments.
- The evaluation of the standard and efficiencies of the candidates for appointment, promotion or transfer in all civil posts.
- On all matters regarding the discipline and punctuality of the employees of All India Services.
- Affairs associated with the demands and benefits of employees working under the All India Civil Services and injured while on duty.
- Whether the payment or expenditure for any work of an employee of All India Civil Services will be borne by the consolidated fund of India.
- Regarding discipline and promptness in government functions of paying compensation to a government employee if he suffers any problem or financial loss due to the negligence on the part of the government, matters related with the punishment measures of those employees who have violated discipline or of all matters related with the interest of the government employees working under the central government.

However the government is not bound to take advises of the Union Public Service Commission in regard to the issues of making reservation in services for the schedule caste, schedule tribe and other backward communities or for making some special provision and privileges for making such reservations for them under Act 335 under the constitution of India.

## What changes can be brought about in UPSC with respect to existing role:

Since UPSC is responsible for the recruitment of top bureaucratic positions of nation, following changes could be made:

- Clear demarcation of role right from the stage of recruitment with respect to promoted officers in the cadre e.g. in the case Praveen Srivastava & Ors vs. UPSC, 2017 the conflict on the issue had to be brought in court.
- The manner of appointment and removal of chairman could be made more transparent by giving the responsibility to an independent body rather than government doing this.
- It is often referred to as watchdog of merit system but has only recommendatory powers. This provision could be relooked upon by giving some teeth to the body.

## Conclusion:

Being a constitutional authority, UPSC is amongst the few institutions which functions with both autonomy and freedom and government should make certain that this autonomy is not infringed upon ensuring institutional credibility.

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# NOTES

# SET-11: QUESTION

## IMPORTANT AMENDMENTS AND ELECTIONS IN INDIA

**Q1. Why is the 42nd Constitutional Amendment Act called as the mini-constitution? Also, explain the relevance of some recent Constitutional amendments in Indian Polity.**

**Q2. With reference to the amendment powers, the Parliament cannot amend those provisions which form the 'basic structure' of the constitution. Discuss**

**Q3. The Indian constitution has been amended several times and some people think that it is due to the failure of our founding fathers to foresee the future? Do you agree? On what grounds amendment of the articles and clauses of the constitution could be justified?**

**Q4. Do you think anti-defection law gives supremacy to political parties over the parliament? How do you relate this with health of democracy? Suggest remedial measures.**

**Q5. Discuss the debate around the amendment of preamble and omission of key words like "secular" and "socialist". How does it augur for Indian democracy?**

**Q6. Critically evaluate the benefits and challenges put forth by First Past the Post system and Proportional Representation system of election.**

**Q7. Free and fair elections are necessary, but not a sufficient condition for efficient working of a democracy. Examine.**

**Q8. Section 123 of the Representation of People's Act, 1951 (Act) impose restrictions on speech thus discuss the limits of those restrictions and the purpose of the law.**

**Q9. What do you understand by Criminalization of Politics? Discuss the reasons behind Criminalization of politics. Suggest measures to curb criminalization of politics.**

**Q10. Elections are meant to be the carnival of democracy. However the conduct of general elections depicts chaos. Analyze if this chaotic model is good for substantive democracy.**

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# SET-11: ANSWERS

**1. Why is the 42nd Constitutional Amendment Act called as the mini-constitution? Also, explain the relevance of some recent Constitutional amendments in Indian Polity.**

***(250 words)***

## Approach

1. **Write briefly about 42nd Constitutional Amendment Act.** ***(50 words)***
2. **Mention about few amendments, for example, the Preamble, federalism, etc** ***(90 words)***
3. **Write about recent few constitutional amendment acts.** ***(60 words)***
4. **Conclusion.** ***(50 words)***

## Hints

The Constitution (Forty-second Amendment) Act, 1976, was enacted during the Emergency 1975-1977 by the Indian National Congress government headed by Indira Gandhi. This amendment brought about the most widespread changes to the Constitution in its history and is sometimes called a "mini-Constitution", as it altered many sections of the Indian constitution for the purpose of amendments.

### The major amendments made in the Constitution by the 42nd Amendment Act are:

- **The Preamble:** The characterization of India as a 'Sovereign Democratic Republic' has been changed to a 'Sovereign Socialist Secular Democratic Republic'. The words 'Unity of the nation' has been changed to 'Unity and integrity of the nation'.
- **Parliament and State:** The life of the Lok Sabha and State Legislative Assemblies was extended from 5 to 6 years.
- **Judiciary**: The 42nd Amendment Act inserted Article 32A in order to deny the Supreme Court the power to consider the Constitutional validity of a State law. Another new provision, Article 131A, gave the Supreme Court an exclusive jurisdiction to determine question relating to the Constitutional validity of a central law.
- **Executive:** Before the 42nd amendment, Article 74(1) stated that, "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions". However, there was a slight ambiguity whether the advice of the Council of Ministers is binding on the President. Forty-second Amendment of the Constitution of India (1976) made it explicit that the President shall, "act in accordance with such advice.

- **Fundamental Duties:** The Fundamental Duties under article 51A of citizens were added upon the recommendations of the Swaran Singh Committee that was constituted by the government in 1976.
- **Directive Principles:** The 42nd Amendment added new Directive Principles, viz Article 39A, Article 43A and Article 48A. The 42nd Amendment gave primacy to the Directive Principles, by stating that "no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights".
- **Federalism:** The Act added Article 257A in the Constitution to enable the Centre to deploy any armed force of the union or any other force under its control for dealing with any grave situation of law and order in any State.
- **Emergency:** Prior to 42nd Amendment Act, the President could declare emergency under Article 352 throughout the country and not in a part of the country alone. The Act authorised the President to proclaim emergency in any part of the country.

### Some recent constitutional amendments in India:

- The recent constitutional amendments have paved the way for various reforms in the country. The 101st, 102nd and the 103rd Constitutional Amendments are regarded as the most important amendments in this regard.
- **The 101st Amendment:** It allowed the government to unify the taxation system throughout India thus leading to a pan India taxation system. It led to the simplification of indirect taxation system in India by introducing GST and increased revenue for the government treasury.
- **The 102nd Amendment:** It provided for granting constitutional status to the National Commission for Backward Classes, restructuring the existing mechanism for the upliftment of backward classes, thus acting as a tool of good governance.
- **The 103rd Amendment:** It provided for 10% reservation to the economically weaker section in the society, thus working for the cause of economic justice in the society.

### Conclusion:

- This amendment brought about the most widespread changes to the Constitution in its history and is sometimes called a "mini-Constitution". Almost all parts of the Constitution, including the Preamble and amending clause, were changed by the 42nd Amendment, and some new articles and sections were inserted. To reverse these ills, 44th Constitutional amendment was enacted.
- Amendment provisions in Indian polity is unique and essential in the sense that it provides life to the constitution, making it not merely a legal document but an instrument of adapting to change and bringing change in society as well.

## 2. With reference to the amendment powers, the Parliament cannot amend those provisions which form the 'basic structure' of the constitution. Discuss

***(250 words)***

**Approach**

**1. Introduction with need of amendment powers** ***(50 words)***

2. **What are amendment powers?** ***(40 words)***
3. **What is doctrine of basic structure ?** ***(60 words)***
4. **Need of harmony between amendment powers and basic structure** ***(80 words)***
5. **Conclusion** ***(30 words)***

**Hints**

Parliament is the apex law making body in the India. Constitution is a living document. It requires changes as the society changes. For example, in era of neo-liberal era, India desperately required foreign investment but complex indirect tax structure was a hassle. So, Parliament enacted **101st constitutional amendment act** to implement new scheme of indirect taxes.

## Amendment powers:

- Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority.
- Also constitution can be modified by simple majority but these changes are not deemed to be constitutional amendment.

## Doctrine of basic structure:

- In the **Kesavananda Bharati case (1973),** Supreme Court stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution.
- It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.

## Need of harmony between amendment powers and basic structure:

- India has a constitution, so parliament should work within constitutional limits to meet social and political challenges. Parliament must not try to circumvent its provisions. Basic structure doctrine has restricted the chances of misuse of brute majority in the parliament. Keshavnanda Bharti case came in a background in which Indira Gandhi wanted a "**committed judiciary**".
- Doctrine of basic structure should not prevent Parliament from exercising its constitutional rule. For example, **99th Constitutional Amendment** which sought to give politicians and civil society a say in the appointment of judges to the highest courts was declared unconstitutional. Supreme Court held that it interfered with independence of judiciary which is a basic structure. Further, Supreme court has not defined basic structure. It has only provided some list of features which are included in the basic structure.
- It cannot be ignored that doctrine of basic structure has empowered the judiciary. Coalition government has been mired with indecisiveness, many time people went to judiciary for decision. Judicial activism has become more acceptable which is not good for democracy. For example, Judiciary mandated auction as an acceptable way of selling resources of state. One must not forget that rule by judges is nothing but rule by some selected people. Further, Supreme Court severely does not have representation of different sections of society.

## Conclusion:

There is a need of balance between various organs of government. Wisdom enshrined in doctrine likes "separation of power" and "check and balance" should not be ignored. Parliament must focus on law –making and judiciary on interpreting the constitution.

**3. The Indian constitution has been amended several times and some people think that it is due to the failure of our founding fathers to foresee the future? Do you agree? On what grounds amendment of the articles and clauses of the constitution could be justified?**

***(250 words)***

### Approach

1. **Briefly introduce about the need for amending a Constitution.** ***(50 words)***
2. **Discuss new problems, challenges emerged** ***(80 words)***
3. **Discuss some important amendments and their impact** ***(80 words)***
4. **Conclusion** ***(40 words)***

### Hints

No social economic nor political phenomena are timeless. They change with the values, orientation, priorities of the society of the time. Hence any constitution should provide necessary provisions to accommodate such macro/micro developments. All major constitutions of the world, like Soviet Union, Germany, United Kingdom, Canada and USA have provided for amending procedures'

- It is the wisdom and foresight of our constituent assembly, framed with due diligence inculcating values of freedom struggle, provided for such a accommodative procedure under Article 368. In doing so they provided for different procedure (a healthy mix of rigid and flexible features) so that basic nature of the constitution shall remain a living document.

## New problems & challenges emerged:

- Cross border Terrorism, Cyberthreat, communal conflicts, Lynching
- Massive proliferation of Corruption
- Concern of new Indian Woman's challenges like sexual harassment of women at workplace, triple talaq etc.
- Issues of environmental security, sustainable development
- Innovative means of taxation like Service tax, GST
- Rights of LGBT ,Minority community
- New paradigm in granting reservation on the basis of economic criteria
- These can be addressed effectively only by constitutional amendments. This would make the Constitution more relevant, respected by citizens and thereby deriving their legitimacy.
- If we analyse the nature of amendments of Indian constitution, our future legislators have used it towards making Constitution more progressive towards bringing positive social transformation in the society.

**For example:** Some of the fare amendments along with justified grounds are given below:

- 1st Constitutional amendment to enable reservation for SC/ST, land reform
- 26th ---recognizing social equality by removing privileges to the Princely states.
- 42nd Amendment to include Fundamental duties, adding new subjects of environment,.
- 52nd to check defection among legislators
- 73rd for democratic decentralization by promoting grass roots democracy.
- 97th --to give more teeth to Cooperatives
- 100th---To check cross boundary illegal migration and promote regional harmony, better relation with neigh boring Bangladesh.

- The law makers have used the amending procedure on the basis of new foreign policy challenges like accession of Sikkim, seceding border territory of India to Bangladesh (100th constitutional amendment) etc hence it should not be perceived as irrelevant or useless or abuse of power of Amendment.
- Even the Supreme Court in various verdicts has recommended amendment for bringing social change like Right to Education,
- Compared with the Constitution of USA, forex, where amendments have been undertaken many times despite its rigidity (requiring consensus of a 3/4th of the states of the federation).

The nature of amending procedures given in the Constitution where federal features like GST makes it rigid, so that there is greater consensus among the states, while features like renaming states, accession of new territories makes it easier giving law makers greater power to secure integrity of India hence they are not abuse of power.Constitutional makers have judiciously incorporated both flexible and rigid feature so that its abuse is checked.

## Conclusion:

Hence, the amendment to constitution is a proof that it is a living document able to adapt to changes & tides of times. It has ensured that the constitution remains strong. The amenability has lead to increase in the Umbrella of constitution to cover as many factors to ensure justice, liberty, freedom, for all the People of the country.

**4. Do you think anti-defection law gives supremacy to political parties over the parliament? How do you relate this with health of democracy? Suggest remedial measures.**

***(250 words)***

**Approach**

1. **Introduce anti-defection law explaining what it provides for.** ***(50 words)***
2. **Discuss how it empowers political parties to control individual MPs.** ***(80 words)***
3. **Discuss negative fallouts of anti-defection law on vibrancy of democratic process.** ***(80 words)***
4. **Suggest remedial measures.** ***(40 words)***

## Hints

### What is the anti-defection law?

- Aaya Ram Gaya Ram was a phrase that became popular in Indian politics after a Haryana MLA Gaya Lal changed his party thrice within the same day in 1967. The anti-defection law sought to prevent such political defections which may be due to reward of office or other similar considerations.
- The Tenth Schedule was inserted in the Constitution in 1985. It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House. A legislator is deemed to have defected if he either voluntarily gives up the membership of his party or disobeys the directives of the party leadership on a vote. This implies that a legislator defying (abstaining or voting against) the party whip on any issue can lose his membership of the House. The law applies to both Parliament and state assemblies.

### Are there any exceptions under the law?

- Yes, legislators may change their party without the risk of disqualification in certain circumstances. The law allows a party to merge with or into another party provided that at least two-thirds of its legislators are in favor of the merger. In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.
- Various expert committees have recommended that rather than the Presiding Officer, the decision to disqualify a member should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission. This would be similar to the process followed for disqualification in case the person holds an office of profit (i.e. the person holds an office under the central or state government which carries a remuneration, and has not been excluded in a list made by the legislature).

### How has the law been interpreted by the Courts while deciding on related matters?

- The Supreme Court has interpreted different provisions of the law. We discuss some of these below. The phrase 'Voluntarily gives up his membership' has a wider connotation than resignation. The law provides for a member to be disqualified if he 'voluntarily gives up his membership'. However, the Supreme Court has interpreted that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct. In other judgments, members who have publicly expressed opposition to their party or support for another party were deemed to have resigned.
- In the case of the two JD(U) MPs who were disqualified from Rajya Sabha on Monday, they were deemed to have 'voluntarily given up their membership' by engaging in anti-party activities which included criticizing the party on public forums on multiple occasions, and attending rallies organized by opposition parties in Bihar.

### Decision of the Presiding Officer is subject to judicial review

- The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992, thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.

- In 2015, the Hyderabad High Court, refused to intervene after hearing a petition which alleged that there had been delay by the Telangana Assembly Speaker in acting against a member under the anti-defection law.

## Is there a time limit within which the Presiding Officer has to decide?

- The law does not specify a time-period for the Presiding Officer to decide on a disqualification plea. Given that courts can intervene only after the Presiding Officer has decided on the matter, the petitioner seeking disqualification has no option but to wait for this decision to be made.
- There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions. In some cases this delay in decision making has resulted in members, who have defected from their parties, continuing to be members of the House. There have also been instances where opposition members have been appointed ministers in the government while still retaining the membership of their original parties in the legislature.
- In recent years, opposition MLAs in some states, such as Andhra Pradesh and Telangana, have broken away in small groups gradually to join the ruling party. In some of these cases, more than 2/3rd of the opposition has defected to the ruling party.
- In these scenarios, the MLAs were subject to disqualification while defecting to the ruling party in smaller groups. However, it is not clear if they will still face disqualification if the Presiding Officer makes a decision after more than 2/3rd of the opposition has defected to the ruling party. The Telangana Speaker in March 2016 allowed the merger of the TDP Legislature Party in Telangana with the ruling TRS, citing that in total, 80% of the TDP MLAs (12 out of 15) had joined the TRS at the time of taking the decision.
- In Andhra Pradesh, legislators of the main opposition party recently boycotted the entire 12-day assembly session. This boycott was in protest against the delay of over 18 months in action being taken against legislators of their party who have allegedly defected to the ruling party. The Vice President, in his recent order disqualifying two JD (U) members stated that all such petitions should be decided by the Presiding Officers within a period of around three months.

## Does the anti-defection law affect the ability of legislators to make decisions?

- The anti-defection law seeks to provide a stable government by ensuring the legislators do not switch sides. However, this law also restricts a legislator from voting in line with his conscience, judgment and interests of his electorate. Such a situation impedes the oversight function of the legislature over the government, by ensuring that members vote based on the decisions taken by the party leadership, and not what their constituents would like them to vote for.
- Political parties issue a direction to MPs on how to vote on most issues, irrespective of the nature of the issue. Several experts have suggested that the law should be valid only for those votes that determine the stability of the government (passage of the annual budget or no-confidence motions).

## Conclusion:

The noble purpose of the anti-defection law is to bring stability to governments. So it stands to reason if it was limited to votes deciding the fate of a government. But the law allows political parties to disqualify legislators for voting against the party line inside the legislature and anti-party conduct outside it. The law is even applicable to Rajya Sabha MPs, who have no mandate to vote out a government.

**5. Discuss the debate around the amendment of preamble and omission of key words like "secular" and "socialist". How does it augur for Indian democracy?**

***(250 words)***

## Approach

1. **Discuss the significance of preamble in the introductory paragraph.** ***(40 words)***
2. **Write about induction of the words secular and socialist in the preamble subsequently.** ***(40 words)***
3. **Discuss recent debate around omission of these words.** ***(80 words)***
4. **Discuss significance of the above ideals for Indian democracy.** ***(40 words)***
5. **Conclusion** ***(50 words)***

## Hints

The Preamble is often referred to as the soul of the Indian Constitution, affording a key to its letter and spirit. Delineating the core concerns of the polity in independent India, the Preamble seeks to express a solemn resolve that becomes the guiding light for the country. It provides for source of the constitution, key ideals to be pursued, nature and character of the Indian state and date of implementation of the constitution. It can also help judiciary in understanding the spirit of the provisions of the constitution in case of ambiguity. Today, it is clear that preamble does form a part of the constitution.

- The words secular and socialist were not a part of the preamble originally and were inserted through 42nd amendment, 1976 by Indira Gandhi government. Arguably, the insertion of these words appears unnecessary and unwarranted. Undoubtedly, the dominant faction of the leadership during the national movement, led by Jawaharlal Nehru, was committed to socialism. If there were any doubts on this count, the matter was finally settled at the Avadi Session of Congress in 1954.
- Above all, the policy of centralized planned economic development through successive Five Year Plans, initiated by the government of Nehru, as well as the unbridled nationalization of the financial institutions by Indira Gandhi, left not even an iota of doubt that India is totally on the socialistic path of economic development.
- Similarly, the idea of secularism was probably as deep rooted in the mindset of the Indian leadership as well as the masses as the idea of democracy. Significantly, as the Indians fought the colonial rulers for Independence, they also became well-versed with certain values which though appeared Western, became synonymous with the value system of the Indians—two such values being that of democracy and secularism. The provisions like article 14,15,25,29 and 30 support this idea that constitution makers didn't feel it necessary to explicitly use the word secular to make their intent clear.
- Recently, there was a demand from certain corners to remove the word "secular" and "socialist" from the preamble. An advertisement issued by the I&B Ministry carried a picture of the preamble to the Constitution as it appeared before the 42nd Amendment, without the words "secular" and "socialist". Even after the ministry dismissed it as an error, the argument given by supporters of this change was that these were not a part of original preamble and had the constitution makers wanted them to be a part of the preamble, they could have done so. There was however a political undercurrent also to this demand. The rise of Hindutva ideology has always been uncomfortable with idea of secularism in India. This demand is in congruence with the rise of capitalist development and pro-Hindutva groups in India in recent decades.

- As an ideal, secularism and socialism provide a sense of utopia for Indian society. Secularism is in keeping with religious diversity and long history of coexistence with minority communities. SC has also accepted in S.R.Bommai that secularism is a basic feature of our constitution. If it is removed forcefully by the ruling party, it will only send a poor message to the minority and the lack of trust will only increase. Communal tension will increase and fringe elements will get bolstered in their hatred for minority.
- Regarding the word "socialism", we are on a definite path of capitalist development after 1991 reforms. There has been increase in income inequality since then, farmers suicides have increased, wealth gap has broadened. In this regard, the very presence of the word gives a sense of how Indian society has to undertake the path of development. The ideal gives a reality check to the ruling party and other participants like civil society to ask questions about policy decisions. The pro-poor tilt in the policies is an outcome of our commitment to the ideal of socialism. The DPSP also indicates towards the same.
- The Indian democracy implicitly contain the values of Secularism and socialism. The history and culture of India had evolve a consensus on the fraternity and dignity of individual, communities. The values of unity in Diversity, Respect for all, freedom to establish ones faith are examples of fabric of secularism while the patronage by state for welfare of people had been done since times of Ashoka. Hence the two words in Preamble explicit the implicit philosophy of the constitution.

### Conclusion:

The above discussion suggests that these terms have huge formal and substantive meaning for Indian democracy. The removal will send a message that doesn't augur well with ideals of national movement, spirit of constitution and dreams of constitution makers.

## 6. Critically evaluate the benefits and challenges put forth by First Past the Post system and Proportional Representation system of election.

***(250 words)***

### Approach

1. **Briefly explain the different system of conducting election** ***(50 words)***
2. **Discuss the benefit and challenges of FPPS system** ***(80 words)***
3. **Discuss the benefit and challenges of PR system** ***(80 words)***
4. **Conclusion** ***(40 words)***

### Hints

The different system of conducting elections can be primarily classified into First Past the Post System (FPPS) and Proportional Representation System (PRS). In FPPS the country is divided into constituencies and the candidate securing maximum number of votes wins the election. On the other hand Proportional Representation or commonly called as Single Transferable Vote System implies an election system, in which divisions in an electorate are reflected proportionately in the elected body hence the representation of all classes of people is ensured, as each party gets as many numbers of seats as the proportion of votes the candidate polls in the election.

## Benefit of the First past the post system:

- It is simple and easy to understand. No specialised knowledge of elections and politics required.
- It retains link between the constituency, Member of Parliament (MP) and voter.
- Fosters representation and 'Geographical Accountability'.
- It allows voters to choose between persons rather than just between parties or balances both party and candidate. So voter asses performance of individual candidate and party.
- It gives chance to popular candidate to get elected even without party backing.
- Cost effective
- It ensures stable government in a diverse country.

## Challenges of the First past the post system:

- Representatives may be elected by a minority of votes, but their party grabs the majority of seats in the legislature hence Votes are wasted.
- Smaller parties representing specific groups have a lower chance of being elected in FPTP.
- since there is delimitation of boundaries, cases of gerrymandering can occur which lead to distortion of electoral process
- Encourages caste, religion, Ethnicity and regional politics.
- Exaggerates the phenomenon of 'regional fiefdoms'

## Benefit of Proportional Representation:

- In PR system, parties to have their presence in the legislatures according to their vote share instead of being wiped out completely even after getting a sizeable vote share.
- PR systems would allow for representation of minorities and smaller parties in the legislatures
- PR would also bring the nation closer and will complete the total integration of country. It will put an end to extreme regionalism and divisive caste and communal politics.
- PR would also put a stop to the exaggeration of regional differences as it allows all of the parties with significant levels of support to gain seats across the country
- It will give rise to very few wasted votes hence ensuring more participation.

## Challenges of Proportional Representation:

- Gives rise to coalition governments and a fragmented party system i.e. less stable government.
- The inability of the voter to enforce accountability by throwing a party out of power or a particular candidate out of office.
- Difficulties either for voters to understand or for the electoral administration to implement depending on voter's education and training of poll workers.

## Conclusion:

No electoral system is perfect. Each one favours one or more of the objectives of elections .The PR systems favour accuracy of representation while FPTP favours stability. Thus their usage depend on the size, diversity, literacy etc. But any election process and system should safeguard the following principles: more representation, transparency, verifiability, fairness, eligibility to vote, free, secret and universal suffrage, and accessibility.

**7. Free and fair elections are necessary, but not a sufficient condition for efficient working of a democracy. Examine.**

***(250 words)***

## Approach

1. **Introduce with the need of free and fair elections** ***(40 words)***
2. **Analyze the concept of elections** ***(90 words)***
3. **Highlight other institutional measures needed for efficient working of a democracy** ***(80 words)***
4. **Conclusion** ***(40 words)***

## Hints

- Elections form the bedrock of the any democracy in the world. They provide people the chance to participate in the leadership selection process and ensure the following:
- Choice of leadership
- Change of leadership
- Political participation; not just voting, but also to get elected
- Self-corrective system
- The most common form of election in most democracies is First-past-the-post System, which despite its defects, is least complex and least time taking election for a large population.

### Defects in First-past-the-post System:

Even free and fair elections might not produce elected officials that are fully representative of the voters. In first-past-the-post systems, it takes only a 1 vote plurality to win the seat. In theory, an electorate split down the middle could produce a legislature heavily weighted toward one party or the other depending on the distribution of voters. For example, in the last American congressional elections, there were more votes for democrats nationwide, but republicans won more seats.

### Imperfect Election:

- Elections are the best and perhaps only way of maintaining a democracy. Non-democratic countries that have sham elections ensure that they are not free and fair by various means:
- Choosing who can run (for example, Hong Kong)
- Fraudulent vote counting
- Use of government resources to promote favored candidate
- uppression of the opposition's message, e.g., no airtime, or unrelenting criticism of opposition candidates on government owned/controlled/influenced media

### Importance of elections and beyond elections:

- The recently released World Development Report (WDR) 2020 focusing on governance has a few interesting points, or counterpoints, on this complex issue. The report broadly analyses what makes government policies work for the benefit of people in the "real" world?

- The number of electoral democracies has more than doubled in the last three decades—from 40 in 1980 to 94 in 2012. But, at the same time, there is a sharp decline of faith in electoral democracies.
- Similarly, it is also understood, that civil society has not only increased its presence and influence, but also has become a strong pressure group, which ensures reforms and good governance, in many countries.
- Thus, a concept of participatory democracy, where a citizen participates in the political process continuously, and not just a 4–5-year interval, is necessary for proper functioning of democracy.

### Other institutional measures needed for efficient working of a democracy

- The institutions below are not democratic in themselves, yet they serve to uphold the democratic system, by ensuring dispersion of power. These are unelected organizations that can temper and tame public passions, educate citizens and preserve liberty.
- These institutions should be protected in a constitution before elections begin, together with the rule of law, separation of powers, and the protection of basic human rights, including freedom of speech, assembly, religion, and property rights.
- **Free and private press.** If the state controls all media, they will probably strongly support the regime and critique would be suppressed. This allows the rulers to move away from democracy without the populace being aware.
- **Autonomous and private universities.** A private university is a gathering of intellectuals free to pursue the scientific endeavor of their choosing. It is an important intellectual counterweight to the government elites' version of the truth, and often a real counter-weight in power.
- **Independent supreme court.** A truly independent supreme court is a no-brainer. It guarantees that the people in power will be held accountable for their actions, and that the constitution is upheld.
- **Independent central bank.** Extensive evidence shows that governments without independent central banks use their money-printing ability to "buy" elections. Meaning that\ they print money in the run-up to the elections, giving the impression that everything is going swell. An independent central bank assures more stable money supply, and removes this crucial tool for aspiring autocrats.

### Conclusion:

These safeguards are not themselves democratic, as in responsive to majority rule. They are constitutional limitations on democracy, what one may call regulations on democracy. History shows that a system without these safeguards can quickly move to become an illiberal democracy, or worse. Illiberal democracy is a governing system in which, although elections take place, citizens are cut off from knowledge about the activities of those who exercise real power because of the lack of civil liberties.

## 8. Section 123 of the Representation of People's Act, 1951 (Act) impose restrictions on speech thus discuss the limits of those restrictions and the purpose of the law.

***(250 words)***

## Approach

1. **Briefly introduce the significance of the section 123 of the Representation of People's Act, 1951** ***(50 words)***
2. **Discuss the limits of the restrictions in this section on freedom of**
3. **speech** ***(80 words)***
4. **Discuss the restrictions mentioned in the law and the purpose**
5. **of the law** ***(80 words)***
6. **Conclusion** ***(40 words)***

## Hints

Section 123 specifically lists the corrupt practices used by the representatives to gain votes. The significance of the act is that it:

- Prevents widespread use of identity politics to gain votes.
- By terming any activity which uses religion for electoral purposes as corrupt practice, the act makes sure that religion is separated from the elections. SC later recognized the same value in Bommai case.
- The Act is intended to ensure free and fair elections in a democracy where universal adult franchise is guaranteed by Articles 325 and 326 of the Indian Constitution.

### Restrictions in this section on freedom of speech:

Certain practices were categorized as "corrupt practices" under Section 123 of the Act, one of them being appeal by candidates for votes on the grounds of religion, race, caste, community or language or the use of, or appeal to religious symbols. A corrupt practice, if proved, would entail to a declaration of the election of such candidate to be void under Section 100 of the Act.

### However, it does not restrict freedom of speech and gives greater choice to people because:

- Supreme court judgment nowhere suggested that all references in electoral speeches to religion or caste, etc., would amount to a "corrupt practice". In fact, during the arguments it was specifically suggested that if the appeal was intended to correct a historical or constitutional wrong or was intended to preserve and protect fundamental entitlements under the Indian Constitution, it would not be a corrupt practice. This is what the precedents of the Supreme Court itself have indicated.
- Strives to make socio-economic development as the main agenda of elections as against garnering votes in the name of religion, caste, community etc. which will eventually help in raising social parameters such as education, health, women empowerment, equality for vulnerable etc.
- Seeks to promote peace and harmony between people who were earlier being divided on communal lines by vested interests.
- Giving teeth to the Election Commission by empowering it to disqualify candidature as recommended by the 2nd ARC, and hence to conduct fair elections.

### Conclusion:

Hence the section 123 has led to the credibility and legitimacy of the elections. This has led to the free and fair elections and the development of the democratic spirit.

## 9. What do you understand by Criminalization of Politics? Discuss the reasons behind Criminalization of politics. Suggest measures to curb criminalization of politics.

***(250 words)***

### Approach

1. **Briefly explain the Criminalization of Politics** ***(40 words)***
2. **Explain the reasons behind Criminalization of politics and opinion of judiciary and other experts** ***(90 words)***
3. **Measures to curb criminalization of politics** ***(80 words)***
4. **Conclusion** ***(40 words)***

### Hints

Despite the best intentions of the drafters of the Constitution and the Members of Parliament at the onset of the Indian Republic, the fear of a nexus between crime and politics was widely expressed from the first general election itself in 1952. The direct entry of criminals into the political parties and legislature, including parliament through elections and the use of criminal methods and tactics to influence political processes and procedures is an attempt to criminalize politics of a society. The politicians are thriving today on the basis of muscle power provided by criminals.

### Reasons for Criminalization of Politics

- **Vote bank Politics**: Money and muscle power of criminals help political parties gain votes. Since, in India electoral politics is more about caste, ethnicity, religion and several other factors, candidates overcome the reputational loss due to criminal charges and come out as victorious in elections.
- **Black money in elections:** It is said lend money to a person if you want to spoil him or make foe. It is the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion. Electoral politics is largely dependent on the money and the funding that it receives. Since candidates with criminal records often possess greater wealth, they ensure greater inflow in money, labour and other advantages that may help a party in successful campaign.
- **Lack of Intra-party democracy:** There is a lack of intra–party democracy and the decisions on candidature are largely taken by the elite leadership of the party. Thus, the politicians with criminal records often escape the scrutiny by local workers and organization of the party.
- **Corruption:** Political corruption in developing states lies in the colonial order or native tyrannical rule from which they have emerged as independent democratic state. Acceptance of bribes, commissions, under-the-table payments, and gifts, by the politicians or the bureaucrats are no longer frowned upon, and even subtile ways have been discovered to create a legitimate veneer and consider these as a part of normal life activities.

- **First Past the Post (FPTP) electoral system**: PTP electoral system allows a candidate to be declared elected from the constituency on the basis of plurality of votes polled and not on the majority of votes polled. Thus, a candidate with as low as 25-30% of valid votes polled may get elected. Criminals do not find difficult to secure the votes because of the use of their money and muscle power.
- **Civil society** in India has failed to check criminalization of politics due to resistance from establishment, prevalent use of money and muscle power and lack of voter awareness.
- **Lack of ethics and values in Indian politics** further accentuates the problem of criminalization. The political parties have been reluctant in checking criminalization for own vested interests.

## The opinion of Judiciary and various committees on criminalisation of politics

- The apex court termed criminalisation of politics as an "extremely disastrous and lamentable situation". It also pointed out that this is an "unsettlingly increasing trend" in the country and has the propensity to "send shivers down the spine of a constitutional democracy".
- In order to "cure the malignancy" of criminalisation of politics , Parliament must make law to ensure that persons facing serious criminal cases do not enter the political arena as the "polluted stream of politics" needs to be cleansed.
- The Vohra Committee instituted during bomb blasts that shook Bombay on 13 March 1993 that had involved the collaboration of a diffuse network of criminal gangs, police and customs officials as well as criminal gangs who enjoyed the patronage of politicians, of all parties. It observed criminal gangs enjoyed the patronage of politicians, of all parties, and the protection of government functionaries. It revealed that political leaders had become the lenders of gangs. They were connected to the military. Over the years criminals had been elected to local bodies, State Assemblies and Parliament.
- Padmanabhaiah Committee observed the criminalization of politics has produced and promoted a culture of impunity that allows the wrong type of policeman to get away with his sins of commission and omission.

## Measures to curb criminalization of politics

- Promoting Intra Party Democracy and Transparency: The party should not allow candidates with criminal records to contest in the election. It would result in fair and free democratic process in India.
- Steps should also be taken to ensure transparency in the funds of political parties; if it requires framing new laws then government should not hesitate in going ahead.
- The RP Act should be amended to debar persons against whom cases of a heinous nature are pending from contesting elections. As currently, under the Representation of Peoples (RP) Act, lawmakers cannot contest elections only after their conviction in a criminal case.
- The forms prescribed by the Election Commission for candidates disclosing their convictions, cases pending in courts and so on in their nomination papers is a step in the right direction if it applied properly.
- **Fast Track Courts for Politicians with Criminal Records:** Many criminals are just allowed to contest in the elections just because they are not convicted and under the trial of court. This practice can be avoided if special arrangements are made for speedy trial of the politicians with criminal records.

### Recommendations of Law Commission must be adhered to:

- The punishment for filing false affidavits under Section 125A be increased to a minimum of two years, and that the alternate clause for ne be removed.
- Conviction under Section 125A should be made a ground for disqualification under Section 8(1) of the RPA, 1951.
- The filing of false affidavits should be made a corrupt practice under Section 123 of the RPA.

### Conclusion:

Corruption and criminalisation of politics is hitting at the roots of democracy. Therefore, Parliament must take steps urgently to curb this menace. Candidates and political parties must give wide publicity to criminal cases pending against her/him in the local media, both print and electronic, after she/He files nomination to contest elections.

## 10. Elections are meant to be the carnival of democracy. However the conduct of general elections depicts chaos. Analyze if this chaotic model is good for substantive democracy.

***(250 words)***

**Approach**

1. **In intro explain importance of election in democracy** ***(50 words)***
2. **Discuss the different obstacle that are in the way of conducting free and fair election** ***(60 words)***
3. **Briefly elaborates on the procedural and substantive democracy** ***(40 words)***
4. **Analyze how the problem in conducting the election is affecting the substantive democracy** ***(60 words)***
5. **Conclusion** ***(40 words)***

**Hints**

Election in democracy is a way of ensuring accountability of government, citizens' participation in governance and thus making citizens ultimate sovereign. Elections expresses the will of the people as well as the authority decided to be the driver of the society for a specified period of time.

### Problem in conducting the General Election-

- Delimitation of Constituencies: The constitution was amended to freeze the delimitation till 2026. This had led to a situation and many states having a representation in the parliament that is disproportionate to their population.
- Preparing the electoral roll and voter list is a challenging task. Flawed electoral rolls have become a menace.
- Question is being continuously raised on effectiveness/tampering of EVMs
- Spreading of Fake news through social media leading to misinformed citizen

- Hate speeches with intention to create polarisation in society in the name of religion, caste, language etc
- Paid news and propoganda which is affecting the fair campaigning
- Lack of transparency in funding of political parties and even foreigners can influence the election as foreign funding of parties is allowed
- Criminalisation of politics and increasing use of money and muscle power to influence the election
- Lack of participation from people leading to low voter turnout.
- Lack of administrative and financial autonomy of Election commission and its weakness to deal with electoral crimes and dubious parties. E.g.- No power to derecognise any party

## Procedural and Substantive democracy:

- Successful democracy is a holistic idea; it encompasses both procedural aspects – political equality, effective institutions, free and fair elections, legislative assemblies and constitutional governments, and good voter turn outs; and substantive aspects – socio-economic equality of citizens, tolerance for different opinions, ruler accountability, respect for the rules, and a strong political engagement.
- Both dimensions of democracy are equally important and, in fact, are interdependent and have symbiotic relationship.

## Analyzing the effect of procedural democracy on substantive democracy:

- Transparency, Accountability and Corruption control were linked with democratization through direct and indirect means.
- Directly, the impact of transparency, accountability and anti-corruption focus on democratization has involved potential links ranging from increased information flow, openness and deliberation to strengthened inter-organizational and public responsibility, and a threat or risk of formal/legal sanctioning and informal/social opprobrium in case of deficiencies in any of the three.
- Indirectly, all three -transparency, accountability and corruption control have been linked with democratization through their role as the pillars of good (and democratic) governance
- The lack of transparency and accountability in procedural democracy is also affecting substantive democracy which is manifested in poor governance, poor infrastructure, lack of inclusive development, increasing hunger and malnutrition, lack of employment, crisis of institution, erosion of checks and balances, corruption and redtapism, degrading moral and ethical values, discrimination and humiliation of marginalized section etc.

## Conclusion:

Democracy is a 'work in progress' and the balance of well-being and inclusion hinges on the unity of procedure and substance. The Constitutional democracy cannot be limited to electoral politics alone. It must protect civil liberties and democratic rights; enable political participation and promote economic empowerment; guarantee cultural rights to communities and fundamental freedoms to all citizens. Hence both procedural and substantive democracy must be integrated to make an inclusive functional democracy

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# NOTES

# PREVIOUS YEAR SOLVED PAPERS

# QUESTION

## 2020

**Question: 1.** **How far do you think cooperation, competition and confrontation have shaped the nature of federation of India? Cite some recent examples to validate your answer.**

**Question: 2.** **The judicial system in India and UK seem to be converging as well diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.**

**Question: 3.** **'Once a Speaker always a speaker'! Do you think this practice should be adopted to impart objectivity to the office of the speaker of LokSabha? What could be its implication for the robust functioning of parliamentary business in India?**

**Question: 4.** **Indian constitution exhibits centralizing tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Diseases Act, 1897; The Disaster Management Act, 2005 and recently passed Farm Acts.**

**Question: 5.** **Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities.**

**Question: 6.** **The strength sustenance of local institutions in India has shifted from their formative phase of 'Functions, Functionaries and Funs' to the contemporary stage of 'Functionality'. Highlight the critical challenges faced by local institutions in terms of their functionality in recent times.**

**Question: 7.** **Rajyasabha has been transformed from a 'useless Stepney tire' to the most useful supportive organ in past few decades. Highlight the factors as well as areas in which this transformation could be visible.**

**Question: 8.** **Which steps are required for constitutionalization of a commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.**

## 2019

**Question: 1.** **Do you think that constitution of India doesn't accept principle of strict separation of powers rather it is based on the principle of checks and balances?**

**Question: 2.** **The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees nowadays is exercising its powers as an independent judicial authority." Explain.**

**Question: 3.** **From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of federal supremacy' and 'harmonious construction' have emerged. Explain.**

**Question: 4.** **What can France learn from the Indian Constitution's approach towards to secularism?**

**Question: 5.** **"Parliament's power to amend the constitution is a limited power and it cannot be enlarged into absolute power". In the light of this statement explain whether parliament under article 368 of the constitution can destroy the basic structure of the constitution by expanding its amending power?**

**Question: 6.** **"The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss.**

**Question: 7.** **Individual Parliamentarian's role as the national lawmaker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss.**

## 2018

**Question: 1.** **In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?**

**Question: 2.** **Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine.**

**Question: 3.** **Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remains in force?**

**Question: 4.** **Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee.**

**Question: 5.** **"The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise.**

**Question: 6.** **Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.**

**Question: 7.** **How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India.**

**Question: 8.** **How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss.**

**Question: 9.** **Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing developmental projects?**

**Question: 10.** **Multiplicity of various commissions for the vulnerable sections of the society leads to problems of overlapping jurisdiction and duplication of functions. Is it better to merge all commissions into an umbrella Human Rights Commission? Argue your case.**

## 2017

**Question: 1.** **Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.**

**Question: 2.** **"Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people." Discuss.**

**Question: 3.** **Discuss the role of Public Accounts Committee in establishing accountability of the government to the people.**

**Question: 4.** **Explain the salient features of the Constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough "to remove cascading effect of taxes and provide for common national market for goods and services"?**

**Question: 5.** **Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy.**

**Question: 6.** **The Indian Constitution has provisions for holding joint session of the two Houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reason thereof.**

**Question: 7.** **To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?**

## 2016

**Question: 1.** **Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal politics?**

**Question: 2.** **To what extent is Article 370 of the Indian Constitution, bearing marginal note "Temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.**

**Question: 3.** **The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss.**

**Question: 4.** **Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the Government's Policy implementation could amount to overstepping its own (CAG) jurisdiction.**

**Question: 5.** **Discuss each adjective attached to the word 'Republic' in the preamble. Are they defendable in the present circumstances stances?**

**Question: 6.** **What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?**

**Question: 7.** **Did the Government of India Act, 1935 lay down a federal constitution? Discuss.**

**Question: 8.** **What is a quasi-judicial body? Explain with the help of concrete examples.**

## 2015

**Question: 1.** **Discuss the possible factors that inhibit India from enacting for its citizen a uniform civilcode as provided for in the Directive Principles of State Policy.**

**Question: 2.** **The concept of cooperative federalism has been increasingly emphasised in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings.**

**Question: 3.** **In absence of well – educated and organised local level government system, 'Panchayats' and 'Samitis' have remained mainly political institutions and not effective instruments of governance. Critically discuss.**

**Question: 4.** **Khap panchayats have been in the news for functioning as extra – constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard.**

**Question: 5.** **Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyse whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate the ordinances be repealed?**

**Question: 6.** **What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.**

**Question: 7.** **Does the right to clean environment entail legal regulation on burning crackers during Diwali? Discuss in the light of Article 21 of Indian Constitution and Judgement (s) of the Apex court in this regard.**

# ANSWERS

## 2020

**Question: 1. How far do you think cooperation, competition and confrontation have shaped the nature of federation of India? Cite some recent examples to validate your answer.**

**Solution:**

### Introduction

Federalism essentially means both the Centre and states have the freedom to operate in their allotted spheres of power, in coordination with each other. India is a federal system but with more tilt towards a unitary system of government. So it is sometimes considered as quasi-federal system.

The nature of federalism kept changing since Independence, there exists cooperation, competition and confrontation between the federal units in India.

### Cooperation

In cooperative federalism both Centre-State and State-State shares a horizontal relationship and cooperate in the larger public interest. Cooperation federalism has emerged as one of the principle in Indian federalism.

### Centre - States

- Cooperation during COVID Pandemic and solving migrant crisis shows cooperation between Centre and states.
- Establishment of NITI Aayog redefined the relationship between Centre and States. It enables states' participation in the formulation and implementation of national policies.
- Acceptance of 14th finance commission's recommendation, which significantly enhanced devolution of finances from 32% to 42% shows the cooperation between Centre and States
- Cooperation on implementation of various central sector schemes and centrally sponsored schemes.
- Implementation of Goods and Services Tax where the states have given up a significant part of taxation powers shows the cooperation between Centre and states
- Constitution bodies like Inter-State councils (Article 263) fosters cooperation.

### State - State

- Statutory bodies like Zonal Councils are established to promote interstate cooperation and coordination. It aims to establish a climate of cooperation among the states for successful and speedy execution of development projects.
- States like Odisha, Chhattisgarh, Andhra Pradesh are coordinating and cooperating on the issues of Naxalism.

### Competition

Competition between states emerged because states are competing among themselves to attract funds and investments, to get funds from Centre and incentives from Finance commission on the basis of performance on various indicators. The idea of Competitive federalism gained significance post economic reforms of 1991.

### State - State

- NITI Aayog played an important role in promoting competitive federalism- ranking states on various socio-economic parameters
  - Health Index- Healthy States, Progressive India Report
  - School Education Quality Index
  - SDG Index
  - Transformation of Aspirational District
- State wise Ease of Doing Business ranking helps to build a sense of competition among states to attract investments.
- Swachh Bharat Ranking Systems
- Investment Summits to attract investments

  To resolve the regional imbalance and inequalities between the states, competitive federalism has become an efficient tool to enhance the socio-economic development of individual states

### Confrontation

Till 1967 after the independence there was hardly any confrontation between the federal units as there was a single party at the Centre and the states. But after 1967 there exists a massive confrontation between Centre - States and States-States

### Centre-States

- Imposition of Presidents rule on the states. Misuse of Article 356 for political reasons.
- Misuse of discretionary powers by Governor.
- Encroachment by the Centre on the state list. For example recent Farm acts encroach upon the state list because agriculture and markets are state subjects
- GST Compensation to States - refusal GoI of its legal commitment to compensate GST shortfall on account of lower revenue.
- In 2019 Kerala has challenged Citizenship (Amendment) Act 2019 in Supreme Court - shows confrontation between Centre and states.
- Imposition of Hindi Language on Southern States. States like Tamilnadu has consistently agitated on this matter.

### States - States

- Inter-State River water sharing disputes. For example Cauvery water dispute between Karnataka and Tamilnadu, Mahanadi River dispute between Odisha and Chhattisgarh
- Border disputes between states. For example Belgaum border dispute between State of Karnataka and Maharashtra.

### Conclusion:

To resolve the confrontation issues, there is a urgent need to implement the recommendation of Sarkaria and Punchi Commission in letter and Spirit. A diverse and large country like India requires a proper balance between the federal units which will help in realizing various socio-economic developmental goals.

## Question: 2. The judicial system in India and UK seem to be converging as well diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.

**Solution:**

### Introduction

The Indian Constitution has established an Integrated Judicial system adopted from Government of India of 1935 which enforces both Central as well as state laws. Features of Judicial system has been adopted from countries like UK and USA. India is synthesis of both, that is, the American principle of judicial supremacy and British principle of Parliamentary supremacy.

### Divergence

- UK Judicial system follows Procedure established by law. In UK the judiciary does not look into the fairness of the laws. Basically they cannot review the acts made by the Parliament. Whereas Indian Judicial system also followed Procedure established by law till Meneka Gandhi Case, after the case India is following due process of law. So Judicial review with Indian judiciary is far much wider than that available to Judiciary of UK.
- Jury System still exists in UK but not in India
- Judicial Appointments - In India judges are appointed by collegium system ( opaque process) while in UK there is a judicial appointment commission( transparent process)
- Act of sedition is no longer valid in UK but sedition act is often used in India.
- Similarly Contempt of Court proceedings are rare in UK while it is often used in India
- Remedy of Special leave petition (SLP- Article 136) of Supreme Court is available in India and not in UK.

### Convergence

- Integrated judiciary mechanism both in India and UK
- Judicial Independence prevalent in the both countries

- Efforts are being made in both countries for Alternate resolution of disputes
- Efforts were made by the Indian Government to introduce some form of judicial accountability by enacting National Judicial Appointment commission Act but was declared null and void by the Supreme Court as it was violating the basic structure of constitution.
- There exists similar instruments of writ petitions in both countries to uphold the rule of law.

### Conclusion:

Hence, both countries UK and India should learn and adapt best global practices associated with judicial system.

**Question: 3. 'Once a Speaker always a speaker'! Do you think this practice should be adopted to impart objectivity to the office of the speaker of LokSabha? What could be its implication for the robust functioning of parliamentary business in India?**

**Solution:**

### Introduction

Speaker holds important position in the Indian parliament. Speaker is the head of the LokSabha and its representative. Speaker is vested with vast, varied and vital responsibilities. But in the recent times it has been seen that the role of speaker has been severely criticized because of various issues.

### Issues

- Role of speaker has been criticized for favoring political parties and remaining biased to the party in majority as speaker are usually elected to the house on a political party's ticket. So there exists a political liability on the speaker to favor his party and he/she does not able maintain impartiality
- Discretionary power of speaker in case of declaration of bill as money bill. For example this power came under criticism when Aadhar bill was introduced as money bill in LokSabha.
- In recent times, role of speaker has been questioned for disqualification of MLAs under the Anti-defection law.
- Less time is allotted to opposition members in the house to debate and discuss.

Possible reasons for biasness exists because speaker belongs to ruling party - he works under a fear and favor of the ruling party. Unlike, in UK the speaker is strictly a nonparty man. There is a convention that speaker has to resign from his party and remain politically neutral.

So there is need to adopt the principle of Once a Speaker always a speaker in order to infuse greater objectivity and impartiality in the functioning of parliamentary business in India. India should adopt the UK system - Speaker should resign from his party and be political neutral.

But this is not the only reform required. Other reforms like -:

- Power of Disqualification under Anti-defection law should be transferred to Election Commission of India
- Power to declare a bill as money bill should be decided by a committee of parliament. This will bring transparency and objectivity in the process.

### Implications

- It will lead to more comprehensive discussions and debates in the parliaments
- It will lead to objective interpretation of issues rather than subjective interpretation.
- Balanced emphasis to the opposition parties -by giving greater opportunity in voicing their concerns on government policies and actions
- Ultimately it will bring more credibility to the institution of speaker.

### Conclusion:

The speaker enjoys great honour, high dignity and supreme authority within the house. Thus impartiality of the office is very important to make the parliamentary democracy work in true sense.

**Question: 4. Indian constitution exhibits centralizing tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Diseases Act, 1897; The Disaster Management Act, 2005 and recently passed Farm Acts.**

**Solution:**

### Introduction

Centralizing tendencies which have been inculcated in Indian constitution due to pre-independence imperial legislation which started with Regulating Act of 1774. In accordance with current political setup, Sir Ivor Jennings believed India to be a "federation with strong centralizing tendencies". Use of Disaster Management Act of 2005 and overriding the provisions of the Epidemic Diseases Act, 1897 variably by central government during COVID-19 pandemic has reflected the centralizing powers of Indian federation. Further, despite agriculture being a state subject, formulation of farm laws via subsidiary route also undermined the role of state government.

### The Disaster Management Act 2005 Vs Epidemic Diseases Act, 1897

- It provides for better prevention of the spread of dangerous epidemic diseases where the state governments have the prerogative over central government.
- It provides powers to the state governments to prescribe regulations regarding any person or group of people to contain the spread of COVID-19.
- However, central government used the Disaster Management Act 2005 to regulate and manage COVID- 19 pandemic, diluting the provisions of the Disaster Management Act 2005.
- The main motive of overriding state's jurisdiction was to act swiftly and promptly during the event of COVID-19 like disaster.
- But, the action underlined the centralization of powers in Indian democratic setup.

### Agriculture reforms: Overriding state's jurisdiction

- Central government made three farm laws by promulgating ordinances. However agriculture is a subject under state list.
- It brought following bill through ordinance under article 123 the constitution:

- The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020,
- The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020, and
- The Essential Commodities (Amendment) Bill, 2020

- However, centre did not bring the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 under subject mentioned under state list but under the subject 'Agriculture Marketing' which has not been mentioned in any of the list of the constitution.
- According to Article 248 in Part XI of the constitution the Centre has power to legislate on any item which is not mentioned in any of the three lists.
- Further, for the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020, the government has not clarified about the provisions of the constitution under which it has brought
- Further, entry 33 under concurrent list provides for both the state and the Union government to legislate regarding production, trade, supply and distribution of a range of foodstuffs and agricultural raw materials.
- Entry 34 under it mandates central government to legislate in matters of price control, under which it brought 'The Essential Commodities (Amendment) Bill, 2020.
- Although, the central government has brought the three farm bills in accordance with constitutional provisions but are directly and indirectly related to agriculture which is subject under state list of the constitution.

### Maintaining unity and integrity of the nation

- Although both actions of the Central government signified the centralizing tendency of Indian federation, it has also showcased pan Indian unified effort to fight pandemic.
- Further, 'One India, One Agriculture Market', which has been envisaged in the farm will unify the agriculture sector of a country like India where more than 60% of the population is directly or indirectly dependent on agriculture.

### Conclusion:

In both of the above cases, central government has exercised powers under its jurisdiction but the presence of both subjects in state's jurisdiction underlines the fact that despite willingness to legislate or act on particular subject matter, the state's role has been limited. It justifies the centralizing power of the Indian federation underlining a strong centre with states. Further, this centralized laws help in maintaining 'Unity in diversity' of Indian Fedration.

**Question: 5. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities.**

**Solution:**

## Introduction

'Judicial Legislation' can be defined as laws which are created by the pronouncements of a judge who departs from a strict interpretation of law according to the manifest intention of the legislature. Judicial legislation in context of Indian constitution is opposed to the doctrine of separation of power. The constitution of India provides the power to legislate only to Indian Parliament and states legislatures. However, any judgment of Supreme Court and High Court regarding any legislation is considered as law in Indian context, which infringes the separation of power jurisdiction.

## How is Judicial Legislation antithetical to the doctrine of separation of powers?

- The power of judicial review over legislative action vested in the High Court under Article 226 and in the Supreme Court under Article 32 of the Constitution.
- It is an integral and essential feature of the Constitution which constitutes part of its basic structure.
- It empowers the Supreme Court and High court to curtail any legislation which infringes fundamental rights of the citizens.
- But, a large number of public interest petitions praying for issuing guidelines to executive authorities under article 32 and Article 226 has called the courts to intervene in number of cases.
- These petitions are completely based on loopholes of different legislations citing need of court's intervention for social welfare and public interest.
- When the court intervenes in such conditions, it sometime pronounces changes in legislation which undermines the power of parliament.
- Further, some of the petitions are related to those subjects which do not come under any legislations.
- Under such circumstances the court legislates by judgments instead of directing the legislature to enact laws upon the aforesaid subject.

## Judicial legislations on different subject matters in recent past due to PILs

- In recent past judiciary has intervened in matters pertaining to subjects such as bonded labour matters, neglected children, non-payment of minimum wages to workers and exploitation of casual workers, and petitions from jails complaining of harassment, against police for refusing to register a case, harassment by police and death in police custody, against atrocities on women impact the lives of the marginalized and disadvantaged.
- In absence of any appropriate statutory arrangement for these subjects issuance of directives or guidelines by the judiciary is a clear case of judicial intervention.
- Although, these subjects are related to infringement of fundamental rights, but the judiciary should direct the central government for guidelines instead of its own guidelines.

## Conclusion:

Although judicial review is part of basic structure of the constitution, it provides for 'Checks' on government's legislative overreach rather than providing an instrument

to judiciary to legislate. As 'Custodian of the Indian Constitution', the apex court must limit the use of instruments such as 'Public Interest Litigations'. It must maintain 'Separation of Powers' among different organs of the government i.e. Legislature, Executive and Judiciary by exercising instrument of 'Checks and balances'.

**Question: 6. The strength sustenance of local institutions in India has shifted from their formative phase of 'Functions, Functionaries and Funs' to the contemporary stage of 'Functionality'. Highlight the critical challenges faced by local institutions in terms of their functionality in recent times.**

**Solution:**

## Introduction

Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) as envisaged by 73rd and 74th Constitutional Amendment Acts respectively have evolved recently in Indian democratic horizon and have started to yield better results, leaving behind its formative state. Now democratic credentials as shown by these local bodies and ground level development envisaged by them has started to quantify in India's development process. However, there are some of the challenges faced by these local institutions in terms of their functionality in recent times.

## Challenges faced by these local institutions in terms of their functionality

- Apart from some of the states like Kerala, Karnataka, Madhya Pradesh e.t.c. Most states have conformed to the 73rd and 74th Constitutional Amendment Acts only on paper and are yet to devolve powers and autonomy to their local bodies.
- Financial constraints of these local bodies are yet to be fully realized as these bodies rely on central grants and limited revenue sources in their periphery.
- Further, there are limitations in terms of exercising power as there are various subjects where power of state and PRIs overlap. These subjects are related to management in area of education, health, sanitation and water.
- Intervention of state's executive in functioning of these institutions further belittles their autonomy and powers.
- There is lack of clear demarcation of powers in administrative setup and inconsistency across vertical and horizontal cooperation.
- PRIs and ULBs have been inconsistent in delivery of services due to lack of human resource and physical infrastructure.
- In some of the states, log pending elections and deliberate scrapping of PRIs by state government has shown the loopholes which need to be corrected.

## Conclusion:

Although, Indian constitution clearly mandates for division of subjects among different level of governance, there are some overlapping powers assigned at different levels. These powers are exploited by legislatures and executive at higher rung of the government leading to limited exercise of power by lower rung. Further, financial and infrastructure constraints of local institutions have limited their role in democratic setup. Decentralization of power was the motive of "Gandhian Philosophy' which can only be realized by strengthening local institutions. Then only India will be able to deliver 'Citizen Centric Services' to the tizens on the last rung of democracy.

**Question: 7. Rajyasabha has been transformed from a 'useless Stepney tire' to the most useful supportive organ in past few decades. Highlight the factors as well as areas in which this transformation could be visible.**

**Solution:**

## Introduction

The Upper House of Indian Parliament has been playing a pivotal role in India's much cherished parliamentary democracy, keeping the bicameral structure alive, setting new records and creating history since its inception.

Thus, RajyaSabha as the second chamber of the parliament is considered as a permanent house (it never dissolves as LokSabha and one-third of its members retire every two years), revisionary house (reconsidering bills passed by the LokSabha) and offers a degree of continuity in the underlying policies of laws passed by parliament.

## Importance of RajyaSabha

- **Equilibrium -** The RajyaSabha is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.
- **Review -** The second chamber enables a second and reflective expression of representative opinion.
- **Checks and Balance -** Both the Houses check one another and hence instances of parliamentary tyranny can be avoided. In other words, it can ensure that the majoritarian thrust of the Lower House does not undermine rule of law and public institutions.
- **Promotes Federalism -** It represents the interests of the States as a federal chamber.
- **Important Body -** It acts as a deliberative body holding high-quality debates on important issues.
- **Public Policy -** It helps to initiate proposals for public policy.
- **Citizen rights** - RajyaSabha can be the voice of sanity, of the excluded, and of citizen rights.

## How in recent decades the role of RajyaSabha has been enhanced?

The Upper House has played significant role in the socio-economic transformation of the countryat the stroke of freedom marked by poverty, illiteracy, poor healthcare, low level of industrialization and economic growth, social orthodoxy, poor infrastructure, unemployment etc. are now a leading engine of economic growth and a voice being heard in the complex global order besides substantially improved quality of life of the people.

The Constitution has placed both Houses of Parliament on an equal footing in some important matters such as:

- Equal right with the LokSabha in the election and impeachment of the President (Articles 54 and 61);
- Equal right with the LokSabha in the election of the Vice-President (Article 66);

- Equal right with the LokSabha to make law defining parliamentary privileges and to punish for contempt (Article 105);
- Equal right with the LokSabha to approve the Proclamation of Emergency (issued under Article 352)
- Proclamations regarding failure of the Constitutional machinery in States (issued under Article 356) and even a sole right in certain circumstances; and
- Equal right with the LokSabha to receive reports and papers from various statutory authorities, namely:
  - Annual Financial Statement [Article 112(1)];
  - Audit Reports from the Comptroller and Auditor General of India [Article 151(1);]
  - Reports of the Union Public Service Commission [Article 323(1)];
  - Report of the Commission to investigate the conditions of the Backward Classes [Article 340(3)]; and
  - Report of the Special Officer for Linguistic Minorities [Article 350B (2)].

## The factors, which have been responsible for the transformation of RajyaSabha into an essential organ, are:

- **Coalition Government -** It requires wider consensus and when there is no single party having a majority.
- **Prime Minister from RajyaSabha** - As a head of the government, he imparts RajyaSabha with enhanced weightage. example Manmohan Singh
- **Opinion -** The requirement of informed opinion on the issues such as climate change, surrogacy law, DNA bill.
- **Principle of Federalism -** Increased principle of Federalism in Indian polity and the rise of regional parties.

## The areas where this change is visible

- Role of RajyaSabha in enacting important legislation like the RTI act and also in opposing discriminatory legislation such as POTA act 2003.
- Making the government is accountable by the passing of amendments to the President's address.
- Making government to agree on amendments on important legislation of the Lokpal Act and Food Security Act 2013.
- The support of RajyaSabha in passing critical bills like the abrogation of article 370 was crucial.

## Conclusion

Even through the ups and downs of Indian politics, the RajyaSabha has remained a vanguard for political and social values, a melting pot of culture and diversity and over all, a relentless flag-bearer of sovereign, socialist, secular, democratic republic called India.

**Question: 8. Which steps are required for constitutionalization of a commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.**

**Solution:**

## Introduction

Constitutionalisation is the term used for the attempt to subject the exercise of all types of public power, whatever the medium of its exercise, to the discipline of constitutional procedures and norms.

## Steps required for Constitutionalization of commission

When something is constitutionalised, it is made subject to the provisions of a country's constitution.

- **Approach -** Approaching the government for granting it constitutional status.
- **Passing of the bill** - parliament passes a bill to provide constitutional status to the commission.
- **Article 368** - Provides power to the parliament to amend the constitution.
  - Parliament can amend by way of addition, variation or repeal any provision of the constitution in accordance with the procedures.
- **Amendment -** An amendment is initiated only by the introduction of a bill for the purpose in either House of parliament, or when the bill is passed in each House by a prescribed majority.
- **President Assent -** subject to President's assent, the constitution stands amended in accordance with the terms of the bill.

**Example -** Article 338 was amended and a new Article 338A was inserted in the constitution through the Constitution (89th Amendment) Act, 2003 to establish the National Commission for Scheduled Tribes (NCST).

## Need of giving constitutional backing to NCW

Though Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 are of specific importance ensuring greater gender justice and empowerment, women at the grassroots level are highly vulnerable. The NCW needs rights available to the NCBC, the NCST and the NCSC to redress the grievances of women.

## Benefits of Constitutionlization

After getting constitutional backing Commission shall, while investigating any matter referred to it, have all the powers of a civil court trying a suit and particularly in respect of the following matters, namely:-

- summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- requiring the discovery and production of any document;
- receiving evidence on affidavits;
- requisitioning any public record or copy thereof from any court or office;
- issuing commissions for the examination of witnesses and documents; and
- Any other matter which may be prescribed.

### Reasons for giving Constitutional backing to promote gender justice.

In spite of positive aspects of women commission and great achievements, there are also some shortcomings such as:

- Although the NCW is an autonomous body, it is functioning as if it is under the ministry of women and child development.
- The commission is dependent on the grant from the Union Government.
- The commission does not have the power to select own members. The power is vested with the Union Government.S
- The commission has no right to concrete legislative power. It has only to power recommend amendments and submit reports which are not binding on state or Union Government.
- Financial assistance is so less that it is difficult make awareness of legal program.
- The National Commission for women in India seizes women's cause only when it is brought to light. Unreported cases of oppression and suppression of women are not attended to.
- In rural sector, there is lack of mindfulness education, opportunities and basic facilities for women for economic of empowerment.

### Conclusion

Constitutionality reflecting constructions, practices, principles and values of a 'constitution' makes all governmental action truly answerable therefore it is the need of hour to provide constitutional backing to NCW.

## 2019

**Question: 1. Do you think that constitution of India doesn't accept principle of strict separation of powers rather it is based on the principle of checks and balances?**

**Solution:**

### Introduction

It is a doctrine of constitutional law under which the three branches, the executive, legislative & judicial, are kept separate, each with separate and independent powers and responsibility so that the powers of one branch are not in conflict with the powers associated with the other branches.

On the other hand, doctrine of Checks and balances describe the powers each branch has to "check" the other branches and ensure a balance of power. With checks and balances, each of three branches can limit the powers of the others, and this way; no branch can becomes too powerful.

### How Indian constitution doesn't accept principle of strict separation of powers?

- Art 50 of Constitution of India is a directive principle of state policy. It gives a direction to the State to keep Judiciary independent of the Executive, particularly in judicial appointments.

- Indian Constitution adopted procedure established by law and it gives supremacy to parliamentary role (also called as political wisdom).
- Article 13 (2) and Article 32 of Indian constitution gives power to Judiciary to declare any law null and void if it infringes with Fundamental rights guaranteed by Indian Constitution. Even administrative function of Supreme Court is controlled by Supreme Court.
- Though Indian President being executive head can also make law under Article 123 (ordinance).
- If studied carefully, it is clear that doctrine of separation of powers has not been accepted in India in its strict sense. The executive is a part of the legislature. It is responsible to the legislature for its actions and also it derives its authority from legislature.
- In India, since it is a parliamentary form of government, therefore it is based upon intimate contact and close co-ordination among the legislative and executive wings. However, the executive power vests in the President but, in reality he is only a formal head and, the Real head is the Prime minister along with his Council of Ministers.
- The reading of Art. 74(1) makes it clear that the executive head has to act in accordance with the aid and advice given by the cabinet.
- It's quite evident from the constitutional provisions themselves that India, being a parliamentary democracy, does not follow an absolute separation and is, rather based upon fusion of powers, where a close co-ordination amongst the principal organs is unavoidable and the constitutional scheme itself mentions it.
- The doctrine has, thus, not been awarded a Constitutional status. Thus, every organ of the government is required to perform all the three types of functions. Also, each organ is, in some form or the other, dependant on the other organ which checks and balances it.
- This system of checks and balances undoubtedly prevents the centralization of powers and monopoly of one branch of the government and contributes to effective functioning of democratic parliamentary form of polity and makes sure that the power is balanced between the three organs of government but on the other hand it also makes the decision making more complex and time consuming.

## Examples justifying the above concept

- For example, The legislative branch has the power to make laws, but the executive branch has the power to check the legislative branch by interdicting the laws, the judiciary on the other hand can declare the presidential orders and other laws and acts made as unconstitutional and the executive has a say in appointment of judges and the power to pardon.
- There have been many such examples, firstly the second ARC has recommended the abolition of the Member of Parliament Local Area development schemes MPLADS & MLALADS on the grounds that these schemes seriously erode the notion of separation of powers, as the legislator directly becomes the executive.
- We also have got to see how Judiciary oversteps the powers given to it and interferes with the proper functioning of legislative or executive organs of the government and results into what is being called as judicial activism or judicial overreach. For e.g.: striking the NJAC bill and the 99th constitutional amendment bill and order passed by Allahabad court for the bureaucrats to send their children to government school.

### Trends related to separation of power in India

- Our Constitution thus places the supremacy at the hands of the Legislature as much as that is possible within the bounds of a written Constitution. But, the balance between Parliamentary Sovereignty and Judicial Review was seriously disturbed, and a drift towards the former was made, by the Constitution (42nd Amendment) Act, 1976, by inserting some new provisions, e.g., Arts. 31D, 32A, 131A, 144A, 226A, 228A, 323A-B, 329A.
- The Janata Government, coming to powers in 1977, restored the pre1976 position, to a substantial extent, through the 43rd and 44th Amendments, 1977-78, by repealing the following Articles which had been inserted by the 42nd Amendment— 31D, 32A, l3lA, 144A, 226A, 228A, 329A; and by restoring Art. 226 to its original form (substantially).
- On the other hand, the Judiciary has gained ground by itself declaring that 'judicial review' is a 'basic feature' of our Constitution, so that so long as the Supreme Court itself does not revise its opinion in this behalf, any amendment of the Constitution to take away judicial review of legislation on the ground of contravention of any provision of the Constitution shall itself be liable to be invalidated by the Court.
- Justice Mahajan took note of this point and stated in the famous case of Re Delhi Laws Act, That: "It does not admit of serious dispute that the doctrine of separation of powers has, strictly speaking, no place in the system of government that India has, at present under our Constitution. Unlike the American and Australian Constitution the Indian Constitution does not expressly vest the different sets of powers in different organs of the State. Our Constitution though federal in form is modeled on the British Parliamentary system, the essential feature of which is the responsibility of the executive of the Legislature……"

### Conclusion

It is evident from the above examples that the reason for the interdependence is accorded to the parliamentary form of governance followed in our country. But, this doesn't mean that the doctrine of separation of power is not followed in India at all. Except where the constitution has vested power in a body, the principle that one organ should not perform functions which essentially belong to others is followed however, no constitution can survive without a conscious adherence to its fine check and balance. The principle of Separation of Power is a principle of restraint which has in it the precept, innate in the prudence of self-preservation, that discretion is the better part of valour.

**Question: 2. The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees nowadays is exercising its powers as an independent judicial authority." Explain.**

**Solution: Introduction**

'Tribunal 'is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body.

- Article 323-A, which came by way of 42nd constitutional amendment in 1976, enabled the Centre to enact The Administrative Tribunals Act, 1985 for setting-

up the Tribunals for adjudication over "disputes and complaints with respect to recruitment and conditions of service of persons". Thus Administrative Tribunals Act, 1985 provides for the establishment of Central Administrative Tribunal and State Administrative Tribunals. The delay in justice administration is one of the biggest obstacles which have been tackled with the establishment of Tribunals.

## Composition:

- The CAT is a multi-member body consisting of a Chairman and members.
- With the amendment in Administrative Tribunals Act, 1985 in 2006, the members have been given the status of judges of High Courts
- In 2013, the sanctioned strength of the Chairman is one and sanctioned strength of the Members is 65
- They are drawn from both judicial and administrative streams and are appointed by the President.
- They hold office for a term office years or until they attain the age of 65 years, in case of Chairman and 62 years in case of members, whichever is earlier.

## Specific powers of Central Administrative tribunal:

- CAT exercises original jurisdiction in relation to recruitment and conditions of service of persons appointed to public services.
- Flexibility: Administrative Tribunals created under Article 323A have been freed from technical rules of Indian Evidence Act, 1872 and procedural shackles of the Code of Civil Procedure, 1908 but, at the same time, they have been vested with the powers of Civil Court in respect of some matters including the review of their own decisions and are bound by the principle of natural justice.
- Relief to Courts: The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with numerous suits. Initially the decision of Tribunal can be challenged only before Supreme courts by filing Special leave petition, however after Chandra Kumar case; the orders of CAT are now being challenged by way of writ petition u/a 226/227 of the Constitution before respective High courts. It lay down that appeals against the orders of the CAT shall lie before the division bench of the concerned High Court.

## Conclusion:

The above powers of CAT show that in certain spheres like recruitment and conditions of service of persons appointed to public services and cases related to civil service rule where supreme Court refrain itself and denied accepting the cases so that purpose of CAT could not get defeated shows that they are exercising their power as an independent Judicial Authority as judgments are more circumstances based and situational. For example NATIONAL GREEN TRIBUNAL. However, in India Common Law System is followed in which a bench mark is set and final interpretation is subjected to Independent judicial system also CAT Functions on the principle of Natural Justice as they are not bound by the Rule of Procedures. Thus, after Chandra Kumar case it can be entertain by the High court & Supreme Court therefore on this basis we cannot accept that they work as a independent judiciary.

**Question: 3. From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of federal supremacy' and 'harmonious construction' have emerged. Explain.**

**Solution:**

## Introduction

Federalism is constituent element of basic structure of Indian constitution though the word 'federal' is nowhere mentioned in the constitution. A federal government is one in which powers are divided between the national government and the regional governments by the constitution itself and both operate in their respective jurisdictions independently.

## Centre state legislative relations and contentious issues:

Articles 245 to 255 of Indian constitution deal with legislative relations between the centre and the states. This mainly has 4 aspects - Territorial extent of centre and state legislation, distribution of legislative subject between centre and states, Parliamentary legislation in state field and centre's control over state legislation. In this light, the constitution provides for a three-fold distribution of legislative subjects between the centre and the states i.e., List I the Union list, List II the state list and List III the concurrent list in schedule VII of the Indian Constitution.

## Principle of federal supremacy and harmonious construction:

If any matter falls under an entry in List I and also in List II the entry in List I shall prevail, this is called the principle of Federal supremacy. The federation has predominant legislative power. The state and concurrent list are subordinate to it. The rule of Federal Supremacy is applied as a last resort, it is the duty of the court to read the entries of the two lists together to arrive at a reasonable and practical construction of the language, to reconcile entries and bring harmony. It is only when the reconciliation proves impossible then the overriding power of Parliament should prevail. This is called the rule of Harmonious construction.

## Examples:

- Pointing out the fundamental aspect of Indian Federalism, B. P. Jeevan Reddy, in S. R. Bommai v. Union of India observed that "within the sphere allotted to them, the States are supreme. The Centre cannot tamper with their powers.
- The 42nd Amendment Act was perhaps one of the most controversial. Effected in 1976 during the Emergency by then Prime Minister Indira Gandhi, the amendment restructured the Seventh Schedule ensuring that State List subjects like education, forest, protection of wild animals and birds, administration of justice, and weights and measurements were transferred to the Concurrent List.
- In the case State of West Bengal v. Committee for the protection of democratic rights: the interpretation placed by the Supreme Court on S. 5 and S. 6 of the Delhi Special Police Estab1ishmet Act, 1946 ('DSPE Act' for short).
    - The CBI as a Special Police set up under the DSPE Act for the investigation of certain offences in any Union Territory. The Superintendence of the CBI vests in the Central Government, which specifies, by notification, the offences or classes of offences to be investigated by the CBI.

- **Section 5** of the DSPE Act empowers the Central Government to extend the powers and jurisdiction of the Special Police Establishment to any area, in a State, not being a Union Territory .for the investigation of any offences or classes of offences specified in a notification under S. 3, and on such extension of jurisdiction, a member of establishment shall discharge the functions of a police officer in that area, and shall, while show discharging such functions, be deemed to be a member of a police force of that area and be vested 238 with powers, functions and privileges and be subject and liabilities of a police officer belonging to that police force.
- **Section 6**: Consent of the State Government to exercise of powers and jurisdiction — Nothing contained in S. 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the State Government.

### Conclusion:

But there have been contentions revolving around the distribution of legislative powers, for instance, Recommendations of Niti Aayog have suggested for shifting of police and public order from the state List to the concurrent list and reason stated is an increase in inter-state crimes.

## Question: 4. What can France learn from the Indian Constitution's approach towards to secularism?

## Solution: Introduction

Secularism is the constitutional principle of separation of the state from religious institutions. Secularism forms the core element of the basic structure of the Indian constitution. And even France is an indivisible, secular democratic social Republic guaranteeing that all their citizens regardless of their origin, race or religion are treated as equals before the law and respecting all religious beliefs.

### France approach towards secularism

- The French state does not favor any one religion & guarantees their peaceful coexistence in respect of laws and principles of the Republic.
- The idea of secularism envisaged in India is different from that of France
- The paradigms of republicanism, as practiced in France or multiculturalism as implemented in a number of Western democracies, such as the UK and the US, or indeed employment-based integration models of Sweden or Germany, are all in crisis.
- French secularist objects Islamic clothing, kosher or halal meals and "burkinis".
- France was a largely homogeneous Catholic country, where the clergy had an unduly high degree of influence over the state's apparatus.
- In France people are not supposed to wear any religious signs in the public institutions like Schools.
- Any act which shows signs of preaching one's religion, get ultimately banned in the France.

## How France can learn from Indian constitution

- Secularism in France does not allow religion into public space, Indian secularism on the other hand is based on equal treatment to all religions and maintaining principle distance from all religious.
- Indian Secularism deals not only with religious freedom of individuals but also with religious freedom of minority communities.
- Only separation of state and religion isn't sufficient for the existence of a secular state. On this line Indian model of secularism is different, the idea of inter religious equality is crucial to the Indian conception. It equally opposed oppression of Dalits and women within Hinduism, discrimination against women within Islam or Christianity.
- In India – state provides Hajj subsidy to Muslims, administrative support for Amaranth Yatra to the pilgrimages, and allows Sikhs to carry Kripans along with them
- Indian deals not only with religious freedom of individuals but also with religious freedom of minority communities. Article 29 and 30 is the constitutional tool to acquire it. Within a particular religion, an individual has the right to profess the religion of his or her choice.
- The Supreme Court of India progressively elaborated the "Essential practice of religion" doctrine to ascertain which elements are fundamental for a religious practice and which may be purged, considered as mere superstition by the intervention of state without infringing the principle of state neutrality in religious affairs.
- Article 25 provides for freedom of conscience and free profession, practice and propagates religion; Article 25(2) of Indian constitution creates a further exception to the right. It accords to the state a power to make legislation in the interests of social welfare and reform, throwing up Hindu religious institutions of public character to all classes and sections of Hindus.
- A good example here would be of recent Sabarimala case where the verdict allowed women of all ages in the Ayyappan temple and declared the banning of entry of women as gender discrimination, the dissent judgment of the view that it is not for courts to determine which religious practices are to be struck down except in issues of social evil like 'sati'.

## Conclusion

So, while concluding we can say that complex religiously diverse societies are not to be ruled by over simplistic and uniform laws. Secularism is not an opinion among others, rather the freedom to have an opinion. It's not a belief, rather principle authorizing all beliefs.

**Question: 5. "Parliament's power to amend the constitution is a limited power and it cannot be enlarged into absolute power". In the light of this statement explain whether parliament under article 368 of the constitution can destroy the basic structure of the constitution by expanding its amending power?**

**Solution:**

## Introduction

The idea behind 'Constitution as a living document' highlights the necessity of making amendments in the constitution to make it more adaptive with time and to ensure that it doesn't lose it relevance as the social, economic and political conditions of the people keeps on changing. Whereas on the other side, too many changes in the constitution would lead to the loss of it's essence. So, the pioneers of our constitution made sure to maintain the balance between a rigid and a flexible amendment process to the constitution.

## Article 368 and Doctrine of Basic structure:

- Article 368 of the constitution deals with the powers of parliament to amend the constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the constitution in accordance with the procedure laid down for the purpose.
- However the parliament cannot amend those provisions which form the "basic structure" of the constitution. This was ruled by the Supreme Court in the KesavanandaBharti case 1973. If the Judiciary feels to review the any amendment made by the parliament, it has the power to do so and if the Judiciary thinks that the amendment is unlawful or against any provision or against public morality, it has the power to make that amendment null and void.
- In the Shankari Prasad case 1951, the Supreme Court ruled that the power of Parliament to amend the constitution under article 368 also includes the power to amend the fundamental rights. In Golaknath case 1967, the Supreme Court reversed its earlier stand and ruled that Fundamental rights are given a transcendental and immutable position and hence Parliament cannot abridge or take away any of these rights. The Parliament reacted to SC's judgment by enacting 24th amendment act 1971 and stated the Parliament has the power to abridge any of the fundamental rights under article 368.

## Limitations on Parliament to amend the constitution:

- However in KesavanandaBharti case 1973, the Supreme courtoverruled its judgment in GolakNath case. It upheld the validity in of 24th Amendment act and stated that the parliament is empowered to abridge any of the fundamental rights. At the same time, it laid down a new doctrine of the 'basic structure 'of the constitution. It ruled that constituent power of the parliament under article 368 doesn't enable it to alter the basic structure of the constitution.
- Parliament reacted to it by enacting 42nd amendment where it declared that there's no limitation on the constituent power of Parliament and no amendment can be questioned in any court of law. However, the Supreme Courtin Minerva Mills case 1980 invalidated this provision as it excluded judicial review which is a basic feature of the question.

## Conclusion:

From various judgments, Unity and Integrity of the nation, judicial review, parliamentary system, free and fair elections, independence of judiciary etc have emerged as the elements or ingredients of the basic structure. These cannot be amended by using the constituent amending power of the constitution under the article 368, thus limiting Parliament's power to amend the constitution.

**Question: 6. "The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss.**

**Solution:**

## Introduction

One part of the Attorney General's role is that of a Cabinet Minister. In this capacity the Minister is responsible for representing the interests and perspectives of the Ministry at Cabinet, while simultaneously representing the interests and perspectives of Cabinet and consequently the Government to the Ministry and the Ministry's communities of interest.

He is appointed by the President of India under Article 76(1) of the Constitution and holds office during the pleasure of the President. It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force. In the performance of his duties the Attorney-General shall have right of audience in all courts

## The Attorney General as the Law Officer of the Executive Council because:

He gives advice to the Government of India upon such legal matters, which are referred or assigned to him by the president. He performs such other duties of a legal character that are referred or assigned to him by the president. He discharges the functions conferred on him by or under the Constitution or any other law.

The Attorney General has a special role to play in advising Cabinet to ensure the rule of law is maintained and that Cabinet actions are legally and constitutionally valid.

He shall advise the Government upon all matters of law connected with legislative enactments and upon all matters of law referred to him or her by the Government.

## Attorney General for India is primary lawyer in the Supreme Court of India because:

- He appears on behalf of the government of India in all the cases in Supreme Court in which the Government of India is concerned.
- He appears on behalf of the government of India in any reference made by the president to the Supreme Court under Article 143 of the constitution.
- He appears on behalf of the government of India in any case in a high court in which the Government of India is concerned, if Government of India requires so.

## Below mentioned are the Limitations placed on the Attorney General:

- He should not advise or hold a brief against the Government of India.
- He should not defend accused persons in criminal cases without the permission of the government of India.
- He should not accept appointment as a director in any company without the permission of government.

### Conclusion:

It should be noted that the AG is not debarred from private legal practice. He is not a government servant as he is not paid fixed salary and his remuneration is decided by the president. The Attorney General is the chief law officer of the Executive Council. The responsibilities stemming from this role are unlike those of any other Cabinet member. The role has been referred to as "judicial-like" and as the "guardian of the public interest".

## Question: 7. Individual Parliamentarian's role as the national lawmaker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss.

## Solution: Introduction

The Constitution provides for the legislature to make laws, the government to implement laws, and the courts to interpret and enforce these laws. While the judiciary is independent from the other two branches, the government is formed with the support of a majority of members in the legislature. Therefore, the government is collectively responsible to Parliament for its actions.

This also implies that Parliament (i.e. Lok Sabha and Rajya Sabha) can hold the government accountable for its decisions, and scrutinize its functioning. This may be done using various methods including, during debates on Bills or issues on the floor of Parliament, by posing questions to ministers during Question Hour, and in parliamentary committees. Within this reference framework, role of Individual Parliamentarian as the national lawmaker assumes greater significance in the health and vitality of the Parliamentary democracy.

### Parliamentarian's role as the national lawmaker:

- MPs may raise issues of public importance in Parliament, and examine the government's response to problems being faced by citizens through: (i) a debate, which entails a reply by the concerned minister, or (ii) a motion which entails a vote.
- Using these methods, MPs may discuss important matters, policies, and topical issues. The concerned minister while replying to the debate may make assurances to the House regarding steps that will be taken to address the situation.
- Alternatively, MPs may move a motion for: (i) discussing important issues (such as inflation, drought, and corruption), (ii) adjournment of business in a House in order to express displeasure over a government policy, or (iii) expressing no confidence in the government leading to its resignation.
- To improve government accountability in Parliament, the opposition in some countries such as the UK, Canada, and Australia forms a shadow cabinet. Under such a system, opposition MPs track a certain portfolio, scrutinize its performance and suggest alternate programs. This allows for detailed tracking and scrutiny of ministries, and assists MPs in making constructive suggestions. Some of these countries also provide for days when the opposition parties decide the agenda for Parliament.

However, given the dominance of parties, independence of MPs are rare. There are other causes as well which have led to the decline in the Individual Parliamentarian's role as the national lawmaker:

- Judicial activism by higher Judiciary (High Courts and the Supreme Court).
- Brute Majority in the ruling government - giving little or no space for democratic dissent.
- Instead of Lawmakers deciding on Policy matters and the formulation of law, these critical factors are inserted by the Party High Command.
- Lack of Subject matter knowledge by the lawmakers leading to delegating the matter to the bureaucracy.
- Avoidance of Pre - vetting process in the inner Party deliberations.
- Penalizing MP/MLAs if they speak and vote their mind against Party lines in the Legislature under the anti defection law.

Individual members have a great role to play in furthering our representative democracy by contributing to productive debates. Steps like,

- Equipping them with relevant information
- Unbiased role of speaker in allotting them time.
- Freeing them from party whip
- Maintaining the decorum of the house must be taken for them to fulfill their role.

## Some unknown facts

- Nearly half of the newly-elected Lok Sabha members have criminal charges against them, a 26% increase as compared to 2014, according to the Association of Democratic Reforms (ADR).
- Of the 539 winning candidates analysed by the ADR, as many as 233 MPs or 43% have criminal charges.
- The BJP has 116 MPs or 39% of its winning candidates with criminal cases, followed by 29 MPs (57%) from the Congress, 13 (81%) from the JDU, 10 (43%) from the DMK and nine (41%) from the TMC, the ADR said.
- In 2014, 185 Lok Sabha members (34%) had criminal charges and 112 MPs had serious criminal cases against them. In 2009, 162 (nearly 30%) out of the 543 Lok Sabha MPs had criminal charges and 14% had serious criminal charges, it said.
- In the new Lok Sabha, nearly 29% of the cases are related to rape, murder, attempt to murder or crime against women.Pragya Singh Thakur, the newly-elected BJP MP from Bhopal, faces terror charges in connection with the 2008 Malegaon blasts
- About 75 per cent of MPs in the Lok Sabha have at least a graduate degree, while 10 per cent are only matriculates, according to a report by PRS Legislative Research.
- The percentage of MPs elected in the 2014 general elections who do not have a matriculate degree is significantly higher (13 per cent) in comparison to the 15th Lok Sabha (3 per cent).

## Conclusion:

India's citizens need a more robust legislative system that offers public representatives — our MPs, Ministers and the Prime Minister — a greater sense of authority. However, one must stand wary against rank populism infecting our body politic. Parliament should be a space for policy and not for politics.According to a 2014 survey among

national voters to study the perception of voters regarding MPs in their respective constituencies; an MP's own high education may not be a guarantee for promotion of literacy and education in his constituency. In the survey, views on 21 most educated members of the 15th Lok Sabha, those with a PhD, did not reflect any better performance in promotion of literacy. Only 10 out of these 21 MPs scored above the national average when it came to better schooling in..

# 2018

**Question: 1. In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?**

**Solution:**

## Introduction

In foresight of overcoming certain problems associated with use of ballot papers and taking advantage of development of technology for ambiguity free voting, removing the possibilities of invalid votes totally, the Election Commission in 1977 mooted the idea of Electronic Voting Machines (EVM). Since 2000, EVMs have been used in various General Elections to State Legislative Assemblies and 3 General Elections to Lok Sabha held in 2004, 2009 & 2014. However, over the years the issue of possible tampering of EVM has been raised before various High Courts since 2001.

## Controversial Issues

- After declaration of result of the recently held General Elections to the State Legislative Assemblies of Goa, Manipur, Punjab, Uttar Pradesh and Uttarakhand, some political parties have raised voice against the credibility of the ECI-EVMs, alleging tampering and manipulation of EVMs during the said elections wherein the machine has been so set in advance as to the vote will be made to a particular party irrespective of whatever the choice made physically without the voter knowing it.
- Various administrative and technical glitches where in certain poll booths during Delhi municipal elections, 2017 and Kairana and Noorpur by-elections the EVM's and VVPAT's stopped working owing to sensor paralysis due to hot weather and humidity.
- Alleged hacking, issue of EVMs only storing votes. Verification of vote is not possible and eventually promoting favouritism wherein a candidate can know how many people from a polling station voted for him.

The Election Commission has rejected these allegations and unequivocally reiterated the credibility of EVM's with technical and administrative safeguards in view of them being stand alone machines, nonmanipulatable by signals from any sources. Example mobile phones. EVM is burnt into a one-time programmable chip thus can never be tampered with. Moreover, the source code of the software is not handed over to any outsider. Also the use of totalizer machines and VVPAT's have been started to eliminate the aforesaid issues. A Totalizer unit which can connect several balloting units and would display only the overall results from an Assembly or a Lok

Sabha constituency instead of votes from individual polling stations thus eliminate favouritism and VVPAT system enables EVM to record each vote cast by generating the EVM slip, thus allowing a fool proof voting system in place after the Supreme court verdict on Subramanian swami's PIL. Also in June 2018, Election Commission of India decided that all VVPATs will have a built-in-hood to prevent it from excess light and heat.

## Challenges before the Election Commission of India

- To regain trust and confidence of all stakeholders in the election system in India amidst cases of political opportunism and political aversion towards use of EVM. Recently ECI also introduced innovative measures like organising workshops, EVM Hackathons for wider credibility establishment.
- Introduction of VVPAT is an appreciated move. However, lacunae in VVPAT technology should be immediately addressed. Measures include: making it independent of battery, include the usage of sustainable inks and reducing sensitivity to heat and light.
- Employment and proper training of workforce to manage errors and technological snags. The EC announced that it will count V-VPAT slips up to a definite percentage. A proper statistical method should be deployed for while deciding on the required proportion of tallying V-VPAT with EVMs. At present it only involves randomly choosing booths.
- Invest more to upgrade technology and procurement of required logistics in time.
- Rather than moving to paper ballot system of election, the focus should be on improving the efficiency, credibility and transparency of the EVM-VVPAT enabled electoral process.
- Targeted focus on increasing the voter awareness and electoral literacy to make them more decisive and empowered in making their choice, along with being the first line of audit in ensuring a fair and just election process The Election Commission of India has been able to nourish India's democratic health since independence by improving the quality of election management. Elections are the cornerstone of every democratic process.

It is through this process that first footsteps into Rule of law, freedom for speech, transparency etc are laid.

Any hollowness in this will change the course of all the institutions of the political system which are at the heart of maintaining people's faith in democracy itself. EVM's play a vital role amidst this in the fate of a candidate and also voters who cast their vote with the hope that it will bring the change that they seek in the country. Therefore, rather than going back to paper-ballot which (too can be tampered) and be inefficient we need to embrace newer technologies and make them fool proof to make the elections fair and just elections which is also mandated by the constitution under Article 324 and is a 'basic structure' of the democracy.

**Question: 2. Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine.**

**Solution:**

## Introduction

National Commission for Scheduled Castes (NCSC) is an Indian constitutional body established by Article 338 of the constitution with a view to provide safeguards against the exploitation of Scheduled Castes, to promote and protect their social, educational, economic and cultural interests, under special provisions in the Constitution. It is an advisory and recommendatory body to look upon the holistic upliftment of the schedule castes.

## About Religious Minority

National Commission for Minority Educational Institution Act, 2004 has defined 'minority' as a community which is defined as according to the central government based on religion within the meaning of Article 30 and 'Minority institution' as an educational institution which is administered and set up by the minority. Rights of Minorities to establish and administer Educational Institutions (Article 30)

- All minorities should have right to set up and govern educational institutions according to their
- If the government is having an acquisition on any property of minority educational institution then the government should keep this in mind that a fixed price should be settled in a way that does not deter the rights minorities
- The State shall not, differentiate among any educational institution on the ground that it is under the administration of a minority whether in terms of a religion or a language.

## Benefits available to Minority Institutions

- There are, comprehensively, three advantages accessible to a minority educational institution that is not accessible to other institutions:
- Minority educational institutions don't need to keep up a reservation in work or affirmations for SCs, STs, and OBCs as required to be done by other educational institutions.
- In respect of control over representatives, minority educational institutions have substantially more prominent power than other institutions. For example, in the selection of teacher and principals, the minority educational institution can have a choice advisory group which does exclude the university representatives. Thus, while in customary schools the headmaster ordinarily must be appointed based on seniority, minority administrations can choose a headmaster according to their own choice.
- In case of admission of the student, minority educational institutions can have a reservation of up to 50 percent for the student of their own community. The Supreme Court held in the Case of P.A. Inamdar vs State of Maharashtra [2006 (6) SCC 537] that:
- The policy of reservation to admit students is not applicable to a minority institution.
- The policy of reservation in terms of employment is not applicable to a minority institution.

In view of the recent demands for Dalit Quota in minority-run institutions such as AMU and Delhi's Jamia Millia Islamia reservation issue in religious minority institutions again raked up.

The idea to make the provision for minorities as a fundamental right under the constitution to protect their educational right is not inequality towards the privileged classes but it definitely gives the sense of security to the minority groups against the perceived threat of majority. Jains are the minority community that has the highest literacy rate and the majority of their population is educated is a successful example of this 'right'. Thus, the way forward would be a formulation of unambiguous list of religious minority institutions that seek aid or recognition from the state to avoid overlapping of regulatory powers in respect of that particular institute for the healthy balance and growth of minorities as well as other communities simultaneously.

This holds significance more so in case of a majoritarian country like India which is a cradle of diversity and epitome of inclusivity. The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority.

**Question: 3. Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remains in force?**

**Solution:**

## Introduction

The rationality behind the incorporation of Emergency provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution. During an Emergency, the central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal during normal times to unitary during Emergency is a unique feature of the Indian Constitution.

## Grounds of Declaration

Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

The 38th Amendment Act of 1975 made the satisfaction of the president in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review.

## Consequences of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

- The executive authority of the Centre extends (a) to directing any state to observe such canons of financial propriety as are specified by it; and (b) to directions as the President may deem necessary and adequate for the purpose.
- Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.
- The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court. Thus, during the operation of a financial emergency,

the Centre acquires full control over the states in financial matters. H N Kunzru, a member of the Constituent Assembly, stated that the financial emergency provisions pose a serious threat to the financial autonomy of the states. Explaining the reasons for their inclusion in the Constitution, Dr BR Ambedkar observed in the Constituent Assembly:

- "This Article more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933, which gave the president power to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American people, as a result of the Great Depression." No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

**Question: 4. Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee.**

**Solution:**

## Introduction

The Parliament is too unwieldy a body to deliberate effectively the issues that come up before it. The functions of the Parliament are varied, complex and voluminous in a modern industrial economy involving cases of GST, Rafael deal, issues of money laundering, etc. Moreover, it has neither the adequate time nor necessary expertise to make a detailed scrutiny of all legislative measures and other matters as the Constitution specifies 3 sessions in one financial year which comes down to around 67 working days in a year. Therefore, it is assisted by a number of committees in the discharge of its duties.

## Significance of Parliamentary Committees:

- To ensure executive accountability, which is central in a representative democracy
- Increase the amount of work that can be done
- Ensure that issues can be debated in more detail than in plenary sessions
- Increase the level of participation of Members of Parliament (MPs) in discussions
- Indian parliamentary committees are a huge reservoir of information. Thus, they enable MPs to develop expertise and in-depth knowledge of the specific Committee's area of work and contribute ideas to strengthen the parliamentary system and improve governance.
- Provide a platform for the public to present views directly to MPs, something which is not possible in a plenary sitting of -Parliament
- Provide an environment for Parliament to hear evidence and collect information related to the work of a specific Committee.
- They examine specific areas of public life or matters of public interest
- They take care of domestic parliamentary issues
- Committees have the power to summon any person to appear before them, give evidence or produce documents.
- They may require any person or institution to report to them.

### Role of Estimates Committee

Under this regard, the origin of the Estimates committee can be traced to the standing financial committee set up in 1921. The first Estimates Committee was constituted on the recommendation of John Mathai. This Committee consists of 30 members who are elected by the Lok Sabha every year from among its

members. Estimates committees usually meet three times a year to scrutinise how the government has spent Budget funds. The main function of the Committee on Estimates is:

- To report what improvements in organisation, efficiency, or administrative reform, consistent with the policy underlying the estimates may be affected.
- Suggest alternative policies in order to bring about efficiency and economy in administration.
- To examine whether the money is well laid out within the limits of the policy implied in the estimates
- To suggest the forth in which the estimates are to be presented to Parliament
- From time to time the Committee selects such of the estimates pertaining to a Ministry or a group of Ministries or the statutory and other Government bodies as may seem fit to the Committee.
- The Committee also examines matters of special interest which may arise or come to light in the course of its work or which are specifically referred to it by the House or the Speaker.

### Challenges before Parliamentary committees:

- It examines the budget estimates only alter they have been voted by the Parliament, and not before that.
- It cannot question the policy laid down by the Parliament.
- Its recommendations are advisory and not binding on the ministries.
- It examines every year only certain selected ministries and departments. Thus, by rotation, it would cover all of them over a number of years.
- It lacks the expert assistance of the CAG which is available to the Public Accounts Committee.
- Its work is in the nature of a post-mortem.

In recent years, committees have become more important in the work of the Parliament, especially since lawmaking is increasingly more complex. Committees are also a powerful way to bring Parliament to the people and allow a greater variety of opinions to be heard.Thus, it is important for periodic experiments and reviews to bring about changes. No such attempts have been made in the Indian parliament in the past 64 years except to increase the total strength of the Houses and boost the security system. A systemic overhaul of the parliamentary committees is thus long overdue.

**Question: 5. "The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise.**

**Solution:**

## Introduction

The Comptroller and Auditor General of India (CAG) is a constitutional post mandated under Article 148 of Constitution of India that provides for an independent office of the CAG. Under this regard the CAG of India has a very vital role to play that is vividly reflected in the method and terms of his appointment as well as the range of powers he can exercise.

Method of Appointment and Removal and Term of Appointment The CAG is appointed by the highest rank and order of the officials of the union and state governments, the President of India, by a warrant under his hand and seal following a recommendation by the Prime minister. This means that there would be a signature of the president on the appointment letter in this case (the highest order of the method of appointment in India). Whereas in other cases where the President is the appointing authority it is not necessary that he is also the FINAL appointing authority. He might delegate his function to some other authority. For e.g. The appointment of officers is done by the President but in general it carries the signature of secretary of the concerned department. The Final appointment by the President is followed by the oath of affirmation made and subscribed by the CAG before the President of India, before he enters upon his office.

Wherein, the government of the nation holds power for five years at a time the CAG holds the office for a period of six yearsor up to the age of 65 years, whichever is earlier with the security of tenure and can resign any time from his office by addressing the resignation letter to the president like other vital dignitaries like Chief Election Commissioner, Chairman of Union Public Services Commission, etc. to keep a check on the working of the government and the nation during and after their tenure. This becomes vital especially in case of CAG that has been mandated the responsibility of keeping the revenue and estimates of the nation in check in the aftermath of the transaction through the channels of legal, regulatory and also the most important proprietary audit. Further the fact that the CAG can be removed by the President only on an address from both houses of parliamentwith special majority on the ground of proved misbehaviour or incapacity in manner of impeachment reflects the vital role CAG has been mandated to play. The grounds of proved misbehaviour and incapacity are wide and subjective in approach and requires a detailed investigation before it can be proved, which eliminates the element of casualty in the appointment of CAG to a greater degree.

## Powers of CAG and Constitutional vitality of the post

As per the provisions of the constitution under Article 149, the CAG's (DPC) (Duties, Powers and Conditions of Service) Act, 1971 was enacted. As per the various provisions, the duties of the CAG include the audit of:

- Receipts and expenditure from the Consolidated Fund of India , State and Union Territory having legislative assembly, government companies, corporations established under law, authorities and bodies substantially financed from the Consolidated Funds of the Union and State Governments or even though not substantially financed from the Consolidated Fund, the audit of which may be entrusted to the C&AG, grants and loans given by Government to bodies and authorities for specific purposes, entrusted audits by the President or the Governor. This hold significance as the nation aspires towards cooperative and competitive federalism and financial devolution in making India one of the fastest growing economies round the globe today.

- He ascertains and certifies the net proceeds of any tax or duty (Article 279). His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection. This helps in ascertaining the goal of fiscal federalism and financial inclusivity especially in times when the nation is opening itself to new avenues like GST that will further its goal of enhancing the tax to GDP ratio.
- He acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament to assist them in their working and balance the streamline the work of the Parliament as per their vision.
- He compiles and maintains the accounts of state governments to keep the states and nation as a whole within the limits of fiscal deficit with a vision of fiscal consolidation.
- submits three audit reports to the President—audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

Under this regard the role of CAG is to uphold the Constitution of India and the laws Parliament in the field of financial administration. The accountability of the executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG. The CAG is an agent of the Parliament and conducts audit of expenditure on behalf of the Parliament. Also, the proprietary audit the CAG in furthering its vital role in the administration of the vast nation specially in a scenario where it has more freedom with regard to audit of expenditure than with regard to audit of receipts, stores and stock unlike CAG of Singapore and Britain. In relation to expenditure he decides the scope of audit and frames his own audit codes and manuals, he has to proceed with the approval of the executive government in relation to rules for the conduct of the other audits

**Question: 6. Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.**

**Solution:**

## Introduction

In light of the appeals filed by the NCT government against the verdict of the Delhi High Court, which had declared that the L-G has "complete control of all matters regarding the National Capital Territory of Delhi, and nothing will happen without the concurrence of the L-G." The Supreme Court Judgement (July 2018) by a five judge constitutional bench pronounced its verdict ruling that the Delhi government has power in all areas except land, police and public order and the LG is bound by the aid and advice of the government in areas other than those exempted.

## The Supreme Court observed:

- The L-G is bound by the aid and advice of the Council of Ministers. In case of difference of opinion, the L-G should straightaway refer the dispute to the President for a final decision.
- The Lieutenant-Governor should act as a "facilitator" for good governance in the national capital and not as an "obstructionist".

- The Lieutenant-Governor's authority, saying he cannot exercise his discretion in "each and every matter" of daily governance. His discretionary powers are in fact limited to only matters in the State List — public order, police and land — over which the legislative power of the Delhi Legislative Assembly stand excluded under Article 239AA.
- The NCT government need only to inform the L-G of its "well-deliberated" decisions. The government need not obtain his "concurrence" on every issue of day-to-day governance.
- The elected government could make policies on laws enacted by its own Assembly. The executive power of the NCT government was co-extensive with its legislative powers.

## Analysis of the Judgement

Although the verdict has clearly demarcated the jurisdiction of authority of the L-G and the Delhi government, the verdict, however, did not address a critical issue which could still be the bone of contention in future litigation, i.e., the exact ambit of the provision to Article 239AA (4) of the Constitution and this might prove to be a stumbling block for the Delhi government whenever it is not ruled by the party which is in power at the Centre. Article 239AA provides for special provisions with respect to the National Capital.

Sub-clause 4 of the said Article provides that the Council of Ministers shall aid and advise the Lt. Governor.

## It reads as follows:

"There shall be a Council of Ministers consisting of not more than ten percent, of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise to his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion."

However, the provision states that in case the Lt. Governor has a difference of opinion on any matter, he can refer it to the President, whose decision in this regard shall be binding. Thus, this provision effectively vests in the Lt. Governor the power to stall and overturn the actions/decisions taken by the Delhi government with respect to any matter by referring it to the President.

While both the judgments – that of the Delhi High Court and the Supreme Court – dealt with myriad issues including the status of Delhi (whether it is a Union Territory or State) and the scope of the term "aid and advice", it is the interpretation of this provision alone which would hold the key when it comes to the battle for Delhi. Failing to provide a concrete answer to when the Lt. Governor should exercise his power under the proviso, the Court goes on to state that difference of opinion between the Lt. Governor and the Council of Ministers should have a sound rationale and the former should not adopt an obstructionist attitude.

However, the practicality and feasibility of the recommendation is subjective in nature and a loophole when it comes to the actual exercise of power. Effectively, the power of the Lt. Governor under the proviso remains, and given that the situations wherein he can exercise the said power have not been circumscribed, the future exercise of this power could lead to political tensions similar to the current one.

L-G's role is not that of a Constitutional figurehead, though the ultimate responsibility for good administration of Delhi is vested in the President acting through the Administrator. However, to avoid the contention, the Administrator should take a more active part in the administration than the Governor of a State and in cases of difference of opinion refer to President for a final decision. This should however be kept as a last resort.

**Question: 7. How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India.**

**Solution:**

## Introduction

Tribunals are specialised courts in addition to the formal judiciary added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A,articles viz. 323-A (administrative tribunals) and 323- B (tribunals for other matters) for dealing with disputes regarding a particular kind of law. These were established to reduce the burden of formal judiciary and to bring expertise and speed to dispute resolution.

However, over the years, concerns from various stakeholders have been raised over the tribunalisation of courts time and again claiming usurpation of certain judicial power from the courts under the garb of Article 50, i.e., the doctrine of separation of power. This authorises that the State shall take steps to separate the judiciary from the executive in the public services of the State whenever the need be.

However, despite so many concerns, tribunals have been pivotal and effective in addressing disputes in past.

They may adjudicate on matters under their jurisdiction but the ultimate power lies with the High Courts and the Supreme Court. With nearly three crore cases pending in Indian courts coupled with vacancies in judiciary is proving detrimental to the efficient functioning of judiciary tribunals act as a relief to the overburdened courts. In a modern society, implementation of Separation of Powers doctrine in its strictest sense is an extremely difficult task. In this complex era of social networking and cybercrimes we need to have tribunals with experts who can deliver justice without undue delay.

## Competency of Tribunals

- Reduced burden on courts at all levels significantly. Example: Central Administrative tribunal established in 1985, National Green Tribunal.
- Reduced delays and complication in delivery of judgement related to government services disputes, tax claims and business and financial markets disputes. Courts are governed by strict procedure defined in CrPC, IPC and the Indian Evidence Act. Whereas Tribunal follow principles of Natural Justice. Thus, less procedural delay and legal obligations.
- For ensuring efficiency and independence (Administrative tribunals CAT, SAT),
- Deal with matters requiring specialized knowledge (National Green Tribunal, Intellectual Property Appellate Board etc. income tax appellate tribunal, EC etc) and thus have expert members also apart from judicial member with efficient and competent knowledge and rich experiences in adjudication on those matters.
- To provide speedy resolution of disputes as they generally have original jurisdiction for that particular subject matter (appellate authority under CIC)

- To provide cheap remedy (Lok Adalat) While it may seem that executive is taking over judiciary in the form of tribunals it would be premature to view tribunals as agents of executive in judicial proceedings. In our parliamentary form of governance, a lot of cooperation is required and thus each organ must correspond to the other on some level so as to function smoothly. Since vesting any one organ with too much power maybe very dangerous, a system of checks and balances should be developed. However, in the past it has been realised that finding retired judges and competent candidates with qualifications set out by Parliament, to be members of quasi-judicial tribunals has been a difficult task. Therefore, restructured effort must be made just like the NJAC act, to develop a statutory framework to ensure selection of eminent persons to these offices and further reforms to empower them.

**Question: 8. How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss.**

**Solution: Introduction**

### Constitution of finance Commission:

The Finance Commission is constituted by the President every fifth year or at such earlier time as he considers necessary. The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected. As per the provisions contained in the Finance Commission [Miscellaneous Provisions] Act, 1951 and The Finance Commission (Salaries & Allowances) Rules, 1951, the Chairman of the Commission is selected from among persons who have had experience in public affairs, and the four other members are selected from among persons who—

- are, or have been, or are qualified to be appointed as Judges of a High Court; or
- have special knowledge of the finances and accounts of Government; or
- have had wide experience in financial matters and in administration; or
- have special knowledge of economics

### 15th Finance Commission:

The Union Government on 27 November 2017 constituted Fifteenth Finance Commission under the chairmanship of former bureaucrat NK Singh. The Commission will make recommendations for five years commencing on 1 April 2020. The Commission will submit its report by 30 October 2019.

### Terms of Reference of 15th Finance Commission:

- It will make recommendations on the distribution of net proceeds of taxes between Centre and States.
- It will recommend the principles which will govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India.
- It will recommend measures needed to augment the Consolidated Fund of a Stateto supplement the resources of the Panchayats and Municipalities on the basis of the recommendations made by the State Finance Commission.

- It will review the current status of the finance, deficit, debt levels, cash balances and fiscal discipline efforts of the Centre and the States and recommend a fiscal consolidation roadmap for sound fiscal management.
- It will look at the resources of the Central Government and the State Governments for the five years commencing on 1 April 2020 on the basis of the levels of tax and the non-tax revenues.
- It will look at the impact of GST, including payment of compensation for possible loss of revenues for 5 years and abolition of a number of cesses and other structural reforms programme on the finances of Centre and States.
- It may review the present arrangements on financing Disaster Management initiatives, with reference to the funds constituted under the Disaster Management Act, 2005 and make appropriate recommendations thereon.
- It will indicate the basis on which it has arrived at its findings and make available the State wise estimates of receipts and expenditure.
- The Commission can also use the population data of 2011 while making its recommendations. Contentious issues raising the questions of constitutional proprietary:
- Southern states have raised objections over the directive to use population data in the ToR from the 2011 Census and not the 1971 Census that was used as this would imply massive cut in their share of the devolutions from the central government.
- Term of reference (ToR) which asks to examine whether revenue deficit grants be provided at all, questions the very objective of Article 275 which enables the Commission to give grants to offset post-devolution gaps between normatively assessed revenues and expenditures.
- The ToR seek to reduce the role of Article 275, which is a legitimate channel for grants, and asks the Commission to leave it more fiscal space to expand grants under Article 282, which is questionable.
- Asking the Commission to take into account the performances in implementation of various Central schemes is equally contentious. Performances must be built into the implementation of schemes and not into the tax devolution formula.

The Constitution of India envisages the Finance Commission as the balancing wheel of fiscal federalism in India under article 280 of the Constitution as a constitutional, quasi-judicial, advisory body, mainly to give its recommendations on distribution of tax revenues between the Union and the States and amongst the States themselves. The Finance Commission forms one of the most important organ for unitary administration in India more so after the negation of Planning commission as the present government is working towards enhanced cooperative, competitive and fiscal federalism. This demands cooperation among the states and their coming together for the early resolution of the issues regarding the terms of reference which have raised the question of constitutional proprietary and work towards redressing the vertical imbalances between the taxation powers and expenditure responsibilities of the centre and the States respectively and equalization of all public services across the States.

**Question: 9. Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing developmental projects?**

**Solution:**

## Introduction

India is a federal republic with three spheres of government: central (union), state and local. The 73rd and 74th constitutional amendments give recognition and protection to local government and in addition each state has its own local government legislation. They are the statutory bodies which are elected at village, block and district level.

## Panchayati Raj Institution:

- The PRIs are the local self-governing bodies that ensure the opportunity for people's participation and involvement in the formulation and implementation of rural development programmes.
- The main objective of Panchayat System in India is to strengthen the base of democracy at the grass root level.
- It was introduced as a real democratic political apparatus which would bring the masses into active political control from below, from the vast majority of the weaker, poor sections of rural India.
- They play the role of a catalytic agent in integrating development of tribal masses in rural areas.

## Sources of finance:

- The taxes imposed by the Village Panchayats are important source of income of Gram Panchayats, such as:
  - taxes on land and houses,
  - the custom duty
  - toll tax
  - license fees
- Money comes also as grants-in-aid from the Central or the State government or from the ZillaParishad or PanchayatSamiti.
- Another source of earning of the Panchayat is the loan collected from the Central government, the State government or other financial agencies. Money collected from gifts through Government schemes such as MPLADS also becomes a source of earning for the Panchayat.

## Way ahead:

- Sufficient funds should be given for meeting critical gaps in local infrastructure and other development requirements.
- Developing capacities of the faculty of state panchayat resource centres and district resource centres
- Strengthening PESA, Rajiv Gandhi Panchayat Sashaktikaran Abhiyan and other schemes.
- Promote devolution of powers and responsibilities to Panchayats according to the spirit of the Constitution and PESA Act.

Hence, by strengthening Panchayati Raj, local governance will be strengthened at the grass root level that would enhance accountability and increase space for people's participation.

**Question: 10. Multiplicity of various commissions for the vulnerable sections of the society leads to problems of overlapping jurisdiction and duplication of functions. Is it better to merge all commissions into an umbrella Human Rights Commission? Argue your case.**

**Solution:**

## Introduction

Vulnerable groups are those groups of society which would be susceptible under any unfavorable situations.

In India the vulnerable groups include Women, Scheduled Castes (SC), Scheduled Tribes (ST), Children, etc.

These vulnerable section needs consideration for safeguarding their interests. For their accelerated socioeconomic development and protections, several commissions such as National Commission for SCs, National Commission for STs, National Commission for Women, National Commission for Child Rights are provided in the constitution or through statue.

These commissions have similar objectives to provide safeguards against the exploitation of these vulnerable groups and to promote and protect their social, educational, economic and cultural interests, WHICH sometimes lead to problems of overlapping jurisdiction and duplication of functions. For example, National commission for women protects women against violence and is also protected by Human rights Commission.

Pros of integration of all the Commissions into umbrella Human Rights Commission

- Efficient use of Resources (Financial, Human, time) as there will be no issue of overlapping of functions.
- Vulnerable will not get contrary judgements from different commissions. As many of them have power of civil court.
- Issues of vulnerable sections such as Women and children are inter-related, so holistic solution can be derived.

## However, there are some cons in merging all the commissions

- Human Rights commission will be overburdened.
- Centralization might make it difficult to help someone responsible for protection of vulnerable rights.
- Different issues of different vulnerable groups need Expert analysis or inputs. It will get hampered as there will be resource crunch.

## Suggestions

- Rationalization of resources.
- Giving more autonomy and power to these commissions
- Strengthening their organizational and functional performance.
- Improving co-ordination among them.

Every vulnerable group have specific problems, that's why we need separate constitutional body to protect their rights (Separate legislature such as Protection of Civil Rights act or Scheduled Castes and Tribes (Prevention of Atrocities Act). Human rights Commission of India has taken many provisions from International

convention of Human Rights because of which it will be difficult for it to consider the socio economic conditions of different vulnerable groups in India, especially those of SC's/ST's/Women etc.(Issues of reservations).

Therefore, it would be better to continue with separate commissions for various vulnerable groups but at the same time we should try to streamline the functions and their jurisdiction in a more rational and efficient manner. So that the purpose for which they have been created can be served better.

# 2017

**Question: 1. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.**

**Solution:**

## Introduction

The National Judicial Appointment Commission Act sought to replace the collegium system for appointment of higher judges and give civil society and executive to have a say in their appointment.

The Supreme Court strike it down as unconstitutional as it was violative of judicial independence.

## Pros of the decision:

- It is in tune with the doctrine of Separation of Powers.
- The judicial independence is the part of the basic structure of the Constitution and should not be tampered with.
- It would lead to interference of executive in appointment of judges leading to biasness in judiciary.
- It led to the violation of Article 124 and 217 concerning the appointment of judges in Supreme Court and High Court.

## Cons of the decision are:

- The collegium system is opaque in its functioning and is accused to be biased and full of nepotism.
- NJAC act would have led to more transparency and accountability in judiciary.
- It aimed to implement the doctrine of checks and balances.
- The huge number of vacancies is also a shortcoming of collegium system. E.g.- 469 vacancies in SC and HC Recently, the SC came out with reforms in collegium system wherein the process will be digitalized under CJI Deepak Mishra. The memorandum of Procedure is also an improvement over collegium system having representation from both judiciary and govt. We need to implement these reforms expeditiously so as to decrease the 30 million pending cases in courts.

**Question: 2. "Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people." Discuss.**

**Solution:**

## Introduction

The Prime Minister has recently emphasised on simultaneous elections for Lok Sabha and State Assemblies.

### Pros:

- Governance- It takes a back seat during elections. Simultaneous elections allow govt to devote four years to governance.
- It results in logjam in legislative work as every party wants to be in spot light at the time of elections.
- Frequent elections hamper stability in the region.
- The exchequer spends a lot of money in conducting elections every year which can then be utilised in developmental works elsewhere.
- The central forces are deployed for conducting elections. Simultaneous elections would ensure their better utilisation for nation's security.
- No new schemes can be introduced during Model code of conduct. This hampers the economic development.
- The simultaneous election once in five years provides stability to the governments. It allows the government to take difficult and harsh decision in larger public interest.
- It also happens in Germany, South Africa and Sweden.
- It has been recommended by Law Commission (170th Report) as well as Parliamentary Standing Committee.

### But, it will reduce the accountability to the people as-

- Frequent elections keep government on their toes.
- It is usually seen that the ministers visit their constituencies only during elections.
- This keeps politicians in touch with the pulse of public and the result of various elections may lead to course correction by the govt.
- Usually the result is also tied to the approval of govt policy. E.g.- UP elections tied to demonetisation move by govt.
- They keep the national issues separated from the regional issues thus imparting clarity in the minds of voters.
- Simultaneous elections may reduce the importance of state elections. Thus, it affects the concept of federalism.
- Simultaneous elections with fixed tenure of five years curtail people's right to express their confidence or displeasure on the government.

The other issues with simultaneous elections are the implementation and logistical issues.

However, in light of the huge time and money saved, the government should go for simultaneous elections providing suitable alternative mechanisms for accountability to people.

**Question: 3. Discuss the role of Public Accounts Committee in establishing accountability of the government to the people.**

**Solution:**

## Introduction

The Public Accounts Committee was set up in 1929 by Montague- Chelmsford Reforms and is called as the Mother of all Committees.

It consists of 22 members- 15 from Lok Sabha and 7 from Rajya Sabha who are elected by Parliament. No minister can become its member.

## It establishes the accountability to the people as:

- Its main function is to examine the appropriation accounts and the finance accounts of the union government and any other accounts laid before the Lok Sabha.
- It examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses
- It examines the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them and accounts of autonomous and semi-autonomous bodies.
- CAG works as the mentor, friend, philosopher and guide of PAC.
- It also examines money spent on any service during the financial year in excess of the amount granted by the Lok Sabha for that purpose.
- It can also make recommendations to streamline the administration for efficient, speedy and economical implementation of policy.
- It provides for Parliamentary oversight over Executive decisions and acts as a check on slackness, negligence and even wrongdoing on the part of the Executive.
- It has representation from nearly all political parties and the head is from opposition party making the democracy meaningful in nature.
- Thus, it increases the awareness of public and increases the answerability of govt.
- PAC unearthed 2G scam and recently summoned the head of RBI to speak on demonetization.

However, there are some challenges like its work is of post- mortem in nature and it suffers from lack of technical expertise. Its recommendations are not binding in nature. Measure should be taken to improvise and reform PAC adequately.

**Question: 4. Explain the salient features of the Constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough "to remove cascading effect of taxes and provide for common national market for goods and services"?**

**Solution:**

## Introduction

The 101st Constitutional Amendment Act pave way for Goods and Service Tax in India which unified the nation in terms of indirect taxation.

### Salient features of GST are:

- Single tax on supply of goods and services, right from the manufacturer to the consumer
- It is a destination based tax unlike the present taxation scheme which is origin based
- It is a value based tax as credits of input taxes paid at each stage will be available in the subsequent stages
- The final consumer will bear only the GST charged by the last dealer in the supply chain

### At the central level, following taxes are being subsumed under GST.

- Central Excise Duty
- Additional Excise Duty
- Service Tax
- Countervailing Duty
- Special Additional Duty of Customs

### At the state level, following taxes are being subsumed under GST:

- State VAT/Sales Tax
- Entertainment Tax
- Central Sales Tax
- Octroi and Entry Tax

### Structure:

- There are two components of GST – Central GST and State GST. Both CGST and SGST will be simultaneously levied across the value chain, both on goods and services.
- The tax will not be levied on exempted goods (alcohol, petroleum and its products) and those transactions which are below the prescribed threshold limits.
- In case of interstate movement of goods and services, IGST will be levied.
- GST Council has been made as a constitutional body having representation from both Union and States to make recommendations on rates, taxes, surcharges etc.

### Benefits:

- It will be able to provide a single national market and remove the cascading effect of taxes as-
- It provides for a uniform tax structure for the whole of country.
- Self-monitoring mechanism
- Easy compliance
- It removes the barrier like state entry tax, octroi etc. making the goods and services available at the same price all over the nation.

### There are some challenges too:

- Exempted Items- petroleum products and alcohol are kept out of its purview.
- Hasty Implementation- The former PM Manmohan Singh said that government did not prepare well for its implementation and it affected the small and medium sector enterprises.
- Preparedness- The companies and MSME sector was not trained by govt before ushering this significant reform. This poses a big implementation challenge.
- **Lack of Common market:** it is not possible till it abolishes the state- specific APMC laws.

But overall, it's a good reform as it truly reforms India into an economic union.

## Question: 5. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy.

## Solution: Introduction

The Supreme court recently ruled that the right to privacy was "an intrinsic part of Article 21 that protects life and liberty".The verdict overturns two previous rulings by the top court which said that privacy was not a fundamental right.

- The judgement reaffirmed the principle of the individual as the raison d'etre of the state. In the process, it fulfilled its constitutional role as a check upon legislative and executive power in comprehensive fashion.
- The privacy judgement thus reaffirms the strength of the Constitutional protections given to fundamental rights.
- The judgement also sketches out the evolution of the concepts of human dignity and the right to life, both guaranteed by the Constitution. When a citizen cannot draw a boundary between the state and his personal life, dignity is manifestly impossible.
- The right to be let alone is a part of the right to enjoy life. The right to enjoy life is, in its turn, a part of the fundamental right to life of the individual.This means privacy will have no definition. It's scope and definition will be decided on a case to case basis. The restrictions on the privacy will depend upon which article it emanates from
- If the restraint on privacy is over fundamental personal choices that an individual is to make, State action can be restrained under Article 21 read with Article 14 if it is arbitrary and unreasonable.

Reading the right to privacy into each and every one of the fundamental rights in the Indian Constitution has meant that the scope and depth of these rights have been expanded.The Supreme Court also criticized a previous ruling by the top court that reinstituted a law criminalizing homosexuality, saying that discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual.

- The right to privacy and the protection of sexual orientation lies at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.
- Section 66a of the IT act: with to Right to Privacy verdict, an individual breaching privacy by on social networking sites could be held accountable.
- The ruling has implications for the government's vast biometric ID scheme, covering access to benefits, bank accounts and payment of taxes.

- It will have a bearing on the challenge to the validity of the Aadhaar scheme on the grounds of its being violative of the right to privacy.

### Concerns:

- Supreme Court did not hold that the right to privacy is absolute. It cannot, for example, be used by individuals to exempt themselves from zoning regulations. The state is within its rights to fetter privacy in some circumstances but the onus would be on it to justify itself.

## Question: 6. The Indian Constitution has provisions for holding joint session of the two Houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reason thereof.

## Solution: Introduction

As the Parliament of India is "bicameral" concurrence of both houses are required to pass any bill. However, the authors of the Constitution of India visualized situations of deadlock between the upper house i.e. Rajya Sabha and the lower house i.e. Lok Sabha. Therefore, the Constitution of India provides for Joint sittings of both the Houses to break this deadlock. Joint session of Indian parliament has been called for only three bills i.e. dowry prohibition act, 1960, banking service commission act, 1977 and POTA, 2002.

- As per **Article 108** of Constitution, a Joint session of Parliament can be summoned in the following situations.
- If after a Bill has been passed by one House and transmitted to the other House
- The Bill is rejected by the other House or
- The Houses have finally disagreed as to what the amendments to be made in the Bill
- More than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it, the President may notify to the Houses intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill unless the Bill has elapsed by reason of a dissolution of the House of the People,
- **Not all bills can be referred to a joint sitting of Parliament. There are two exceptions.**
- Money Bill
  - Under the Constitution of India, money bills require approval of the Lok Sabha only. Rajya Sabha can make recommendations to Lok Sabha, which it is not required to accept.
  - Even if Rajya Sabha doesn't pass a money bill within 14 days, it is deemed to have been passed by both the Houses of Parliament after expiry of the above period. **Therefore, a requirement to summon a joint session can never arise in the case of money bill.**
- Constitution Amendment Bill
  - Article 368 of Indian constitution require that constitution of India can be amended by both houses of parliament by 2/3 majority. In case of disagreement between both houses, there is no provision to summon joint session of parliament.

**Question: 7. To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?**

**Solution:**

## Introduction

The Election Commission of India is set up under Article 324 of the Indian Constitution. It is responsible for the election of President, Vice- President, Parliament and state legislative assemblies.

## Suggested reforms by Election Commission are-

- Giving equal status i.e. equal constitutional protection to all the members of ECI as given to its head.
- Making the budget to be charged rather than voted by Parliament.
- A permanent secretariat for ECI.

## Electoral rolls

- Use of common electoral rolls for Parliament, State legislature and local bodies.
- Option of proxy voting for NRIs

## Election Management

- Making of any false declaration before authorities punishable.
- Uniformity in the procedure of voting system in the case of election of members of State Legislative Council and the Council of States by members of Legislative Assembly Election officials
- empower the District Election Officer also, apart from the Chief Election Officer, to requisition of staff for election duties
- Permanent staff to ECI instead of deputing officials from outside.
- Use of totalizer for counting of votes

## Nomination of candidates

- Restriction on the number of seats from which a candidate is fighting
- Disqualification of a candidate if he is a defaulter on public money

## De-criminalization of politics

- Persons charged with cognizable offences shall be de-barred from contesting in the elections
- Making bribery and using religious sentiments a cognizable offence with punishment of at least 2 years

## Political Parties

- Provisions for exemption of Income Tax should be made applicable only to political parties that contest elections and win seat(s) in the Parliament or Legislative Assemblies.

- compulsory maintenance of accounts by political parties
- Provisions for exemption of Income Tax should be made applicable only to political parties that contest elections and win seat(s) in the Parliament or Legislative Assemblies.
- Use of electoral bonds
- Cap on expenditure by political party in election
- Limit the number of star campaigners

### Election campaign

- Ban on exit polls and opinion polls
- Restriction on paid news

### Election petition

- appointment of additional Judges in High Courts for trying election petitions
- Fast track the election cases

### Significance of the Reforms:

- These lead to free and fair elections which are the backbone of democracy
- These provide more teeth and power to ECI
- These seek to decriminalize the political system
- Increase in transparency and accountability
- Decrease the use of money and muscle power during elections
- Increase the intraparty and interparty democracy amongst political parties
- In tune with various SC and HC directions.

## 2016

**Question: 1. Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal politics?**

**Solution:**

### Introduction

The Government of NCT of Delhi Act, included as the 69th amendment to the constitution in 1991, before coming to Article 239 AA of the constitution, we should consider the matter from historical perspective.

The principle of democracy and parliamentary sovereignty has been firmly established in England and elsewhere. Now it is not the king, but the people who are supreme, and they exercise their 'general will' and thus, the role of appointed

officers have declined compared to that of elected. In case of India, apex court held the President and Governor in India are like British king. They have to act on the advice of the council of ministers, and not on their discretion.

The British king still has 3 rights-(1) right to be consulted, (2) the right to encourage, and (3) the right to warn. But apart from these limited rights, he has to act in accordance with the advice of the Council of Ministers. This was the legal position even before the 42nd constitutional amendment which amended Article 74 by adding the words "who shall act on the advice of the Council of Ministers." However, the expression 'aid and advise' is only a term of article, and it does not mean that the President or Governor has any discretion in the matter. It is true Delhi is not a fully fledged state, and certain power e.g., related to police and land is with the central Government. But Delhi is not a Union Territory, the 69th Amendment which introduced Article-239AA, provides a Legislature and a Council of Ministers.

"There shall be a Council of Minister with Chief Minister at the head to aid and advise the Lt. Governor in the exercise of his function in reference to matter with respect to which the Lt Governor has power to make laws, except insofar as he is, by or under law required to act his discretion." Here, term 'aid and advise' has not a literally meaning but a term of article, otherwise democracy will be subverted. The unique status of Delhi and multiplicity of authorities have always been a cause of trouble in administrative affairs. The recent various tussles between Delhi CM and Lt Governor is rooted in the clause of NCT Act, because both have interpreted differently to defend their stand points. Undoubtedly, there is some ambiguity- that is the reason in recent the Home ministry's notification, while hearing Delhi's Government petition, termed it "suspected" and ruled that Delhi Government has no authority to probe central Government officials. Further, the observation by Apex court added that Delhi HC ruling is tentative and would not be binding. The observation by Apex Court has complicated the legal conflict further.

Since Delhi is a special case, which doesn't get replicated in case of other states or UTs; along with the factor, that the several legislations by the Delhi Government have clearly exceeded the constitutional powers of the Government, such as the authority to Delhi lokayukt to be able to inspect central ministers and officials, have brought matters to standstill. However, the fear of happening the same in other states doesn't have solid foundation.

**Question: 2. To what extent is Article 370 of the Indian Constitution, bearing marginal note "Temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.**

**Solution:**

## Introduction

In 1947, the princely state 'J&K' became a part of India by 'the Instrument of Accession'. At that time, Ayyangar, (Constitutional Assembly Member) argued that for a variety of reasons Kashmir, unlikely other princely states, was yet not ripe for complete integration. Moreover he argued, "Will of the people through the instrument of the (J&K) Constituent Assembly will determine the Constitution of the State as well as the sphere of the Union jurisdiction over state". Belief was that it would one day integrate like other states of union. Assuming this could happen only when there was real peace and only when people of the state acquiesced to such an arrangement. Hence, the use of term "temporary provision" is used in the title of the article and Article-370 was incorporated.

Article-370 was and is about providing space, in matter of governance, to the people of state who felt deeply vulnerable about their identity and insecure about the future. Article-1 of Indian Constitution states India is not a confederation but a 'Union of State'. Hence no state has a right to secede from it, and union is indissoluble. Supporting this statement J&K Constitution itself claim that J&K state is and shall continue to be the integral part of India.

Article-370 is temporary - A series of Presidential Order has eroded it substantially and made most Union laws applicable to the state. In this context, half a century back in 1963, Nehru remarked, "The process of erosion of Article 370 has began, many things have been done in last few years which made the relationship closer between Union and J&K." In fact today the autonomy enjoyed by the state is a shadow of its former self, and virtually there is no institution of the Republic of India that does not include J&K within its scope of jurisdiction.

The only substantial differences from other states—(1) related to permanent residents and their rights. (2) The non-applicability of emergency provision on the ground of "internal disturbance" without the concurrence of the state. Article-370 cannot be revoked unilaterally, revoked only if a new Constituent Assembly of J&K is convened and willingly to recommend its revocation. Parliament has the power to amend the Constitution to change 370's provision, but this could be subject to judicial review.

**Future Prospects-**

- It has been a tendency whatever party in Delhi and Kashmir parties are running away from debate. It should not be treated as suit and scoot policy.
- It should be debated and discussed on more serious note eventually consensus and trust matters in political democracy.
- Its time to review from both the Sides (union and j&k)—in last 66 years what has been net balance sheet of the gains and losses to the J&K and the Union of India.
- The People who was or are in the Power only there vested interested have been served by this provision.

Article 370 is a volatile and debated issue. All the stakeholders (Kashmiris, Ladakh and Jammu, Central govt. State govt. of J&K and other states) should develop a long lasting sustainable framework instead of blocking the talks by quoting the arrangement permanent.

## Question: 3. The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss.

## Solution: Introduction

There are several factors which have undergone a sea change in recent years and most important of them are, leadership selection or change, ideological stand-point, etc. The party system in India has taken a strong change in recent years, this was particularly evident, when in most political parties, with the exception of BJP, the second or third generation of the founder is still ruling the party. In other words, political power has become like wealth, which passes on to the successor, which apart from exception belongs to the family of ideological founder of the party.

- There were large number of smaller regional and national parties that came to prominence in years since and they were against the dynasty politics initially, however, now in most of them second generation leadership has come up with a reckoning that dynasty politics is perhaps going to last much more. Ideological

standpoints have strongly diluted, for example, a party which was initially meant to be representative of backward classes, gave more tickets to upper castes in past elections. Similarly in most cases, the ideology has diluted so much that support or opposition to issues has become a matter of political gain, rather than ideological preference.

- Another big change is decisive verdicts in elections, which has affected the fortunes of many smaller players and independent candidates. Regional Parties, whose, major plank of contesting Lok Sabha elections with huge resources was not, because they could form government, but because they could gain from political horse-trading later on, in case of fractured mandate. Now with decisive mandates in recent elections, they have lost their power significantly.
- Another change is Communication strategy and Social media such as, Facebook, Twitter, YouTube and political blogs have changed every aspect of communication in modern Indian politics. This also has connected Indian youth to the politics.
- Anti defection to prevent horse trading prevents local leaders to dissent in cases where their viewpoint is against viewpoint of whole party (eg- Andhra MPs during State Re organisation)
- Coalition of means - Post poll alliances are an example of coalition of means to grab Government without coherence of ideologies

Therefore due to changing political scenario, public awareness and multi party system India politics has evolved into a phase of contradictions. It is important as a way ahead that the political parties to 1) build party on sound ideological grounds 2) postruths to be eliminated 3) strict separation of politcs wiith non state actors 4) reforms funding norms including discussion on state sponsorship of political parties 5) politics to be based on moral grounds.

**Question: 4. Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the Government's Policy implementation could amount to overstepping its own (CAG) jurisdiction.**

**Solution: Introduction**

The CAG is the constitutional institute through which the accountability of the Government and other public authorities all those who spend public money to Parliament and State legislatures and through them to the people is ensured.

The executive is answerable to Parliament and to the people for all its decisions, but the answerability is enforced through the CAG where it involves finance and account. As India emerging as a major hub of economic activities, Government policies are taking wider place for fulfilling the aspiration of development goals. Therefore, it is quite natural that while implementing policies there may be some losses occur so commenting on it by CAG, shall not be considered as overstepping its own jurisdiction, but it's a check and balance, which should be taken as rational economic thinking on cost-benefit analysis.

Article 149 of the Constitution talks about the duties of the CAG. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation

to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively.

### Power to examine policy:

The constitutional validity of a "performance audit" conducted by the CAG was challenged by one Arvind Gupta by way of a public interest litigation in the Supreme Court. In its judgment, which came to be known as the Munimji judgment, the apex court observed that "the CAG's function to carry out examinations into [the] economy, efficiency and effectiveness with which government has used its resources is inbuilt in the 1971 Act". Nor are these functions violative of the Constitution, since the CAG's reports are subject to scrutiny in Parliament and legislatures. It is worth remembering that the CAG is not trying to lay down macroeconomic policies regarding deficit financing or laissez faire. The CAG's domain lies in scrutinising the "design of the rules and procedures" that impact receipts of revenue into the Consolidated Fund of India. And regarding expenditure, Section 13 of the Act certainly permits him to point out wasteful expenditure.

Hence , while exercising every power at hand as a constructive critique to ensure financial propriety of Government, CAG,as an agent of parliament(legislature) must exercise utmost restraint, not to muddle into day to day administration(implementation of policy) of executive, to strike right balance between two arms of democracy.

## Question: 5. Discuss each adjective attached to the word 'Republic' in the preamble. Are they defendable in the present circumstances stances?

## Solution: Introduction

The preamble of Indian constitution mentions India as a 'Republic' country which is 'sovereign', 'socialist', 'secular' and 'democratic'. The words 'socialist' and 'secular' were added to the constitution under the 42nd constitutional amendment act in 1976.

**SOVEREIGN**–India is neither a dependency nor a dominion of any other nation, It is an Independent state. In the present times, the term 'sovereignty' may be losing rigid connotations of "supreme and absolute power acknowledging no superior" -no modern state can be considered sovereign in that sense. However, through the words of the Preamble, what is sought to be established is the oneness of the people of India (not the people of different states but of one nation), that the sovereignty vests in the collectivity, and the that the people of India are not subordinate to any external authority. With the enactment of the Constitution India was no longer a 'dominion' it was a 'republic'.

**SOCIALIST**–The founding father did not want the constitution to be wedded to any particular political ideology or ism or to be limited by any economic doctrine. it was the constitution (42nd amendment,1976) that introduction this word socialist to qualify our Republic. Socialism to mean "free forms of exploitation-social, economic and political." In limited sense It is difficult to define. As the supreme court says,' Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards gandhian socialism'.

**SECULAR**–This term 'secular' too was added by the 42nd amendments of 1976. A secular state deals with the individual as a citizen irrespective of his religion, is not connected to particular religion nor does it sees to promote or interfere with religion. Secular state must have nothing to do with religious affairs except when their management involves crime, fraud or becomes a threat to unity and integrity of the state.

**DEMOCRATIC**–The Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and action. universal adult franchise, periodic election, rule of law, independent of judiciary, and absence of discrimination on certain ground. in broader sense it includes not only political democracy but social and economic too.

The Indian constitution the right to equality to all person and says that no citizen can be discriminated on the ground of race, race caste, gender and place of birth. Usually the record of India, when it comes to political rights is very good among the emerging nations. The judiciary plays an important role in overseeing the implementation of constitutional guarantees. The developments in India, particularly give me confidence that in the new millennium, we will not face the World empty-handed whether in terms of civilization attainments or economic strength. We need to feel proud, not in narrow nationalistic sense, which in itself is significant but in wider sense of values that the constitution provided to their citizen, fraternity, tolerance for other point of view, spiritual quest and respect for cultural diversity.

## Question: 6. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?

## Solution: Introduction

The IR Coelho v. State of Tamil Nadu (2007) is one of the most important judgments of the Supreme Court of India to date. It determined the importance of judicial review and the powers of the judiciary in this aspect. The case is also referred to as the 9th Schedule Case and involved an exhaustive discussion on Article 31-B of the Indian Constitution. This case removed the shield that the legislature took to shield the laws violative of the fundamental rights, from judicial review. The judgment used the Kesavananda Bharati v State of Kerala (1973) as precedent. The supremacy of the judiciary as the final interpreter of law was finally restored. In this case, A 9 member bench of SC argued that all amendments to the constitution made on or after 1973 by with the 9th schedule has been amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic structure of the constitution. Further, after is placed in the 9th schedule, its validity has to be tasted on the touchstone of the basic structure doctrine.

### Judicial Review and Basic Structure:

Judicial review is similar to a court proceeding in which a judge reviews the lawfulness or legality of a decision or an action made by the public body. Judicial review is recognized as a necessary and basic requirement in order to safeguard the liberty and the rights of the individuals. The power of the judicial review is vested upon the High Courts and the Supreme Court under Article 13 and 137 of the Constitution. The compulsion of judicial review was described in fundamental rights in part III under the Article 13 of the constitution. The judicial review is available when there is no effective means of challenge. As the Judiciary is the guardian of the constitution therefore it is under its purview to check the inconsistency of the actions with the constitution. The motive behind the judicial review is whether the law has been correctly applied and the right procedures have been followed. The main motive behind the judicial review is to protect the rights of the public and implement the fundamental rights. Judicial review works as a protector when the three organs of the government harms the constitutional values and deny the rights. Due to the democratic form of government, every section of the people is involved in decision making and policymaking process.

The I R Coelho case has further strengthened the hold of the basic structure doctrine in the constitutional setup of the country by emphasising that all amendments, depending on its impact and consequences if violative of the doctrine of the basic structure, need to be struck down. Judicial review is the most effective way to deal with laws that infringe upon the fundamental rights of the citizens. The legislatures cannot act with impunity by using concepts of federalism and welfare state to bring in legislation to fulfil their ulterior motives of invading upon fundamental rights. The Parliament and the executive need to be kept in check lest we see occurrences similar to those that took place in the emergency period.

**Question: 7. Did the Government of India Act, 1935 lay down a federal constitution? Discuss.**

**Solution:**

### Introduction

Government of India Act, 1935 mark a point of no return in the history of constitutional development in India. The Constitution of India with or without some modification adopted some important provisions from this 1935 Act,

- The Act provides the establishment of All India federation including all provinces at that time under the paramountcy of the British Crown, Our Constitution of India provides the same mechanism under the President of India.
- The Act derived the powers between the Centre and units in terms of 3 lists—federal , provincial, and the Concurrent List as we adopted the same manner as Union , State and Concurrent List.
- This act introduced Responsible Government, which is same in our Constitution also. The Concept of Dyarchy, the type of Government, which was established in the provinces by the Act of 1935, it remains same in the constitution of India, Provinces were made autonomous in their respective subject. Out states are autonomous too now by the authority under constitution.
- The Act provides a Federal Court at Delhi. Now the Supreme Court of India is established under Constitution which has the same power and functions as of Federal Court.

- The establishment of RBI under this Act, it remains same in Independent India to control regarding monetary policy and currency creation.
- The Act also introduced bicameralism which yet to be continued in many of the state.
- The Concept of Union Public Service Commission and State service commission also derived from this law.

Thus, while the 1935 act had some federal features, federalism in true spirit was established later-on, only with the passing of constitution.

**Question: 8. What is a quasi-judicial body? Explain with the help of concrete examples.**

**Solution: Introduction**

A quasi-judicial body is an entity which has powers and procedures resembling those of a court of law or judge, and which is obliged to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties. These organizations generally have authorities of settlement in matters like breach of discipline, conduct rules, and trust in the matters of money or otherwise. Their powers are usually limited to a particular area of expertise, such as financial markets, employment laws, public standards, immigration, or regulation.

**These bodies can be statutory, constitutional, regulatory (SEBI):**

- These bodies have the power of civil court
- They primarily oversee the administrative zones.
- The courts have the power to supervise over all types of disputes but the quasi-judicial bodies are the ones with the powers of imposing laws on administrative agencies.
- Quasi-judicial activity is restricted to the issues that concern the particular administrative agency.
- These organizations generally have authorities of settlement in matters like breach of discipline, conduct rules, and trust in the matters of money or otherwise.
- Their powers are usually limited to a particular area of expertise, such as financial markets, employment laws, public standards, immigration, or regulation.
- Awards and judgements of quasi-judicial bodies often depend on a pre-determined set of rules or punishment depending on the nature and gravity of the offence committed.

These bodies are required due to complexity of society, to lessen the burden on judiciary and fasten the process of justice. These bodies improve administrative efficiency and help in Good Governance.

## 2015

**Question: 1. Discuss the possible factors that inhibit India from enacting for its citizen a uniform civilcode as provided for in the Directive Principles of State Policy.**

**Solution:** **Introduction**

Article 44 of the Indian constitution envisages India to have a uniform civil code for all its citizens. Enactment of a uniform civil code implies abolishment of the personal laws of all major religious communities and its replacement with a common set of laws for all the citizens.

Following are the major reasons why India is still distant from its constitutional vision of an uniform civil code:

- Separate laws for different religious communities were introduced by the British as they feared that Indians may rebel if they felt that the British are interfering in their religious affairs.
- The present situation is not any different and the fear of losing vote banks has been the biggest deterrence from introducing a uniform civil code in India.
- There is an apprehension that the uniform civil code may be in conflict with the fundamental rights of Freedom of conscience of free profession, practice and propagation of religions (Article 26) and the freedom to manage religious affairs (Article 25).
- The inability of governments to find a common ground between different communities. For example, only mandatory religious practices can be left out and the government can make a uniform civil code for rest of the practices Or the government can make laws which leave a scope for necessary autonomy for all the religions. Example -: Uniform civil code can decide the provisions for the maintenance of a divorcee wife while leaving the process of separation up to the individual personal laws.

The vast diversity of the personal laws, along with the devotion with which they are adhered to, makes uniformity of any sort very difficult to achieve. Even under the Hindu Marriage Act, 1955, marriages may be solemnized in accordance with the rites and ceremonies of a variety of people who come under the definition of a Hindu. In the Muslim law too, though there are no elaborate rites or ceremonies, there exist some differences between the Sunni and Shia marriages. Some people also argue that it would lead to a loss of the culture and the identity of the minorities in the Indian society.

To summarise, it is very much possible to at least move forward in the direction of a uniform civil code. However, the above-mentioned factors have proved to be obstacles in this cause.

**Question: 2.** **The concept of cooperative federalism has been increasingly emphasised in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings.**

**Solution:** **Introduction**

Cooperative federalism is the horizontal relationship between union and states and shows neither is above the other. Indian constitution has incorporated instruments to ensure co-operation between the centre and states to ensure that cooperation is necessary for the proper growth of the country. Cooperative federalism means that the centre and the states share a horizontal relationship and address each other grievances through mutual trust and co-ordination.

## Problems in Existing Structure:

- **Institution of Governor:** Governor has been seen as an agent of centre in the state government because governor is generally appointed without consent of Chief Minister and centre government can remove governor anytime for trivial reasons as there are no sufficient safeguards provided in the constitution.

**Centrally Sponsored Schemes (CSS):** These schemes are formulated by union and implemented by states by getting financial support from centre. These schemes are against spirit of cooperative federalism because how can you decide requirement of North Eastern State by staying at New Delhi.

States are also criticized for some actions in contradiction of spirit of cooperative federalism like oppose the various important bills GST or VAT either in Rajya Sabha or legislative assembly for political reasons, poor implementation of welfare schemes etc. Further poor devolution of power and finance by states with local government is a matter of concern for spirit of cooperative federalism.

AFSPA, All India Services and financial control over large number of resources by central government are other drawbacks in existing federal structure, among others.

## The Cooperative federalism has helped in overcoming the existing federalism in following ways:

- **7th schedule -** It demarcates central, state, and concurrent lists based on the principle of subsidiarity. Residuary power has been kept with the center. Article 249 provides authority to the parliament to make on those subjects which are under state jurisdiction if the resolution passes in-state council with a two-thirds majority.
- **All India Services -** An integrated judicial system has been established to enforce both states as well as central laws. All India services provide another uniting factor in cooperative federalism. This provision is enshrined in article 312 of the Indian constitution. Inter-state Council Under article 263 of the constitution has been established to discuss and investigate the subject of common interest between the center and the states.
- **Full Faith and Credit Clause -** Article 261 of the Constitution of India provides that full faith and credit shall be given throughout the territory of India to all the public acts, records, and judicial proceedings of the Union and every State. This is a step to promote cooperation and faith between the center and the states.
- **Zonal council -** These are statutory bodies established under the State reorganization act of 1956 to ensure coordination. It provided for 5 zonal councils, one for each north, south, east, west, central. The northeastern council has been created under a separate act.
- **Cooperative Federalism in Recent Policies:**
- NITI AYOG' or the National Institution for Transforming India is a Government of India policy think-tank established by the Narendra Modi government to replace the Planning Commission. The main emphasis of NITI AYOG is to bring the effect over center and state relationship. NITI Aayog provides relevant strategic technical advice at the center and state levels, dissemination of best practices within the country as well as from other nations, infusion of new policy ideas, it ensures that India is an active player on the global commons, etc.

- GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. GST was passed by the 101st amendment, 2016 and it came into effect on April 1, 2017. The main agenda behind the whole concept of GST is ONE TAX ONE NATION'.
- Policies Tackling COVID-19 - Through a combination of various laws, regulations, guidelines, and orders, a nation-wide lockdown was enforced to control the spread of the novel coronavirus. Among these, the Disaster Management Act, 2005 was invoked on March 24 to impose a blanket lockdown to ensure consistency in the application and implementation of various measures across the country.
- Although public order and public health are subjects of the States as per the Indian Constitution, the Centre has used the DM Act to effectively bypass States and assume complete control. Then some fissures are seen in funding policies as the Centre declared that corporations donating to PM-CARES can avail CSR exemptions, but those donating towards any Chief Minister's Relief Fund cannot.

Federalism is a concept which needs to be adopted in practice and spirit rather than a letter. In this article, we have analyzed the importance of cooperative federalism since time immemorial

**Question: 3. In absence of well – educated and organised local level government system, 'Panchayats' and 'Samitis' have remained mainly political institutions and not effective instruments of governance. Critically discuss.**

**Solution:**

## Introduction

India has a three level governance structure that involves decision making in form of Centre, State and local bodies. Even after three decades of its existence, local bodies are accused as political institutions without any substantial powers to make decisions. But this opinion needs serious reconsiderations.

## Benefits of Introducing Education as a Requirement:

It might help in bringing the better qualified people who has better scientific knowledge to tackle the everyday problems of agriculture and other infrastructural shortcomings.

Educated and organized people may be able to incorporate the worldwide practices, due to more acquaintance with communication technology, so as to develop their region.

The minimum education criteria is necessary, as we wish to embark to e-governance as a mode of delivery and grievance redressal.

They might be better to tackle and eradicate the social evils like child marriage, female foeticide and infanticide, which are largely prevalent especially in states like Punjab, Haryana and Rajasthan where this education criterion is adopted.

However it may not be possible to make local government system an effective system of governance even with educated and organized system, because:

Local government system is also facing some other major difficulties such as devolution of powers and functions from states along with social prejudices.

Making education the criteria for selection of candidates may not be feasible until all people are educated. This rule may deprive large section of adult population

from contesting the elections such as approx. 66% population become ineligible in Haryana with law of minimum criteria of 10th standard for contesting the elections. This is against their right to contest election and also against Article 15 and 16.

Hence it's true that education is must for local governance with respect to changes in society but it should be inclusive in terms without discrimination.

**Question: 4. Khap panchayats have been in the news for functioning as extra – constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard.**

**Solution:**

## Introduction

Khap is a cluster of villages united by caste and geography. It is as old as 14th century started by upper caste jats to consolidate their power and position. Khap panchayat governs the khap formed by same gotra (clan) families from several neighbouring villages. Khap panchayats are prevalent in Haryana, western Uttar Pradesh and parts of Rajasthan. The main criticism of Khap panchayat is that rights of an individual are not respected. Rights of liberty, dignity, freedom to choose own life partner are jeopardized. Women are abused and their issues are never addressed. Most of the Khap rules are against law. Rule of men rather than rule of law prevails.

## Steps taken by Legislature, executive and judiciary:

As Khap Panchayats are informal organization of governance, so strengthening the formal institutions of governance is the best method to counter these types of organizations. 73rd Constitutional Amendment to provide panchayat a constitutional status was a strong step taken by legislatives to curb the power of KhapPanchayats.

Recently, Maharashtra government has proposed a bill called "Maharashtra Prohibition of Social Boycott Act 2015" against social boycott of individuals or families by Caste Panchayats and termed any action of social boycott as crime.

Khap Panchayats in North India and Katta Panchayats in Tamil Nadu have been declared as illegal and barbaric by Supreme Court.

A judgment by a session's court in Karnal in 2010, for the first time awarded the death penalty to five men for murdering a young couple who had married against the diktats of a Khap panchayat. It gave life sentence to a member of the Khap panchayat who declared the marriage invalid and was present when the killing took place.

Overall, the judiciary, executive and legislature have taken somewhat strong steps in dealing with the problem of Khap Panchayats, but government should work for awareness generation and socio-economic development of people so that they can understand the lacunas of this alternative dispute redressal system.

**Question: 5. Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyse whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate the ordinances be repealed?**

**Solution:** **Introduction**

The Supreme Court's verdict that ordinances are subject to judicial review, and do not automatically create enduring effects, places a timely check on a power rampantly abused by governments. Under Article 123 of the Constitution, the president is granted legislative powers to issue an ordinance when Parliament is not in session. The law, however, requires that an ordinance be approved by the Lok Sabha and Rajya Sabha within 6 months of its promulgation. Similar powers are granted to governors of states.

Some of the issues associated with ordinances are:

The executive power to issue ordinance goes against the philosophy of separation of power between legislature, executive, judiciary

- It bypasses the democratic requirements of arguments and deliberations.
- Re-promulgation defeats the constitutional scheme under which a limited power to frame ordinance has been conferred on President and Governor
- It threatens sovereignty of Parliament and State legislature which have been constituted as primary law givers under constitution.
- Ordinances have often been bone of contention between and executive and legislature and many time subjected to Judicial review:

The rationale behind ordinance provision is to tackle situations of crisis which are vital for national interest. When both houses or any one of them is in recess, there is no way out except the ordinance route.

However, recently the increased numbers of ordinances have been promulgated by the incumbent government in the last year has brought this issue to renewed debate. The major example being the Land Ordinance, which was promulgated thrice, but the bill was defeated in the Rajya Sabha.

Opposition accused the government of taking the ordinance route and bypassing the legislative procedure. In this regard, Supreme Court's judgment held that ordinance route is not the parallel power of the executive to legislate and executive cannot undermine the separation of power, which provides the Parliament the unparallel authority to make laws and policies for the people of the country.

Though Supreme Court's decision has facilitated the promulgation process, however, it cannot be denied altogether that ordinances have helped the government to overcome many unfavorable and difficult situations. Thus, ordinances serve their purposes, if used judiciously. There is not a need to repeal the instrument, rather to be used as a savior of national interest only.

Ordinance reforms are the need of the hour; this extreme power can turn the state to be a leviathan. The ultimate object should be to reduce the undemocratic elements to a minimum (eliminate, if possible) and uphold the democratic values which are the heart and soul of parliamentary democracy.

**Question: 6.** **What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.**

**Solution:** **Introduction**

Arbitration is a method for settling disputes privately, but its decisions are enforceable by law. An arbitrator is a private extraordinary judge between the parties, chosen by mutual consent to sort out controversies between them. The A&C Act has been enacted for ensuring minimum court intervention in arbitration and greater coherence and consistency between domestic arbitration law and international practises. Despite this, arbitration in India continues to be ad-hoc, expensive, long drawn and often suffers from excessive court intervention.

Why was the amendment has been made in this Act:

After the amendment of UNCITRAL Model Law in 2006, the UN General Assembly suggested all countries shape their laws relating to ADR accordingly, in order to achieve uniformity of arbitral procedures.

- To make the process uniform

  With the amendment, the government seeks to standardize the procedure of International Commercial Arbitration to make it at par with the international arbitration procedures. Also, the process of domestic arbitration would become standardized for more efficiency.

- To Promote Alternate Dispute Resolution

  The Government of India is the biggest litigator in the country and it needed to promote a more cost-effective and faster way to resolve disputes. The latest amendments seek to promote ADR and have formed a council that has been vested with the responsibility to do so. With this amendment, we strive to make India a hub of domestic and international arbitration such as Singapore.

- To reduce the burden of the courts

  Courtroom litigation is still the most popular way people seek to resolve their disputes. Even when people go for arbitration but cannot find an arbitrator, they approach a High Court or the Supreme Court for the appointment of Arbitrators. The burden of the courts will be lifted to some extent with the presence of an Arbitration Council for the appointment of arbitrators.

- To provide a faster remedy

  The act provides that the proceedings of an Arbitration must be completed within 6 months from the date of appointing the arbitrators. The arbitral award is to be given within 12 months from the date of appointment of arbitrators.

This will definitely speed up the entire procedure and provide a quicker remedy.

Many foreign investors have been hesitant to invest in India, due to the various delays associated with the judicial system of the country. The Government with the intention of exhibiting its positive intent in making India an ideal investment destination has decided to immediately effect the desired changes to the A&C Act and therefore has promulgated the present Ordinance.

The intent behind the amendments might have been good but the execution is not flawless. The process regarding the grading of the arbitrators is not very clear. The exclusion of foreign arbitrators discourages foreign parties who wish to commence arbitration in India. The amendment is a step in the right direction and with some more amendments, India may be able to become a Hub for Arbitration.

**Question: 7. Does the right to clean environment entail legal regulation on burning crackers during Diwali? Discuss in the light of Article 21 of Indian Constitution and Judgement (s) of the Apex court in this regard.**

**Solution:**

## Introduction

Article 21 of the Indian Constitution provides the right to life and personal liberty as a fundamental right. However, the Supreme Court through its liberal interpretation has widened the scope of the right and held that right to life is not merely subsistence, but a life of dignity. Thus, right to clean environment is considered to be a part of the right to life. On the issue of legal regulation on burning crackers, the Supreme Court did not banned the burning of cracker as it may be against the right to freedom of religion as burning crackers on Diwali comes under a religious practice. The Article 21 can also be widened to include the right to celebrate hence can violate the fundamental rights.

- All freedoms come with certain reasonable restrictions. To ensure the fundamental right to clean environment, the government may take steps to regulate burning crackers during Diwali. But there is a need to balance between Right to Environment and Right to Religious freedom. In 2015, the Supreme Court dismissed a petition which was aimed at putting a blanket ban on bursting of crackers on Diwali or designating a particular place for bursting crackers.

## The Issue Of Noise And Air Pollution

Over the years, a large part of the pollution started voicing their concerns over the rising levels of noise and air pollution, which together combined can be extremely lethal since individually they lead to various health problems. With the various types of crackers, the level of pollution caused is extremely high, which makes the air unbreathable and noise levels intolerable. As per a study, fire-crackers increase the level of sulphur dioxide 200-fold above the safety limits prescribed by World Health Organisation (WHO). The pollution can trigger asthma attacks and cause new cases of asthma. Not only humans, but every year hundreds of dogs are injured on the spot of such activity, or lost never ever to be found. An animal or bird need not be absolutely nearby to suffer – deafening loud sudden sounds cause panic in almost every creature in the vicinity. A dog's hearing capacity is 3,000 times more than a human's. Even a 90-decibel sound, the noise level of an average cracker, is enough to scare a dog. Every year, numerous cases are reported in the national capital of India, Delhi related to burn injuries as well as 30% to 40% increased cases of wheezing, respiratory diseases, exacerbation of bronchial asthma and bronchitis patients have been reported during and post-Diwali. Therefore, the government took up this issue seriously and enacted various legislations, including the Supreme Court giving out certain judgements and orders to curb this increasing level of combined pollution.

## S.C Judgement:

- Though the supreme court has refused to ban the burning of crackers since it is the right of the people in the country. But the harmful effects of the crackers should be made to the public so that they are aware of the impact it can make to the society.
- Banning the crackers in the country is not possible since it would be playing with the religious sentiments of the people. It would also affect the employment opportunities of the people working in the the industry
- The legislation entails that since this is an individual right of the people it has to a voluntary dSecision of the part of the people for not bursting the crackers. they should be made aware of the ill effects of burning crackers on the environment, children and the people

Bursting crackers has been a custom in our society which is now proving to be lethal for the coming generations. Article 21- Right to Life, is a basic human right and subsequently a Fundamental Right for Indian Citizens, and to breathe clean air constitutes the same. Hence, it is necessary to exercise certain prudence and caution in this situation and one must give precedence to various rights in terms of their necessity.

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# NOTES