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GENERAL STUDIES (TEST CODE : 1495)

Name of Candidate	SHRADDHA GOME		
Medium Eng./Hindi	ENGLISH	Registration Number	833853
Center		Date	

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Q. No.	Maximum Marks	Marks Obtained
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Total Marks Obtained:

Remarks:

INSTRUCTIONS

- Do furnish the appropriate details in the answer sheet (viz. Name, Registration Number and Test Code).
उत्तर पुस्तिका में सूचनाएं भरना आवश्यक है (नाम, प्रश्न-पत्र कोड, विद्यार्थी क्रमांक आदि)।
- There are **TWENTY** questions printed in **ENGLISH & HINDI** इसमें बीस प्रश्न हैं अंग्रेजी और हिन्दी में छपे हैं।
- All questions are compulsory.**
सभी प्रश्न अनिवार्य हैं।
- The number of marks carried by a question/part is indicated against it.
प्रत्येक प्रश्न/भाग के अंक उसके सामने दिए गए हैं।
- Answers must be written in the medium authorized in the Admission Certificate, which must be stated clearly on the cover of this Question-Cum-Answer (QCA) Booklet in the space provided. No marks will be given for answers written in medium other than the authorized one.
प्रश्नों के उत्तर उसी माध्यम में लिखे जाने चाहिए जिसका उल्लेख आपके प्रवेश पत्र में किया गया है और उस माध्यम का स्पष्ट उल्लेख प्रश्न-सह-उत्तर (क्यूसीए) पुस्तिका के मुख्य पृष्ठ पर अंकित निर्दिष्ट स्थान पर किया जाना चाहिए। उल्लिखित माध्यम के अतिरिक्त अन्य किसी माध्यम में लिए गए उत्तर पर कोई अंक नहीं मिलेंगे।
- Word limit in questions, if specified, should be adhered to.
प्रश्नों में शब्द सीमा, जहाँ विनिर्दिष्ट है, का अनुसरण किया जाना चाहिए।
- Any page or portion of the page left blank in the Question-Cum-Answer Booklet must be clearly struck off.
उत्तर पुस्तिका में खाली छोड़ा हुआ पृष्ठ या उसके अंश को स्पष्ट रूप से काटा जाना चाहिए।

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EVALUATION INDICATORS

1. Contextual Competence
2. Content Competence
3. Language Competence
4. Introduction Competence
5. Structure - Presentation Competence
6. Conclusion Competence

Overall Macro Comments / feedback / suggestions on Answer Booklet:

1.

2.

3.

4.

5.

6.

1. The right institutional design ensures that post-retirement appointments do not create perverse incentives in judicial decision-making. Comment. (150 words) 10

सही संस्थागत अभिकल्पना यह सुनिश्चित करती है कि सेवानिवृत्ति के पश्चात् की जाने वाली नियुक्तियां न्यायिक निर्णयन में अनुचित प्रोत्साहनों को उत्पन्न न करें। टिप्पणी कीजिए।

Independent and Impartial Judiciary is sine qua non of a democracy. Article 124(7) of the Constitution debars a judge from pleading before any court / Tribunal post retirement.

The rationale behind it :-

1. Prevent quid pro quo i.e. give and take between executive and judiciary
2. Ensure impartial functioning of judiciary
3. Check executive or outside influence on decisions
4. "justice should not only be done but also seen to be done"

Apart from the constitutional provision, Constitutional Convention has also developed preventing judges from immediately opting for political/executive post after retirement.

For instance, Administrative Reform Commission recommended cooling off period.

→ Position consistent with other constitutional post like UPSC chairman who is debarred from subsequently holding any government post,

→ Previously, judges who held post after retirement did after adequate cooling off period to remove any doubt of partiality of — Ranjanathar Mishra.

→ However, recent nomination of former chief justice Ranjan Gogoi to Rajya Sabha has raised concern. He delivered landmark judgement in favour of government including Ayodhya judgement.

Way forward

• Post-retirement jobs raises serious concern over judicial independence and hence, must only be opted after sufficient cooling off period in accordance with well established past practice.

2. What do you understand by the 'doctrine of neutrality'? Explain its significance for constitutional offices in the Indian context. (150 words) 10
- 'तटस्थता के सिद्धांत' से आप क्या समझते हैं? भारतीय संदर्भ में संवैधानिक पदों के लिए इसका महत्व स्पष्ट कीजिए।

Doctrine of Neutrality implies acting in fair, objective and non-partisan manner, without favouring any individual or group.

It is well established under Indian Constitution :-

Office	Neutrality
1. Judiciary (Art 124/ 214)	- Salary, expenses charged on consolidated fund of India (non-votable) - can only be removed by special procedure by both houses of parliament - Collegium for appointment - Restatement of Judicial values (1977) - Prachin aloofness
2. Comptroller and Auditor General (Art 148)	- fixed tenure - can only be removed in like manner as Supreme Court Judge - Salary charged to Consolidated fund (CFI)

3. Chief
Election
Commissioner

- Security of tenure (cannot be arbitrarily removed)
- Tenure cannot be adversely altered after appointment

4. ~~Finance~~
~~Commissioner~~
Central vigilance
Commission

- Appointment by Collegium (non-political appointment)

Rationale

Neutrality in
Appointment/
Service/Removal/
Conduct

- Objective functioning
- check on legislative apathy and executive excess
- bulwark of individual freedom
- fulfill role bestowed by Constitution
- Secure public welfare and realise ideals of preamble

The best example highlighting the role of neutrality is Judiciary — as guardian of constitution plays fundamental role in protecting fundamental rights of citizens and checking other branches as seen in KS Puttaswamy Case, Narley Singh Johar Case.

3. Pressure groups are seen to play a constructive, positive role in deepening democracy and enhancing our liberties, but they have also been criticized on many counts. Discuss. (150 words) 10

दबाव समूहों को लोकतंत्र को सुदृढ़ करने और हमारी स्वतंत्रताओं को बढ़ाने में रचनात्मक व सकारात्मक भूमिका निभाते हुए देखा गया है, लेकिन कई मोर्चों पर उनकी आलोचना भी हुई है। चर्चा कीजिए।

Pressure groups are collective of individuals who come together to secure their own as well as public interest through :-

Electioneering

→ Placing candidates disposed in their favour on key/ political posts

Lobbying

→ Indirectly & directly influencing the holders of official posts who may not be initially in their favour, to act in furtherance of their interest

Mobilising

→ Use public opinion to indirectly influence the position holders

Owing to these, pressure groups play a stellar role in strengthening and deepening democracy and electoral participation.

Pressure groups may be regional,
Sectoral or common.

First instance - Narmada Bachao Andola →
aim to secure rights of displaced
persons and rehabilitate

- Farmers Pressure group -
further their own interest
such as income security, waiver

- NSUI - political mobilisation of
students

Despite their importance, they have come
under scanner :-

↳ 1. Parochial role → favour their interest over
others/national interest

eg - pressure groups for linguistic ^{separate} state (Telangana
movement) would threaten national unity

2. Resorting to violent methods (eg. violent
conflict between student unions)

3. Indulging in corrupt practices - further
deteriorate political climate.

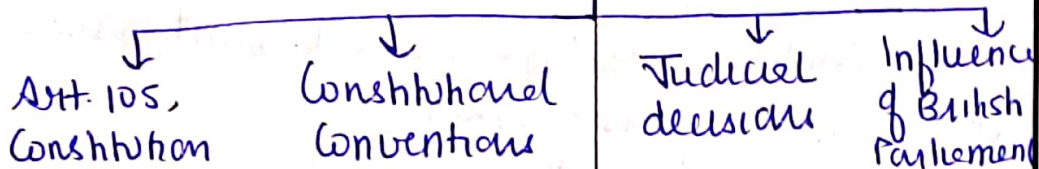
Thus, pressure groups must take proactive
steps to secure their legitimacy by not resorting
to illegal and anti-national activities like violence.

4. While powers and privileges are indispensable for the due discharge of duties of the legislature, it is necessary to maintain a balance between legislative privileges and fundamental rights. Analyse. (150 words) 10

जहाँ विधायिका के कर्तव्यों के उचित निर्वहन के लिए शक्तियाँ और विशेषाधिकार अपरिहार्य हैं, वहीं विधायी विशेषाधिकारों और मूल अधिकारों के बीच संतुलन बनाए रखना आवश्यक है। विश्लेषण कीजिए।

Parliamentary privileges are key to effective, independent and efficient functioning of the Parliament and its members.

Privileges



Significance

- Importance can be gauged from scope of the privileges

INDIVIDUAL

- Freedom of speech & expression — not liable for anything said/vote given in office
- Freedom from jury service
- Freedom from arrest

Collective

- Right to publish / prevent publication of its proceedings
- hold secret meetings
- be informed about arrest of its members
- punish members / outsiders for breach

Together, these special rights and privileges ensure that

1. Parliament & members can dedicate full time to office (eg - no jury service)
2. Act independently without fear (eg - not liable for anything said or vote given)
3. Secure authority and sanctity in eyes of people (eg - power to punish for breaches)

However, these special rights act as limitation on fundamental rights of others

For instance, ^{outside} member can be barred from attending secret meeting of house - Interfere with right to information.

In recognition of the same, it is important to codify the privileges as recommended by National Working Commission to review working of Constitution.

Well defined, restricted and judicious use of privileges is key to securing parliamentary autonomy while respecting others fundamental rights.

5. Rather than being a constitutional head of the state, the Governor usually acts more as 'an agent of the centre'. Critically analyze. (150 words) 10
- राज्य का संवैधानिक प्रमुख होने के बजाय, राज्यपाल सामान्यतः 'केंद्र के एजेंट' के रूप में अधिक कार्य करता है। समालोचनात्मक विश्लेषण कीजिए।

Governor is the de jure executive head of the state and plays central role in maintaining healthy Centre-State relationship.

Constitutional Position

- Art 163 - Governor is appointed by President and holds office during his pleasure.
- Apart from Constitutional discretion, he has been bestowed with individual discretion in recognition of his role as Centre's representative to state
 - ↳ reserve bill for presidential assent
 - ↳ recommend imposition of emergency in state

Thus, Governor is not merely a constitutional head of state but also Centre's nominee to state to ensure

- ↳ Coordination between Centre and state
- ↳ Ensure state runs according to due Constitution.

Unfortunately, few incidents have raised concern over the partisan nature of the post :-

1. Refusal to call for Vote of trust (to prevent state government from proving majority)
2. Recommending State emergency without due reasons

Role of Maharashtra governor in administering oath to CM in middle of the night is one such example.

Reasons for being agent

Political appointee

No security of tenure

Representative of Central government - his mouthpiece

No independent functioning

To check such misuse, Sarkaria Committee recommendations must be paid heed to -

1. Governor must not be active in politics in the state for at least 5 years
2. His term must not normally be interfered with
3. Must be man of integrity and character
4. Practice of conferring chancellorship should be discontinued.

6. Cabinet committees can play a crucial role in accelerating the government's decision-making and reforms. Critically evaluate. (150 words) 10
- मंत्रिमंडल समितियां सरकार के निर्णय-निर्माण और सुधारों को त्वरित करने में महत्वपूर्ण भूमिका निभा सकती हैं। समालोचनात्मक मूल्यांकन कीजिए।

Cabinet Committees are extra constitutional devices, provided under Rules for Allocation of Business, 1961.

Significance

1. Cabinet is supreme executive authority and nucleus of decision making in Parliament.

Concerns

- Voluminous work
- Complex, technical tasks
- too big a body to undertake regular, in-depth discussions on every issue

Solutions

- Cabinet Committees formed to aid and advise Cabinet
- Consist of mostly Cabinet members (may have non-Cabinet members)
- Undertake in-depth research & consultation.
- Seek expert inputs — better decision making

4 prominent Cabinet Committees:

- 1 Cabinet Committee on Political Affairs (most important of all - policy & foreign decision making)
- 2 Cabinet Committee on Economic Affairs
- 3 Cabinet Committee on Appointments
- 4 Cabinet Committee on Accommodation

While, first three are headed by Prime Minister, last is headed by Union Home Minister.

Challenges

- Unfortunately, their workings have raised some concerns →
 - members are mostly from same party (no diversity of opinion)
 - already overburdened
 - act like kitchen cabinet - against democratic decision making
 - use of informal group of ministers has increased.

To address these, it is important that external stakeholders like expert views are giving due importance and decision making of committee remain democratic and transparent.

7. Highlight the significance of Gram Nyayalayas in providing inexpensive and speedy justice to people in rural areas. Also mention the issues being faced by them. (150 words) 10

ग्रामीण क्षेत्रों में लोगों को सस्ता और त्वरित न्याय प्रदान करने में ग्राम न्यायालयों के महत्व पर प्रकाश डालिए। साथ ही, उनके द्वारा सामना की जा रही समस्याओं का भी उल्लेख कीजिए।

Gram Nyayalayas, established through Gram Nyayalaya Act 2009, have been instrumental in securing the vision of Article 39A i.e. access to justice to all.

Salient features

1. Established at intermediate panchayat level
2. headed by Nyayadhikari (equivalent to Judicial magistrate first class)
3. has both civil and criminal jurisdiction (provided under Schedule I & Schedule II)
4. Aim to provide inexpensive and speedy justice to rural population
5. Appeal from the decision goes to district & session court respectively (civil and criminal matters respectively)

Significance

- Access to justice has remained distant goal for vast majority — addresses the concern

- fulfill recommendation of 114th Law Commission Report.
- Closer to people - both physical and emotional proximity
- Reduce burden of judicial system (30 more case pending overall).

Challenges

1. Poor infrastructure
 - Not more than 190 setup against goal of 5000
 - Most states have not notified (supreme court had to intervene)
 - No physical infrastructure
2. Reluctance among Stakeholders
 - lawyer, clerks, Notary reluctant to serve in rural areas and refer cases there
3. Nyayadhikari are existing judicial magistrates overburdened already.
4. Lack of awareness among people.

Hence, Separate cadre of trained Nyayadhikari, mass awareness campaign and allocation of adequate financial resources is the need of the hour to realise the goal of justice for all.

8. Analyse the merits and demerits of the Presidential system for a country like India. (150 words) 10
भारत जैसे एक देश के लिए अध्यक्षतात्मक प्रणाली के गुणों और अवगुणों का विश्लेषण कीजिए।

Constitution of India has provided for Parliamentary System at both centre and state level (Art 79-121, Part V).

Unlike presidential system, parliamentary system is based on responsible government where executive is responsible to legislature for its policies and actions.

Given the non-satisfactory working of Parliamentary system — demand for presidential system has been raised e.g. — by Shashi Tharoor.

- criminalisation
- high defection
- frequent disruption
- poor quality debate

Merits of Presidential System

1. Experienced Government

Government by experts

better decision making

high quality debate

2. Stability (not subject to non-confidence)

motion or defection leading to fall of government as seen in Madhya Pradesh etc.

3. Expert led government abodes well for political, economic and social development of country.
4. Check criminalisation (43% in India) and role of money & muscle power.
5. Promote accountability - elected head

Demerits

1. Responsible Government is cornerstone of India's democracy.
2. Promote majoritarianism and concentration of power in one person.
3. Against well established democratic tradition based on debate, dissent and discussion.

Lacunae in existing system must be addressed through appropriate electoral reforms and amendment to 10th schedule. The answer does not lie in switching to presidential system but strengthening parliamentary system.

9. Highlighting the issue of political defections in India, discuss the significance of Kihoto Hollohan judgment. (150 words) 10
- भारत में राजनीतिक दल-परिवर्तन के मुद्दे पर प्रकाश डालते हुए, किहोतो होलोहान निर्णय के महत्व की विवेचना कीजिए।

"As politics become career, politicians become commodities for trade"

The menace of political defection is not new to India. The instance of Naya Ram changing loyalties thrice in 2 weeks as early as 1960s justifies the same.

Unfortunately, the extent and frequency has intensified in recent years.

1. Political parties sole motive is to retain or gain power — lead to high corruption, trading in politicians.

2. 10th schedule on anti-defection has proved inadequate

— members resign from post lead up to fall of government and get re-elected in next elections

For example — Karnataka — 11/17 MLA re-elected in next election on other party ticket. (2019)

3. Increasing role of money & muscle power coupled with criminalisation provides favorable

Climate.

4. Public perception & scanty regard for integrity/ethics further adds to it
5. Partisan role of speaker/governor has served as added incentive (as seen in Rajasthan elections in 2020)

In wake of it, Kihoto Hollohan judgement assumes great significance. The court held that

- decision of leader of house of ~~low~~ on defection is not beyond judicial scrutiny
- Court may scrutinize the decision on grounds of malafide, extraneous reasons.

Thus, act of speaker who kept decision pending for over 17 months (in Mizoram) or not acting on it can now be subject to judicial scrutiny.

Courts, however, can only play curative role. The need of the hour is reform of anti-defection law in India and implementing Supreme Court decision of replacing speaker with permanent adjudicatory mechanism in deciding defections.

10. Examine the challenges associated with the implementation of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and suggest measures to ensure its implementation in both letter and spirit.

(150 words) 10

पंचायत (अनुसूचित क्षेत्रों पर विस्तार) अधिनियम, 1996 के कार्यान्वयन में जुड़ी चुनौतियों का परीक्षण कीजिए और इसका अक्षरशः कार्यान्वयन सुनिश्चित करने के उपायों का सुझाव दीजिए।

Panchayats (Extension to Scheduled Areas) Act, 1996 is hallmark of spirit of Democratic decentralisation and Gandhian democracy in India.

Salient features

- 73rd Amendment modified to suit local customs of the people in Scheduled Areas
- Power of Gram Sabha
 - to undertake, plan and implement development projects
 - give certificate of utilization of funds to panchayat
- Recommendation mandatory for license of mining minor minerals
 - consultation before acquisition of land or rehabilitation
- Adequate powers to regulate village market, minor forest produce,

Despite noble objectives, several weaknesses :-

1. Lack of awareness about the rights
2. Heavy Bureaucratization
3. Lack of proper infrastructure to realise the objective [eg- no regular meeting or consultation with members]
4. Lack of political will among the officials
5. Forest communities seen as obstacle to development rather than as partner

Realising the goal of grass root democracy in Scheduled areas calls for

1. Greater allocation of financial and functional powers to gram sabha and panchayat
2. Awareness campaign to inform of their rights
3. Set up proper infrastructure to hold regular meeting
4. Strand penalty against any mining/land acquisition without proper consultation

Poor implementation has led to criticism of it being "grass root democracy without grass". Efforts be taken to ensure that grass not only survives but also thrives and nourishes entire democratic ecosystem.

11. It is not only institutional challenges faced by Election Commission but also the twin threats of money and muscle in Indian electoral politics that need to be addressed for free and fair elections in India to continue. Discuss. (250 words) 15

न केवल निर्वाचन आयोग द्वारा सामना की जा रही संस्थागत चुनौतियों, बल्कि भारतीय चुनावी राजनीति में धन और बाहुबल के दोहरे खतरे के मुद्दे को भी भारत में स्वतंत्र और निष्पक्ष चुनाव जारी रखने के लिए संबोधित किए जाने की आवश्यकता है। चर्चा कीजिए।

Independent and Impartial Election Commission is lifeblood of India's democracy.

Article 324 of the Constitution vests power of Superintendence, direction and control of election to office of President, vice-president and Parliament and State legislature on it.

Challenges

- Despite the significance & success, key challenges remain

1. Criminalisation { 43% with criminal charges in 2019
29% with serious charges

2. Heavy influence of Money & muscle power { likelihood of winning becomes twice (study by Association for democratic reforms)

— enter politics to influence judicial decision (e.g. less than 2% conviction rate)

3. Predominance of Parochial issues like caste, Regionalism, Communalism

Institutional Challenges

4. Lack of Security of tenure of other chief commissioners

5. Chief election Commissioner is basically a political appointee

6. Lack of power to deregister political parties

7. No power to disqualify candidates for filing false affidavits

8. Political parties outside ambit of RTI legislation

Together, these conditions have provided favorable climate for not only party politics but also election of candidates with villainous records in the country.

Consequences

Erode public trust in electoral process

Public perception of politics as dirty affair - educated and persons of integrity reluctant to enter

- Poor quality & frequent disruptions in parliament
- reducing sanctity & legitimacy in people eyes

Recommendations

1. Electoral reform

- Several steps taken: like introduction of NOTA, SC decision to advertise political advertisements (Public Interest Foundation case)
- Need to disqualify candidates with serious charges from contesting

2. Enhance power of ECI

— deregulate parties
— false affidavit =
— corrupt practice =
— disqualification

3. Political parties to be brought within RTI

4. Encourage youth, persons of integrity to enter political fray — need public pressure to change

5. Implement ARC recommendations such as on checking funding of parties and corrupt practice

While, India's democracy has stellar success in procedural aspects, true spirit lies in process ensuring fairness, integrity and men of character.

12. Local bodies have the constitutional status of being a third tier of the government, but are simultaneously subordinate to the State Government in several key functions and aspects. Analyse. (250 words) 15

स्थानीय निकायों को सरकार के तृतीय स्तर का संवैधानिक दर्जा प्राप्त है, लेकिन साथ ही कई प्रमुख कार्यों और पहलुओं के संदर्भ में ये राज्य सरकार के अधीनस्थ भी हैं। विश्लेषण कीजिए।

73rd & 74th Constitutional Amendment ushered a new era of democratic decentralisation in India.

By virtue of Art 243-243P and Art 243Q-243Z; Panchayat and municipalities have been set up at rural and urban level respectively.

Constitutional Status

- Enshrined as 3rd tier of the government
- Independent in their sphere

↳ Schedule XI & XII calls for devolution of few subjects to local bodies.

73rd Amendment

Mandatory	Optional
• Panchayat at village, intermediate & district level • directly elected by people at all level	• Reservation for backward class • manner of election to post of chairman at village level

- Election to post of Chairman at intermediate and district level indirectly conducted
- All persons above 21 years can contest
- Reservation for SC/ST
- Reservation for women (1/3)

Power & finances to be devolved on the bodies

- Constitute finance & state election Commission

74th Amendment

- Constitute municipalities
 - Nagar panchayat
 - Municipality Council
 - Municipal Corporation
- Consist of Councillors, Standing Committee & Mayor
- Area divided into wards with single Councillor from each ward directly elected by people
- Representation of experts secured
- Provision for district planning & district metropolitan Committee

Thus, play the role of 3rd tier of government

Subsidiary status

1. Lack of 3F
 Funds
 Functions
 Finances

Devolution of funds & functions at discretion of State government.

States reluctant to devolve

eg - Own source of funds of panchayat - 0.3%
 local expenditure as % of public - 7%
 expenditure (benchmark = 55%)

2. Lack of Infrastructure - no secretariat, no regular elections (eg - Pending Tamil Nadu elections), proxy for women.

3. Creation of parallel bodies Haryana - Rural Development Authority

Recommendations

To realise full potential of 3rd leg of our government, compulsory devolution of subject and finances must be ensured.

Local bodies must not be at discretion of state government. Only then can the Gandhian democracy be truly established.

13. While the federal principle is one of the basic features of our Constitution, unlike other model federal Constitutions of the world, Indian federalism leans in favour of a strong Centre. Discuss. (250 words) 15

जहाँ संघीय सिद्धांत हमारे संविधान की मूलभूत विशेषताओं में से एक है, वहीं विश्व के अन्य आदर्श संघीय संविधानों के विपरीत, भारतीय संघवाद मजबूत केंद्र के पक्ष में झुका हुआ है। चर्चा कीजिए।

Article 1 declares India i.e. Bharat as Union of State. According to the Constitution bench of Nidhal Stanlen Steel v. Union of India, India's federalism is sui generis model which cannot be abridged in a sentence or two.

Similar to Canadian Model, India's federal structure leans in favour of strong center.

Federal features	Centralising tendency
1. Distribution of powers b/w Center & State (legislative, executive, financial) e.g. - Article 245 - 3 list	1. Residuary power with State and predominance of List I & II
2. 3-tier of government	2. Emergency powers - convert to unitary state
3. Independent judiciary	3. Integrated judiciary
4. Written Constitution (delineated sphere)	4. Single citizenship
5. Rule of Law	5. Single election machinery (ECI)

Reasons for strong center

1. Protect Unity & Integrity of India
2. Political factors — India surrounded by hostile neighbours, need to secure its interest
3. Historical factors — check separatist tendencies of state & acute regionalism
4. Ensure states run according to constitutional vision

Remainder that

1. India is not a result of agreement between states
2. States not free to secede

Federation is only to secure administrative convenience.

Nature of federation

- Strong center does not mean states are agents of center (S.R. Bommai Case)
 - Supreme in their own sphere
 - Not state center appendages

- According to Dr Ambedkar, India's federalism like Amphibian — can be both unitary and federal according to the need of the time.
- Federalism remains the basic feature of the Constitution (Jindal Stantien Steel v. Union of India).
- Increasing emphasis on cooperative competitive federalism as seen from NITI Aayog to unleash dynamism and promote cooperation among the state-center.

However, recent incidents such as refusal of center to make good GST compensation deficit; abrogation of special status of J&K; increasing reliance on cen by center has raised concern about state of federation.

Nevertheless, federalism remains cornerstone of Indian Constitution. Both Union and state have clearly delineated sphere of influence under the Constitution with necessary tools to ensure unity and integrity of India.

14. Tribunals have not only failed to meet their envisaged objectives but also given rise to multiple challenges in the administration of justice in India. Critically discuss. (250 words) 15

अधिकरण न केवल अपने परिकल्पित उद्देश्यों को पूरा करने में विफल रहे हैं, बल्कि इन्होंने भारत में न्याय प्रशासन में कई चुनौतियों को भी जन्म दिया है। समालोचनात्मक चर्चा कीजिए।

Tribunalisation of Justice in India has been a central feature of India's legal system in past decade.

features {

- trappings of court
- quasi-judicial authority
- expert adjudication

Significance

- Overburdened judiciary has been inadequate to meet the needs of technical & complex nature of adjudication in key sectors

{

- 3 crore cases pending
- 87% pendency in subordinate judiciary

- Recognising it, 42nd Amendment introduced Art 323 A & 323 B

Art 323 A → adjudication of disputes over recruitment and service conditions of members of civil service

Art 323 B — tribunals for specified sectors
like taxation, electricity

- Importance →
- expert led adjudication
 - expedience
 - not bound by civil procedure Code flexible
 - departmental representation

Challenges

Their working however has raised
Concern

1. High pendency in tribunals
2. Judicial member not adequately represented (rough placed at level of High Court)
3. Lack of tenure security — high politicisation
4. Absence of uniform rule of working

These concerns were highlighted in two judgements of Madras Bar Association v. Union of India.

Court recommend →

1. Minimum tenure of 5-7 years of members.

2. within overall supervision of Ministry of law & justice
3. Judicial members (not members of Indian legal service)
4. Presiding officer cannot be removed except concurrence of judicial members of appointing collegium
5. Judicial supremacy in appointing committee

In light of it, court struck down 2017 rules on tribunals.

Unfortunately, newly enacted 2020 rules also fall foul of these principles.

Tribunals hold the key to reducing the burden of judiciary while ensuring ease of doing business through expert & adjudication in flexible manner. However, its independence and effective functioning is equally crucial and must be secured.

15. Critically examine the relevance of the 103rd Constitutional Amendment Act in evolving the reservations policy as tool to meet the objectives of social justice in India. (250 words) 15
- भारत में सामाजिक न्याय के उद्देश्यों को पूरा करने के लिए एक साधन के रूप में आरक्षण नीति विकसित करने में 103वें संविधान संशोधन अधिनियम की प्रासंगिकता का समालोचनात्मक परीक्षण कीजिए।

Equality is the cornerstone and basic feature of India's Constitution.

Article 14 of the Constitution embodies both formal and substantive equality.

Formal → every person equal before law -
no discrimination solely on ground of caste, creed, religion, sex

Substantive → Every individual has different socio-economic realities -
turning blind eye to the prevalent inequalities will further aggravate it
"To ensure equality, starting line must be same for all"

Pursuant to this principle, Article 15 and 16 provide for affirmative reservation i.e. favorable treatment for certain groups.

103rd Amendment

- It provides reservation in education institutes as well as public employment to economically weaker section of the Society. (Art. 15(6) & 16(6) resp)
- Till then, reservation was limited to
 - Society & educationally backward class JSC/ST (Art 15)
 - backward class not adequately represented (Art 16)
- Judicial pronouncements like Indira Sawhney clarified that economic means cannot be sole factor to grant reservation.

In light of this, constitutional Amendment was made

Significance

- Recognises that poverty has been pervasive phenomenon cutting across all social groups
- Facilitate means as sole ground for reservation

- ~~It~~ consistent with the evolving concept of inclusion of creamy layer (as called for in M. Nagaraj v. Union of India)

Criticism

- Populist & never ending phenomena
- Means should not be - 'reservations' needed to fight years of social exclusion faced by marginalised communities -
- not a substitute for anti-poverty program
- in violation of spirit of 9-judge bench judgement in Indu Swahney

Nevertheless, it recognises India's Constitution as living document which must keep pace with need of the time. Given the widespread inequality, 103rd Amendment is landmark step in securing goal of justice - Socio, economic and political.

16. To what extent and in what ways should a judiciary be accountable to the society, while remaining mindful of the constitutional organisation of the government? (250 words) 15

सरकार के संवैधानिक संगठन के प्रति सजग रहते हुए, किस सीमा तक और किस प्रकार न्यायपालिका को समाज के प्रति जवाबदेह होना चाहिए?

Judiciary is the guardian of the
Constitution, guarantor of fundamental
rights of citizens and sentinel *à qui vive*
on two other branches of government.

Given this significant role, Independent
and Impartial judiciary is *sine qua non*.

Constitutional Organisation

1. Article 124 & 214

- Judges appointed by President upon recommendation of Collegium system, introduced in Second judge case

2. Non-partisan appointment process

2. Independence

- Security of tenure
- Service conditions cannot be unfavorably altered
- Cannot be removed by both houses of parliament
- Salary charged on Consolidated fund

Accountability to Society

1. Through Impeachment process by people's elected representative

- due to political nature of process, not a effective mechanism

eg - no judge impeached till date

2. Restatement of Values (1977)

- practice also open from society
- no conduct to raise question on its impartiality

3. Public Outburst

- Most effective tool to keep a watch
- healthy discussion on judicial decisions and conduct of judges is key to securing the legitimacy
- Justice Krishna Iyer → Our conduct must be sole vindication of our legitimacy and not waiting public check on it

Thus, though non-elected, given its constitutional significance, public accountability is key to healthy judicial system.

Concerns1. Collegium

- Shrouded in secrecy
- no public declaration of criteria for selection
- reasons for transfer
- Cell for replacement with NJAC (shut down in 2014 judgement - *Suresh K. Koiri v. UOI*)

2. Contempt Power misuse

- Prashant Bhushan Case highlighted the risk - public outrage over the Contempt sentence causes questions as ability of judges to subject men to scrutiny

Key steps have been taken to promote accountability such as opening judiciary to RTI and cell for reform of collegium.

Checking misuse of Contempt jurisdiction shall be another focus area. And lessons ~~examples~~ must be learnt from other jurisdictions like Temperton Case of US.

17. What do you understand by Constitutionalism? Do you think a written constitution is a necessary condition to ensure Constitutionalism? Also, analyse various provision of the Indian constitution that ensures Constitutionalism. (250 words) 15

संविधानवाद से आप क्या समझते हैं? क्या आप मानते हैं कि संविधानवाद को सुनिश्चित करने के लिए लिखित संविधान एक आवश्यक शर्त है? साथ ही, संविधानवाद को सुनिश्चित करने वाले भारतीय संविधान के विभिन्न उपबंधों का भी विश्लेषण कीजिए।

Constitutionalism implies limited government.
It is concept wherein Constitution both prescribes and circumscribes power of government.

As held in K.S. Puttaswamy v Union of India, Constitutionalism is basic feature of India's Constitution.

Court noted that while a country may have Constitution, it may not have Constitutionalism.

Example — Where word of dictator is the law, Constitution may exist but not Constitutionalism.

Whether written Constitution necessary?

- Yes, written Constitution is crucial
 - ↳ delineates power and responsibility
 - ↳ lays down check on power of government (Art 13)
 - ↳ removes any doubt/inconsistency.

Absence of written Constitution promotes concentration of power with parliament which is sovereign of Britain.

- ↳ Parliament is supreme
- ↳ It can amend any law
- ↳ Constitution not consolidated in single document - no check on its power.

Features under India's Constitution1. Written Constitution

- Sphere clearly demarcated
 - eg - cannot legislate to take away fundamental rights (Art 13)
- Subject to judicial review (Art 226, 32)

2. Rule of law

- Lord Halsbury - Be ever you so high,
Law is above you
- Central feature - embodied in Art 14

3. Rigid Constitution

- Certain features cannot be amended without special majority and state ratification (cf. Article 368)

4. Independent Judiciary (Art 124)

- checks executive & legislative action
- Example - Union cannot legislate on State subject
- no tax without authority of law

5. Fundamental rights

- major check against state authorities
- Example - Article 21 cannot be suspended even in emergency

Thus, India has both Constitution as well as Constitutionalism. It is the key to healthy democracy and rooted in principles of equality, liberty and fraternity.

18. Highlight the systemic issues pertaining to functioning of regulatory bodies in India. How can these be addressed? (250 words) 15
भारत में नियामकीय निकायों की कार्यप्रणाली से संबंधित प्रणालीगत मुद्दों पर प्रकाश डालिए।
इनका समाधान कैसे किया जा सकता है?

Regulatory bodies are crucial for effective, independent and efficient functioning of several authorities in India.

Example

- TRAI → regulating telecom sector
- RBI → Banking sector
- IRDA — Insurance sector
- SEBI — Capital market

Systemic Issues

1. Politicisation

- (Tension between government and RBI over credit to NBFC sector)
- Concern with SEBI over information asymmetry
- political interference in appointment process

2. Parallel bodies creation undermining role of regulators

Example — Financial sector in India has complex maze of regulators like RBI, SEBI, PFRDA, IRDA

- Proposal of government to set up Payment regulation Bank approved by RBI

3. Corruption and collusion

- Often regulators own employees may facilitate corruption such as auditors

4. Unpredictable regulatory regime and frequent amendment to laws

These have led to ~~poor~~ ineffective functioning of the bodies.

Independent functioning free from executive interference is crucial to fulfilling their role.

Measures

1. Independent mechanism for appointment of officials (non-political process)
2. Non-government interference in functioning
3. Stable regulatory regime with effective stakeholder consultation
4. Consolidation of laws & bodies into minimum required framework
5. Skilled workforce with value sensitization training to curb malpractices.

These measures would go a long way in promoting institutional autonomy and effective functioning of regulators in India.

19. On one hand, the government cites paucity of resources for development and on the other, funds lie unutilised in several government departments. What are the possible reasons for such a scenario? Analyse. (250 words) 15
- जहाँ एक ओर, सरकार विकास के लिए संसाधनों के अभाव का हवाला देती है और वहीं दूसरी ओर, कई सरकारी विभागों में कोष अग्रयुक्त पड़े रहते हैं। ऐसे परिदृश्य के लिए संभावित कारण क्या हैं? विश्लेषण कीजिए।

Lack of financial resources and necessary infrastructure remains one of the dominant challenge in implementation of any government scheme.

Prominent example

- 73rd & 74th
Constitutional
Amendment — local bodies have paucity of funds as well as functionaries
- Gram Nyayalayas — Not set up by states owing to lack of funds
- Opposition of State to
Ayushman Bharat — lack of funds

However, deeper analysis show that for most of these schemes funds lie rotten in the accounts.

Rationale

1. Politicisation — major hurdle in Implementation
(Example — center-state fund in Ayushman Bharat scheme)
2. Lack of political will & administrative apathy
3. Corruption (funds rebooked to other task or overspenditure shown)
4. Implementation hurdles
(Example — land acquisition may be stuck for developmental projects).

Thus, often, it is not the lack of funds but lack of political will that results in non-implementation or poor implementation of schemes.

Underwriting of accounts by center report of CAG (2020) testimony to same.
Example — GST Compensation fund
undercredited by 42,000 crore

Measures

1. Legislative measures
 - ~~Scheme for~~ ^{as scheme} fund shall not be allowed to be disbursed for other purposes without appropriate scrutiny.
2. ◦ Social audits of the accounts of government department as well as public projects
3. Institutional checks
 - proper oversight and monitoring
 - ~~Government~~ grievance redressal mechanism
4. Anti-corruption measures like person with Doubtful Integrity record, social packs.

These measures would go a long way in ensuring proper implementation of projects and effective utilisation of taxpayers money, promoting inclusive growth.

20. The Preamble to the Indian Constitution cannot be regarded as a source of any prohibition or limitation. Discuss in the context of various judgments of the Supreme Court. (250 words) 15

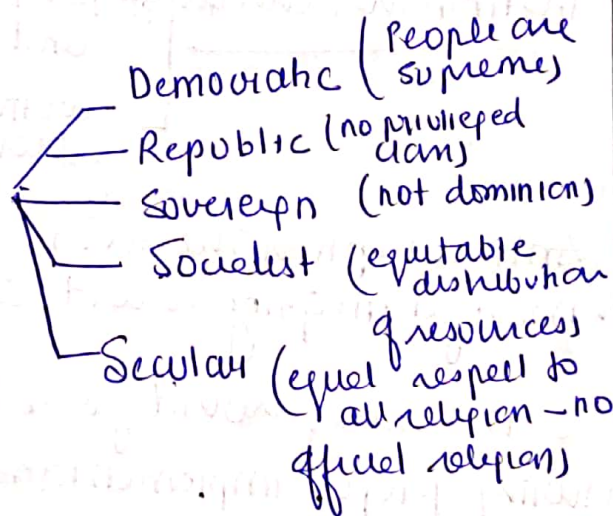
भारतीय संविधान की उद्देशिका को किसी प्रतिबंध या सीमा का स्रोत नहीं माना जा सकता है।
उच्चतम न्यायालय के विभिन्न निर्णयों के संदर्भ में चर्चा कीजिए।

Mr. Nani Palkhivala, ^{famous} ~~former~~ ^{former} ~~Constitutional~~ ^{Constitutional} expert described Preamble as haroscope of India's Constitution.

It embodies the vision of our founding fathers, fundamental principles as well as solemn resolve that nothing but revolution can alter.

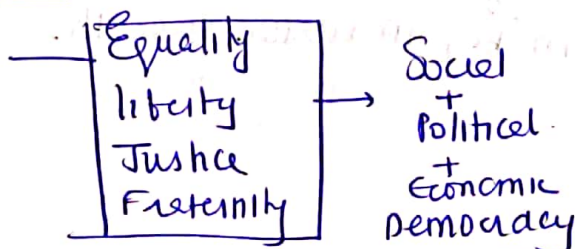
Significance

Nature of Indian Society



Source of Authority — "We, the people"

Values of Society



Thus, preamble is introduction and key part of the Constitution.

Judgements

In Re Berubari

Preamble is not part of the Constitution

It is non-judicable

Keshavananda Bharti Case

Preamble is part of India's Constitution

It is non-judicable

non source or limitation of legislative power

Yet, important guiding light to the three wings of the Constitution

42nd Constitutional Amendment → Added 'Secular, Social Integrity' to Preamble

Therefore, it is beyond doubt that preamble is very much part of the Constitution and a beacon light for Judiciary.

Significance

- Key in Constitutional interpretation

Example - Sabarimala Case - Art 17
interpreted broadly to include
all form of social exclusion
- took inspiration from concept of
Socio-economic-political justice
in preamble

- Guiding light to law makers

Example - Navtej Singh Johar - recognition
of transgender key to respecting
human dignity and
Sacred personality of all

- helps court in deciding between various
interpretation & constitutionality
- if accordance to values of preamble

- Ground of public scrutiny e.g. Citizenship
Amendment Bill 2019 opposed as violation
of Preamble

Thus, Preamble though non-judiciable is
key to India's Constitution and mind of its
framers