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Subject: Essay

Name of Candidate Kaon Satyarthi

Test Code 608

Schedule

Registration No. 5205

Place Dhanbad

Time 11:00 Am

Module 432

Classroom ☐

Distance Learning ☒

Classroom & Distance Learning ☐

EVALUATION INDICATORS

1. Alignment Competence
2. Context Competence
3. Content Competence
4. Language Competence
5. Introduction Competence
6. Structure - Presentation Competence
7. Conclusion Competence

INDEX TABLE

Q.No.	Page No.	Maximum Marks	Marks Obtained
1.			
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Total Marks Obtained

Remarks:

Signature of Examiner

INSTRUCTIONS:

1. Do furnish the appropriate details in the answer sheet (viz. Name, ID Number and Test Code)
The Candidate should fill the index table, especially for him/her.
2. In the left margin, she/he should write only question number and in the right margin, nothing should be written.
3. The page number should be coded by the candidate himself and the range of page number related to the answer of the question should be used to complete the index table.
4. All Parts of the questions should be written at one place.
5. No Supplementary sheet shall be provided by the management. So the candidate is advised to accommodate required information within the space provided.
6. The candidate need not write anything in his/her answer that derogates the dignity of an individual or an organization.
7. The candidate should respect the instructions, given by the invigilator.
8. The Examinee has to submit the answer sheet to the invigilator after completion of examination.
9. However, he/she is allowed to take away the question paper.

Section A

Q3.) NJAC - It's not judiciary or executive but judiciary and executive.

A five judge bench of the Supreme Court of India recently struck down the 'Constitution 99th Amendment Act' on the grounds that it violated the basic structure of the constitution and gave undue primacy to the executive in matters of judicial appointments. The basic feature in question here is the doctrine of 'separation of powers'. 'separation of powers' is enumerated in the Part IV of the constitution of India as a Directive Principle of State Policy. It is also a cardinal principle that almost all major democracies of the world follow to varying extent.

The Supreme Court of India (SC) in its main judgement authored by Justice JS Khehar ruled that the National Judicial Appointments Commission (NJAC) and articles 124A & 124B were unconstitutional. To understand the court's position let us first have a look at the ~~com~~ composition

of the NJAC. The NJAC was to comprise 6 members. Three of the 6 members were to be the representatives of the judiciary. They were the chief justice of India and two of the senior most judges of the SC of India. The rest of 3 members were the law minister and 2 eminent citizens from different walks of public life. These eminent members were to be selected by the Chief Justice of India, the Prime Minister of India and the leader of the Opposition in the Lok Sabha. It is clear from the composition of the NJAC ^{that the intention} was to create a balance between the Judiciary and the executive without compromising the primacy of the judiciary.

The SC however is of the view that the presence of the law minister and the 2 eminent persons might create unnecessary political interference in the appointment of higher judges. The NJAC was to oversee appointments to the SC, High Courts and transfer of judges from High Court to another.

Let us now examine some of the arguments that were forwarded by the Supreme Court to strike down the NJAC.

The crux of the SC's position revolves around the principle that judging by past

second the political executive can not be trusted with judicial appointments. This mistrust between the judiciary and the executive arises out of an especially turbulent time in the 1970s. The government had then forwarded the doctrine of a committed judiciary. Some appointments were made to the SC that can be termed as an attempt to pack the judiciary. A notable example being the elevation of Justice AN Ray as the Chief Justice of India superseding 4 of the senior most judges of the SC.

After the turbulent 1970s a permanent gulf emerged between the judiciary and the executive. The SC finally seized initiative in 1993 in the Second Judges case when it constituted an extraconstitutional body called the collegium for appointments to higher judiciary. This was then seen as the final word on the primacy of the judiciary.

Some other arguments against NJAC int its current avatar that were considered by the court were:

One, The NJAC was to function as an adjunct to the law ministry with no independent secretariat. This would create a financial dependence of the NJAC on the executive.

Two, any 2 members of the NJAC could veto its decisions, this would facilitate the law minister and one of the eminent persons to team up against the 3 judicial members of the NJAC.

Three, the government of India is the largest litigator in the SC, therefore it has an incentive to influence the NJAC's decisions in its favour. Presence of the law minister and the 2 eminent persons would facilitate this. The SC routinely gives judgements that are not in the favour of the government. e.g. the coal block allocation case, 2G spectrum case.

Four, the constitutional amendment (99th) only lays down the constitution and not the composition of the NJAC. Therefore the parliament at a later date can easily modify the composition in the executive's favour.

Five, we are routinely given examples of the UK Judicial Commission, but the UK Judicial Appointments Commission has no political representation in it.

Six, the executive even today has an important role in the appointments. No appointments can take place without the consent of the political executive. A recent example being the recommendation of Gopal Subramanian by the collegium, this was declined by the executive and the matter ended.

The judiciary is also of the view that it is in a position to best know the bar and the bench and hence possesses the intellectual resource to appoint judges.

The Supreme Courts views are clear, concise and coherent however it ignores one important feature of the NJAC. That feature is NJAC is not executive over judiciary rather it is executive in collaboration of the judiciary.

If we carefully analyse the constitution and composition of the NJAC we find that it has tried to find a route for cooperation between the executive and the judiciary and remedy the ills of the Collegium system.

Justice JS Verma who was one of the key authors of the 'second judges case' himself later ruled the decision. He is on record as saying that the collegium has failed to function as envisioned and it requires reforms lock, stock and barrel.

It is clear from the NJAC that the judiciary still had primacy since 3 of the six members of the NJAC had to be judges. Moreover if the Supreme Court had

misgivings about the nature of the eminent members it could have read down the relevant section. The SC decided not to exercise this option.

The SC also ignored the fact that the NJAC had been passed with consensus in both the houses of the parliament as well as more than half of the state legislatures. Such wide political support means that the NJAC was considered bipartisan and the will of the sovereign majority.

The appointment of the 2 eminent persons was also to be done by bipartisans support as well as the concurrence of the Chief Justice. Therefore the question of ~~the~~ explicitly political appointees was miniscule.

The judiciary not only disregarded parliamentary sovereignty but also ignored the view of the constitutional mandate. The Constitution in article 124 says that the judges have to be appointed by the President of India in consultation with the judiciary. It is clear from this article that our ~~found~~ founding fathers envisaged a collaborative and not a confrontational role for the executive and the judiciary in the process of judicial appointments.

Moreover there are some explicit design flaws in the existing collegium system that the NJAC could have remedied. They include; One the collegium functions in a way that is not transparent, two there is evidence that the collegium favours judges and lawyers over eminent jurists when it comes to the appointment of higher judiciary. Three, there is no role of the executive in the appointments process except at the last stage when the collegium's decision is presented before them as a fait accompli.

In all major democracies of the world there is a consensus on the role of the executive in judicial appointments. e.g in the US the judges are appointed by the President. In UK & South Africa there is a provision for an appointments commission that has representation from all sections of the society.

However now since the NJAC has been declared unconstitutional the onus is on the SC to reform the appointments process. Some steps that can be taken in this direction are;

One, it can institute a list of standard

operating procedures that the collegium will follow. Two, the discussions of the Collegium and standards/criteria applied must be made public. Three, the interaction between the executive and the judiciary must be institutionalised. Four, a mechanism for wider consultation and representation of views must be constructed.

Jawaharlal Nehru and B.R. Ambedkar, two of the leading lights of the constituent assembly were of the view that a process as important as judicial appointments cannot be entirely left to unelected judges. We hope that the collaborative spirit of the NJAC remains intact and the SC finally comes ~~to~~ up with a remedy that retains the primacy of the judiciary but does not negate the role of the executive. We must realise that the mistrust between the judiciary and the executive is misplaced.

Section B

Q1.) Diplomacy is the first line of defence.

Diplomacy is key in the implementation of foreign policy, security on the other hand is the ultimate goal of foreign policy. It is safe to say thus, that Diplomacy and security are correlated. A famous foreign policy expert once said that diplomats are honest and intelligent men who understand the value of lying for the security of their fellow countrymen. The aforementioned quote might ~~be~~ have been made in a lighter vein but it is pithy nonetheless.

A first line of defence is a self explanatory phrase. For any harm to come to the body the first line of defence must be breached. The first line of defence is also the most important line of defence. Once the first line is breached it becomes easier to make past successive lines.

Our contention here is that it is only after diplomacy fails that a country's security is credibly threatened. That is to say that diplomacy and not physical force is the first line of defence for a nation's security.

If we look at one of the most ancient yet seminal texts on foreign policy i.e. the Artha-shastra by Kautilya, we find that he devotes considerable energy to a discussion on diplomacy.

Kautilya discusses the role and qualifications required for becoming a diplomat at great length. According to him diplomats are the eyes and ears for the king therefore only persons with the highest knowledge of law, economics and history as well as loyalty and integrity are fit to become diplomats.

Kautilya also explains how a diplomat is key to maintenance of lasting peace between two neighbours. He says that the presence of diplomats in neighbouring countries helps in clearing confusion, misunderstanding and is also a mechanism to know whether our neighbours have any evil designs on us.

Similarly the great Italian realist Niccolo Machiavelli emphasises on the importance of the king choosing the right diplomats. His argument too is that diplomats can help prevent war and loss of life and property.

In the modern times however we see that diplomats often come under criticism for their role in a country's foreign policy. Let

us examine some arguments that seek to negate the role of diplomats in the maintenance of peace.

First, diplomacy is just a 'talking shop' without real outcomes. In India the Tashkent agreement is often cited as the victory of the military ^{of 1965} that was squandered away by the diplomacy.

Detractors however forget the extraordinary range of activities that a diplomat has to undertake. Diplomacy is an inherently long, tedious and rigorous process. The fruits of diplomacy are not immediately visible to the larger public hence the misperception that diplomats only negotiate and never finalise. In our recent history the Indo-US nuclear deal is a brilliant example of the success of ~~diplomacy~~ diplomacy.

Second, the determinants of security depend on so many factors like geopolitics and history that it is impossible for diplomats to prevent war. This argument is true to some extent however it reinforces the need for diplomacy. It is only because the nature of 'war & peace' is so complex that we need multiple layers of defence and diplomacy is only the first line. There have been instances in the past e.g. the Cuban missile crisis of 1962 when diplomacy has resulted into diffusing

tensions and imminent war.

Third, diplomacy fails more often than it succeeds. The World Wars 1 & 2 or the recent Ukraine crisis are glaring examples of the failure of diplomacy. However we often forget that for every war ^{that took place} there are at least an equal number that was averted due to the success of diplomacy. Recent example being the Iran-P5+1 nuclear deal. There was a time when war seemed imminent between the US led forces and Iran but successfully diplomacy from both sides has prevented this tragedy.

A fourth attack is directed towards the practitioners of diplomacy i.e. the diplomats. It is often argued that diplomats are often generalists who are ill equipped to handle increasingly complex issues related to economy, technology and the society.

However this argument can not stand its ground against diplomacy. The answer to the critics here is not less but better diplomacy.

We need to induct specialists as well as men/women of high intelligence who can understand and deal with complex problems and history shows that nations have done it in the past.

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If we look at the past successes of diplomacy acting as the first line of defence and preventing war we will be surprised both by the quality and quantity.

The most recent example apart from the Iran - P5+1 nuclear deal is the US - Cuba rapprochement. The USA & Cuba had an acrimonious relationship since the 1950s but after years of sustained diplomacy they have finally come around to the idea of having normal relations. Similarly extremely tense situations built up between India and Pakistan after the 2001 parliament attacks were diffused due to careful and calculated diplomacy. In 1989, Rajiv Gandhi's visit to China was seen as a diplomatic coup that acted as a guarantee against any future aggression. Another historic example was the 1970s Nixon's visit to China. This visit acted as a catalyst in US - China relations and eased the tensions between them.

On the other hand we find that most wars happen only after diplomacy fails. The 1999 Kargil conflict between India and Pakistan happened only after the 'bus diplomacy' initiated by Prime Minister Vajpayee failed.

World War I was one of the most glaring examples of a major war breaking out due to the failure of diplomacy. Similarly the escalation of the war in Syria can be attributed to a failure in diplomacy between Russia, the US, Assad and anti Assad Free Syrian Army.

Let us now examine some of the features of ~~democracy~~ diplomacy that enable it to act as a first line of defence.

First, diplomacy results in a closer interaction and interconnectedness between two nations. When two countries cooperate it is unlikely that they will undertake mutual aggression.

Second, the nature of security today has changed. When we talk about security we do not only mean territorial security but also economic, technological and environmental security. Diplomacy acts as the vehicle of foreign policy at important fora like the WTO, IMF & World Bank for economic security, Climate Change negotiations at the UNFCCC for environmental security and Internet Governance Forum for technology security.

Third, diplomacy creates the condition for positive peace. That is to say, not just the absence of war but the absence of conditions that lead to war. By negotiating Free Trade Agreements (e.g. Indian FTAs with ASEAN, SAARC etc), taking part in regional fora (e.g. the SCO, East Asia Summit etc) diplomacy creates a framework for cooperation on security issues like terrorism, climate change, river water disputes etc. We must remember that even though India & Pakistan have seen so many ups and downs in our relationship the Indus Water Treaty i.e. a piece of diplomatic settlement has stood the test of time.

When Prime Minister Modi undertakes vigorous ~~out~~ outreach to regions as diverse as the Indian Ocean (Seychelles, Mauritius, Maldives, Sri Lanka), China, USA, South East Asia, Asia Pacific (Fij) and our neighbourhood (Bangladesh, Nepal & Bhutan), it is only because he understands the value of diplomacy. Indian diplomacy has the capacity and intellectual resource to deal with diverse & complex problems. However we must improve on areas where we lack. e.g. the quantity of human resource capacity in the Indian Foreign Service.

Diplomats are the eyes and ears of a nation. It is no ones point that diplomacy is the only defence we have. However there is also no denying that diplomacy is the first line of defence, it is only through diplomatic engagement that disputes can be resolved without taking recourse to violence in a nuclearised world. Diplomacy earns us goodwill that leads us into cooperation. We must remember that even 'Shri Krishna' tried to deal with the Kauravas diplomatically before the great war. It was only when diplomacy failed that the great war of Mahabharata took place.

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Rough

General points

~~Bo separation of powers.~~

~~Structure of the NJAC.~~

~~[Constitution Day Consultation.]~~

~~The need for NJAC?~~

~~Appointments is not the only reform needed~~

- ~~→ vacancies~~
- ~~→ backlog~~
- ~~→ standards & accountability.~~
- ~~→ Transparency~~

Solution

Need for greater trust between judiciary & executive.

Improve the collegium.

The role of the executive cannot be ignored even when judiciary has primary.

Judiciary

~~Political interference,~~

~~Emergency~~

ADM Jabalpur (Shivkant Shukla)

~~No secretariat~~

~~Presence of law min + 2 eminent persons.~~

~~Committed judiciary.~~

The collegium can be improved.

Judges know the bar best.

~~Primacy of Judges gone.~~

~~Executive even now has a major role e.g. Gopal Subramanian / This point was raised by R.M. Lohia.~~

~~HC Judicial Commission has no political representation.~~

~~Govt. is the largest litigator.~~

~~The SC routinely ~~del~~ rules against the government. e.g. Coal block allocation, 24 case etc.~~

Question of gender

Law Commission reports

~~Constitutional amendment only said constitution and not composition.~~

Executive

~~JS Verma himself~~

~~The judges could have read down.~~

~~They could have ruled some positions.~~

~~You can't distrust the elected representatives~~

~~(C) Collegium not transparent~~

~~Example of UK. (Judicial Appointments Commission)~~

~~(C) Judges overlook eminent jurists.~~

~~There was wide political consensus~~

~~The judgement was overreach.~~

~~Judges still had primacy.~~

~~Gender question is paradoxical.~~

~~Parliamentary sovereignty~~

~~Ambedkar & Nehru in CA Debates.~~

~~Even justice AP Shah could not become an SC judge.~~

The NSAC gave primacy to the judiciary

~~The NSAC was judiciary and executive
not judiciary or executive.~~

Rough

Yes it is.

What is Diplomacy.

~~What is the first line of defence.~~

History of diplomacy.

→ Arthashastra

→ Machiavelli diplomacy.

Changing role of ~~democracy~~.

first line of defence also for

→ economic security

→ territorial security.

→ Technology

→ Nuclear diplomacy

Diplomats are key to foreign policy.

Diplomats are the eyes and ears of the
govt. e.g. Mr. X.

Diplomacy preventing war: Cuban Missile
Crisis.

US-Cuba Rapprochement.

Rajiv Gandhi in China, Nixon in China.

Diplomacy as a projection of soft power.

Diplomacy establishes positive peace.

Diplomats negotiate deals.

e.g. India - Pakistan track 2 diplomacy.

only when it fails wars happen.

e.g. WW1 & the concert of Europe.

WW2 and failure of Versailles.

Korean War.

against

- ~~Plain talkshop~~ (e.g. 1965 war)
- ~~security is determined by factors larger than men.~~
- ~~Diplomats have never been able to prevent war.~~ (West Asia, S. Korea, Congo, etc.)
- Diplomats are not specialists.
- Diplomacy as an exercise in extravagance.

UN Sec gen is a diplomat.

Koffi Annan could have prevented the war in Syria & Libya.

N. Korea shuns diplomacy and invites war.

Diplomacy diffuses war like conditions,

Expel the diplomat and you are in a fix.

Indian diplomacy

Role of JLN

Problems: strength, training, specialisation

Achievements: Africa, Latin America,

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