

GS TEST – 2 MODEL ANSWERS

1. "Indian political system has witnessed little advances in furthering the role of President in democratic credentials." Analyse the statement with suitable examples. 12 ½

Approach of an Answer

- Start with a contextual – based introduction.
- Explain the role of President defined by the Constitution and through subsequent amendments.
- Bring some examples of activists' presidents that helped in sustaining democracy.
- How the president can play an effective role within the constraints of the Constitution.
- Conclude in the end that President has an important role in protecting the Constitution.

Introduction

The election of new president has re-invigorated the debate about an office of the president and its role in maintaining democracy.

President's role in the Republic

Article 53 reads as 'The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him'. In spite of the expression 'directly' in Article 53 of the Constitution, **India's President merely 'reigns and does not rule'**.

The role of president is largely ceremonial in nature. This was the consequence of 42nd Constitutional Amendment that drastically curtailed the President's powers with respect to the Council of Ministers. Article 74(1) now mandates the President to act on the aid and advice of the Council of Ministers. This prevents the president becoming a power center rivalling that of prime minister.

Activist Presidents

While ordinarily, President has to act on the advice of the Cabinet, the latter does not have the right to give him an advice contrary to the provisions of the Constitution. Some presidents have asserted their power and played a pivotal role in redefining the office. Some examples are as follows:

- President Giani Zail Singh used its pocket veto power to withhold the Indian Postal Bill.
- President K R Narayanan did not accept the piece of advice of the PM, Indra Kumar Gujaral, on the issue relating to the Kalyan Singh Government in 1997, and when the matter of Mrs Rabri Devi's government during the Vajpayee regime came up.
- President A P J Abdul Kalam returned the Office of Profit Bill for reconsideration to the Cabinet.

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How President can play an effective role?

The President is not a silent institution and his role stands beyond the constitutional provisions and established conventions. The powers of the President flow from the oath he takes under **Article 60 to 'preserve, protect and defend the Constitution and submit himself to the service and well-being of people of India'**. Therefore, new norms can be devised and used to preserve the faith and belief of the common man in the system. These norms can be:

- The Constitution is silent on the limitations on the President's activities in public affairs. Public speaking of president can initiate the debate in the society.
- Use of pocket veto in the cases which are considered to be undermining the Constitution.
- Reaching out to the people of India.

Conclusion

The office of the President should not be conceived as merely a ceremonial post or a rubber stamp. Within the confines of constitution, a president can redefine the activities of his office.

2. **The increased 'Tribunalisation of Justice' having its roots in the 42nd Amendment has affected the cardinal principle of Separation of Powers. In this background, highlight its advantages and disadvantages. Do you agree that tribunals have been successful in fulfilling its objectives?** 12 ½

Approach of an Answer

- Introduction should bring out the context that why this question has been asked.
- Explain 'Tribunalisation of Justice' and its origin in the 42nd Amendment.
- Briefly, point out that tribunalisation of justice affects Separation of Powers.
- Highlight the advantages and disadvantages of tribunals.
- Argue to what extent tribunals have been successful in fulfilling its objectives.
- Take a balanced conclusion with an optimistic view of tribunals.

Introduction

The Finance Bill 2017 proposal for the dissolution of several tribunals points out the proliferation of tribunals and often their inefficient functioning.

Tribunalisation of Justice and its Origin

Tribunalisation of justice means over reliance on tribunals to resolve disputes that may follow the letter but not the spirit of rendering justice to the people.

The proliferation of tribunals can be attributed to 42nd (Amendment) Act which inserted Articles 323A and 323B by which Parliament has been authorized to constitute administrative and other Tribunals.

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Tribunalisation and Separation of Powers

Tribunals are Quasi-Judicial bodies. These are controlled and manned partly by the Executive. Consequently administrative responsibility of tribunals lies with respective ministries.

Moreover, the Constitution protects the independence of the judiciary in terms of qualifications, mode of appointment, tenure and mode of removal, which is not available to members of tribunals. They come under the control of the Executive. Therefore, it allows the Executive to perform limited rule in adjudication functions which is direct violation of principle of separation of powers.

Advantages of Tribunals

- Growing technicality and complexity demands specialized jurisprudence which conventional courts may fail to deliver. So tribunals can fill the void. Eg: National Green Tribunal.
- Speedy Justice Delivery Eg: Tax Disputes
- Unclogging the Supreme Court and High courts of routine cases.

Disadvantages of Tribunals

- In *Chandra Kumar Case* (1997), the Supreme Court declared that judicial remedies are available against the orders of these tribunals. Therefore, huge number of appeals from the tribunals has managed to enter into the High Courts and Supreme Court. Thus, clogging the justice delivery system.
- **Conflict of interest** – Government is the biggest litigant in tribunals. On the other hand, government plays an important role in the appointment, service conditions and in determining qualifications of members for tribunals.
- Lack of adequate man power.

Performance of tribunals

The performance of tribunals is at best chequered. Few like NGT (banning diesel vehicles across Delhi, protecting Yamuna flood plains), CAT (resolving of employment related disputes) could achieve some degree of success. However tribunals like Debt recovery tribunal were virtual non starters.

Conclusion

Given the delays and lack of expertise of conventional judiciary, tribunals are a necessity. Lack of judicial trappings must not be the reason to abandon the tribunals. But at the same time, tribunals should be given Independence as the court of law so that they do not violate the Separation of Powers which forms the basic structure of our Constitution.

3. **The Inter-State River Water Disputes (Amendment) Bill, 2017 is termed as “revolutionary step” in promoting Cooperative Federalism in India. Discuss its salient features. Do you think that this would lead to an amicable solution of Inter-State River Water Disputes?**

12 ½

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Approach of an Answer

- Start with a contextual based introduction.
- Bring out only the salient features of Inter-State River Water Disputes (Amendment) Bill, 2017.
- Explain in brief that this is a revolutionary step in promoting Cooperative Federalism in India.
- Argue whether this will resolve India's inter-state river water disputes.
- Write a conclusion on a positive note.

Introduction

Inter-state river water disputes hinder the cooperative federalism of our nation and provide parochial mindset making regional issues superior to national issues as happened in Cauvery river water dispute.

Constitutional Aspects

Article 262 of the Indian Constitution confers the powers on Parliament to adjudicate the inter-state water disputes. Under this provision, the Parliament has enacted two laws [the River Boards Act (1956) and the Inter-State Water Disputes Act (1956)].

Salient Features of the Inter-State River Water Disputes (Amendment) Bill, 2017

- The centre is to set up Disputes Resolution Committee (DRC) for resolving any inter-state water dispute amicably. The DRC will get a period of one year to submit its report to the central government.
- The Bill proposes to set up a Single Permanent Tribunal for the adjudication of water disputes, if a dispute is not resolved through the DRC. This tribunal can have multiple benches.
- Under the Bill, the proposed tribunal has to give its decision on a dispute within a period of two years. This period is extendable by a maximum of one year.
- Under the Bill, the requirement of the decision of the tribunal to be published in the official gazette has been removed.
- The Bill calls for a single agency to maintain data bank and information system at the national level for each river basin.

Cooperative Federalism

- DRC mechanism promotes institutional mechanism for amicable cooperation.
- Reduces delays since time period is reduced.
- Since bill removes the prospects of publication in gazette, Supreme Court interventions (through Art. 136 – Special Leave Petition) in this regard can be curtailed.
- The Bill gives the central government powers to make rules in which water will be distributed during stress situations arising from shortage in the availability of water. It promotes a culture of sharing.

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Will this amendment bill resolve the Disputes?

Permanent tribunal subsuming all existing ad hoc tribunals could be a major step towards streamlining the dispute redressal mechanism. Scientific data collection and DRC are surely promising ideas. However they alone will not be able to address the different kinds of problems—legal, administrative, constitutional and political—that plagues the overall framework. A comprehensive policy and relook is the need of the hour.

Conclusion

As water stressed country, urgent steps must be taken so that water disputes are solved timely and equity of water supply is ensured.

4. “The Governor is not an ombudsman for the Legislature”. In the light of this statement, critically analyze the role of Governor enumerated in the Constitution and by various judgements. 12 ½

Approach of an Answer

- Briefly write the context in the introduction that why this question has been asked.
- Highlight how the role of governor has been clarified in the wake of recent SC judgement.
- Give some suggestions to ensure the proper functioning of post of Governor.
- Write a conclusion.

Introduction

Supreme Court in Arunachal Pradesh judgment has clarified the role and powers of Governor especially his discretionary powers.

Role of Governor

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister.

Art. 163 of the Indian Constitution mandate the governor to act on the aid and advice of the Council of Ministers. At the same time, it also envisages the possibility of the governor acting at times in his discretion. So, the Governor claiming discretionary powers under Article 163 of the Constitution had ordered the advancement of the session in the Arunachal Pradesh.

But the Supreme Court ruled the following in this case:

- The constitutional role of the Governor is the **titular head of the State Executive**.
- Governor is not an elected representative but only an **executive nominee whose powers flow from the advice of the Cabinet**.

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- The court held that what happens within the four walls of a political party is none of the Governor's concern. "The Governor must remain aloof from any disagreement, discontent or dissension, within parties. The activities within a party, confirming turbulence, or unrest within its ranks, are beyond the concern of the Governor. The Governor must keep clear of any political horse-trading and even unsavory political manipulations".
- A Governor cannot use his discretionary powers to run a parallel administration challenging the existence of an elected State government.
- The Governor is bound by the "aid and advice" of the elected Council of Ministers as the default rule. While he has the discretion to act on his own in certain matters, those matters must be specified "by or under the Constitution".
- In case a "remarkable situation" arises in the political spectrum of the State, the Governor's duty is only to report to the President and wait for a decision.
- A Governor can act in his own discretion if his actions are justified by or under the Constitution... but the Governor's exercise of this discretion would be open to challenge where it can be shown to be perverse, capricious, fallacious, extraneous or for a motivated consideration.

Conclusion

The judgment reduces the role of Governor as a mere figurehead at the apex of state administration. It is important to look at some ways to improve the working of this office so that Governor can act as a bulwark against abuse of power by an elected State Government.

5. **Comment on the recent amendments to Representation of People's Act (RPA), 1951 that are aimed at significant changes for bringing transparency in political funding. Do you think that state funding of elections is the panacea to control black money in politics?**

12 ½

Approach of an Answer

- Start with a contextual/fact based introduction.
- Highlight the amendments to Representation of People's Act (RPA), 1951.
- Discuss to what extent these amendments will bring transparency in political funding.
- Argue whether the state funding of elections is the panacea to control black money in politics.
- Conclude with the Law Commission recommendation on state funding of elections.

Introduction

Non-accounted electoral funding is the starting point of vicious corruption cycle. Association for Democratic Reforms (ADR) reported that around 69% funding of six major parties comes from undisclosed sources. Given the magnitude of the problem, Budget 2017 tried addressing the issue.

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Proposed amendments to RPA act

- Maximum amount of cash donation, a political party can receive is reduced to **Rs. 2000**.
- Political parties, however, will be entitled to receive donations above this limit by cheque or in digital mode from their donors.
- Amendment to the Reserve Bank of India Act to enable the issuance of electoral bonds in accordance with a scheme that the Government of India would frame in this regard.
- Exemption from payment of income-tax to the political parties would be available only if they fulfill these conditions.

Effect of these reforms in dealing with political funding

Though the intent of the amendments is a necessary step in the right direction yet they are by no means can be labeled as fully effective because of the following reasons:

- Many political parties are likely to strive to accept cash endowments below Rs. 2,000 only; these will not be required to be reported to the Income Tax Department or to the EC of India.
- As donations received through electoral bonds are exempt from being included in the annual reports of political parties to the IT Department or the Election Commission of India, these amounts will also not be reported.
- There are loopholes in the electoral bonds. While the identity of the donor is captured, it is not revealed to the party or public. So transparency is not enhanced for the voter.

State Funding of Elections

Recently, Prime Minister has raised the possibility of State Funding of Elections in India. The idea of state funding of elections is a concept designed to reduce corruption by funding elections with government money as opposed to individual campaign contributions. This concept was supported in varying degrees by Indrajeeth Gupta Committee and 2nd ARC.

State funding may also enable outsiders to the party-political system, who are currently daunted by the criminalisation of electoral funding, to contest polls.

In theory, State funding would cut out money power from the equation, however in practice things may not work out so linearly. India collects only about 16% of GDP as taxes given these constraints, the public resources have to be channeled towards basic services. While State funding may cut out the black money component, candidates who take the cash may also supplement it with their own money, which may be black money.

Conclusion

Given the lack of probity and transparency in public life and without key reforms in other areas such as decriminalization of politics; introduction of inner party democracy; electoral finance reform; transparency and audit mechanisms; and

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stricter implementation of anti-corruption laws, moving towards state funding of elections may not produce ideals of clean elections. Even the Law Commission in its 255th Report was not supportive of the idea of complete state funding of elections

6. The privileges of legislatures are often at odds with the fundamentals of democracy it seeks to protect. Examine the statement in the context of recently use of privileges by Karnataka Assembly. 12 ½

Approach of an Answer

- Start with a contextual/historical based introduction.
- Write in brief the privileges to legislature as per the constitution.
- Why these privileges were given to legislature and how it has been at odds with the fundamentals of democracy.
- Give the possible suggestions to prevent the misuse of privileges by the legislatures.
- Come up with a balanced conclusion.

Introduction

The recent Karnataka Assembly's resolution to sentence the editors of the newspapers brought into focus the misuse of privilege legislations.

Privileges to Legislature

Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members.

Articles 105 and 194 of the constitution conferred certain privileges both individually and collectively. Article 105 mentions two privileges:

- Freedom of speech in the Parliament; and
- Exemption from liability to judicial prosecution "in respect of anything said or any vote given" in a House or any committee.

However with regard to other privileges they would be same as defined by British House of Commons. Privileges were further reinforced by Code of Civil Procedure, 1925.

Why are they necessary?

Privileges of legislature are the milestones of democracy in its struggle to free representative and responsible institutions from the burdens of (a) feudal privileges and/or (b) arbitrariness of an authoritarian executive.

They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities.

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How it is at odds with the fundamentals of Democracy?

However, the uncodified nature (except the freedom of speech in the legislature) and the ambiguous nature of the provisions often lead to misuse of the privileges as happened in the recent Karnataka assembly. Such incidences do point out the wide powers of the legislature to encroach upon the fundamental rights of free speech and expression which are sacrosanct of any modern democracy.

Given the nature of provisions, even judiciary in the famous **M.S.M. Sharma vs. S.K. Sinha** and in **Keshav Singh's cases** reaffirmed the position regarding **Freedom of Speech being subservient to legislative privileges**.

Suggestions

The absence of codification gives House the freedom to decide when and how breach of privilege occurs. To dispel the ambiguity National Commission to Review the Working of the Constitution (NCRWC) in its report in 2002, suggested that privileges be **“defined and delimited.”** But legislatures have been reluctant, as once privileges are codified they will be subject to judicial scrutiny.

Conclusion

The time has come for the legislature to codify privileges and for the higher judiciary to lay down the limits of penal action for breach of privilege.

7. **“Regulatory Institutions in India have not attained the kind of maturity that is needed for the emerging economy.” In the light of this statement, critically comment on the issues being faced by the regulatory bodies in India.**

12 ½

Approach of an Answer

- Start with a general introduction about the regulatory institutions.
- Write in brief the need for such regulatory institutions.
- Bring out the issues faced by regulatory bodies along with examples if possible.
- Come up with the recommendations of 2nd ARC or FSLRC on improving the functioning of regulators.
- Conclude in the end by highlighting the importance of robust regulatory institutions in India.

What are Regulatory Authorities (RA)?

Regulatory authorities are independent entities which are accountable for exercising autonomous authority over some area of activity in a regulatory or supervisory capacity. It is established by legislative act and they also perform quasi judicial functions.

Need for Regulatory Institutions

Post-LPG Reforms, a plethora of structural adjustments were made to regulate the newly liberalized economy. This has given rise to various regulatory bodies to serve various purposes as follows:

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- To check anti-competitive practices or prevention of market failure. Eg: CCI, SEBI, RBI.
- To ensure fair play and consumer protection. Eg: RERA
- To prevent negative externalities. Eg: CPCB.
- To promote the public interest by ensuring fair access, non-discrimination and affirmative action. Eg: NABARD

Issues faced by the Regulatory Bodies

However, regulatory institutions in India face several issues which impede overall business environment

- Too many regulatory authorities regulating the same sector and thus overlapping function. Eg: To regulate Civil Aviation, there are four regulators - AAI, AERA, DGCA, BCAS.
- Our RAs are plagued by poor capacity especially in data collection and seldom in tune with best practices of the world.
- Effective RA requires directors who are independent and preferably apolitical, however of them are manned by retired IAS officers who lack necessary expertise.
- Accountability of RA is a big causality in the present structure. Though minister is not responsible for functioning of RA, he is held accountable in the parliament through questions.
- Rules of law making of RA are largely framed by delegated legislation which raises many accountability and legitimacy issues

Suggestions

- Merging of RA is an urgent requirement as suggested by FSLRC (Unified Financial Agency)
- The 2nd ARC recommended ways to strengthen legislative oversight:
 - Regulators should be present before the Parliamentary Committees to answer questions.
 - Their recommendations should be scrutinised by sector-specific committees.
- The 2nd ARC also recommended the need for greater uniformity in the terms of appointment, tenure and removal of various regulatory authorities.
- Punchhi Commission has suggested for the setting up of independent regulators to oversee the functioning of all regulators.

Conclusion

India liberalized its economy 26 years ago. But many of its institutions - including regulatory agencies - predated that era. That gap needs to be narrowed without delay. Matured economies need robust regulatory authorities which can rise up to the challenges of ever increasing globalized economy.

8. Nagaland has been granted asymmetrical status under Art. 371(A) which provides for its autonomy. Discuss the recent controversy surrounding the reservation of women in the light of this Article. 12 ½

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Approach of an Answer

- Start with a contextual based introduction.
- Write in brief how Nagaland is having an asymmetrical status under Art. 371(A).
- Highlight the clash between Naga customary laws and constitutional provisions.
- Argue that gender justice should override traditional customs and laws.
- Write a balanced conclusion highlighting interim SC order.

Introduction

Recently, Nagaland has witnessed violent protests regarding the implementation of 33% reservation for women in urban local bodies. The issue points out the conflict between Naga traditional values and progressive gender justice constitutional provisions.

Genesis of Art. 371(A)

The roots of special provisions of Art. 371(A) is in the 16 point agreement between Government of India (GoI) and Naga People Convention in 1960 which facilitated in the creation of state of Nagaland. Consequently, Art. 371(A) of the constitution secures a special status to the state based on distinct political and cultural structure. It also ensured that no Act of Parliament shall apply to the state in respect of customary laws, religious and social practices, ownership and transfer of land and resources.

This special status given to the Nagaland makes it asymmetrical with respect to other states in Indian Federalism.

Clash of Art. 371(A) and Art. 243(T)

Art. 243(T) provides for 33% reservation of seats for the women in urban local bodies. However, it has been argued that urban local bodies are not part of the traditional Naga society. ULBs are constitutional bodies to which customary Naga laws cannot be applied.

Naga women are traditionally debarred from landowning rights. Though highly educated (92%), political participation is abysmally low. However, correcting this asymmetry is an arduous task since all male tribal traditional bodies argue that it is an infringement upon Naga tradition and customs as protected under Article 371(A) of the Constitution. They also argue that giving decision making powers to women would upset the Naga society.

Gender Justice

However, political empowerment of women cannot be held hostage to traditional patriarchal values and old legislations. Women reservation is necessitated in patriarchal societies for reasons of inequalities in the society. Civil society groups like Naga mothers association have to be encouraged in their fight for achieving political empowerment.

Moreover, reservation of women should not be seen as charitable grant but rather an impetus towards creating a level playing field in policy making and decision making.

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Conclusion

In the background of interim directive by the Supreme Court on this case, the elections to the urban local bodies should be held giving 33% reservations to women.

9. The recently notified Prevention of Cruelty to Animals Rules, 2017 has raised certain constitutional issues. Elaborate those issues. How far the Directive Principles of State Policy (DPSPs) can be implemented over Fundamental Rights (FRs)? 12 ½

Approach of an Answer

- Bring out the context in the introduction.
- Elaborate the constitutional issues raised by these rules.
- Discuss to what extent DPSPs can be implemented over FRs.

Introduction

The Prevention of Cruelty to Animals Rules, 2017 was recently notified to regulate the animal markets and curb trans-border smuggling of cattle in accordance with Art. 48 of the Indian Constitution.

Constitutional Issues

These rules have raised some important constitutional questions which made the Madras High Court to put stay on the operation of these rules. These issues are:

- a) The Rules made are considered to be **ultravires the parent Act** as the primary Act permits killing of animals for the purposes of food. The Prevention of Cruelty to Animals (PCA) Act also permits slaughter of animals as well as sale of animals for slaughter.
- b) The rules infringe one's fundamental right to practise trade and business guaranteed under **Article 19(1)(g)**.
- c) The Rules also infringe one's **right to livelihood**, which emanates from **Article 21**.
- d) The Rules also impact **one's food choices**. In various Supreme Court judgments, it has been held that what one eats is one's personal affair and forms part of **right to privacy under Article 21**.
- e) Referring to the seventh schedule to the Constitution, the issues concerning markets, fairs and preservation or protection and improvement of livestock fall within **entry 28 and 15 of the State list**. Therefore, only the State legislature and not the Centre is empowered to enact laws and frame statutory rules on those subjects.

Relationship between DPSPs and FRs

The justiciability of Fundamental Rights on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the Constitution.

The conflict between the two is finally settled out in Minerva Mills Case, 1980 in which the Supreme Court held that:

- a) Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.

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- b) Directive Principles were made subordinate to the Fundamental Rights.
- c) Fundamental Rights conferred by Article 14 and Article 19 were accepted as subordinate to the Directive Principles specified in Article 39 (b) and (c).

So, presently, the Parliament can amend the Fundamental Rights for implementing the Directive Principles as long as the amendment does not damage or destroy the basic structure of the Constitution.

10. Maneka Gandhi Case, 1978 is one of the landmark judgments that gave a new perspective to the Part III of the Constitution and brought a shift in the approach of the judiciary. Elaborate. 12 ½

Approach of an Answer

- Start with a general introduction about the Maneka Gandhi case.
- Discuss how this case has given a new perspective to the part III of the Constitution.
- Elaborate the shift in the approach of judiciary after this case.
- Write a conclusion highlighting that this case has been one of the landmark judgements.

Introduction

The decision of the Supreme Court of India in Maneka Gandhi case was an 'inflexion point' in the court's movement towards a broader interpretation of the fundamental rights guaranteed by the Constitution.

New Perspective to the Part III of the Constitution

The case was a turning point in the Supreme Court's interpretation of Art. 21. The court moved from a passive to an active approach in construing the right to life under the Constitution. Thereafter, the expression of 'personal liberty' is of widest amplitude which included wide range of un-enumerated rights.

Derived from Article 21, these rights cover areas such as the rights of prisoners, protection of women and children and environmental rights. The list of various such rights covered under Art. 21 have been listed in ***Unni Krishnan vs. State of A.P.*** such as:

- The right to go abroad;
- The right to privacy;
- The right against solitary confinement; etc

Shift in the approach of the Judiciary

The right to life and personal liberty under Article 21 reads as 'No person shall be deprived of his life or personal liberty except **according to procedure established by law.**' The phrase 'procedure established by law' was the subject of profound debate. This has prevented the courts to question any law – no matter **how arbitrary or oppressive** - as violating the right to life or personal liberty if the law had been suitably passed and enacted. This view was upheld in ***K. Gopalan vs State of Madras Case, 1950.***

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But the majority judgement in Maneka Gandhi case held that a law made by state which seeks to deprive a person of his personal liberty **must prescribe a procedure for such deprivation which must not be arbitrary, unfair, or unreasonable**. After this judgement, it effectively meant that '*procedure established by law*' under Article 21 would have the same effect as the American concept of '*Due process of Law*'. This is based on the simple premise that arbitrary law is no law.

Conclusion

The right to life and personal liberty under Article 21 since this judgment has gradually become a repository of human rights and fundamental freedoms in India over the last four decades.

11. Lok Sabha rather than the Rajya Sabha epitomizes the Parliament in India under the framework of Parliamentary Democracy in India. Assess the veracity of the statement in the context of Parliament's responsibility to ensure the accountability of the government to the Parliament. **12 ½**

Approach of an Answer

- Start with a general introduction about the Parliament or contextual based introduction.
- Argue that how Lok Sabha epitomizes the Parliament in India in ensuring the accountability of the government.
- Discuss the importance of Rajya Sabha especially in the present context.
- Write a balanced conclusion by highlighting the importance of both houses in Parliament.

Introduction

Article 79 of the Indian Constitution provides for a bicameral Parliament 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.

How Lok Sabha epitomizes the Parliament in India?

Lok Sabha has some features exclusively held by it which make it the cornerstone of Parliamentary democracy. Such features are:

- Art. 75(3) provides for the council of ministers to be collectively responsible to the House of People. Thus, only Lok Sabha is empowered to remove the council of ministers by passing a no-confidence motion.
- Art. 110 gives complete powers to Lok Sabha with respect to Money Bill matters from its introduction to its passage.
- Voting on the demands for grants is the exclusive privilege of the Lok Sabha whereas Rajya Sabha can only discuss the budget.
- Higher representation of Lok Sabha in the parliamentary committees that ensures the government's accountability.
- A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.

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- There are many other matters such as joint sitting, financial bills, adjournment motion where Lok Sabha enjoys more powers than Rajya Sabha.

All these exclusive features seemed to believe that Lok Sabha epitomizes Parliament in India.

Relevance of Rajya Sabha in ensuring the accountability of the government

At the same time, the Rajya Sabha also ensures the accountability of the government to the Parliament especially in the present context.

- Regionalisation of the party system has invested the Rajya Sabha with a greater potentiality.
- The Rajya Sabha has equal, rather veto power, powers with Lok Sabha in the federally important matters of constitutional amendment. This was evident in the passage of **Goods and Service Tax (GST) Constitutional Amendment**.
- Amendment in the 'Motion of Thanks' for two successive years enforces moral accountability on the government.
- The ruling party having majority in the lower house without any significant opposition has made the Rajya Sabha more relevant for keeping checks and balances on the government.

Conclusion

Parliament connotes a broader sense of democracy that describes the relative role of both houses. In the present context, Rajya Sabha can be considered equal to Lok Sabha in ensuring the accountability of the government to the Parliament.

12. Public Accounts Committee (PAC), the “mother of all Parliamentary Committees” has been reduced to being a toothless watchdog. Comment on the effectiveness of PAC in holding the executive accountable to the Legislature.

12 ½

Approach of an Answer

- Introduction should bring out the context that why this question has been asked.
- Discuss in brief that how PAC has been the “mother of all Parliamentary Committees”.
- Highlight how PAC has been reduced to being a toothless watchdog.
- Argue on the effectiveness of PAC in holding the executive accountable to the Legislature.
- Bring out some suggestions to improve the functioning of PAC
- Conclude in the end with the importance of PAC.

Introduction

The Public Accounts Committee (PAC) has called the RBI Governor to ask questions on the decision making process ahead of the demonetization announcement. This has generated interest in the significance of public account committee.

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Genesis

The Committee on Public Accounts was first set up in 1921 in the wake of the Montague-Chelmsford Reforms. Post independence, the Committee became a Parliamentary Committee functioning under the Speaker with a non-official Chairman.

PAC as the “mother of all Parliamentary Committees”

- It ensures the financial accountability of the executive to the legislature which is the bedrock of the parliamentary form of the government.
- It keeps a vigil on the spending and performance of the government.
- The committee bring to light inefficiencies, wasteful expenditure and indiscretion in the implementation of policies and programmes approved by Parliament.
- It also makes recommendations to streamline the administration for efficient, speedy and economical implementation of policy.
- PAC has brought into light certain cases where parliamentary authority on administrative tax has been diluted by the executive.

Toothless Watchdog

In spite of being the “mother of all parliamentary committees”, it has been reduced to a toothless watchdog because of the following reasons:

- Reports are generally post mortem in nature. Moreover, action taken reports are often vague.
- The lack of technical expertise also hinders the PAC’s examinations.
- PAC’s procedures are not open to the media or to the public.
- Most often PACs feel that their reports are not being taken seriously. Consequently, bureaucracy has developed thick skin against the recommendations
- The members are elected for one year seldom helping in developing of expertise.
- The members selected by parties for selection to Committee are not chosen on the basis of merit, which hampers effective functioning of the committee.

Suggestions

- A broad platform should be built to share and learn from the experiences of PAC functioning and discuss, debate and find solutions to enhance the level of functioning.
- They should be given ‘Constitutional Status’ similar to that of the Election Commission and the Comptroller and Auditor General.

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- The panel should also be given more teeth to efficiently monitor the government spending. Eg powers to examine Public-Private Partnership projects.
- PAC should be assisted by technical expertise committee.
- It should have powers to punish the official who fail to turn up before the committee.

Conclusion

PAC in spite of its several weaknesses helps in bringing important issues to public and creating public discourse. As the committees have evolved over time, there is a need to look at the challenges faced by the committee and find solutions so that parliament oversight of the executive is ensured in a better manner.

13. What do you understand by 'Pressure Groups'? Elucidate the importance of pressure groups for India along with suitable examples. 12 ½

Approach of an Answer

- Directly start with the definition of Pressure Groups.
- Bring out the importance of pressure groups for India.
- Highlight various examples.
- Write a conclusion.

Introduction

The term 'Pressure Group' refers to any interest group whose members because of their shared common attributes make claims on the other groups and on the political process.

Pressure groups do not make policy decisions but rather try to influence policy makers by external pressure tactics like Electioneering (Placing in public office persons who favour their interests), Lobbying, Propagandizing etc.

Importance of Pressure Groups for India

Post-Independence, pressure groups activity was limited due to dominance of single political party over government for long time. However, today their role is presumed to be of constructive and democratic.

- They help in **giving voice to the voiceless** by mobilizing marginal sections and aid in articulation of their demands collectively. Eg: Safai Karmachari Andolan led by Bezwada Wilson played a key role in pressurizing the government in enacting prevention of employment in manual scavenging. Similarly, Mazdoor Kisan Sangathan played an active role in the passage of RTI.
- Pressure groups help governments in being informed about the public opinion between elections. Eg India Against Corruption led by Anna Hazare.

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- Apart from promotion of interests, pressure groups also act as interest groups which protect the interests of the sections of the society they represent. Eg: All India Kisan Sabha, AITUC and student groups like ABVP and NSUI.
- Moreover, various business groups organize themselves into pressure groups to lobby for favorable policies and also aid in policy making by providing critical inputs. Eg: FICCI, CII, ASSOCHAM.

Conclusion

Pressure groups have an immense role to play in building a true pluralistic and democratic society.

14. Both the constitutional bodies, Inter State Council (ISC) and Finance Commission (FC), operationalize Part XI and XII of the Constitution that ensure political decentralization and appropriate financial devolution. Elaborate. 12 ½

Approach of an Answer

- Start with a general introduction by rewriting the question in different form.
- Elaborate that how ISC operationalize Part XI along with certain issues.
- Discuss that FC operationalize Part XII of the Constitution.
- Write a conclusion highlighting the importance of these bodies in aiding Cooperative Federalism.

Introduction

The constitution makers have provided for constitutional bodies i.e. Inter-State Council (ISC) and Finance Commission (FC) to ensure the cooperative federalism in India.

Inter-State Council and Part XI

The Inter-State Council was set up in 1990 on the recommendations of Sarkaria Commission on Centre-State Relations. Its objective is to discuss matters on which states and union have common interest and to make recommendations on such matters.

Under Article 263 of the Constitution, the ISC is mandated to ensure better Centre-state cooperation and resolve Centre-state or inter-state issues. The effective functioning of the ISC will ensure the devolution of more real authority to the states. Even, the architects of India's Constitution saw the need for inter-governmental forums in the working of the federal system.

But in spite of the constitutional status bestowed upon the ISC under Art. 263, it has been largely underutilised. The ISC which was proposed to meet thrice a year, has met only 11 times in 26 years.

With the return of the single-party majority government at the Centre in 2014, there is a great need to empower institutions like ISC for the harmonious working of the federal structure and ensuring political decentralisation to the states.

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Finance Commission and Part XII

Art. 280 of the Constitution confers the power on the President to constitute a Finance Commission in every five years. It is required to make recommendations for the distribution of the net proceeds of taxes to be shared between the Centre and the states.

In most federal systems, there are vertical and horizontal fiscal imbalances. These imbalances are to be addressed by the Finance Commission.

- Vertical Imbalances occur because the central government has the power to levy and/or appropriate more taxes than the states. As a result, states do not have sufficient tax revenues to fund their expenditures. This is resolved by allocating some taxes from a common divisible tax pool to states. **The FFC has radically enhanced the share of the states in the central divisible pool from the current 32 percent to 42 per cent which is the biggest ever increase in vertical tax devolution.**
- Horizontal imbalances occur because states have different levels of development, income and expenditure. Some states have high incomes, and can deliver public services such as roads, schools, and hospitals from their own revenues. Others may struggle to even pay salaries of civil servants. The aim of the Finance Commission is to ensure that all states have enough resources to fund a minimum level of expenditure each year. The FFC transfers are progressive in nature i.e. states with lower per capita NSDP receive on average much larger transfers per capita.

Conclusion

Both the constitutional bodies play a significant role in ensuring political decentralisation and appropriate financial devolution to the states.

15. Elaborate the role of speaker in the passage of money bills in the wake of recent controversies. Discuss the infirmities in the Constitution in dealing with Money Bills. Also, whether there is scope of judicial review in dealing with certification of Money Bills?

12 ½

Approach of an Answer

- Introduction should bring out the context that why this question has been asked.
- Discuss the role of speaker in the passage of money bills.
- Argue whether there is a scope of judicial review after the certification of Money Bills.
- Write a balanced conclusion.

Introduction

The role of speaker in the passage of Money Bill has come into light in the background of Aadhar controversy. Aadhar Bill which contained provisions other than the matters mentioned in Art. 110(1) has been certified as money bill by the speaker.

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Role of Speaker enshrined in the Constitution

Under Article 110(1), a money bill comprise of provisions dealing 'only' with matters incidental to clauses such as imposition and regulation of any tax, payment into or withdrawal from the Consolidated Fund of India (CFI) or Contingent Fund of India.

Moreover, the speaker can certify each and every bill to be a 'money bill' capable of being enacted by Lok Sabha alone, rendering the Rajya Sabha and the bicameral legislative system redundant. And even the Supreme Court cannot question the speaker's decision since it is "final". However some anomalies are profound:

- Though the chairman of Rajya Sabha enjoys higher order of precedence than the speaker, he has no role in certification process; and
- Vague wording of the Article 110 (3) enables the speaker to declare any other bills as money bill as happened in the recent Aadhar act.

Such classification of bills as money bills has substantial implications in terms of undermining public and parliamentary deliberative processes.

Scope of Judicial review

Article 110(3) clearly states that the decision of speaker regarding money bill is final. Moreover, Article 122 prohibits courts from questioning the validity of the proceedings in parliament on the ground of any alleged irregularity of procedure not illegality (*Raja Rampal vs Speaker, Lok Sabha*).

Consequently, the opinion of the Supreme Court has been inconsistent in matters of money bills. From enjoying absolute power in certifying (*Saeed Siddiqui case and Y.K Jaiswal case*) to recent comments made while adjudicating a recent PIL where apex court declared that it would not hesitate to correct a Speaker if there are procedural illegalities.

Conclusion

Scope of judicial review does exist especially where speaker's choice is grossly illegal or disregards basic constitutional mandates. However, judiciary venturing into parliamentary proceedings can be fraught with dangers of violation of separation of power. So, it is in the interests of the sanctity of parliament to develop conventions to handle any grievances related to money bills.

16. Do you think that India should switch over from Parliamentary System to Presidential System of Government? Is it feasible? Critically analyse. 12 ½

Approach of an Answer

- Introduction should bring out the context that why this question has been asked.
- Argue whether switching to Presidential System of Government is the solution.
- Discuss about the feasibility aspect of switching to Presidential System of Government.
- Conclude with your stand.

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Introduction

In a parliamentary system, the government is headed by a Prime Minister who is the leader of the party or coalition commanding a majority in the legislature. A presidential system separates the executive from the legislature and places a directly elected President at the head of the executive branch.

Arguments against the Parliamentary Form of Government

- **Amateur Legislators:** It has created a unique breed of legislator, largely unqualified to legislate, who has sought election only in order to wield executive power.
- **Governance Issues:** For 25 years till 2014, our system has also produced coalition governments which have been obliged to focus more on politics than on policy or performance. It has forced governments to concentrate less on governing than on staying in office.
- **Collegial cabinets have proven incapable of taking decisive action when faced with urgent demands.** The result has been an inefficient, lax and demoralised administration. The cabinet is incapacitated because it is subject to a multitude of pressures from contrary directions.

Arguments for Presidential System of Government

- **Availability of 'Outside Talent':** Easier to bring talent to governance in the Presidential System.
- **Improving the Governance:** India's many challenges require political arrangements that permit **decisive action**, whereas ours **increasingly promote drift and indecision**.
- **The presidential government would be more stable — or so it is argued.** The American President is more effective because power vests in one person. The executive, being independent of the legislature, can be more single-minded in its pursuit of the national interest **free of the debilitating distractions of vested interests**.
- **Direct Accountability:** Any politician with aspirations to rule India as President will have to win the support of people beyond his or her home turf; he or she will have to reach out to different groups, interests, and minorities.

Arguments against Presidential System of Government

- **Possibility of Abuse of Power:** A presidential system centralizes power in one individual unlike the Parliamentary system which is considered to be dangerous for democracy (Distribution of Powers).
- **Does not capture the diversity of India: A diverse country like India cannot function without consensus-building.**
- **'Outside Talent':** Right from C.D. Deshmukh to T.A. Pai to Manmohan Singh to M.G.K. Menon to Raja Ramanna, talent has been coming into the parliamentary system with the added safeguard of democratic accountability, because the 'outsiders' have to get elected after assuming office.

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Feasibility Aspect

Parliamentary system forms the 'Basic structure' of our Constitution. (Doctrine of Basic Structure is propounded by the Supreme Court in Keshavananda Bharti Case in 1973). So, the system cannot be changed to Presidential System unless Supreme Court changes the Doctrine of Basic Structure.

Conclusion

The present parliamentary system has been tried and tested for nearly 70 years. Rather than change the system, why not reform thoroughly and cleanse the electoral processes?

17. Lokpal and Lokayukta Act aimed to create India's anti-corruption watchdog have not been implemented after more than three years of its passage. What are the possible reasons? Discuss how Lokpal can become an effective institution in tackling corruption when other institutions have not been successful. 12 ½

Approach of an Answer

- Start with the contextual based introduction or general introduction about Lokpal and Lokayukta Act.
- Elaborate on the reasons that why it has not been implemented till now.
- Discuss in brief that how other institution has not been successful in tackling corruption.
- Argue how Lokpal can become an effective institution.
- Conclude by saying that Lokpal is one of the tools to tackle corruption.

Introduction

The recent verdict on public interest litigation by Supreme Court criticized the Government of India for not implementing the Lokpal Act.

Lokpal Act Provisions

India being a signatory of UN Convention against Corruption needs an institution like Lokpal. In this context, Lokpal and Lokayukta Act was passed in 2013.

The Act allows setting up of anti-corruption ombudsman called Lokpal at the Centre and Lokayukta at the State-level, Lokpal will cover all categories of public servants, including the Prime Minister current and former Members of Parliament and Members of Legislative Assemblies, government employees and employees of companies funded or controlled by the central or state government.

However in spite of its laudable merits, the institution of Lokpal did not come into being even though the legislation is passed more than 3 years ago. The most important reason is that the current Lok Sabha does not have a Leader of Opposition (LoP) to sit on the selection panel. This unique situation called for an amendment changing LoP to Leader of the largest Opposition party.

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Why other institutions have not been successful?

- Courts being over-burdened failed to dispose justice speedily.
- Other institutions like CBI and CVC suffered from issues like politicization of the investigation, appointments based on patronage, lack of autonomy-both functional and financial and most importantly delay, in investigation and filing of charges.

How Lokpal can be an effective institution?

However, the utility of Lokpal as ombudsman has definite advantages over other similar institutions:

- Lokpal will have power of superintendence and direction over any central investigation. Directorate of prosecution will be under overall control of CBI director. At present, it comes under the law ministry.
- The Act specifies that CBI officers investigating cases referred by the Lokpal can only be transferred with the approval of the Lokpal.
- Lokpal specifies a time limit of 60 days for completion of inquiry and 6 months for completion of investigation by the Central Bureau of Investigation.
- Most importantly It incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending under clear time lines.
- All expenses of Lokpal shall be charged to the Consolidated Fund of India.

Way Forward

The government should make necessary amendments in the Lokpal Act to plug the deficiencies without diluting the efficacy of the Lokpal to scrutinize the affairs of the government.

Conclusion

Neither a single law nor another institution can help in reducing the corruption. It should be accompanied with inducing ethical principles based on universal morality.

18. "Introduction of GST (Goods and Services Tax) no doubt is being treated as big bang reform, but it tends to undermine fiscal federalism." In this context, comment on the changing nature of Union-State Financial Relations.

Approach of an Answer

- Introduction should bring out the context that why this question has been asked.
- Write in very brief that GST is a big bang reform.
- Discuss how GST undermines fiscal federalism.
- Highlight the changing nature of Union-State Financial Relations.
- Write a conclusion on a positive note.

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Introduction

The new Goods and Service Tax (GST) regime is introduced by way of the 101st Constitutional Amendment.

GST being a big bang reform

GST is considered a reform of far reaching consequences that would help integrate India into a single market with a standard rate of taxation. It is being treated as big bang reform even mother of all reform in financial administration.

How GST undermines Fiscal Federalism

Fiscal Federalism is quite elaborately delineated in the Seventh Schedule and Part XI of the Indian Constitution. The constitution empowers each and every state to make its own fiscal policy (taxation and expenditure). State governments are seen as equal partners by being allocated the powers of taxation in our pre-GST constitutional scheme.

But, fiscal policy will be moreover guided by the GST Council, constitutional body set up under Art. 279A (1). This is considered to undermine fiscal federalism because of the following reasons:

- Uniqueness of each state gets lost. For example: Fat tax in Kerala has to be abolished now.
- The council's decisions will require a three-fourths majority, but the Central government's votes will have a weightage of one-third of the total votes cast and thereby Union have a virtual veto power.
- The States used to have autonomy over levy of sales taxes, which, on average, accounted for 80 per cent of their revenue. But with the GST, which mandates a uniform rate, even this limited autonomy would be gone.

Changing nature of Union-State Financial Relations

With the introduction of GST, there has been change in the Union-State Financial Relations in the following manner:

- The amendment grants to both the Union and the State governments concomitant powers under Article 246(A) over nearly all indirect taxes which was not the case earlier.
- There has been an insertion of new Article 279 (A) which provides for the setting up of GST Council. It is empowered to take decisions on all important aspects of the tax.
- The amendment has made many changes in the Seventh Schedule such as:
 - The centre used to tax 'services' alone. In GST regime, entry 92C ("tax on services") from List I has been deleted so that the states as well as the centre can tax services.
 - Under State list, entry 52 (entry tax for sale in state) has been deleted.

Conclusion

GST should be seen as an example of Cooperative Federalism or a product of a pooled sovereignty, where the States have voluntarily waived some of the critical fiscal powers that they hitherto enjoyed under the Constitution.

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19. Analyze the problems that have restricted the successes of Panchayati Raj system in India? How far has the Seventy-Third Constitutional Amendment Act been successful in countering these problems? 12 ½

Approach of an Answer

- Write a general introduction or historical based introduction.
- Analyse the problems that have restricted the successes of Panchayati Raj system in India.
- Argue to what extent Seventy-Third Constitutional Amendment Act has made the PRIs as 3rd tier of self-governance.
- Give some suggestions or recent initiatives by the government to improve the functioning of PRIs.
- Conclude on a positive note.

Introduction

The framers of the Indian Constitution inserted Article 40 that directs the State to take steps to organise village panchayats as a unit of self-government.

Problems

In the light of recommendations by Balwant Rai Mehta Committee, most of the states created panchayati raj institutions by mid 1960s. However, these institutions faced several problems and could not become a unit of self-government. Some of such problems that have restricted the successes of Panchayati Raj system in India are:

- Poor attendance, particularly of women and SC/STs.
- Absence of secretarial assistance.
- Frequent dissolution by state governments for partisan reasons.
- Frequent delay of elections.
- Lack of financial autonomy.
- Entrenched caste identities.

Why amendment was required?

To address the above mentioned problems, a constitutional status was recommended by L.M. Singhvi committee. Accordingly, 73rd Amendment, 1992 added a new Part IX to the constitution titled "The Panchayats" covering provisions from Article 243 to 243(O).

The Act has given a practical shape to the Article 40 of the Constitution. Now, PRIs has been brought them under the purview of the justiciable part of the Constitution. Therefore, this is considered a significant landmark in the evolution of grassroot democratic institutions in the country.

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The Constitutional Amendment brought several provisions to address several issues like lack of uniformity, constraints of financial resources and lack of participation of women and minorities. These provisions are:

- The act provides for a Gram Sabha as the foundation of the Panchayati Raj System.
- The Act brings about uniformity in the structure of Panchayati Raj and provided reservation of seats for women and SS/ST's.
- A clear term for 5 years has been made mandatory and separate state election commission (243K) was created by the act.
- State Government needs to appoint a finance commission every five years, which shall review the financial position of the Panchayats.
- Accordingly for raising revenues (tolls, fees), autonomy was given to the panchayats.

Suggestions

Even though constitutional status was given to PRI's, they suffer from several constraints like state Government control, emergence of parallel bodies/(DRDA) and most importantly lack of political and bureaucratic will.

To overcome such challenges 2nd ARC suggested separation of functional domain for local bodies and to deal with lack of expertise, it suggested a pool of experts and specialists that could be maintained by a federation/consortium of local bodies.

Conclusion

The positive impact of the 73rd Amendment in rural India is clearly visible as it has changed power equations significantly. Moreover, the success of many flagship schemes like MNREGA, Swachh Bharat Abhiyan depends on the robustness of PRI's.

20. Laws of defamation and contempt must be seen as lingering anachronisms. Do you believe that such laws need to be repealed from the statute book in the modern era of free speech and expression? Critically analyze. 12 ½

Approach of an Answer

- Start with a contextual/historical based introduction.
- Give arguments for and against the laws of defamation and contempt of court.
- Write a balanced conclusion.

Introduction

The recent cases of defamation and contempt of court have brought into focus these laws in the modern era of free speech and expression.

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Arguments supporting Defamation and Contempt of Court

- Defamation and Contempt of Court are to be read as reasonable restrictions on an individual's right to free speech under Article 19(2).
- "The law is part of the state's "compelling interest" to protect the dignity and reputation of citizens. Also reputation of one cannot be allowed to be crucified at the altar of the other's right of free speech". (*Subramaniam Swamy vs Uoi 2016*)
- The proponents deny the argument that criminal defamation had a chilling effect on free speech. It maintained that a person would be charged for criminal defamation only if his speech had neither social utility nor added to the value of public discourse and debate.
- Mere misuse or abuse of law can never be a reason to render a provision unconstitutional.
- The right to reputation of an individual is recognised under Article 21.
- Articles 129 and 215 of the Constitution explicitly give the power to the Supreme Court and High Courts to punish for contempt of itself. Thus, the power cannot be abrogated or stultified.
- A law on Contempt of Court safeguard the judiciary's reputation, dignity and most importantly enable the courts to function.

Arguments against Defamation and Contempt of Court

- Criminal defamation (Section 499 and 500 of IPC) and Contempt of Court stifles freedom of speech and expression under Article 19(1)(a) of the Constitution even if the speech made was meant to foster public debate of matters in the public domain.
- These penal sections had been misused by those in power to settle political scores. They are used as a means to coerce the media and political opponents into adopting self-censorship and unwarranted self-restraint.
- It goes against the global trend of decriminalising crimes and institution of civil remedies. The United Kingdom, from whom India borrowed these pernicious provisions of the defamation law and contempt as well, had abolished criminal libel five years ago.

Conclusion

A balance needs to be find out between the free speech and expression and the reasonable restrictions by retaining the laws of defamation and contempt.

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