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Mains Answer Writing cum Guidance Program - 2024

Hints required to write the answers

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2024



Hints to write the Answers - MGAP 2024

27th of August

Question:1 Write in 150 Words.

It has been argued that over the years there has been a steady decline in the efficacy of Parliament as an institution of accountability. Analyse and also suggest appropriate measures to address the relevant concerns.

Approach:

- Give arguments in support of decline in the efficacy of Parliament.
- Discuss the possible reasons of impaired parliamentary functioning.
- Suggest ways to improve the efficiency of the parliament.
- Conclude with relevance of debate, deliberation and dialogue in a democracy

Hints to write the answer:

The Parliament in India was envisaged as a representative institution playing a key role in social and political unity. Being an elected body, it also has a key position in the structure of governance in India with functions ranging from law making and oversight of the executive to scrutiny of the budget.

However, in recent times there has been a lament about the decline of this body in light of the following factors:

- 50% decrease in average Parliamentary sittings between 1960 (120 days/year) to present (65-70 days/year).
- Loss of productive time and resources due to frequent disruptions.
- Frequent use of ordinances to bypass parliamentary scrutiny.
- Reduced deliberations and time spent on bills and budget.

Reasons for decline in parliamentary efficacy

- Anti-defection law and party-whips: It disincentivizes active participation of individual MPs as they have to heed to party lines to avoid disqualification.
- Executive/Government control: The Government control over the summoning of each house and the legislative business to be deliberated, hinders the envisaged parliamentary control over the executive.
- Decline in effectiveness of parliamentary committees: MPs are unable to pay attention to committees as their constituencies make a huge demand on their time. Also, no mechanism exists for regular assessment of performance of committees.
- Erosion of political ethics and professionalism because of commercialization and criminalization of politics, and loss of individual integrity.
- Lack of research staff: It hinders the ability of legislators to deep-dive into important issues and constructive deliberations in the house.
- Live telecasts and media attention: This encourages MPs to take grandstands on issues to grab undue public attention.

Following measures are required to restore the credibility of the Parliament:

- Fix minimum number of sittings: 120 for Lok Sabha, and 100 for Rajya Sabha as was recommended by National Commission to Review the Working of the Constitution.
- Advanced annual calendar of the sittings of the house, which is drawn by the Parliament itself, and not at the sole discretion of the executive.
- Adopt system of shadow cabinet where opposition MPs can assume portfolios, and hence scrutinize and track the progress in detail.
- Electoral reforms to check criminalization, use of money power, and curb the menace of fake news.
- Responsible opposition, which invests in constructive debates, and minimal disruptions to promote responsible legislation.
- Providing a role for the Election commission in deciding issues such as defection.

- Strengthening of committee system.
- Encouraging greater say of the electorate by considering measures such as right to recall.

Parliament as the highest legislative office of India owes its accountability to the ultimate sovereign – the people of India. Constructive debates, deliberations, disputes and dialogue are the soul of Indian democracy, and the parliament needs to be the flag-bearer.

OR

Question:2 Write in 250 Words

What is the role that opposition plays in a democracy like India? In this context, discuss whether our Parliament can be benefited from a shadow cabinet.

Approach:

- Discuss the role played by opposition in a parliamentary democracy.
- Define shadow cabinet and explain how India can benefit from it.
- Conclude by discussing its feasibility in India.

Hints to write the Answer:

In a democracy such as India the ruling parties or coalitions often do not represent absolute majority of voters and this means that a large number of voters have reposed trust in what constitutes the opposition upon the completion of election process. Thus, the onus of aggregating and articulating the view of people is equally a responsibility of the opposition as that of the ruling party/parties.

The opposition in such a context plays following roles:

Supervision and scrutiny of the executive through Parliament: General debates on legislations, discussion of the general budget and motions of censure, are the avenues through which the opposition subjects the policies and actions of the government to constant criticism. Public Accounts Committee and key departmentally related standing committees such as home, finance and external affairs are customarily chaired by a senior member from opposition. Opposition plays a significant role in the ad hoc committees constituted to scrutinize specific cases like the 2G probe.

- Interest aggregation: By projecting alternate preferences, values and ideologies in policy, legislation and the budget process, it presents a viable alternative to the

incumbent government and secures the interest of minorities.

- Electoral transparency: The Opposition works with mass media and civil society organizations to monitor and improve the quality of voter registration and ensures fair polling.
- Appointments: Leader of opposition plays an important role in appointment of crucial posts like the CVC and the Lokpal.

Shadow Cabinet

The Shadow Cabinet is a team of senior parliamentarians chosen by the Leader of the Opposition to mirror the Cabinet in Government. Each member of the shadow cabinet is appointed to lead on a specific policy area for their party and to question and challenge their counterpart in the Cabinet. India borrowed its parliamentary structure from the Westminster System of UK; however, it did not adopt Shadow Cabinet system. Potentially, our parliament can benefit from the system through the empowerment as well as accountability brought in by the shadow cabinet system in the following ways:

- Accountability: shadow ministers take on the real ministers more effectively and hold them accountable for their actions and policies.
- Meaningful debate on policies: India's political discourse focuses very less on policy talk. Having assigned roles to particular members would ensure that policy issues are followed up by the opposition leaders with more commitment.
- Legitimacy of opposition: It would also help voters evaluate the work of the opposition more meaningfully.
- Ministers of future: The skills of shadow cabinet leaders continue to evolve as they focus on specific ministries. Therefore, they are often appointed as ministers when their party comes to power.

The implementation of the shadow cabinet can be seen in its nascent form in states like Kerala, Goa and Maharashtra. The idea to succeed would require adjusting to Indian democracy where the parliament has multiple parties representing diverse regions.

OR

Question:3 Write in 150 Words

The crucial position accorded to the Speaker in Indian legislatures, makes it imperative to protect them from undue political pressures and incentives. Examine.

Approach:

- Introduce by highlighting the position of the Speaker in Indian Legislature.
- Discuss the instances in our polity where the Speaker of the Assembly has precipitated a political crisis by seemingly political decisions.
- Discuss the provisions and measures that can help to protect the Speaker from undue political pressures and incentives.
- Conclude on the basis of above points.

Hints to write the Answer:

The office of the Speaker occupies a pivotal position in our parliamentary democracy. The Speaker is looked upon as the true guardian of the traditions of parliamentary democracy.

The crucial position of speaker can be understood from the following points:

- The Speaker of the Lok Sabha conducts the business in house; and decides whether a bill is a money bill or not.
- They maintain discipline and decorum in the house and can punish a member for their unruly behaviour by suspending them.
- They also permit the moving of various kinds of motions and resolutions such as a motion of no confidence, motion of adjournment, motion of censure and calling attention notice as per the rules.
- The power to disqualify an MP or MLA under anti-defection law lies with the presiding officer of houses and assemblies.

In view of these, there are many safeguards in the Constitution such as security of tenure, salaries charged on Consolidated Fund of India, discussing their conduct only on substantive motion etc. to protect the office of Speaker from undue political pressure.

Though the Constitution envisages the Speaker as a neutral position but there have been numerous instances in our polity where the action of Speaker has raised concerns. For example:

- Sixteen MLAs from the ruling party in the Arunachal Pradesh Assembly and nine MLAs in Uttarakhand Assembly were disqualified by the Speaker, in 2016 despite not officially leaving the party or defying its directives, etc.
- Controversies regarding declaration of Aadhar Bill, 2016 as money bill by the speaker.

Thus, more steps are required in addition to the existing safeguards. For instance:

- Power to decide upon the question of disqualification can be entrusted to Election Commission of India.

- After getting elected as Speaker, he/she must resign from the party membership as practiced in matured democracies like UK. Also, his constituency should go uncontested in the next general election.
- Democratic conventions must be evolved through political consensus in order to ensure non-partisan actions by speaker.

OR

Question:4 Write in 150 Words

Individual Parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss. (PYQ)

28th of August

Question:1 Write in 150 words.

“Debate and discussion not only in the house, but also in the Parliamentary committees is the lifeblood of Parliament.” Elaborate.

Approach:

- Introduce by mentioning the significance of debates and discussion for the Parliament
- Discuss the importance of debates and discussion for Parliamentary committees
- Enlist the challenges that limits opportunities of debates and discussion within the houses of Parliament
- Conclude by affirming the importance of debates and discussions

Hints to write the Answer:

Parliamentary debate, discussion and deliberation are the cornerstone of a truly vibrant democracy without which a democracy becomes a body without soul. Debate and discussions are not only the primary roles of the Houses but they are also necessary for the Parliamentary Committees.

Importance of debate and discussion in the Houses can be seen as follows:

- Better Policy Formulation: With the debate and discussion many creative and diverse inputs are added to the policy and Debates and discussion gives opportunity to the

opposition to provide the Constructive Criticism which helps in removing the flaws of the policies and laws. So these helps in formulation of better Policy and laws.

- **Enhancing Accountability:** As Members of Parliament (MP) are representative of people so debate and discussion of the policies of Government, actions of Ministers and other members ensures the Accountability of members towards people.
- **Brings Credibility and Transparency:**As through the Parliamentary debate and discussion the actions of government is questioned and members need to justify their actions so it brings more Credibility and Transparency. For example, many facts came forward about the Rafael Deal and Pegasus because of debate and discussion in House.
- **Reduce Burden of Courts:** As some laws made by the Parliament are interpreted by the courts so parliamentary debates helps in the better understanding of the intention and objectives of the laws.
- **Raising issues of public interest:** Parliamentary debates and discussion is best forum to bring the attention of government on the issues of public interest. For example, Debates on the topics of farmers' protest in the House was initiated by members.
- **Covering issues comprehensively:** Laws can incorporate the needs of the aspirational sections of society when laws are made after thorough debate and discussions in the house.

Importance of the debate and discussion in parliamentary committees can be seen as following:

- **Allocation of Specific function:** The functions of the Houses of Parliament are varied, complex and voluminous so different committees focuses on the different assigned functions. For example, Public account committee examines the annual audit reports of Comptroller and Auditor General of India (CAG).
- **Adequacy of time and expertise:** Houses has neither the adequate time nor the necessary expertise to make a detailed scrutiny of all the legislative measures. Committees are made for particular function and with the help of experts in the particular matter they brings better inputs.
- **Detailed Scrutiny of Bills:** As parliamentary committees has much time so they scrutinize the bills clause by clause and it makes debates and discussion in committees necessary.
- **Inter-ministerial coordination:** Parliamentary Committees are assigned to look in demands for the grants to different departments and ministries. So to provide necessary grants, debate and discussions are needed.

Reasons for recent decrease in the debate and discussion in Houses and Committees:

1. **Decrease in Sittings of the Houses:** Sitting days in Lok Sabha have declined from an annual average of 121 days during 1952-70 to 68 days since 2000. So there is very less time left for the discussion on the particular topics.
2. **Disruptions:** As per a PRS report, the 16th Lok Sabha (2014-19) lost 16% of its scheduled time to disruptions so less working time for the fruitful debates and discussions.
3. **Fewer Bills being referred to Standing Committees:** The percentage of bills referred to

Committees has drastically reduced from 71 per cent in the 15th Lok Sabha (2009-14) to 27 percent in the 16th Lok Sabha (2014-19), and to only around 13 per cent since 2019.

4. Ignorance and Politics by Parties: Many times government try to ignore the debates and discussion on many controversial issues.

The Rajya Sabha Chairman recently said that debate, discussion and decision are hallmarks of democracy and these should not be replaced by disorder, disruption and delay in legislation. In the 75th year of Independence, having a healthy and functional Parliament that allows debate and discussion is the only mahotsav worth having – a mahotsav called Democracy.

OR

Question:2 Write in 250 Words

Use of ordinance making power to bring in governance reforms not only dilutes the accountability of executive to the legislature but also fails to generate popular consensus on the issues of national importance. Examine with examples.

Approach:

- Introduce by briefly describing ordinance making power.

Body:

- First part of the body should explain how this power dilutes the accountability of executives to the legislature.
- Second half should focus on its impact on broader national consensus. Cite relevant examples in both the cases.
- Conclude with a comment on its importance and using it only sparingly

Hints to write the Answer:

The ordinance-making powers (Article 123 and 213 of the Constitution) is the most important legislative power to be exercised by the President/Governor to deal with unforeseen and urgent matters. However, its use to bypass the scrutiny of legislature over the executive has often resulted in dilution of democratic principles.

Although, it is a part of the constitution it is criticized for diluting executives' accountability as stated below:

1. Bypasses legislature: Successive promulgation of ordinances, bypass the law-making function of the legislature. E.g., During 1970s more than 200 ordinances were promulgated by the Bihar government, without any attempt to get the bills passed by the assembly.

2. Avoids detailed scrutiny: Ordinances are often allowed to lapse and are not tabled before the Parliament. This undermines the constitutional provisions for Parliamentary scrutiny over the executive.

3. Exploited for political gains: Ordinance making power is used for political exigencies to garner electoral benefits. It defeats the intent of this constitutional provisions and gives executive a free hand to impose its agenda irrespective of parliamentary will.

4. Carrot and stick approach: Ordinances to extend the tenure of high-ranking officials days before their retirement, diminishing their autonomy. E.g., Recent extension of tenure for CBI's and ED's directors through ordinance.

It also impacts on national consensus in following ways:

1. Dilutes democracy: Legislature comprises of peoples' representatives entrusted with framing law. Ordinance denies legislature from there democratic right. E.g. ordinance for land and farm law.

2. Sporadic national policy: As ordinance are temporary and not debated upon, they give credence to whims and fancy of handful of individuals. This make such policies highly volatile and subject to change.

3. Majoritarian regime: Ordinances promulgated by the executives' runs the inherent risk of ignoring the minority (opposition) views which are equally important/relevant in a democracy.

4. Ineffective legislation: Generally ordinance are narrowly discussed within Council of Ministers and may lack broad perspective; thus, prone to inefficiency.

5. Conflict between government organs: It violates Separation of Power and creating friction between executive and legislature and also open scope for judicial intervention which can be perceived as judicial activism.

Ordinance making power is very important power of executive to handle some extraordinary situation, but it is not a parallel legislative power. Over the decades it has been used and misused several times, for it is not possible to completely insulate the domain of law from politics in a democratic setup. However, it is imperative upon the executives to sparingly use the ordinance making power and table it before the legislature.

OR

Question:3 Write in 150 Words

Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee.

29th of August

Question:1 Write in 250words.

Although holding a distinctive constitutional position, the Governor is occasionally perceived as lacking the willingness or capability to fulfill their duties in an impartial and efficient manner as envisioned by the framers of the constitution. Analyse.

Hints to write the Answer:

India is a federal constitution, however due to unique conditions of India, constitution makers decided for the post of governor as head of administration to be appointed by the President of India, holding office at his pleasure. The Governor is not the member of a party; he is the representative of the people as a whole in the State. It is in the name of the people that he carries on the administration.

Constitutional status

- ✓ The office of Governor has been discussed under Article 153 to Article 162 of the Indian Constitution.
- ✓ He is part of the federal system and has the dual role of being the constitutional head of the state as well as being the representative of the Central Government.
- ✓ The Governor performs the same duties as the President, but for the State.
- ✓ The Governor stands as executive head of a State and the working remains the same as that of the office of President of India.
- ✓ He is the constitutional head of the state and bound by the advice of his council of ministers. He functions as a vital link between the Union Government and the State Government.

Biased role and inefficiency

The Process of Appointment:

- ✓ The root lies in the process of appointment itself.
- ✓ The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day.

Abuse of Governors discretionary powers

- ✓ Governors discretionary power in appointment of chief minister when the eventful hung assembly.
- ✓ These powers have also been misused often, in favour of political parties.
- ✓ The most recent one(2018) is action taken by the governor while forming a government in Karnataka,
- ✓ Governor called a party to form the government, though it was not having a simple majority and gave some time to prove majority.
- ✓ But the Governor did not give the first preference to the other two parties with a post-poll alliance.

Misuse of Article 356

- ✓ Under Article 356, as a discretionary power, the Governor needs to submit a report to advise the President to proclaim emergency if there is constitutional breakdown.
- ✓ This power has been abused by political parties in power at centre to dismiss governments in state governed by parties in opposition.

Arbitrary Removal

- ✓ The removal of governors without justified reasons has also become a major issue. The successive Union governments in India have removed governors appointed by previous governments.

Recommendations

- ✓ Supreme Courts Judgements regarding role of governor
- ✓ One must consider the Supreme Court's verdict in B.P. Singhal v. Union of India on the interpretation of Article 156 of the Constitution and the arbitrary removal of Governors before the expiration of their tenure.
- ✓ This judgment fixed tenure for Governors could go quite a long way in promoting neutrality and fairness in fulfilling their duties, unmindful of the dispensation at the Centre.

S.R. Bommai Judgment

- ✓ In S.R.Bommai case, following the Sarkaria Commission's recommendations, the Supreme Court underlined that the breakdown of constitutional machinery implied a virtual impossibility, and not a mere difficulty, in carrying out governance in a State.
- ✓ SC said that while the subjective satisfaction of the President regarding such a breakdown was beyond judicial scrutiny, the material on which such satisfaction was based could certainly be analysed by the judiciary, including the Governors report.

Way forward

For the smooth functioning of a democratic government, it is equally important that the governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgment.

- ✓ In the current political climate examples being Goa (2017), Meghalaya (2018), Manipur (2017) and Karnataka (2018), point to the need to ensure proper checks and balances to streamline the functioning of this office.
- ✓ An agreed 'Code of Conduct' approved by the state governments, the central government, the parliament, and the state legislatures should be evolved.
- ✓ The 'procedure for appointment of governors should be clearly laid down'.
- ✓ Also conditions of appointment must also be laid down and must assure a fixed tenure for the governor so that the governor is not under the constant threat of removal by the central government.
- ✓ The Office of the Governor must have the requisite independence of action.
- ✓ 'Discretionary powers' by the Governors should be guided by the healthy and democratic conventions.

Abiding by constitutional morality, the governor must refrain from aligning himself to any political ideology. The virtue of impartiality must be withheld to ensure a free and fair election in a democracy.

OR Changing the way of learning

Question:2 Write in 150 Words

Punitive responses to sexual violence need serious rethinking, given the multitude of perverse consequences and their negligible role in addressing the actual needs of rape survivors. Critically analyse.

Hints to write the Answer:

The unchecked rise in the number of sexual violence cases against women has palced the centre and the state governments at the receiving end of widespread public backlash. And anytime there is public outrage about any such event, the government resorts to framing a law against such acts which, in nature, is harsher than the previous legislation.

Punitive responses as seen in

☒ ● The Criminal Law Amendment Acts of 2013 and 2018 introduced the death penalty for the rape of women and children.

- ☐ ● Relating speed with time, and driven by intuition, the policy response to speedy justice mandated shorter periods of investigation and trial under the CLA 2018.
- ☐ ● The same is the case with state laws be it the Shakti Bill of Maharashtra or the Disha bill from Andhra Pradesh which too provides for death penalty for the offence.

However, harsher punishments as a proxy for justice and shorter time periods for complicated processes in the guise of speedy justice presume a world entirely different from reality and the effectiveness of these laws in checking the rise of such cases and acting as a deterrent has been a subject of debate.

Problems with these legislations:

- ☐ ● Reporting of cases: The focus of the criminal justice system needs to shift from sentencing and punishment to the stages of reporting, investigation and victim-support mechanisms.
- ☐ ● Conviction rate: Harsh penalties often have the consequence of reducing the rate of conviction for the offence.
- ☐ ● Introducing harsher penalties does not remove systemic prejudices from the minds of judges and the police.

Harsher punishment deter complainants:

- ☐ ● Crime data from the National Crime Records Bureau shows that in 93.6 percent of these cases, the perpetrators were known to the victims.
- ☐ ● Introducing capital punishment would deter complainants from registering complaints.

Steps that should be taken:

Making the system accessible to women:

- ☐ ● The system's misogyny is only made apparent when women hesitate to file complaints against sexual violence, and face harassment when they do step into a police station.
- ☐ ● So reforms at this stage become the need of the time.

Speedy trial at the cost of efficiency:

- ☐ ● The push for speedy investigations in such a scenario puts undue pressure on an already overburdened system and sets the criminal justice system up for injustice.

Understaffed judiciary:

- ☐ ● The ratio of judges to the people is pitiable – 19 judges per 10 lakh persons.
- ☐ ● The pendency rate of rape cases is extremely high: 87.5% of cases under the IPC and 90% of cases under the POCSO. So the courts need to be more efficient by making appointments to various posts.

Rehabilitation:

- ☐ ● The social stigma and the prejudice that the rape survivors face is the biggest hurdle they face in the way of complete recovery.
- ☐ ● This leads to deep psychological scars and it is something that the survivors never recover from.

So there is an urgent need to make provisions for their rehabilitation in these bills. Just punishing the guilty is only halfway to the achievement of justice. Instead of the noose acting like a deterrent, the processes have been stymied by apathy and lower accountability for sexual violence continues to be elusive. It is time we realised that the cry for harsher punishments obfuscates the more difficult problems in the criminal justice system, and they need to be addressed urgently

OR

Question:3 Write in 250 Words

Define the concepts of “Doctrine of essentiality” and “Doctrine of Principled Distance,” and elucidate how the Supreme Court has played a significant role in upholding the principle of secularism in India, supported by appropriate examples.

Hints to write the Answer:

The doctrine of essentiality has evolved to protect the essential or integral religious practices that do not violate any fundamental right. India being a secular country, has discrete religious beliefs and to deny any is to violate the freedom of religion. The doctrine of "essentiality" was invented by a seven-judge Bench of the Supreme Court in the 'Shirur Mutt' case in 1954.

☒ ☒ • In the Ayodhya case 1994, the Constitution Bench had ruled that "A mosque is not an essential part of the practice of the religion of Islam and namaz (prayer) by Muslims can be offered anywhere, even in the open."

☒ ☒ • In the Sabarimala case 2018, the Supreme Court has referred the case to a larger 7 judges constitutional bench to re-evaluate the "essential religious practice test engaged with whether untouchability, manifested in restrictions on entry into temples, was an "essential part of the Hindu religion".

☒ ☒ • The cases of two Parsi women married to non-Parsi men to enter the Tower of Silence and other religious places and a plea seeking entry of Muslim women into mosques are some other examples that refer to the doctrine of essentiality.

Experts of constitutional law have argued that the essentiality doctrine has tended to lead the court into an area beyond its competence and given judges the power to decide purely religious questions.

The doctrine of Principled Distance means the State is not strictly separate from religion, but it maintains a principled distance from religion. Any interference in religion by the State has to be based on the ideals laid out in the Indian Constitution. In this context, the Supreme Court has identified secularism as a basic structure in the SR Bommai case.

☒ ☒ • SC also interpreted secularism in the Indian context to refer to equal/principled distance from all the religious faiths. The concept of Sarva Dharma Sambhava was stressed upon, where the State could also interfere with the religious practices wherever required

like the Hindu Marriage Act, Uniform Civil Code etc.

☐ ☐ ● It held that ours was a tolerant society, and though the State does not have any religion, it gives equal treatment for all the religious faiths.

☐ ☐ ● Also, it clarified the secularism does not intend to create an atheistic society without any religion but a healthy co-existence of all the religions.

There have also been interpretations of secularism as a way of life and most of the interpretation has been circled around Hinduism. But, ours being a multi-religious society, needs to be taken into account. To date, there is no single clear definition for the secularism of the Indian State. It's high time now that an all-encompassing interpretation of the nature of the Secular State of India needs to be come up with to avoid certain elements taking advantage of loopholes in this aspect.

OR

Question:4 Write in 150 Words

What are the conditions that warrant the President of India to declare a National Emergency? What are the repercussions when such a proclamation remains in effect?

Hints to write the Answer:

A country faces threats to its security both from outside and inside. The Union Government requires additional powers to deal with such situations called emergencies. In a federal government, the need for such emergency provisions is even greater as the federal government, by virtue of sharing powers with the state governments, enjoys relatively limited powers. Part 18 of the Constitution, from Articles 352 to 360 deals with emergency.

Circumstances for the National Emergency to be proclaimed:

☐ ● National Emergency is dealt in Article 352.

☐ ● An emergency due to war or external aggression or armed rebellion is called National Emergency.

☐ ● By the 44th Amendment Act the expression "internal disturbance" was replaced by the term "armed rebellion".

☐ ● This type of emergency can be declared by the President if he is satisfied that the security of India or any part thereof is threatened or is likely to be threatened.

☐ ● The President can declare such an emergency only after the written advice of the Cabinet.

☐ ● This provision ensures that the Prime Minister, without the approval of the Union Cabinet can not recommend it for proclamation.

☐ ● Every such proclamation of emergency has to be approved by both the Houses of Parliament by absolute majority of the total membership of the Houses as well as 2/3rd majority of members present and voting within one month.

☐ ● Once approved by the Parliament, the emergency remains in force for a period of six months from the date of proclamation.

Consequences of National Emergency:

- ☒ ● The declaration of National Emergency has far-reaching effects both on the rights of individuals and the autonomy of the states.
- ☒ ● According to Article 353, during the operation of national emergency the executive power of the centre extends to directing any state regarding the manner in which its executive power is to be exercised.
- ☒ ● The tenure of the Lok Sabha extends by a period of one year at a time.
- ☒ ● But the same cannot be extended beyond six months after the proclamation ceases to operate.
- ☒ ● The tenure of State Assemblies can also be extended in the same manner.
- ☒ ● During emergency, the President is empowered to modify the provisions regarding distribution of revenues between the Union and the States.
- ☒ ● However, all such orders need to be placed before each House of Parliament for approval.
- ☒ ● The Fundamental Rights under Article 19 are automatically suspended and this suspension continues till the end of the emergency.
- ☒ ● According to the 44th Amendment Article 19 can be suspended only in case of proclamation on the ground of war or external aggression and not on ground of armed rebellion.
- ☒ ● Other fundamental rights may also get suspended except Article 20 and 21.
- ☒ ● The combined effect of the operation is that there is an emergence of a full fledged unitary government.

The provisions of emergencies are provided keeping in view the security and stability in the nation. But they must not be used for political gains or disturbing the democratic structure of the nation. They are meant only to maintain the constitutional machinery only in cases of real crisis situations.

30th of August

Question:1 Write in 250 Words

While it has been argued that the judiciary should be brought under RTI, a balance also needs to be maintained between independence of the judiciary and the right of people to know. In the light of this context, Analyse the pros and cons of bringing judiciary under the ambit of RTI. Conclude with suggestions for the same.

Approach:

- Introduce the debate around the issue of bringing judiciary under RTI
- Analyse the pros and cons of bringing judiciary under the ambit of RTI
- Conclude with suggestions for the same.

Hints to write the answer:

Honorable Supreme Court has referred to a five bench judges Constitution Bench, the question whether disclosure of information about judicial appointments, transfers of HC judges amounts to interference in judicial independence. Amidst the controversy of annulment of NJAC by the Supreme Court, the debate of bringing judiciary fully under the ambit of RTI is gaining ground.

Some of the rationale and benefits in bringing judiciary under RTI can be enumerated as: Appointments through proceedings of the collegium are absolutely opaque and inaccessible for public. RTI umbrella over judiciary will bring in transparency and will curb nepotism in appointments. It will also curb instances like superseding of the senior judges for promotions etc.

- The law of contempt has been often misused to punish outspoken criticism and exposure of judicial misconducts. Even an FIR cannot be registered against the judges under the Prevention of Corruption Act. RTI will ensure accountability and will act as a key tool in eliminating misconduct by judges.
- While acting on the premise of judicial independence, judges expediently exclude themselves from disclosure of any kind of information to public. If brought under RTI, such disclosure will create public trust.
- RTI will help in curbing red-tapism and will ensure rationality and logic in judgements. However there are some cons of bringing judiciary wholly under RTI.
- There is apprehension that it might undermine the independence of judiciary and the decisions as judges would be apprehensive of public pressure
- Apprehensions that RTI disclosure may affect credibility of the decisions and free and frank expression of judges.
- The disclosure of personal details of judges might be a cause of concern for national security.
- Sometime details of appointments are closely linked with personal details like medical conditions, disclosure of which will undermine the right to privacy.
- Some of the RTI applications may be frivolous and politically motivated.

However, it needs to be noted that judiciary is not an exemption under RTI. Judiciary plays a dual role of administrative functions and the other of judicial decision making and most of administrative functions are under ambit of RTI. The judicial decisions can also be brought under RTI but there is requirement of drawing balance between independence of judiciary and the fundamental right of right to know of people so that judiciary remains people last hope in democracy.

OR

Question:2 Write in 150 Words

“There is a thin line between judicial overreach and judicial activism”. How judicial overreach has been distorting the notion of separation of power. Substantiate with examples,

Approach:

- Introduction: Define the two terms: Judicial overreach and Judicial activism. Briefly define the meaning of given statement.
- Discuss the concept of the Separation of Powers and the need for the concept in a Parliamentary Democracy.
- Explain how judicial overreach is distorting the notion of the SoPs.
- Give Way Forward.

Hints to write the Answer:

The term judicial activism signifies a pro active judiciary. It do not go rigidly within the text of the statute passed by legislature rather, it is the use of judicial power broadly to provide socio-economic justice. Judicial overreach or judicial over-activism on the other hand is the instances of allegation over the judiciary when it interferes within in the functional domain of other institutions like executive or legislature. Thus there is a very thin line in the interpretation of the two. This interference of the judiciary in form of judicial executivism or judicial legislation distorts the notion of separation of power which intends to provide institutional autonomy to the three branches of government and provides mutual checks and balances in Indian setting. The judicial pronouncements on the SoPs, from Ram Jayawa case (1955) to I R Coelho case(2007), varied from no constitutional basis to making it a part of the “basic structure of constitution”.

Methods Used for Judicial Overreach

- Excessive use of Art.142 to provide complete justice.
- PILs: M C Mehta Case.
- Judicial review: NJAC Case.
- Interpretation of Constitution: I R Coehlo Case.
- Judge-made-Laws: Vishakha Guidelines
- Notion of continuous mandamus leading to judicial governance.

How Judicial Overreach Distorts the Principle of SoPs

If any organ of the state encroaches upon the essential functions of other organs then it will be termed as the distortion of the principle of the SoPs.

- **Impact on Executive:**

o Constant judicial interpretation and adding dynamism to it leads to confusion and chaos over policies. Judiciary is not equipped with technical expertise to decide policy matters and in the cases of Judicial overreach, it leads to idealistic and emotional rather than administratively feasible policies e.g. Taj Case: instant relocation of industries around Taj Mahal

o Too much of emphasis on certain section of individuals and mistaking their grievances to be grievances of general public leads to a creation of 'judiciary protected sections'. It makes judiciary appear as a crusader and other organs as the wrongdoers e.g. SalwaJudoom Case, Vishakha Guidelines, ban on selling liquor on national highways. o Bureaucracy might push the policy decisions into the judicial domain to delay policy implementation.

• **Impact on Legislative:**

o Legislation, in a democratic set-up, is a time-consuming process and consensus building exercise. When judiciary tells the legislatures to enact some laws or give the guidelines for it, it is taking the legislative exercises of debates, discussion and evolution of policies. It creates judiciary dependency syndrome among the citizens.

o The intervention of judiciary in the monitoring of voting in the Bihar Assembly, asking Election Commission to seek affidavits by candidates declaring their antecedents are some of the examples. However, one of the rationales for having judicial activism is the inactivity and inability of the parliament to get laws passed on the matters of social importance. As, Vishakha guidelines were issued in the wake of rampant sexual harassment at workplaces and absence of law on the matter in the country.

Way Forward

- The judiciary should restrain in taking the roles of executive and legislature.
- The state should make different bodies like NHRC, NCW and so on more powerful to make the ideals of social justice enshrined in our constitution a reality.
- Judiciary should act only as a alarm bell and government should treat judiciary's observations as more of a dialogue between the three organs of the government

OR

Question:3 Write in 150 Words

Identify the key areas of reforms required in the judicial system in India. In this context, examine the significance of the idea of putting in place an All-India Judicial Service.

Approach:

- Explain the areas of reforms required in Indian justice system.
- Mention the origin of the idea of an All India Judicial Service (AIJS), its significance as well as fears against it.

▪ Conclude with emphasis on the urgent need to operationalize AIJS in light of calls by the PM and honourable SC.

Hints to write the answer:

A 2017 study conducted by NGO Daksh found that the courts and the police are the least preferred options for seeking justice by Indians, who prefer informal mechanisms. It is because they perceive the justice system to be too expensive, too complex and too slow to resolve their disputes. These challenges with the Indian judicial system have been a constant cause of concern for the last many decades. A few key areas which require urgent reforms are:

• Judicial manpower

o Shortage of judges- India has 19 judges per 10 lakh people on an average, according to a Law Ministry data which also states that the judiciary faces a combined shortage of over 6,000 judges, including over 5,000 in the lower courts itself.

o Judicial appointments- are marred by opacity, vagueness and alleged nepotism in it.

• Judicial functioning

o Judicial backlog- Over 3 crore pending cases in India, as per National Judicial Data Grid (NJDG).

o Judicial corruption- backlog of cases creates opportunity for demanding bribes, the court personnel can be paid to slow down or speed up a trial, or dismiss a complaint.

• Judicial infrastructure- Lack of district and other lower courts, lack of digitally enabled courts etc.

• Increasing government litigation- 46% of all litigation across courts were cases or appeals filed by State or Central governments.

• Criminal justice system reform is needed as propounded by Malimath committee in 2003.

• Police lacks training for scientific collection of evidences and also police and prison official often fail to fulfill their duty leading to long delays in trial.

An All India Judicial Service has been proposed as solution to the problems facing the judiciary. It was mooted by Law Commission in 1950s. The 42nd constitutional amendment inserted the provision in article 312. It has been explored in recent times as well. The idea is to recruit district judges through an all India exam and then allocate them to each State on the lines of All India Services.

Significance of an All-India Judicial Service (AIJS)

• Objectivity and transparency in judges' appointment, thereby reducing nepotism and corruption.

• Talented recruits will ensure efficiency and efficacy of judiciary.

• It will ensure pan India uniformity in terms of quality of judges.

- Judges vacancies will reduce and pendency of cases will also decline.
- Public faith in judiciary will be revived.

But there are a few arguments against AIJS as well:

- Nine High Courts have objected to it.
- A national level exam may ignore the differences in local laws and customs.
- States may argue it is against the federal structure.
- It may be against the independence of judiciary as executive will exercise control over the judicial cadre.

AIJS is part of larger reforms required to improve the quality and speed of justice at lower courts. AIJS has the backing of the Supreme Court and the incumbent PM favours the idea as well. The government is trying to assuage the apprehensions of states and judiciary.

OR

Question:4 Write in 150 Words

Supreme court of India keeps a check on arbitrary power of the Parliament in amending the Constitution'. Discuss critically. (PYQ)

31st of August

Question:1 Write in 250 Words

Comment on the importance of judicial review for safeguarding and promoting citizen's rights, while also stressing the critical necessity of avoiding overreach and adhering to judicial constraint.

Hints to write the Answer:

Judicial review is the power bestowed upon the judiciary to examine the constitutionality of legislative enactments and executive orders of both the Central and State governments. It is inherent in Article 13, 32, 226 etc. of the Constitution and has been upheld as the part of basic structure of the Constitution in Indira Gandhi vs Raj Narain case, 1975.

Importance of Judicial Review for the protection and promotion of citizens' rights:

1. Upheld Ideals of Constitution: It helps in the protection of fundamental rights and helps in promotion of the ideals of Constitution like equality, liberty and justice etc.
2. Engendering Human Rights Jurisprudence: The Judiciary has developed human rights jurisprudence while giving a liberal interpretation to the 'right to life and personal liberty'. Some of the landmark rulings in this context include:

☑ • *Bandhua Mukti Morcha v. Union of India*: The Court held that the right to education is implicit in and flows from the right to life guaranteed under Article 21.

☐ • National Legal Services Authority case (2014): The court recognised transgender as the “third gender”.

3. Judicial Governance: Judicial review helps in maintaining governance in the areas of environmental policy monitoring and investigating public corruption, and promoting electoral transparency and accountability etc.

4. Prevent Misuse of Power: Judicial review prevents the misuse of power by the legislature and executive which can take out the basic rights of citizens. For example, in Kesavananda Bharti case Supreme Court checked the power of legislature using Judicial Review and held that essential rights cannot be amended which are basic structure of the Constitution.

5. Independence of Judiciary: Judicial Review ensures the principle of the independence of the judiciary which is the necessary for protection of the fundamental rights of the citizens.

6. Social Justice: It helps in promotion of welfare state and provide social justice by establishing balance between the Fundamental Rights and Directive Principles of State Policy (Minerva Mills case, 1980).

However, sometimes while checking the power of Legislature and Executive, Judiciary starts interfering with the proper functioning of the legislative or executive organs of the government which is called Judicial Overreach. For example, the Supreme Court’s ban on liquor sale on highways.

Judicial review should not become judicial overreach and should observe the judicial constraint because:

- Violation of Constitution: It disturbs the constitutional balance among the three organs of the state and violates the principle of separation of powers, which is a feature of the basic structure of the Constitution. For example, Article 122 and 212 which prohibits courts to interfere in legislation.
- Poor Accountability: The Judiciary is not accountable to the people in the same way as the Executive and the Legislature. While the actions of the Executive and the Legislature are reviewed by the Judiciary, the excesses of the Judiciary are remedied only by a larger bench or through a Constitutional amendment. This results in conflict of interest.
- Demotivates Executive: It tends to have a negative impact upon the morale of the Executive, tasked with policy formulation and implementation, and usually acting under resource constraints.
- Lack of Resources: The courts are ill-equipped to deal with a lot of cases requiring technical expertise like economic and environmental crises. It results in wastage of judicial time, which can otherwise be utilized for hearing various important matters relating to public importance pending before the court.

Instead of replacing administrative directives with judicial ones, the court’s job should be to encourage the authorities to take action and issue the proper executive orders. According to the Constitutional vision, the judiciary must balance judicial activism and judicial restraint while avoiding the temptation to operate as a “Super Legislature.

OR

Question:2 Write in 150 Words

In recent decades, writs and Public Interest Litigations (PILs) have emerged as crucial tools for addressing numerous significant public issues. Provide an explanation of their importance and impact.

Hints to write the Answer:

A Public Interest Litigation also known as PIL can be broadly defined as litigation in the interest of the public in general. PILs are extensions of Writ Jurisdiction. Therefore, PILs may be filed either before the Hon'ble Supreme Court of India under Article 32 of the Indian Constitution or any High Court under Article 226 of the Indian Constitution.

Writs:

- The Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-Warranto.
- However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights. Writ jurisdictions play a vital role in ensuring justice for the aggrieved citizen. To ensure fundamental rights writ are necessary instrument which empower citizens.
- But the high cost and complicated procedure involved in litigation, however, makes equal access to jurisdiction mere slogan in respect of millions of destitute and underprivileged masses stricken by poverty, illiteracy and ignorance.

Public Interest Litigation (PIL):

- The Supreme Court of India, pioneered the Public Interest Litigation (PIL) thereby throwing upon the portals of courts to the common man. The seeds of the concept of public interest litigation were sowed for the first time by Justice Krishna Iyer in *Mumbai Kamgar Sabha v Abdul Thai* case.
- Any individual or organisation can file a PIL either in his/her/their own standing i.e. to protect or enforce a right owed to him/her/them by the government or on behalf of a section of society who is disadvantaged or oppressed and is not able to enforce their own rights.

In this context, the growth of writs and PILs as key instruments for taking cognizance of several public issues of significance have increased in recent decades due to:

1. Relaxed rule of locus standi – PILs can be filed by any person for the welfare of others who are disadvantaged and are thus unable to approach the courts themselves. Thus, the general rule of locus standi has been relaxed in cases of PILs to protect and safeguard the interests and rights of these disadvantaged people.
2. SC's insistence on fundamental rights – SC has said that the right to approach the Supreme Court under Article 32 is itself a fundamental right and that if a citizen of India is deterred in any case from approaching this Court in exercise of his right under Article 32 of the Constitution of India then it would amount to a serious and direct

interference in the administration of justice in the country.

3. Relaxed procedural rules – Courts have treated even a letter or a telegram as a PIL as in the case of Rural Litigation & Entitlement Kendra, Dehradun vs. State of Uttar Pradesh. Even the law regarding pleadings has been relaxed by the courts in cases of PILs.

4. Creative interpretation – Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the 'right to life' in Article 21 has been expanded to include right to free legal aid, right to live with dignity, etc.

5. Question of maintainability – The Government may not be allowed to raise questions as to the maintainability of the PIL if the court is prime facie satisfied that there is a violation of any constitutional rights of a disadvantaged category of people.

6. Complete Justice – Under Article 142 of the Constitution of India, the Supreme Court of India has the discretionary power to pass a decree or order as may be necessary to do complete justice.

7. Appointment of a Commission – In special circumstances, a court may appoint a Commission or other bodies to investigate. In the event that the Commission takes over a public institution, the Court may direct management of it.

8. Sensitive judges have constantly innovated on the side of the poor – For instance, in the Bandhua Mukti Morcha case in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer.

At the same time, some of the issues faced due to this increased use of writs and PILs can be seen from the following points:

- Misuse of PILs – Courts are extremely cautious to ensure that PILs are not misused as the misuse of PILs would defeat the very purpose for which it was conceived i.e. to come to the rescue of the poor and the downtrodden.
- If a writ petition is filed directly in the Supreme Court, the petitioner has to establish why the High Court was not approached first.
- Increased burden on judiciary which is reducing the efficiency of judiciary due to already backlogs from earlier times.

Writs are essential to enforce not only fundamental rights but also useful for other purposes i.e. enforcement of an ordinary legal rights. Together with PILs, it has radically altered the traditional judicial role so as to enable the court to bring justice within the reach of the common man.

OR

Question:3 Write in 150 Words

While the Election Commission of India has quite effectively neutralized the effect of muscle power and incumbency power, the commission has newer challenges to face. Discuss in the light of several long pending reform proposals that aim to clean up electoral process.

Hints to write the Answer:

The Indian elections face a number of challenges, in the form of malpractices during or before the elections. These include the use of muscle power, misuse of power by the incumbents and other political parties.

However, the ECI has quite effectively neutralized the effect of muscle power and incumbency power. This is evident from the following steps taken in this direction:

1. Checking populism through new announcements: Applicability of the Model Code of Conduct (MCC), imposes constraints on the new government announcements.
2. Suspension under the Model Code of Conduct: Use of muscle power, booth capturing, hate speech attracts harsh penalties.
3. Restrained government advertising: The ECI keeps a check on the misuse of the government machinery through excessive government advertising during elections.
 - a. E.g., Orders of removal of government ads from petrol pumps in West Bengal during recent elections.
4. Security arrangements: Paramilitary forces like CISF and BSF are deployed to ensure the smooth conduction of electoral exercise.

Although, the effect of muscle power and incumbency power has been virtually neutralized, the Election Commission faces a number of new challenges.

1. Political funding: The source of funding for the political parties has often been non-transparent despite reduced cash donations limit and reforms like electoral bonds.
2. Money power: Misuse of money power enhances winnability of candidates. This is evident from the fact that out of 545, 475 have assets greater than 1 crore.
3. Materialistic inducement: Liquor and cash is used to influence the voters.
4. Freebies: Freebie culture is quite common before the announcement of elections as was recently seen in the state of Tamil Nadu before elections.
5. Paid news: Manipulation of the voters through print, electronic, and social media is another challenge to free and fair elections.
6. Criminalization: Nearly 50% of the MPs in the current Lok Sabha have criminal records, an increase of 44% since 2009.
7. Casteism and communalism: Vote-bank politics encourages casteist and communal narratives during and before elections, thus, causing a social unrest.
8. Limited powers of ECI: ECI lacks the power to de-register the political parties following corrupt electoral practices.

In order to tackle these challenges, the following steps need to be taken:

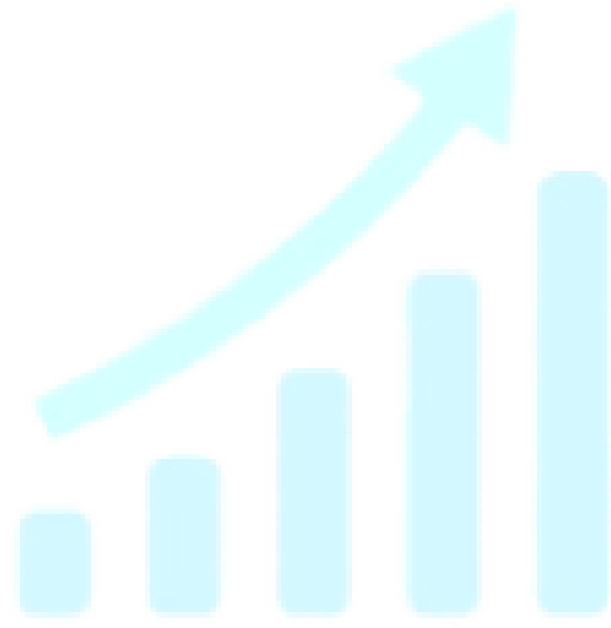
Issue	Reform
Criminalization	<ol style="list-style-type: none"> 1. Internal party reforms, especially, those related to distribution of tickets based on merit. 2. Faster disposal of criminal cases against MPs.
Political funding	<ol style="list-style-type: none"> 1. State funding of elections as recommended by Dinesh Goswami committee and 2nd ARC. 2. Applicability of RTI on the political parties.
ECI reforms	<ol style="list-style-type: none"> 1. Independent appointment. 2. Separate Secretariat. 3. Restrictions on post-retirement appointments.
Regulation of media	<ol style="list-style-type: none"> 1. Equal space for all parties in print and electronic media. 2. Reporting of social media groups and pages that are associated with a party. 3. Suspension of licenses of media houses for paid news.
Money power	<ol style="list-style-type: none"> 1. Setting out a meritocratic criterion for eligibility in contesting elections. 2. Internal party democracy.
Malpractices	<ol style="list-style-type: none"> 1. Cash for vote, casteism and communalism can be tackled through an enforceable MCC with greater teeth. 2. Amendments to the RPA, 1951 to increase the ambit of disqualification owing to malpractices.

The need, therefore, is to implement a holistic strategy of electoral reforms in order to set the right tone for true democracy in letter and spirit at the very onset of the biggest exercise of democracy.

OR

Question:4 Write in 150 Words

The Attorney-General is the chief legal adviser and lawyer of the Government of India.”
Discuss (PYQ)



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