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Hints required to write the answers

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2024



Hints to write the Answers - MGAP 2024

- *Indian Constitution historical underpinnings, evolution, features, amendments, significant provisions and basic structure*

Question:1 Write in 150 Words

Explain the different elements of the preamble that reflect the general purposes behind various provisions of the Constitution. Additionally, discuss the amendability of the preamble.

Approach

- *Briefly mention the significance of the Preamble.*
- *Discuss how the preamble gives general purposes behind numerous constitutional provisions.*
- *Discuss the amendability of the Preamble.*
- *Conclude as per the context.*

Hints to write the Answer:

Introduction

Preamble is an introductory document to the Constitution that reveals the source of authority, nature of the Indian state, objectives of the Constitution and date of adoption of the Constitution. It embodies the basic philosophy and fundamental values and contains a grand and noble vision of the Constituent assembly.

Preamble is a key to the minds of its makers and reveals that establishment of sovereign democratic republic was the sole object of the founding father. The aim was to realize the goal of a just social and economic order based on justice, equality and freedom.

Body

The various elements of the preamble reflect the general purposes behind various provisions of the Constitution such as:

- Justice (social, economic and political) - Fundamental rights and Directive principles contain various provisions which aim to eliminate inequalities, remove discrimination and secure equal rights to all.
- Liberty (of thought, expression, belief, faith and worship) - Article 19 provides for freedom of speech and expression and Article 25-28 gives the right to religion to everyone including minorities.
- Equality (of status and opportunity) – it promotes civic, political and economic equality as reflected in following articles:
 - o Article 14-18 provides for absence of special privileges to any section of society and adequate opportunities for all without discrimination.
 - o Article 39 secures equal rights to an adequate means of livelihood and equal pay for equal work.
 - o Article 325 and 326 provides for universal adult franchise and right to participate in elections without any discrimination.
- Fraternity (dignity of an individual and unity and integrity of the nation)
 - o System of single citizenship promotes the feeling of fraternity.
 - o It is a fundamental duty of every citizen to promote harmony and spirit of a common brotherhood.

Since preamble is key to our constitution, there have been questions over its amendability. This question was dealt in the Kesavananda Bharati Case (1973) and the Supreme Court held that the Preamble is a part of the Constitution and it can be amended under Article 368, subject to the basic structure doctrine.

It found its earlier opinion tendered in Berubari Union Case 1960 that Preamble is not a part of the Constitution and therefore, cannot be amended under Article 368, to be wrong.

The Preamble has been amended only once till now by the 42nd Constitutional Amendment Act 1976 which added three new words- Socialist, Secular and Integrity to the Preamble.

Conclusion

Thus features of provisions are actually soul of our constitution. Also constitution allows to amend preamble as per condition prevailing in nation.

Question:2 Write in 250 Words

Directive Principles can be considered even more crucial than Fundamental Rights because they provide a positive thrust towards welfare. Discuss.

Approach

• In introduction, briefly write about the significance of Directive Principles and Fundamental Rights in Indian Constitution.

• List the arguments and evidences supporting the importance of directive principles.

• Also, enumerate the points to highlight the role of Fundamental Rights in democracy.

• In conclusion, emphasize on balance between both the Directive Principles and Fundamental Rights

Hints to write the answer:

In the words of Granville Austin, „Directive Principles (DPs) and Fundamental Rights (FRs) are the conscience of the Indian Constitution.“ While FRs ensure minimum basic rights to ensure a dignified life to citizens, DPs are considered fundamental in the governance of the country as it seeks to establish economic and social democracy.

In the Kesavananda Bharati Case, 1973 the Supreme Court highlighted the importance of Directive Principles as:

- They contain the basic philosophy of the Constitution which needs to be reflected in the government policies and laws made by the Parliament.
- Unlike Fundamental Rights, these principles do not put any limitations on the powers of the state.
- It covers almost every section of society. For example – children, women, old age, disabled, scheduled caste and scheduled tribes, and therefore helps in the establishment of a welfare state.
- It also provides a list of areas of governance to be considered. For example - free legal aid, workers participation, and equal pay for equal work, environment protection and uniform civil code.

However, the role of the fundamental rights is also crucial as they:

- Are essential for holistic development of individuals.
- Protect the liberties and freedoms of the people from being encroached upon by the state or other individuals.
- Act as limitations on the executive and the legislature.

- Prevent the government from becoming autocratic or despotic.
- Help in the establishment of the rule of law.

However, the Supreme Court in *Minerva Mills case*, 1980 held that absolute primacy to one over other disturbs the harmony of the Indian Constitution. Hence, a balance between the two is necessary to achieve the objectives of Justice, Liberty, Equality and Fraternity as enshrined in the preamble.

Question:3 Write in 150 Words

Explain why it is argued that India is a sui generis case of federalism.

Approach

• Briefly, define the concept of federalism and provide an explanation of the Indian federation.

• Highlight the uniqueness of the Indian federation.

Hints to write the Answer:

Federalism is characterized by the Constitutional division of powers between the national government and regional governments whereby both entities operate in their respective jurisdictions. Countries such as the United States are considered to be an important example of federalism in practice.

Indian Constitution also establishes a federal system to ensure efficient governance and national unity reconciled with regional autonomy. However, it also contains non-federal or unitary features. Thus, it is also described as quasi-federal and some political commentators name it as a 'federation *sui generis*'.

This title is justified as :

- The Centre has been assigned greater powers than the States.
- A federation as per the American model, is formed through a treaty or an arrangement between the constituent units. However, the Indian federation is not an outcome of an agreement amongst the States.
- In many cases the federation provides States right to secede from the federal system, but under Article 1 of the Constitution, Indian states have no right to secede i.e. India is an "indestructible Union of destructible States."
- Indian Federation under Schedule 7 provides for a clear-cut division of power between the Centre and States. However, this arrangement can be altered in favour of the National Government under certain circumstances like imposition of emergency (Article 352 & 356).
- Contrary to the American and Australian Federal system, Indian system does not provide for an equal status to the States so far as representation in Upper House is

concerned.

- Though Centre and States have a separate sphere of influence, however, Indian federal system tilts towards a strong centre. Constitutional provisions like: All India Services, Office of Governor, CAG, Election Commission etc. have strengthened the Centre. This system closely resembles the Canadian federal system.
- Prominent federal features such as dual Constitution, dual citizenship etc. are not provided in the Indian Constitution.

The Supreme Court in *S. R. Bommai vs. Union of India*, 1994 held that federalism, is a basic feature of the Constitution. Though the adoption of a unitary bias is justified, but slowly the political and economic scenario of the country is tilting towards greater devolution of power and decentralization.

Question:4 Write in 150 Words

Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defensible in the present circumstances? (PYQ)

▪ Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein

Question:1 Write in 250 Words

Article 21 of the Constitution provides, "No person shall be deprived of his life or personal liberty except according to the procedure established by law". Analyse the value principle involved and its relevance in today's context.

Approach

- *Explain Article 21*
- *Discuss the contemporary situations which limit life and personal liberty*
- *Analyse the value principle of Article 21 and its relevance in today's context*
- *Conclusion*

Hints to write the Answer:

Article 21 of the Constitution of India, 1950 provides that, “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” ‘Life’ in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes the right to live with human dignity, the right to livelihood, the right to health, the right to pollution-free air, etc.

Under the canopy of Article 21, so many rights have found shelter, growth, and nourishment. Thus, the bare necessities, minimum and basic requirements that are essential, and unavoidable for a person is the core concept of the right to life. Though the phraseology of Article 21 starts with a negative word, the word ‘No’ has been used in relation to the word ‘deprived’. The objective of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to the procedure established by law. It clearly means that this fundamental right has been provided against the state only.

If an act of a private individual amounts to encroachment upon the personal liberty or deprivation of life of another person, such violation would not fall under the parameters set for Article 21. In such a case, the remedy for an aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of a private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21.

In a democratic order, the concept of constitutional morality and judicial values assume myriad dimensions and implies several consequences to the dignity and freedom of the individual. Constitutional morality means adherence to the core principles of constitutional democracy.

The values that are identified as fundamental by the Judiciary in administering justice are considered as judicial values. The courts being the intermediately between the people and the other organs of the state, is vested with the power to scrutinize legislation and administrative actions on the anvil of the constitution and the law in matters brought before him.

The expression of personal liberty in Article 21 was given an expansive interpretation. The court emphasized that the expression of personal liberty is of wide amplitude covering a variety of rights which go to constitute the personal liberty of man. The expression ought not to be read in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by the process of judicial construction, and hence right to travel abroad falls under Article 21.

Relevance in today's context

The most significant aspect of the case is the reinterpretation of the expression of procedure established by law used in Article 21. It would no longer mean that the law could prescribe some resemblance of the procedure, however arbitrary or fanciful, to deprive a person of his personal liberty.

The process cannot be arbitrary, unfair, or unreasonable. Thus, the procedure in Article 21 must be right and just and fair and not arbitrary, fanciful, and oppressive.

Conclusion:

In the course of time, Article 21 has come to be regarded as the heart of the Fundamental Rights. It has enough positive content in it, and it is not merely negative in its reach. Over time, since Maneka Gandhi, the Supreme Court has been able to imply several Fundamental Rights out of Article 21. This has been possible by reading Article 21 along with some Directive Principles. It has thus emerged into a multidimensional Fundamental Right.

Question:2 Write in 250 Words

An individual's fundamental right to live with dignity and reputation "cannot be sullied solely because another individual can have his freedom". Hence, examine the validity of defamation laws in India.

Approach

- Briefly introduce the defamation law and its origin.
- Describe the types of defamation
- Discuss the validity of defamation laws based on pronouncements made by higher courts
- Way forward

Hints to write the Answer:

In India, defamation is both a civil and a criminal offence. The remedy for a civil defamation is covered under the Law of Torts. In a civil defamation case, a person who is defamed can move either the high court or the subordinate courts and seek damages in the form of monetary compensation from the accused. The Indian penal Code, 1860 provides an opportunity for the defamed person to file a criminal case against the accused. Under Sections 499 and 500 of the IPC, a person guilty of criminal defamation can be sent to jail for two years.

There are several petitions filed in the Supreme Court of India challenging the

constitutional validity of Sections 499 and 500 of IPC. The petitions contend that both the sections went beyond the restrictions enshrined in Article 19(2) of the Indian Constitution, constricting the freedom of speech beyond reasonable limits.

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression to all Indian citizens. But it is not absolute. Under Article 19(2), the state is allowed to make laws to impose reasonable restrictions on the right of free speech in the interests of the sovereignty and integrity of India, national security and national interest, friendly relations with foreign countries, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Only defamation protects a private individual interest, while all others are public interests.

In *Subramanian Swamy v. Union of India* case, the court approved the constitutional validity of Sections 499 and 500 (criminal defamation) in the Indian Penal Code, underlining that an individual's fundamental right to live with dignity and reputation "cannot be ruined solely because another individual can have his freedom".

The ruling noted that "the right to freedom of speech and expression is not an absolute right", and has to be "balanced with the right to reputation", which is protected under Article 21 of the Constitution.

The court held that criminalisation of defamation to protect individual dignity of life and reputation is a "reasonable restriction" on the fundamental right of free speech and expression. The judgment holds far-reaching implications for political dissent and free press.

Arguments against the validity of defamation laws

- Sections 499-500 in the IPC do not constitute "reasonable restriction" on speech as commented by many because even truth is not a defence. Even if a person has spoken the truth, he can be prosecuted for defamation. Under the first exception to Section 499, the truth will only be a defence if the statement was made for the public good, which is to be assessed by the court. This is an arbitrary and overbroad rule that deters people from making statements regarding politicians or political events even which they know to be true because they run the risk of a court not finding the statement to be for the public good.
- Second, a person can be prosecuted under Section 499 even if he or she has not made any verbal or written statement at all. A magistrate may issue a criminal process on the mere allegation that the defendant conspired with the person who actually made the allegedly defamatory written statements.
- Third, a person can be prosecuted even for a statement about the dead. While Article 19(2) permits restricting speech in the interests of protecting the private interest in a reputation, restricting speech to protect the reputation of the deceased is excessive and over-board.

- Fourth, even an ironical statement can amount to defamation. Since Section 499 applies to “any imputation concerning any person,” a criminal suit can be filed even for political speech – which is the most protected speech in a democracy.
- It is a tool that can be easily invoked and enables allegedly defamed persons to drag anyone to courts across the country.
- Finally, it is unclear why defamation has to be a criminal offence at all and why civil remedies are not sufficient.

Arguments in favour of the validity of defamation laws

- The reputation of one cannot be allowed to be crucified at the altar of the other’s right of free speech. So there is no point in declaring the present law unconstitutional. It is needed to strike a balance between Article 19 and Article 21.
- Unlike other inflexible provisions of the IPC, Sections 499/500 have four explanations and 10 exceptions, which add content and context to the offence and also chisel it away substantially.

They constitute significant conditions which help to exclude frivolous complaints.

- Section 199(1) in the CrPC safeguards the freedom of speech by placing the burden on the complainant to pursue the criminal complaint without involving the state machinery. This filters out many frivolous complainants who are not willing to bear the significant burdens – logistical, physical, and monetary – of pursuing the complaint.
- A mere misuse or abuse of law, actual or potential, can never be a reason to render a provision unconstitutional.

Way forward

Criminal defamation should not be allowed to become an instrument in the hands of the state, especially when the CrPC gives public servants an unfair advantage, by allowing the prosecutors to stand in for them when they claim to have been defamed by the media or their political opponents.

In recognition of the fact that many countries do have criminal defamation laws which are unlikely to be repealed in the near future, following interim measures can be taken:

No-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below:

- The offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intent to cause harm to the party claiming to be defamed;
- Public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;

- Prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should not be available as a sanction for breach of defamation laws.

Question:3 Write in 150 Words

Post-independence India has witnessed many instances of extreme regionalism. Is it a threat to national integrity? How can regional aspirations be addressed within the constitutional framework?

Approach

- Give a brief definition of regionalism.
- Give an account of the rise of regionalism in India.
- Describe how it becomes a threat to national integrity.
- Bring out some Constitutional provisions which try to deal with regional aspirations

Hints to write the Answer:

Regionalism, as an ideology and political movement, seeks to advance the causes of regions. It is the interest of one region or a state asserted against the country as a whole or against another region or state in a hostile way, and the promotion of conflict for such interests.

Post-independence India has witnessed many instances of regionalism manifested in the demand of Dravida Nadu, Telangana movement, Bodoland movement in Assam, Khalistan movement. Inter-state disputes also carried regionalist undertones. The underlying causes range from a regional disparity to the son-of-soil concept, as well as the diversity of languages, cultures, ethnic groups, etc.

Regionalism is often seen as a serious threat to the development, progress, and unity of the nation.

Internal security challenges by the insurgent groups, who propagate and are motivated by the feelings of regionalism pose a grave challenge to the internal security of the country. At times, it transforms into secessionism, especially in border areas with support from the neighbouring countries.

The Constitution of India has adequate provisions to address the issue of regional aspirations. Some of them are:

- Indian federalism provides a mechanism for addressing regionalism and reconciling of regional identities within the democratic framework.
- The 73rd and 74th Amendment Acts further addressed the regional aspiration by decentralizing the power and resources for regional needs.
- The regions under the 5th and 6th Schedule enjoy certain autonomy, which gives them the scope to maintain their own culture and develop according to their needs.
- The provision of the PESA Act of 1996 is a step towards bringing reconciliation with regional aspirations.
- Article 371 has special provisions helpful in addressing the concerns of some states. These provisions need to be implemented in true spirit and with adequate political will to address the issues endangering regionalism.

Question:4 Write in 250 Words

The concept of cooperative federalism has been increasingly emphasized in recent years. Highlight the drawbacks in the existing structure and extent to which cooperative federalism would answer the shortcomings. (PYQ)

▪ Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein

Question 1) Write in 250 words.

Discuss how the concept of basic structure, although not specifically defined in the Indian constitution, is an Indian judicial innovation. Tracing the evolution of basic structure doctrine in India highlight its salient features.

Approach :

- *Introduce about the concept of basic structure.*
- *Explain how it is an Indian judicial innovation.*
- *Highlight its salient features arising out of various supreme court judgments.*

HINTS TO WRITE THE ANSWER

The concept of basic structure was introduced by Supreme Court in the Kesavananda Bharti case 1973. It restricted the amending powers of Indian Parliament.

The concept of Basic Structure has not been mentioned in the Constitution, neither there was a restriction on the amending powers of Parliament. However, debate over amending power that started with Shankari Prasad Case eventually culminated with Kesavandna Baharti Case where Supreme Court innovatively settled this question:

- Empowering Parliament to abridge or take away any of the Fundamental Rights.
- Laying down the new doctrine of 'basic structure' of Constitution. It meant that the Constitution has certain basic features that cannot be altered or destroyed through amendments by the parliament

This doctrine has been used by Supreme Court in subsequent judgments to preserve the sanctity and basic character of Constitution. While shying away from explicitly defining the Basic Structure, through various judgments it has mentioned different features of Constitution that constitute basic structure.

Thus the doctrine has evolved through SC judgments and is still expanding:

- Under Minerva Mills Case(1980), the Supreme Court ruled that Judicial Review is included in Basic features of Constitution
- In Waman Rao Case (1981), it was held that the doctrine will be applied to Constitutional Amendments after the Kesavananda Bharti Case Judgement.
- Subsequently, Supreme Court included Secularism, Right to equality, Right to Life, Supremacy of Constitution, Rule of law and many more under the Basic Structure of Constitution.
- More than 20 features have been decided by SC as a part of Basic Structure.

Thus, the basic structure is a substantive limitation upon the power of the Parliament to amend the Constitution. It forces constitutional amendments to conform to certain standards or values that maintain the sanctity and spirit of the Constitution.

Question:2) Write in 150 words.

Part IV of the Indian Constitution has great value as it provides for social and economic democracy as distinguished from political democracy. In light of the above statement, discuss the importance and limitations of this part of the constitution.

Approach:

▪ Give a brief description of DPSP.

- Write the importance of DPSP in India.
- Highlight its limitations.

HINTS TO WRITE THE ANSWER:

DPSP in Part IV of the Constitution denotes the ideals that the government should keep in mind while formulating policies and enacting laws. These are set of Constitutional instructions to state in legislative, executive and administrative matters.

Importance of DPSP

- Fundamental rights provide for political rights. DPSP supplement them by providing for social and economic rights.
- DPSP constitute comprehensive socio-economic programme for a modern democratic state
- Aim at realizing high ideals of justice, liberty, equality and fraternity
- Embody the concept of welfare state, and not that of the police state
- It helps courts in examining and determining constitutional validity of law in the light of socio-economic propriety
- Its socialistic principles lay down framework of democratic socialist state, providing socio-economic justice
- The DPSP incorporates the Gandhian ideology as well as ideology of liberalism
- They impose moral obligation on the state authorities for their application.
- Their implementation creates a favourable atmosphere for the full and proper enjoyment of fundamental rights.

However, this part is also fraught with certain limitations:

- No Legal Force: The DPSP are non-justiciable in nature i.e. they are not legally enforceable by the courts for their violation
- Constitutional Conflict: DPSP lead to constitutional conflict (a) between Centre and states, (b) Centre and President, (c) Chief minister and governor
- Conflict with Fundamental rights: They can be amended to implement the fundamental rights.
- A law cannot be struck down by courts for violating DPSP.

In spite of above limitations, DPSP are fundamental to the governance of the country. Its significance can be gauged from the words of a former CJI, "If all the principles of DPSP are fully carried out, our country would indeed be a heaven on earth. India would then be not only democracy in political sense, but also welfare state looking after welfare of its citizen".

Question:3 Write in 150 Words

Lack of finance has been a perennial challenge for local bodies. In this regard, please suggest some innovative resource mobilization measures at the local level.

Hints to write the answer:

Local bodies are institutions of the local self-governance, which is a State subject and article 243 G of the Indian Constitution enshrines the basic principle for devolution of power to the Local Bodies. In the nation's journey towards becoming an economic power, local bodies play an important part in enabling service availability to the citizens where lack of finance for these bodies is seen as a stumbling block.

As the objective of the formation of local bodies was to ensure equitable and all-round development of urban and village areas, finances play an important role in strengthening the local bodies to function. Issues involved in finances can be seen from the following points:

- States were empowered to constitute Finance commission for the proper devolution of finances to the local bodies and were given freedom to act accordingly. This created a gap in the actual devolution mechanism.
- After 30 years of decentralisation, local government expenditure in India as a % of GDP is only 2%, as compared to emerging economies like China (11%) and Brazil (7%).
- Local bodies lack the capacity to properly impose taxes, due to ambiguous taxation norms, lack of reliable records, and so on.
- Most local bodies, both rural and urban are unable to generate adequate funds from their internal sources, and are therefore extremely dependent on external sources for funding.
- Studies show that around 80 percent to 95 percent of revenue is obtained from external sources, particularly state and central government loans and grants.
- State governments have not devolved enough taxation powers, as these are not under the compulsory provisions of the 73rd and 74th amendments. Most states only permit local bodies to collect property taxes and water tariffs, but not land tax or tolls.

In this regard, following can be some innovative resource mobilization measures for the local bodies:

1. Encouraging municipal bonds – Credit rating of cities and towns is a step in the right direction for issuing Municipal Bonds for mobilization of resources. For example, in June, 2017, Pune Municipal Corporation had raised money through municipal bonds to finance its 24x7 water supply project.
2. Improvements in tax structures and infrastructure – Devolving more taxation powers along with improving efficiency and transparency in collection and mobilization of resources. Here, use of Information and Communication Technology (ICT) can be prioritised.
3. Alternative sources of revenue – There is a need to explore alternative sources of revenue generation by the local bodies such as entertainment tax, mobile towers, user charges for solid waste, water, parking, value capture financing and monetization of

infrastructural facilities like parks, roads.

4. Property tax related – As they are the major sources of revenue for local bodies, there is need for review of property tax system which suffers from undervaluation; nonavailability of database of properties; low rates; low collection efficiency and lack of indexation of property values.

5. Networks of local bodies – Creating networks of Panchayati Raj Institutions and local government elected representatives in physical and virtual forms, and extending these networks to international networks over a period of time.

6. Knowledge sharing – Providing a platform for knowledge management in the PR and local governance space including collation and dissemination of a body of knowledge including best practices/innovations/case studies.

7. Strengthening the Trust Based Approach for LBs – The 14th FC had recognised the need to trust and respect local bodies as institutions of local self-government.

8. Focus on devolving three F's – Policy and action research on issues such as devolution of 3Fs (Funds, Functions and Functionaries), socio-political impact of their performance, practices for conflict management on governance issues etc.

However, there are other reasons too which hinder the proper functioning local bodies such as excessive state control, creation of Parastatal agencies, infrastructural inadequacies, etc. which also need to be tackled through the implementation of various recommendations of Finance Commissions (FCs), Standing committees of Parliament, etc.

A well-funded local government with clearly delineated functions is best positioned for all round and equitable development. India's burgeoning population and rising aspirations of youth necessitates need for further measures to empower local bodies to ensure the transformation from "Swarajya to Surajya" in the context of goals of 'New India'

Question:4 Write in 250 Words

Though the federal principle is dominant in our Constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. (PYQ)

Question:5 Write in 250 Words

In the absence of well – educated and organised local level government system, Panchayats and Samitis have remained mainly political institutions and not effective instrument of governance. Critically Discuss.

• Separation of powers between various organs dispute redressal mechanisms and institutions. + Current Affairs

Question:1) Write in 250 words.

The Speaker of Lok Sabha is placed very high in the order of precedence. Do you think the office of the speaker „can“ act impartially? Explain the controversy regarding the powers of the speaker with respect to deciding money bills and disqualification of members.

Approach:

- *Introduction: Introduce by writing about the office of Speaker and its Position.*
- *Body: Discuss cases where the speaker can act impartially and also highlight the controversy regarding the powers of the speaker on money bills and disqualification.*
- *Conclusion: Controversy regarding money bills and disqualification of members*

Hints to write the answer:

The Speaker of the Lok Sabha is the presiding officer of the Lok Sabha (House of the People), the lower house of the Parliament of India. Her unique position is illustrated by the fact that she is placed very high in the Warrant of Precedence in our country, standing next only to the President, the Vice-President, and the Prime Minister.

PROVISIONS FOR PROTECTING INDEPENDENCE AND IMPARTIALITY

1. The Constitution of India provides that the Speaker's salary and allowances are not to be voted by Parliament and are to be charged on the Consolidated Fund of India.
2. The Speaker can be removed from office only on a resolution of the House passed by a majority of all the then members of the House.
3. He takes no part in the debate either in the House or in committee.
4. He votes only when the voices are equal, and then only in accordance with rules which preclude the expression of opinion upon the merits of a question. Until recently, his seat was often uncontested at a general election

CAN THE OFFICE OF SPEAKER ACT IMPARTIALLY?

1. With no security in the continuity of office, the Speaker is dependent on his or her political party for re-election. This makes the Speaker susceptible to pulls and pressures from her/his political party in the conduct of the proceedings of the Lok Sabha.

2. Currently, the extent of the Speaker's political commitment often depends on the personality and character of the person holding the office.

3. Howsoever desirable the proposition of neutrality may be, it would be unrealistic to expect a Speaker to completely abjure all party considerations while functioning as there are structural issues regarding the manner of appointment of the Speaker and his/her tenure in office.

4. Unlike in the British model where the speaker resigns from party membership, this is not the case in India. The electoral system and conventions in India have not developed to ensure protection to the office, there are cogent reasons for Speakers to retain party membership. It is to be noted that Speaker resigning from a party is not a ground for disqualification under Anti defection law.

5. Speakers have been alleged to help ruling parties keep their flocks together by using their powers to disqualify MLAs under the Tenth Schedule. Example: In 2016, the conduct of the Speakers in Arunachal Pradesh and Uttarakhand was not impartial and beyond reproach

CONTROVERSY REGARDING THE POWERS OF THE SPEAKER

1. Union Governments that do not have a majority in Rajya sabha are accused of dressing ordinary/ financial bills as money bills to bypass Rajya sabha by making the Speaker certify the same.

2. Also in case of defection, accusations are made against the Speaker for partisanship. SC had ruled that no judicial intervention shall happen until a decision is made by the speaker.

CONTROVERSY REGARDING MONEY BILL

1. Article 110 (3) clearly states that with regard to the question of whether legislation is a Money Bill or not, the decision of the speaker is final and binding. The question is whether such a clause completely excludes any judicial review.

2. Article 122 prohibits the courts from questioning the validity of any proceedings in parliament on the ground of any alleged irregularity of procedure.

3. The passage of the Aadhaar Act as a Money Bill, and the Financial Act 2017 as a Money Bill in order to get a smooth passage in Parliament has come under much scrutiny.

4. In the Aadhaar judgment, the majority bench had upheld the certification of the Aadhaar Act as a money Bill. However, the Supreme Court referred to a larger bench the issue of whether the 2017 Finance Act could be passed as a Money Bill, which has reopened the debate on the Aadhaar judgment.

5. The question of the Speaker's certification is subject to judicial review was settled in the Aadhaar judgment and contrary judgments, such as Siddiqui and Yogendra Kumar now stand overruled. The consequence is that the speaker's certification of money bills is now subject to judicial review.

CONTROVERSY REGARDING DISQUALIFICATION OF MEMBERS

1. The Anti Defection Act sought to regulate MLA trading and maintain a balance between the sanctity of the people's vote and the freedom of choice, however, its inbuilt loopholes, the partisan role of institutions, and the influence of money in politics have weakened the law.

2. The decision to resign before the disqualification is taken because it allows a member to become a minister in the current House otherwise the member cannot become a minister in the current House until his/her re-election or the expiry of the term, whichever is earlier.

3. In the Manipur legislative assembly issue, the Speaker failed to act and kept the petition pending, as the law does not specify a time-frame for the Presiding Officer to decide on a disqualification plea.

4. The Speaker has been given almost absolute powers under the anti-defection law. In many instances, Speakers have not acted impartially, and have shown their political leaning.

The Speaker represents the House and is a symbol of the nation's freedom and liberty. Therefore that should be an honored position, a free position, and should be occupied always by persons of outstanding ability and impartiality.

Question:2 Write in 250 Words

Panchayati raj institutions (PRIs) are simultaneously a remarkable success and a staggering failure, depending on the goalposts against which they are evaluated. Discuss.

Approach

- *Write introduction about 73rd amendment and PRIs.*
- *Highlight the parameters where PRIs can be considered as success.*
- *Highlight the failures of PRIs on various parameters.*
- *Conclude accordingly.*

Hints to write the answer:

With the constitutional mandates deriving from the 73rd amendment the Panchayati Raj Institutions (PRIs) are key pillars of democratic governance in India. In more than two decades of their existence the PRIs have some impressive achievements along with unrealized potential seen as their failure.

Success:

- **Number of elected Representatives:** with nearly 3 million elected representatives at the village, intermediate and district level, the PRIs have enhanced representation
- **Empowerment of women:** A constitutional mandate of 33% reservation for women has yielded excellent results. Many states have provided for 50 percent reservation for women. Female PRI leaders are more likely to focus on issues pertinent to women.
- **Political representation at the grassroots level for marginalized:** This is the only level of government, where SC/ST candidates have a genuine voice in governance. Reports suggest that SC Sarpanchs are more likely to invest in public goods in SC hamlets.

Failures:

- **Authority and functions:** State government, meant to transfer functions listed as per 73rd AA has undertaken very little devolution of authority and functions to PRIs. Core functions like water, sanitation, maintenance of community assets, etc. continue to be in the hands of State governments.
- **Finances:** The power to tax, even for subjects falling within the purview of PRIs, has to be specifically authorized by the state legislature. Though State Finance Commissions have advocated for greater devolution of funds, there has been little action by states.
- **Functionaries:** Many State Governments have not transferred the required staff to

the PRIs after the devolution of powers. Government officers are not willing to work under the administrative control of elected PRIs and administrative personnel serving under Panchayats are accountable to state government and not local bodies.

- **District Planning Committee:** The mandate to establish a DPC to prepare a draft development plan has been violated and distorted in most States. Parallel bodies encroach upon the domain of Local Governments (LGs).

- **Capacity Building:** There haven't been adequate capacity building exercises for members of Panchayats belonging to weaker section. For example, women participation has been mired by challenges such as 'sarpanch patis'.

- **Parallel schemes and agencies** such as MPLAD and MLALAD continue to bypass local governments.

Hence for governance efficacy at grassroots level, the only long-term solution is to foster genuine fiscal federalism where PRIs have authority to levy, collect and appropriate taxes to augment their resources and there is adequate devolution of functions making PRIs well equipped to solve their problems.

Question:3 Write in 250 Words

Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities. (PYQ)

Question:4 Write in 150 Words

Do you think that constitution of India does not accept principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. (PYQ)

Question:5 Write in 150 Words

Comment on status of prisoners and custodial violence in the country keeping in mind Supreme court guidelines in the DK Basu case.

Hints to write the answer:

British developed Indian police system as an instrument of force to further their colonial agenda. Post-independence, India transformed this system to deliver justice by incorporating Article 21, 22 into the Constitution. Despite this, India has seen a rise in cases of custodial violence. Accordingly, Supreme Court intervened in DK Basu Case 1996 issuing guidelines like:

1. Details of police personals involved in interrogation of arrestee be recorded. Also, memo of arrest be attested by a witness and custodial details be communicated to relative/friend within 8-12hours of arrest.
2. The arrestee must be made aware of his rights and undergo medical examination every 48 hours during detention.
3. Copies of all concerned documents be sent to Magistrate and arrest information be displayed within 12hours of arrest.
4. A recorded entry to be made in the diary at the place of detention, regarding the names of the officers involved with the arrest.
5. Arrestee may be permitted to meet his lawyer during interrogation.

However, these guidelines failed to improve prisoners' status as visible by:

1. NCRB report highlights the occupancy of Indian prisons at 118.5%
2. High number of undertrials (69%), due to pendency of cases.
3. Muslims, Dalits and Adivasis accounted for 55%of the undertrials, but form only 50% of the convict and 38% of the total population suggesting biasness against them.
4. Prison with their hostile, environment causes emotional numbing, producing, hardened criminals defeating their reformatory purpose.
5. Deplorable infrastructure and resources to operate prison, coupled with hostile groupings provide fertile ground for prison riots. E.g., Dum Dum, Byculla prison riot.

Evidences and reasons behind such violence are listed below:

1. As per NCRB, custodial death decreased marginally, but proportion of un-natural death increased by 10% in 2018-2019 suggesting increased custodial violence. E.g., Thoothukudi deaths of father-son duo.
2. NHRC in 2017-18 received 1,636 intimations regarding custodial death but recommended prosecutions/inquiry in just 40 cases. Also, its 1993 general guidelines are widely ignored.
3. Police personnel acting both as law enforcer and investigator compounded with ambiguous colonial-era law 20.
4. Political exigencies result in exploitation of police machinery by politicians and rich to further their agenda. Also, cry for quicker justice delivery widens scope for extra-judicial means E.g., torture for confession, Disha rape case encounter, etc.
5. Failure to establish a Police Complaint Authority by state prescribed under Prakash Singh Case has hindered investigation of police excess.

Custodial violence goes against rule of law and deprives prisoners of their basic human rights. India should ratify 1987 UN Convention on torture and enact an Anti-Torture legislation tailored to domestic requirement to curb this menace.

Question:6) Write in 250 words.

Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function entrusted to judiciary by the constitution, but there is a fine line between judicial activism and judicial overreach. Discuss.

Hints to write the answer:

Judicial review is a process under which various executive and legislative actions are subject to review by the judiciary. Judiciary under judicial review can invalidate unconstitutional laws and amendments. Not only judicial review, but judicial activism is also an important judicial instrument, under which judiciary call upon the executive to perform its obligations.

In words of Dr Manmohan Singh 'Courts have played a salutary and corrective role in innumerable instances. But at the same time, the dividing line between judicial activism and judicial overreach is a thin one', which is as described:

Judicial activism	Judicial overreach
Judicial activism is a positive to supplement the fallings of the executive and legislatives.	Judicial overreach is breach into the executive's domain and is considered an intrusion into functioning of executive.
Judicial activism, judiciary call upon the executive to perform its obligations under the constitution and the laws.	Judicial overreach transcends the boundary, as judiciary oversteps and perform the mantle of the executive and legislature.
Judicial activism acts as accountability mechanism against inaction of executive.	Judicial overreach goes against the spirit of separation of power as envisaged under the constitution.
Example of judicial activism include judicial action related to labor policy (e.g., minimum wages, working conditions etc.), issues related to environmental and ecological matters, etc.	Judicial intervention in policy matters can be categorized as judicial overreach, as these are executive matters.
Activism is reasonable, occur occasionally with limited intervention of judiciary, when executive doesn't fulfill its responsibility.	Overreach is arbitrary, unreasonable, and frequent interventions are made by the judiciary into the legislature's domain.
Supreme court has acted as a Sentinel on the qui vive, enforcing fundamental rights. E.g., SC formed independent expert committee to investigate the Pegasus issue.	The interference of judiciary in day-to-day affairs of governance smacks of highhanded approach. E.g., Madras HC accusing ECI of genocide for conducting elections, was in poor taste.

Judiciary is active partner in India's social revolution, its activism ensures protection and promotion of individual rights.

1. Article 142 of Indian constitution enable SC to pass decree or order to ensure complete justice. This enhances the scope for judicial activism.
2. Judicial activism is not only necessary but also desirable in instances where there is either a willful negligence or ignorance in the part of executive and the legislature.
3. Role of judiciary is to uphold the constitutional ideals at the same time strengthen constitutionalism.
4. In its role as the guardian of the fundamental rights judiciary does not violate separation of powers rather re-enforce the same.

In the words of Justice J S Verma (former CJI), the judiciary should only compel performance of duty by the designated authority in case of its inaction or failure, while a takeover by the judiciary of the function allocated to another branch is inappropriate. Judicial activism is appropriate when it is in the domain of legitimate judicial review. It should neither be judicial 'ad hocism' nor judicial tyranny." In a democracy where the constitution is supreme, and the rule of law requires that every organ of the state, adhere to constitutional policy, unrestrained activism on the part of judiciary often leads to its overreach. Since there is no system of checks on the Supreme Court, judicial restraint is critical for the maintenance of balance of power.

Question:7 Write in 150 Words

Highlighting the need of an All-India Judicial Services (AIJS), enumerate the various challenges associated with creation of an AIJS.

Hints to write the answer:

All-India Judicial Services (AIJS), in the lines of existing all India services, was first mooted by the Law commission in 1950s to recruit officers for district courts through a competitive examination. The 42nd CAA 1976 provide for an AIJS under Article 312.

The significance of an AIJS can be understood from following discussion:

1. To resolve issue of high pendency (around 3.8 crore cases) at lower courts.
2. Efficiency and efficacy: AIJS would bring best talents which will help in bringing efficiency and quality in the judiciary process.
3. Curtail corruption and nepotism in judge selection: As the process will be transparent and will be based on merit.
4. Addressing judges to population ratio: India has only 20 judges per million population against the recommended 50 judges per million population by the Law commission in 1987.

5. Reduction in appellate litigations: The lower courts in most cases are courts of first incidence, AIJS will enable quality judgements leading to reduced appellate litigations in higher judiciary.

However, AIJS has been criticized due to some challenges associated with creation of AIJS. These are discussed below:

1. Dilutes the federal structure: Article 233 puts the power of recruitment to subordinate judiciary under the state list of seventh schedule.
2. Constitutional challenge: Clause 3 of article 312 places a restriction that post inferior to the district judge cannot be recruited through AIJS.
3. Opposition from multiple High Courts: Nine High Courts are against this proposal as it undermines the power of high courts in the appointment of district judges, hence diluting independence of judiciary.
4. Unremunerative pay and lower chance of promotion to higher courts: The pay scale is low and less than a third of seats in the High Courts are filled by District judges. These may discourage the best talent to get into AIJS.
5. Issue of local language and dialect: As the proceeding of lower judiciary is done in local language, an all-India recruitment can create problems in this regard.

But these challenges can be bridged through corrective measures and therefore can overall improve the justice delivery at the lower judiciary. Corrective measures needed to be taken in this regard are:

1. Amendment of relevant clause of Article 312 to remove constitutional barriers.
2. Looking after pay scale, issues of transfer and career growth may help attract the best talent.
3. Sufficient training with focus on learning of local language and customs.

So, the implementation of AIJS by resolving its challenges will be a step forward in judicial reform. Also, NITI Aayog recently in its “Strategy for New India@75” recommended the creation of an all-India judicial service.