



VISION IAS

www.visionias.in

VISION IAS
R N 02 NOV 2016
SUBMITTED IN 3 HOURS
RECEIVED

GENERAL STUDIES (TEST CODE : 766)

Name of Candidate	ADITYA VIKRAM YADAV		
Medium Hindi/Eng.	ENGLISH	Registration Number	28474
Center	RAJINDER NAGAR	Date	2/11/2016

INDEX TABLE

Q. No.	Maximum Marks	Marks Obtained
1	12.5	
2	12.5	
3	12.5	
4	12.5	
5	12.5	
6	12.5	
7	12.5	
8	12.5	
9	12.5	
10	12.5	
11	12.5	
12	12.5	
13	12.5	
14	12.5	
15	12.5	
16	12.5	
17	12.5	
18	12.5	
19	12.5	
20	12.5	

Total Marks Obtained:

Remarks:

INSTRUCTIONS

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

75, 3rd Floor, Old Rajinder Nagar Market, Near Axis Bank, New Delhi – 110060

103, 1st Floor, B/1-2, Ansal Building, Behind UCO Bank, Dr. Mukherjee Nagar, Delhi – 110009

EVALUATION INDICATORS

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

Overall Macro Comments / feedback / suggestions on Answer Booklet:

1.

2.

3.

4.

5.

6.

All the Best

All the questions are compulsory and carry 12.5 marks each.

1. Legislative Councils in states are expensive and otherwise superfluous legislative appendages. Examine the utility of legislative councils in this context. Also, comment on the procedural aspect of setting up and abolishing them.

राज्य विधान परिषदें महंगी और अनावश्यक विधायी उपांग हैं। इस संदर्भ में विधान परिषदों की उपयोगिता की जांच करें। इसके अतिरिक्त इनके सृजन व उत्सादन के प्रक्रियात्मक पहलुओं पर टिप्पणी करें।

Legislative Councils are regarded as the upper houses of larger state legislatures, made under the Constitution for states with a minimum legislative strength of 120 (except 5 & 6).

They were originally envisaged as 'delaying chambers' to stall ill-conceived / populist legislative measures & to provide representation to a larger pool of persons in large states. Even as LCs exist in 7 states, Tamil Nadu & Andhra Pradesh's historical & recent vacillations on their formation cast

LCs in a negative light.

Their utility is -

- ① Representative
- ② Delaying chamber
- ③ $\frac{1}{6}$ eminent persons nominated by Governor bring expertise
- ④ Allow subject experts into cabinet / council of ministers

However, given the Shamsher Singh judgement (transferring nomination to Council of Ministers) along with the lacklustre nature of LC functioning, both experts & states themselves are ~~re~~ reassessing their utility.

∴ Drawbacks -

- ① Cannot supersede / veto will of the legislative assembly.
- ② Inferior position in all aspects including passing of bills.
- ③ Expensive to maintain, create sucking

are a source of major corruption for ruling parties + political persons

④ Utility in 'expertise' of members has not been shown in any state.

Therefore, given the passing of a motion with $2/3^{\text{rd}}$ majority of present & voting, plus half of total strength of legislative assembly, along with passing of a resolution by Parliament with simple majority is a tedious process.

However, with states like Telangana, Andhra & Tamil Nadu reassessing their utility, there is a need to reinvigorate them by -

- 1) Stricter checks for persons appointed via nomination
- 2) more constitutional powers.
- 3) Following 'spirit' of constitution.

2. While some argue that Article 3 provides usurping powers to the center at the cost of states, according to others it enables the Parliament to maintain and preserve federalism as enshrined in the constitution. Discuss. Is it time to have a relook at Article 3 in the spirit of co-operative federalism?

जहाँ कुछ लोगों का तर्क है कि संविधान का अनुच्छेद 3 राज्यों की कीमत पर केंद्र को अनन्य शक्तियां प्रदान करता है, वहीं दूसरों के अनुसार, यह संविधान में निहित संघवाद को बनाए रखने तथा संरक्षित करने के लिए संसद को सक्षम बनाता है। चर्चा कीजिए। क्या सहकारी-संघवाद की भावना के अनुरूप अनुच्छेद 3 पर पुनः विचार करने का समय आ गया है?

Article 3 grants Parliament the power to alter, increase or decrease size ~~or jurisdiction~~ of a state with or without assent of state assembly, so as to maintain administrative convenience and allow for the expression of economic & political aspirations of people. eg. Jharkhand. Constitutional scholars paint India as a 'quasi federal' [KC Wheare] or at best as a federation with unitary features [Jennings]. Even the Supreme Court, in *Re Delhi Laws Act Case* (1951) qualifies India as ~~now~~ a quasi federal nation.

with unitary bias as it is a union which divided itself into units & not a conglomeration of states.

Article 3 powers have not been criticised too often in practice, as their use has FACILITATED creation of ethnic/~~state~~ linguistic states along with administrative ease.

eg. North Eastern states, Andhra Pradesh,
↓
Uttarakhand after 1956 SRC.

However, the power is often criticised to be unitary, & without consultation of interested parties [states themselves] thus rendering it problematic.

It is argued, that even as the need to centralise existed in 1947, it is not as emergent now, as India has cemented its position & is not prone

to secessionist tendencies.

SR Bommai v. UoI [94] qualified federalism as a part of basic structure, thus increasing this need of consultation or concurrence.

'Co-operative Federalism' embodies the spirit of co-operation to improve effectiveness & efficiency of administrative units for general welfare.

Even as processes of consultation may provide a deeper perspective, it also raises concerns -

- i) Political issues will be made (e.g. Telangana)
- ii) Unnecessary stalling of economically or politically expedient changes.
- iii) Breach of constitutional mandate of Parliament

3. While the British Parliament is a sovereign legislature, the Parliaments of India and USA are non-sovereign legislatures. Explain. Also, compare the organisation and powers of the Indian Lok Sabha with the British House of Commons.

जहाँ ब्रिटिश संसद एक संप्रभु विधायिका है, वहीं भारत और अमरीका की संसदें गैर-संप्रभु विधायिकाएं हैं। स्पष्ट करें। इसके अतिरिक्त, हाउस ऑफ कॉमन्स और भारतीय लोक सभा के गठन की प्रक्रिया और शक्तियों की तुलना करें।

British Parliament is regarded as being sovereign as it has no 'checks' on its functioning, has no limitation of jurisdiction, nor effective separation of powers.

In contrast, USA & Indian legislatures are restricted by-

- i) Written nature of Constitution
- ii) Fundamental Rights
- iii) Judicial Review
- iv) Federalism + ~~Basic Structure~~
- v) Separation of Powers.

As none of these limits exist on UK Parliament, it is seen to be 'effectively' sovereign.

Even as the Indian & British legislatures are constituted in the same fashion [Queen + House of Lords + House of Commons vs. President + Lok Sabha + Rajya Sabha], their common Westminster model structure & procedure, powers & privileges (Art. 105) seem to be common, their jurisdiction ~~has~~ is different -

- 1) Unlike UK, Indian Parliament has ~~no~~ ^{only} exceptional powers on the State List in Schedule 7.
- 2) Judicial Review present on ALL Parliamentary deliberations in India unlike UK.
- 3) Basic Structure Doctrine as a judicial innovation in India has been ~~criticised~~ ever expanding at the cost of the

Parliament's jurisdiction.

4) India's Parliament cannot transgress fundamental rights on the letter of constitution.

Therefore, in contrast to the 'most powerful legislature in the world', i.e. UK, Indian Parliament is not sovereign for the aforementioned reasons.

4. While Fundamental Rights are crucial to the survival of a vibrant democracy, Fundamental Duties are equally important. While enumerating the Fundamental Duties, discuss the statement.

जहाँ एक जीवंत लोकतंत्र के अस्तित्व के लिए मौलिक अधिकार अत्यंत महत्वपूर्ण होते हैं, वहीं मौलिक कर्तव्य भी समान रूप से महत्वपूर्ण होते हैं। मौलिक कर्तव्यों को चिन्हित करते हुए प्रस्तुत कथन पर चर्चा कीजिए।

Fundamental Duties were modelled by the Swaran Singh Committee along the lines of USSR duties of citizens so as to fulfill the principle of 'no rights without duties' of citizens, & to provide direction to citizens in aiding & nation building.

~~Even as~~ Fundamental duties include - ① Conserving lakes, forests & environment ② Respecting women & preserving dignity ③ Respecting the national flag & anthem ④ Building brotherhood & social harmony ⑤ Scientific temper & spirit of inquiry. Others such as 'payment of taxes'

were excluded.

The Mineers Mills Case (1980) said FR, FD & DPSP: form a 'bedrock of balance', which shows that all are equally important. The justiciability of Fundamental Duties is seen in Environment cases like MC Mehta v. UoI (91) and of sexual harassment in Visaka v. RJ

Therefore, in lawmaking as in law interpretation, Duties have been supplementing Fundamental Rights in policy formation & implementation, even as they are not enforceable per se,

Therefore, it is seen that Fundamental Duties are essential for governance and also

nation building as it provides citizens & communities a direction to channel energies & maintain desirable conduct.

∴ It places duties on citizens as opposed to the state (as in Fundamental Rights), even though it is used in policy making.

5. Several constitutional experts have found the process of appointment and removal of governor to be against the very grain of democratic traditions and constitutional propriety. Do you think that this process warrants a fresh look in context of recent controversies surrounding the post?

कई संवैधानिक विशेषज्ञों ने राज्यपाल की नियुक्ति व इसे हटाने की प्रक्रिया को लोकतांत्रिक परंपराओं की मूलभावना और संवैधानिक मर्यादा के विरुद्ध पाया है। इस पद से जुड़े हाल के विवादों को देखते हुए क्या आप इस प्रक्रिया की समीक्षा की आवश्यकता महसूस करते हैं?

Recent 'resignations' of governors in 2014, dismissal of Arunachal Pradesh Governor along with the partisan role played by successive governors over the past 60 years has-

- ① Frustrated constitutional mandate
- ② Led to curtailment of governors discretion by Shamsher Singh v. UoI
- ③ Reduced credibility of post & increases insecurity of state governments.

Under Article 164, The Central Government through the President 'appoints' a governor, with minimal constitutional qualifications like age.

As Governors serve for 5 years or 'pleasure' of president' whichever is earlier, their posts are seen to be the highest offices in the state with the Lowest job security.

In Jayalitha v. Union of India (90), role of governor was discussed despite Art. 361 immunity due to the partisan role played.

In BP Singhal v. UoI (2010) and the recent Arunachal case, the partisan role was discussed & decisions quashed by courts.

As per Punchhi, Sarkaria and 2nd ARC Commissions, there is a need for urgent constitutional reform.

- i) Person must be of 'public eminence' & non political nature.
- ii) Must consult Chief minister and ~~President~~ Rajya Sabha before exercising 'Pleasure'.
- iii) Must give 'reasons' for summary removal.

However, due to the critical dual role played by the Governor as the ① Agent of Centre & ② Constitutional head of state, it is not desirable to curtail the power of Centre as it may result in fissiparous, unconstitutional or secessionist tendencies in states.

6. Repeated violations of the Model Code of Conduct (MCC) have raised questions on its effectiveness. In this light, discuss the idea of making MCC a part of Representation of Peoples Act, 1951.

आदर्श आचार संहिता (एम.सी.सी.) के बार-बार होने वाले उल्लंघन ने इसकी प्रभावशीलता पर प्रश्न खड़े किये हैं। इस आलोक में, आदर्श आचार संहिता को लोक प्रतिनिधित्व अधिनियम, 1951 का हिस्सा बनाने के विचार पर चर्चा करें।

Model code of conduct is an extra legal device of Election Commission agreed to informally by all parties in 1992 for effective conduct of elections, which empowers the EC to -

- i) Stop major announcements, speeches, ~~trans~~ expenditure etc. by incumbent right before elections
- ii) Transfer officials for non-partisan conduct of elections.
- iii) Take power in state for the period to exercise control over money & muscle power & anti-democratic activities during & before elections
- iv) Regulate processes & personnel for peaceful & equitable elections.

However, as in 2011 general elections as in recent Bihar elections, the sheer magnitude of violation of MCC caused serious concern to policymakers given that the ECs power is not utilised very often given allegations of partisanship & 'anti-democratic' character of disqualifying candidates despite presence of ~~Article 123~~ empowering provisions in RPA, 1951.

Therefore, as per repeated demands of experts, ECs, Courts & others, there is a need to-

- i) Formalise power to impose & enforce MCC under Election Comm.
- ii) Increase scope of powers to reduce partisanship of govt.

machinery, still influence of money & unlawful elements while finally resulting in more representative election outcomes.
 ∴ Need to broaden & cement powers of EC, but it must be coupled with safeguards in appointments in EC, as it may make a 'partisan Election Commissioner' very powerful, with authority to influence outcomes disproportionately.

eg. Navin Chawla indicted by 1977 Shah Commission, yet made CEC by UPA.

7. The government cannot condition receipt of public benefits on waiver of fundamental rights. Discuss this statement in context of the recent issues raised in the Aadhaar petitions.

सरकार, जनता के समक्ष कल्याणकारी लाभों को प्राप्त करने के लिए, मौलिक अधिकारों के परित्याग की शर्त नहीं रख सकती। हाल ही में आधार कार्ड से सम्बंधित याचिका में उठाए गए मुद्दों के संदर्भ में इस कथन पर चर्चा करें।

In recent cases concerning data security, privacy & 'choice' of individuals, such issues have been pitted against 'efficiency in delivery, reduced corruption and increased welfare'. This has been done through the Aadhaar case, where the Supreme Court acknowledged the lack of a legislative framework & restricted use of Aadhaar to current schemes, & removed 'mandatory' nature of biometric identity.

It is increasingly seen throughout the world that the issue of 'use of technology' has been seen

to enable both welfare and surveillance, & civil society & governments have been seen to be in conflict. [FBI v. Apple].

However, in India it is seen that Fundamental Rights are a part of Basic Structure & are inviolable & incapable of being waived by a citizen. Therefore, an FR cannot be taken away except through 'reasonable restrictions', wherever they are provided.

¶ In the Aadhar petitions, an uncodified 'Rt. to Privacy' has been devised under Article 21 as per PUC v. UOI (1997) which gave a very limited definition to show illegality of state.

actions. Additionally, security of sensitive data & sharing with 3rd parties has also been woven into the case.

It is seen that through the Aadhaar legislation (2016), a lawful mechanism, albeit subject to criticism has been made so as to acknowledge potential violations of rights while making multiple safeguards.

Therefore, it is seen that constitutionally, no fundamental rights can be taken away for giving public benefits BEYOND reasonable restrictions.

But unenumerated rights like privacy may be debatable in this context.

8. Though the institutions protecting human rights and rights of the vulnerable sections are meant to act as watchdogs, they are treated as subordinate departments with scant regard for their autonomy or statutory character. Discuss the issues which these institutions are facing related to appointment, structure and functioning.

यद्यपि मानवाधिकारों और समाज के कमजोर वर्गों के अधिकारों की रक्षा करने वाले संस्थानों से इन अधिकारों के प्रहरी के रूप में कार्य करने की अपेक्षा की जाती है, लेकिन इन विभागों की स्वायत्तता या वैधानिक चरित्र के प्रति महज औपचारिक सम्मान प्रदर्शित करते हुए अधीनस्थ विभागों जैसा व्यवहार किया जाता है। इन संस्थाओं द्वारा नियुक्ति, गठन और कामकाज से संबंधित सामना की जा रही चुनौतियों पर चर्चा करें।

Constitutional [NCSC, NCST & NCBC]
& statutory [NCM, NCW, NHRC, NCPRC]
and other Commissions protecting
human rights have been
given powers of Civil Court & of
investigation, role in socio-economic
policy making & enforcement
reforms, to empower them to
allow renewal of rights by the
most disadvantaged in specific
situations or otherwise.

However, the recent Kairano
Report of NHRC ~~has~~ exemplifies the
partisan & subordinate role played

by Commissions due to structural issues in formation & functioning -
Issues -

- 1) Except NHRC, minimal role of multiple stakeholders in Appointment making it a government decision
- 2) Minimal criteria for appointment, making Political persons as the natural choice for such posts.
- 3) Funds are either not allocated, or not disbursed. This impairs Commissions from normal daily functioning & carrying out tasks
- 4) ~~For~~ Officials are not adequate, nor do they have domain expertise as most officials are on deputation to the commission
- 5) As appointees are political, they cannot act independently if

own party in power,

⑥) Powers of civil court only in procedure, & they can ONLY recommend action, therefore POWERLESS.

∴ It is seen that structurally deficient design & appointments of such commissions, major overlaps in jurisdiction and a systemically flawed & unscientific approach to issues such as Rohtak gangrape (2016) & AFSPA issues has reduced credibility of such institutions.

9. Equality of seats among states in Rajya Sabha could not be adopted after independence because of the circumstances prevailing at that time. However, there is a need to take a fresh look at this. Evaluate.

स्वतंत्रता पश्चात् राज्यसभा में राज्यों के बीच सीटों की समानता की संकल्पना तत्कालीन परिस्थितियों के कारण नहीं अपनाई जा सकी। हालांकि इस पर नए सिरे से विचार करने की आवश्यकता है। मूल्यांकन करें।

In the Council of States, the Constituent Assembly had the option of making it 'equally representation' as per the USA Senate model, with equality of representation. However, the same was shot down by Ambedkar as -

- i) India not 'confederation of states', therefore equality of all states is not a fundamental tenet.
- ii) Lok Sabha & delimitation based on population, & ∴ must have similar provisions in Rajya Sabha
- iii) Fundamental difference in size & populations will cause major resentment. eg. UP vs. Kerala/HP /Sikkim

iv) Intention of Rajya Sabha is to give representations to views of states. ~~But~~ If equitable, limited number of MPs from large states will be unable to flag issues.

As states were seen to be only for administrative convenience with no basis of their own, the population (plus special circumstances) formula was adopted in Sch. 3.

However, given the cementing role of state ('State-Nation' concept of Yogendra Yadav) and their permanence, there is a need to reconsider -

- i) Chairman does not allot time to smaller states.
- ii) UP has more seats than all the 10 hill states combined.

- iii) Unequal voting status in presidential elections as per population.
- iv) Aspirations of ~~states~~ small states not fulfilled.
- v) Larger States not seen to 'need' as many MPs given prevalence of the model in many countries.

Therefore, even as a more representative & equitable Rajya Sabha is envisaged, EQUALITY in itself will be more divisive than representation, & therefore it is desirable to grant more representation to small states without upsetting the current balance.

10. It is contended that the implementation of One-Rank-One-Pension (OROP) for the armed forces would create a severe strain on government finances. Explain the principles underlying the OROP and arguments that have been cited in its support as well as opposition.

यह दृढ़तापूर्वक कहा जा रहा है कि सशस्त्र बलों के लिए वन रैंक-वन पेंशन (ओ.आर.ओ.पी.) का कार्यान्वयन सरकार के वित्त पर एक गंभीर दबाव उत्पन्न करेगा। ओ.आर.ओ.पी. के अन्तर्निहित सिद्धांतों तथा इसके समर्थन एवं विपक्ष में दिए गए तर्कों की व्याख्या कीजिए।

'OROP' is the principle that all persons retiring on the same rank (eg. Colonel) will get the same amount of pensions and increments regardless of -

- ① Time of retirement ② Length of service ③ Mode of recruitment.

This is because of perceived 'injustice' against those jawans who retire at 35, and to those officers who retired earlier (before 2000s).

Additionally, OROP is seen to be linked to 'pride' of the Armed forces & a perceived degradation of social status because of

lower emoluments & lack of employment opportunities after early retirement.

In the same way, arguments against OROP include -

- 1) Excessive strain on government finance. [> ₹ 500 crores]
- 2) ~~Geometric~~ Exponential increase in financial liability over time.
- 3) Armed forces as the ONLY government employees not covered under Contribution linked pension under NPS
- 4) No benefits of similar nature to CAPFs & state police.
- 5) 'Benefit' of OROP to disproportionately benefit 'Apex Scale' retirement Generals ... Major benefit to senior officers.

Therefore, it is seen that arguments have been made amidst a slowing demand for employment in Armed Forces & a 'reduction in status' of officers coupled with NATIONAL DUTY.

However, lack of a coherent financial plan, & the mixing of emotional arguments in place of facts has muddled the debate & turned OROP into a political move to garner votes.

11. Article 311 of the Constitution has been a matter of much debate. Arguments range from its retention in its present form, or even strengthening it, to its total deletion. Comment.

संविधान का अनुच्छेद 311 वहस का महत्वपूर्ण विषय रहा है। इस विमर्श में इसे वर्तमान रूप में ही बनाए रखने, अधिक सशक्त करने से लेकर इसके विलोपन तक के मुद्दे शामिल हैं टिप्पणी करें।

Article 311 deal with the restrictions on 'Doctrine of Pleasure' over civil servants of Art. 310.

It provides detailed & meticulous safeguards to government employees against DISMISSAL, REMOVAL & REDUCTION IN RANK.

It has been a major reason for 'job security' in government employment as it provides:-

- i) Rt. to hearing & Principles of Natural Justice.
- ii) Can't be removed by authority subordinate to appointing authority.
- iii) Process of Disciplinary proceedings against officials.

The process has resulted in 'entrenching' dead-wood & inefficient employees in government.

The 44th Constt. Amendment acknowledged this & removed 'right to second hearing' for the employee, to accelerate the process.

However, due to restrictive & expansive judicial pronouncements along with the conflict of interests of officials to accelerate removal of their brethren has stalled ~~all~~ proceedings 0/311 despite SC judgement to finish such proceedings in 6 months.

However, even as a simple process may accelerate such dismissal, there is a need to restrict the prevalence of POLITICAL pressures in such acts.

It is argued that any further dilution may be counterproductive to bureaucratic independence & security as the power of 311 will be exercised ~~by~~ for adverse ends by interested parties.

This will inhibit decision making, entry into civil services & reduce credibility of government as a whole.

∴ Any reduction in 311 safeguards needs to be insulated from adverse pressures.

12. While Public Interest Litigations have provided access to justice for the poor and the marginalized sections of the society but many vested interests have also misused it. In this context, examine the utility of PILs as a tool of social justice.

यद्यपि जन हित याचिकाओं ने समाज के निर्धन एवं अधिकार विहीन वर्गों को न्याय तक पहुंच प्रदान किया है, लेकिन कुछ निहित स्वार्थों के कारण इसका दुरुपयोग भी हुआ है। इस संदर्भ में, सामाजिक न्याय के साधन के रूप में जन हित याचिकाओं की उपयोगिता का परिक्षण करें।

The recent rap by Supreme Court to ~~SP~~ Centre for PIL founder Prashant Bhushan for excessive filing & seeking to abuse the dilution of locus standi has shown the crisis of the Courts with PILs.

PILs were started by the SP Gupta v. UOI (1982) & Nilabati Behara v. Orissa cases so as to facilitate pursuit of Fundamental rights by those who ~~then~~ cannot themselves approach the court. Any public

spirited person could approach the court, in absence of personal interests to enforce such rights.

~~However,~~

However, over time, SC has been clogged with PILs under Art. 32 & even Art. 136, leaving no time for constitutional interpretations or advisory ~~for~~ opinions.

Misuse of PIL-

- i) Careers of politicians made because of PILs. eg. Sarbananda Sonowal v. Govt on illegal immigration
- ii) 'Career PIL experts' such as PUCL, PUDDR, Common Cause & Prashant Bhushan seen to glorify themselves then to help others
- iii) Personal interests often motivate perceived public interest.
eg. Kudankulam.

iv). Personal disputes often take form of PILs to allow being heard in Supreme Court for fast disposal.

∴ Even as PILs were devised to let Court step in where executive failed, it is seen that an overenthusiastic perusal of PILs have blocked the courts, created vested interest & have facilitated JUDICIAL ACTIVISM & encroachment.

Thus it is seen that use of PIL jurisdiction may be put into Constitution in a restrictive sense; so that it is not misused by the Court or a party.

13. What do you understand by alternate dispute redressal mechanism? Discuss the various tools of ADR. In light of the problems faced by the Indian judiciary enumerate the advantages of Lok Adalats.

वैकल्पिक विवाद निवारण तंत्र से आप क्या समझते हैं? वैकल्पिक विवाद निवारण तंत्र (ए.डी.आर.) के विभिन्न साधनों पर चर्चा करें। भारतीय न्यायपालिका के समक्ष पेश आ रही समस्याओं के आलोक में लोक अदालतों के लाभों का वर्णन करें।

'Alternate Dispute Resolution' are means of resolving judicial disputes outside the court in structured format tailored to magnitude of dispute & needs of parties.

It was devised in US & UK when judicial pendency increased & judicial process was not seen to be ideal for many disputes. eg. matrimonial, Corporate.

Means of ADR ⇒ Arbitration, Conciliation, Mediation, Lok Adalats etc.

It is seen as the 'need of the day' in India by the Law Commission.

- ① High delays & pendency in courts
- ② High costs, lawyers & time taken
- ③ Ideal dispute resolution forum is not always judicial,
- ④ ~~Process~~ CPC-CAPC are not victim / party centric.
- ⑤ Lawyers & courts cause social embarrassment in private disputes. eg. family, marriage, property

Therefore, Arbitration & Conciliation Act was made in 1988 & amended recently. Additionally, mediation has been promoted by the local courts in personal disputes.

The Legal Services Authority Act 1987 created Lok Adalats & Permanent LAs for essential public services. These have

been agents of change as -

- i) Fast, cheap, Summary procedure.
- ii) Decisive, with minimal scope of appeal.
- iii) Reduces judicial pendency & role of lawyers.
- iv) 'Individualized Justice' unencumbered by Court orders.
- v) In full public view, as justice must be 'seen' to be done.

Therefore, Lok Adalats, despite functional issues are overall desirable. For ensuring popularity of ADR, need to reduce role of lawyers bodies in influencing the Court against ADR & to make legislations to facilitate ADR eg. recent A&C Amendment, 2015.

14. Bringing political parties under the ambit of RTI will not only usher accountability and transparency in governance but will also be a major step towards electoral reforms. Discuss.

राजनीतिक दलों को सूचना के अधिकार अधिनियम (आर.टी.आई.) के दायरे में लाने से न केवल पारदर्शी एवं उत्तरदायी शासन की शुरुआत होगी बल्कि यह चुनाव संबंधी सुधारों की दिशा में एक बड़ा कदम होगा। चर्चा करें।

The recent Supreme Court decision to include political parties within RTI was seen to be desirable, while showing some concerns on the 'legality' of such an order.

The merits of such a move are -
① Will curtail unaccounted flow of cash into parties.

② As EC doesn't regulate expenditure by parties, will ensure accounting of expenditure & accountability.

③ Will improve payment of tax liability to parties.

④ In light of recent Congress - 'Young India' controversy,

will disentitle party leaders to use party funds as personal bank accounts.

③ As election financing is the last structural issue in curtailing institutionalised corruption, it will be desirable.

However, as most black money expenditure is off-the-books, and the RTI Act only covers 'Public authorities', the inclusion of political parties, though morally & socially desirable, will not be entirely legal or prudent.

Inclusion will further inhibit parties from declaring legal contributions from donors & to appropriate such amounts largely

illegally & to spend them as such.
Therefore, it is desirable that
such a proposal is ~~not~~ conceived
of as an amendment to RTI
Act, with full support of the
parties in Parliament for the
same. eg. Surety Abhiyaan Suomoto
~~This is desirable~~ This will improve
compliance with RTI while
reducing the 'Jane Theory'
mentality of parties, as all
major parties will be under
similar obligations.

Therefore, this is a desirable
move, but must come after the
concurrence of parties & the
vigilance of the media & public.

15. A generational shift in railway operations is required. In light of this, discuss the need for an independent tariff and safety regulatory authority of India.

रेलवे के संचालन में आमूलचूल परिवर्तन की आवश्यकता है। इस तथ्य के प्रकाश में, भारत के लिए एक स्वतंत्र प्रशुल्क टैरिफ एवं सुरक्षा नियामक प्राधिकरण की आवश्यकता पर चर्चा करें।

Successive committees on the Railways, most recently Bibek Debroy Committee have suggested a 'generational' shift in rail operations through-

- ① Commercial accounting.
- ② Leaving non-core funcⁿ like schools & hospitals.
- ③ Independent Rail Tariff Authority
- ④ Restructured Railway Board & removal of silos
- ⑤ Implementation of previous projects, cost efficiencies & revenue increases.

It is seen that the current operating ratio of 114% of Railways

remains unsustainable due to lack of political will to increase passenger fares, inability of companies to pay exorbitant freight charges & the pursuit of economically unviable but politically desired routes for expansion.

Thus, a Rail Tariff Authority, which computes ~~fixed~~ tariffs, removes cross subsidisation & integrates economic necessity of the poorest is of critical importance,

as it - (1) Improves financial health of Railways (2) Allows capex

(3) Expansion in service quality & quantity. eg. Talgo Coaches.

(4) New tracks & better technology.

Similarly, a Safety authority, as recommended by the Kekodkar Commission is essential, given high human & economic damage through rail accidents, unmarked crossings, animals & public on tracks, collisions etc.

Current system of CRS has failed to adapt to new technology, & as tracks are overutilized (124%), accidents are inevitable

∴ Better financial health via ~~low~~ higher railway tariffs, better safety via GABAN, space tech, Safety regulator and higher R&D expenditure in RDSO will bring sustained change in railways.

16. It has been argued that the 'First past the post' system fails to represent the will of the majority and encourages vote-bank politics. In this context, examine whether India should adopt Proportional Representation System to reform our electoral process.

यह तर्क दिया जाता है कि 'फर्स्ट पास्ट द पोस्ट' प्रणाली बहुमत की इच्छा का प्रतिनिधित्व करने के स्थान पर वोट बैंक की राजनीति को प्रोत्साहित करती है। इस संदर्भ में, इस बात का परीक्षण करें कि क्या भारत को अपनी चुनावी प्रक्रिया में सुधार करने हेतु आनुपातिक प्रतिनिधित्व प्रणाली अपनाना चाहिए?

The Constituent Assembly, while discussing a similar conundrum, defined FPTP & discussed the benefits of both systems in electoral process. FPTP was adopted as -

- ① Cheaper & Faster ② India is historically used to it w/ British
- ③ Inculcates unity in constituency among electors.
- ④ Restricts creation of groups in a 'virtual separate electorates' w/ proportional representation
- ⑤ National unity, regional representation & limiting elected candidates

However, as FPTP often implies rule of majority, India has seen prevalence of ① Hindu ② Male ③ Disproportionately upper caste persons getting elected.

Additionally, as 'winner' secures only 26-32% votes & the party winning 2014 general elections only got <40% votes shows lack of credible representation,

∴ Proportional representation is often seen as a panacea against ills of the FPTP as -

- i) Gives representation to ^{more} all sections.
- ii) Multiplicity of views & opinions.

But, as it is more ~~costly~~ ^{expensive &}

time consuming, not followed.
Also, Ambedkar contended that
'illiterate' sections of populⁿ will
~~not~~ not understand the system,
Therefore FPTP is more desirable.

However, with increased literacy
awareness & rights based
approach, it is increasingly
desirable to move towards
a system of proportional repre-
sentation.

17. Independence of judiciary and separation of powers, both are part of the basic structure of the constitution. In this context, discuss the recent Supreme Court judgment on the constitutional validity of the National Judicial Appointments Commission.

न्यायपालिका की स्वतंत्रता एवं शक्तियों का विभाजन, दोनों संविधान के मूल ढांचे का हिस्सा हैं। इस संदर्भ में, हाल ही में सुप्रीम कोर्ट द्वारा राष्ट्रीय न्यायिक नियुक्ति आयोग (एन.जे.ए.सी.) की संवैधानिक वैधता पर दिए गए निर्णय पर चर्चा करें।

Through the Basic Structure Doctrine, independence of judiciary & separⁿ of powers were cemented in the SCAoRA v. UoI (1992) case [IInd Judges Case].

Through the 99th Constt. Amendment, the Parliament intended to make the process of appointment more transparent, inclusive and representative, while bringing it in line with Art. 124, which gives primacy to executive.

The Supreme Court, in the NJAC Case, struck down the 99th CA by holding

That the same violates Basic Structure as -

- i) Primacy of judiciary in appointing, is a facet of Judicial independence
- ii) Eminent Persons remove the Separation of powers
- iii) Art. 124C allows judicial appt. to enter legislative domain.
- iv) Executive only has facilitatory role in appt.

The judgement has been criticised for being anti-democratic & for not 'reading down' impugned provisions instead of declaring it unconstitutional.

Experts have called it 'DOCTRINE OF DERIVED BASIC STRUCTURE' where concepts not present in Constitution are 'deemed'

to be basic ~~set~~ structure
eg. Primacy of judiciary.

Additionally, as Separation of Powers was only a DPSP (Art. 50) & the Constitution was seen to have 'Separation of functions', not powers, according to SC & experts, the judgement is unprecedented.

It is seen to disbalance the intricate structure of 'Checks & balances' by putting judiciary above any checks, which militates against Separation of Powers.

Also, as major questions of law & reasoning not answered, it is seen that legislative change is NECESSARY to regulate appointments

18. AMRUT gives state governments the flexibility in designing schemes and eases central monitoring. Explain. How far can it recast the urban landscape of India?

अमृत (AMRUT) राज्य सरकारों को योजनाओं के प्रारूप निर्धारण के सन्दर्भ में लचीलापन प्रदान करता है तथा केंद्र द्वारा की जाने वाली मॉनीटरिंग को आसान बनाता है। वर्णन करें। भारत के शहरी परिदृश्य को यह किस हद तक पुनर्निर्मित कर सकता है?

AMRUT ⇒ A Tat Mission for Rejuvenating Urban Areas is a progressive & ambitious scheme to provide ₹ 50,000 cr. over 5 yrs to 500 towns & cities for their improvement & modernization.

It has been heralded as the epitome of 'cooperative federalism' by NITI Aayog as it changes the process initiated under its precursor JNNURM, which imposed 'one size fits all' solutions to states & cities, whilst dictating how & on what

money is to be spent.

Under AMRUT, MoUD has given states flexibility to design schemes & to plan fund usage in cities AS PER NEED, & to submit such proposals.

AMRUT employs a 'competitive' approach where on the basis of

- ① Current health of urban local body
- ② Possibility of increasing internal revenue generation
- ③ Utility, viability & implementation of proposed projects.
- ④ Effects on citizens

are taken into account before allocating funds. This creates a stake of the ULB & state in reviewing such funds, generates

political & administrative interest in execution, & is most ~~importantly~~ very beneficial to locals as it is the most effective project through a competitive approach.

Additionally, central interference via completion certificates, deadlines & guidelines have been relaxed as per principle of subsidiarity.

This allows useable & beneficial projects, at lowest cost to be made with minimal political interference. This improves capabilities of towns to cope with urbanisation & increased stress on water, land, environment, transport & health.

19. There has been a tendency to resolve specialized cases faster through the means of Tribunals. In light of this, discuss the issue of increasing "tribunalisation" of courts in India.

न्यायाधिकरण जैसे साधनों के माध्यम से विशेष मामलों को तेजी से हल करने की प्रवृत्ति देखी जा रही है। इसके सन्दर्भ में, भारत में न्यायालयों को न्यायाधिकरणीकृत करने की बढ़ती प्रवृत्ति के मुद्दे पर चर्चा करें।

The introduction of Act. 323 A & B to operationalise tribunals in 1975 was done with the following rationale -

- ① Overburdened, expensive & long process of adjudication in judicial system.
- ② One size fits all procedure of CPC CrPc & appeals frustrates dispute.
- ③ Lack of specialisation of judges.
- ④ Increased technicalities in fields of I & T etc.
- ⑤ Fast & effective quasi-judicial dispute resolution in UK & US.

The establishment of CAT, SAT & later TDSAT, PMLAT, NCLT, COMPTAT, NCDRC etc. led to ① specialisation of dispute resolution.

② Faster, cheaper, effective & without procedural constraints.

However, it also gave the government a chance to nominate govt. servants & favourable persons to these posts, increasing partisanship.

Also, such tribunals seem as post retirement sinecures for judges, & reduce their independence while in the court.

However, even as the tribunalisation is desirable, SC has put restrictions on the use of such

Tribunals -

- 1) Char person + 50% members from the judiciary.
- 2) All appeals to High Court as under Judicial Review [L Chandrakumar Case] [Frustrates point of 'instant justice']
- 3) Must follow Rule of Law, PNJ and Supreme Court.

Therefore, The prevalence of judges & appeal to HC has frustrated the point of such tribunals as judicial process is followed by judges, integrity is circumspect and appeals lie to HC, $\therefore$ time & money arguments extinguished. $\therefore$ Even as increased tribunals-ation is desirable for justice delivery, effective & CONCLUSIVE determination of rights & independence is imperative.

20. While the 73rd and 74th constitutional amendments provided for representation to women in local governance, much work remains to be done to ensure their true participation, given their present socio-economic conditions. Comment.

यद्यपि 73वें और 74वें संविधान संशोधन ने महिलाओं को स्थानीय शासन में प्रतिनिधित्व प्रदान किया है, लेकिन उनकी वर्तमान सामाजिक-आर्थिक स्थिति को देखते हुए, महिलाओं की वास्तविक भागीदारी सुनिश्चित करने के लिए बहुत कुछ किया जाना शेष है। टिप्पणी करें।

Parts IXX & IXXA of the Constⁿ provide a horizontal reservation to women in Panchayats at a minimum threshold of 33%.

This has led to ~~over~~ 1.1 million women getting elected & in empowering themselves & ~~the~~ aiding resolution of problems of women in their areas.

However, such 'empowerment' is seen to be superficial as it has been marred by the absence of 'social & economic empowerment' of women in village areas.

Issues -

- 1) 'Sarpanchpati' phenomenon of male heads of family / husbands play role of 'effective' sarpanch while elected women are rubber stamps.
- 2) Social alienation & stratification within a family impair women from fighting elections on their own.
- 3) Domestic responsibilities ensure that the woman cannot spend adequate time dealing with her village.
- 4) Illiteracy, social domination & ~~low~~ systemic low self esteem lead to women remaining rubber stamps.

Therefore, in the words of Ambedkar, political democracy is useless

without social & economic democracy.

Therefore, urgent need exists to

- 1) Educate, train & empower girls from the School & anganwadi levels. & reduce money-muscle power.
- 2) Allow political parties to 'adopt' & hone talent of rising women sarpanches. eg. Chhavi Rajawat (Rajasthan)
- 3) Dissemination of case studies of empowerment, autonomy & functioning of women sarpanches.
- 4) Systemic social change to ameliorate conditions of women by channelling state resources.

Therefore, it is essential to provide adequate conditions for women to sustain political movements, campaigns & elections.