



JOKTA ACADEMY
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ASWM NOTES

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Syllabus: Part 1

1. Historical underpinnings and evolution
2. Salient Features
3. Fundamental Rights, DPSP, FD
4. Amendment Process and important amendments
5. Theory of Basic Structure
6. Structure Organisation and Functions
 - ❖ Parliament and State legislatures
 - ❖ Union and State executive
 - ❖ Judiciary

Que: What were the historical underpinnings of the Indian Constitution and how did they influence its evolution?

Or

Que: The Constituent Assembly, tasked with drafting the Constitution, was deeply influenced by India's diverse historical and social experiences.

Historical Underpinnings of the Indian Constitution:

The Indian Constitution's historical underpinnings can be traced back to various sources, including indigenous traditions, colonial experiences, and Western political thought.

1. **Indigenous Traditions:** The Constitution draws upon India's ancient and medieval political and social traditions.
 - ❖ Vedas, Upanishads, and Dharmashastras provided insights into the nature of governance, rights, and duties.
 - ❖ The Buddhist and Jain teachings influenced non-violence, tolerance, and equality. Medieval Bhakti movement's emphasis on individual liberty and spiritual equality.
2. **Colonial Experiences:**
 - ❖ Impact of Western ideas of liberty, democracy, and constitutionalism.
 - ❖ The Montagu-Chelmsford Reforms of 1919 and the Government of India Act of 1935 laid the groundwork for the Constitution's eventual drafting.
3. **Western Political Thought:**
 - ❖ particularly the ideas of liberal democracy and the separation of powers.
 - ❖ inspired by the American and French Constitutions and the British parliamentary

system.

- The Constitution also incorporates elements of socialist and Gandhian thought, such as the idea of social and economic justice and the emphasis on non-violence.

Influence on the Evolution of the Indian Constitution:

The historical underpinnings of the Indian Constitution have had a significant impact on its evolution, from the initial drafting to subsequent amendments.

1. The Constituent Assembly, tasked with drafting the Constitution, was deeply influenced by India's diverse historical and social experiences.
2. The Assembly's members, drawn from various regions and communities, brought their unique perspectives and traditions to the table.
3. The debates and discussions during the drafting process reflected the influence of India's indigenous traditions, colonial experiences, and Western political thought.
4. The Constitution's fundamental rights reflect India's ancient and medieval traditions of individual liberty and social justice.
5. The right to life, liberty, and equality before the law draw on India's Dharmashastras and the Bhakti movement's emphasis on spiritual equality.
6. The inclusion of the right to freedom of religion and cultural and educational rights reflects India's diverse social fabric.
7. The inclusion of Directive Principles of State Policy in the Constitution's preamble, inspired by Gandhian and socialist thought, was a significant amendment that reflected India's post-independence aspirations.
8. Similarly, the 73rd and 74th Constitutional Amendments of 1992 that empowered local governance reflect ancient traditions of Panch and Gram Sabha.

Conclusion

The historical underpinnings of the Indian Constitution reflect India's diverse social and political experiences. The Constitution draws on India's indigenous traditions, colonial experiences, and Western political thought, and has evolved through amendments to reflect changing aspirations and challenges. Despite this the Constitution remains a living document, reflecting India's democratic and pluralistic ethos.

Question: Discuss the role of Constituent Assembly while Critically examining its composition.

Role of Constituent Assembly

The idea of a constituent assembly was put forward for the first time by MN Roy. The demand for a constituent assembly was accepted for the first time by the British through their ‘August offer’ of 1940. Eventually, a constituent assembly was established under the provisions of the Cabinet Mission plan.

1. First meeting was held on December 9, 1946. Constituent assembly held 11 sessions over two years, 11 months and 18 days
2. Constituent assembly acted as the temporary legislature until a new one was to be constituted.
3. Some of the functions it performed at this stage were:
 - ❖ Ratification of India’s membership of the commonwealth
 - ❖ It adopted the national flag
 - ❖ It adopted the national anthem
 - ❖ Adoption of National song
 - ❖ Electing Dr Rajendra Prasad as the first President of India
4. Drafting committee was chaired by Dr BR Ambedkar played a pivotal role in drafting the constitution and also in passage of the constitution in the assembly
5. Constituent assembly adopted, enacted and gave to themselves the constitution on November 26, 1949. However, most provisions came into force on January 26th, 1950. This date is referred to in the constitution as the ‘date of its commencement’.

Criticism of the constituent assembly

1. Not a representative body since members were not directly elected
2. It was not a sovereign body since it was established based on British order
3. It consumed unduly long time to make the constitution
4. It was dominated predominantly by congress party.
5. It was dominated by lawyer-politician to a greater degree
6. It was dominated by Hindus predominantly

However, the above criticisms do not hold true picture of the constituent assembly. Though it was indirectly elected, the constituent assembly consisted of people belonging from all section of the Indian society. The time-consuming process considering the challenge of enacting a constitution for a country like India was reasonable. The secular provisions in the constitution and the sustainability of the constitution definitively prove that the constitution did not give any overt or covert preference to the dominant religion of the land

Que: How Indian Constitution is different from traditional Federal Constitution and is biased towards a Strong Centre.

OR

“India is a federation with a unitary bias and is referred to as a quasi-federal state.” Comment.

Federalism is a system of government in which power is divided between a central authority and constituent political units. The Constitution of India establishes a federal structure to the Indian government, declaring it to be a “Union of States”.

The Indian Constitution is not truly federal but rather quasi-federal, according to K C Wheare.

Federal Features of the India Union:

1. Two governments i.e. Union Government and State governments
2. Division of powers between the union and its constituents (Seventh Schedule contains three lists such as the Union List, State List, and Concurrent List)
3. Supremacy of the Constitution (Basic structure of the Constitution is made indestructible by the Judiciary)
4. Partial rigidity of the Constitution
5. Independent Judiciary
6. Bicameralism

Unitary Features of the Constitution:

1. A strong centre – The Union Government becomes all powerful in certain times like emergencies.
2. Emergency provisions
3. Article 365 of the Constitution of India demands that the States must comply with the central direction.
4. Single Constitution
5. Single citizenship
6. Flexibility of Constitution
7. Integrated judiciary
8. Appointment of the Centre. E.g.: Governor
9. All India Services

The following characteristics highlights Indian Constitution is not a “traditional federal Constitution”:

1. There is no provision of separate Constitutions for each State as required in a federal state. The Constitution of India is the supreme document, which governs all the states.
2. The Constitution can be altered only by the Union Parliament; whereas the States have no power to alter it.
3. In contradiction to a federal Constitution, the Indian

Constitution renders supreme power upon the Courts to invalidate any action which violates the Constitution.

- The distribution of powers facilitates local governance by the states and national policies by the Centre.

The Indian Constitution is a constitution sui generis. On one hand, the constitution contains features which are of high importance for a federal arrangement, at the same time it contains provisions which fight for a strong Centre, thus making it quasi-federal in nature. The fact to be appreciated here is that these dual federalism provisions were deliberately incorporated to best fit a polyglot country like India.

The Parliamentary form of the government adopted by the Indian Polity has both strengths and weaknesses. Analyse.

Parliamentary form of government is also known as Westminster model of government or Cabinet government or Responsible government. It has been taken from the United Kingdom.

Major features of parliamentary form of government

- Presence of Nominal and Real Executives
- Majority Party Rule
- Collective Responsibility of council of ministers responsible to the e of People.
- Role of Opposition Party to keep check on the ruling government.
- Bicameral legislature
- The President can dissolve the Lok Sabha on recommendation of the Prime Minister while Rajya Sabha is a permanent house and cannot be dissolved.

Advantages of parliamentary form of government

- Better coordination between the administration and the legislation
- Prevent authoritarianism since the executive branch is accountable to the legislature
- Participatory and inclusive decision-making.
- Be prepared to replace the government if you lose majority support. "The leader of the opposition party is the deputy prime minister" Jennings.
- Representation of different groups is possible in Parliament as well as government. This is especially important for countries like India.
- The system is flexible because the PM can be easily changed as needed.

Demerits of Parliamentary form of Government

- Political defection or evils of the multiparty coalition can make the government unstable.
- A change in the ruling party is usually followed by

- changes in the policies of the government.
- The cabinet becomes autocratic and exercises nearly unlimited powers whenever the ruling party enjoys an absolute majority in the Parliament
- In the parliamentary system, The cabinet acts as the leader of the legislature as well as the executive. Hence, the whole system of government goes against the letter and spirit of the theory of separation of powers.
- Ministers are not experts in their fields Hence Prime Minister has a limited choice in the selection of ministers

As the representative body that checks the government's activities, Parliament plays a crucial role in our democracy. It is critical for Parliament to function properly in order to fulfil its constitutional purpose.

Discuss various features of Indian secularism.

Secularism is the principle that makes a state neutral in the matter of religion and hence does not uphold any particular religion as the state religion, for example, USA and India.

Principled distance from religion is the essence of Indian secularism. The 42nd amendment of the Constitution of India, amended the Preamble of the Constitution declaring India as a secular nation.

In India secularism means the state views all religions as equal.

Various features of Indian concept of secularism:

- The Constitution of India prevents the State from discriminating against any citizen on the grounds of religion (Article 15).
- All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
- Indian Constitution embodies the positive concept of secularism, i.e. giving equal respect to all religions or protecting all religions equally. The Western concept of secularism connotes a complete separation between the religion and the state.
- In a landmark judgement in the Bommai case (1994), the Supreme Court upheld that **secularism is a 'basic feature' of the Constitution.**
- The 7th schedule of Indian constitution places religious institutions, charities and trusts into concurrent List, which means that both the central government of India and various state governments in India can make their own laws about religious institutions, charities and trusts.
- Indian secularism focuses on harmony among all religions rather than tight separation between state

and religion.

- Indian secularism is broader in a sense that it allows state intervention to help reform various evils and superstitions. E.g. Triple Talaq Act.

The essence of secularism lies in accommodation of varied social groups; India embraced many religions, sects, communities showing tolerance and true sense of accommodation, leading to a tolerant nation with social cohesion.

Discuss the importance of Fundamental rights.

Part III of the constitution covers all the traditional civil and political rights enumerated in the universal declaration of human rights. Dr B R Ambedkar described them as the most citizen part of the constitution.

- Fundamental rights are planned to protect the dignity of the individual and create situations that can help every human being to develop his personality to the fullest extent.
- They interlace a guaranteed pattern on the basic structure of human rights. It imposes negative obligations on the state, not on encroaching on individual liberty in its various dimensions.
- They are most essential for the attainment by the individual of his full intellectual, moral and spiritual status.
- The object of the inclusion of them in the constitution is to establish a government of law and not of man.
- They were considered essential to protect the liberties and rights of the people against the infringement of the power delegated by them to their government.
- Fundamental Rights protect the liberties and freedom of the citizens against any invasion by the state, and prevent the establishment of authoritarian and dictatorial rule in the country. They are very essential for the all-around development of individuals and the country.
- Fundamental rights are essentially human rights but are regulated by the Constitution in India. They integrate him with the society and at the same time as they incorporate educational value also, a citizen is able to understand the importance of all the members of the society.
- The Constitution also provides for enforcement of these rights hence they have legal value also which empower a citizen to protect, respect and fulfil the rule of law. They uphold the equality of all individuals, the dignity of the individual and the nation's unity.

What is the rationale behind Article 32 called the heart and soul of the constitution?

Article 32 falls under Part III of the Constitution that includes the fundamental rights of individuals.

Dr B.R. Ambedkar had once said, "If I was asked to name any particular article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other article except this one (Article 32). It is the very soul of the Constitution and the very heart of it."

Rationale behind Article 32 called the heart and soul of the constitution:

- Right to constitutional remedies works on the Doctrine "Ubi Jus Ibi Remedium" which means when there is a right there is a remedy.
- It gives the power to the citizens of India to go directly to the Supreme Court of India, rather than by way of appeal, if they feel that any of their Fundamental Rights have been violated.
- Article 32 makes the Supreme Court the defender and guarantor of the fundamental rights.
- The Supreme Court and The High Court under Article 32 and 226 are equipped with constitutional weapons i.e., WRITS for the violation and enactment of the Fundamental Rights.
- Both the courts have the power to issue directions, orders, and writs, including writs of Habeas corpus, Mandamus, Prohibition, Quo warranto, and Certiorari, for the enforcement of any of the rights.
- On the other hand, Parliament has the right to empower any other court with such authority so that it can act as "Protector and guarantor" of such rights.
- Supreme Court in basic structure doctrine made clear that right to move to Supreme Court cannot be suspended except otherwise provided by the Constitution.

The constitutional remedies provided to the citizens are the most powerful orders with immediate effects and results and that is why it has always been considered as the most important fundamental right engrafted in the Constitution of India.

Unlike Fundamental Rights, which are justiciable and can be enforced by the courts, DPSPs are non-justiciable, meaning that citizens cannot directly approach the courts to enforce them. Comment.

Directive Principles of State Policy (DPSP) are the form of instructions/guidelines to the governments at the centre as well as states. Though these principles are non-justiciable, they are fundamental in the governance of the country.

The Constitution of India aims to establish not only political democracy but also socio-economic justice to the people to establish a welfare state. With this purpose in mind, our Constitution lays down desirable principle and guidelines in Part IV known as the Directive Principle of

State Policy.

Yes, the DPSPs should be made enforceable

1. It will keep the autocratic tendencies of the ruling governments in check.
2. The government will become answerable to the people only if these DPSPs are justiciable in a court of law.
3. Most of the provisions contained in the DPSPs are promises made by the contesting parties during the time of elections.
4. Their actions will also be controlled by these Directives. An example would be the provision contained in Article 44, relating to the implementation of a Uniform Civil Code.

No, DPSPs need not be made enforceable

1. Making the Directives enforceable is futile, since a large number of laws and policies are already in place for the implementation of these DPSPs. Eg, Panchayati Raj (Article 40) was introduced through an Amendment to the Constitution in 1992. Today, there are 2,27,698 Gram Panchayats, 5906 Intermediate Tiers, and 474 Zila Panchayats in the country.
2. DPSPs are argued that their provisions are not very secular. Eg. it calls for the implementation of a Uniform Civil Code, it also directs the state to ban the slaughter of cows, a cause that is primarily Hindu.
3. The Directive Principles also try to impose morals on the citizens, something that is inarguably outside the scope of law. Eg. The Directives contain a provision that calls for the ban on alcohol. Though it has never been enforced on a national level, this provision certainly tries to impose certain morals on the people.

The directive principles play an ideal before the legislator of India which shows that light while they frame the policies & laws. They show the path to the leaders of the country which takes the country to achieve the ideal of the constitution embodied in the Preamble "Justice, Social, Economic, Political; liberty, equality and fraternity".

The Fundamental Duties serve as a reminder of the responsibilities citizens have towards the nation and society, balancing the rights provided by the Constitution. Whether these duties should be enforced is a subject of debate. State your opinion on the debate.

In 1976, Parliament on recommendation of Sardar Swaran Singh Committee enacted the 42nd Constitutional Amendment Act in 1976. This amendment added a new part, namely, Part IVA to the Constitution.

Need for enforcing fundamental duties

1. Fills legal vacuum making them obligatory to enforce the needed discipline and behavioural change among citizens.
2. **In M.C. Mehta v. Union of India**, the Supreme Court introduced compulsory learning of lessons on protection and improvement of the natural environment in all the educational institutions of the country as a part of Fundamental duty under Article 51-A (g).
3. At times, Directive Principles Of State Policy (DPSP) has taken precedence over Fundamental Rights and some of them have found their way into statute books. Similarly FDs can have enlarged legislative scope.
4. The fundamental duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.
5. Fundamental duties can be relevant consideration for Courts to examine the reasonableness of any legislative restriction on the exercise of a freedom.
6. As the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. Eg, Fundamental duty to defend the country and render national service when called upon to do so

Drawbacks of enforcing fundamental duties

1. Provides opportunity to implant political propaganda, To attain vested interests under the garb of fundamental duty like protecting the culture. For example, omitting and tampering with school curriculum.
2. Redundant when suitable legislative actions are available: For example fundamental duty to protect and improve the natural environment including forests and wildlife only repeat what the existing environment protection laws prescribe for.
3. Futility of legal enforcement without will and aspirations of citizens: Out of the ten clauses in Article 51A, five are positive duties and the other five are negative duties.
4. Difficulty in determining scope: Fundamental duty such as 'to value and preserve the rich heritage of our composite culture' leaves the scope of such duties open ended.
5. Such ambiguity enables unscrupulous elements for moral policing. Example recent lynching by cow vigilantes.

Wayforward:

1. Voluntary obedience more suitable: Making fundamental duties may facilitate compulsory

allegiance of citizenry obligations but that's not democratic. Even Gandhiji always believed in moral persuasion rather than forceful adherence.

2. Lack of adequate awareness: For the proper enforcement of duties, it is necessary that it should be known to all. This should be done by a systematic and intensive education of people that is by publicity or by making it a part of education.

The provisions for enforcement of fundamental duties should be made considering the multiculturalism and pluralism of India.

Describe the procedure of amendment of the Constitution of India under Article 368. Why has this amendment procedure been often criticized?

The Constitution of India provides for its amendment in order to adjust itself to the changing conditions and needs. Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.

Procedure for amendment of constitution:

1. Amendment can be initiated only by the introduction of a bill for the purpose in either house of the Parliament
2. The bill can be introduced either by a minister or by a private member and does not require the permission of the President
3. The bill must be passed in each house by a special majority, that is, a majority of the total membership of the house and a majority of two-thirds of the members of the house present and voting
4. Each house must pass the bill separately. If there is any disagreement, there is **no provision** for joint sitting of the houses
5. If the bill seeks to amend the provisions of the constitution, it must be ratified by the legislatures of half of the states by a simple majority
6. After passage of the bill by both the houses, it is presented to the President for his assent
7. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament
8. After the President's assent, the bill becomes an act

Criticism of the amending procedure

1. An amendment can be invoked in the Parliament only
2. The procedure is very rigid if a private member of the parliament wants to move a constitutional amendment bill
3. Vesting of even the constituent power in the Parliament gives the ruling party a greater probability to pass amendments if they have requisite numbers in both houses of Parliament. This makes easy to

ignore minority voices while making important constitutional amendments.

4. Inability of states to initiate constitutional amendment in Indian constitution does not represent matured cooperative federalism. The consent of the states is limited to just a few provisions.
5. No time frame has been prescribed in the constitution for states to ratify or reject the amendment bill.
6. The provisions relating to the amendment procedure are too sketchy. Hence, they leave a wide scope for taking matters to the judiciary.

Despite these defects, it cannot be denied that the process has proved to be simple and easy and has succeeded in meeting the changing needs and conditions of society. The procedure is neither highly flexible as to allow the ruling parties to change it according to their whims nor is it very rigid as to be incapable of adapting itself to the changing needs.

Significance of the amendment provisions in the Indian Constitution.

Part XX of the Constitution under Article 368 deals with the amendment of the Constitution. Indian constitution provides for three kinds of amendment processes i.e., amendment by simple majority, amendment by special majority, and amendment by special majority and ratification by the States.

Significance of the amendment provisions of the constitution:

1. As the time is not static; it goes on changing in the same way the political, economic and social conditions of the people also goes on changing so for that reason The Constitution has to be amended at every interval of time
2. A Constitution which is a static document becomes a big hurdle in the path of the progress of the nation. Provision of amendment of the Constitution is made with a view to overcome the difficulties which may encounter in future in the working of the Constitution
3. Technological changes create new fields of knowledge whose regulation becomes critical in the absence of amendment. E.g., need of constitutional status to upcoming institutions like Data protection authority of India.
4. It maintains flexibility of constitution to accommodate new institutions, reform existing ones and accept international commitments within our own laws. Eg. GST and GST Council.
5. Amendment provisions help to strengthen foundational principles of Indian constitution like cooperative federalism through GST council, constitutional status to National Commission for Backward Class to

ensure equality.

- If there were no provision made for the amendment of the Constitution, people would have recourse to extra-Constitutional methods like revolution to change the same.

The provisions relating to the amendment procedure leave a wide scope for taking matters to the judiciary. Even though, Parliament has unlimited power of amending constitution, Basic structure doctrine of Supreme Court acts as check on amending power of parliament.

Why Indian Constitution is Called as Blend of Rigidity and Flexibility. Examine.

The Indian Constitution is a balancing act between rigidity and flexibility.

- Some provisions can be amended by a special majority of the Parliament, which is defined as a two-thirds majority of the members of each House present and voting, as well as a majority (more than 50%) of the total membership of each House.
- Other provisions may be amended with a special majority of the Parliament and ratification by half of the total number of states.
- Simultaneously, certain provisions of the Constitution can be amended by a simple majority of Parliament in the manner of the ordinary legislative process.
- The provisions in the constitution that allow the parliament to supplement the provisions of the constitution with legislation add to the constitution's flexibility.

Significance

- The Basic Structure doctrine advanced in the Kesavananda Bharati case has undoubtedly increased the constitution's rigidity. In fact, whenever the issue of Basic Structure arises, the Indian Constitution, as added by Supreme Court, is "absolutely rigid".
- It makes it clear that Parliament cannot use its power to amend the Constitution to alter, distort, or harm the basic characteristics and principles of the Constitution in any way.

Criticism/Challenges

- However, given the ease with which more than 100 amendments have been passed in the last 60 years of the Constitution's operation, some critics have described the amendment procedure as being overly flexible.

As a result, the amendment procedure should only be used as a last resort.

Furthermore, while passing the amendment, Parliament

must maintain and preserve the Constitution's basic structure.

The concept of 'basic structure' came into existence in the landmark judgment in Kesavananda Bharati vs State of Kerala case (1973) 50 years ago.

Kesavananda Bharati Case (1973):

Supreme Court overruled its judgment in the Golak Nath case. (It upheld the validity of the 24th Amendment Act and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights.)

At the same time, it laid down a new doctrine of the 'basic structure' of the Constitution.

It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.

The Doctrine of Basic structure, one of the most important examples of judicial activism is the result of the creative interpretation of the constitution by the judiciary. It was given by the 13-judges bench of the Supreme Court in the Kesavananda Bharati case (1973), and was aimed at defining the scope of the amending power of the Parliament.

It is a doctrine to examine the constitutional validity of constitutional amendment.

In Kesavananda Bharati Case (1973), on the question whether the amending power of the Parliament is unlimited and absolute, the Supreme Court held that

- The amending power is limited to the extent that it doesn't alter the 'Basic Structure' of the constitution.
- The word 'amend' under Art 368 means only changes other than altering the basic features of the constitution, which would amount to making or writing a new constitution.
- In this way, the Supreme Court, introduced a 'substantive limitation' on the amending power of the Parliament.
- However, the judgment of the Supreme Court inventing a new doctrine of the 'basic structure' has been subjected to intense academic debate.
- The opponents of the judgement claims that the judiciary has gone for the metaphysical approach rather than the legal approach of what is written.
- They argue that if the government was destroying the constitution, the judiciary has gone to the extent of creating the constitution.
- On the other hand, the proponents of the decision argue that judiciary has protected the sanctity of the constitution.

DEBATE that led to Basic Structure Doctrine

Minerva Mills vs. Union of India:

In the Minerva Mills case, the Supreme Court held that ‘the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.

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

Sankari Prasad Judgment 1951:

Initially judiciary was of the view that the amendment power of the parliament is unrestricted because it can amend any part of the constitution, even the [Article-368](#) which provides the power to amend to the parliament

Golak Nath Vs State of Punjab 1967:

The Supreme Court adopted a new vision to see the powers of parliament that it cannot amend Part III of the constitution i.e. Fundamental rights and thus awarded fundamental rights a “Transcendental Position”.

Keshavanada Bharti Vs State of Kerala 1973:

It gave birth to the landmark judgment which pronounced that the parliaments cannot alter or disturb the basic structure of the constitution.

It was held that, however, the parliament has unfettered power to amend the constitution, but it cannot disturb or emasculate the basic structure or fundamental features of the constitution as it has only the power of amendment and not of rewriting the constitution.

Significance

1. Limiting Political Power and Amending Powers of Parliament
2. Extend Wise Exercise of Judicial Review Process and exercise of co-constituent power by the Supreme Court.
3. Last Word Resting with the Supreme Court: responsibility to uphold fundamental principles, which are crucial to maintaining the integrity of the Constitution.

For Example The decision in the [NJAC case \(2015\)](#) makes it compellingly clear that Judicial independence is important as the “essence” of rule of law, which embeds both “decisional

autonomy” and “institutional autonomy”.

4. The basic structure doctrine is a testimony to the theory of Constitutionalism to prevent the damage to essence of Constitution of India by brute majority of the ruling majority.
5. The basic doctrine saved the Indian democracy as it acts as a limitation of constituent power or else unlimited power of parliament might have turned India into a totalitarian
6. It helps us to retain the basic tenets of our constitution so meticulously framed by the founding fathers of our Constitution.
7. It strengthens our democracy by delineating a true separation of power where Judiciary is independent of other two organs. It has also given immense untold unbridled power to Supreme Court and made it the most powerful court in the world
8. By restraining the amending powers of legislative organ of State, it provided basic Rights to Citizens which no organ of State can overrule.
9. Being dynamic in nature, it is more progressive and open to changes in time unlike the rigid nature of earlier judgements.

CRITICISM

1. The Constitutional Bench in Kesavananda Bharati case ruled by a 7-6 verdict which could be challenged again for re-interpretation.
2. There has been no basis for the doctrine in the language of the Constitution.
3. The lack of definite explanation as to what constitutes the basic structure, thereby leaving the doctrine ambiguous.
4. It is seen that the basic structure doctrine gets defined differently by different judges based on their subjective satisfaction.
5. It is inconsistent with the concept of separation of power.
6. A law made by Parliament can be declared null and void by the Courts if courts consider it against basic structure of the Constitution which limits amending powers of elected Parliament.
7. Leads to Judicial Overreach:
For example National Judicial Appointments Commission (NJAC) was unanimously enacted as an amendment to the constitution by the Parliament and passed by the legislature of twenty [out of twenty-eight] States in India. However, the basic structures doctrine used in cases regarded as incidents of judicial overreach like the NJAC bill.
8. It gives power to the judiciary that allows it to impose its philosophy on a government that is formed democratically.

Conclusion

The Basic Structure Doctrine is a cornerstone of the Indian Constitution, which has been instrumental in ensuring the preservation of the fundamental principles of democracy and protecting the rights of citizens. Its establishment in the Kesavananda Bharati case is a testament to the strength and resilience of India's democratic institutions and the judiciary's commitment to upholding the Constitution.

Zia Modi, in her book 'The Ten Judgments that changed India', has given following arguments- Although the judiciary was wrong from the academic point of view, but from the practical point of view, it was the need of the time in the Indian context. (ii) It has proved to be a blessing in disguise as it has checked authoritarianism of the government. This has stopped India from going on the path of the other Third World countries.

- What is the Doctrine of Separation of Powers?**
- What are the Instruments of Checks & Balances?**
- What are the Issues with the Separation of Powers?**

Doctrine of Separation of Powers

1. Separation of powers is the division of the legislative, executive, and judicial functions of government.
2. Article 50 says that states shall take steps to separate the Judiciary from the Executive.
3. The constitutional demarcation precludes the concentration of excessive power by any branch of the government.
4. The Indian Constitution lays down the structure and defines and determines the role and functions of every organ of the State and establishes norms for their inter-relationships and checks and balances.

Instruments of Checks & Balances

Legislature Control:

1. On Judiciary: Impeachment and the removal of the judges. Power to amend laws declared ultra vires by the Court and revalidating it.
2. On Executive: Through a no-confidence vote it can dissolve the Government. Power to assess works of the executive through the question hour and zero hour.

Executive Control:

1. On Judiciary: Making appointments to the office of Chief Justice and other judges.
2. On Legislature: Powers under delegated legislation. Authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution.

Judicial Control:

1. On Executive: Judicial review i.e., the power to review executive action to determine if it violates the Constitution.
2. On Legislature: Unamendability of the constitution under the basic structure doctrine pronounced by the Supreme Court in Kesavananda Bharati Case 1973.

Issues

1. Weakened Opposition in India: Democracy works on the principle of checks and balances. It is these checks and balances that prevent democracy from turning into majoritarianism.
2. In a Parliamentary system, these checks and balances are provided by the opposition party. However, the majority of a single party in the Lok Sabha has diminished the role of an effective opposition in the Parliament.
3. Judiciary Being Averse to Checks & Balances: The Supreme Court has held the 99th constitutional amendment, which provided for the establishment of the National Judicial Appointments Commission as ultra-vires.
4. The NJAC could guarantee the independence of the system from inappropriate politicization, strengthen the quality of appointments, enhance the fairness of the selection process, promote diversity in the composition of the judiciary, and rebuild public confidence in the system.
5. Judicial Activism: In many recent judgments, the SC has become hyper-activist in making judgements that are deemed as laws and rules. This transgresses the domain of legislature and executive.
6. Executive Excesses: Executive in India is alleged of over-centralisation of power, weakening of public institutions and passing laws to strengthen law, order & security of the state but curbs freedom of expression as well.

Que. How is the Rajya Sabha Relevant in Indian Democracy?

The Rajya Sabha, constitutionally the Council of States, is the upper house of the bicameral Parliament of India. The genesis of the Rajya Sabha can be traced to the Montague-Chelmsford report of 1918 and, consequently, the Government of India Act, 1919, which provided for a second federal chamber of Parliament.

Asserting the federal nature of the Indian polity, Rajya Sabha ensures healthy bicameralism not only as a House for second thought but is also a guardian of a State's rights as a House of correction.

Relevance:

1. **Permanent Body:** Unlike the Lok Sabha, the Rajya Sabha is not subject to dissolution but one-third of its members retire after every second year.
 - ❖ This ensures continuity and also brings about a fusion of new and old in the House.
 - ❖ This type of arrangement is designed to secure the representation of past as well as current opinion and help in maintaining continuity in public policy.
2. **Review and Revaluation Role:** Rajya Sabha helps in a deeper review of laws, as it complements the first chamber in securing greater executive accountability.
 - ❖ It checks hasty, defective and ill-considered legislation made by the Lok Sabha by making provision of revision and thought.
 - ❖ It also provides a platform to the small and regional parties to present their views.
3. **House of Checks and Balances:** Since the 'Lok Sabha' decisions may go in favor of the populist sentiment and force the members to go contrary to the best judgment, the Rajya Sabha keeps a check and balance on it.
 - ❖ Unlike the House of Lords in Britain, the Rajya Sabha members do not hold the hereditary membership rights.
4. **Voice of the States:** The process of indirect elections also makes its way to the Indian parliamentary system as the members of the Rajya Sabha are elected by the members of the state legislative assemblies based on proportional representation by means of the single transferable vote.
 - ❖ The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.
5. It acts as a conduit between the states, people, and Parliament, furthering the principles of decentralization by lending an independent voice to the states.
6. **Promotes Participatory Democracy:** Twelve members are nominated to the Rajya Sabha by the President of India for 6 years term for their contributions towards arts, literature, sciences, and social services.

This feature of the Rajya Sabha makes it even more democratic and participatory as eminent people making significant contributions to society, make their way to the highest echelons of Indian Politics.

Que. What are the Special Powers of Rajya Sabha?

1. **Legislation on Matters of the State List:** Article 249 allows the Parliament to legislate on matters

- enumerated in the State List if the Rajya Sabha passes a resolution by two-thirds majority.
2. **Creation of All India Services:** Article 312, the Parliament is allowed to create an All India Services common to the Union and the States, if the Rajya Sabha passes a requisite resolution.
3. **Proclamation of the President's Rule:** Usually, such proclamations need approval of both the Houses of Parliament. But if the Lok Sabha is dissolved when the proclamation comes to Parliament, then the Rajya Sabha alone can approve the imposition of President's Rule. (Articles 352, 356 and 360)
4. **Removal of Vice President:** Resolution for the removal of the Vice-president can be introduced only in the Rajya Sabha and not in the Lok Sabha (Article 67).

What are the Concerns Related to Rajya Sabha ?

1. **Subverting the Federal Character of the Rajya Sabha:** By way of the Representation of People (Amendment) Act, 2003, parliament has removed the word 'domicile' from Section 3 of Representation of People Act, 1951. Following the amendment, A person who is neither a resident nor a domicile of a state can contest the Rajya Sabha elections from that state.
2. The ruling parties on many occasions have used the Rajya Sabha seats to elect their defeated candidate in Lok Sabha.
1. **Limited Powers Related to Money Bills:** A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha. Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.
2. **Bypassing the Rajya Sabha:** In some cases, ordinary bills are being passed in the form of a Money Bill, circumventing the Rajya Sabha and giving rise to the question about the very efficacy of the upper house of Parliament.
3. **Issues with the Provision of Joint Sitting:** Since the Lok Sabha has a larger membership in a joint sitting generally the will of the Lok Sabha prevails over Rajya Sabha.
4. **Other Limitations:** A no-confidence motion cannot be introduced in the Rajya Sabha.
5. In addition, it exercises a limited role in the functioning of the Public Accounts Committee and has no part in the Estimates Committee.

Que. What is a Collegium System and How Did It Evolve?

Que. What are the Issues Related to the Collegium System?

It is the **system of appointment and transfer of judges** that has evolved through judgments of the SC, and not by an Act of Parliament or by a provision of the Constitution.

Evolution

1. **First Judges Case (PIL by S P Gupta) 1981:** It declared that the “primacy” of the CJI’s (Chief Justice of India) recommendation on judicial appointments and transfers can be refused for “cogent reasons.” The ruling gave the Executive primacy over the Judiciary in judicial appointments for the next 12 years.
2. **Second Judges Case (PIL by Supreme Court Advocates on Record Association) 1993:** SC introduced the Collegium system, holding that “consultation” really meant “concurrence”. It added that it was not the CJI’s individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the SC.
3. **Third Judges Case (presidential reference to the Supreme court)1998:** SC on the President’s reference (Article 143) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.
4. **National Judicial Appointments Commission Act (NJAC) or Ninety-Nine Amendment) Act, 2014** to recommend names for the Appointment of Supreme Court Judge and Appointment and Transfer of High Court Judge declared **unconstitutional** in October 2015.
5. **Composition of NJAC**
 - a) The Chief Justice of India
 - b) 2 senior-most judges of the Supreme Court
 - c) The Law Minister of India
 - d) 2 eminent members that are chosen by the Selection Committee

Composition

1. The SC collegium is headed by the CJI (Chief Justice of India) and comprises four other senior most judges of the court.
2. A High Court collegium is led by the incumbent Chief Justice and two other senior most judges of that court.

Judges of the higher judiciary are appointed only through the collegium system and the government has a role only after names have been decided by the collegium.

Articles 124(2) and 217 of the Indian Constitution deal with the appointment of judges to the Supreme Court and High Courts vests power on the President to appoint.

Que. What are the Issues Related to the Collegium System?

1. **Exclusion of Executive:** The complete exclusion of the executive from the judicial appointment process created a system where a few judges appoint the rest in complete secrecy.
2. **No accountability Mechanism:** They are not accountable to any administrative body that may lead to the wrong choice of the candidate while overlooking the right candidate.
3. **Chances of Favouritism and Nepotism:** The collegium system does not provide any specific criteria for testing the candidate for the post of CJI because of which it leads to wide scope for nepotism and favouritism.
4. **Non Transparency:** It gives rise to non-transparency of the judicial system, which is very harmful for the regulation of law and order in the country.
5. **Against the Principle of Checks and Balances:** In India, three organs work partially independently but they keep check and balance and control on the excessive powers of any organ. However, the collegium system gives Judiciary immense power, which leaves little room for checks and poses the risk of misuse.
6. **Close-Door Mechanism:** Critics have pointed out that this system does not involve any official secretariat. It is seen as a closed-door affair with no public knowledge of how and when a collegium meets, and how it takes its decisions. Also, there are no official minutes of collegium proceedings.
7. **Unequal Representation:** The other area of concern is the composition of the higher judiciary, women are fairly underrepresented in the higher judiciary.

Way Forward

Filling up of vacancies is a continuous and collaborative process involving the executive and the judiciary, and there cannot be a time frame for it. However, it is time to think of a permanent, independent body to institutionalise the process with adequate safeguards to preserve the judiciary’s independence guaranteeing judicial primacy but not judicial exclusivity.

It should ensure independence, reflect diversity, demonstrate professional competence and integrity.

Syllabus Part 2

1. Functions and responsibilities of Union and States
2. Issues and challenges pertaining to federal structure
3. Devolution of power and finances upto local level and challenges therein
4. Representation of people Act
5. Various constitutional posts and bodies

Q. What are the functions and responsibilities of Union and State governments in federal structure defined in Indian constitution.

In a federal system of government, such as the one in India, both the union (central) government and state governments have distinct functions and responsibilities. Here's an overview of their respective roles:

Union Government (Central Government):

1. **Defence and Foreign Affairs:** The central government is responsible for matters related to national defense and foreign relations. This includes managing the armed forces and conducting diplomacy with other countries.
2. **Currency and Monetary Policy:** The issuance of currency, regulation of the banking system, and formulation of monetary policy fall under the purview of the central government.
3. **Interstate and International Trade:** The central government regulates trade between states and with foreign countries. It sets trade policies, tariffs, and treaties.
4. **Telecommunications and Postal Services:** Matters related to telecommunications, including the regulation of radio and television, as well as postal services, are managed by the central government.
5. **Railways and Major Transport Networks:** The central government oversees major transportation infrastructure, such as the Indian Railways and national highways.
6. **Foreign Trade and Commerce:** Policies and agreements related to foreign trade and commerce are determined by the central government.
7. **National Security and Intelligence Agencies:** National security, including the management of intelligence agencies, is the responsibility of the central government.
8. **Concurrent List Subjects:** The central government has jurisdiction over subjects listed in the Concurrent List of the Constitution, shared with state governments. In these areas, both levels of government can legislate, but central laws prevail in the case of conflicts.

State Governments:

1. **Police and Law and Order:** State governments are responsible for maintaining law and order within

- their respective territories. They oversee state police forces and have authority over criminal justice matters.
2. **Health and Education:** State governments manage public health services and the education system within their states. This includes schools, colleges, and universities.
3. **Agriculture and Rural Development:** Matters related to agriculture, rural development, and land management are primarily under the jurisdiction of state governments.
4. **Local Governance:** State governments delegate authority to local bodies like municipalities and panchayats to manage local affairs, including urban and rural development, and infrastructure.
5. **State Transport and Roads:** State governments oversee transportation systems within their states, including state highways and local road networks.
6. **State Finances:** States have their own budgets, taxation systems, and fiscal policies, allowing them to raise revenue and manage their finances.
7. **Public Welfare Programs:** State governments implement various social welfare programs, including those related to healthcare, housing, and social services.
8. **Concurrent List Subjects:** State governments share responsibility with the central government for subjects listed in the Concurrent List. They can legislate on these matters, but central laws take precedence in the event of a conflict.

It's important to note that these functions and responsibilities may vary in different federal systems, and they are defined by the country's constitution or legal framework. The distribution of powers and functions can also change over time through constitutional amendments or legislative actions.

Why Centre is criticized to control over states. Comment.

The centre government has control over the states through different agencies and varied techniques is mentioned below:

1. Governor,
2. Directions to the State Government,
3. Delegation of Union functions,
4. All-India services,
5. Grants-in-aid,
6. Inter-State Councils,
7. Inter- State Commerce Commission,
8. Immunity from mutual taxation.

Issues between the Centre and the States:

1. The Role of the Governor (Discretionary Power and Appointment Issues)
2. Reservation of Bills for Consideration of President
3. Misuse of Article 356
4. The Maintenance of Law and Order in States
5. Encroachment by the Centre on State List
6. The Financial weakness of the State
7. Taxation Powers
8. Issue of Grants
9. Role of Planning Commission
10. Question of Autonomy Issue

Q. What are the issues and challenges pertaining to the federal structure in Indian Polity?

India's federal structure, which divides powers and responsibilities between the central government and state governments, has been a subject of ongoing debate and has faced several issues and challenges over the years. Some of the prominent issues and challenges pertaining to the federal structure in Indian polity include:

1. Resource Allocation: Unequal distribution of resources, including financial resources and revenue-sharing mechanisms, has been a persistent challenge. States often contend that they do not receive a fair share of resources, which can lead to fiscal imbalances.
2. Inter-State Disputes: Conflicts and disputes between states over issues like river water sharing, boundary disputes, and distribution of assets can strain inter-state relations and require legal resolutions.
3. Centralization of Power: Critics argue that over the years, there has been a trend toward centralization of power, with the central government encroaching on subjects that should be under state jurisdiction. This can limit the autonomy of state governments.
4. Concurrent List Ambiguity: The Concurrent List in the Constitution contains subjects on which both the central and state governments can legislate. Ambiguities and overlapping jurisdiction can lead to conflicts and legal disputes.
5. Financial Dependence: States are often financially dependent on grants and allocations from the central government, which can impact their fiscal independence and decision-making.
6. Political Instability: Frequent changes in state governments, particularly due to coalition politics, can lead to instability and shifts in policy direction, affecting governance.
7. Regional Disparities: India's diverse regions have varying levels of development. Bridging regional disparities and ensuring equitable development across the country is an ongoing challenge.

8. Language and Cultural Diversity: India's linguistic and cultural diversity poses a challenge in terms of language policies, cultural preservation, and balancing the interests of different linguistic and ethnic groups.
9. National Security: Matters related to national security, defense, and foreign policy are primarily under the central government's domain. Coordinating these areas with the states can be challenging, especially during crises.
10. Center-State Relations: Disputes and disagreements between the central government and state governments, particularly those controlled by political parties in opposition at the center, can impact the functioning of the federal structure.
11. Overlapping Jurisdictions: The presence of various statutory bodies and regulatory authorities, both at the central and state levels, sometimes leads to overlapping jurisdictions and confusion in implementation.
12. Disaster Management: Coordination during natural disasters and other emergencies can be a challenge, requiring effective cooperation between the center and states.

Efforts to address these issues and challenges include the establishment of institutions like the Finance Commission, Inter-State Council, and the Planning Commission (now NITI Aayog). Constitutional amendments and legal mechanisms also play a role in shaping the balance of powers and responsibilities between the center and states in India's federal system. The dynamic nature of these challenges reflects the evolving nature of federalism in the country.

Both cooperative federalism and competitive federalism have their own merits and can be relevant in different contexts within a diverse country like India. The choice between the two depends on the specific challenges, goals, and dynamics of the country. Critically analyse.

Competitive federalism is a concept where centre competes with states and vice-versa, and states compete with each other. It refers to relations between regional governments (horizontal competition) and between central and regional governments (vertical competition).

Cooperative federalism is the concept which reflects the relationship between centre and state where they both come together and resolve the common problems with each other's' cooperation. With the collaborative efforts and cooperation, different level of governments in an amicable manner, contributes towards the growth of the country.

Spirit of cooperative federalism in India

1. Separation of Power: Schedule 7 of Constitution provides strict delineation of powers between center and state. (Except during emergencies which comes under judicial review)
2. Article 131 of the Constitution, which gives the Supreme Court exclusive jurisdiction to hear cases between states and the Centre. Ex: Chhattisgarh moved SC against NIA Act in Jan 2020
3. Coalition governments: It has increased states' bargaining power.
4. GST Council: Majority decisions have been based on consensus till now, while states gave 2/3rd of votes.
5. Since 10th FC, state's share has been continuously increasing till 14th FC by devolving 42%. (41% till J&K is UT)
6. NITI Aayog: Replacing the erstwhile Planning Commission, the Aayog is promoting bottom-up approach to development planning.
7. Sabka Saath Sabka Vikas involves State's as equal partners of development

Spirit of competitive federalism in India

1. The concept of competitive federalism is driving the Indian states to rush in for reforms to make an easy way for doing business in their state and expediting the pending project clearances. Ex: Vibrant summits conducted by various states, easing of compliance related laws in states to attract FDI etc
2. In this scenario, Centre government is only responsible to frame rules in this kind of free market as generally states compete with each other to attract funds
3. Union government devolves funds to the states on the basis of usage of previously allocated funds. Thus, funds and investments flow in greater amount (both from central government and private investors) to those states which have shown optimum use of previously allocated funds.
4. This system ensures minimum wastage and maximum use of resources as it strives for Healthy competition to improve physical and social infrastructure within the state.
5. Competitive federalism is also welcomed by industry because healthy competition among states will pave the way towards more investment destinations in future. In turn it should lead to significant job creation and economic development.

Some of the steps taken in India in recent times to give effect to this form of federalism are:

1. Greater allocation of funds or favorable terms to states that perform better on certain indices. Ex: Implementation of 'One Nation, One Ration card

scheme'

2. Ranking states based on development parameters. Ex: Swachh Bharat rankings, Ease of doing business ratings for states, selection of cities to be included under smart city programme etc
3. Andhra Pradesh has come up with their own brand name at Davos integrated and emulated the same elements of the nation brand India campaign with Make Andhra Pradesh Your Business
4. States have been given more freedom to plan their expenditure

Critical analysis

Competitive federalism

1. Some states have better infrastructure and expertise. This could further add fuel to the inequality that exists between the regions
2. A race towards motivated by competition might not be in the best interests of the states vis-à-vis tribal displacement, greater level of pollution etc
3. The ranking framework of the central government has also been put to question by some over the alleged bias towards some states.
4. An institutional mechanism must be evolved where important decisions are appropriately discussed with states.

Cooperative federalism

1. Several issues such as trust deficit and shrinkage of divisible pools plague Centre-State relations. Together, they make total cooperation difficult.
2. On one hand the Centre has increased the States' share of the divisible pool but in reality States are getting a lesser share.
3. For instance, as per the 15th FC recommendations, many south states are on the losing side of their share of tax resources.
4. The allocation towards various social welfare schemes has also come down, affecting the States' health in turn
5. Inter-State water disputes like the Mahadayi issue between Goa and Karnataka, Mahanadi water disputes (Odisha and Chhattisgarh) requires cooperation from all quarters (centre and riparian states).

Way forward

1. There needs to be a mix of competitive and cooperative federalism for India to move ahead.
2. The future for India is cooperative and competitive federalism. Competitive federalism provides the dynamism that needs to be unleashed.
3. We need cooperative federalism to balance competitive federalism.
4. Constitution needed to catch up with economics to

“favour integration over granting sovereignty” to promote Indian internal integration.

5. GST which seeks to introduce the concept of one nation-one tax, in order to economically unify the country for the first time, is described this as “pooled sovereignty”, which would bring a big change in the working of federalism in the country.

Conclusion

Competition alone cannot give the best results it is competition with cooperation that will drive the real change. There has to be a balance between cooperative and competitive federalism.

In this regard an institutional mechanism must be evolved where important decisions are appropriately discussed with states to ensure no states is left behind in the development paradigm.

Q. What are challenges faced by local governments even after enactment of 73rd and 74th constitutional amendments in Constitution?

While the 73rd and 74th Constitutional Amendments in India provided a significant boost to local self-governance by establishing Panchayats (rural local bodies) and Municipalities (urban local bodies), respectively, several challenges persist in the effective functioning of local governments. Some of these challenges include:

1. **Financial Dependence:** Local governments often rely on the central and state governments for funding, which can limit their financial autonomy. In many cases, the grants provided are insufficient to meet local needs.
2. **Uneven Capacity:** The capacity and administrative capabilities of local governments vary widely across states and regions, leading to disparities in service delivery and governance effectiveness.
3. **Political Interference:** Local bodies may face political interference from higher levels of government, which can undermine their autonomy and decision-making powers.
4. **Limited Revenue Sources:** Local governments have limited sources of revenue, mainly through property taxes and local fees. Expanding revenue sources can be a challenge due to resistance from taxpayers.
5. **Lack of Technical Expertise:** Many local bodies lack the technical expertise and trained personnel needed to plan and implement development projects effectively.
6. **Corruption and Mismanagement:** Instances of corruption and mismanagement within local governments can hinder the delivery of public services and infrastructure development.

7. **Unequal Representation:** There may be issues related to the equitable representation of marginalized communities, women, and other disadvantaged groups within local bodies.
8. **Inadequate Political Participation:** Encouraging active citizen participation in local governance remains a challenge. Many people are disengaged from local political processes.
9. **Coordination Challenges:** Coordination between rural and urban local bodies can be challenging, especially in areas where urbanization is rapidly increasing.
10. **Overlapping Jurisdictions:** In some cases, overlapping jurisdiction and responsibilities between different tiers of government (panchayats, municipalities, and state government departments) can lead to confusion and inefficiency.
11. **Legal Ambiguities:** Ambiguities in laws and rules regarding the roles and responsibilities of local governments can create confusion and disputes.
12. **Resource Allocation:** The allocation of resources to local governments, both in terms of funds and administrative powers, is not always equitable, which can hinder local development.
13. **Capacity Building:** Building the capacity of local elected representatives and officials to effectively govern, plan, and implement projects is an ongoing challenge.
14. **Infrastructure Development:** Insufficient infrastructure and resources for local governments can limit their ability to provide essential services such as water supply, sanitation, and healthcare.

Efforts are being made to address these challenges through capacity-building programs, financial reforms, and the strengthening of local institutions. The success of local governance in India depends on continued efforts to empower and support local governments, enhance their financial sustainability, and promote community participation in decision-making processes.

Constitution allows Parliament to make provisions in all matters relating to elections to the Parliament and State Legislatures. In exercise of this power, the Parliament has enacted laws like Representation of the People Act 1950 (RPA Act 1950), Representation of the People Act 1951 (RPA Act 1951).

Key Provisions of Representation of the People Act 1950

1. Lays down procedures for delimitation of constituencies.
2. Provides for the allocation of seats in the House of the People and in the Legislative Assemblies and Legislative Councils of States.

3. Lays procedure for the preparation of electoral rolls and the manner of filling seats.
4. Lays down the qualification of voters.

Delimiting Constituencies

1. The President of India has been conferred the power to amend orders delimiting constituencies, only after consulting the ECI.
2. In Lok Sabha, there is a reservation of seats for Scheduled Castes and Scheduled Tribes.
3. The ECI has the power to determine the constituencies to be reserved for scheduled tribes in the states of Meghalaya, Mizoram, Nagaland and Tripura.

Allocation of seats

1. As far as possible, every state gets representation in the Lok Sabha in proportion to its population as per census figures.

Electoral Rolls

The 1950 Act permits the registration of persons in electoral rolls who are ordinarily resident in a constituency and persons holding:

1. Service qualification such as a member of armed forces, member of the armed police force of a state, serving outside the state, or central government employees posted outside India.
2. Certain offices in India declared by the President in consultation with ECI.
3. The wives of such persons are also deemed to be ordinarily residing in India. There is a proposal for making some provisions gender-neutral by replacing the term 'wife' with 'spouse'.

Electoral Officers

1. Chief Electoral Officer (CEO)

- ❖ Each state to have a CEO nominated or designated by the ECI in consultation with the state government to supervise the election work in the State/ UTs.
- ❖ The ECI also nominates or designates an officer of the state as the District Election Officer (DEO) in consultation with the state government
- ❖ The DEO works under the overall superintendence and control of the CEO.

2. Electoral Registration Officer (ERO)

- ❖ The ERO is responsible for the preparation of the electoral roll for each constituency (parliamentary/assembly).
- ❖ An appeal against the order of the ERO during the update of the electoral rolls now lies with District Magistrate.

3. Returning Officer (RO):

- ❖ RO is responsible for the conduct of the election in a constituency and returns an elected candidate.
- ❖ The ECI nominates or designates an officer of the government or local authority as the RO in consultation with the state government.

Power to make rules

1. Power to make rules under the act is conferred to the Central government, which can exercise this power in consultation with the ECI.
2. The Civil Courts have also been barred to question the legality of any action of the ERO regarding revision of electoral rolls.

Voting Rights

1. In 2010, voting rights were extended to citizens of India living abroad.

Key Provisions of Representation of the People Act 1951

1. Actual conduct of elections.
2. Administrative machinery for conducting elections.
3. Poll.
4. Election offences.
5. Election disputes.
6. By-elections.
7. Registration of political parties.
8. qualification and disqualification of members of both houses of Parliament (ie Loksabha and Rajyasabha) and the state legislatures (ie. State Legislative Assembly and State Legislative Council).
9. Rules for the Code of conduct of elections.

Disqualifications

Section 8 deals with Disqualification of representatives on conviction for certain offences.

1. Found guilty of election offences/corrupt practices.
2. Conviction for any offence resulting in imprisonment for 2 or more years. Conviction for promoting enmity between different groups.
3. Failed to lodge an account of his election expenses within time.
4. Having interest in government contracts, works or services.
5. If dismissed from government service for corruption or dis-loyalty to the state.
1. If punished for practising and preaching social crimes like sati, untouchability, etc.

Provisions Related to Political Parties

1. Every association or body in order to become a political party must be registered with the ECI whose decision regarding registration will be final.
2. Registered political parties, in course of time, can get recognition as ‘State Party’ or National Party’.
3. Change in name and address of a registered political party must be communicated to the ECI.
4. The ECI cannot derecognise a party.

Challenges:

1. **False Disclosures:** Even after the provision of the declaration of assets and liabilities in the RPA act, candidates do not disclose all the assets and provide wrong and incomplete information regarding their assets, liabilities, and income and educational qualifications.
2. **The Bureaucratization of Politics:** In spite of the inclusion of several provisions aimed at making the ECI as an independent body, it is still dependent on the Union for financial matters that paves the way for political parties to manage to get the officers in their favour through money and muscle power.
3. **Dual Responsibility of the ECI:** The ECI does not have independent staff of its own so whenever elections take place, it has to depend upon staff of Central and State Governments hence the dual responsibility of the administrative staff, to the government for ordinary administration and to the ECI for electoral administration is not conducive to the impartial and efficient functioning of the Commission.
4. **Misuse of Government Machinery:** The RPAs lack clear provisions and guidelines on the matters related to the misuse of official machinery that gives an unfair advantage to the ruling party at the time of elections and leads to the misuse of public funds for furthering the prospects of candidates of a particular party.

Way Forward:

1. **Restriction on Opinion Polls:** By an amendment made to the RPA 1951, conducting and publishing results of exit polls have been prohibited.
2. There should be a similar prohibition or restriction on opinion polls also as several manipulated opinion polls could impact the voting pattern.
3. **False Declaration as Offense:** The RPA ,1951 should be amended to include all the items related to the election disclosure in the affidavit and making false declarations in connection with the election to be an offence.
4. **Independent ECI:** In order to curb the practice of bureaucratization of politics and to secure

complete independence of the Election Commission, its expenditure should be charged on the Consolidated Fund of India.

5. **De-listing of Valid Electorates:** Parliament must pass a law dealing with the serious problem of delisting of valid electors from electoral rolls because illiterate electorate residing in far villages cannot watch over the publication of electorate lists.
6. **State Funding of Elections:** To minimise the role of money in elections, provisions should be made for state funding of elections.

What is Anti-Defection Law?

Discuss Grounds of Defection.

What Measures could be taken for effectiveness of the Anti defection law in Parliamentary form of government?

The anti-defection law was introduced in 1985, through the 52nd Amendment Act of 1985. It was inserted in the Tenth Schedule of the Indian Constitution and is popularly known as Anti Defection Act.

1. Defection has been defined as a “conscious abandonment of allegiance or duty”.
2. It lays down the process of disqualification on grounds of defection.
3. The presiding officer has the authority to disqualify a member on proven grounds of defection.
4. The goal was to prevent the legislators from changing their political affiliations during their tenure in office.
5. It applies to both the Parliament and the state assemblies.

In 2003, through the 91st Amendment, the anti-defection law was made more effective to deal with regular defection.

Significance:

1. It is to prevent defections motivated by the lure of office or material advantages or other such considerations.
2. It deters the legislators from shifting their political association to gain any personal advantages.
3. It maintains stability in the party system and prevents the threat of toppling the governments.
4. It promotes party discipline by ensuring that the legislators vote in favour of the party whip.
5. It permits the merger of political parties without disqualification of members.
6. It strengthens the institution of democracy and keeps corruption in check.

Grounds of Defection:

1. **“Voluntarily giving up his membership”:** It has

a wider connotation than resignation. In absence of formal resignation, the giving up of his membership can also be inferred from the legislator's conduct.

Example: Two members of Janata Dal (United) were disqualified in 2017 by the Chairman of Rajya Sabha, on the grounds of "voluntary giving up their membership". They criticised the party on public forums at multiple events and attended rallies of opposition parties.

2. **"Violation of Instructions"**. It means that if the legislator votes or abstains from voting in the House contrary to a direction issued by the political party he belongs to, he is deemed to be disqualified. The direction issued by the political party is famously referred to as the party whip.
3. A legislator can further be disqualified if he is an independently elected member and joins a political party.
4. A legislator will be deemed to be disqualified if he is a nominated member and joins any political party, after six months from the day he became a legislator. The decision of the presiding officer who decides the legitimacy of grounds of disqualification of defection is subject to the Judicial Review.

Exceptions under the Law:

1. The law enables a party to merge with another party if at least two-thirds of the legislators of the party are in favour of such a merger.
2. Neither the members who decide to merge nor the ones who stay in the original party will face any disqualification.
3. According to Paragraph 5 of the Anti-Defection Law, the section provides an exemption to the speaker, chairman, and deputy chairman of the legislature from disqualification on grounds of defection.

Criticism

1. After enactment of the Anti-defection law, the MP or MLA has to follow the party's direction blindly and has no freedom to vote their judgment.
2. Due to Anti-Defection law, the chain of accountability has been broken by making legislators accountable primarily to the political party.

Suggestions:

1. Expert committees suggest that the decision to disqualify a member of Parliament should be made by the President and the decision to disqualify a member of the State Assembly should be made by the Governor, based on the advice of the Election Commission.
2. Some believe that the power to deal with the question of disqualification should be decided by an

independent authority. Since the speaker's tenure relies on the party's majority in the House, according to Justice Verma in Hollohan Judgement, the speaker should not enjoy such authority.

3. Experts have suggested that the law should be valid in cases where the votes decide the stability of the government. should apply only in cases of no-confidence motions or annual budget.
4. According to the 170th Law Commission Report, intra-party democracy should be endorsed, which would enable discussion among members of the party and prevent dictatorship within the party.
5. Keisham Meghachandra v. the Hon'ble Speaker Manipur, Justice Rohinton Nariman talked of the need to set an external means to deal with defection cases. In his words, "Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as an arbiter of disputes concerning disqualification which arise under the Tenth Schedule"

He further continued that it can be "with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism. It will allow the defection cases to be settled quickly and timely.

How does the Election Commission of India discharge its constitutional mandate to conduct free and fair elections in the country? What challenges does it face? Analyse.

The holding of free and fair elections is the sine-qua-non of democracy. To ensure the conduct of elections in free, fair and in an impartial manner, the constitution-makers incorporated Part XV (Articles.324-329) in the constitution and empowered Parliament to make laws to regulate the electoral process.

Ensuring free and fair elections in India:

- Election Commission ensure free and fair election by enforcing and maintaining a model code of conduct before elections and punishes any candidate or party that violates it.
- The Commission had gone to the extent of disciplining the political parties with a threat of de-recognising if the parties failed in maintaining inner-party democracy.
- It upholds the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance.
- It conducts elections with the highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism.

- It ensures participation of all eligible citizens in the electoral process in an inclusive voter-centric and voter-friendly environment.
- The Commission approaches the government well in advance to obtain the names of senior officers for the purpose of appointment as observers before any election.
- Commission via SVEEP, ECI engages more and more voters in the electoral process and ensure their ethical and inducement-free participation in voting.

Challenges:

- **Misuse of Government Machinery:** Misuse of official machinery: The issue of advertisements at the cost of government and public exchequer highlighting their achievements, disbursements out of the discretionary funds at the disposal of the ministers, use of government vehicles for canvassing etc.
- **Distorting Informed Decision Making of Voters:** Unregulated populism that offers and distributes 'irrational freebies' during election campaigns causes voters to be biased, especially the unprivileged, since freebies can sway them and affect the informed decision-making process for choosing their representatives.
- **Lack of Independent Staff:** Since ECI does not have its own staff, it relies on those of the Central and State Governments whenever elections are held.
- **Politicisation of social media:** social media reflects public opinion, that is a currency of democracy. But one of the most common criticisms of social media is that it creates echo chambers where people only see viewpoints they agree with.
- **No Statutory Backing for Enforcing Model Code of Conduct (MCC):** As far as enforcing Model Code of Conduct (MCC) and other election-related decisions are concerned, there is no clarity regarding the powers of Election Commission of India (ECI) to enforce them on ground.
- **Phenomenon of fake news and misinformation –** an important aspect of the role that social media are likely to play in the elections is the phenomenon of fake news and misinformation. The social rupture caused by such campaigns, including heightened insecurity for marginalised sections of society, is phenomenal.
- **Use of bots and unfair means to trend on social media –** The immediacy of the engagement, with deep penetration through the device of posts going viral, sometimes, allegedly, owing to the deployment of bots, creates challenge in conducting free and fair election.

Conclusion

The powers of the EC are enormous and all-encompassing which even exceed the powers of the executive in all election-related issues during the course of the election period. Thereby giving it effective tools in dispensing free and fair elections, only thing that lacks is will and integrity on the part of responsible officials.

Current Topic

ONE NATION ONE ELECTION

The government has constituted a committee headed by former President of India Ram Nath Kovind in order to explore the possibility of 'One Nation, One Election'

The concept of One Nation, One Election in India :

- It aims to synchronise elections for the Lok Sabha (the lower house of India's Parliament) and all state assemblies. The idea is to hold these elections simultaneously, either on a single day or within a specific time frame.
- Over the years, PM Modi has pushed strongly for the idea of simultaneous Lok Sabha and state assembly polls, and the decision to task Kovind to look into it underscores the government's seriousness as a host of elections approach. The assembly polls in five states are due in November or December 2023 which will be followed by the Lok Sabha elections which is likely to be held in May-June 2024

Constitutional amendments:

To sync the term of the State Legislative Assemblies with that of the Lok Sabha, the term of the state legislative assemblies can be reduced and increased accordingly and for the same, constitutional amendment would be needed in:

- **Article 83:** It states that the term of the Lok Sabha will be five years from the date of its first sitting.
- **Article 85:** It empowers the President to dissolve the Lok Sabha.
- **Article 172:** It states that the term of the legislative assembly will be five years from the date of its first sitting.
- **Article 174:** It empowers the Governor of the state to dissolve the Legislative Assembly.
- **Article 356:** It authorises the Central Government to impose President's Rule for failure of constitutional machinery in the state.
- **The Representation of the People Act** as well as related parliamentary procedure will also need to be amended.

Pros of One Nation One Election

- The primary benefit of ONOE is the reduction in the cost of conducting elections as each separate elections require huge amount of financial resources.

INSIGHT

- **When the first elections to the Lok Sabha took place in 1951-52, 53 parties contested the elections, around 1874 candidates participated and poll expenses were 11 crore.**
- **In 2019 elections, there were 610 political parties, around 9,000 candidates and poll expenses of around 60,000 crore rupees (declared by ADR) are yet to be declared by the political parties.**

With having simultaneous elections would ease the burden on administrative and security forces, who otherwise are engaged multiple times in election duties.

- As per reports, With implementation of ‘One Nation, One Election’ , the government can focus more on governance rather than being in a election mode, which often hampers policy implementation.
- Simultaneous elections, according to the Law Commission, will increase voter turnout because it will be more easy for people to cast many ballots at once.
- Holding elections once in five years can provide more time to all the stakeholders i.e. political parties, ECI, paramilitary forces, civilians for its preparation.

Cons of ‘One Nation One Election’

- To implement One Nation, One Election’ , changes would also be required in the Constitution and other legal frameworks.
- One Nation – One Election would need a constitutional amendment and then it would need to be taken to state assemblies.

Critical Analysis

- It is not a new concept having taken place four times in the 1950’s and 60’s but at that time India has fewer states and a smaller population that could vote
- It is quite possible that the government at centre or state can fall before completing its term and the moment government falls, there has to be an election nationwide; including parliament and State legislature or term of any has to be reduced to synchronise the term.
- For holding simultaneous elections, the requirements for EVMs and the VVPATs will double, because for every polling station, the ECI has to provide two sets (one for election to the Legislative Assembly and

second for that to the Lok Sabha).

- There will be a need for better security arrangements for simultaneous elections thus augmenting the Central Police Forces accordingly. The ECI is already facing problem in storing EVMs after elections.
- **Logistical Challenges:** There will also be an additional requirement of the polling staff There will be difficulty in transporting materials to the polling stations
- Additionally, there is worry that regional issues might get overshadowed by the national issues, affecting the electoral outcome at the state level.
- The agreement among all political parties is significant hurdle as well as opposition parties have opposed to One Nation One Election.

Current Topic

Uniform Civil Code

UCC provide one law for the entire nation (including all religious communities) in their personal matters such as marriage, divorce, inheritance, adoption etc.

Article 44 of the Constitution lays down that the state shall endeavour to secure a UCC for the citizens throughout the Indian territory.

In India, personal law subjects like marriage, divorce, inheritance come under Concurrent list (7th Schedule).

Status of UCC in India:

1. In most civil matters, India follows UCC such as Indian Contract Act 1872, Civil Procedure Code, Transfer of Property Act 1882, Partnership Act 1932, Evidence Act, 1872 etc.
2. In certain matters, however, there is diversity even under these civil laws as states have made hundreds of amendments to these.
3. Several states refused to be governed by the uniform Motor Vehicles Act, 2019.
4. At present, Goa is the only India state that has implemented UCC.

Law Commission Related on UCC

1. Law Commission of India (2018): It stated that UCC is neither necessary nor desirable at this stage, as it would be counter-productive for the harmony of the nation. It also suggested that reforms in personal laws should be done by amendments and not by replacement.
2. Recently, 22nd Law Commission of India has chosen to seek the opinions and suggestions of the general public as well as recognised religious organizations regarding the UCC.

Constituent Assembly's Views on UCC:

1. During the debates in the Constituent Assembly, the inclusion of the UCC sparked significant discussion.
2. There was a vote, resulting in a 5:4 majority, where it was decided by the sub-committee on fundamental rights, led by Sardar Vallabhbhai Patel, that the UCC would not be included as a fundamental right.
3. Dr. B R Ambedkar, while drafting the Constitution, stated that a UCC was desirable but should remain voluntary until the nation was socially prepared to accept it.
4. As a result, the UCC was placed in the Directive Principles of State Policy (DPSP) (Article 44).

RECENT DEVELOPMENTS

1. Prime Minister in his recent address expressed his support for the implementation of a Uniform Civil Code (UCC) in India, stating that India cannot function efficiently with a system of "separate laws for separate communities".
2. an expert committee headed by a retired Supreme Court (SC) judge has been constituted by Uttarakhand to implement Uniform Civil Code (UCC) and for checking all the relevant laws that control personal matters for those living in Uttarakhand.
3. the Allahabad High Court also called upon the Central government to initiate the process for implementation of UCC.

What is the need of UCC?

1. It would uphold the constitutional values of equality, fraternity and dignity for all.
2. All citizens must be treated as equals and government sponsorship/regulation of religious places/events must be barred in the constitution.
3. The enforcement of UCC would help narrow down the religious divide in a country like India where people of different religions reside.
4. The enforcement of UCC would provide protection to vulnerable sections, simplify laws and ensure gender justice adhering to the ideal of secularism.
5. UCC would promote national integration and secularism by creating a common identity and sense of belonging among all citizens. It would also reduce the communal and sectarian conflicts that arise due to different personal laws.
6. UCC would ensure gender justice and equality by removing the discrimination and oppression faced by women under various personal laws. It would grant equal rights and status to women in matters of marriage, divorce, inheritance, adoption, maintenance, etc. It would also empower women to challenge the patriarchal and regressive practices that violate their fundamental rights.

7. UCC would simplify and rationalise the legal system by removing the complexities and contradictions of multiple personal laws. It would harmonise the civil and criminal laws by removing the anomalies and loopholes that arise due to different personal laws.
8. UCC would modernise and reform the outdated and regressive practices that are prevalent in some personal laws. It would eliminate the practices that are against the human rights and values enshrined in the Constitution of India, such as triple talaq, polygamy, child marriage, etc.
9. It would make the law more accessible and understandable for the common people. It would also accommodate the changing social realities and aspirations of the people.

What are the Challenges in Adoption of the UCC?

1. Political Inertia: No political party has shown a sincere and consistent commitment to enact UCC, as it is seen as a sensitive and divisive issue that may alienate their vote banks.
2. Moreover, there is no consensus among various parties and stakeholders on the scope, content and form of UCC, as different groups have different views and interests on personal matters.
3. Lack of Awareness and Education: They are often influenced by misinformation or propaganda spread by vested interests or communal forces.
4. Against Indian Concept of Secularism: duplicating the western model of law which is based on uniformity but Indian concept of Secularism is based on diversity of religion and people.
5. Minorities i.e., Muslims, Sikhs, Christians, Buddhists, Jain, and Zoroastrians have a misconception that UCC will destroy their religious practices and they will be compelled to follow the religious practice of majorities.
6. The demand for a uniform civil code has been framed in the context of communal politics.
7. A large section of society sees it as majoritarianism under the garb of social reform.
8. Constitutional Hurdle: Article 25 of Indian constitution, that seeks to preserve the freedom to practise and propagate any religion gets into conflict with the concepts of equality enshrined under Article 14 of Indian Constitution.

Way Forward

- The extensive legal reforms necessary to harmonize personal laws into a single code would demand significant time and effort. Consequently, during this transitional period, the legal system may experience an increased burden due to the emergence of new cases challenging the constitutionality of the UCC
- The government and society will have to work hard

to build trust, but more importantly, make common cause with social reformers rather than religious conservatives.

- Need of the hour is the codification of all personal laws so that prejudices and stereotypes in every one of them would come to light and can be tested on the anvil of fundamental rights of the Constitution.