

45½

Indian Polity

Time Allowed: 3 hr.

Max. Marks: 250

Q.	Marks	Instructions to Candidate
1.		<ul style="list-style-type: none">• There are 20 questions.• All questions are compulsory• The number of marks carried by a question/part is indicated against it.• Answer the questions in NOT MORE THAN 200 words each. Contents of the answer is more important than its length.• Answers must be written in the space provided. <p>Any page or portion of the page left blank in the Question-cum-Answer Booklet must be clearly struck off.</p>
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1. Invigilator Signature

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Name Anjana S. Kumar

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Date 13/2/16

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REMARKS

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Q1. "No democratic country in the world has made preventive detention an integral part of its constitution as has been done in India." Critically analyse the statement explaining its need in Indian context? (12.5 Marks)

Preventive detention means arrest of a person before he commits a crime or the case being addressed by the court. India is the only democratic country in the world that has made it an integral part of the constitution.

India, comprising multi-diverse population had to ensure tolerance among the various factions. In order to bring it in the fullest possible manner such a provision is also incorporated on it. This is basically to ensure peace and security of a unique democracy like India.

However there are sufficient safeguards to prevent the misuse of preventive detention. He can be detained only to a maximum period of 3 months at a time only in case there is sufficient reason for such detention can it be possible.

Need clarity
in intro.

2

You need to
be more
specific

Try incorporating more
valid points.

Remarks

Even though suitable provisions to prevent its misuse are given, it is quite illogical to punish a person for a crime that he 'may' do rather than what is already done. Hence measures must be adopted to ensure that such a provision must be taken only when it is of critical urgency rather than false political or religiously motivated purposes.

Preventive detention is a gross violation of Art-21 of Indian Constitution due to which it is known as anarchistic

→ Mention about various Acts which contains the provision of preventive detention.

→ Link this with the current situation that, how it is relevant today.

with the growing pace of terrorist organisations and their action (ISIS, Mujahideens), which have misguided several Indian youths - In such a scenario the law like preventive detention is needed.

Remarks

Q2. "Directive Principles of State Policy serve as a common political manifesto." Critically analyse the statement in the light of implementation of the Directive Principles of State Policy in India? (125 Marks)

Directive Principles of State Policy of Part IV of the constitution have been adopted from the Irish constitution. Though they are non-justiciable, they serve several important functions in the governance of a state.

They act as a moral or guiding principle behind the actions of a government. Whenever a government functions it considers the various socialistic, Gandhian and liberal-intellectual Directive Principles. They can never be ignored while implementing policies of a state. They are often referred to by the courts to take decisions on the activities of govt.

The conflict between Directive Principles of State Policy and Fundamental Rights started from the Champakam Dorairajan case and finally culminated in the

2 1/2

Try to be more specific

DPPs are not enforceable by court of law.

Remarks

Incorporate more valid points.

Munava Mills case wherein it stated that constitution lies on a bedrock of FRs and DPSPs. However 39 (b) and (c) of DPSP are superior to Art 14 and 19 of FRs.

The recent decisions of Kerala govt. to limit alcohol to 5 star hotels, the ban on beef and cow slaughter in various north Indian states are all manifestations of the implementation of DPSPs by various state govt.

Thus the DPSPs play a significant role in the functioning of a democracy.

- Need to show, how it is common political manifesto?
 -
 - 33% reservation for women.
 - Special reservation for weaker sections.
 - Special treatment to child.
- In spite of change in govt. and person with nulling, the ideology remains common and that the welfare of masses which have effectively been enshrined in DPSPs -

Remarks

Q3. "There is a synthesis of parliamentary sovereignty and judicial supremacy in the constitutional framework of India." Analyse. (12.5 Marks)

The Indian constitution has been made by analysing various other constitutions of the world and suitable synthesis of different systems has been adopted. In India there is sovereignty of Parliament where in, it can formulate various laws for the country with certain privileges for the legislators to maintain their independence. They are not entitled to be arrested for civil cases 60 days before, during the session, and after 40 days of the session. They ^{can} not witness in a court for their actions in the Parliament. By the above principles, sovereignty of Parliament is maintained.

112

This is the narrow interpretation

The Indian Judiciary holds a supreme position in our constitution in the following ways:

1) Their salary and finance are from the consolidated fund of India (not put to vote by Parliament)

Remarks

2) Security of tenure for the judges -
can be removed by a difficult procedure
in Parliament. No judge has ever been
removed.

3) The actions of judge cannot be
discussed in the Parliament unless it is
their removal procedure.

4) The Judiciary can declare an act
unconstitutional if it ultra-vires the
constitution. Eg. NFAC

5) Appointment of judges by collegium
Thus, it can be seen that there is a
cooperation and synthesis between
the judiciary and legislature which
forms the keystone of Parliamentary
system.

- Talk about the checks and balance system
- Parliament is supreme in all sense, the judiciary
only interprets the law made by parliament.
- SC has limited powers to check validity of any
legislation, which can be done only if the enacted
Act violates the FRs, law by incompetent authority
to constitution.

Remarks on separation of powers

You need
to have
more
conceptual
clarity
regarding
the topic

Q4. PESA is an incomplete document, which failed to address the socio-economic developmental challenges of Tribal societies. Examine. (12.5 Marks)

PESA (Panchayat Extension to Scheduled Areas) Act aims to extend the provisions of Panchayati Raj in the Scheduled Areas of 5th schedule, which include tribal areas of our country.

1 1/2

It was incorporated to provide the tribals freedom to monitor their functioning; to safeguard their own traditions and culture without any outside interference. However, it has failed to address their objectives as envisioned while its formation.

You need more conceptual clarity

It failed to address the socio-economic developmental challenges of tribal societies. Their lack of resources were not addressed through this Act. They are still among the bottom section of the society as revealed from the National Family Health Survey Statistics.

Remarks

Bring more clarity in your points.

Suitable modifications need to be incorporated in the Act to make it successful. Proper monitoring of its implementation must be considered. Instead of intruding and damaging the traditions of the tribal areas, they must be given adequate resources to safeguard their culture on one hand and improve their social, economic and health parameters on the other hand. Only then the indigenous groups in our country be protected.

→ PESA, over the time got diluted at state level and in the process most of the powers have been given to the district administration or Zilla Parishad.

Remarks

You have
very
limited
points.

Try incorporating
more valid
points.

Q5. Decriminalization of suicide attempt has been a long standing demand by the human right activists in India; discuss the pros and cons of any such law, if it gets passed in India? (12.5 Marks)

Suicide attempt has been criminalised under section 309 of IPC in India. Decriminalisation of suicide has been a long standing demand by various groups since it hampers the universal Human Rights of individual → How?

If decriminalisation of suicide is passed in India, then the advantages are:

- 1) Ensure the right to die which can be interpreted from the right to life fundamental right. → Incomplete!!
- 2) Safeguard individuals from subsequent trauma they have to undergo once their suicide attempt fails.
- 3) Provide sufficient Human rights to take their own decisions in critical situations.

You have very limited points.

Try incorporating multiple points.

Remarks

However it has the following issues as well :-

1) It can encourage people to take such a decision — why? (incomplete!!)

2) Right to Die give wrong guidance to people thereby hampering their bravery to fight against the odds of life.

3) can be misused by anti-social elements.

Thus the pros of such a law is more than the cons and globally attempt to suicide has been decriminalised in many countries, leading to the inevitable need of such a law in our country.

Adv

Pros Decriminalizing will allow doctors to treat suicidal attempt person early and more careful without any fear of authority.

Cons India is a home to almost all type of religion & culture. In Islam, Judaism, Christianity, suicide is a sin so, it may hurt the religious values of people.

Remarks

Q6. Critically examine the recent decision of SC to support the Haryana Government's initiative to set minimum educational qualification for PRIs and ULBs. Discuss the right to contest elections in light of this development? (12.5 Marks)

2

The recent decision of Supreme Court to support the Haryana Government's initiative to set minimum educational qualification for Panchayati Raj Institutions and urban local Bodies came as a surprise to many taking into consideration the deplorable levels of female literacy and sex ratio.

Improper Introduction.

The Act mandates class X and class IV as minimum qualifications to contest elections in PRIs and ULBs. It is against the right to contest elections as has been provided in our constitution. Since it is a legal right and not fundamental right and the law tries to bring about DPSPs, the SC has approved such a law. However the current situation of Haryana shows some facts. The female literacy is around 66% while the male literacy is

class X for common

class VIII for ill women & Dalit Candidates.

class V for Dalit women

Avoid using colloquial language

Remarks

around 78%. The sex ratio is also low compared to national average. Thus it is evident that females will not be eligible to contest in large numbers, only the youngsters can at the most contest compared to experienced and efficient older people either male or female.

However since education can give more insight into administration, this can give efficiency as well and the Act mandates toilets in households which can change the overall social conditions within the state. Hence this new law may prove to be right given the future course of action can determine and show the progress.

As per the rule of law, under Part IX of constitution state govt. has the power to legislate on the matters of Panchayat elections and it can not be quashed for being arbitrary or discriminatory, because the classification is reasonable and based on intelligible differentia.

Remarks

You need to have conceptual clarity

This decision has distinguished nearly 42% of population of the state from contesting election.

Q7. The Upper house of parliament is there to ensure that the concerns of states aren't looked-over, however, overtime it has become a roadblock and has stalled functioning of a legitimated house selected directly by people; critically analyse. (12.5 Marks)

The Bicameralism of Indian Parliament has the Lower House - Lok Sabha (directly elected representatives) and Upper House - Rajya Sabha (indirectly elected and nominated representatives).

The Rajya Sabha has been formed to check the hasty decisions of the Lok Sabha and provide seats for eminent persons from art, science, social service and literature. However the recent scenario does not prove the above functions right.

The winter session of Parliament showed that Lok Sabha reached nearly 100% efficiency in their functioning while the Rajya Sabha was in a dilapidated condition marked with frequent protests and overhauls. The absence of eminent persons like Sachin Tendulkar, Rekha etc. show

2

Try to be more specific

Avoid using unsubstanciated points

Remarks

that they are of unnecessary expenditure and do not contribute to the functioning of Rajya Sabha. The recent passage of Juvenile Justice Bill shows the inefficiency of Rajya Sabha wherein the ~~Act~~^{Bill} was delayed so long that the public had to use to pass such ~~Act~~ a Bill to become a law.

Thus the present condition of Rajya Sabha do not cater to the needs of it and thus require suitable provisions to improve its efficiency and contribution to the functioning of democracy.

- = RS is envisaged as a chamber of ideas & for preparing long term future plan for the country. It also enables parliament to legislate on matters of state subjects in national interest & matter of new All India Services.
- = RS acts as a revisory body for the Acts passed by Lok Sabha and prevents the interests of state from the hasty decision taken by the lower house.
- = The members of RS should Act for the interests of state and common welfare and not for the interests of

Remarks party

They incorporating more valid points.

Q8. Discuss the major reasons, because of which SC has struck down the Section 66A of the IT Act? Discuss how it will hamper the job of security agencies regarding the maintenance of Cyber Crime and monitoring of Social Media? (12.5 Marks)

The SC has struck down the Section 66A of the IT Act due to its rampant misuse by the executive. The section 66A of IT Act enables the police to arrest individuals on account of sharing derogatory, inciting words that can hamper the security of the nation. The law prevents right to freedom of speech and expression as given by FRs.

The arrest of two girls who wrote about the traffic congestion in Mumbai due to the death of political leader, the arrest of a software engineer for expressing his opinion against Manika Bannerjee, etc are a few to cite its misuse.

The case was brought up by a young law student Sucha which finally released the citizens from the clutches of such Act.

34/2

Example should be given appropriately

Remarks

However it can curtail the efficiency of security agencies regarding monitoring of cyber crimes. The SC also struck down Kerala Police Act which also attempts to prevent the FR. This will prevent the security agencies from arresting individuals who maliciously use the cyber world to harm ^{other} individuals or agencies. The curbing words of individuals cannot be ~~over~~ prevented down as the SC has limited the scope of IT Act.

Hence the IT Act needs to be amended in such a manner to protect the right to speech and expression on one hand with certain exceptions to safeguard the efficient functioning of security agencies on the other hand in this globalized cyber dominated world.

- Such acts by the police in the interests of political party has violated the provision under Art - 19(1) (a) of our constitution and further Art - 21.

Remarks

Q9. The 73rd and 74th amendments to the Constitution of India have been seen as landmark amendments for boosting the process of decentralization in India. How such decentralization has contributed to the achievement of gender and social justice at the grass root level? Give reasons for your answer. (12.5 Marks)

and 74th

The 73rd Amendment of 1992 gave rise to Panchayats and Municipalities (ULB) in our country. They envision decentralisation of powers to the grass root level as given in the Gandhian kind of DPSPs.

2 1/2

What do you mean by Gandhian kind?

They have contributed in a significant manner to achieve gender and social justice throughout India. The provision of 33% females in these bodies have given sufficient possibilities of women empowerment. They enable the local people to take care of their issues and address them in the best possible manner.

They provide the local bodies with sufficient funds to address their concerns. Their success is best manifested in the southern states like Kerala, TN, etc where they have given progress in a well addressed manner.

Be more specific

Remarks

However there are some issues as well though women are given opportunities the main decisions are taken by their husbands. There are several cases where popular leaders bring forward their wives so that the party / family rule can be continued in such reserved constituencies. The additional qualifications stipulated by states like Haryana, Rajasthan etc curtail the gender justice.

Thus the P.R.I and ULBs have decentralised power in an efficient manner leading to better gender and social justice as well. The act must be modified to ensure 50% women participation which is currently under centre's consideration.

- This Act provides 33% reservation for women & proportional representation to SCs, STs in electing members of village panchayat, Block level and district level.

- Through P.R.Is, women and backward section can work on creation, development and promotion of SHGs, cooperatives, MSMEs.

- This has also enabled the women & backward sections to enter in the public sphere, becoming more aware of

Remarks their rights & questioning the exploiting structure of society and thus promoting social equality.

You need to focus that how this contributes in gender equality at grass-root level.

Q10. Do you think that rationalization of Centrally Sponsored Schemes and simply transferring of fund to state without central monitoring may bring people at the verge of mercy of state government? Discuss the steps needed for improving CSS. (12.5 Marks)

Rationalisation of CSS and simply transferring of fund to state without central monitoring will ~~not~~ bring people at the verge of mercy of state government. This needs to be done with central monitoring.

In the federal structure of India, states need to be given independence in their own decisions and functioning however it should be under the overall ~~good~~ monitoring of the centre. The requirements of each and every state will not be the same so a top-down or one size fits all approach will not do any good.

In such a scenario, the funds should be transferred to the state which it can use as per the needs while care must be taken that it is properly used as per the needs of people.

1/2
 Try to bring more relevancy in your points.

Remarks

states like Kerala, Tamil Nadu etc have better sex ratio and education and so funds need not be given for such activities like Beti Bachao Beti Padhao, etc. They should be given funds so that they can look to other matters where they lack like infrastructure, etc.

You have not answered the end part of the question

Thus the rationalisation of CSS funds by giving to the states is a better option but overall monitoring should be there to prevent its misuse.

CSS schemes funds are being diluted to be used on populist schemes like free electricity, free laptop, free water etc. instead of focussing on more important areas like health & education, Sanitation etc.

So it requires effective monitoring by the center, better data management etc.

- 3rd party evaluation should be promoted

Remarks :

Q11. Effective scrutiny of the documents by the committees in the Parliament depends on the skill and resources available to the parliamentary committees. Is it possible to upgrade these facilities with the existing talent pool and civil services structure? Discuss how it can be improved and would affect the functioning of parliamentary committees?

(12.5 Marks)

Parliamentary committees play a major role in the scrutiny of documents in the Parliament, since the representatives of the people are not experts in this field; the civil services officers and others contribute to this role.

Being the largest democracy and the second populous nation in the world, the documents concerning the life of such a huge population need to be scrutinised in an efficient and foolproof manner. With the present talent pool and civil services structure this is quite impossible to upgrade.

For improving the scrutinising procedure foreign collaborations need to be incorporated. There should be training for our officials from the

Remarks

most efficient faculties of the world. Such trainings can improve the talent pool in a better manner. Increasing the number of experts ~~is~~ is another way wherein the demographic dividend can be utilised for these purposes as well. With the increasing population and decreasing resources, it is critical to involve experts with efficient training to scrutinize laws.

Hence, the largest growing economy of the world can better the demographic dividend with more international collaborations to give form better laws to the nation.

Since the work of these committees are basically research oriented, focussing on questionnaires, scrutinizing the work done on documents submitted should be done by professionals to avoid incapacities during execution. Technocrat bureaucracy suffers through training by institutions like (BPST)

Remarks

Q12. What do you understand by the concept "Contempt of Court"? Does it cover criticism of judiciary also? Does it violate the provision under Article.19(1) (a), which grants to the country's citizens a right to freedom of speech and expression? Critically examine. (12.5 Marks)

The concept of 'contempt of court' includes the statements which lower the dignity of the court, render a bad image of the court, lower the authority of the court. This is provided to ensure the independence and supremacy of judiciary in our country.

However publications or statements of rightful criticism of judicial pronouncements, analysis of such data do not amount to contempt of court. A person can be imprisoned for six months or ₹ 2000 fine or both can be awarded for contempt of court.

This provision doesn't violate a citizen's freedom of speech and expression because sufficient safeguards are given in the "contempt of court".

→ wilful contempt - Civil contempt
→ Contempt by publication - Criminal contempt.

Remarks

Inappropriate more relevant points.

Proper criticisms of judgements are permitted. The Art 19(1) gives enough freedom to citizens with certain limitations as well. The supremacy of judiciary needs to be safeguarded and this doesn't hamper Art 19(1). The recent arrest and 4 weeks imprisonment of ^{the} CPM leader, Jayarajan in Kerala for calling (addressing a judge as "shumban" (stupid) shows the importance of judiciary has in our country. Such remarks hamper the functioning of judiciary and its pronouncements.

Mention what governs the action of "contempt of court".

Thus judiciary occupies a pivotal position and 'contempt' of court safeguards it without affecting Art 19(1).

- Bring more clarity and relevancy in your points.
- Be more specific and add more valid points.

- mention about the contempt of court Act - 1971.
- Legal proceedings can not be used to criticise the judiciary.

Remarks

Q13. In view of trend in the last few decades in India of fractured mandate and coalition governments, allegedly the prime ministerial form of government by the very nature has impeded the process of legislation and governance, and, hence, it is suggested by some experts that India should adopt Presidential system of government. Evaluate the pros and cons of the presidential system for India. (12.5 Marks)

Presidential system of government is the system adopted in U.S.A. In the Indian society, the cons of such a system are:

1) complete separation of executive and legislature

2) Lack of responsibility as the concept of collective responsibility is not here.

3) complicated setup which is quite difficult to be understood by this population.

4) May lead to dictatorship of president.

The pros of such a system in Indian society are:

1) Efficient administration as it is done by experts in the field

2) Fractured mandate and coalition governments will end.

Remarks

mention about both the system and their pros and cons.

(3) Executive can take decisions without the support of legislature and hence faster implementation of policies.

(4) Policies can be adopted without considering factions in various states with disapprovals. Overall growth will be of prime concerns.

However, from the ^{two} types of government Parliamentary and Presidential, the constitution makes ~~selected~~ Parliamentary form considering the importance of responsibility and cooperation between Executive and legislature. This need to be continued by passing the laws that has taken place to bring out a glorious future as envisioned on 26th Nov, 1949.

President of US can best be compared with the Prime Minister of India, as both are elected representatives. However, the ~~COMs~~ selected by president are not elected, rather appointed by him, so their direct participation and responsibility can not be sought.

Remarks

Be more specific in your approach

Bring relevancy in your points by incorporating more and more valid points.

Q14. Explain how creation of Niti Ayog and recommendations of 14th Finance Commission intend to promote cooperative federalism better than their earlier counterparts?

(12.5 Marks)

NITI Ayog (National Institution for Transforming India) and the 14th FC under Y. V. Reddy have brought about new insights into the ideas of cooperative federalism.

NITI Ayog replacing the 65-year old Planning Commission emphasises the cooperative federalism model. It is a bottom-up approach and where states can take their own decisions regarding the policies. States are adequately represented and no devolution of funds come under its concern. This is a move which eliminates the flaws of previous PC wherein a top-down approach was taken with no sufficient representation of states. PC used to allocate funds to the states. Now NITI Ayog is a think-tank with experts and the fund devolution is not their mandate.

21/2

Remarks

Try to be more specific in your approach.

The 14th FC had recommendations which encircle the main theme of cooperative federalism. The devolution of funds to states have increased from 32% to 42% compared to the previous one. Several CSS⁽⁹⁾ have been scrapped from central assistance which provides more funds to be given to states. The criteria for fund allocation has also been improved giving 2011 census consideration, social distance, etc.

Thus both the NITI Aayog and 14th FC gave importance to the federal structure giving adequate freedom for them to tackle their concerns.

PC was considering one size fit all approach where as Niti Aayog brings competitive environment among the state which prompts the state to perform more.

Remarks

Bring more relevancy in your points.

Q15. What are the main features of 122nd Amendment (GST) Bill of the Indian Constitution?
 What are the main differences between the treasury and opposition benches in this regard? (12.5 Marks)

The 122nd Amendment Bill (GST) is of great importance to the economy of our country. It brings about a goods and services tax which replaces all the indirect taxes of our country. This will be a destination based tax rather than production based. It is of 3 components - central GST, state GST and integrated GST. The bill gives sufficient compensation to the states suffering losses. It excludes alcohol and petroleum from its ambit.

However the bill is debated due to the differences between the treasury and opposition benches. The treasury has excluded alcohol and petroleum products which is opposed by the opposition. The uniform rate of compensation to the states - 18% is also

2

Remarks

You are writing a general answer

Be more specific in your approach.

a matter of concern for the Opposition. They want it to be increased.

This GST Bill is one among the major changes to our economy since independence. This can in the long run lower the rates of articles. The delay in passage of this bill has caused lower rankings of India in indices like Ease of Doing Business, Competition Index, etc. Thus the passage of the Bill by consensus is the need of the hour.

Incomparable
more
specific
points.

There will be a GST council which will recommend the state of tax, period to levy tax, principle of supply, special provision to certain states etc.

Remarks

Q16. The Indian constitution has been amended several times and some people think that it is due to the failure of our founding fathers to foresee the future? Do you agree? On what grounds amendment of the articles and clauses of the constitution could be justified?

(12.5 Marks)

The Indian constitution, as made by our founding fathers is neither rigid nor flexible. The amending procedure has been incorporated in our constitution so that it can be adjusted to the situation of future.

The amendment of constitution is, not an easy procedure since it requires special majority in both the houses of the parliament separately and if federal structure is affected the consent of half the state legislatures is also required. The nearly 100 amendments to our constitution has been made taking into consideration the situational needs.

consider the 100th amendment of our constitution of giving enclaves to Bangladesh. This was done to ~~obtain~~

Remarks

safeguard India-Bangladesh relations and the citizens of these enclaves. Such amendments are required for the progress of our nation to make the constitution representative of the time.

There are examples where amendments have failed as well. The NJAC is a typical example to show how rigid our constitution is.

Thus the founding fathers had future vision to provide provisions to incorporate the needs of the hour to our constitution to make it up-to-date.

Mention about Art- 368 which exclusively provides the provision to amend the constitution

Law is a dynamic concept and over the time with changing scenarios, it should be changed to incorporate the changing need. Eg- 73 & 74 Amendment Act.

Remarks

Q17. It is said that model code of conduct over the years have become like a toothless tiger and party manifesto is merely a crude joke to the voters, to ensure reforms regarding these, ECI has taken steps from time to time, discuss why these steps have been inadequate and what could be done to ensure their proper implementation and enforcement? (12.5 Marks)

Model code of conduct as envisioned in the Representation of Peoples Act, 1951 has become like a toothless tiger these years. It is due to lack of implementation of such provisions in an efficient manner.

The funding to the political parties, unwillingness to reveal the source of funds, malpractices in election, failure to implement the policies of party manifesto, corruption, etc are hampering the elections of our country. Though ECI are implementing reforms they are not reaching the desired targets.

The lack of independence of ECI is one of the reasons for such a scenario. The body is funded as per the voting of Parliament. There is no security of tenure

ECI is independent

Remarks

Read the constitution

to the election commissioners. They do not employ their staff. All these reveal the indebtedness they have to the govt. in power.

To reform the elections; ECI should be independent from the clutches of the executive and legislature. They need to have ~~some~~ independence like the UPSC.

The RTI must be imposed on political parties and proper implementation of reforms must be ensured. The staff of ECI should be selected by themselves to

prevent malpractices. The ECI has asked the centre about its independence which if granted can bring about a remarkable change in the conduct of elections in India.

You lack conceptual clarity regarding the topic who?

Read the topic and write accordingly

Re-write

Remarks

Q18. While Judiciary has been at forefront in the fight to make the administrative and electoral system transparent and accountable, it has displayed the attitude of touch me not when it comes to applying the same principles to itself. Critically comment with respect to the recent NJAC ruling and other judgments related to it in last few years. Also suggest what should be the ideal method of selecting the HC & SC judges. (12.5 Marks)

National Judicial Appointments Commission (NJAC) was a proposed body to replace the collegium system to select and transfer SC and HC judges. However it was struck down by the SC even though ratified by 16 states.

The First Judges case pronounced the consultation of CJI as a mandatory provision while appointment. The Second Judges case gave 'consultation' meant 'consensus' and that CJI need to consult 2 senior most judges as well. The Third Judges case gave consensus meant CJI's as well as the four senior most judges in the collegium (all to be considered). The NJAC had CJI, law minister, 2 senior most judges and 2 eminent persons (one from SC/ST/women) selected by

37

Remarks

PM, Leader of Opposition, CJI. This made a balance between Executive and Judiciary. Approval of 5 of them were necessary for appointment.

The appointment of HC and SC judges lacked transparency since no applications were invited, criteria of selection was unknown. It was within the collegium system. A better method would be vacancies to be announced, applications invited, participation of Executive but without veto power. The major issue with NJAC was the executive had veto power which could give way to malpractices within judiciary. If executive is involved in selection without veto power, transparency will be established safeguarding the independence of the judiciary which is a basic structure of our constitution as remarked in Kesavananda Bharati Judgement of 1973.

The process of debate is about Judicial over reach
Focus more on Judiciary over reach

Remarks

The provisions of NJAC was transparent which the SC has quashed. Instead of giving a try to NJAC, SC declared it unconstitutional and the ground for the same was also favorable.

Q19. LGBT rights are in consonance with spirit of fundamental rights; analyze the statement in light of Naz foundation judgment. (12.5 Marks)

LGBT (Lesbian, Gay, Bisexual, Transgender) rights are in consonance with the fundamental rights of right to life. No country can hamper the sexual freedom of individuals on privacy.

3

The recent Naz Foundation judgement considering the rights of LGBT community is of adequate importance in this modern world. Now the SC has given it to the consideration of a constitutional bench. The law of sex which treats all other forms apart from peno-vaginal sex as unnatural sex prevents the rights of LGBT. This is a colonial law that has its roots in pre-independence British rule.

In this globalized world where many of the countries have legalised the rights of LGBT, India need to reconsider the previous SC judgement. It has

Remarks

Bring more
relevance in
your points.

been proved by psychologists around the world that LGBTs do not have any mental disorder and it is natural inclination of ones own sexual identity. Thus like any other individual, the LGBT community should be given their right to live, enabling them to escape from the trauma and hidden lives that they now undergo.

Mention about
section 377 of Indian
penal code - 1860

Art-21 - Right to life and
liberty
Art-14-18 - Right to equality

Remarks

Q20. While in last 3 Decades numerous statutory rights commission like National Minority commission, National women commission, and National Backward class commission have been established to protect and promote the rights of the vulnerable & weaker sections of the their society. However functioning is marked by several weaknesses and deficiencies. Highlight those weaknesses & Deficiencies. What should be done to address these deficiencies? (12.5 Marks)

To protect the rights of the vulnerable and weaker sections of their society, statutory bodies of NCM, NWC and National Commission of Backward classes have been established. However they are not achieving their desired outputs.

Their weaknesses like inefficient implementation of their policies. They form just advisory bodies without have a binding influence on the government. They lack efficient staff and planning. Many are still unaware of such institutions. Their mandate must be made aware to the vulnerable sections.

The recent deaths of dalit students, the increasing rapes and crimes on women, lack of sufficient

Error in sentence formation

Remarks

Bring more relevancy in your points.

representabcon of memory communities all reveal the lacuna in the functioning of such bodies. Even the incident of dogs taking corpse of a 2-year old girl child beside National commission of women in Delhi truly reveals the present state of our country.

Thus formation of such statutory bodies will not prove useful unless they are efficiently implementing their mandate to safeguard the vulnerable sections of our society.

- The appointment of the commissioner should be made transparent
- They should be provided with implementing power for various policies related to vulnerable sections.

Remarks