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SRUSHTI DESHMUKH

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GS Paper II Marks - 111

GS Mains Q&A **Executive, Legislature & Judiciary**



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Name : SRUCHI J. DESHMUKH

Roll No. :

Mobile No. :

GS MAINS Q&A 2018

EXECUTIVE, LEGISLATURE AND JUDICIARY

Time Allowed: 3 Hr.

Max. Marks: 250

Instructions to Candidate

- ▶ There are 20 Questions.
- ▶ All questions are compulsory.
- ▶ The number of marks carried by a question 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 within the space provided.
- ▶ Any page or portion of the page left blank in the Question-cum-Answer Booklet must be clearly struck off.

Q	Answer	Q	Answer
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

Date:

Candidate's Signature



Examiner's Signature

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REMARKS

Remarks

Q1. Reviving and strengthening the Departmentally Related Standing Committees (DRSCs) can significantly improve the legislative process and effectiveness of parliament as an institution. Examine, the role played by DRSCs and issues they are suffering from. (12.5 Marks)

Departmentally Related Standing Committees (DRSCs) are an integral part of the Parliamentary Govt's functioning. India currently has 24 such committees with a membership of 30 members (20 from Lok Sabha & 10 from Rajya Sabha) which are nominated for 1 yr.

Role played by the DRSCs :

- 1) They act as chambers of technical expertise and examination to review the bills of different dept.
- 2) They allow the MPs to have a deliberative approach to the business of Parliament.
- 3) Discussions & debates over work done, performance evaluation, with regard to allocation etc is also carried out.
- 4) Since, they include members from both ^{Houses} ~~chambers~~, federal character is maintained.
- 5) Members can impartially express opinion since they are not in-camera proceedings.

Remarks

- 8) Members from diverse background, who may not be part of ruling party get a chance to participate in legislative brainstorming.
- 9) Training ground for both politicians & civil servant to understand ground realities & administrative difficulties.

Certain issues, they are suffering from

- 1) Tenure is generally 1 yr of members, which prevents dept of expertise and continuity of knowledge.
- 2) Since members are nominated, not elected, certain political considerations may creep in.
- 3) They are recommendatory in nature.

The continuity of work in DSCs is the ^{tireless} testimony to Parliamentary functioning as Vice President ^{highlighted} & leads to legislative refinement but must be rid of its limitations.

Remarks

Q2. In parliamentary democracy, an effective opposition is sine-qua-non to protect spirit of democracy. In this regard, elucidate on role played by opposition. Also suggest steps to make opposition more effective. (12.5 Marks)

Effective opposition is rightly the indispensable aspect of an effective and efficient democratic govt in a parliamentary democracy, which plays multiple role.

- 1) It holds the Ruling party accountable to its decisions - commissions & omissions
- 2) It criticises the unhealthy policies and spreads public awareness about the same.
- 3) It prevents authoritative functioning of the single largest party and voices the concern of the masses & minority political opinion.
- 4) Opposition is essential to prevent a partial reality view rather facilitates multi dimensional understanding.
- 5) It keeps the Govt on its toes such that it focusses on welfare of people.

Remarks

6) It avoids hasty decision making and acts as a buffer, specially in Rajya Sabha.

7) It unveils alternative policy approaches.

Nevertheless, due to extreme criticism and ethical slowdown in leaders, opposition may appear as a roadblock in smooth functioning. It can be made more effective by:-

1) Incorporating official opinion of opposition in decision making Eg in Public Account Committee -

2) Improving deliberative time with opposition and allowing them to present alternative approaches.

3) Maintaining cooperative spirit. Eg. Even Ministers were chosen from opposition MPs in early years in India

The inputs from opposition must be constructively used and a coordinating spirit must prevail to enhance quality of democratic govt.

Remarks

Q3. Though Judiciary has accused the government to undermine its power under National Judicial Appointment Commission, but even the existing collegium system is highly opaque and undemocratic; Examine, the need for reforms in this context. Also discuss what Memorandum of Procedure should include to break logjam between executive and judiciary. (12.5 Marks)

The Collegium System that currently is responsible for the recommendation/choice of legal authorities/judges of HC & SC in India, that was put forth by Judiciary itself in the JUDGES CASE as is highly opaque.

The situation demands reform as:

- 1) It leads to "Judges Appointing Themselves", violating the Separation of Powers and principle of fairness.
- 2) No clear rules, guidelines, background considerations ~~are~~ are mentioned in public domain and appointments ~~are~~ deliberations are behind closed doors.
- 3) It has caused an "Uncle judges" phenomenon, where "Self-preservation" causes recruitment from same family/caste/region etc.
- 4) Very few women, SCs, STs etc are represented on the bench, which needs to change.

Remarks

But care must be taken that undue political interference may not creep in and the independence of judiciary is not curtailed which can help maintain the sanctity and credibility of the organs of judiciary.

The disagreement over MOP has led to backlog in appointments and thus must be solved to include:

- 1) Clear guidelines, considerations be illustrated which are seen in judges recommendation in public domain
- 2) On contrary, in US, public discussions occur over judges appointment as they are constitutionally integral posts
- 3) Impartial Committee of Leader of Opposition, PM, legal luminaries, retired justices can nominate members to the Commissions apart from CJI etc.
- 4) Transparent functioning must include discussing track record, performance etc to avoid incidences like Justice Karan etc. 5) AIJS can be also of help in this.

Care must be taken to allow proper MOP drafting in ~~a~~ a speedy manner to restore the public trust in judicial appointment.

Remarks

Q4. The position of speaker requires, non-partisanship and integrity, however, it has been under question on several occasions. In this regard, discuss the role of speaker and suggest measures to strengthen the dignity of position. (12.5 Marks)

Speaker is not ~~the~~ only the presiding officer of the House of People ^{/Legislature} but is also the mediator, the connecting link in the legislative deliberations responsible for a host of ~~a~~ business/activities in the house.

This requires almost non-partisanship and integrity on his/her part to carry out the responsibilities, ~~but~~ :-

- 1) Speaker has the function to moderate the deliberative discussion in house
- 2) He/she is responsible for admitting Motions in Parliament Eg. Censure, Calling Attention motion etc.
- 3) Speaker is entrusted with maintenance of dignity of the house and thus is given disciplinary powers over the house members. ^{✓ Non Confidence motion}
- 4) He/she formally summons/prorogues/adjourns the sessions & carries out the business.

Remarks

5) Speaker is responsible for categorising bill eg. as money bill or not.

6) In defection proceedings, Speaker acts as a quasi-judicial authority in this capacity by examining evidence, similarly in case of breach of privilege of house.

~~XXXXXX~~ Recently, on occasion of branding Aadhar bill as money bill presumably to prevent Rajya Sabha's power exercise (Opposition's view) and declining the appointment of Leader of Opposition (lower numbers) has drawn critique.

Steps to enhance dignity of position:

1) Greater say over the choice of speaker / election to the opposition members, could raise acceptability.

2) Ensuring clarity of rules, of the House to all members and in public domain for awareness.

3) Preventing active reappointment in the political party as minister etc to prevent conflict of interest / vested interest.

Remarks

Q5. How tribunals as quasi-judicial body are different from regular courts in India? Also discuss the recommendations of Law Commission to improve the working of tribunals, which are facing the crisis of transparent appointment and functioning? (12.5 Marks)

Tribunals are quasi-judicial institutions, set up with an objective to not only speed up the judicial delivery process but also impart expertise in tackling specialised issues of legal competence.

They are different from regular courts as their appointment is done by the Union Govt itself and the matters they handle are of specific domain Eg National Green Tribunal, Debt Recovery Tribunal, NCLT etc.

Due to the ongoing crisis with regard to Separation of powers, foundational conflict of interest as Govt itself is a litigant in majority matters and service conditions of judges who are often reappointed to tribunals was passed on to Law Commission for recommendations.

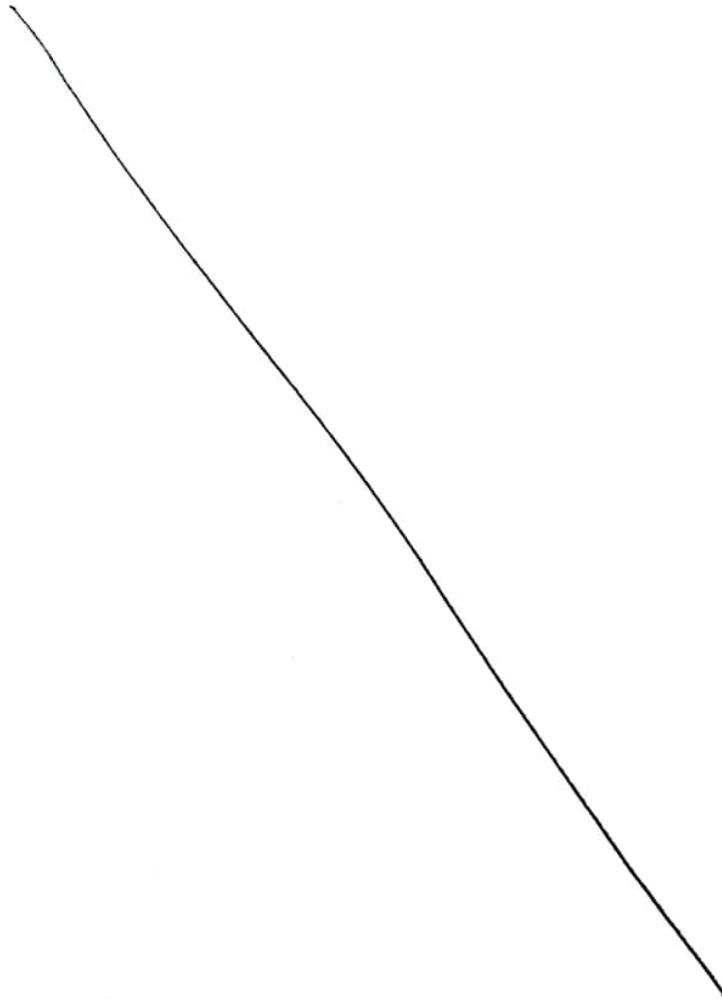
Remarks

Following Recommendation by Chauhan Commission ^{Law} are:

- 1) Chief Justice of India be party to the appointment of members to the ~~Chief Justice~~ Tribunals and minimal political / govt interference / involvement.
- 2) Selection Committee be constituted for same.
- 3) Service Conditions of the tribunal members and its constitution is outlined - to maintain uniformity in different tribunals.
- 4) Chairman's tenure be 3 yrs or 70 yrs age.
- 5) Law Ministry must be nodal agency to overlook the functions / working.
- 6) C Chandra Kumar: SC observed that tribunals are supplemental to HCs & not substitutes, hence, appeals must lie to the HC from tribunals (A 226 jurisdiction).
- 7) Benches of tribunal be spread in different areas to allow geographical coverage.

Remarks

Q6. National Human Right Commission (NHRC) is termed as toothless tiger by the Supreme Court of India. In this regard, examine the functioning and effectiveness of the institution. Also suggest the measures required to enhance the legitimacy and credibility of the institution? (12.5 Marks)



Remarks

Q7. The post of Parliamentary Secretary has been debated over issue of Office of Profit. While explaining the term, parliamentary secretaries and office of profit, discuss the issue involved. Also discuss the 2nd ARC recommendations to determine which appointments constitute for office of profit. (12.5 Marks)

Parliamentary Secretary appointed in a legislature is similar to the Minister of State who assists a Minister in his/her duties.

The concept of office of profit is mentioned as a ground for disqualification of members (Art 102, 191) if any other office from which pecuniary gain / profit or materialistic / non materialistic gain is being made ^{is held} can be under Office of Profit except which those exempted by Parliament by law (1959).

Issues involved are the appointment of MLAs in legislative assemblies as parliamentary secretaries Eg in Assam (13 MLAs), Delhi (21 MLAs) which breached the limit of Ministers. This pertained to holding office of profit as due to a foundational

Remarks

conflict of interest exists in performing the duties and responsibility with the authority gained. This can topple the balance of power and fairness of office, as consideration of profit can block independent / free / fair decision making.

As SC observed in Shiv Murthy Swami Case 1971 and ARC recommendations envisage:

- 1) Office of profit must be clearly determined whether appointment, done by govt or not.
- 2) whether removal, scrutiny of govt is not.
- 3) Even if pecuniary gains are not utilised, but still gained by member then an office of profit itself.
- 4) office being scrutinised by govt, in supervision & superintendence of govt or not
- 5) If it ^{is} included in the "exclusion" list of law or not

Remarks

Q8. Since the institution of the first Finance Commission, stark changes in the macroeconomic situation of the Indian economy have led to major changes in the Finance Commission's 'Term of Reference' over the years. In this context, discuss the major changes brought in by the finance commission to incorporate these considerations? Highlight the major defects in working of Indian fiscal federalism? (12.5 Marks)

Finance Commission (Article 280)

is responsible for the Centre-State financial relation and resources allocation/devolution considerations.

Earlier Indian economy was such that the federal units had little financial resources on account of skewed & less dept and had to rely on centre, as also the considerations were of erstwhile macroeconomic situation of inspector-licence permit raj, centralised control was envisaged.

With new economic policy and changing developmental needs - finance commission brought new changes. (XIV finance commission and others)

1) Increased devolution from Central Pool upto 42% for the States.

Remarks

- 2) Granting greater autonomy to states to decide where the resources need to be utilised promoting a bottom up approach.
- 3) Considering Green Cover of the state to encourage Environmentally friendly dept for the allocation of resources.
- 4) Putting Population - as reference also.
- 5) Assessing special dept needs for Special Category States, hilly & North East states

Major defects in Indian fiscal federalism

- a) Fiscal deficit target not kept as a criteria (any longer) to devolve that can install fiscal responsibility in states
- b) Lesser mandate / guideline with regard to financial resource dissolution to PRIs & ULBs which keeps them in resource crunch & helpless.

Remarks

Q9. The MPLAD scheme has been criticized a lot, for lack of spending and ineffective spending, however, in recent years it been linked with certain measurable outcomes like, Contribution to Swachh Bharat mission and village adoption policy under Sansad Adarsh gram Yojana. Analyze impact of such measures and discuss what should be done to make such spending more effective? (12.5 Marks)

Earlier the MPLAD scheme had been highly criticised for its ineffective outcomes that defeated the purpose of scheme, but the Sansad Adarsh Gram Yojana - which allows the MPs to bring substantial dept in areas of their choice is showing positive results.

- 1) Village Adoption Policy Eg. By Sachin Tendulkar, RS MP of Southern dist has allowed transformation of the area in terms of basic education, sanitation and health services.
- 2) Mass campaigns like Swachh Bharat Abhiyan, Skill dept mission ^{are} ~~can~~ being promoted by MPs by regular monitoring, evaluation and encouragement.
- 3) Fund utilisation in effective manner to make Model Villages/Towns ~~can~~ brings snowballing benefits to nearby areas for dept.

Remarks

4) This has potential to focus on the least developed and deprived villages/areas of India that have been left out as MPs cannot choose their own area/

Such spending can be made much more effective:-

- 1) Promoting accountability by encouraging MPs to share success stories of their work in Parliament/
Public domain.
- 2) Evidence based Working and continuous monitoring of implementation of schemes.
- 3) Utilising technology, for app based info dissemination, citizen awareness about the MP & Scheme as well
- 4) Collaboration with Ground level/ Grass root machinery of administration, bottom-up planning, Gram Sabha Social Audit etc.

This can enhance the effectiveness of such schemes and # reap great benefits for the overall dept. concerns.

Remarks

Q10. Fast track courts were created with an objective of reducing the pendency in judiciary, however, it was not successful in its objective. Evaluate the statement and examine the performance of fast track courts, so far? (12.5 Marks)

fast track courts were constituted with an aim to reduce the burdening of judiciary as. 25 million, 4 million & 60,000 cases are pending in Subordinate Courts, HCs & SC respectively in India.

In cases where accelerated justice delivery becomes essential, not only to convict the criminals but also to maintain the trust of people in judicial system which is getting eroded due to expensive litigation, high time requirement etc; Eg Prevention of Atrocities on SC/ST Act 1989, Child Sexual Abuse (PoA) Cases, Cases of sexual harassment against women are given to fast track courts today.

1) But due to an overall poor efficiency of the judicial delivery framework, even fast track courts are piling up case files.

Remarks

- 2) Shoddy police investigation, obsolete forensic std, inadequacy of officers has caused a decline in quality of case management causing delays also.
- 3) Vacancy of judges in the judiciary due to slow pace in appointment is adding up to delay.
- 4) Ultimate appeal lying to apex courts, complicates the entire process rendering it defeated.

But still, in some cases fast track courts have helped in accelerated justice delivery. Eg Recent case of honour killing conviction ~~by~~ in POA 1989 by fast track court is worth lauding. Domain expertise and likeness of cases allows comparative understanding and clarity/precision in judgements too. Fast track courts must be constituted & appointed timely and supplemented with robust investigation to get best results.

Remarks

Q11. Various parliamentary committees are working as de-facto legislature, particularly in times of frequent disruptions, walk-outs and closures? Elaborate how it affects functioning of legislature and suggest if there is any solution to address this problem? (12.5 Marks)

On account of frequent disruptions, walkouts, adjournments and pandemonium in legislatures, the Parliamentary Committees function as de facto legislature and the transparent ~~for~~ legislative proceedings are roadblocked.

- Constant disruption is a huge cost to the public who pays for the Parliament functioning.
- The disruption in ~~business~~ of Parliament slows down the business and reduces time for the deliberation, discussion of bill in legislature.
- Conducive debates are essential in democracy where representatives are required to express public opinion.
- It creates backlog of business and may even lead to hasty decision making in later sessions.
- Only those members, privy to a committee can participate in discussion, of a specific bill/issue.

Remarks

- Issue of public importance cannot be discussed in an effective manner.
- Only political issues, blame game and rancour does not facilitate quality debates.

As former speaker Somnath Chatterjee remarked that the importance of Parliament lies not in the majestic building but the quality of debates that occur inside, following steps can ensure smooth functioning.

- 1) Rigorous discussion and agenda building in All party meet prior to session commencement.
- 2) Adequate time be allotted for opposition to express their concerns/reservations.
- 3) Attendance of members be ensured.
- 4) Disciplinary action be taken for breach of rules.
- 5) Performance evaluation of legislatures and public accountability.
- 6) Supplementing MPs with quality knowledge & domain awareness about issue

Maintaining the smooth functioning of Parliament is integral for the democratic decision making which must not be reduced to PSCs.

Remarks

Q12. What are your views on the importance of decentralization of the administration of justice? Do you think, that the Supreme Court has strayed from its original character as a Constitutional Court and gradually converted itself into a mere court of appeal? (12.5 Marks)

Decentralization of the administration of justice is an effective tool to devolve and delineate the judicial responsibilities at multiple levels to ensure efficient disposal, case management, and justice opportunity to common people.

But due to an integrated system, apex court's perception and availability of appeal options, as well as corrupt practices at subordinate levels, the common people gain finality only in SC and this has reduced it to Court of appeal.

Decentralisation is important -

- 1) To account for local practices, state laws that may be different ~~and~~
- 2) To allow geographical reach to the masses
- 3) Some options beyond HC, DG, like Lok Adalats, ADR offer opportunities for amicable settlement too.

Remarks

But most cases fight for admission in the SC

- SC also using Special leave petition (Art 136) liberally while admitting petitions.
- The Public Interest litigation, filed in SC causes judicial pronouncements in cases like making National Anthem mandatory or not etc.

In
 • Many cases, finality in ~~the~~ judicial system is not ensured which causes SC deciding on allowing childbirth or abortion or not to rape victims, other pregnant women instead of constitutional questions having substantial law issues.

A Robust mechanism must exist to dispose off petty cases or cases without any constitutional ques. to be settled in decentralised manner. Thus substantial questions only must be admitted in SC. Recently, more judicial expertise needs to be built on new questions like data privacy, Internet of things, climate change etc to prevent all/every case from reaching SC's doorstep.

Remarks

Q13. While the parliamentary system depends for its successful working on the enforcement of rigid discipline on the party members, however, party whip, at times, reduces MPs/MLAs to a level of mere number and not voice. Elaborate. (12.5 Marks)

The political parties are the building blocks of our parliamentary multi party democracy and ensuring discipline maintains fairness of competition which is facilitated by party whip who not only ensures members attendance but also their votes on crucial matters.

But due to such provisions and Defection liability under Anti Defection law 1985 on not following party whip, reduces the MPs/MLAs into mere ~~counting~~ nos.

- (*) MPs/MLAs are not allowed to freely express their opinion on matters of public interest.
- (*) This may even reduce the accountability of members to their individual constituency who actually elect them in a drive to blindly support party directions.

Remarks

(*) This is harmful for overall democratic functioning based on debates / deliberations which should ideally allow members to freely voice their appreciation / criticism, where political parties merely structure & give direction ^{& patronage} to the members.

This makes their presence ~~as~~ the only important consideration, rather than their voice

Remarks

Q14. What are Assurances in parliamentary terms? Discuss the need and working of the Committee on Governmental Assurances. (12.5 Marks)

In Parliamentary Terms, the term "assurances" signifies the promises made, about issues raised and official opinions given about the progress of the issue or ^{its} achievements on the floor of the house by the Representatives of the Govt.

The Committee on Governmental Assurances act as 2 different committees in both houses with 15 members in Lok Sabha & 10 member Committee in Rajya Sabha

Need of such a Committee:

- 1) It examines the assurances made by the ruling party ~~and the~~ to the members and public at large
- 2) It keeps track of the achievements, whether assurances amount to false promises only.

Remarks

3) It thus, holds the Govt accountable on the speech made and answer given on the floor of the house to maintain the sandcity of the house

4) Since, making assurances is easy and most politicians resort on making promises in election manifesto and election rallies etc, assurance committee ensures that a sense of responsibility is instilled in the Parliament. ~~to~~

^{for}
The Maintenance of trust in the Govt Machinery of the general public and the larger democracy. Assurance committee ensures that Parliamentary rules are respected by issuing notices and raising concerns.

Remarks

Q15. The implications of inaction by Parliament, both in terms of slow response to pressing national problems and a lack-lustre commitment to critically scrutinizing legislation, are far reaching. Discuss the impact of poor performance of Parliament on the economic reforms in India. (12.5 Marks)

The Parliament is the foundation stone of the democracy in ^{its} Representative form that holds the responsibility to voice concerns and accommodate viewpoints of the Sovereign-Citizens. But due to degrading political culture, thirst for power, dynastic politics, ~~corse~~ opportunism and dedication to "seat" rather than service, ~~has~~ absenteeism in Parliament, lack lustre commitment to critical scrutiny and indulgence in sheer disruption is evident.

This impacts the quality of legislation that is passed by the Parliament which is in turn going to be implemented in the country and affect crosses of citizens, as seen in economic and social dimensions.

Remarks

* Many provisions of economic reform seek to benefit only sectional interests, mostly corporate which cause harm to the general public but are overlooked due to inaction.

* Economic reforms like GST needed a rigorous scrutiny to allow accommodation of interests of specially the vulnerable, ~~the~~ digitally illiterate/ unaware masses as it sought to bring drastic shift.

Lack of commitment by members and lack of initiative to gain knowledge about new domain and expertise has caused great harm to the legislative process impacting people at large

Remarks

Q16. Elaborate the Doctrine of Separation of Powers in context of Indian constitution? Do you think the SC's denial to form National Judicial Appointment Commission is against this doctrine? Give reasons in support of your answer? (12.5 Marks)

Separation of Powers envisages the differential distribution & delineation of power amongst the 3 organs of govt Executive, legislative and the Judiciary.

In Indian context, though strict separation is ensured in Article 51 between Judiciary and Executive, the Legislature and Executive have functional overlap.

→ Due to parliamentary nature, Executive is drawn from the legislature itself and hence Ministers are also members of Parliament.

Provisions for Separation:

- 1) Article 121, 211, Conduct of judges can't be discussed in Parliament.
- 2) Article 122: SC cannot call in question the proceedings of Parliament.
- 3) MP is not liable for any justification for anything said or vote given on floor of house in Court.

Remarks

4) Executive

The SCs denial

A system of checks and balances ensures that separation is maintained.

- 1) Cabinet/Council of Ministers are accountable to the Lok Sabha (Art 75)
- 2) Parliamentary Committees can call Executives to hold them answerable for action Eg RBI Governors etc
- 3) Judicial Review (Art 13) forms basic structure of constitution over any legislative/executive 'law'.

SCs denial to NJAC appears breach of this doctrine as:

- 1) It prevents checks & balances in appointment of higher judiciary.
- 2) It leads to Self Recruitment & less accountability.
- 3) System is opaque and promotes "Uncle judges".
- 4) NJAC was passed by a constitutional amendment act of Parliament & had the public mandate fully but was simply struck down.
- 5) This leads to domination of one organ, unhealthy for Separation of powers.

Remarks

Q17. Elaborate the structure of bicameral legislature in Indian states? Also examine the need for such an institution? (12.5 Marks)

Bicameral legislature, a legacy of GOI Act 1935, holds the key to an additional chamber or house apart from State legislature ^{Assembly,} in the form of Legislative Council.

It is found in states of Bihar, ~~Uttar~~ Uttar Pradesh, Telangana, Andhra Pradesh, Maharashtra, Jammu Kashmir and Karnataka only.

The members of the bicameral legislature of Legislative assembly are elected in same manner directly as in other states, but those of legislative council are indirectly elected. & $\frac{1}{3}$ of assembly members (40)

- $\frac{1}{6}$ are nominated by the Governor among ~~members~~ members with expertise in art, sports etc.
- Rest $\frac{5}{6}$ are either appointed by the assembly members from amongst those not a part of assembly or by graduates & teachers of the respective states.

Remarks

Need for such an institution :

- 1) The work of avoiding hasty decisions taken by assembly is done by the second house
- 2) It leads to greater scrutiny of bills, better deliberation and a keen eye on the legislative provisions.
- 3) Independent opinion in the legislative council allows novelty and diversity to be incorporated in the legislative functioning.

Hence, Bicameral legislature act as buffer chambers & enhance legislative refinement and quality of discussion in the best interest of the state.

Remarks

Q18. Recently LG of Puducherry has nominated three members in the State assembly. Elaborate on the procedure and law regarding the nomination of members to the Assembly of a Union Territory? What is the contentious issue related to it?

(12.5 Marks)

The Constitution under Article 239A envisages select Union territories to have legislative ~~councils~~ legislatures or COM which can be both elected & nominated.

Under this provision, Govt of UT Act 1963, provides that LG can nominate 3 members to the State legislative assembly but must not be in the service of govt. of UT.

Procedurally sound, these nominations were made by LG and oath was administered to them, but this raised contentious issue.

-) The ruling govt cried a foul play as the CM was not consulted in case of nominations as even at Centre, when President nominates members to LS/RS, he is advised by COM.

Remarks

•) Also, the nominations made were of some members incidentally of ruling govt at centre which raised concerns ~~of~~ over the power and intention of the LG.

While nominations made to the assembly are generally made on the advice of com by Governors / President but the ambiguity in case of LG in many UTs including Delhi, Puducherry over the discretion, power of the LG in ~~comparison~~ comparison to elected assembly members remains a concern, that usually goes in LG's favour due to peculiar nature of post.

Remarks

Q19. "What was hoped to be a dead letter of the constitution has turned to be a deadly weapon against state governments and legislative assemblies". Explain this statement by Supreme Court, in the context of the abuse of article 356? (12.5 Marks)

Article 356 that envisages Presidential Rule on account of failure of constitutional machinery in any state was hoped to be a dead letter by Dr. Ambedkar but has been used since in manners of political issues.

It provides for exercise of this power on 2 grounds:

- 1) When governor ~~the~~ sends a report to the President that state cannot be run in accordance with Constitutional mandate.
- 2) When orders^{directions} of the Union for the maintenance of order are not complied with.

But, unfortunately, this provision was misused multiple times to gain control over the state ~~govt~~ as it dissolves the state govt and Assembly.

Remarks

Govt

- 1) ~~Janata Party~~ indulged in invoking Art 356 in states ruled by opposition in 1977.
- 2) Similar stance was followed by the ruling party again in 1980.
- 3) In State of TN, such rule was imposed without any governor's report.
- 4) Recently, on account of loss of majority of ruling govt, President rule was imposed on Jharkhand Pradesh.

SC in SR Bommai Case 1994 laid down guidelines for Art 356 which were supported by Sarkaria & Punchhi Commission:

- 1) Reasons of malafide can be judicially reviewed and even struck down by SC as well as restoration of govt possible.
- 2) Dissolution of assembly be not done immediately without Parliamentary approval.
- 3) Art 356 cannot be imposed if only loss of majority without seeking alt. govt.
- 4) Adequate time be given to State to comply with orders and warning be issued.
- 5) "Localised Emergency" in part of state suggested by Punchhi Commission.

Remarks

Q20. Post-legislative scrutiny improves the quality of the laws. Do you think this kind of system is needed in India? Analyse it taking into account the experience of other countries. (12.5 Marks)

Post-legislative Scrutiny can be an efficient tool to improve the quality of law and examine its implementation.

- » It can help judge the progress of law
- » To find how much the law has been able to reach its potential goal as envisaged when passed.
- » To bring amendments if any adjusting ground realities.
- » To strengthen the efficacy of law itself
- » To align the policy of govt around the law.

This kind of system is a dire need of the Indian scenario because:

-) Complexity of legislations, replication of provision, overlap & conflict causing confusion.

Remarks

- a) Devil lies in the implementation, which gets ignored on account of no legal scrutiny of law by legislature itself.
-) Due to changing realities and present socio-economic differences & diversities, the ground realities need an examination which post legislative scrutiny can offer.

Remarks